

## **ATTORNEY PRESENCE AT PROBATION OFFICER PRESENTENCE INVESTIGATION INTERVIEW COURT RULE**

### **Issue**

Should the Representative Assembly request that the Michigan Supreme Court adopt a court rule that requires a probation officer who interviews a defendant as part of a presentence investigation to, upon request, give the defendant's attorney notice and a reasonable opportunity to attend the interview?

RESOLVED, that the State Bar of Michigan supports amendment of the Michigan Court Rules to adopt a court rule that requires a probation officer who interviews a defendant as part of a presentence investigation to, upon request, give the defendant's attorney notice and a reasonable opportunity to attend the interview.

FURTHER RESOLVED, that the State Bar of Michigan proposes the amendment to Chapter 6 of the Michigan Court Rules by adding MCR 6.005(J), as follows:

#### **RULE 6.005**

(A – (I) - [Unchanged]

#### **(J) ATTORNEY NOTICE AND OPPORTUNITY TO ATTEND PRESENTENCE INTERVIEW**

Purpose and authorization. In order to promote the fair administration of justice and the right to counsel in pending criminal actions and proceedings in the Courts of this state, all probation officers who interview a defendant as part of a presentence investigation must, upon request, give the defendant's attorney notice and a reasonable opportunity to attend the interview.

### **Synopsis**

The proposed addition to the Michigan Court Rules provides a mechanism for criminal defendants to be represented by counsel at all Presentence Interviews conducted by probation officers. Unless the defendant opts out of the representation, no such interview may occur without defense counsel. The rule makes clear that the decision to opt out belongs to the defendant, and not to defense counsel.

### **Background**

The rule is modeled on Rule 32(c)(2) of the Federal Rules of Criminal Procedure (FRCP), which provides:

The probation officer who interviews a defendant as part of a presentence investigation must, on request, give the defendant's attorney notice and a reasonable opportunity to attend the interview.

Adopting a rule such as the one proposed will enhance the quality of representation for criminal defendants, help assure the fair administration of justice, and protect society. Given the dual function

of probation officers as both potentially adversarial court agents / law enforcement officers and social workers who are tasked with easing the defendant's compliance with court-mandated pre and post-trial / conviction requirements and conditions, many defendants are less than forthright in communication with their probation officers. Meanwhile, the possibility of coercion and manipulation of the defendant by the probation officer, as well as the imposition of impossible, unrealistic or unwarranted conditions of probation, is well known. Assuring that the defendant has the opportunity to have his or her defense counsel present at such interviews therefore benefits all parties to the criminal court process and not merely the defendant.

### **Opposition**

None known.

### **Prior Action by Representative Assembly**

None known.

### **Fiscal and Staffing Impact on State Bar of Michigan**

The cost impact is predicted to be de minimis.

### **STATE BAR OF MICHIGAN POSITION By vote of the Representative Assembly on September 26, 2019**

Should the Representative Assembly request that the Michigan Supreme Court adopt a court rule providing a mechanism that requires a probation officer who interviews a defendant as part of a presentence investigation to, upon request, give the defendant's attorney notice and a reasonable opportunity to attend the interview?

(a) Yes

or

(b) No