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November 3, 2011

Corbin Davis
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2010-14 – Proposed Adoption of New Rule 6.202 of the Michigan Court Rules

Dear Clerk Davis:

The Executive Committee of the State Bar of Michigan considered the above proposed rule change published for comment. In its consideration of the proposal, the Committee considered recommendations from the Criminal Jurisprudence & Practice Committee and the Criminal Law Section. In accordance with those recommendations, the Executive Committee voted to support the proposed changes if modified in the following manner:

Rule 6.202. Disclosure of Forensic Laboratory Report and Certificate; Applicability; Admissibility of Report and Certificate; Extension of Time; Adjournment.

(A) This rule shall apply to trials in the District, Probate and Circuit Court.

~~(A)~~ (B) ~~Mandatory~~ Disclosure. ~~A copy of a report of the methods and findings of any examination conducted by an employee of the state police crime laboratory or of a laboratory with which the state police crime laboratory has a contract for the provision of laboratory or scientific examination services or analysis shall be served by the prosecuting attorney on the defendant's attorney, or on the defendant if the defendant is not represented by an attorney, at least 28 days before trial. Proof of service of the report on the defendant's attorney, or the defendant if the defendant is not represented by an attorney, shall be served on the court.~~ Upon receipt of a forensic laboratory report and certificate by the examining expert, the prosecutor shall serve a copy of the laboratory report and certificate on the opposing party's attorney, or party if not represented by an attorney, within 14 days after receipt of the laboratory report and certificate. A proof of service of the report and certificate on the opposing party's attorney, or party if not represented by an attorney, shall be filed with the court.

~~(B)~~ (C) Notice and Demand.
~~(1) Notice. If the prosecuting attorney intends to offer the report as evidence against the defendant at trial, the prosecuting attorney shall inform the defendant's attorney, or the defendant if the defendant is not represented by an attorney, of that fact in writing when the report is served. The analyst who conducts the analysis on the forensic sample and signs the report shall complete a certificate on which the analyst shall state (i) that he or she is qualified by education, training, and experience to perform the analysis, (ii) the name and location of the laboratory where the analysis was performed, (iii) that~~

~~performing the analysis is part of his or her regular duties, and (iv) that the tests were performed under industry-approved procedures or standards and the report accurately reflects the analyst's findings and opinions regarding the results of those tests or analysis. Except as provided in subrule (B)(2), a report so certified is admissible in evidence to the same effect as if the person who performed the analysis or examination had personally testified.~~

(1) Notice. If a party intends to offer the report as evidence at trial, the party's attorney or party, if not represented by an attorney, shall provide the opposing party's attorney, or party if not represented by an attorney, with Notice of that fact in writing when the report is served as provided in subrule (B) (A)(1). The analyst who conducts the analysis on the forensic sample and signs the report shall complete a certificate on which the analyst shall state (i) that he or she is qualified by education, training, and experience to perform the analysis, (ii) the name and location of the laboratory where the analysis was performed, (iii) that performing the analysis is part of his or her regular duties, and (iv) that the tests were performed under industry-approved procedures or standards and the report accurately reflects the analyst's findings and opinions regarding the results of those tests or analysis. Except as provided in subrule (C)(2), the report and certification is admissible in evidence to the same effect as if the person who performed the analysis or examination had personally testified.

~~(2) Demand. Upon receipt of a copy of the laboratory report and certificate, the defendant's attorney, or the defendant if the defendant is not represented by an attorney, shall file a written objection to the use of the laboratory report and certificate against the defendant within 14 days of receipt of the notice. The written objection shall be filed with the court in which the matter is pending, and shall be served on the prosecuting attorney. If written objection is filed, the court shall determine the admissibility of the evidence by use of the appropriate rules of evidence. If the defendant's attorney, or the defendant if the defendant is not represented by an attorney, does not file a written objection with the court to the use of the laboratory report and certificate within the time allowed by this section, then the report and certificate are admissible in evidence as provided in subrule (B)(1).~~

(2) Demand. Upon receipt of a copy of the laboratory report and certificate, the opposing party's attorney, or party if not represented by an attorney, may file a written objection to the use of the laboratory report and certificate. The written objection shall be filed with the court in which the matter is pending, and shall be served on the opposing party's attorney or party if not represented by an attorney within 14 days of receipt of the Notice. If a written objection is filed, the report and certificate are not admissible under subrule (C)(1). If no objection is made to the use of the laboratory report and certificate within the time allowed by this section, the report and certificate are admissible in evidence as provided in subrule (C)(1).

(3) For good cause, the court shall extend the time period of filing a written objection.

(4) Adjournment. Compliance with this court rule shall be good cause for an adjournment of the trial.

The judges, prosecutors, and defense attorneys who comprise the membership of the Criminal Law Section and the Criminal Jurisprudence and Practice Committee actively debated this proposal over several meetings. The proposal that emerged as a result of these discussions is intended to ensure that the amended rule applies to all trials in district, circuit and probate court, and that there is a good cause exception to allow rescission of the otherwise-assumed waiver of a defendant's rights under the Confrontation Clause. In addition, the recommended changes are offered to make clear that the rule as amended does not circumvent the prosecutor's mandatory obligation to furnish forensic reports to the defense, or allow courts to admit evidence in violation of the Confrontation Clause.

We thank the Court for the opportunity to comment on the proposed adoption and apologize for submitted this position after the November 1, 2011 comment deadline.

Sincerely,

Janet K. Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Julie I. Fershtman, President