

MCR 6.425(B) AND (C) PROVIDING COPIES OF PRESENTENCE REPORTS TO DEFENDANT AND DEFENSE COUNSEL BEFORE SENTENCING

Issue

Should the Representative Assembly recommend the Michigan Supreme Court amend MCR 6.425(B) and (C) of Criminal Procedure as follows:

RULE 6.425 SENTENCING: APPOINTMENT OF APPELLATE COUNSEL

(B) Presentence Report; Disclosure Before Sentencing. The court must provide copies of the presentence report to the prosecutor ~~and~~, the defendant's lawyer, ~~or~~ **and** the defendant ~~if not represented by a lawyer~~, at a reasonable time before the day of sentencing

(C) Presentence Report; Disclosure After Sentencing. After sentencing, the court, on written request, must provide the prosecutor, the defendant's lawyer, ~~or~~ **and** the defendant ~~not represented by a lawyer~~, with a copy of the presentence report and any attachments to it

Synopsis

This change in the rule would provide that both the defendant and defense counsel have adequate opportunity to review and use the presentence report at sentencing, and to maintain the report in both their files for future reference.

Background

Current practices vary widely throughout the state, and while the existing rule provides that defense counsel or an unrepresented defendant may demand a copy after sentencing, there is no reason why both the attorney and client should not have a copy of the report when it is most needed: *before* sentencing.

Opposition

None known.

Prior Action by Representative Assembly

None known.

Fiscal and Staffing Impact on State Bar of Michigan

There would be no fiscal impact to the State Bar of Michigan. There will be a minimal fiscal impact to the court by providing one additional copy of the presentence report for the defendant. However, this additional cost would be offset by improvements in the administration of justice resulting from more effective representation.

STATE BAR OF MICHIGAN POSITION
By vote of the Representative Assembly on April 12, 2008

Should the Representative Assembly recommend the Michigan Supreme Court amend MCR 2.645(B) and (C), as proposed, to mandate the distribution of copies of the presentence report *before* sentencing?

(a) Yes

or

(b) No