

Order

Michigan Supreme Court
Lansing, Michigan

February 5, 2010

Marilyn Kelly,
Chief Justice

ADM File No. 2008-39

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

Amendments of Rules 6.425
and 6.610 of the
Michigan Court Rules

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of Rules 6.425 and 6.610 of the Michigan Court Rules are adopted, effective May 1, 2010.

[The present language is amended as indicated below by underlining for new text and strikeover for text that has been deleted.]

Rule 6.425 Sentencing; Appointment of Appellate Counsel

- (A) [Unchanged.]
- (B) Presentence Report; Disclosure Before Sentencing. The court must provide copies of the presentence report to the prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, at a reasonable time, but not less than two business days, before the day of sentencing. When providing the presentence report to the prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, the court shall inform them that the presentence report is confidential, and shall instruct them that they are prohibited from making a copy or otherwise creating an image of the report, and must return their single copy of the report to the court before or at the time of sentencing. If the presentence report is not made available to the prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, at least two business days before the day of sentencing, the prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, shall be entitled, on oral motion, to an adjournment of the day of sentencing to enable the moving party to review the presentence report and to prepare any necessary corrections, additions, or deletions to present to the court. The presentence report shall not include the following information about any victim or witness: home address, home telephone number, work address, or work telephone number, unless an address is used to identify the place of the crime.

The court may exempt from disclosure information or diagnostic opinion that might seriously disrupt a program of rehabilitation and sources of information that have been obtained on a promise of confidentiality. When part of the report is not disclosed, the court must inform the parties that information has not been disclosed and state on the record the reasons for nondisclosure. To the extent it can do so without defeating the purpose of nondisclosure, the court also must provide the parties with a written or oral summary of the nondisclosed information and give them an opportunity to comment on it. The court must have the information exempted from disclosure specifically noted in the report. The court's decision to exempt part of the report from disclosure is subject to appellate review.

(C)-(G) [Unchanged.]

Rule 6.610 Criminal Procedure Generally

(A)-(E) [Unchanged.]

(F) Sentencing.

(1) ~~At the~~ For sentencing, the court shall:

- (a) require the presence of the defendant's attorney, unless the defendant does not have one or has waived the attorney's presence;
- (b) ~~give the defendant's attorney or, if the defendant is not represented by an attorney, the defendant an opportunity to review the presentence report, if any, and to advise the court of circumstances the defendant believes should be considered in imposing sentence; and~~ provide copies of the presentence report (if a presentence report was prepared) to the prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, at a reasonable time, but not less than two business days before the day of sentencing. When providing the presentence report to the prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, the court shall inform them that the presentence report is confidential, and shall instruct them that they are prohibited from making a copy or otherwise creating an image of the report, and must return their single copy of the

report to the court before or at the time of sentencing. If the presentence report is not made available to the prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, at least two business days before the day of sentencing, the prosecutor and the defendant's lawyer, or the defendant if not represented by a lawyer, shall be entitled, on oral motion, to an adjournment to enable the moving party to review the presentence report and to prepare any necessary corrections, additions or deletions to present to the court, or otherwise advise the court of circumstances the prosecutor or defendant believes should be considered in imposing sentence. The presentence report shall not include the following information about any victim or witness: home address, home telephone number, work address, work telephone number, or any other information prohibited from disclosure pursuant to MCL 780.751 et seq., unless an address is used to identify the place of the crime.

- (c) inform the defendant of credit to be given for time served, if any.

(G)-(H) [Unchanged.]

Staff Comment: The amendments of Rules 6.425 and 6.610 of the Michigan Court Rules were submitted by the Representative Assembly of the State Bar of Michigan. The amendments increase the time within which a court is required to provide copies of the presentence report to the prosecutor, the defendant's lawyer, or the defendant if not represented by a lawyer, to at least two business days before the day of sentencing. If the report is not made available at least two days before sentencing, the prosecutor or defendant's lawyer, or the defendant, when not represented by a lawyer, is entitled to an adjournment to prepare any necessary corrections, additions, or deletions to present to the court. The revisions of these rules also prohibit the inclusion of specific information in the report about the victim or witness, and require that the court instruct those who review the report that they are precluded from making a copy of the report and must return their copy to the court before or at the defendant's sentencing. The confidentiality provision is based on MCL 791.229.

The staff comment is not an authoritative construction by the Court.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

February 5, 2010

Corbin R. Davis
Clerk