

Order

Michigan Supreme Court
Lansing, Michigan

July 7, 2011

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2010-14

Michael F. Cavanagh
Marilyn Kelly

Proposed Adoption of
New Rule 6.202 of the
Michigan Court Rules

Stephen J. Markman
Diane M. Hathaway
Mary Beth Kelly
Brian K. Zahra,
Justices

On order of the Court, this is to advise that the Court is considering the proposed adoption of new Rule 6.202 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at www.courts.michigan.gov/supremecourt/resources/administrative/ph.htm.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

Please note that a draft certificate, referred to in proposed subrule (B)(1), is published in conjunction with publication of this proposed rule.

Rule 6.202. Disclosure of Forensic Test Results; Admissibility of Report.

- (A) **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.
- (B) **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.

- (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).

Staff Comment: The intent of this proposed new rule is to create a "notice and demand" rule that would allow forensic reports to be admitted into evidence without the forensic analyst's presence if the defendant does not object. The proposed rule is based on favorable discussion by the United States Supreme Court in *Melendez-Diaz v Massachusetts*, 557 US ___; 129 S Ct 2527 (2009). Although the Supreme Court struck down the Massachusetts procedure for admitting forensic evidence without attendance by the forensic analyst, it noted that some states have adopted "notice and demand" provisions that create a procedure by which forensic reports may be admitted into evidence if the defendant does not object to the report's entry.

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

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by November 1, 2011, at P.O. Box 30052, Lansing, MI 48909, or

MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2010-14. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.



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.

July 7, 2011

Corbin R. Davis

Clerk