

MCR 6.201(A)-(B) DISCOVERY TO APPLY IN MISDEMEANOR ACTIONS

Issue

Should the Representative Assembly recommend the Michigan Supreme Court amend MCR 6.201 of Criminal Procedure to clarify that the specified disclosures and discovery apply to misdemeanor actions? The clarification amendment proposed is:

RULE 6.201 DISCOVERY

(A) Mandatory Disclosure. In felony and misdemeanor actions, ~~In~~ addition to disclosures required by provisions of law other than MCL 767.94a, a party upon request must provide all other parties:

- (1) the names and addresses of all lay and expert witnesses whom the party may call at trial; in the alternative, a party may provide the name of the witness and make the witness available to the other party for interview; the witness list may be amended without leave of the court no later than 28 days before trial;
- (2) any written or recorded statement pertaining to the case by a lay witness whom the party may call at trial, except that a defendant is not obliged to provide the defendant's own statement;
- (3) the curriculum vitae of an expert the party may call at trial and either a report by the expert or a written description of the substance of the proposed testimony of the expert, the expert's opinion, and the underlying basis of that opinion;
- (4) any criminal record that the party may use at trial to impeach a witness;
- (5) a description or list of criminal convictions, known to the defense attorney or prosecuting attorney, of any witness whom the party may call at trial; and
- (6) a description of and an opportunity to inspect any tangible physical evidence that the party may introduce at trial, including any document, photograph, or other paper, with copies to be provided on request. A party may request a hearing regarding any question of costs of reproduction. On good cause shown, the court may order that a party be given the opportunity to test without destruction any tangible physical evidence.

(B) Discovery of Information Known to the Prosecuting Attorney. In felony and misdemeanor actions, ~~U~~pon request, the prosecuting attorney must provide each defendant:

- (1) any exculpatory information or evidence known to the prosecuting attorney;
- (2) any police report and interrogation records concerning the case, except so much of a report as concerns a continuing investigation;

(3) any written or recorded statements by a defendant, codefendant, or accomplice pertaining to the case, even if that person is not a prospective witness at trial;

(4) any affidavit, warrant, and return pertaining to a search or seizure in connection with the case; and

(5) any plea agreement, grant of immunity, or other agreement for testimony in connection with the case.

Synopsis

The proposed amendment to the Criminal Procedure rule makes clear the defense is entitled to the specified disclosures and discovery in misdemeanor actions.

Background

The proponent of the amendment believes a rule clarification is needed to eliminate the conflicting interpretations and practices of prosecutors relating to application of MCR 2.601 in misdemeanor actions. Some prosecutors in Michigan recognize a defendant's right to the specified disclosures and discovery in misdemeanor actions, and other prosecutors refuse to recognize the disclosures or provide discovery in such actions.

Opposition

None known.

Prior Action by Representative Assembly

None known.

Fiscal and Staffing Impact on State Bar of Michigan

None known.

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 6.201 of Criminal Procedure as proposed to clarify that the specified disclosures and discovery apply to misdemeanor actions?

(a) Yes

or

(b) No