



p 517-346-6300
p 800-968-1442
f 517-482-6248
www.michbar.org

September 30, 2011

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

306 Townsend Street
Michael Franck Building
Lansing, MI
48933-2012

RE: ADM File No. 2010-12 – Proposed Amendment of Rule 606 of the Michigan Rules of Evidence and Proposed Amendment of Rule 2.512 of the Michigan Court Rules

Dear Clerk Davis:

At its September 7, 2011 meeting, the Board of Commissioners of the State Bar of Michigan considered the above rule amendment published for comment. In its review, the Board considered recommendations from its Civil Procedure & Courts Committee, the Justice Policy Initiative, and the Litigation Section. The Board voted unanimously to support the changes to Rule 606 of the Michigan Rules of Evidence and to oppose the changes to Rule 2.512 of the Michigan Court Rules.

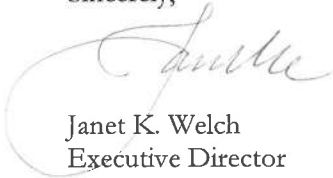
Support for adoption of the proposed amendment to MRE 606 was in recognition of its similarity to FRE 606 regarding what jurors may and may not testify about regarding their deliberations.

Opposition to the proposed change published to MCR 2.512 stemmed largely from the significant value trial attorneys place on what they learn from speaking with jurors, and the absence of evidence of a problem with the current rule that might justify eliminating this benefit. Trial court judges are already fully empowered to protect jurors from harassment. Board members shared personal experiences of encountering jurors long after a case is over, in various impromptu settings such as restaurants or social events. In these cases the jurors themselves initiated contact and were interested in discussing the trial. Board members were concerned that interaction in such circumstances would run afoul of the proposed rule. The Litigation Section elaborated on such concerns:

The Litigation Section objects to the proposed amendment to MCR 2.512(E) for the reason that it interferes with what should be, in the Section's opinion, the trial attorneys' right to talk to juror's following their dismissal as jurors. A post-trial interview with the jurors is a vitally important process for attorneys to learn, among other things, how the case and the attorneys' actions were received by the jury. The Section is not aware of current abuses of post-trial interviews with jurors that the amendment seems to be addressing. The amendment requires a formal motion, presumably with notice and a hearing, which would require the motion to be filed, in most instances, prior to trial, before the attorneys may even know if they wish to interview the jurors. This needlessly adds to pretrial litigation costs and burdens the parties and the court on the eve of the trial with matters not affecting the trial itself. Furthermore, the amendment fails to set forth a standard by which the court should grant or deny the motion. If the motion is denied, regardless of the standard, attorneys have no remedy if the motion is improperly denied as once the jurors are dismissed and leave the courthouse, no appeal can cure the harm. The amendment, furthermore, provides no time limit on the prohibition of jury contact, nor any guidance to the attorneys regarding incidental contact with jurors in public.

We thank the Court for the opportunity to comment on the proposed amendments. Please contact me with any further questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janet K. Welch". The signature is written in a light grey or blue ink and is positioned above the printed name and title.

Janet K. Welch
Executive Director

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