MICHIGAN SUPREME COURT

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NEW JURY REFORM RULES AIMED AT GREATER ENGAGEMENT BY JURORS
Chief Justice Young: New rules "permit jurors to be truly involved, not just sitting in enforced passivity"; better tools for "seeking the truth"

LANSING, MI, June 29, 2011 – Jurors can ask questions of witnesses, take notes and use them during deliberations, and take trial exhibits into the jury room, under a comprehensive jury rule package announced by the Michigan Supreme Court today.

The new rules are aimed at "giving jurors the tools they need for their very demanding job: seeking the truth," said Chief Justice Robert P. Young, Jr.

"Traditionally, the legal system has been somewhat conflicted about juries," Young said. "On the one hand, lawyers and judges tell jurors how important they are to the justice system and how much we value their service. Then we proceed to tie their hands – they can't take notes, ask questions, or talk to other jurors about the evidence while it's still fresh in their minds. We ask them to make tremendously important decisions and then take their decision-making tools away. The last time any of us were expected to learn while sitting quietly like jurors was in kindergarten."

By contrast, the new rules "permit jurors to be truly involved, rather than sitting in enforced passivity," Young explained. "The rules allow jurors to be more engaged and make well-informed decisions."

Young noted that other states, including Arizona and Massachusetts, have already adopted jury trial reforms and that about 30 other states have either made such changes or are studying them. "This is our future," he said.

Noting that the Supreme Court has proclaimed July to be Juror Appreciation Month, Young said the Court is grateful to Michigan jurors for their service. "People make sacrifices to serve on juries – time away from family, time away from work," he said. "Those of us in the court system owe it to them to make their service as meaningful as possible, and that includes freeing them to be more actively engaged in the trial process."

The Supreme Court began working on jury reforms in 2005, publishing a proposed rule package for public comment and then, in 2008, authorizing a two-year pilot program involving 12 courts. In surveys, jurors who participated in the pilot program strongly favored the reforms. For example, 91 percent of jurors who participated in the survey agreed that being able to discuss the evidence before final deliberations helped them understand the case, focus on and recall the evidence, and reach a correct verdict.

Features of the jury reform package:

- Jurors can, with the judge's permission, submit questions to witnesses through the judge. Criminal procedure rules already contained such a provision, but the new rule includes jurors in civil cases as well.
- Jurors can, if permitted by the judge, take notes during trial and use those notes during the jury's deliberations.
- The jury can request to view "property or … a place where a material event [such as a crime scene] occurred."
- In civil cases, the judge "may instruct the jurors that they are permitted to discuss the evidence among themselves in the jury room during trial recesses," as long as all jurors are present.
- After the jury is sworn, the judge "shall provide the jury with pretrial instructions reasonably likely to assist in its consideration of the case," covering "the duties of the jury, trial, procedure, and the law applicable to the case …." The rule also requires the court to give jurors copies of the instructions.
- The judge may "authorize or require" attorneys to provide jurors with "a reference document or notebook," which would include a list of witnesses, relevant provisions in statutes, and copies of any documents at issue, such as a contract. Other items, such as preliminary jury instructions, trial exhibits, "and other admissible information," can also be added to the notebook.
- The judge may require attorneys to prepare "concise, written summaries of depositions" for the jury instead of having the full deposition read aloud.
- In addition to making opening and closing statements, attorneys may, "in the court's discretion, present interim commentary at appropriate junctures of the trial."
- Court can schedule expert testimony to assist jurors' understanding of the issues – for example, by having expert witnesses testify sequentially. Another option is to allow each expert to be present for the opposing expert's testimony, so that the expert can "aid counsel in formulating questions to be asked of the testifying expert on cross-examination."
- Judges may "fairly and impartially sum up the evidence" after closing arguments, while also reminding jurors that they must decide fact issues for themselves. The rule bars judges from commenting on a witness's credibility or stating a conclusion "on the ultimate issue of fact before the jury."
- Judges are required to give the jury a copy of the final jury instructions to take into the jury room for final deliberations. In addition, judges must invite jurors to ask any questions they may have to clarify the instructions.
- In addition to jurors' notes and final jury instructions, the judge "may permit the jurors to take into the jury room the reference document … as well as any exhibits and writings admitted into evidence."
- The judge "may not refuse a reasonable request" from jurors to review evidence or testimony as they deliberate.
- If the jury appears to reach an impasse during deliberations, the judge "may invite the jurors to list the issues that divide or confuse them in the event that the judge can be of assistance in clarifying or amplifying the final instructions."

The complete rule package is available online at http://www.courts.michigan.gov/supremecourt/Resources/Administrative/2005-19_06-29-11_order.pdf.

The jury reform rules go into effect on September 1, 2011. Both Justice Diane M. Hathaway, who expressed concerns about the rule changes, and Justice Stephen J. Markman, who supports the new rules, included statements with the Supreme Court's order adopting the reforms.

The Court plans to review the rules and their impact in fall 2014.

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