

MICHIGAN SUPREME COURT



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NATIONAL JURY INNOVATION AWARD HONORS MICHIGAN SUPREME COURT, TRIAL COURT JUDGES FOR MICHIGAN JURY REFORM PROJECT National Center for State Courts praises Michigan Supreme Court, pilot project judges for “sustained and comprehensive commitment to enhancing jury service”

LANSING, MI, September 12, 2012 – Michigan’s comprehensive jury reforms, and the Michigan trial court judges who tested them, are being honored along with the Michigan Supreme Court by the National Center for State Courts, the NCSC announced today.

The Supreme Court and 12 trial judges are the recipients of the 2012 G. Thomas Munsterman Award for Jury Innovation, given annually by the NCSC to recognize significant improvements or innovations for juries, NCSC President Mary C. McQueen said.

“Michigan’s jury reform pilot project demonstrated a sustained and comprehensive commitment to enhancing jury service through thorough testing of in-court reforms and revisions of procedural rules,” said McQueen.

NCSC Vice President and General Counsel Robert Baldwin will present the award to the Court and pilot project judges following the Court’s first oral argument on October 9. The ceremony will take place at 10:45 a.m. in the old Supreme Court courtroom in the state Capitol building.

Effective September 1, 2011, the Michigan Supreme Court adopted a comprehensive package of jury reform court rule amendments, despite initial and intense opposition from some Michigan attorneys and judges who feared the changes, Chief Justice Robert P. Young, Jr., explained. Before adopting the rules, the Court conducted a two-year pilot project in which 12 judges tested proposed reforms in actual trials and reported on their experiences. The Court also surveyed jurors, who strongly favored the reforms, such as permitting jurors to take notes, submit questions for witnesses in both civil and criminal cases, and discuss the evidence among themselves before final deliberations.

“These wide-ranging reforms allow jurors to be more truly involved in the fact-finding process – and, as a result, to make better-informed decisions,” Young said.

The Court’s jury reform effort began in 2005 when then-Chief Justice Clifford W. Taylor asked Justice Stephen J. Markman to review jury reform practices in other states and to propose rules for Michigan courts. After intensive study, the Court published a series of proposed rule changes for public comment in July 2005.

Reaction from Michigan’s legal community was swift – and largely negative, Young noted. “While non-lawyers favored the reforms, lawyers and judges generally did not,” he said. Despite this opposition, the Court did not abandon the reforms, but instead authorized the 2009-2010 pilot project that led to the rules’ adoption, he explained.

“Initially, some of the pilot project judges were very skeptical about these rule changes,” Young said. “By the end of the project, they had become converts and the most enthusiastic voices in favor of changing the rules. The pilot project judges displayed great courage, not only in testing these unfamiliar procedures, but also in becoming advocates for reform.”

The pilot project judges include

- Judge Thomas P. Boyd, 55th District Court, Mason, Ingham County
- Judge William J. Caprathe (retired) and Judge Kenneth W. Schmidt, 18th Circuit Court, Bay County
- Judge Richard J. Celello, 41st Circuit Court, Dickinson/Iron/Menominee counties
- Judge Beth Gibson, 92nd District Court, Newberry, Luce/Mackinac counties
- Judge Timothy G. Hicks, 14th Circuit Court, Muskegon County
- Judge Richard W. May, 90th District Court, Charlevoix/Emmet counties
- Judge Wendy L. Potts, 6th Circuit Court, Oakland County
- Judge Donald L. Sanderson, 2B District Court, Hillsdale County
- Judge Paul E. Stutesman, 45th Circuit Court, St. Joseph County
- Judge David Viviano, 16th Circuit Court, Macomb County
- Judge Peter J. Wadel, Lake County Trial Court/79th District Court, Ludington

The National Center for State Courts, headquartered in Williamsburg, Virginia, is a nonprofit court reform organization dedicated to improving the administration of justice. Founded in 1971 by the Conference of Chief Justices and U. S. Supreme Court Chief Justice Warren E. Burger, NCSC provides education, training, technology, management, and research services to the nation’s state courts.

Michigan jury reform overview

- 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.”
- Jurors can, with the judge’s permission, submit questions to witnesses through the judge. Criminal procedure court 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; if the judge allows note taking, jurors must be allowed to 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.”
- 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.
- Where it is appears likely that a deposition will be read to the jury, the judge “should encourage the parties 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.”
- 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 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.”

For the complete text of these rules, see

http://www.courts.michigan.gov/supremecourt/Resources/Administrative/2005-19_06-29-11_order.pdf.

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