

MICHIGAN SUPREME COURT



Office of Public Information

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FOR IMMEDIATE RELEASE

POST-VERDICT QUESTIONING OF JURORS IS FOCUS OF PROPOSED RULE CHANGES ON NOV. 30 PUBLIC ADMINISTRATIVE HEARING AGENDA

Attorneys, parties would be barred from asking jurors about deliberations or basis for the verdict, unless court grants permission; proposal also limits scope of post-verdict inquiry

LANSING, MI, November 29, 2011 – Jurors could not be questioned about the basis for their verdict or jury deliberation details by “[a]ttorneys, parties, or anyone acting for them or on their behalf” without court permission, under a proposed court rule change ([ADM File No. 2010-12](#)) on the [Michigan Supreme Court’s](#) November 30 administrative hearing agenda.

Courts would allow post-verdict juror questioning only on “a formal motion ... with the court” under the proposed change to Michigan Court Rule 2.512; the change would also allow the court to “conduct such interrogation [of jurors] in lieu of granting permission to the movant.” A related change to Michigan Rule of Evidence 606 would not allow a juror to testify or give a sworn statement “as to any matter or statement occurring during ... deliberations or to the effect of anything upon that or any other juror’s mind or emotions ... or mental processes” related to a verdict or indictment. But jurors would be allowed to testify regarding any “extraneous prejudicial information” or outside influences that could have improperly affected the jury, and about mistakes jurors made on the verdict form.

The public hearing will take place in the Michigan Supreme Court courtroom on the sixth floor of the Michigan Hall of Justice, 925 W. Ottawa Street, Lansing; the hearing will begin at 9:30 a.m. and adjourn no later than 11:30 a.m.

Public administrative hearings are part of the Supreme Court’s rule-making process. Proposed changes to the Michigan Court Rules, Michigan Rules of Evidence, attorney and judicial ethics rules, and other court administrative matters, and related comments, are online at <http://www.courts.michigan.gov/supremecourt/Resources/Administrative/index.htm#proposed>. Proposals are published for public input before being placed on an administrative hearing agenda.

A possible change to attorney advertising rules is also on the public hearing agenda ([ADM File No. 2002-24](#)). Under the proposed revision to Michigan Rule of Professional Conduct 7.3, attorneys would have to include the words “Advertising Material” on letters, e-mails, or other written “communication from a lawyer that seeks professional employment from a prospective client.” The same requirement would not apply to radio or television ads, or to writings where the attorney “has a family or prior professional relationship with the recipient.”

The proposed rule would also require attorneys to wait 30 days after a death, injury, or accident before contacting a potential client.

Also on the Supreme Court's agenda:

- [ADM File No. 2008-36](#), proposed amendment of MCR 7.202 or proposed adoption of an administrative order. The proposed change to MCR 7.202 would include a trial court's order "suppressing or excluding substantial and material evidence" in a criminal case in the definition of a "final order" that the prosecutor could appeal as of right. For the trial court's order to be deemed a "final order," the prosecutor would have to certify "that the [excluded or suppressed] evidence is essential to the prosecution of the case." If the trial court is affirmed on appeal, "the state shall be barred from prosecuting the defendant for the same offense or offenses" unless the prosecution shows that new evidence has been discovered "that the state could not, with reasonable diligence, have discovered before filing the appeal." An alternative proposal would give prosecutors the right to a stay to bring an interlocutory appeal of a trial court's decision to suppress prosecution evidence.
- [ADM File No. 2010-13](#), proposed amendment of MCR 6.001. The proposed revision is aimed at clarifying discovery procedures in criminal matters in district court.
- [ADM File No. 2010-14](#), proposed adoption of new MCR 6.202. This new criminal procedure rule would allow a forensic expert's reports to be admitted into evidence without the expert having to appear in court, if the defendant does not object. The proposed rule is based on comments in the U.S. Supreme Court's majority opinion in *Melendez-Diaz v Massachusetts*, 557 US ___, 129 S Ct 2527 (2009). The Supreme Court struck down the defendant's drug conviction in that case because the prosecution had submitted three "certificates of analysis" without the forensic analyst testifying in person; that practice violated the defendant's Confrontation Clause rights, the majority said. However, the majority commented that "notice and demand" statutes that allow forensic reports to be admitted into evidence without the analyst's presence – subject to a defendant's objection – do not violate the Confrontation Clause.
- [ADM File No. 2010-19](#), proposed amendments of Subchapter 7.100 of the Michigan Court Rules. These changes, which would govern appeals to circuit courts, were submitted by the Circuit Court Appellate Rules Revision Committee.

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