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>>> <Michael_LaBeau@monroemi.org> 9/22/2006 11:38:31 AM >>>

I am a Circuit Court Judge completing my 22nd year on the bench. I find most of the amendments appropriate where they grant discretion to the court in conducting trials. Many of these things could be done previously, but the amendments make it clear that the court does have the discretion to do them. However, some of the amendments require certain mandatory action by the court that I find objectionable.

MCR 2.512(A)(2) would require the parties to submit in writing to the court a statement of issues after the close of evidence. If everyone doesn't know the issues by the close of evidence, something is seriously wrong. If needed, the court should have the discretion to require this but it should not be mandatory.

MCR 2.513(A) requires the court before evidence is taken to give the jury a copy of instructions about the elements of all civil claims or all charged offenses, as well as legal presumptions and burdens of proof. This would be good in some cases but not necessary in many others. In some cases, this would be a waste of time and undue burden on the parties and/or the court. Every case shouldn't be painted with the same brush. Such requirements, when not needed in a particular case, just flood the jury with additional unnecessary instructions and make trials last longer. When needed, it is good to have a court rule backing up doing this. However, it should be discretionary.

MCR 2.513(D) allows the parties to make interim commentary at appropriate junctures of the trial within the court's discretion. While I don't have a big objection to this rule, it seems to me that it could result in evidentiary problems as well as lengthy argument and time wasted on what commentary would be allowed. MCR 2.513(G)(3) allows for a panel of experts to discuss a subject in lieu of or after testifying. The same comments apply. While we are seeking to find the truth, this process opens up a real can of worms considering rules of evidence, foundation, etc.

MCR 2.513(N)(2) requires the court to advise the jury that it may submit questions about instructions in a sealed envelope. Juries have been asking questions for years on a piece of paper. A sealed envelope seems unnecessary. That same rule requires the court to invite the jury to ask any questions to clarify instructions before they deliberate. This seems inconsistent. First we have a sealed envelope, but before that we have the jury ask questions in open court. If you wait to get written questions after they start to deliberate, the court and attorneys can formulate an appropriate response.

MCR 2.513(N)(4) requires the court to provide each juror with a written copy of the final jury instructions. I often provide the jury with a portion of the instructions but not each juror. Most of the time a copy of all final instructions is unnecessary. Often just the elements of a crime or civil matter are helpful. Rarely do they need all the other instructions. Furthermore, if they need to hear or read the instructions again, they can and do ask for them. To give each juror a copy appears unnecessary as well. This rule should be discretionary and allow for all or a portion of the instructions to be given to the jury. Whether to give a copy to the jury as a whole, or to each juror, should also be left to the court's discretion depending on the circumstances of a given case.

Trial courts are overburdened as it is. Requiring things that should be discretionary suggests that we do not know how to run our trials in a fair and efficient manner. Please consider these comments when deciding on passage of these proposed rules.