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October 31, 2006

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

Re: Comment on ADM File No. 2005-19

Dear Mr. Davis:

The Michigan Association of Circuit Court Administrators (MACCA) is writing to comment on ADM File No. 2005-19 because the members of our Association have concerns regarding the impact of these rules on the administration of justice in Michigan. Judges and attorneys have different viewpoints and are no doubt commenting on the impact of the rule on them. We are concerned about the operation of our Courts.

An over-all observation is that the amendments greatly increase the complexity of litigation involving jury trials without taking into account whether the increased complexity is needed in all cases. It seems to us that many provisions in the rule are extremely helpful in difficult or complex cases in which there are issues of law or fact that require more organization and structure. We believe, though, that the vast majority of jury trials are better handled under simpler rules. It should be kept in mind that these rules impact state-wide practice, while litigation varies in complexity and numbers in the various Michigan trial courts. We think it would be wiser to leave many of these provisions to the discretion of judges, to be used only when they would aid the administration of justice.

We will highlight some of the provisions that cause us concern from an administrative standpoint. Proposed MCR 2.513(A) on preliminary instructions, for example, requires that the Court 'shall' provide a copy of the preliminary instructions to the jury in writing.

This places a burden on Court, particularly judges' staff, because instructions are not normally provided to the Court by counsel in a complete package which does not need editing. Each party normally provides their version of the instructions, if any, which need to be edited, merged and printed. Copies will have to be printed for the judge, the attorneys for all parties and the jurors. In criminal cases many courts seat two alternates – therefore at least seventeen copies will be needed if each person involved in the trial gets a copy. It may seem trivial, but this imposes a burden on local courts for the wear and tear on equipment and the expense of paper, toner, etc. for copying the instructions in every trial. When the number of cases state-wide each year are considered the expense to citizens is substantial. In many cases it is not necessary or even helpful to give the jury printed copies of preliminary instructions. As an alternative, the rule could direct that 'a' copy be given to the jury. They can share the copy and ask the Court any questions they may have as they arise during the trial. The rule should not mandate that all jurors get copies all of the time.

MCR 2.513(B) is too broad when it prohibits all communications 'pertaining to the case' between the court and the jury without notifying the parties and permitting them to be present. Court staff of some type must interact with the juror, many times about albeit mundane things like refreshments, breaks, restroom facilities, lunches, when to come and go, etc. Arguably, these 'pertain to the case' since the staff wouldn't be talking to the jurors about these things except for the case. We don't really think this is the intent of the Supreme Court, but we feel that the Court should make it clearer that housekeeping communications are not prohibited – only communications relating to the merits of cases.

MCR 2.513(E) states that the court 'must' encourage counsel to provide jurors with a reference document or notebook. This is a provision that complicates trials and drives up the cost of litigation. It may be very helpful in complicated cases, but is unnecessary the vast majority of the time. It should be left to the discretion of judges.

Similarly, MCR 2.513(N)(3) mandates that each juror receive a copy of the final jury instructions. We have the same concern regarding preparation of instructions, copying and the expense. This should be discretionary with the Court. The instructions are not needed in writing in all cases. As noted above, the goal of this portion of the rule could be met by providing the jury with a copy.

Finally, proposed MCR 2.513(O) provides that a judge may not refuse a reasonable request to review testimony through video, audio or a transcript. This may impose a significant increase in costs upon courts. Those using court reporters will have to request transcription of testimony. Transcription is expensive and time consuming. This may delay proceedings. It will place additional time sensitive pressure on busy court reporters. There is no provision for the parties to bear this expense. If the Court orders transcripts, it normally has to pay for them. This will be a burden on local funding units.

Thank you for the opportunity to comment on these proposed changes.

Very truly yours,

DeVona Jones, President
MACCA