Order

Michigan Supreme Court
Lansing, Michigan

June 29, 2011

ADM File No. 2005-19

Amendment of Rules 2.512, 2.513, 2.514, 2.515, 2.516, and 6.414 of the Michigan Court Rules

Robert P. Young, Jr., Chief Justice

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Brian K. Zahra, Justices

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, as well as consideration having been given to the results of the pilot project that was authorized by Administrative Order No. 2008-2, the following amendments of Rules 2.512, 2.513, 2.514, 2.515, 2.516, and 6.414 of the Michigan Court Rules are adopted, effective September 1, 2011. The Court will review the efficacy of the rules adopted in this order in the fall of 2014.

Rule 2.512 Instructions to Jury

(A) Request for Instructions.

(1) At a time the court reasonably directs, the parties must file written requests that the court instruct the jury on the law as stated in the requests. In the absence of a direction from the court, a party may file a written request for jury instructions at or before the close of the evidence.

(2) In addition to requests for instructions submitted under subrule (A)(1), after the close of the evidence, each party shall submit in writing to the court a statement of the issues and may submit the party's theory of the case regarding each issue. The statement must be concise, be narrative in form, and set forth as issues only those disputed propositions of fact that are supported by the evidence. The theory may include those claims supported by the evidence or admitted.

(3) A copy of the requested instructions must be served on the adverse parties in accordance with MCR 2.107.

(4) The court shall inform the attorneys of its proposed action on the requests before their arguments to the jury.

(5) The court need not give the statements of issues or theories of the case in the form submitted if the court presents to the jury the material substance of the issues and theories of each party.

(B) Instructing the Jury.

(1) At any time during the trial, the court may, with or without request, instruct the jury on a point of law if the instruction will materially aid the jury in understanding the proceedings and arriving at a just verdict.

(2) Before or after arguments or at both times, as the court elects, the court shall instruct the jury on the applicable law, the issues presented by the case, and, if a party requests as provided in subrule (A)(2), that party's theory of the case.

(C) Objections. A party may assign as error the giving of or the failure to give an instruction only if the party objects on the record before the jury retires to consider the verdict (or, in the case of instructions given after deliberations have begun, before the jury resumes deliberations), stating specifically the matter to which the party objects and the grounds for the objection. Opportunity must be given to make the objection out of the hearing of the jury.

(D) Model Civil Jury Instructions.

(1) The Committee on Model Civil Jury Instructions appointed by the Supreme Court has the authority to adopt model civil jury instructions (M Civ JI) and to amend or repeal those instructions approved by the predecessor committee. Before adopting, amending, or repealing an instruction, the committee shall publish notice of the committee's intent, together with the text of the instruction to be adopted, or the amendment to be made, or a reference to the instruction to be repealed, in the manner provided in MCR 1.201. The notice shall specify the time and manner for commenting on the proposal. The committee shall thereafter publish notice of its final action on the proposed change, including, if appropriate, the effective date of the adoption, amendment, or repeal. A model civil jury instruction does not have the force and effect of a court rule.

(2) Pertinent portions of the instructions approved by the Committee on Model Civil Jury Instructions or its predecessor committee must be given in each action in which jury instructions are given if

(a) they are applicable,

(b) they accurately state the applicable law, and

(c) they are requested by a party.

(3) Whenever the committee recommends that no instruction be given on a particular matter, the court shall not give an instruction unless it specifically finds for reasons stated on the record that

(a) the instruction is necessary to state the applicable law accurately, and

(b) the matter is not adequately covered by other pertinent model civil jury instructions.

(4) This subrule does not limit the power of the court to give additional instructions on applicable law not covered by the model instructions. Additional instructions, when given, must be patterned as nearly as practicable after the style of the model instructions and must be concise, understandable, conversational, unslanted, and nonargumentative.

Rule 2.513 Conduct of Jury Trial

(A) Preliminary Instructions. After the jury is sworn and before evidence is taken, the court shall provide the jury with pretrial instructions reasonably likely to assist in its consideration of the case. Such instructions, at a minimum, shall communicate the duties of the jury, trial procedure, and the law applicable to the case as are reasonably necessary to enable the jury to understand the proceedings and the evidence. The jury also shall be instructed about the elements of all civil claims or all charged offenses, as well as the legal presumptions and burdens of proof. The court shall provide each juror with a copy of such instructions. MCR 2.512(D)(2) does not apply to such preliminary instructions.

(B) Court's Responsibility. The trial court must control the proceedings during trial, limit the evidence and arguments to relevant and proper matters, and take appropriate steps to ensure that the jurors will not be exposed to information or influences that might affect their ability to render an impartial verdict on the evidence presented in court. The court may not communicate with the jury or any juror pertaining to the case without notifying the parties and permitting them to be present. The court must ensure that all communications pertaining to the case between the court and the jury or any juror are made a part of the record.

(C) Opening Statements. Unless the parties and the court agree otherwise, the plaintiff or the prosecutor, before presenting evidence, must make a full and fair statement of the case and the facts the plaintiff or the prosecutor intends to prove. Immediately thereafter, or immediately before presenting evidence, the defendant may make a similar statement. The court may impose reasonable time limits on the opening statements.

(D) Interim Commentary. Each party may, in the court's discretion, present interim commentary at appropriate junctures of the trial.

(E) Reference Documents. The court may authorize or require counsel in civil and criminal cases to provide the jurors with a reference document or notebook, the contents of which should include, but which is not limited to, a list of witnesses, relevant statutory provisions, and, in cases where the interpretation of a document is at issue, copies of the relevant document. The court and the parties may supplement the reference document during trial with copies of the preliminary jury instructions, admitted exhibits, and other admissible information to assist jurors in their deliberations.

(F) Deposition Summaries. Where it appears likely that the contents of a deposition will be read to the jury, the court should encourage the parties to prepare concise, written summaries of depositions for reading at trial in lieu of the full deposition. Where a summary is prepared, the opposing party shall have the opportunity to object to its contents. Copies of the summaries should be provided to the jurors before they are read.

(G) Scheduling Expert Testimony. In a civil action, the court may, in its discretion, craft a procedure for the presentation of all expert testimony to assist the jurors in performing their duties. Such procedures may include, but are not limited to:

(1) Scheduling the presentation of the parties' expert witnesses sequentially; or

(2) allowing the opposing experts to be present during the other's testimony and to aid counsel in formulating questions to be asked of the testifying expert on cross-examination

(H) Note Taking by Jurors. The court may permit the jurors to take notes regarding the evidence presented in court. If the court permits note taking, it must instruct the jurors that they need not take notes, and they should not permit note taking to interfere with their attentiveness. If the court allows jurors to take notes, jurors must be allowed to refer to their notes during deliberations, but the court must instruct the jurors to keep their notes confidential except as to other jurors during deliberations. The court shall ensure that all juror notes are collected and destroyed when the trial is concluded.

(I) Juror Questions. The court may permit the jurors to ask questions of witnesses. If the court permits jurors to ask questions, it must employ a procedure that ensures that such questions are addressed to the witnesses by the court itself, that inappropriate questions are not asked, and that the parties have an opportunity

outside the hearing of the jury to object to the questions. The court shall inform the jurors of the procedures to be followed for submitting questions to witnesses.

(J) Jury View. On motion of either party, on its own initiative, or at the request of the jury, the court may order a jury view of property or of a place where a material event occurred. The parties are entitled to be present at the jury view, provided, however, that in a criminal case, the court may preclude a defendant from attending a jury view in the interests of safety and security. During the view, no person, other than an officer designated by the court, may speak to the jury concerning the subject connected with the trial. Any such communication must be recorded in some fashion.

(K) Juror Discussion. In a civil case, after informing the jurors that they are not to decide the case until they have heard all the evidence, instructions of law, and arguments of counsel, the court may instruct the jurors that they are permitted to discuss the evidence among themselves in the jury room during trial recesses. The jurors should be instructed that such discussions may only take place when all jurors are present and that such discussions must be clearly understood as tentative pending final presentation of all evidence, instructions, and argument.

(L) Closing Arguments. After the close of all the evidence, the parties may make closing arguments. The plaintiff or the prosecutor is entitled to make the first closing argument. If the defendant makes an argument, the plaintiff or the prosecutor may offer a rebuttal limited to the issues raised in the defendant's argument. The court may impose reasonable time limits on the closing arguments.

(M) Summing up the Evidence. After the close of the evidence and arguments of counsel, the court may fairly and impartially sum up the evidence, if it also instructs the jury that it is to determine for itself the weight of the evidence and the credit to be given to the witnesses and that jurors are not bound by the court's summation. The court shall not comment on the credibility of witnesses or state a conclusion on the ultimate issue of fact before the jury.

(N) Final Instructions to the Jury.

(1) Before closing arguments, the court must give the parties a reasonable opportunity to submit written requests for jury instructions. Each party must serve a copy of the written requests on all other parties. The court must inform the parties of its proposed action on the requests before their closing arguments. After closing arguments are made or waived, the court must instruct the jury as required and appropriate, but at the discretion of the court, and on notice to the parties, the court may instruct the jury before

the parties make closing arguments. After jury deliberations begin, the court may give additional instructions that are appropriate.

(2) Solicit Questions about Final Instructions. As part of the final jury instructions, the court shall advise the jury that it may submit in a sealed envelope given to the bailiff any written questions about the jury instructions that arise during deliberations. Upon concluding the final instructions, the court shall invite the jurors to ask any questions in order to clarify the instructions before they retire to deliberate.

If questions arise, the court and the parties shall convene, in the courtroom or by other agreed-upon means. The question shall be read into the record, and the attorneys shall offer comments on an appropriate response. The court may, in its discretion, provide the jury with a specific response to the jury's question, but the court shall respond to all questions asked, even if the response consists of a directive for the jury to continue its deliberations.

(3) Copies of Final Instructions. The court shall provide a written copy of the final jury instructions to take into the jury room for deliberation. Upon request by any juror, the court -may provide additional copies as necessary. The court, in its discretion, also may provide the jury with a copy of electronically recorded instructions.

(4) Clarifying or Amplifying Final Instructions. When it appears that a deliberating jury has reached an impasse, or is otherwise in need of assistance, the court 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.

(O) Materials in the Jury Room. The court shall permit the jurors, on retiring to deliberate, to take into the jury room their notes and final instructions. The court may permit the jurors to take into the jury room the reference document, if one has been prepared, as well as any exhibits and writings admitted into evidence.

(P) Provide Testimony or Evidence**.** If, after beginning deliberation, the jury requests a review of certain testimony or evidence that has not been allowed into the jury room under subrule (O), the court must exercise its discretion to ensure fairness and to refuse unreasonable requests, but it may not refuse a reasonable request. The court may make a video or audio recording of witness testimony, or prepare an immediate transcript of such testimony, and such tape or transcript, or other testimony or evidence, may be made available to the jury for its consideration. The court may order the jury to deliberate further without the requested review, as

long as the possibility of having the testimony or evidence reviewed at a later time is not foreclosed.

Rule 2.514 Rendering Verdict

(A) Majority Verdict; Stipulations Regarding Number of Jurors and Verdict. The parties may stipulate in writing or on the record that

(1) the jury will consist of any number less than 6,

(2) a verdict or a finding of a stated majority of the jurors will be taken as the verdict or finding of the jury, or

(3) if more than 6 jurors were impaneled, all the jurors may deliberate.

Except as provided in MCR 5.740(C), in the absence of such stipulation, a verdict in a civil action tried by 6 jurors will be received when 5 jurors agree.

(B) Return; Poll.

(1) The jury must return its verdict in open court.

(2) A party may require a poll to be taken by the court asking each juror if it is his or her verdict.

(3) If the number of jurors agreeing is less than required, the jury must be sent back for further deliberation; otherwise, the verdict is complete, and the court shall discharge the jury.

(C) Discharge From Action; New Jury. The court may discharge a jury from the action:

(1) because of an accident or calamity requiring it;

(2) by consent of all the parties;

(3) whenever an adjournment or mistrial is declared;

(4) whenever the jurors have deliberated and it appears that they cannot agree.

The court may order another jury to be drawn, and the same proceedings may be had before the new jury as might have been had before the jury that was discharged.

(D) Responsibility of Officers.

(1) All court officers, including trial attorneys, must attend during the trial of an action until the verdict of the jury is announced.

(2) A trial attorney may, on request, be released by the court from further attendance, or the attorney may designate an associate or other attorney to act for him or her during the deliberations of the jury.

Rule 2.515 Special Verdicts

(A) Use of Special Verdicts; Form. The court may require the jury to return a special verdict in the form of a written finding on each issue of fact, rather than a general verdict. If a special verdict is required, the court shall, in advance of argument and in the absence of the jury, advise the attorneys of this fact and, on the record or in writing, settle the form of the verdict. The court may submit to the jury:

(1) written questions that may be answered categorically and briefly;

(2) written forms of the several special findings that might properly be made under the pleadings and evidence; or

(3) the issues by another method, and require the written findings it deems most appropriate.

The court shall give to the jury the necessary explanation and instruction concerning the matter submitted to enable the jury to make its findings on each issue.

(B) Judgment. After a special verdict is returned, the court shall enter judgment in accordance with the jury's findings.

(C) Failure to Submit Question; Waiver; Findings by Court. If the court omits from the special verdict form an issue of fact raised by the pleadings or the evidence, a party waives the right to a trial by jury of the issue omitted unless the party demands its submission to the jury before it retires for deliberations. The court may make a finding with respect to an issue omitted without a demand. If the court fails to do so, it is deemed to have made a finding in accord with the judgment on the special verdict.

Rule 2.516 Motion for Directed Verdict

<u>A party may move for a directed verdict at the close of the evidence offered by an opponent. The motion must state specific grounds in support of the motion. If the motion is not granted, the moving party may offer evidence without having reserved the right to do so, as if the motion had not been made. A motion for a directed verdict that is not granted is not a waiver of trial by jury, even though all parties to the action have moved for directed verdicts.</u>

<u>Staff Comment</u>: The amendments in this order reflect the Court's approval of many of the jury reform principles tested in the Court's two-year jury reform pilot project that ended in December 2010. Under this order, jury practices for both civil and criminal proceedings are generally incorporated in a new MCR 2.513. The Court will review the efficacy of these amendments in 2014.

The staff comment is not an authoritative construction by the Court.

MARKMAN, J. (*concurring*). I support the adoption of these juror reforms, which, in my judgment, will accomplish the following: first, they will make evidence more accessible to jurors, and thereby enhance the ability of jurors to render intelligent and informed decisions concerning the significance of such evidence; second, they will afford jurors a better opportunity to discern the 'big picture' of cases in which they are sitting, and thereby enable them to better understand and more effectively carry out their responsibilities; third, they will enhance the quality and accuracy of juror deliberations; fourth, they will diminish opportunities for gamesmanship in the courtroom, potentially distracting and confusing jurors; fifth, they will more deeply engage, and maintain the attention of, jurors in the proceedings that they are to judge; and sixth, they will render at least somewhat less true Robert Frost's observation that "a jury consists of twelve persons chosen to decide who has the better lawyer."

These new rules constitute a comprehensive package of juror reforms drawn largely from the experience of other states and the federal judicial system. Among other things, these reforms will: (1) permit the use of preliminary jury instructions; (2) permit note-taking by jurors during the trial and the use of such notes during deliberations; (3) permit reference documents or notebooks; (4) permit interim summarizing statements by attorneys; (5) permit juror discussion of evidence before deliberations in civil cases; (6) permit jurors to ask questions of witnesses during trial; (7) require the court to invite jurors to ask questions about final instructions before they embark upon deliberations; (8) permit courts to provide jurors with written copies of jury instructions; (9) permit courts in appropriate circumstances to sum up the evidence; (10) permit courts to allow juror views of properties and places where material events have occurred; (11) permit courts to clarify or amplify the final jury instructions during deliberations; (12)

permit courts to allow jurors to take into the jury room reference documents and notebooks, if these have been prepared, as well as exhibits and writings admitted into evidence; (13) permit courts to provide jurors with testimony or evidence as necessary during deliberation; (14) permit courts to require the preparation of concise, written summaries of depositions to be read at trial in lieu of the full deposition; and (15) permit courts to craft a variety of approaches to the scheduling of expert witnesses in civil cases. With only a few exceptions, most of these reforms will repose *discretion* in the trial court as to whether such reforms should be applied in a particular case. Over time, I would anticipate that those reforms which have proven most beneficial will come to be most widely adopted, while those that have proven least beneficial will come to be modified or reconsidered.

While I am obviously grateful to members of the bench and bar who have participated in this Court's pilot project over the past two years, it must be emphasized that the principal purpose of these reforms is not to make life easier or simpler for the bench and bar, but rather it is to assist those citizens who are performing their civic duty as jurors. Even more specifically, the principal purpose of these reforms is to further the rule of law, and necessarily the search for truth upon which this depends, by affording jurors the fullest possible assistance of our legal system in apprehending the cases and controversies before them. As Muskegon Circuit Court Judge, Timothy Hicks, a participating judge in the pilot project, has explained:

> We have heard from the persons most integral to our jury system--the jurors. We know what they think works. We say we value them, but we [currently] ignore or disregard what 91 percent of them want [i.e., the percentage of jurors in the pilot project who reported that being able to discuss the evidence before deliberations helped them reach a correct verdict.] [*The Jury Reform Pilot Project—The Envelope, Please*, Michigan Bar Journal, at 42, June 2011.]

Finally, in brief response to my dissenting colleague: first, Justice HATHAWAY asserts that "party consent [should be] required before any of the new procedures are used." However, this fails to recognize that the principal beneficiaries of the new procedures are not the parties or their counsel, but the jurors themselves. As Judge Hicks has also observed, there may be some instances in which parties "*do not want* jurors to be engaged. There are cases in which attorneys want confusion and doubt, where they want the jurors to nullify or render a verdict on the basis of passion unconnected to any facts." *Id.* However, the role of the juror is to render a verdict on the basis of the law and the facts, and it is this Court's responsibility in its supervision of our state's justice system to bear *this* interest principally in mind so that the rule of law can be effected. And it is to this end that the present reforms are principally directed; second, Justice HATHAWAY asserts that we are likely at the outset to see legal challenges to some of these new rules. This doubtlessly is true, and is to be expected whenever a court adopts new rules, much

less comprehensive reforms. It will be necessary for this Court to continue to work with the trial bench and bar in order to ensure that these reforms are implemented in a responsible fashion, and when legal challenges and appeals arise, to ensure that these are resolved in a reasonable manner; third, Justice HATHAWAY asserts that members of the bar have opposed most of these reforms. However, many of the comments from the bar were submitted *before* this Court conducted its pilot program in which twelve judges in Michigan from varied courts and communities implemented many of these new procedures and thus *before* we received highly positive feedback from participating judges and attorneys, and, perhaps most importantly, from participating jurors; and finally, Justice HATHAWAY asserts that, although the present order states that this Court will review these reforms in three years, because we have not established any specific "review mechanism," we will have "no way . . . to evaluate the efficacy of these procedures" at that time. However, I fully expect that our State Court Administrative Office will monitor the use of the new procedures, and that in the day-to-day exercise of this Court's appellate responsibilities, we already have in place an effective "review mechanism" to assess the ongoing progress of these reforms.

To quote from Judge Hicks once more,

> "Use your common sense and everyday experience." I hear this in virtually every closing argument. Yet the traditional jury trial essentially deprives jurors of the tools to do this. They cannot take notes, ask questions, or discuss the case while the testimony is fresh-- all the things you'd do during the week [in undertaking the important decisions of life.]

The purpose of these juror reforms is in significant part to render more compatible the decision-making of the jury process with the important decision-making of everyday life, to enable citizen-jurors to bring to bear their judgment and common sense in ways that are now made unnecessarily difficult and burdensome by existing court rules and procedures.

HATHAWAY, J. (*dissenting*). I respectfully dissent from the decision to implement these new rules designed to "reform" jury trials. These new rules contain procedures, such as expanded jury note taking and asking questions, which if properly used, have a valid place in our judicial system. However, they also contain multiple procedures that are highly controversial and are likely to prove problematic, particularly when litigants are *forced* to use them by a trial judge. The new rules include controversial procedures such as using deposition summaries in lieu of testimony, interim jury deliberations, and interim commentary by attorneys. I agree with the overwhelming majority of public comments that oppose most of these procedures. Those comments were submitted by a broad spectrum of the legal community, and reflect a host of valid, practical and legal issues that have not been resolved. While I will not summarize those lengthy and

detailed concerns here, I urge trial judges and litigants to review the comments submitted to this Court before utilizing these procedures.[1]

As evidenced by the concerns expressed in public comment, there are valid reasons why many of the procedures should not be employed. My paramount concern is that party consent is not required before any of the new procedures are used. While implementation of most of the procedures is left to the trial judge's discretion, the procedures become *mandatory* for parties once a judge exercises his or her discretion to use them. Thus, this Court is forcing questionable, and to some extent experimental, procedures on litigants regardless of whether they agree to use them. Accordingly, I believe that the procedures in these rules should at the very least be restricted to cases wherein party consent is given. Despite the absence of such a requirement in these rules, I strongly urge my colleagues on the trial bench to obtain party consent, rather than force litigants to use procedures that may unfairly interfere with trials.

Moreover, trial courts and litigants should be aware that there is inadequate objective evidence establishing that many of these so-called "reforms" will result in any substantial improvement in the jury trial system. After public comment was received, a 2-year limited pilot program was conducted by this Court.[2] The pilot, while useful, failed to produce sufficient objective data upon which to base well-informed opinions.

For example, while 12 judges agreed to participate in the pilot, four of the participating judges did not provide the required follow-up surveys (from judges, facilitators, attorneys, and jurors). Therefore, data only exists from 8 courts. The pilot only produced surveys from 97 jury trials over a two-year period. We do not know whether only 97 jury trials were conducted in that 2-year period, whether only selective trials utilized the procedures, or whether surveys were not collected in trials where procedures were used. Further, this Court's formal review only tabulated results from 30 of those 97 cases as a representative sampling. Of those 30 cases reviewed, the majority of the involved courts did not utilize the more controversial procedures. In fact, in the 30 cases used for the sampling, most used only a limited number of procedures.[3]

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[1]http://courts.michigan.gov/supremecourt/Resources/Administrative/2005-19-Comments.htm

[2] The pilot project was implemented on August 5, 2008, which was before I became a member of this Court. The project ran until December 31, 2010. See Administrative Order 2008-2.

[3] Like Justice Markman, I am grateful to members of the bench and bar who participated in this Court's pilot project over the past 2 years. However, the data produced by the pilot is inadequate. When data is inadequate we should not rely on it. For example, while our study produced statistics that reflect that 91% of jurors in the pilot project found interim deliberations helpful, that percentage only reflects 91% of jurors from 30 cases and it does not tell us why 9% of jurors did not find the procedure helpful or what problems arose. We cannot simply ignore problems that occurred. Instead, we need to know what the problems are and correct them before procedures are implemented.

Most significantly, our pilot project did not utilize control groups or employ independent monitoring techniques (such as videotaping jury sessions) to objectively evaluate the efficacy of the procedures. Among the out-of-state studies reviewed by this Court only one study utilized objectively verifiable monitoring. That study, conducted in Arizona, only examined one procedure, juror interim deliberations.[4] Notably, the study concluded that the overall impact of interim discussions was only "modest" and contained shortcomings.[5] That study does not support this Court's decision to implement

[4] The 2002 Arizona study utilized a control group by dividing juries into "discuss" and "no discuss" groups and the jurors were videotaped so that objective monitoring could be employed.
http://www.law.northwestern.edu/faculty/fulltime/diamond/papers/arizona_civil_discussions.pdf (last accessed June 2, 2011).

[5] *Id*.

these rules. Accordingly, I strongly urge my colleagues on the trial bench to exercise caution before implementing these procedures.

We should also be mindful that appellate review of the use of these procedures will be subject to the abuse of discretion standard. This standard sets a heightened threshold for a successful challenge on appeal.[6] Thus, practically speaking, parties may be left with little or no recourse when these untested experimental procedures become harmful or produce unfair results. Nevertheless, we are still likely to see numerous challenges by parties, creating increased appeals, increased litigation costs, and delay in proceedings.

Moreover, while today's order does not implement a formal "pilot project," the order states that "[t]he Court will review the efficacy of the rules adopted in this order in the fall of 2014." However, this Court has not established any review mechanism to monitor and evaluate the results of this 3-year experiment. Thus, this Court will have no way, other than perhaps anecdotal comments, to evaluate the efficacy of these procedures.

Finally, Justice Markman asserts "that the principal beneficiaries of the new procedures are not the parties or their counsel, but the jurors themselves." However, I still urge trial courts to obtain party consent before implementing these procedures because, as Canon 1 of the Code of Judicial Conduct states, "A judge should always be aware that the judicial system is for the benefit of the litigant and the public." Although some of these procedures may in theory benefit jurors, we must be mindful that the litigants' rights are always paramount, and we should not adopt procedures that potentially endanger these rights. Therefore, any procedures implemented should both benefit jurors *and* include protections for the paramount rights of litigants.

Accordingly, I dissent.

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[6] In *People v Babcock*, 469 Mich 247, 269 (2003), this Court explained that "an abuse of discretion standard acknowledges that there will be circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome." Further, "[w]hen the trial court selects one of these principled outcomes, the trial court has not abused its discretion and, thus, it is proper for the reviewing court to defer to the trial court's judgment."

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 28, 2011

Clerk