

MSC adopts massive rule changes to jury procedures

29. June 2011 By Sarah Riley Howard

Today the Court issued an order amending six court rules, mostly in the 2.500 series, which make controversial changes to jury procedure. See the order [here](#). Of particular note, beginning in September trial court judges have discretion to permit:

- jurors to talk to each other about the case prior to the close of proofs;
- jurors to submit questions to witnesses in civil cases through the judge (this was already permitted in criminal cases); and
- interim statements by the lawyers throughout the case.

Trial judges will also have discretion to require “concise summaries” of deposition testimony be offered instead of full text.

Many of the changes were supported by jurors who were surveyed, but opposed by comments submitted from bench and bar.

Justice Markman wrote a concurrence supporting the changes, noting several observations of pilot program participant Muskegon County Circuit Court Judge Timothy Hicks. (Judge Hicks’ in-depth article supporting the reforms can be found in the June 2011 issue of the Michigan Bar Journal. He argues that these changes are effective in helping jurors deliberate more effectively and make more reasoned decisions.) Justice Hathaway dissented, arguing that with an abuse of discretion standard of review, it will be nearly impossible for appellants to successfully challenge one of the new procedures where significant injustice resulted. She also took the position that the study of these rules and presumptions underlying them had not be appropriately completed yet.

The amendments, which change MCR 2.512-2.516 and 6.414, take effect September 1, 2011, and are scheduled to be reviewed in fall 2014.