



p 517-346-6300

p 800-968-1442

f 517-482-6248

www.michbar.org

306 Townsend Street

Michael Franck Building

Lansing, MI

48933-2012

February 1, 2013

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

RE: ADM File No. 2012-18 – Proposed Amendment of Rule 2.512 of the Michigan Court Rules

Dear Clerk Davis:

At its January 18th meeting, the Board of Commissioners of the State Bar of Michigan considered the above rule amendment published for comment. In its review, the Board considered recommendations from the Criminal Jury Instructions Committee, Criminal Issues Initiative, and Criminal Jurisprudence & Practice Committee. The Board voted unanimously to support the proposed amendment and urge the Court to consider concerns articulated by the Criminal Jury Instructions Committee. The Criminal Jury Instructions Committee has provided timely, accurate, and understandable jury instructions and guidance to the bench and bar for over four decades, aiding the legal process at trial and helping to reduce appeals.

It is important to note at the outset that there are important differences between civil and criminal practice affecting the production of model criminal jury instructions that must be taken into account to ensure that the quality of the criminal jury instruction standards is maintained. For example, because of the frequent statutory changes affecting criminal law the Committee has found it necessary to meet three times a year to ensure that the latest legal changes are incorporated into the model instructions. With that in mind, the Committee's concerns and questions, endorsed by the Board of Commissioners, are as follows:

1. Requiring a comment period for proposed jury instructions is problematic. There are many more criminal than civil jury trials. Electronic publication of accurate, new instructions as quickly as possible is essential for the prevention of reversibly erroneous criminal jury instructions. A comment period only delays the delivery of accurate instructions to the bench and bar. At one time in its history the Criminal Jury Instructions Committee used a solicitation of comments procedure, but abandoned the practice some years ago because so few comments were received. Comments were last solicited in 2006 for instructions relating to the Self-Defense Act and several other matters. Very few comments were received and, therefore, the procedure was abandoned in favor of a commitment to the delivery of new instructions as quickly as possible.

2. Will the Criminal Jury Instructions be available free of charge? If so, will the “Commentary” section be continued?

While we support free access to the jury instructions themselves, we believe that it is important that the future model preserves the incentives for updating and enhancing the existing Commentary. Practitioners and judges have relied on the Commentary for reasoning, comprehension, guidance, and the ability to avoid reversible error. The proprietary aspect of the current system has provided ICLE and the Committee the resources to accomplish this.

3. The diversity of geography, background, occupation and viewpoint in the membership of the Criminal Jury Instruction Committee has been a strength and an important factor in the quality of its work. Currently, the members represent prosecutors, defense attorneys, circuit and district court judges, as well as law professors. The committee hopes the Court will continue to select members who represent the diverse interests and perspectives of the bench and bar.

We thank the Court for the opportunity to comment on the proposed amendments.

Sincerely,



Janet K. Welch
Executive Director

cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
Bruce A. Courtade, President