

## **PROPOSED AMENDMENT OF MCR 2.306 [ELECTRONIC COMMUNICATIONS DURING DEPOSITIONS]**

### **Issue**

Should the State Bar of Michigan adopt the following proposal to amend Michigan Court Rule 2.306:

(C) Conduct of Deposition; Examination and Cross-Examination; Manner of Recording; Objections; ~~Conferring~~ Communicating with Deponent.

(5) ~~Conferring~~ Communicating with Deponent.

(a) A person may instruct a deponent not to answer only when necessary to preserve a privilege or other legal protection, to enforce a limitation ordered by the court, or to present a motion under MCR 2.306(D)(1).

(b) A deponent may not ~~confer~~ communicate with another person while a question is pending, except to decide whether to assert a privilege or other legal protection. Communication includes all contact, including contact by electronic means, between the witness and another person.

### **Synopsis**

The Michigan Court Rules currently provide that a witness may not confer with another person while a question is pending in a deposition. The proposal seeks to clarify that the prohibition includes all sorts of communications, including electronic communications. While the general rule is arguably broad enough to already prohibit such electronic communications, the Court Rules and Standard Jury Instructions have been updated in many instances in order to expressly call out treatment of electronic communications given the ubiquity of such methods and to reinforce specifically that they are not permitted.

### **Background**

On October 1, 2012 the chair of the Civil Procedure & Courts Committee received a letter from Board of Commissioners member Jules B. Olsman suggesting the above proposed language to amend MCR 2.306 to deal with the issue of electronic communication with witnesses.

The Committee notes that these changes, which update established rules to address communications with a deponent, are consistent with other changes made to address technology (such as jurors accessing the internet) and are consistent with the existing rule in stating prohibitions to improper communications during a deposition.

**Opposition**

None known.

**Prior Action by Representative Assembly**

None known.

**Fiscal and Staffing Impact on State Bar of Michigan**

None.

**STATE BAR OF MICHIGAN POSITION  
By vote of the Representative Assembly on April 27, 2013**

Should the Representative Assembly recommend the adoption of the above proposal to amend MCR 2.306?

(a) Yes

or

(b) No