

July 31, 2023

Larry S. Royster  
Clerk of the Court  
Michigan Supreme Court  
P.O. Box 30052  
Lansing, MI 48909

**RE: ADM File No. 2022-11: Proposed Amendments of Rules 2.511 and 6.412 of the Michigan Court Rules**

Dear Clerk Royster:

At its July 21, 2023 meeting, the Board of Commissioners of the State Bar of Michigan considered ADM File No. 2022-11. In its review, the Board considered recommendations from the Access to Justice Policy Committee, Civil Procedure & Courts Committee, Criminal Jurisprudence & Practice Committee, and the Children's Law, Criminal Law, and Negligence Law Sections. The Board voted unanimously to support the proposed amendments with a recommendation that the Court strike Rule 2.511(C)(2) and Rule 6.412(C)(2)(b) from ADM File No. 2022-11 as published.

All the committees and sections of the Bar that offered comment to the Board on ADM File No. 2022-11, and the Board itself, are unanimous in the belief that attorney-conducted voir dire is an integral component of a fair trial, and that inadequate voir dire impairs litigants' constitutional right to a trial by a jury of one's peers. In addition to the voluminous, anecdotal observations offered by members of the Bar about the importance of attorney-conducted voir dire, the Board took note of a significant body of empirical research<sup>1</sup> that suggests attorneys are more effective than judges at eliciting the candid self-disclosures from potential jurors that are essential to selecting a fair and impartial jury. Understandably, attorneys are also more familiar with the facts of a particular case and therefore better positioned to ascertain potential biases that inform for-cause and peremptory challenges to jurors.

The Board recommends striking Rule 2.511(C)(2) and Rule 6.412(C)(2)(b) because it is concerned that permitting a procedure by which attorneys must submit questions to the court which the court *may* then ask of potential jurors will significantly undermine the purpose and effectiveness of voir dire, while also eroding litigants' perception of the judicial system by leaving them feeling disenfranchised by the jury selection process. Striking these provisions will leave courts with the necessary and appropriate authority to oversee the propriety of questions being posed by attorneys, while also guaranteeing litigants access to genuine, attorney-conducted voir dire.

Thank you for the opportunity to comment on the proposed amendments.



Peter Cunningham  
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court  
James W. Heath, President

---

<sup>1</sup> See, e.g., Jones, *Judge-versus attorney-conducted voir dire: An empirical investigation of juror candor*, Law and Human Behavior, 11(2), 131-146 (1987).