

MICHIGAN DISCONNECTS ITS JURORS

If your organization becomes a party to a lawsuit that goes to trial before a jury, how would you feel about jury members using cell phones or other electronic devices to access information about the case or even to post an opinion about the trial on a social networking site?

Juries play an important role in both criminal and civil trials. The impartiality of jurors is a fundamental element of our justice system. Courts typically instruct juries not to access information about the subject matter of the trial outside of the court proceedings as this can interfere with the jurors' obligation to deliberate based solely on the evidence presented by the parties. The wide-spread use of technology and social media by Americans, including those called to jury duty, is impacting the outcome of trials and, in some cases, has become the basis for a mistrial.

In *United States v. Hernandez*, a federal court in Florida granted a motion for mistrial after learning that several members of the jury located and read key information about the case online. In a civil matter, an Arkansas court held that a party's right to a fair trial was impacted by

Twitter messages sent by a juror suggesting that he was biased against one of the parties. By contrast, in *United States v. Siegelman*, the U.S. Eleventh Circuit Court of Appeals recently affirmed a lower court's denial of a request for mistrial where a juror had viewed an unredacted version of the original indictment against the defendant on the court's Website. The appellate court reasoned that the access did not expose the jury to any new or additional facts and, therefore, did not prejudice the defendant.

In reaction to this phenomenon, the Michigan Supreme Court has issued an order amending the Michigan Court Rule addressing jury impartiality. The amended court rule, MCR 2.511, "Impaneling the Jury" took effect on September 1, 2009. The new rule requires Michigan courts to instruct jurors not to use electronic devices, including cell phones, computers and other mobile communication devices while attending trial or during deliberation.

Organizations litigating disputes in Michigan courts now have the added protection of a specific jury instruction designed to prevent improper use of electronic devices by jurors to access outside information. To review the amended court rule, go to: <http://courts.michigan.gov/supremecourt/Resources/Administrative/2008-33.pdf>.



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