Law Office
of
ROBERT S. TOALE
505 Weyer Street
Gretna, Louisiana 70053

Admitted to Louisiana Bar
Admitted to Georgia Bar
Website: www.robertstoale.com

Telephone: (504) 368-8440
Telecopier (504) 366-0054
Email: robertstoale@gmail.com

August 15, 2014

District Judges and Clerk, United States District Court
Eastern District of Louisiana
500 Poydras St., Room C-151
New Orleans, LA 70130
BY E-MAIL: Clerk@laed.uscourts.gov

Re: Proposed Amendments to Local Rules Regarding Juror Interviews

Dear Honorable Judges and Clerk Blevins:

On behalf of the Louisiana Association of Criminal Defense Lawyers (LACDL), I am writing to express our concerns about the proposed amendment of the Eastern District's local rules regarding interviewing former jurors (Local Criminal Rule 23.2 and Local Civil Rule 47.5). LACDL is a state-wide professional organization for criminal trial, appellate, and post-conviction attorneys, and it consists of both private practitioners and public defenders. LACDL members regularly practice in federal court, and the proposed rule would be detrimental to our professional development, the interests of jurors, and the cause of justice.

As an initial matter, attorneys communicate with former jurors for several reasons, and the communication can be beneficial to both the defense team and the jurors. Through our contact with jurors, we can gain valuable professional development, learning what jurors found effective about the defense's presentation, what jurors found confusing about the process, and the things about which jurors would have liked to know more. Using this information, we can not only improve our performance in other cases, but we can enhance the experience of jury service for future jurors.

Likewise, through their contact with attorneys, jurors are given a meaningful opportunity to discuss and reflect on their jury service. As we have learned from years of speaking with jurors in criminal cases, jurors often feel neglected by the court system after having given so much of their time and energy towards participation in a trial. Particularly considering the strict limitation on their ability to discuss the case throughout the trial itself, the chance to speak freely about the trial with others who are familiar with the case has proven to be extremely cathartic for jurors.

Most critically, however, free communication between the parties and former jurors serves the system's ultimate goal of fundamental fairness and the cause of justice. As our combined years of experience have taught us, it is only by virtue of the candid and unstructured dialogue occurring when an attorney interviews a former juror that irregularities and other improprieties like juror misconduct are discovered. Louisiana state law has long adhered to a policy of allowing attorneys and jurors to speak freely about their service subject to the attorney's professional restrictions, *see* La. R. Prof. Conduct R. 3.5. Under such a regime, Louisiana courts have repeatedly protected individuals from being tried and convicted in violation of fundamental fairness. *See, e.g.*, *State v. Sinegal*, 393 So.2d 684 (La. 1981) (ordering a new trial where jurors consulted a superseded law book during deliberations); *State v. Marchand*, 362 So.2d 1090 (La. 1978) (ordering a new trial where bailiff communicated prejudicial information to jurors); *State v. Cantu*, 469 So.2d 1083 (La. App. 2 Cir. 1985) (conviction reversed because of extraneous information provided by alternate juror). Indeed, just recently, the Louisiana Supreme Court remanded the case of *State ex rel. Tyler v. Cain*, No. 2013-KP-0913 (11/22/13), for an evidentiary hearing on a claim that two jurors improperly consulted and read aloud from the Bible while deliberating.[1] Where life and liberty are at stake, the local rules of this Court should provide no less protection to the people of Louisiana.

The proposed amendments, however, would not only prohibit former jurors and attorneys from speaking freely to each other, but they would in many ways make the system even more unfriendly for former jurors. Pursuant to proposed Rule 23.2, attorneys could only speak to jurors "for good cause shown" and, if allowed, "only in the presence of the court." In effect, the rule would require jurors to be hauled into court and placed on the witness stand before they are allowed to discuss with the parties any aspect of the case on which they sat as a juror. This provision strikes us as far more intrusive than the current practice.

Moreover, the proposed amendment is unnecessary, as attorneys practicing in federal court are already limited in their ability to communicate with former jurors, and those limitations are sufficient to protect the interests of jurors in general and in specific cases. Specifically, the rules prohibit communication that is prohibited by law or court order, or where the juror has made known to the attorney a desire not to communicate, or where the communication involves misrepresentation, coercion, duress, or harassment. *See* E.D.LA. R. 83.2.3 (adopting La. R. Prof. Conduct R. 3.5). There is no reason to further limit communications with jurors, which have proven to be beneficial to both attorneys, former jurors, and the justice system more generally.

Thank you for taking the time to consider LACDL's comments and concerns about the proposed amendment to the Court's local criminal rules.

[1] Additionally, the Supreme Court's order recognized the evidentiary restrictions on jury testimony without burdening the right to speak freely outside of court: "At this hearing, the testimony of jurors will be admissible to show the nature and the circumstances of any reading of the Bible which took place during deliberations. However, under La. Code Evid. art. 606(B), no juror may testify to the actual impact consultation of the Bible had on his mind or verdict. Nor may he speculate as to the impact it had on the mind of another juror." This Court likewise already provides this evidentiary protection in Rule 606(b) of the Federal Rules of Evidence.

Sincerely,

/s/ *Robert S. Toale*

ROBERT S. TOALE
President, LACDL