

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

**Notice for Comment on Proposed Amendments to the
Local Civil and Criminal Rules for the Middle District of Louisiana**

Pursuant to Rule 83 of the Federal Rules of Civil Procedure, public notice is hereby given of the proposed amendments to Local Civil Rule 47 and Local Criminal Rule 24 of the United States District Court for the Middle District of Louisiana. The new language is underlined and the old language is lined-through.

Comments regarding the proposed amendments may be submitted in writing and transmitted by email to localrules@lamd.uscourts.gov. The deadline for comments is October 15, 2019.

October 1, 2019



Michael L. McConnell, Clerk of Court

LOCAL CIVIL RULE 47 - JURORS

(d) **Contacting Prospective Jurors and Jurors Before and During Trial.** ~~Prospective jurors shall not be contacted, either directly or through any member of their immediate family, in an effort to secure information concerning the background of any member of the jury panel.~~

~~(1) A lawyer shall not communicate, either directly or through another, with a juror or prospective juror unless authorized to do so by law or court order, upon good cause shown.¹~~

~~(2) A lawyer may not, either personally or through another, send an access request to a juror or prospective juror through any electronic social media. An access request is a communication to a juror seeking access to a juror or prospective juror's social media for the purpose of obtaining information about a juror or potential juror which the juror or potential juror has not made public or that would be the type of ex parte communication prohibited by subsection (1) of this local rule.²~~

~~(3) Unless otherwise limited by law, court order, or subsections (1) and (2) of this local rule, a lawyer may review, in advance of or during a trial, a juror's or prospective juror's public Internet presence. "Internet presence" includes but is not limited to postings by the juror or prospective juror on electronic social media that are publicly available and that do not require an access request.³~~

¹ This is drawn from the Louisiana Rule of Professional Conduct 3.5(b), ABA Model Rule 3.5(b) and ABA Formal Opinion 466.

² This is drawn verbatim from ABA Formal Opinion 466 except that "subsection (1) of this local rule" replaces "Model Rule 3.5(b)."

³ This is drawn from ABA Formal Opinion 466. See also, Jan L. Jacobowitz and John G. Browning, Legal Ethics and Social Media, A Practitioner's Handbook, American Bar Association, 2017, at 96. ("[R]esearching the social media of prospective jurors, and continuing to monitor social media activity during trial, can be vital to seating an honest, unbiased jury, and to ensuring that any online misconduct is promptly brought to the court's attention.") One writer has suggested that "it is not only permissible for lawyers to research jurors before and during trial using social media according to currently existing professional standards, but they may have an ethical obligation to do so." Jessica L. Boylan, "Jury Duty": The Ethical Obligations of Attorneys Researching Jurors Using Social Media Technology, 29 Geo. J. Legal Ethics 867, 869 (2016).

(4) In the course of reviewing a juror's or potential juror's Internet presence, if a lawyer discovers evidence of juror or potential juror misconduct, the lawyer must disclose the misconduct or potential misconduct to the court as soon as possible.⁴

(e) Interviewing Jurors After Trial.

- (1) No party or their attorney shall, personally or through another person, contact, interview, examine, or question any juror or alternate ~~or any relative, friend or associate thereof~~, except on leave of court granted upon good cause shown. If a party believes in good faith that grounds for legal challenge to a verdict exist, he may move for an order permitting an interview of a juror or jurors to determine whether the verdict is subject to challenge.⁵
- (2) No juror has any obligation to speak to any person about any case and may refuse all interviews or comments;
- (3) No person may make repeated requests for interviews or questions after a juror has expressed the desire not to be interviewed;
- (4) No juror or alternate who consents to be interviewed may disclose any information with respect to the following:
 - (A) The specific vote of any juror other than the juror being interviewed;
 - (B) The deliberations of the jury; or
 - (C) Evidence of improprieties in the jury's deliberation.

⁴ This is drawn from ABA Formal Opinion 466.

⁵ This combines M.D. Florida Local Rule 5.01(d) and N.D. Mississippi Local Rule 48.

LOCAL CRIMINAL RULE 24 - **INTERVIEWING TRIAL JURORS**

(a) Contacting Prospective Jurors and Jurors Before and During Trial.

(1) A lawyer shall not communicate, either directly or through another, with a juror or prospective juror unless authorized to do so by law or court order.¹

(2) A lawyer may not, either personally or through another, send an access request to a juror or prospective juror through any electronic social media. An access request is a communication to a juror seeking access to a juror or prospective juror's social media for the purpose of obtaining information about a juror or potential juror which the juror or potential juror has not made public or that would be the type of ex parte communication prohibited by subsection (1) of this local rule.²

(3) Unless otherwise limited by law, court order, or subsections (1) and (2) of this local rule, a lawyer may review, in advance of or during a trial, a juror's or prospective juror's public Internet presence. "Internet presence" includes but is not limited to postings by the juror or prospective juror on electronic social media that are publicly available and that do not require an access request.³

(4) In the course of reviewing a juror's or potential juror's Internet presence, if a lawyer discovers evidence of juror or potential juror misconduct, the lawyer must disclose the misconduct or potential misconduct to the court as soon as possible.⁴

¹ This is drawn from the Louisiana Rule of Professional Conduct 3.5(b), ABA Model Rule 3.5(b) and ABA Formal Opinion 466.

² This is drawn verbatim from ABA Formal Opinion 466 except that "subsection (1) of this local rule" replaces "Model Rule 3.5(b)."

³ This is drawn from ABA Formal Opinion 466. See also, Jan L. Jacobowitz and John G. Browning, Legal Ethics and Social Media, A Practitioner's Handbook, American Bar Association, 2017, at 96.

("[R]esearching the social media of prospective jurors, and continuing to monitor social media activity during trial, can be vital to seating an honest, unbiased jury, and to ensuring that any online misconduct is promptly brought to the court's attention.") One writer has suggested that "it is not only permissible for lawyers to research jurors before and during trial using social media according to currently existing professional standards, but they may have an ethical obligation to do so." Jessica L. Boylan, "Jury Duty": The Ethical Obligations of Attorneys Researching Jurors Using Social Media Technology, 29 Geo. J. Legal Ethics 867, 869 (2016).

⁴ This is drawn from ABA Formal Opinion 466.

(a) (b) Interviewing Jurors After Trial.

- (1)** No party or their attorney shall, personally or through another person, contact, interview, examine, or question any juror or alternate ~~or any relative, friend or associate thereof~~, except on leave of Court granted upon good cause shown. If a party believes in good faith that grounds for legal challenge to a verdict exist, he may move for an order permitting an interview of a juror or jurors to determine whether the verdict is subject to challenge.⁵
- (b)** **(2)** No juror has any obligation to speak to any person about any case and may refuse all interviews or comments;
- (c)** **(3)** No person may make repeated requests for interviews or questions after a juror has expressed the desire not to be interviewed;
- (d)** **(4)** No juror or alternate who consents to be interviewed may disclose any information with respect to the following:
- (1)** **(A)** The specific vote of any juror other than the juror being interviewed;
- (2)** **(B)** The deliberations of the jury; or
- (3)** **(C)** Evidence of improprieties in the jury's deliberation.

⁵ This combines M.D. Florida Local Rule 5.01(d) and N.D. Mississippi Local Rule 48.