

Date: 07/23/2015 [02:23:57 PM]
From: Andrew MacKie-Mason <amackiemason@uchicago.edu>
To: info@michiganidc.gov
Subject: Comments to MIDC Proposed Standards

Dear Commissioners:

As a law student and future public defender with internship experience in two Michigan public defender offices, as well as others elsewhere, I am glad that the Commission has begun the work of reforming Michigan's broken indigent defense system. The attached comments are suggestions for next steps in the Commission's work, and do not in any way represent a full complement of changes or additions that will be necessary to bring indigent defense in Michigan up to reasonable standards.

Please continue your excellent work and take advantage of this unique opportunity to move Michigan closer to making the promise of *Gideon* a reality.

Sincerely,

Andrew MacKie-Mason

* * * * *

Standard 1A: The Commission should require all lawyers representing indigent defendants to have access to adequate tools for legal research to ensure that their knowledge of relevant case law is up to date. Comprehensive electronic databases should be strongly recommended.

Further, the Commission should make clear that criminal defense lawyers' obligation to know the law extends to the fields that bear on collateral consequences for criminal convictions. At a minimum, in accordance with *Padilla v. Kentucky*, the Commission should require criminal defense lawyers representing non-citizen clients to become knowledgeable about the immigration consequences of criminal convictions. However, the Commission should go further than *Padilla*, and require that criminal defense lawyers also become familiar with other collateral consequences, including but not limited to access to government benefits (including subsidized housing), employment, education, and expungement/sealing (including the impact of conviction in the present case on the ability to expunge or seal prior records).

Standard 2D.2: The Commission should make clear that public defenders (as well as police, courts, jails, and other institutions in the criminal justice system) are bound by the Americans with Disabilities Act, and implementing regulations, when dealing with clients with vision, hearing, or speech disabilities that require various forms of interpretation.

For interpretation in general, the Commission should explore existing standards for effective legal interpretation, and adopt detailed standards informed by those that already exist (for example, the standards adopted for American Sign Language Interpretation by the National Consortium of Interpreter Education Centers: <http://www.diinstitute.org/wp-content/uploads/2012/06/Best-Practices-Legal-Interpreting.pdf>).

Standard 3B: Only requiring lawyers to request funds for an investigator "when appropriate" is too vague a standard to provide sufficient guidance. The Commission should establish rules for when a request to the court for professional investigation assistance is presumptively required. Those rules should likely be based on the maximum sentencing exposure faced by the defendant.

Staff comments to Standard 3: The Commission should make absolutely clear that decisions to limit investigation cannot be made merely on the basis of discovery or representations made by the government, and must incorporate conversations with the client and the client's version of the facts.

Additions to Standard 3: The Commission should require counsel to keep clients informed of the status of investigations, and to explain any decisions to limit investigation to the client.

The Commission should strongly encourage the creation of at least one permanent, full-time defense investigator position in any county with caseloads above a certain threshold. The Commission should also develop recommended qualifications, standards, and ethical guidelines for defense investigators.

Standard 4A: In order to prevent indigent defendants from being pressured by prosecutors or judges into waiving their right to counsel, the Commission should require that indigent defendants who wish to waive their right first consult with counsel appointed for that purpose. The Commission should consider requiring the appointment of standby counsel for all defendants facing serious charges who wish to represent themselves.

Additional Standards:

The Commission should establish minimum standards for the investigation and case preparation an attorney must complete before recommending that a client plead guilty.

The Commission should establish minimum standards for written motions that attorneys should be required to either file or make a conscious and informed decision to not file in certain types of cases, or cases that present certain issues. In particular, attorneys should be required to file written *Brady* requests in every case.

The Commission should establish minimum standards for advocacy at the sentencing stage, including mitigation investigation, written sentencing submissions, and consideration of the collateral consequences of different sentencing options. Lawyers should be required to discuss the impact of different sentences with their clients, and to advocate at sentencing in accordance with the client's wishes.

In general, the Commission should adopt client-centric standards for indigent criminal defense. Lawyers should consult with their clients about major decisions, give advice in light of the client's particular circumstances, and advocate in accordance with their clients' decisions.

Andrew MacKie-Mason
J.D. Candidate, Class of 2017

