Michigan Indigent Defense Commission – First Standards

The MIDC's first standards were originally released in June of 2015 and were the subject of a public hearing by the MIDC on August 18, 2015. In addition to the public hearing, the standards received many written comments from members of the criminal justice community. Those comments were compiled and can be viewed in .pdf format here. At the December 15, 2015 meeting, the Commission voted to submit the MIDC's final version of the first proposed standards to the Michigan Supreme Court for adoption pursuant to the procedures previously set forth in the MIDC Act.

On January 4, 2016, the MIDC submitted the first standards to the Michigan Supreme Court. The Court accepted comments on ADM File No. 2015-27 until May of 2016, which can be viewed at the Supreme Court's website, and held a public administrative hearing on the standards on May 18, 2016 which can be viewed on the State Bar of Michigan's virtual court channel. A transcript of the public administrative hearing is also available online through the Court's website. The Michigan Supreme Court's Order of June 1, 2016 conditionally approving the standards is available here. The Court conditioned approval on legislative revisions to the MIDC Act to address certain constitutional questions implicated by the statute.

During the fall of 2016, a series of bills were introduced in the Michigan House of Representatives and the Michigan Senate to amend the Michigan Indigent Defense Commission Act and related statutory provisions. The primary legislative amendments (1) move the MIDC from the Judicial Branch to the Department of Licensing and Regulatory Affairs (LARA); (2) clarify the definition of local systems as trial court funding units; and (3) require LARA to approve proposed minimum standards for indigent defense and specifies that these minimum standards should not infringe on Supreme Court authority. A companion bill was introduced in the Senate to amend the Administrative Procedures Act to make clear that the MIDC standards are not part of the APA's rulemaking process. The primary bills amending the MIDC Act passed in the House on September 22, 2016 and were unanimously approved by the Senate on December 14, 2016. A detailed description of House Bills 5842-5846 and Senate Bill 1109 can be found on the Michigan Legislature's website. Governor Snyder signed the legislation and the press release can be found here.

The Michigan Indigent Defense Commission met in Lansing on December 20, 2016 and voted to submit the first set of minimum standards for indigent defense delivery systems that the Michigan Supreme Court conditionally approved on June 1, 2016 to the Department of Licensing and Regulatory Affairs (LARA) for approval. Judge James Fisher, Commission Chair, submitted those standards to LARA on February 7, 2017. A comment period was available until March 9, 2017.

The comments submitted to LARA on the first standards are attached.

From: Joanne Adam
To: Comments
Subject: comments
Date: Friday, February 10, 2017 1:56:19 PM

Most, if not all of the standards cannot be done without someone giving us the funds to do them...when will that happen? Perhaps right away so I could attend the March CDAM seminar? Since I now need 12 credits and I'm not sure how many credits the March seminar gives? Where else will I get these credits? and when I have to travel 2 or 3 hours to places to attend seminars, will you pay for my mileage or rooms as needed? I will post the answers to this if I get them. I won't bother to write to my representative. She has never. NEVER called or emailed me. I find that to be extremely rude.

~~Joanne Vallarelli Adam ~~
Law Office of Joanne Vallarelli Adam 517.886.3600
Email - JVAdamlaw@gmail.com
Mailing address: 5859 W Saginaw, #117, Lansing, MI 48917
Charlotte office - 112 E Lawrence Ave, Charlotte, MI 48813

DO NOT ASSUME THAT YOUR E-MAIL HAS BEEN RECEIVED. If your E-mail is urgent or time sensitive or if you have not received a response from me, call me.

From: Bob Farnette
To: Comments
Subject: CLE
Date: Thursday, February 09, 2017 9:53:07 AM

Currently, Oakland County requires ten hours per year of CLE for appointed counsel. It is difficult to find and present ten hours of meaningful and non-repetitive CLE every year. Requiring twelve hours would ring in meaningless sessions. For some years I practiced in a state requiring twelve hours for all, and content became thin after a few years. Cost also escalated to about $1500 per year. Some attorneys would find the time and cost excessive, and the pool of counsel would shrink.
Robert L. Farnette P13304

From: Anna Frushour
To: Comments
Subject: MIDC Set of Standards
Date: Friday, February 24, 2017 12:44:56 PM

I am concerned about the 12 hours of CLE. In my experience, there are just not that many CLE courses available specifically for criminal attorneys. If this requirement creates that demand, perhaps that will change. Maybe it would be better to start with 6 credits and increase that requirement over the next few years so that the supply can catch up to the demand.

The expense is another issue as well. 12 hours of CLE could easily be somewhere between $1000-$2000 a year. That's not even taking into account travel and accommodations if the locations are far. This can be quite a burden on attorneys, especially sole practitioners. If there's a way to get a discounted rate or a scholarship program if you are a public defender, I think that would help ease the burden.

--
Anna Frushour
Attorney at Law

Frushour Law, PLLC.
122 S. Main Street
Suite 260
Ann Arbor, MI 48104
www.frushourlaw.com
734-219-5111
Fax: 734-215-2322

Lenawee County Public Defender's Office
113 W. Front St. (Lower Level) Adrian, MI 49221
Fax: (517) 264-5357

John T. Glaser
County Public Defender
John.Glaser@Lenawee.mi.us
Telephone: (517) 264-5352

Dawn R. VanDusen
Deputy Public Defender
Dawn.VanDusen@Lenawee.mi.us
Telephone: (517) 264-5352

Michael Dagher-Margosian
Senior Public Defender
Michael.Dagher-Margosian@Lenawee.mi.us
Telephone: (517) 264-5353

Rhonda Underwood
Assistant Public Defender
Rhonda.Underwood@Lenawee.mi.us
Telephone: (517) 264-5353

February 26, 2017

MIDC
Comments@Michiganidc.gov

Re: Minimum Standards

Dear Sir/Madame:

Our office has been fortunate enough for the County to establish a full time Public Defender's office. Being full time allows us to concentrate on our clients and concentrating on the criminal law.

Here is our concern; we are underfunded to comply with the standards:

Standard 1: Payment for four attorneys at a CDAM conference once a year is paid for by county and the cost is significant. This does not include the need for additional inside training for technology or access to Westlaw that is beyond the basic subscription. The need for additional funds from the state will be needed to fully comply with this standard.

Standard 2: Our jail has no confidential area to meet with a client before his/her arraignment. We have very limited/shared confidential space at the courthouse. I believe a room at the jail, and two rooms at the courthouse will have to be constructed which will cost a considerable amount of money, that the County does not have in their budget.

Standard 3: We do not have an investigator or enough money in our budget to hire one. If the State funds an investigator for our office, will the funds come every year so we can meet this standard?

Standard 4: To be able to be at the first appearance for every client our office will need an additional attorney and office staff. Again, until we receive additional funding we cannot comply with this standard.

So our question is, if the State does not fund our office so that we can comply with the standards, where do we get the money to comply?

Sincerely,

John T. Glaser
Chief Public Defender

From: William Hackel
To: Comments
Subject: MDIC standards--comment
Date: Thursday, March 09, 2017 2:03:56 PM

My Comment on February 2017 Michigan Indigent Defense Commission Update

I want to make sure I am reading Standard 4 correctly because it appears to discriminate against those with resources at the time a person is first brought before a court for arraignment.

District courts do the original arraignments, and these are done by (1) a police officer bringing into court on an arrest warrant, (2) video from a local or county jail, (3) the person walks into court without the assistance of the police, or (4) based on a date set by the court.

Given that, Standard 4 A provides in part:

> "Counsel shall be assigned as soon as the defendant is determined to be eligible for indigent criminal defense services. The indigency determination shall be made and counsel appointed to provide assistance to defendant as soon as the defendant's liberty is subject to restriction by a magistrate or judge. Representation includes but is not limited to arraignment on the complaint and warrant."

In other words:

(1) A determination of indigency must occur before the arraignment even commences.

(2) A person who is not indigent gets arraigned, but a person determined to be indigent does not get arraigned unless there is an attorney present.

This standard nor do any of the comments address specifically address whether an arraignment can continue when an individual appears and is determined to be indigent but an attorney is not available---does the district judge arraign or not?

If it is "do not arraign" then natural effect of this reading is that two persons charged with the

same crime are could be subject to different results based solely on income-----too bad for the one that has resources for not bringing in an attorney because he will be arraigned and bond will be set, but the one that does not have resources will be able to avoid the immediate arraignment until an attorney is found. ["the indigent attorney is sick, we could not find an immediate replacement, we got to let you go, can you come back Tuesday?]"

If the goal in all this is to make sure there is a defense attorney at the time of arraignment, including any of the 4 times it occurs in district court, then maybe we should just go to what they had on the television show "Night Court", which is just to have a defense attorney assigned at a courthouse and all jails and local lockups (for videos), waiting around for someone to either appear in the courthouse and/or be in a jail whose sole purpose will be at least getting through the original arraignment on the charge.

I note that Comment 2 identifies "{o]ne of several compliance plans for this standard may use an on-duty arraignment attorney to represent defendants" but curiously does not identify what are the other possible of the "several compliance plans" that are out there.

William Hackel

42-2 District Court

From: Michael Hennigan
To: Comments
Subject: 1. Visiting defendant"s too soon after arrest. 2. Financial incentives.
Date: Thursday, February 09, 2017 9:00:36 PM

Please keep in mind, many defendants are suffering from mental illness and/or drug addiction. Visiting defendant's prior to stabilization is unwise, because they are often combative, and unwilling or unable to discuss their cases rationally. As a practical matter, and from a pecuniary standpoint, early visitation is not necessarily virtuous or wise. Systemic bias toward early visitation is ill advised.

Receiving "full" pay for getting a felony case dismissed at exam or upon motion in Circuit, leads to more cases being dismissed at exam and upon motion in Circuit. Criminal defense attorneys are human. Incentivized criminal defense attorneys are aggressive.

However, such policy slows dockets--much to the chagrin of Jurists--and raises municipal costs--much to the chagrin of administrators. Jurists and administrators are human too.

If your goal truly is about enhancing representation, and not about enhancing appearances, then attorney incentives will color your final plan.

When Wayne County maintained a "full" pay for dismissals at exam or upon motion in Circuit policy, it produced sharp, aggressive, cutting edge criminal defense attorneys.

Sent from my iPhone

Berrien County Public Defender's Office
100 Church Street,
St. Joseph, MI 49085

March 9, 2017

Michigan Indigent Defense Commission
200 N. Washington Square, 3rd Floor
Lansing, MI 48913
Submitted via e-mail: comments@michiganidc.gov

Re: Proposed Minimum Standards 1-4

Dear MIDC/LARA,

I write to express my strong support of MIDC Proposed Minimum Standards 1-4 for Appointed Counsel. I consider these standards to be imperative in making progress on the state of indigent defense in Michigan.

By way of background, I have been a practicing attorney for almost 20 years. I have practiced criminal defense as an Assistant Public Defender in Washington, D.C., Oregon, and Michigan. I have also practiced as retained counsel in a criminal defense law firm based in Washtenaw County. In total, I have practiced criminal defense in roughly 11 counties in Michigan.

I am currently the Chief Public Defender in Berrien County. The Berrien County Public Defender Office was created by the Berrien County Commissioners in October of 2016 and officially opened on January 3, 2017. Our Public Defender Office has made efforts to proactively follow the Proposed Minimum Standards because we believe they are necessary to provide our clients with quality representation.

During my legal career, I have also worked in other offices that adhere to the Proposed Minimum Standards without an official, state requirement. The Standards provide a foundation to work toward providing all persons charged with a crime(s) with quality representation regardless of their economic status.

I strongly encourage LARA to adopt the standards as written. Thank you for your time and consideration.

Sincerely,

Carl Macpherson
Chief Public Defender
100 Church St.
St. Joseph, MI 49085
(269) 982-8698

From:	ministry of New Buffalo township
To:	Comments
Subject:	Minimum indigent defense standards
Date:	Saturday, February 11, 2017 2:04:16 PM

If your minimum standards does not include the respectful treatment of indigent people while they sit in jail the night before or three nights before they receive an appointed attorney, then you have not reached the essence of MINIMUM in regard to your due process standard. The sheriff of Berrien County intentionally deprives people of a pad to sit or lay on, and no blanket is allowed either. So people are deprived of ordinary body heat, due to loss of heat that sitting or laying on bare concrete causes. There is no legitimate excuse for such deprivation. Loss of body-heat, which can obviously cause sleep deprivation too, results in loss of mental ability to defend one's fundamental rights even with the aid of an attorney. Your required cost analysis collections should include the cost of providing jailed people with the fundamental right to the use of their Creator-endowed body-heat. Cheryl Marie, New Buffalo township; www.ministryofnewbuffalotownship.org

From:	nijad mehanna
To:	Comments
Subject:	Re: [SBM Criminal Law Announce] Michigan Indigent Defense Commission Seeking Public Comment on Minimum Standards
Date:	Wednesday, February 08, 2017 4:49:47 PM

why isn't it a priority to increase the fee the defense attorneys receive for their services? do you not think that a fee increase would increase the urge to work harder, and decrease in work load which will ultimately lead to better legal services on behalf of indigent individuals?

From: criminallaw-announce-request@groups.michbar.org <criminallaw-announce-request@groups.michbar.org> on behalf of criminallaw-announce@groups.michbar.org <criminallaw-announce@groups.michbar.org>
Sent: Tuesday, February 7, 2017 1:12 PM
To: criminallaw-announce@groups.michbar.org; criminallaw@groups.michbar.org
Subject: [SBM Criminal Law Announce] Michigan Indigent Defense Commission Seeking Public Comment on Minimum Standards

Below is information from LARA regarding the MIDC's first set of standards for indigent defense delivery systems. You can read about the standards at the MIDC website: http://michiganidc.gov/standards/

Standards | Michigan Indigent Defense Commission

michiganidc.gov

June 22, 2015 - The MIDC announces the release of the first set of proposed minimum standards for the local delivery of indigent criminal defense services.

Comments on the standards can be submitted until March 9, 2017. Send comments to comments@michiganidc.gov or you can mail them to the office: 200 N. Washington Square, 3rd Floor, Lansing, MI, 48913.

If you have any questions or concerns, please contact Marla McCowan at 517-388-6702.

Michigan Law
University of Michigan Law School
Michigan Innocence Clinic

David A. Moran

701 South State Street
Ann Arbor, Michigan 48109-3091
734.763.9353
Fax: 734.764.8242

February 15, 2017

Michigan Indigent Defense Commission
200 N. Washington Square, 3rd Floor
Lansing, MI 48913
Submitted via e-mail: comments@michiganidc.gov

Re: **Proposed Minimum Standards 1-4 for Appointed Counsel**

Dear Sirs/Madams:

I am writing to express my support of Proposed Minimum Standards for Appointed Counsel 1-4 issued by the Michigan Indigent Defense Commission. I view these standards as a small, but very important, first step toward an indigent defense system that will fulfill the promise of *Gideon v Wainwright*, 373 US 335 (1963).

I am the director of the Michigan Innocence Clinic at the University of Michigan Law School, which began operations in January 2009. So far, the Clinic has freed eleven wrongfully convicted men and three women, who collectively served over 150 years in prison for crimes they did not commit. We have won these cases largely by finding evidence that was never found by trial counsel.

From 1992 to 2000, I was an assistant defender at the State Appellate Defender Office (SADO) in Detroit, where I handled nearly 200 indigent criminal appeals from around the state. Of those appeals randomly assigned to me, we were able to exonerate and free five of those clients by presenting new evidence of complete innocence that trial counsel had failed to present.

The common thread of the cases we have taken in the Michigan Innocence Clinic and the innocent clients I represented at SADO is some of the very worst lawyering one can possibly imagine. I will describe just one of these cases to illustrate the point.

In the mid-1990s, I was assigned to represent a man named Harold Wells, who had been sentenced to four years in prison for receiving and concealing stolen property, namely a stolen car. Mr. Wells was convicted after a bench trial in Wayne Circuit Court lasting only 30 minutes.

The prosecution called only two witnesses, both police officers. The first officer testified that he was patrolling Detroit late one evening when he saw a car run a stop sign. The officer followed the car, ran the plates, which came back as a stolen car, and initiated a chase. The car came to an abrupt stop, and the driver and two passengers bailed out. The officer caught the two passengers, a teenage boy and a teenage girl, but the driver jumped a fence and disappeared into the night. The officer could only describe the driver as a black male with brown pants.

The prosecution's only other witness, another officer, testified that he heard the first officer's dispatch and, some 15 minutes later, approximately a quarter-mile away, saw a black male wearing brown pants walking down the street. The officer arrested that man, who turned out to be Harold Wells.

And that was the prosecution's entire case—that Harold Wells was seen wearing brown pants about 15 minutes after a black male wearing brown pants disappeared into the night a quarter-mile away. Appointed defense counsel did no real cross-examination, did not make an opening statement, presented no witnesses, and barely made a closing argument.

Immediately after the case was assigned to me at SADO, I did the most elementary thing that trial counsel had never bothered to do: I read the police report. In that police report, I learned that when Harold Wells arrived at the police station that night, the two juveniles who had been arrested earlier said, "That's not him." We found one of those juveniles, who not only confirmed that Harold Wells was not the man driving the stolen car; she told us that she had given the police the name and address of the man who the driver.

As a result of our very brief investigation, Harold Wells, who had no criminal record, was freed after serving approximately 18 months in prison for a crime to which he had no connection at all. In addition to the incalculable damage to Mr. Wells' life, it cost Michigan approximately $50,000 to incarcerate Mr. Wells for those 18 months, while the real car thief remained at large.

In Mr. Wells' case, trial counsel had not bothered to read the police report. Unfortunately, my experience in scores of cases has shown that it is not uncommon for appointed trial attorneys in Michigan to show up for trial completely unprepared. When that happens, we all pay.

Harold Wells' story is merely illustrative of the train wreck that is our system of indigent defense in this state. Unfortunately, I have more such stories, and so do many other lawyers in the state.

The first set of Proposed Minimum Standards do not come close to fixing all of the deficiencies that have led to injustices such as the Wells case. But they amount to a good start toward a better system.

Proposed Standard 2(C) would have made all of the difference in the Wells case because it would have required the attorney to obtain the relevant documents, including the police report which revealed that the passengers in the car had told the police that Mr. Wells was not the driver. Proposed Standard 3 would have required Mr. Wells' attorney to perform reasonable investigation, and a reasonable investigation based on the information in the police report would have led the attorney directly to the juvenile passenger who would have not only cleared Mr. Wells at trial but also would have named the man who was the actual driver.

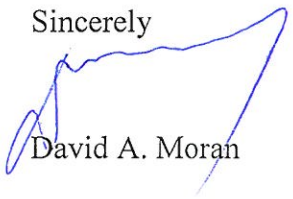
Proposed Standards 1 and 3 are particularly important because they would require criminal defense attorneys to learn relevant Michigan law, become aware of forensic and scientific issues that arise in criminal cases, take continuing legal education courses, and request the assistance of experts when appropriate. I am especially heartened by these proposals because so many of the cases we are currently handling or have already won in the Michigan Innocence Clinic involve convictions based heavily on outdated, discredited, or newly controversial forensic and medicolegal science.

For example, we have one exoneration in a case in which a client was convicted of First Degree Child Abuse based on a claim of Shaken Baby Syndrome (SBS), and we are currently litigating several other such cases. As the Michigan Supreme Court recently recognized, SBS has in recent years become a controversial diagnosis and it is therefore incumbent for a defense lawyer in an SBS case to consider consulting medical experts who may contradict the prosecution's expert's claim that the infant was shaken. *See People v Ackley*, 497 Mich 381, 391-92 (2015) (recognizing the controversy surrounding SBS diagnoses and holding counsel ineffective for failing to consult with an expert). Yet we continue to see cases in which defense counsel was apparently completely unaware that an SBS diagnosis could be challenged. By requiring appointed defense counsel to attend CLE, learn about forensic science developments, and consult experts when appropriate, the proposed standards would help a great deal.

Proposed Standard 4 would also help prevent wrongful convictions by requiring that counsel be appointed as soon as the defendant is determined to be indigent. As the 2008 NLADA Report, *A Race to the Bottom*, amply documented, many counties have routinely delayed appointing counsel to indigent defendants charged with minor crimes with the entirely predictable effect that they will plead guilty at a first appearance in order to get out of jail as quickly as possible before they lose their jobs and/or their homes. This system leads to countless wrongful convictions of misdemeanors because the pressures to plead are the same whether the defendant is guilty or innocent of the charged crimes. And the person who pleads guilty under such pressure is then saddled with a criminal record for the rest of his or her life. If the court must provide counsel right away, that attorney can help the indigent defendant get out of jail on bond so he or she can decide rationally whether to enter a plea or to fight the charges.

In sum, I support the MIDC's Proposed Standards 1-4 in full, and I would urge LARA to adopt them as written.

Sincerely



David A. Moran

OAKLAND COUNTY MICHIGAN
CORPORATION COUNSEL

OAKLAND COUNTY EXECUTIVE L. BROOKS PATTERSON

Keith J. Lerminiaux, Corporation Counsel
(248) 858-0557 | lerminiauxk@oakgov.com

MIDC
200 N. Washington Square, 3rd Floor
Lansing, MI 48913
comments@michiganidc.gov

Oakland County's Public Comments

This document shall serve as Oakland County's public comments on the four minimum standards submitted by the Michigan Indigent Defense Commission to the Michigan Department of Licensing and Regulatory Affairs pursuant to the Michigan Indigent Defense Act, MCL 750.981 *et al.*

1. Under the standard Time and Place of Interview, defense attorneys are required to meet with their clients, if in custody, within three business days. The standard also requires "charging documents and police reports must be provided to defense counsel in preparation for the initial interview."

   The MIDC has created an impossibly tight time frame to comply with this requirement. Local police departments, prosecutors' offices and local funding units cannot ensure initial electronic entry of the data, secure the electronic data when notified of the appointment of counsel, make redactions required by law and deliver it to the defense attorney in this frame. Further, the three day time frame or even an extended time frame will necessitate technology upgrades to provide the various parties the underlying records necessary for all parties to perform their statutory responsibilities. These costs cannot be projected at this time.

2. The MIDC should offer clarification on the mandate for defense investigators: 1) the role or specific duties of defense investigators (as distinguished from the role of a defense attorney); and 2) the definition of "reasonableness" in the minimum standard requirement that "reasonable requests" must be funded.

3. LARA and the MIDC have provided no clarification on what specific costs local funding units should include in the "local share" calculation under MCL 780.983(h). Should all direct and indirect costs associated with indigent defense costs be included in local share? Specifically, should the following be included: a) capital improvement costs; b) technology and software upgrade costs and associated operating costs; c) facility costs; and d) indirect costs (e.g. overhead, administration, personnel, security)?

4. LARA and the MIDC have not clarified what constitutes "reasonable costs" in excess of the determined local share that will be eligible for grant funding under MCL 780.993(9). Are all costs associated with indigent defense costs eligible, including the following: a) capital improvement costs; b) technology and software upgrade costs and associated operating

costs; c) facility costs; and d) indirect costs (i.e. overhead, administration, personnel, security)?

Oakland County has concerns over the State of Michigan's willingness to comply with both the Headlee Amendment and the clear legislative directive to appropriate funds for indigent defense systems. See Michigan Const. 1963, article 9 § 29 and MCL 780.993(6). The Headlee Amendment prohibits the enforcement of any new state mandate that increases the burden on local governments unless the mandate is accompanied by adequate funding to offset the increased costs associated with the state mandate. Oakland County has had ongoing issues with the State of Michigan over eligible costs under the Child Care Fund for necessary technology upgrades required by the State of Michigan at Oakland County Children's Village. The State of Michigan has denied counties reimbursement for the reasonable costs associated with technology upgrades and operational systems needed to comply with the State's mandated software application reporting system.

5. The 180 day time period required by MCL 780.993(3) is not a sufficient amount of time for larger county local funding units to develop a compliance plan and determine the cost analysis of these first four standards. The initial compliance plan will require significant coordination among County courts and several county departments, including but not limited to the following: 1) analysis of building modifications at the Oakland County courthouse, the four district courts and the Oakland County Jail; 2) significant changes in the operational plans of the four 52nd District Courts and Circuit Court; and 3) cost analysis of creating the compliance plan and implementation of the compliance plan.

6. LARA and the MIDC need to clarify in the standards how the grant funds under MCL 780.993(6) will be provided to counties. Oakland County is only required to comply with and fully implement its approved compliance plan within 180 days ***after*** receiving grant funds from the MIDC. MCL 780.993(10). The MIDC offers no guidance on when the state legislature is expected to appropriate funds to the MIDC and how long the MIDC process will take to distribute grant funds to the counties for their indigent defense delivery system.

Sincerely,

OAKLAND COUNTY CORPORATION COUNSEL

Keith D. Lerminaux
Corporation Counsel

From:	Matthew Steven Quintana
To:	Comments
Subject:	MIDC Standards
Date:	Thursday, February 16, 2017 6:43:36 AM

To all concerned,

Setting a uniform defense standard in Michigan is long overdue. The defense for poor people in rural counties is an absolutele disgrace. I know, because I was shuffled through the system by an appointed attorney. I knew I likely should've had a better outcome, but my appointed defense wasn't interested in doing the extra work to fight the charge. He just wanted to settle with the prosecutor, and there was no way I could afford more my own, more aggresive, defense. To add insult to injury, I was still forced to pay the county for that inadequate, token defense despite the fact that I was living on around $6k a year in wages.

Funding is obviously the biggest issue. Don't let the counties whine about it and try to water the standards down. People's lives are at stake, and they always manage to find funding for their own priorities when they really want to.

-Matthew Quintana

From: Hvbrfcaswiltravl@aol.com
To: Comments
Cc: marlamccowan@comcast.net
Subject: AMENDED - Feedback on MIDC Proposed Standards
Date: Thursday, March 09, 2017 2:52:05 PM

FEEDBACK ON THE MIDC PROPOSED STANDARDS - AMENDED

Standard 1

Knowledge of Technology: The Wayne County Prosecutor's office develops in-house experts in technology from their staff who can help their attorneys with digital and electronic presentations. In federal court, the court will pay an expert to assist defense counsel with technology.

MIDC should be working with the courts to provide the equipment so that the court appointed defense bar can use technology in the courtroom as well as require and encourage the court to pay for experts in technology to assist the defense.

In looking over the Wayne County Criminal Advocacy Program topics, there isn't one session on using technology in the courtroom. One of our past Wayne County Bar Criminal Defense Bar Association presidents, Susan F. Reed, along with Attorneys Cliff Woodards, II and Patrick Nyenhuis (with encouragement from Presiding Criminal Judge Timothy M. Kenny) worked tirelessly to try to get us up-to-date with technology in the courtroom. Unfortunately, the equipment was bulky and not easy to use. We need equipment and better equipment that is easier to use. We need someone to assist court appointed counsel during trials like the Wayne County prosecutors have.

Continuing Education: I would ask that the MIDC regional managers be required to maintain the same level of continuing education as court appointed counsel. Every MIDC regional manager, if he or she doesn't have any trial experience, should be required to second chair at least 5 trials and handle at least 2 jury trials. Each MIDC regional manager

should have to negotiate, at a minimum, 5 guilty plea cases. They need to feel the stress of telling a client that he or she is being offered a 90 day misdemeanor but the client insists on going to trial on a 20 year Arson case because the client is convinced the boyfriend or girlfriend won't show up for trial. Or, feel the stress of having a client, charged with Possession with Intent to Deliver Cocaine, reject a plea offer of Possession of Cocaine with no objection to 7411 and then preparing for that trial where the police allege the drugs were found on the client.

It does not make sense to have regional managers who have never tried a case developing trial practice standards or creating an assignment system. If they don't have the experience then they need to get the experience. They should be required, during their 2 jury trials, to use the technology that they want us to use in the courtroom.

It is concerning that there doesn't appear to be one attorney on the Indigent Defense Commission who regularly practices and accepts court appointed assignments at Frank Murphy Hall of Justice which is the largest criminal justice system in the State of Michigan. You need feedback from the frontline soldiers – the people who are wading through the mud to fight the cause of justice. There should be at least 2 attorneys who regularly practice and accept court appointed assignments at Frank Murphy Hall of Justice sitting on the Indigent Defense Commission.

Practicing criminal law is largely based on intuition or gut instinct (after extensive preparation). You need attorneys representing indigent defendants who are there every day in the trenches. They should be sitting on the Indigent Defense Commission.

Standard 2

A. Timing and purpose of the interview:

I think requiring that an interview be set within 3 days is something a

bureaucrat does who has never tried a case. The requirement should simply be that the attorney should meet or make contact with the client prior to the first hearing. There have been times that the prosecutor's office has had difficulty locating the discovery. It does not create a good first impression or create trust if you don't have the facts. The fact that other entities have required contact within 3 days holds little weight. It was the American Bar Association that determined that cases should go to trial within 90 days and that denies justice to all parties involved on so many levels and has been used to squeeze pleas out of defendants.

Clients should be advised that there are snitches in the jails and that they should not share their discovery with other inmates who will later claim that the client confessed. Clients should be advised not to write letters discussing their case or defense to the judge. In all my years of practice, I have never seen a letter to the judge help a client. The judge generally does not read the letter but the prosecutor does.

Clients should be advised to not discuss their case over the jail telephone **ever** because they are being recorded.

B. Setting of Interview: MIDC should be requesting a seat at the table in helping develop any new court facility in Wayne County. Of particular concern in Frank Murphy Hall of Justice are the prosecution witness waiting rooms where the witnesses can hear everything that is said inside the courtroom. It makes sequestration meaningless. Attorney client meeting rooms are of critical importance and there are none in Frank Murphy Hall of Justice.

C. Preparation: Attorneys should be advised to obtain or preserve any 911, police car video or body tapes at the probable cause conference. The deadlines for maintaining those records are short.

Standard 3

MIDC should require courts to obtain telephone numbers for

defendants. Most of the Wayne County assignments do not have telephone numbers for the clients. It is easy information to obtain from the defendants at the time of the initial arraignment.

Additional thoughts:

Compensation: It has been said that MIDC's purpose is to set standards and not to address compensation. The compensation for attorneys, investigators and experts must be part of this discussion if MIDC wants to attract aggressive and talented attorneys, investigators and experts to represent or assist the indigent population.

I hope these suggestions are helpful.

Susan K. Rock
Attorney at Law
PO Box 39287
Redford, Michigan 48239
(313) 937-4444

From: Matt Sawicki
To: Comments
Subject: MIDC Standards submitted to LARA
Date: Wednesday, February 15, 2017 12:47:52 PM

After reviewing the standards as they shall be proposed to the Licensing and Regulatory Authority, and discussing this topic with various colleagues, it is apparent that the standards will impose undue financial hardship on many of the cash strapped cities and townships across the State of Michigan. In my opinion, if the MIDC is intent on making District and other Michigan Courts accountable for "Counsel and First Appearance and other Critical Stages" the best practice would be for the MIDC to utilize their regional offices and set up some sort of remote counsel system. This would take the pressure off courts financially and logistically as each region of the MIDC would be responsible for adhering to the standards. Instead of asking the courts to follow a set of standards that will make daily operation difficult, the onus is instead placed on the MIDC to be in full compliance and to assume the costs of this endeavor. The MIDC, in turn, can recruit and maintain a capable staff of counselors that will be available as required. This shift would alleviate cities and townships of the financial burden the standards impose and place the burden on the State of Michigan and the MIDC.

Sincerely,

Matt Sawicki
Court Administrator
17th District Court
15111 Beech Daly Rd.
Redford, MI 48239
(313)387-2794

From: Michael Sawicky
To: Comments
Subject: MIDC commentary
Date: Friday, February 10, 2017 2:13:25 PM

I've been practicing law for over 21 years as an assistant prosecutor, criminal defense attorney, and district court magistrate. While I think that the goal of the new MIDC standards is admirable, I think the application of these standards is really impractical.

As a magistrate, I conduct weekend and holiday arraignments. Forcing us to have an attorney present simply to conduct an arraignment is absurd. From a practical standpoint, if a defendant was arrested on a Friday, I could arraign and release him on a personal bond Saturday morning… but now if there's no attorney available, he may have to sit the entire weekend in jail and not be arraigned until Monday (at the earliest… if it's a three-day weekend or extended holiday, he'll sit longer). And good luck getting any attorney to volunteer to be "on call" in the event they're needed for an arraignment… by the time the police return with warrants and I get over to the police departments and prepare the paperwork, it could be late morning or early afternoon… No one will want to sit around and wait to see if they're going to have to come in, especially on a holiday… and good luck getting the courts to figure out how they're going to pay for this. The courts won't want to pay someone who sat around and twiddled his thumbs all day… and attorneys won't come in and waste their time sitting around if they aren't going to get paid for their time…

With the volume of cases we see on a regular basis, forcing the courts to conduct arraignments with counsel present serves no practical purpose other than to delay to process and tie us up needlessly… The overwhelming majority of the defendants who appear in court receive personal bonds and walk out anyway… The presence of an attorney won't have any bearing on the outcome at this stage. Never mind that we won't know if they need court-appointed counsel until after we arraign them anyway… If they do, we tell them they'll meet with their lawyer by the next court date. In over ten years as a magistrate, I've never encountered a problem with this… so why are we being forced to change the way we do business?

As to the continuing legal education requirements, while I appreciate the need to stay up to date on current changes in the law and refresh my knowledge of other aspects of the criminal justice system, mandating a specific number of hours for those of us who've practiced over 20 years makes little sense. In Oakland County, there are four levels for court-appointed counsel. At my category level, I'm required to complete 10 hours of legal education. Forcing me to complete more educational hours isn't going to make me a better lawyer at this point in my career… As a sole practitioner, between my regular schedule and magistrate schedule I don't have time for more classes… My objective is to make a living and I don't get paid to sit in class…

I already take great pains to ensure that I meet all of the requirements as currently spelled out in the minimum standards. There isn't one thing that I've read in there that is new or unknown to me. Frankly, I work pretty damn hard to make sure I do my best for my clients (whether retained or appointed). I think that the thrust of this indigent criminal defense reform is being pushed on us by people who have no practical knowledge of how the system works and have no understanding of how we interact with our clients. Judging from the lukewarm reception Jonathan Sacks got at last year's CDAM conference when he spoke about the proposed MIDC changes… I know I'm not alone in my thinking.

To be honest, the only change that I think needs to be made is additional funding for appointed counsel. Rather than implement all these ridiculous changes, it would be way more productive to simply work on getting each county additional funds to pay those of us who've been doing this for years for minimal payment. Oakland County only pays us for two jail visits. If we had the money for at least three visits, then we could see our clients more often in order to prepare for court hearings. Also, we don't get paid to file motions… perhaps money could be allocated to help cover motion filings… That's where the focus should be.

I have yet to speak with any fellow court appointed attorneys who are in favor of the new proposed MIDC rules… and I've spoken with many attorneys who've practiced longer than I have. These are very experienced lawyers… and everyone says the same thing: these changes are stupid. Is the system perfect? No. Could it use some tweaking? Yes. But not to the extent being proposed.

Michael Sawicky

****

MICHAEL E. SAWICKY, P.L.L.C.

LAW OFFICES
26050 ORCHARD LAKE ROAD, SUITE 300
FARMINGTON HILLS, MICHIGAN 48334
(248) 522-0008 PHONE
(248) 442-3319 FAX
WWW.MICHAELSAWICKY.COM

From: Michael Sepic
To: Comments
Subject: Standard 4 Counsel at First Appearance and other Critical Stages
Date: Saturday, March 04, 2017 9:50:05 AM

Greetings:

I wish to comment on Standard 4 of the Minimum Standards for Appointed Counsel under the MIDC Act; Standard 4 being Counsel at First Appearance and other Critical Stages. I have to preface saying the I am the prosecuting attorney in Berrien County where the county Board of Commissioners funded a new Indigent Defense department as of 1/1/2017.I also have to indicate that as the yearlong study progressed by Berrien County during 2016, I felt it was of little concern to me what the county decided to do with this issue. As the details of a new indigent defense department started to emerge, I transitioned to believe the way indigent defense is delivered here is of great concern to me as a prosecuting attorney managing a county department.

With the advent of our indigent defense department appearing at the initial arraignment for in-custody defendants (done by video) here in Berrien County as of 1/1/2017, I began sending assistant prosecutors to those in-custody arraignments every day. Though we would appear at these arraignments for special purposes very infrequently over the years, we trusted judges to set appropriate bonds. Judges are setting bonds every day. Judges are experts at extracting bond-relevant information from defendants. With the added data of criminal justice histories and their experience with "fail to appears" they are best equipped to set bonds to assure themselves and the public of a defendant's appearance at the next court date. In addition in our county, there is a county employee who interviews in-custody defendants pre-arraignment and uses a matrix to make a bond recommendation to the judge. I took the view though that since there was now a defense lawyer at every in-custody arraignment, I too was going to send a lawyer.

I have tracked the information from these arraignments for eight weeks now and can honestly say, the indigent defense lawyers at these proceedings offer absolutely no insight to a judge that the judge does not already have to set a bond. In fact, now that there is an assistant prosecutor at these arraignment, it appears at the rate of about once a day they can offer some piece of information from our file that causes the judge to increase the bond recommended. The indigent defense lawyer at this arraignment is an expense that is entirely unnecessary. One might say that there is the value of an indigent defense lawyer at a defendant's side during this arraignment. The arraignments are of such a short duration and the interaction so brief, it is unrealistic to think that

benefit really exists.

In addition, there are several another issues.
1. Here the indigent defense lawyer interviews in custody defendants pre-arraignment and pre-finding of indigency.
2. And, there is the issue of conflict when a public defender speaks with co-defendants at arraignment. It might become an issue on appeal if a public defender represents one of the co-defendants after having spoken to the other at arraignment. I'm told indigent defense lawyers are appearing "specially" and are not inclined to talk facts of the case at this point with the client, but rather, only pre-trial release issues. I never knew conflict of interest analysis was dependent on what was actually discussed versus what could be discussed, or more likely in this scenario what the defendant may blurt out. I can envision an indigent defense lawyer saying to his arraignment defendant as the attorney is covering his ears, "stop, stop, I'm not hearing you say your bond should be lower because you were only the lookout and your co-defendant was the robber."
Or , co-defendant "A" having seen his indigent defense attorney at video arraignment, then later at a pre-exam conference co-defendant "A" sees that same indigent defense attorney making a deal for co-defendant "B" to testify against "A".

I suppose the notion to have a lawyer at these hearings sounds attractive in the abstract, but unless one actually views indigent defense lawyers at arraignments one cannot make the assessment that the practice has value and, frankly, that it is worth the expense.

While I suppose individual communities could decide to create such a practice, to require it seems to impose an expense with no value in many communities.

Thank you for your time and consideration.

Michael J. Sepic
Berrien County Prosecutor
Courthouse
811 Port Street
Saint Joseph, MI 49085
269 983 7111, ext 8314

Please consider the matters of Jurisprudence in Indigent defense in Michigan in the Juvenile Criminal Family Court Division of the [redacted] Circuit in the case of [redacted]

As much as not testing the veracity of a declarant's statement of hearsay is a travesty; shielding and or not stating the initial source of that information when it represents a falsehood is worse of an abuse. If it is in the American legal custom to avoid a defendant's being taken by surprise.

If a non-custodial parent obligor is party in a juvenile criminal case. Then, what proceeds is a judgement stating that he/or she must pay [redacted] for juvenile home fees. When that obligor has no income, and no means test has been made as to his ability to pay that relies on fact. Also, if the obligor must incessantly prove a negative (absence of income) despite due diligence in each attempt. Only to not prevail against an outright lie, and or heresay that is allowed to state that he has income in the range of [redacted] Wouldn't it be proper to allow a refutation and a test of the veracity of whatever "publicly available" lies exits?

Certainly one is indigent where the state already shields his spouse (as in federal "injured spousal protections") from his collections liabilities and he has no income of his own to speak of. If the juvenile child in subject is not said spouses liability, nothing either, construes that her resources are obligated. Then, certainly that man is indigent of an ability to pay. To forgo the obvious of what has arisen out of a criminal case is such an abuse as to incapacitate a defense for that individual who has no means to afford protection left at the whim and prejudices of the courts. This discretion leaves the door wide open for these types of rampant abuses. The net result of which, leaves said indigent obligor in a state of undue hardship without the common courtesy that Michigan affords all of her citizens. For the errors of the past, a levy against the first fruits of the future can in fact preclude gainful endeavors in our techno-mediated era, this we all know. This is too harsh and unfair and Michigan should force harmonization on the principle of fairness as it relates to civil liabilities for broke parents that proceed out of criminal liabilities for Juveniles, and encode fairness into the law. Even more so if it has already granted

[redacted]

Reference
Burton's Legal Thesaurus, 4E. Copyright © 2007 by William C. Burton. Used with permission of The McGraw-Hill Companies, Inc.

"(SURPRISE. This term is frequently used in courts of equity and by writers on equity jurisprude nce. Itsignifies the act by which a party who is entering into a contract is taken unawares, by whi ch suddenconfusion or perplexity is created, which renders it proper that a court of equity should relieve the partyso surprised. 2 Bro. Ch. R. 150; 1 Story, Eq. Jur. Sec. 120, note.[redacted] Jur. 366, seems tothink that the word surprise is a technical expression, and nearly synonymous. with fraud. Page 383,note. It is sometimes, used in this sense when it is deemed presumptive of, or approaching to fraud. 1Fonb. Eq. 123 3 Chan. Cas. 56, 74, 103, 114. Vide 6 Ves. R. 327, 338; 2 Bro. Ch. R. 826; 16 Ves. R.81, 86, 87; 1 Cox, R. 340; 2 Harr. Dig. 92.

2. In practice, by surprise is understood that situation in which a party is placed, without any d efaultof his own, which will be, injurious to his interest. 8 N. AS. 407. The courts always do ever ything in theirpower to relieve a party from the effects of a surprise, when he has been diligent in endeavouring toavoid it. 1 Clarke's R. 162; 3 Bouv. Inst. n. 3285.)"

Thank you for listening,

Sincerely,

Thomas Shaffer

Ref: Comment on Counsel for First Appearance Received February 7, 2017, 5:19 p.m.

The 6th Amendment recognizes that there is a right to an attorney at all critical stages of a case. Arraignment is one of these critical stages.

There are two concerns. First, there is the need to have an attorney present. This may be something addressed by an on-call attorney making a one-time appearance. If this is accomplished, there is a Second concern. Sufficient information is needed to conduct the arraignment and make arguments concerning bond. There is a need for information about the person's past criminal history, record of appearance or non-appearance, the crime(s) being charged, and family ties. Some of this information is available from the client. Other information is needed, and could be provided by Community Corrections, if an interview was performed. The attorney on-call will need access to the police reports and the LIEN information. Otherwise, reliance will be solely on information from the client, which is often incomplete and inaccurate.

Suggestion is made for the following in order for effective representation to take place: First - there could be an on-call attorney available at arraignment for limited appearance
Second - community corrections shall do a screening with the defendant and provide information to the on-call attorney (in capital cases, community corrections could still do a screening - however they would not make bond recommendations). Any indication of a need for a forensic interview should be highlighted, and the arraigning attorney could, in appropriate cases, make a suggestion for referral for forensic examination. Community corrections could make recommendation for testing for substance abuse as part of any bond considerations. In addition, immigration issues could be identified, an order for any needed immigration counsel could be in place, and any language interpreter needs could be assessed and arranged for the next court date.
Third - the incident report / Information must be available and shared with the attorney at arraignment, as well as the LIEN information concerning prior history of the client

This process should also be followed for juvenile DL cases. The on-call attorney should be available to determine factors for pre-trial release or detention in the Youth Home.

A unique situation arises for juveniles who are arraigned on listed offenses after a Petition is filed with the Juvenile Court. In this situation, the attorney appointed at the Prelim (and the parent), need to be notified of any arraignment of the Juvenile based on automatic waiver claims. A bond hearing could be scheduled at the arraignment and only interim bond could be set. Community corrections and/or the Youth Home should have an assessment done by the time of the bond hearing. (This is not applicable in automatic waiver cases where no Juvenile Petition was filed - in which case the procedure is the same as adult cases).

When it comes to waiver of counsel, the concern is greater for persons who are under the influence. Another concern is for juveniles who are arraigned, because their understanding of the process may be affected by their age.

Received February 7, 2017, 5:19 p.m.

Criminal disposition at arraignment should be discouraged. It is not reasonable to expect that the consequence of a plea can be adequately explained and evaluated during the limited time given for arraignments. This will lead to many motions to set aside pleas and possible Ginther hearings when the result is different from what was thought by the client.

Arraignment is not the same as the initial interview. The explanation of the court process is limited and the standard should not be one that has duties to explain the intracacies of the court process.

Should you require more discussion in this regard, please advise.

Sincerely
Thomas J. Tomko
tjtomkolaw@aol.com
586-795-8822

Attorney at Law
Kyle B. Trevas PLC

P.O. Box 1523, 409 East Eighth Street, Traverse City, MI 49686
trevaskyle@gmail.com office 231-929-3611 fax 231-929-3644

3/9/2017

MIDC

Re: MIDC Standards

At this stage of the review of these standards the largest concern is that there still appears to be no consideration that these standards apply to both felony and misdemeanor representations. To me it appears that the standards are created by looking at the felony system and little regard is given to misdemeanor cases which are much greater in number.

Standard 2

A.

The requirement of meeting within three business days is onerous I. As a recommendation or goal it is reasonable, making it a requirement is too much. The staff comments address many of the issues related to the difficulties in complying with a three day requirement (being promptly informed of appointments, being informed if client is in custody and getting police reports).

I will again note as I have stated in previous comments on the issue, 3 days for the first visit is not a national standard, it is not even a trend, at best two states require something similar and one suggests it. The other states that require or suggest it have very different systems than our own Court Rules MCR 6.108 and MCR 6.104(E)(4).

Most importantly if standard 4 is implemented and the defendant has a chance to meet with an attorney at arraignment then almost of the time sensitive issues listed in supporting the requirement of meeting within 3 days will be handled.

Attorney at Law
Kyle B. Trevas PLC

P.O. Box 1523, 409 East Eighth Street, Traverse City, MI 49686
trevaskyle@gmail.com office 231-929-3611 fax 231-929-3644

(2) review charges; (3) determine whether a motion for pretrial release is appropriate; (5) determine any immediate mental or physical health needs or need for foreign language interpreter assistance; and (6) advise that clients should not discuss the circumstances of the arrest or allegations with cellmates, law enforcement, family or anybody else without counsel present.

All of those issues would be best handled by the counsel required in standard 4.

Also (6) advise that clients should not discuss the circumstances of arrest or allegations with cellmates, law enforcement, family or anybody else without counsel present, sounds nice and should be done but in reality most of the damage is done within the first 24 hours of arrest.

Standard 4

I have no idea how this will be practical in small Northern Michigan Counties. Many of the smaller Courts only hold criminal court once a week, but arraignments happen all week long. This creates an issue because public defense attorneys are not around and may have offices miles away from the court house in another county.

The idea of counsel at arraignment is probably the most useful to the defendant of these standards but I see no practical way to comply in many counties. I fear that the only attempts at complying with standard will place an uncompensated, onerous, ineffective and inefficient burden on those providing public defense services.

Sincerely,

Kyle Trevas

From:	Jack Vitale
To:	Comments
Subject:	MIDC Standards Set 1
Date:	Thursday, February 09, 2017 5:04:56 PM

The 1st District Court Judges do not believe that Counsel at first hearing is necessary especially in the 1st District Court-Monroe County.

Virtually all in court arraignments are conducting by a 1st District Court Judge.

We do not take guilty pleas from a defendant at the first in court appearance.

We follow MCR 6.104 when arraigning defendants specifically section (E). And, by reference, MCR 6.106 for the setting of bail. This is our job and no one elses.

I suggest that the fairest and most cost effective solution to guarantee a defendants' rights under MCR 6.104 is to add a provision to the effect that: **"The court shall accept a plea of guilty or nolo contendere at the arraignment."**

Respectfully submitted,

--

Hon. Jack Vitale
Chief Judge-Monroe County Courts
106 E. First St.
Monroe, Mi 48161
734.240.7145
fax: 240.7098
e-mail: jack_vitale@monroemi.org

"Common sense is not so common", Voltaire

My suggestion to amend MCR 6.104 should have read as follows:

"The court shall NOT accept a plea of guilty or nolo contendere at the arraignment."

--
Hon. Jack Vitale
Chief Judge-Monroe County Courts
106 E. First St.
Monroe, Mi 48161
734.240.7145
fax: 240.7098
e-mail: jack_vitale@monroemi.org

"Common sense is not so common", Voltaire

From:	Starlazehr@aol.com
To:	Comments
Subject:	comment on timeframe
Date:	Thursday, February 09, 2017 4:36:52 PM

Any 3 day timeframes should be defined as three business or weekdays as I often get only 1-2 day notice for court appointments in Oakland County, and with any busy lawyers schedules, it is not usually practical or possible to meet with a client prior to a first court date if given that lead time. Weekend days should not count toward any 3 day time frame in my opinion that could potentially cause any issue for complaint or grievance later.

eg. I am notified of court appointment on a Friday with a court date on Monday morning. It is not likely nor fair to expect me to meet with a new client over the weekend.

STARLA D. ZEHR, P.C.
Attorney at Law
4345 Meigs Ave., Suite B
Waterford, MI 48329

Office (248) 674-4500
Fax (248) 674-7570
email: starlazehr@aol.com
website: starlazehrdivorcespecialist.com