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**From:** Michael Bauchan <mbauchan@bauchan.com>  
**To:** info@michiganidc.gov  
**Subject:** Michigan Indigent Defense Commission (MIDC) Standards for Counsel

Dear Friends:

I have read your standards, which are laudable but inadequate to address a glaring practical problem - the attorney fee payment system.

In September, 1971 when I was a new Roscommon County attorney I was one of 4 Roscommon County attorneys available for court appointments. Within a few months Jim McNally took sick so his docket got spread among the other 3 of us. A few months later one of the others paid his secretary for 2 weeks to pass out files and disappeared from the county for several months. His docket got spread among the other 2 of us. We were run ragged trying to keep up with civil and criminal work.

At that time, and for the next several years, we were paid \$25 per hour when the old State Bar Minimum Fee Schedule specified \$35 dollars per hour as the minimum ethical fee to charge.

I worked as hard for my court appointed clients as for ones who retained me, so often the judge cut my bills to \$11 to \$16 per hour.

When "young" attorneys came to the county the Circuit Court Judge told the District Court Judge not to appoint me any more, which was fine because at the time the wages I paid my staff was greater than the amount I earned working for court appointed clients, which by then were literally costing me money to represent them.

In later years I understand the old Hourly Rate method of paying court appointed attorneys was replaced by a contract basis. It's my understanding that Roscommon and other counties in the circuit, which has been reduced in size from five counties in 1971 to three and then two (Roscommon and Ogemaw) have county boards of commissioners that want to have a fixed budget item to pay court appointed attorneys.

Frankly I don't know why, because somewhere along the line they started assessing additional costs to defendants found guilty of any charge to have to reimburse the county for paying for their court appointed defense.

As I understand it, if I were a court appointed attorney under such a contract and was being paid \$1,000 per month for misdemeanor defense and \$2,000 per month for felony defense, I'd get my \$3,000 per month the first of every month regardless of the work I do for the defendants assigned to me.

This I'd get paid \$3,000 per month by the county and any time I have to "waste" helping my court appointed clients is time that I could use charging my other clients \$200 or more per hour or playing golf or just spending time with my family.

As you can understand, since the counties went with the "contract" system of paying their defense attorneys I've had numerous calls every year from clients complaining about their court appointed attorneys not meeting with them except for a few minutes before a court hearing, not properly preparing their cases, not doing what clients request, not calling exculpatory witnesses, and even talking them into pleading guilty to things which the clients didn't do.

Such sloppy and unethical lawyering makes me sick, especially when the client tells me their history and I see with good defense work they would not have been convicted of anything or were simply in fact not guilty but their attorney persuaded them to take a deal to plead guilty to something just so he didn't have to do his job.

The contract system financially rewards the contract attorneys at the expense of their providing good honest representation to the clients entrusted to their care.

My court appointed clients got the best I could give them just as if I was retained. By way of example, when police started using radar here at Houghton Lake they picked me up, gave me a warning, said they have radar now so the first week are giving people warnings to slow down knowing we have radar in town. Being a defense attorney with electrical engineering degree, I asked for a demonstration. They offered to take me for a ride to demo it to me while I rode in the back seat. A mile down the road they pulled into a side street to turn around and take me back to my car. As they pulled to the shoulder to wait for a car behind us to pass, that car pulled over behind us. The officer got out & called back asking "can I help you boys?" The driver behind said "we saw you put Mr. Bauchan in the patrol car and we thought you were taking him to jail over in Roscommon. We were going to follow you to see if he needed us to contact someone or in some way help him." The officer sent them on their way. They were some of my court appointed clients whom I had represented. That is an example of loyalty a good attorney gains if they do their job right regardless whether the county is paying them.

Therefore I suggest that all courts abolish a fixed contract so attorneys only get paid when they work.

To me working under a contract system is unethical because the attorney has a financial interest in not doing the job for the client. Thus the attorneys interests are adverse to the client's interests.

Paying attorneys a fixed monthly rate for court appointed work just encourages attorneys to look at the court appointed clients as overhead to be cut so they don't "waste time" helping clients when they already get paid whether they help them or not.

I'm 71 years old and retired without a staff, but I still take all client calls and tell clients what I'd do in their position and refer them to attorneys still in practice while not taking on any cases and not charging anyone anything. When I finish talking to them I send them a summary of the MI Auto No Fault Law that I wrote because we've had the law for over 40 years but I've never met anyone who knows what it is or their rights under it other than a few attorneys

and insurance people who deal with it day in and day out.

In my retirement I'm trying to educate people about MI Auto No Fault by distributing thousands of flyers annually with a one page summary of Michigan Auto No Fault in a Nutshell that I wrote. I can't handle their cases, but at least I can pass on some of my education gained over the last 43 years here. This evening in Walmart and Home Depot I rewarded at least 3 people who helped me by giving them calendar business cards and No Fault flyers. They each learned something they should know but don't.

Mass education of the public about No Fault is another topic but one the state bar should address.

Another is to have attorneys addressed by Dr. the same as music, math, economist, educational and others with doctorate degrees in addition to those whose degrees are in the medical field.

Thank you for your courtesy in considering my comments.

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