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To: [Comments](#)
Subject: Standard 4 Counsel at First Appearance and other Critical Stages
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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.

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