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## Asked and Answered . . .

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### Frank D. Eaman on Indigent Defense

By **Steve Thorpe**

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The Michigan Indigent Defense Commission recently completed a first draft of proposed standards for public defenders in the state, saying appointed attorneys should be well-educated and continually trained, should meet quickly with their clients and thoroughly investigate their cases. Jonathan Sacks, MIDC executive director, told commissioners he hoped to publish the standards ahead of an Aug. 18 public hearing. In 2011, Gov. Rick Snyder issued an executive order establishing the initial advisory commission, responsible for recommending improvements to the state's legal system. Frank D. Eaman, a distinguished criminal defense attorney who has been representing clients in criminal cases, trials and appeals, since 1971. Eaman has been an adjunct law professor at Cooley Law School for more than 10 years, and an instructor at the Criminal Defense Attorneys of Michigan Trial College for more than a decade. He has also filled leadership roles at the request of the State Bar of Michigan, Criminal Defense Attorneys of Michigan, and Michigan Trial Lawyers Association.

**Thorpe: Give us a capsule history of indigent representation in Michigan.**

**Eaman:** Michigan was one of the first states to provide counsel at public expense for individuals who could not afford an attorney. The power of the court to appoint a lawyer and to order the county to pay for the lawyer was by the Michigan legislature in the 19th Century, well before the United States Supreme Court decided *Gideon v Wainwright*, the case that required counsel in all felony cases. The Michigan courts did not appoint counsel in all cases, however, until *Gideon* was decided. Because the counties began paying for appointed counsel under the old system, after *Gideon* the judges continued to appoint counsel and the counties paid for appointed counsel. A defender office was established in Wayne County a few years after *Gideon* and it received a percentage of the Wayne County appointments. Other counties in Michigan established defender offices, with one of the most recent defender offices opening in Muskegon County.

In recent years, the ability of the counties to pay for and provide adequate public defense has flagged, resulting in less than adequate public defense at many levels. A study of public defense in Michigan by the National Legal Aid and Defender Association, which was commissioned by the Michigan Legislature, exposed many problems with the providing of public defense. The study applied the phrase “McJustice” to apply to what the observers saw in some courts – a quick resolution of cases that did not always provide an opportunity for adequate public defense. While justice delayed is often justice denied, we don’t want to reduce the quality of representation, or deny representation, just to move cases along on the docket.

Since the NLADA study, there has been a move to transfer fiscal responsibility and some oversight to the state instead of the county in order to solve the problems that exist. Michigan remained one of the few states where the state was totally uninvolved in providing public defense at the trial level.

**Thorpe: Tell us a little about the commission itself and its goals.**

**Eaman:** Governor Rick Snyder signed the Michigan Indigent Defense Commission (MIDC) Act in 2013. The Act received wide bi-partisan support. The law established a commission whose members are appointed by the governor from nominations made from various groups. The statute is the beginning of the state taking responsibility for public defense at the trial level in Michigan, so Michigan can join the majority of states in providing some support for public defense at the state level. The make-up of the commission is broad-based, with some non-lawyers on the commission. I can say from the first few meetings of the commission that I have attended, that the commission is a collegial group devoted to the objectives of the MIDC Act. Our chairperson, retired Judge James Fisher, keeps us focused on the objectives and has helped us move along to accomplish a great deal in a short time. One of the first tasks was to hire an executive director. We had an excellent pool of applicants to choose from, and we chose Jonathan Sacks, who had recently been a deputy defender at the State Appellate Defender Office, the state office that handles a large percentage of the criminal appeals for the counties.

Now, we are collecting data from around the state so we can understand exactly what is happening in all the courts, and we are working on authorizing basic standards to be put in place. The Michigan Indigent Defense Commission Act requires us to create standards, so that there will be some uniformity of the quality of public defense in Michigan. At the same time, the commission recognizes that Michigan is a diverse state, with different counties requiring different approaches, and that there is no one fix for the problems.

**Thorpe: What sort of guidelines will the standards provide?**

**Eaman:** Standards will ensure that whatever system of public defense a court chooses, there will be minimum standards met by the system. Currently the commission is focused on authorizing four standards for publication and public comment. The statute mandates that we create these standards and submit them to the Michigan Supreme Court for adoption, but we won’t do so until the public has an opportunity for comment and there is a public hearing. The four standards that we are preparing address education and training, the initial interview with the client, availability of experts and investigators, and the presence of counsel at the defendant’s first appearance in front of a judge or magistrate. All four standards are specifically

mandated by the Act.

**Thorpe: How big a component is attorney training and education?**

**Eaman:** Attorney training and education is a huge component of an adequate public defense. The criminal law, and the criminal code, is constantly changing. I have been practicing over 43 years, and I can't tell you how many times the drug laws, alone, have changed during that time – criminalizing different substances and changing penalties. Also, the United States Supreme Court is constantly deciding cases that affect criminal defendants. Just recently, for instance, the Court held that the contents of a cell phone cannot be searched without a warrant. Annual training on the changes in the law are necessary. And, the basic skills required of a trial lawyer are different than the skills required of, say, business lawyers. Being able to navigate the court system, and learning how to make opening statements, closing arguments, objections, and how to participate in the jury selection process are usually not taught in law school (unless the student takes a trial skills class). Throwing lawyers into a courtroom to defend someone accused of a crime without any training, and not training lawyers on the changes in the law, is inconsistent with the specific objectives of the Michigan Indigent Defense Commission Act, and the Sixth Amendment requirement of effective assistance of counsel.

**Thorpe: You chaired a task force in 1986 that attempted to address many of the same issues. Why has progress been so slow?**

**Eaman:** I have been thinking a lot about the State Bar Task Force that I chaired in the 1980's. Like the commission, it was a diverse group of individuals brought together with many different perspectives. We invited public defenders from other states to discuss their programs so we could see what other states were doing. State Bar President George Roumell recognized that we needed to address the problems of public defense way back then – it was the beginning of what became a crisis, as recognized by the NLADA report. I keep telling the commission members that I get a feeling of déjà vu at some of the commission meetings when we discuss issues that our Task Force addressed in the 1980's. We had proposed a statute then, as well, to have the state take over some responsibility for public defense, and we promulgated standards for comment.

I have learned over the years that change often takes time. The Michigan Legislature was not ready in the 1980's to move to an Indigent Defense Commission. Over time, that movement has taken place, with support from Governor Snyder. The commission now has input from others, and an executive director and competent staff, which is producing a result that enhances the work of the 1980's Task Force.

**Thorpe: Where can citizens get more information on this initiative? I understand you have a new website?**

**Eaman:** I urge people to go to our new website, [www.michiganidc.gov](http://www.michiganidc.gov), and see what we are all about. Our proposed standards are posted there. If you want to read the Michigan Indigent Defense Commission Act, see Public Act 93-94, 2013. We are reaching out to as many people in the state as we can for input to our work, at the same time, recognizing that there is an urgency that we get going to solve the problem of indigent defense in Michigan.