STATE OF MICHIGAN

COURT OF CLAIMS

COUNTY OF OAKLAND, Plaintiff, v STATE OF MICHIGAN, DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS, and MICHIGAN INDIGENT DEFENSE COMMISSION, Defendants.	**OPINION REGARDING PLAINTIFF'S AND DEFENDANTS' MOTIONS FOR SUMMARY DISPOSITION** Case No. 17-000216-MZ Hon. Christopher M. Murray

Pending before the Court is defendants' motion for summary disposition pursuant to MCR 2.116(C)(4) and (C)(8),[1] as well as plaintiff's competing motion for summary disposition under MCR 2.116(C)(10).[2] For the reasons stated herein, defendants' motion will be GRANTED, and plaintiff's motion will be DENIED. An order will be entered contemporaneously with this opinion that sets forth the relief awarded to each party. This matter is being decided without oral argument pursuant to LCR 2.119(A)(5).

I. BACKGROUND

[1] The motion also cites MCR 2.116(C)(6), which allows this Court to grant summary disposition if another action has been initiated between the same parties and which involves the same claim. Because defendants have not identified another action or otherwise presented an argument on (C)(6), the Court construes the motion as one brought only under (C)(4) and (C)(8).

[2] The motion cites MCR 2.116(C)(9) and (C)(10), but because all of the arguments sound in the nature of (C)(10), the Court construes the motion as being brought only under (C)(10).

This case involves the constitutionality of the Michigan Indigent Defense Commission Act (MIDC Act), MCL 780.981 *et seq.*, as well as certain minimum standards established by the Michigan Indigent Defense Commission (MIDC). On or about January 4, 2016, the MIDC, which at the time was an autonomous entity created within the judicial branch of state government, presented to the Michigan Supreme Court for the latter's approval a set of standards related to the delivery of effective assistance of counsel for indigent criminal defendants. In an administrative order—Michigan Supreme Court Administrative Order 2016-2—the Supreme Court conditionally approved the proposed standards, while at the same time identifying three potential constitutional areas of concern in the statute. The administrative order urged the Legislature to address the constitutional concerns by December 31, 2016, or the conditional approval would be "automatically withdrawn."

The Legislature amended the MIDC Act in 2016 PA 439, and the amendments took effect on January 4, 2017. Pertinent to the instant case, the amendments effectuated by 2016 PA 439 removed the MIDC from the judicial branch and placed it within the Department of Licensing and Regulatory Affairs, which is an agency under the executive branch of government. See MCL 780.985(1). In addition, 2016 PA 439 changed the statutory definition of "indigent criminal defense system," to mean the local unit of government that funded a trial court, and not the local unit of government *and* the trial court. See MCL 780.983(g). And, pertinent to this case, the amendments to the MIDC Act specified that any minimum standards enacted under the act were not to infringe on the authority of the Michigan Supreme Court, as conferred by Const 1963, art 6, § 5, and Const 1963 art 6, § 4. See MCL 780.985(3); MCL 780.991(3)(a).

On January 20, 2017, State Court Administrator Milton Mack, Jr. wrote a memo to the state's chief judges in which he opined that the amendments to the MIDC Act "appear to address

issues of uncertain constitutionality that were raised by the Court." Nevertheless, the memo noted that the Supreme Court's "conditional approval" expired on December 31, 2016, which was before the amendments to the statute took effect.

On May 22, 2017, the MIDC implemented four "minimum standards" as set forth in MCL 780.985(3) and MCL 780.991(1), for guaranteeing the delivery of indigent criminal defense services. Standard 1 sets forth a minimum standard for the "Education and Training of Defense Counsel," while standard 2 concerns a minimum standard for defense counsel's initial client interview. Standard 3 contains a minimum standard for investigations by defense counsel and for certain matters pertaining to expert witnesses, while standard 4 refers to a minimum standard for defense counsel's first appearance and subsequent appearances at critical stages in the proceedings. The standards include the admonition that indigent criminal defense systems were to submit compliance plans with regard to the standards by November 20, 2017. See MCL 780.993(3) (specifying that, within 180 days of the approval of a standard, "each indigent criminal defense system shall submit a plan to the MIDC . . ." and such plan "shall specifically address how the minimum standards established by the MIDC under this act shall be met and shall include a cost analysis.").[3]

Thereafter, the MIDC published a document entitled "A Guide for Submission of Compliance Plans, Cost Analyses, and Local Share" ("Guide"). According the Guide, the guidelines were "designed to assist with the preparation of the cost analysis and compliance planning for delivering indigent criminal defense services." Among other requirements, the

[3] The MIDC is charged with approving or disapproving the plans within 60 days of submission. MCL 780.993(4).

Guide specifies that any compliance plan was to address "each standard individually," meaning the four standards implemented by the MIDC in May 2017. The Guide encourages indigent criminal defense systems to "contact their MIDC Regional Manager" with questions about funding and compliance. Also within the Guide is a section entitled "General Guidelines for Compliance Plans," which will be discussed within the context of Oakland County's Administrative Procedures Act (APA) challenge. The MIDC published additional "Instructions" and "Guidelines" for compliance plans in July 2017.

Oakland County filed a complaint in this Court[4] on July 25, 2017, in which it raised a number of constitutional challenges. Count I alleges that the MIDC Act is "facially unconstitutional" under Const 1963, art 3, § 2—the separation of powers clause—because "it empowers LARA to usurp the Michigan Supreme Court's constitutional authority to regulate and enforce minimum qualifications and professional standards for attorneys who represent indigent criminal defendants." Count II alleges that both the MIDC Act and the approved standards—Standards 1-4—are "facially unconstitutional" under Const 1963, art 6, § 5 because "they usurp the Michigan Supreme Court's constitutional authority to promulgate rules governing practice and procedure in Michigan Courts." Count III sounds a similar refrain, with the exception being that it asserts the MIDC Act and the approved standards violate Const 1963, art 6, § 4. Lastly, Count IV alleges that the MIDC promulgated "mandatory rules and procedures" in violation of the APA. The complaint sought declaratory relief and a stay of the enforcement of the approved standards.

[4] See MCL 780.985(5).

II. ANALYSIS

A. STATUTORY INTERPRETATION AND CONSTITUTIONAL CONCERNS

The issues raised require an examination of certain provisions of the MIDC Act. When interpreting a statute, a court is to begin with the statute's plain language. This Court is to assume that the Legislature intended the plain and ordinary meaning expressed therein and must construe the statute as written. *Burise v Pontiac*, 282 Mich App 646, 650-651; 766 NW2d 311 (2009). Nothing may be read into an unambiguous statute. *Mich Ed Ass'n v Secretary of State (On Rehearing)*, 489 Mich 194, 217-218; 801 NW2d 35 (2011). Moreover, when construing a statute, a court must read the pertinent language in context, keeping in mind the purpose of the statute. *CG Automation & Fixture, Inc v Autoform, Inc*, 291 Mich App 333, 338; 804 NW2d 781 (2011).

As noted, Oakland County has raised a facial challenge to the constitutionality of the MIDC Act. A party presenting a constitutional challenge to legislation must overcome a heavy burden. *Judicial Attorneys Ass'n v State*, 459 Mich 291, 303; 586 NW2d 894 (1998). Statutes are presumed constitutional, and this Court "has a duty to construe a statute as constitutional unless its unconstitutionality is clearly apparent." *In re Forfeiture of 2000 GMC Denali and Contents*, 316 Mich App 562, 569; 892 NW2d 388 (2016) (citation, quotation marks, and alteration omitted). Indeed, "[t]he court's power to declare a law unconstitutional is exercised with extreme caution and is not exercised where serious doubt exists regarding the conflict." *AFSCME Council 25 v State Employees' Retirement Sys*, 294 Mich App 1, 9; 818 NW2d 337 (2011). And, "[t]o make a successful facial challenge to the constitutionality of a statute, the challenger must establish that no set of circumstances exists under which the [a]ct would be

valid." *Judicial Attorneys Ass'n*, 459 Mich at 303 (citation and quotation marks omitted; alteration in original).

The Court will address Oakland County's constitutional challenges to the MIDC Act separately from its challenges to the Standards implemented by the MIDC.

B. CHALLENGES TO THE MIDC ACT

1. FACIAL CONSTITUTIONAL CHALLENGE—SEPARATION OF POWERS

Turning first to the constitutionality of the MIDC Act itself, Oakland County argues that the act violates the separation of powers doctrine by permitting the executive branch, through the MIDC, to regulate the legal profession by establishing certain minimum qualifications and professional standards for attorneys who represent indigent criminal defendants. This power, Oakland County argues, sits solely with the judicial branch.

This state's guiding document makes clear that "[t]he powers of government are divided into three branches: legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution." Const 1963, art 3, § 2. There is also no dispute that the Supreme Court possesses explicit constitutional authority to regulate the practice of law and conduct of attorneys, as well as the conduct of court proceedings. See, e.g., Const 1963, art 6, §§ 4-5; *Grievance Admin v Lopatin*, 462 Mich 235, 241; 612 NW2d 120 (2000); *McDougall v Schanz*, 461 Mich 15, 26-27; 597 NW2d 148 (1999).

That principle, however, does not end the inquiry, as our appellate courts have never interpreted the separation of powers doctrine to require "an absolute separation of powers." *People v Cameron*, 319 Mich App 215, 235; 900 NW2d 658 (2017). See also *Judicial Attorneys*

Ass'n, 459 Mich at 297 ("This Court has established that the separation of powers doctrine does not require so strict a separation as to provide no overlap of responsibilities and powers."). Rather, there can be an overlapping of functions, responsibilities, and powers between branches. *Judicial Attorneys Ass'n*, 459 Mich at 297. In this sense, Michigan has adopted the view of James Madison, expressed in The Federalist No. 47, that "where the *whole* power of one department is exercised by the same hands which possess the *whole* power of another department, the fundamental principles of a free constitution are subverted." *Soap & Detergent Ass'n v Natural Resources Comm*, 415 Mich 728, 752; 330 NW2d 346 (1982), quoting The Federalist No. 47 (J. Madison). Stated differently, "[i]f the grant of authority to one branch is limited and specific and does not create encroachment or aggrandizement of one branch at the expense of the other, a sharing of power may be constitutionally permissible." *Cameron*, 319 Mich App at 233 (citation and quotation marks omitted). Indeed,

> It is simply impossible for a judge to do nothing but judge; a legislator to do nothing but legislate; a governor to do nothing but execute the laws. The proper exercise of each of these three great powers of government necessarily includes some ancillary inherent capacity to do things which are normally done by the other departments." [*Judicial Attorneys Ass'n*, 459 Mich at 297 (citation and quotation marks omitted).]

The Court first turns to Oakland County's assertion that the MIDC Act offends the separation of powers doctrine because it permits LARA to regulate the conduct and minimum qualifications of attorneys who represent indigent criminal defendants.[5] The first "critical question[ ]" in a separation-of-powers analysis is whether the judicial branch's powers in

[5] Oakland County has submitted affidavits detailing the high costs that could be incurred in complying with certain Standards. But for the Court to delve into whether the act makes good policy in that regard would itself run afoul of the separation of powers clause. *King v State*, 488 Mich 208, 233; 793 NW2d 673 (2010)(YOUNG, J., dissenting).

regulating the practice of law and conduct of attorneys and courts include the authority granted to LARA in the MIDC Act. *Judicial Attorneys Ass'n*, 459 Mich at 297. Oakland County's argument on this point is essentially limited to pointing to the minimum standards that were implemented by the MIDC. However, the standards implemented by LARA do not aid in determining whether the MIDC Act is unconstitutional *on its face*. Indeed, "[t]he constitutionality of an act must rest on the provisions of the act itself," and not on subsequent actions taken by those affected by the act. *Id*. at 304. For this reason alone the Court finds Oakland's separation-of-powers argument to be lacking.

Moreover, even examining the contents of the MIDC Act, and assuming an overlap of powers occasioned by the act, the pertinent question becomes whether the legislatively prescribed functions in the MIDC Act are "sufficiently limited and specific so as not to encroach on the exercise of the constitutional responsibilities of the judicial branch." *Id*. at 297. It is so limited, because what the MIDC Act accomplishes, at most, is a permissibly limited sharing or "overlapping" of functions.

At the outset, the MIDC Act refers to and imposes burdens on "indigent criminal defense systems," which the act defines as a local unit of government that funds a trial court, *not* the trial court itself. MCL 780.983(g). Hence, the statute takes care to not encroach on the authority of the judicial branch. Moreover, the non-encroaching nature of the statute is buttressed by the idea that the statute expressly recognizes, on more than one occasion, the very constitutional authority Oakland County claims it flaunts. That is, the statute expressly mandates that any minimum

standards[6] imposed by the MIDC "shall not infringe on the supreme court's authority over practice and procedure in the courts of this state as set forth in section 5 of article VI of the state constitution of 1963." MCL 780.985(3). See also MCL 780.991(3)(a) ("Nothing in this act shall prevent a court from making a determination of indigency for any purpose consistent with article VI of the state constitution of 1963."). The express recognition of the constitutional role of the judiciary undercuts (but does not preclude) a facial challenge to the constitutionality of the act on separation-of-powers grounds. See *Strauss v Governor*, 459 Mich 526, 543-544; 592 NW2d 53 (1999) (finding, albeit in the context of an executive order, that the express inclusion of the constitutional provision the order was said to violate weighed against finding the order was unconstitutional).

Furthermore, the enforcement provisions of the MIDC Act demonstrate that the overlap of powers at issue is consistent with constitutional principles. To that end, the act only permits the MIDC to ensure that an "indigent criminal defense system," i.e., the "local unit of government," complies with the standards. See MCL 780.993; MCL 780.995. The act does not permit the MIDC to force the judiciary to comply with the minimum standards. Nor does the legislature attempt to control what occurs in court. MCL 780.985(3). And, of course, the MIDC will have no say on who becomes a licensed attorney in the first instance. Instead, the act's provisions address the creation of a county-controlled system to determine (with information provided by, amongst others, the courts[7]) an individual's indigency status and to provide qualified attorneys to represent indigent defendants See *Id*; MCL 780.989(1); MCL

[6] Again, the standards themselves are not pertinent to a facial challenge to the constitutionality of the MIDC Act.

[7] MCL 780.991(1)(a).

780.991(1)(a)&(c). Importantly, the representation to be required by the indigent criminal defense systems must be consistent with the decisions of Michigan appellate courts and the United States Supreme Court on ineffective assistance of counsel. MCL 780.983(c); MCL 780.985(3); MCL 780.989(1)(a); MCL 780.1003(1). Thus, at least with respect to the quality of representation provided by counsel under this new system, the standards are set by the state and federal constitutions as interpreted by the courts, not through separate MIDC standards.

In sum, keeping in mind that the Court is to presume a statute's constitutionality unless the contrary is readily apparent, and in light of the narrow overlap of authority effectuated by the MIDC Act, the Court rejects Oakland County's separation of powers argument as it pertain to the act.

2. WHETHER THE MIDC ACT'S PROVISIONS CONFLICT WITH THE COURT RULES

Oakland County next argues that the MIDC Act has "multiple provisions that address indigency determinations" that "directly conflict with the Michigan Court Rules." With such a conflict, Oakland County argues, the judicially created court rules must prevail over the rules promulgated by the executive pursuant to statute. Notably, the county points out that MCL 780.991(1)(a) specifies that the "delivery" of indigent defense services "shall be independent of the judiciary" and that preliminary inquiries and the determination of indigency "shall be made as determined by the indigent criminal defense system . . ." MCL 780.991(3)(a). According to Oakland County, the MIDC Act's provisions on indigency determinations conflict with MCR 6.005(B) and (D), which give trial court judges responsibility for determining indigency. Such conflict, the county argues, demonstrates a usurpation of the judiciary's authority, rendering this provision of the act unenforceable.

In general, legislative enactments regarding rules of practice may not conflict with the court rules. *Stenzel v Best Buy Co, Inc*, __ Mich App __, __; __ NW2d __ (2017) (Docket No. 328804); slip op at 6. Courts are not to "lightly presume that the Legislature intended a conflict, calling into question" the Supreme Court's "authority to control practice and procedure in the courts." *Kern v Kern-Koskela*, __ Mich App __, __; __ NW2d __ (2017) (Docket No. 330183); slip op at 4 (citations omitted). "Absent an inherent conflict between a court rule and a statute, there is no need to determine whether there was an infringement or supplantation of judicial or legislative authority." *Stenzel*, __ Mich App at __; slip op at 6.

The Court sees no conflict between these provisions. The last sentence of MCL 780.991(3)(a) provides that "[n]othing in this act shall prevent a court from making a determination of indigency for any purpose consistent with article VI of the state constitution of 1963." Without the preceding sentence, the Court would tend to agree regarding a potential conflict between what the statute permits and what the court rules provide. However, this final sentence in § 991(3)(a) serves to dissipate any potential conflict between MCL 780.991(3)(a) and MCR 6.005(B) and (D). So too does MCL 780.991(3(a), which provides that a "trial court may play a role in this [indigency] determination as part of any indigent criminal defense system's compliance plan under the direction and supervision of the supreme court . . . ." In short, whatever role an indigent criminal defense system is to play in indigency determinations under the MIDC Act, that role cannot, as plainly stated in the act itself, "prevent a court from making a determination of indigency for any purpose . . ." consistent with the Court's constitutional

authority.[8] And without an inherent conflict between the statute and court rule, "there is no need to determine whether there was an infringement or supplantation of judicial . . . authority." *Stenzel*, __ Mich App at __; slip op at 6.

C. CHALLENGES TO MINIMUM STANDARDS

Oakland County also alleges that Standards 3 and 4 "conflict with several sections of the Michigan Court Rules and interfere with court practice and procedure in judicial proceedings." MCL 780.985(5) permits an "indigent criminal defense system" to petition this Court to review whether the approved minimum standards are "authorized by law." The statute further declares that this Court's review of the standards is to be in the manner of "judicial review [described] under section 28 of article VI of the state constitution of 1963 . . ." MCL 780.985(5). This means that the Court is tasked with determining whether the standards are "in violation of statute [or constitution], in excess of the statutory authority or jurisdiction of the agency, made upon unlawful procedures resulting in material prejudice, or [are] arbitrary and capricious[.]" *Northwestern Nat'l Cas Co v Ins Comm'r*, 231 Mich App 483, 488; 586 NW2d 563 (1998).

1. STANDARD 4

Standard 4 is entitled "Counsel at First Appearance and other Critical Stages," and requires that counsel "shall be assigned as soon as the defendant is determined to be eligible for indigent criminal defense services." Moreover, it provides that a defendant is to be represented at arraignment on the complaint and warrant. Oakland County argues that because an indigent criminal defendant does not have a constitutional right to be represented by counsel at

[8] The issues presented by the parties do not give the Court occasion to review what that role might look like. And, as articulated below, the Court will not entertain arguments regarding potential, yet-to-be-enacted standards by MIDC.

arraignment, and because the court rules do not require representation by counsel at arraignment, Standard 4 is invalid.

Although Oakland County has correctly pointed out controlling authority that the federal constitution does not *require* the appointment of counsel at arraignment, see *Rothgery v Gillespie Co, Tex*, 554 US 191, 213; 128 SCt 2578; 171 L Ed 2d 366 (2008), *People v Green*, 260 Mich App 392, 400; 677 NW2d 363 (2004), and *People v Horton*, 98 Mich App 62, 72; 296 NW2d 184 (1980), it has not identified any *constitutional* authority *prohibiting* the appointment of counsel at an arraignment. And fully recognizing that the constitutional right to counsel does not apply to arraignments does not answer the pertinent question: can a state afford an indigent defendant greater rights than those guaranteed by the constitution? The answer is, of course, that a state can (absent a state constitutional prohibition) afford its citizens rights *additional* to those protected by the federal constitution, but not fewer. *People v Harris*, 499 Mich 332, 337; 885 NW2d 832 (2016) (recognizing that states, by legislative enactment, "may provide protections greater than those secured under the United States Constitution . . ."). And that appears to be what the legislature granted under MCL 780.991(3)(a), by providing that a determination of indigency—which will lead to the appointment of counsel—shall occur "*not later than* the defendant's first appearance in court." MCL 780.991(3)(a). Though not required to do so by either the state or federal constitution, the Michigan Legislature was free to afford indigent defendants the right (if deemed appropriate by the MIDC) to counsel *at* the arraignment.

In sum, on the authorities presented to the Court, there is no conflict between what Standard 4 requires and what the pertinent controlling authorities allow. As such, the Court cannot conclude that Standard 4 is not authorized by law and need not consider whether there

was "an infringement or supplantation of judicial . . . authority." *Stenzel*, __ Mich App at __; slip op at 6.

2. STANDARD 3

Oakland County next argues that Standard 3 conflicts with the judiciary's authority to define and regulate practice and procedure. The purportedly offending section of Standard 3 states that "Counsel shall request the assistance of experts where it is reasonably necessary to prepare the defense and rebut the prosecution's case. Reasonable requests must be funded as required by law." This standard does not conflict with a trial judge's discretion to permit the appointment of an expert witness. See MCL 775.15; *People v Tanner*, 469 Mich 437, 442; 671 NW2d 728 (2003). Rather, the standard notes that experts must be funded "*as required by law*." In other words, the request must be funded "as required by" the very authority which Oakland County accuses the MIDC of disregarding. Nor does Standard 3 in any way interfere with the trial court's gate-keeping functions under MRE 702. There is no evident conflict.[9]

3. FUTURE STANDARDS

Lastly, Oakland County notes that in certain publications the MIDC has contemplated granting additional authority to local funding units to decide issues concerning the appointment

[9] It is not clear whether Oakland County has directly asserted a challenge to Standards 1 and 2. The county's brief lists the standards' requirements and conclusory states that defendants "cannot credibly maintain that LARA and MIDC do not regulate the duties and qualifications of indigent criminal defense counsel given the plain language of the minimum standards." However, they do not specifically analyze Standards 1 and 2 in the same manner they have briefed Standards 3 and 4, and simply listing the standards' requirements with a conclusory assertion leaves this Court to speculate regarding the county's argument. Moreover, on the Court's review of the standards, the standards, like Standards 3 and 4, do not conflict with any statutes, court rules, or constitutional principles. Accordingly, the Court declines to find that Standards 1 and 2 were not authorized by law. See MCL 780.985(5).

of experts and in regard to indigency determinations. The county has not, however, provided any evidence that the MIDC has implemented this strategy by promulgating standards. Thus, at this point, the county's concerns are purely hypothetical and are not ripe for decision. See *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372 n 20; 792 NW2d 686 (2010). Moreover, this Court's review under the MIDC Act does not extend to *potential*, yet-to-be-enacted standards. See MCL 780.985(5) (specifying that only an approved minimum standard "is considered a final department action subject to judicial review . . .").[10]

D. COMPLIANCE WITH THE APA

Lastly, Oakland County argues that the MIDC has violated the APA by promulgating mandatory rules and procedures without complying with the APA's requirements. As acknowledged by the county, the minimum standards established by the MIDC are expressly exempt from the APA's requirements. MCL 24.207(r); MCL 780.985(4). However, the county argues that this exemption did not give the MIDC wholesale authorization to ignore the APA. According to the county, MIDC's "Guide for Submission of Compliance Plans, Cost Analyses, and Local Share Calculations," contain compulsory provisions which amount to "rules" under the APA.[11]

[10] Related to the issues raised above, Oakland County has asked this Court to declare, in the event of a future conflict between minimum standards and court rules, that the court rules are controlling. Such a request with regard to future, unknown standards is not ripe for review. See *Lansing Sch Ed Ass'n*, 487 Mich at 372 n 20.

[11] To the extent Oakland County's claim rests on MIDC's subsequently rescinded interpretation of the term "local share" as is used in MCL 780.983(h), by the county's own admission, the decision with regard to this interpretation was rescinded.

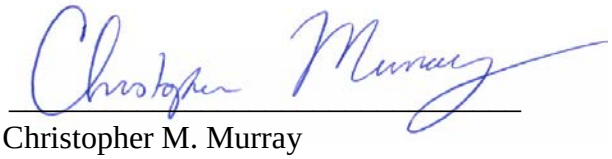
Oakland County's position is meritless. First, the legislative determination that the standards are not rules for purposes of the APA *does* indeed end the issue as it concerns the standards. See *Mich Ed Ass'n*, 489 Mich at 217-218 (courts are to enforce statutes as they are written). Second, the Court disagrees with Oakland County's assertion that the MIDC has been promulgating "compulsory rules and procedures disguised as 'guidelines' without adhering to the APA." In defining a "rule" subject to the APA's procedures, the APA expressly exempts from the definition of "rule": "A form with instructions, an interpretive statement, a guideline, an informational pamphlet, or other material that in itself does not have the force and effect of law but is merely explanatory." MCL 24.207(h). Here, the challenged "Guide" is, on its face, not a "rule" as the APA has defined that term. However, the label assigned to the Guide by the MIDC is not the determining factor in this Court's analysis of whether the "Guide" is, in fact, a rule. *Kent Co Aeronautics Bd v Dep't of State Police*, 239 Mich App 563, 582; 609 NW2d 593 (2000). Rather, the Court looks to the substance of the MIDC Guide.

Having reviewed the Guide, the Court agrees with defendants that the Guide is merely explanatory and does not purport to create "compulsory provisions," as Oakland County alleges. The introduction of the document specifies that it is only intended to "assist with the preparation of the cost analysis and compliance planning for delivering indigent criminal defense services." The document then encourages indigent criminal defense systems to come up with their own "cost effective models" for delivering services. Regarding costs—which makes up the primary component of the County's argument—the document specifies that costs "cannot be excessive" (emphasis omitted). Then, the document goes on to specify guidelines for the types of compliance plans and particular details in those plans that the MIDC will approve. The Guide does not impose any obligations on indigent criminal defense systems, nor does it expand on

Standards 1-4. Rather, the Guide simply advises indigent criminal defense systems what types of plans and which types of costs will be deemed reasonable or not "excessive." To that end, pages 6-7 of the Guide specifically encourage indigent criminal defense systems to contact "their MIDC Regional Manager" with questions about costs and particular items prior to submission. This is indicative of a more flexible, guiding process as is anticipated by MCL 24.207(h), rather than the imposition of "rules," as that term is used in the APA. See *Kent Co Aeronautics Bd*, 239 Mich App at 583 (explaining that the challenged interpretive document was not a "rule" under the APA because the criteria described in the interpretive document "do not create any legal obligation on behalf of the township to propose a site, nor do they enlarge, abridge, or in any way affect the rights of the public. The criteria simply advise a local governmental unit, by way of explanation . . .").

For these reasons, the Court will enter an order granting defendants' motion for summary disposition, and denying plaintiff's motion for summary disposition.

Dated: November 3, 2017



Christopher M. Murray
Judge, Court of Claims

STATE OF MICHIGAN

COURT OF CLAIMS

OAKLAND COUNTY v STATE OF MICHIGAN, *et al*,

Case No. **17-000216-MZ** **Hon. Christopher M. Murray**

ORDER

At a session of said Court held in the City of
Detroit, County of Wayne, State of Michigan.

The Court, having issued an Opinion on the parties' competing motions for summary disposition, and otherwise being fully advised in the premises;

IT IS HEREBY ORDERED that, for the reasons stated in the accompanying Opinion, defendants' motion for summary disposition is GRANTED pursuant to MCR 2.116(C)(8) and (C)(10) and plaintiff's motion for the same is DENIED.

IT IS SO ORDERED.

This order resolves the last pending claim and closes the case.

Dated: November 3, 2017

Christopher M. Murray
Judge, Court of Claims

A true copy entered and certified by Jerome W. Zimmer Jr., Clerk, on

November 3, 2017
Date

Clerk