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Michigan Indigent Defense Commission
200 N. Washington Sq., 3rd Floor
Lansing, MI 48913

RE: Michigan Indigent Defense Commission Standard 8

Members of the Commission:

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Michael Franck Building
Lansing, MI
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At its January 26, 2018 meeting, the Board of Commissioners of the State Bar of Michigan (the Board) considered Standard 8 – Economic Disincentives or Incentives, which the MIDC published for comment. In its review, the Board considered recommendations from the Criminal Jurisprudence & Practice Committee, the Access to Justice Policy Committee, and the Criminal Law Section. Based on those recommendations, the Board voted unanimously to support the proposed standard.

To ensure that indigent criminal defendants receive effective legal representation, it is vitally important that their attorneys are adequately compensated for their work and reimbursed for actual expenses. The proposed standard takes significant steps to improve compensation for court-appointed counsel.

Although Standard 8 calls for relatively large increases in fees over what many courts current pay, this increase is necessary to provide indigent defendants with their constitutional right to adequate legal representation. The hourly fees are still approximately half of what the average solo practitioner and the average private criminal defense attorney in Michigan charge on an hourly basis. See [The State Bar of Michigan 2014 Economics of Law Practice Survey, Table 3 – Attorney Hourly Billing Rates](#) and [Table 7 – Attorney Hourly Billing Rates by Field of Practice](#).

Standard 8 also provides flexible guidelines for localities to review and pay attorney bills and moves this administrative function out of the judiciary. Just as clients review their attorneys' bills prior to payment, the locality, as the entity contracting for legal services for indigent criminal defendants, should control the review process for attorney bills and receipts. The Standard 8 payment guidelines allow each locality to define thresholds requiring additional scrutiny of potentially excessive attorney charges. With time, the administrative office will gain an expertise as to the appropriateness of attorney billing for that particular locality.

Although there may be concerns that attorneys will take advantage of the new hourly compensation rate and overbill for their services, attorneys who misrepresent their billing face significant consequences. Not only could these attorneys be removed from the locality's criminal assignment list, these attorneys – like all licensed

attorneys in Michigan – could face sanctions for violating the Michigan Rules of Professional Conduct (MRPC). The comment to MRPC 4.1 requires that a lawyer be “truthful when dealing with others on a client’s behalf,” which would extend to a lawyer submitting his or her bills to the locality for payment. Therefore, attorneys who exaggerate and misrepresent their billing do so at their own peril – not only will they be removed from criminal assignment lists, but they could also be subject to professional disciplinary sanctions, including disbarment.

Another important aspect of Standard 8 is the discouragement of event-based fee systems. These systems discourage good lawyering through two economic disincentives. First, low fees for trials and motion practice often encourage attorneys to attempt to plead out a high number of cases with relatively little work to make the practice of law economically viable. This results in a lower standard of practice for indigent clients compared to those with retained lawyers. Second, by paying per event, rather than the actual hours worked, attorneys have less incentive to put the often long and laborious work into the case of a difficult client who should be convinced to plead guilty. The attorney may decide that he or she cannot afford the long uncompensated hours necessary to get the client to plead and it is easier and more advantageous to simply take the case to trial. In the end, these unnecessary trials cost the state more money in wasted judicial and prosecutorial resources and longer sentences.

In conclusion, the proposed Standard 8 will significantly improve indigent criminal defendants’ access to legal services and the quality of those services. For these reasons, the Board unanimously supports Standard 8.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janet K. Welch".

Janet K. Welch
Executive Director

cc: Donald G. Rockwell, President