

Date: 07/23/2015 [02:23:57 PM]  
From: Andrew MacKie-Mason <amackiemason@uchicago.edu>  
To: info@michiganidc.gov  
Subject: Comments to MIDC Proposed Standards

Dear Commissioners:

As a law student and future public defender with internship experience in two Michigan public defender offices, as well as others elsewhere, I am glad that the Commission has begun the work of reforming Michigan's broken indigent defense system. The attached comments are suggestions for next steps in the Commission's work, and do not in any way represent a full complement of changes or additions that will be necessary to bring indigent defense in Michigan up to reasonable standards.

Please continue your excellent work and take advantage of this unique opportunity to move Michigan closer to making the promise of *Gideon* a reality.

Sincerely,

Andrew MacKie-Mason

\* \* \* \* \*

Standard 1A: The Commission should require all lawyers representing indigent defendants to have access to adequate tools for legal research to ensure that their knowledge of relevant case law is up to date. Comprehensive electronic databases should be strongly recommended.

Further, the Commission should make clear that criminal defense lawyers' obligation to know the law extends to the fields that bear on collateral consequences for criminal convictions. At a minimum, in accordance with *Padilla v. Kentucky*, the Commission should require criminal defense lawyers representing non-citizen clients to become knowledgeable about the immigration consequences of criminal convictions. However, the Commission should go further than *Padilla*, and require that criminal defense lawyers also become familiar with other collateral consequences, including but not limited to access to government benefits (including subsidized housing), employment, education, and expungement/sealing (including the impact of conviction in the present case on the ability to expunge or seal prior records).

Standard 2D.2: The Commission should make clear that public defenders (as well as police, courts, jails, and other institutions in the criminal justice system) are bound by the Americans with Disabilities Act, and implementing regulations, when dealing with clients with vision, hearing, or speech disabilities that require various forms of interpretation.

For interpretation in general, the Commission should explore existing standards for effective legal interpretation, and adopt detailed standards informed by those that already exist (for example, the standards adopted for American Sign Language Interpretation by the National Consortium of Interpreter Education Centers: <http://www.diiinstitute.org/wp-content/uploads/2012/06/Best-Practices-Legal-Interpreting.pdf>).

Standard 3B: Only requiring lawyers to request funds for an investigator "when appropriate" is too vague a standard to provide sufficient guidance. The Commission should establish rules for when a request to the court for professional investigation assistance is presumptively required. Those rules should likely be based on the maximum sentencing exposure faced by the defendant.

Staff comments to Standard 3: The Commission should make absolutely clear that decisions to limit investigation cannot be made merely on the basis of discovery or representations made by the government, and must incorporate conversations with the client and the client's version of the facts.

Additions to Standard 3: The Commission should require counsel to keep clients informed of the status of investigations, and to explain any decisions to limit investigation to the client.

The Commission should strongly encourage the creation of at least one permanent, full-time defense investigator position in any county with caseloads above a certain threshold. The Commission should also develop recommended qualifications, standards, and ethical guidelines for defense investigators.

Standard 4A: In order to prevent indigent defendants from being pressured by prosecutors or judges into waiving their right to counsel, the Commission should require that indigent defendants who wish to waive their right first consult with counsel appointed for that purpose. The Commission should consider requiring the appointment of standby counsel for all defendants facing serious charges who wish to represent themselves.

Additional Standards:

The Commission should establish minimum standards for the investigation and case preparation an attorney must complete before recommending that a client plead guilty.

The Commission should establish minimum standards for written motions that attorneys should be required to either file or make a conscious and informed decision to not file in certain types of cases, or cases that present certain issues. In particular, attorneys should be required to file written *Brady* requests in every case.

The Commission should establish minimum standards for advocacy at the sentencing stage, including mitigation investigation, written sentencing submissions, and consideration of the collateral consequences of different sentencing options. Lawyers should be required to discuss the impact of different sentences with their clients, and to advocate at sentencing in accordance with the client's wishes.

In general, the Commission should adopt client-centric standards for indigent criminal defense. Lawyers should consult with their clients about major decisions, give advice in light of the client's particular circumstances, and advocate in accordance with their clients' decisions.

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Andrew MacKie-Mason  
J.D. Candidate, Class of 2017



Date: 06/24/2015 [08:23:29 PM]  
From: Andrew Stacer <astacer@stacerplc.com>  
To: info@michiganidc.gov  
Subject: MIDC Standards

To whom it may concern:

Is there anything that will ensure that the government will deliver discovery to defense counsel in a timely manner in order to make the new standards regarding mandatory initial client meeting actually mean something/be effective, other than a glorified time wasting meet and greet given the time constraints place on appointed counsel relative to the "rate of pay"? Since this MIDC thing ia not tie to fixing the court appointed attorney fee schedules, let alone imposes sanction-able standards for defense counsel, who are at the whim of prosecutors; who regularly deny discovery in misdemeanor matters and obtaining discovery in felonies can be slow to say the least.

Thank you. Feel Free to call me.

Andrew D. Stacer  
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## Michigan Indigent Defense Commission

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**From:** Bbosler3 <bbosler3@aol.com>  
**Sent:** Wednesday, July 29, 2015 9:29 PM  
**To:** info@michiganidc.gov  
**Subject:** Criminal Defense Standards for Indigent  
**Attachments:** Comments on Standards.doc

Dear Committee:

Thank you for your work. Attached are my comments.

Barbara Bosler  
75993

## Standard 1

### Education and Training of Defense Counsel

The Michigan Indigent Defense Commission Act requires adherence to the principle that “[d]efense counsel is required to attend continuing legal education relevant to counsel’s indigent defense clients.” M.C.L. §780.991(2)(e). The United States Supreme Court has held that the constitutional right to counsel guaranteed by the Sixth Amendment includes the right to the effective assistance of counsel. The mere presence of a lawyer at a trial “is not enough to satisfy the constitutional command.” *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Further, the Ninth Principle of The American Bar Association’s *Ten Principles of a Public Defense Delivery System* provides that a public defense system, in order to provide effective assistance of counsel, must ensure that “Defense counsel is provided with and required to attend continuing legal education.” The MIDC proposes a minimum standard for the education and training of defense counsel to effectuate *Strickland*, the MIDC Act, and the Ninth Principle:

**A. Knowledge of the law.** Counsel shall know substantive Michigan and federal law, constitutional law, criminal law, criminal procedure, rules of evidence, ethical rules and local practices. Counsel has a continuing obligation to know the changes and developments in the law. What is the measure for this? New attorneys may know current case law but lack the actual experience to effect adequate defense. How can this knowledge be equated to actual competencies or performance expectations?

**B. Knowledge of scientific evidence and applicable defenses.** Counsel shall know all forensic and scientific issues that can arise in a criminal case, know all legal issues concerning defenses to a crime, and be able to effectively litigate those issues. What is the measure for this? Ability to ask the right questions? To know how to research a case on forensic and scientific issue? Ability to talk with the proper resources/experts? Ability to re-enact the crime to properly investigate what happened?

**C. Knowledge of technology.** Counsel shall know how to utilize office technology commonly used in the legal community, and technology used within the applicable court system. Counsel shall be able to thoroughly review materials that are provided in an electronic format. Each court system affords different technology and technology is a broad term that could mean just equipment or hardware and software or an entire informatics structure. . What is Counsel expected to know versus requesting technology support from each court to comply with an effective defense? Does technology here also include using powerpoint and other presentations/displays in court? What is the minimum requirement necessary to effect adequate counsel?

**D. Continuing education.** Counsel shall annually complete continuing legal education courses relevant to the representation of the criminally accused. Very broad statement. What should the focus of the CLE be? How encompassing should it be, i.e., all Criminal Law crimes? Or specific to the case Counsel is assigned or agrees to represent? Counsel shall participate in skills training and educational programs in order to maintain and enhance overall preparation, oral and written advocacy, and litigation and negotiation skills. Lawyers can discharge this obligation Is this really an obligation or a necessity to comply with the standards? for annual continuing legal education by attending local trainings or statewide conferences. Are these training sessions geared towards meeting these standards? Attorneys with fewer than two years of experience practicing criminal defense in Michigan shall participate in one basic skills acquisition class. By whom/what certified program? Is this enough? Shouldn’t there be a mentorship program set up to prepare newer

| attorneys to ensure proper foundation? All attorneys shall annually complete at least twelve (12) hours of continuing legal education.

*Staff comments:*

- *The quality of the training should be analyzed through evaluations, and the effectiveness of the training shall be measurable and validated.*
- *The minimum of twelve hours of training represents typical national and Michigan requirements, and is accessible in existing programs offered statewide.*

## Standard 2

### Initial Interview

The Michigan Indigent Defense Commission Act requires adherence to the principle that “[d]efense counsel is provided sufficient time and a space where attorney-client confidentiality is safeguarded for meetings with defense counsel’s client.” M.C.L. §780.991(2)(a). United States Supreme Court precedent and American Bar Association Principles recognize that the “lack of time for adequate preparation and the lack of privacy for attorney-client consultation” can preclude “any lawyer from providing effective advice.” See *United States v. Morris*, 470 F.3d 596, 602 (CA6, 2006). Further, the Fourth Principle of The American Bar Association’s *Ten Principles of a Public Defense Delivery System* provides that a public defense system, in order to provide effective assistance of counsel, must ensure that “Defense counsel is provided sufficient time and a confidential space within which to meet with the client.” The MIDC proposes a minimum standard for the initial client interview to effectuate the MIDC Act and the Fourth Principle:

**A. Timing of the Interview:** Counsel shall conduct a client interview as soon as practicable after appointment to represent the defendant in order to obtain information necessary to provide quality representation at the early stages of the case and to provide the client with information concerning counsel’s representation and the case proceedings. Counsel shall conduct subsequent client interviews as needed. Following appointment, counsel shall conduct the initial interview with the client sufficiently before any court proceeding so as to be prepared for that proceeding. When a client is in custody, counsel shall conduct an initial client intake interview within 72 hours of appointment. When a client is not in custody, counsel shall promptly deliver an introductory communication so that the client may follow-up and schedule a meeting.

**B. Setting of the interview:** All client interviews shall be conducted in a confidential setting. Counsel shall ensure that confidential communications between counsel and the client are conducted in private. Counsel and the indigent criminal defense system shall ensure the necessary accommodations for private discussions between counsel and clients in courthouses, lock-ups, jails, prisons, detention centers, and other places where clients must confer with counsel. How is this standard going to be effected? Courts are not set up to accommodate. What is the transition plan? What steps should Counsel take when a confidential area is not available?

**C. Preparation:** Counsel shall obtain copies of any relevant documents which are available, what if they are not available? What recourse? including copies of any charging documents, recommendations and reports concerning pretrial release, and discoverable material.

### D. Client status:

1. Counsel shall evaluate how? What criteria should be used for this assessment? How competent is counsel to always determine this? whether the client is competent to participate in his/her representation, understands the charges, and has some basic comprehension of criminal procedure. Counsel has a continuing responsibility to evaluate the client’s capacity to stand trial or to enter a plea pursuant to Mich. Ct. R. 6.125 and M.C.L. §330.2020. Counsel shall take appropriate action what does this mean? where there are any questions about a client’s competency.

2. Where counsel is unable to communicate with the client because of language or communication differences, counsel shall take whatever steps are necessary to fully explain the proceedings, including seeking the appointment of an interpreter to assist with pre-trial preparation, interviews, investigation, and in-court proceedings, or other accommodations.

*Staff comments:*

- *The Commission recognizes that counsel cannot ensure communication prior to court with an out of custody indigent client.*
- *The 72 hour requirement is typical of national requirements.*
- *The Commission recognizes that certain indigent criminal defense systems currently only pay counsel for limited client visits in custody. In these jurisdictions, compliance plans with this standard will need to guarantee funding for multiple visits.*

### **Standard 3**

#### **Investigation and Experts**

The United States Supreme Court has held: (1) “counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Strickland v. Washington*, 466 U.S. 668, 691 (1984); and (2) “[c]riminal cases will arise where the only reasonable and available defense strategy requires consultation with experts or introduction of expert evidence, whether pretrial, at trial, or both.” *Harrington v. Richter*, 562 U.S. 86, 106 (2011).

The MIDC proposes a minimum standard for investigations and experts:

A. Counsel shall conduct an independent investigation of the charges and offense as promptly as practicable.

B. When appropriate, counsel shall request funds to retain an investigator to assist with the client’s defense.

C. Counsel shall request the assistance of experts where it is reasonably necessary to prepare the defense and rebut the prosecution’s case.

D. Counsel has a continuing duty to evaluate a case for appropriate defense investigations or expert assistance.

*Staff comments:*

- *The Commission recognizes that counsel can make “a reasonable decision that makes particular investigations unnecessary” after a review of discovery and an interview with the client.*
- *The Commission emphasizes that a client’s professed desire to plead guilty does not alleviate the need to investigate.*

## **Standard 4**

### **Counsel at First Appearance**

The MIDC Act provides that standards shall be established to effectuate the following: (1) “All adults, except those appearing with retained counsel or those who have made an informed waiver of counsel, shall be screened for eligibility under this act, and counsel shall be assigned as soon as an indigent adult is determined to be eligible for indigent criminal defense services.” M.C.L. §780.991(1)(c); (2) “A preliminary inquiry regarding, and the determination of, the indigency of any defendant shall be made by the court not later than at the defendant's first appearance in court. M.C.L. §780.991(3)(a); (3) ...counsel continuously represents and personally appears at *every court appearance* throughout the pendency of the case.” M.C.L. §780.991(2)(d), emphasis added. The United States Supreme Court has held that assistance of counsel is required at critical stages of proceedings, and that the right to counsel attaches when a defendant’s liberty is subject to restriction by the court. *Rothgery v. Gillespie County*, 554 U.S. 191 (2008).

The MIDC proposes a minimum standard on counsel at first appearance:

A. Counsel shall be assigned as soon as the defendant is determined to be eligible for indigent criminal defense services. The indigency determination shall be made and counsel appointed and made available to provide assistance to the defendant as soon as the defendant’s liberty is subject to restriction by a magistrate or judge. The representation includes, but is not limited to the arraignment on the complaint and warrant or the setting of a case specific interim bond while defendant is in custody. Nothing in this paragraph shall prevent the defendant from making an informed waiver of counsel.

B. All persons determined to be eligible for indigent criminal defense services shall also have appointed counsel at pre-trial proceedings, during plea negotiations and at other critical stages, whether in court or out of court.

#### *Staff comments:*

- *The proposed standard addresses an indigent defendant’s right to counsel at every court appearance and is not addressing vertical representation (same defense counsel continuously represents) at this time. M.C.L. §780.991(2)(d) also addresses vertical representation, which will be the subject of a future minimum standard.*
- *One of several potential compliance plans for this standard will be an on duty arraignment attorney who will not necessarily represent the indigent client at later proceedings.*
- *Standard 4 is written to make sure that interim bonds may be set to allow release from custody so that the requirement for counsel at first appearance does not lengthen any jail stays. The Standard only applies to case-specific interim bonds set by a judge or magistrate while a defendant is in custody, not those set by police or implemented by the jail staff.*

## **Sources and Authority**

### **Standard 1 - Education and Training of Defense Counsel**

#### *Sources:*

ABA 10 Principles of a Public Defense Delivery System (Principles 6 and 9)  
Florida Performance Guidelines for Criminal Defense Representation (Section 1.2)

#### *Authority:*

M.C.L. §780.991(2)(c) and (2)(e)

### **Standard 2 - Initial Interview**

#### *Sources:*

ABA 10 Principles of a Public Defense Delivery System (Principle 4)  
Florida Performance Guidelines for Criminal Defense Representation (Section 2.1)  
Committee for Public Counsel Services, Assigned Counsel Manual Policy and Procedures (Part IIB)  
Supreme Court of Nevada, *In the Matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases* (Standard 4-4)

#### *Authority:*

*Strickland v. Washington*, 466 U.S. 668 (1984)

*US v. Morris*, 470 F.3d 596 (CA6, 2006)

M.C.L. §780.991(2)(a)

Mich. Ct. R. 1.111B

Mich. Ct. R. 6.125

MRPC 1.6

### **Standard 3 - Investigation and Expert Witnesses**

#### *Sources:*

Florida Performance Guidelines for Criminal Defense Representation (Section 4.2)  
Committee for Public Counsel Services, Assigned Counsel Manual Policy and Procedures (Parts IVA, VIA)  
Supreme Court of Nevada, *In the Matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases* (Standard 4-7)

#### *Authority:*

*Strickland v. Washington*, 466 U.S. 668 (1984)

*Harrington v. Richter*, 562 U.S. 86 (2011)

*Ake v. Oklahoma*, 470 U.S. 68 (1985)

*Hinton v. Alabama*, 134 S. Ct. 1081 (2014)

*People v. Trakhtenberg*, 493 Mich. 38 (2012)

*Wiggins v. Smith*, 539 U.S. 510 (2003)

*Avery v. Prelesnik*, 548 F.3d. 434 (2008)

#### **Standard 4 - Counsel at First Appearance**

*Sources:*

*ABA Ten Principles of a Public Defense Delivery System - Principle 3*

*Authority:*

*Rothgery v. Gillespie County*, 554 U.S. 191 (2008)

*United States v. Cronin*, 466 U.S. 648 (1984)

*Powell v. Alabama*, 287 U.S. 45 (1932)

*US v. Morris*, 470 F.3d 596 (CA6, 2006)

M.C.L. §780.991(1)(c), (2)(a), (3)(a, d)

Mich. Ct. R. 6.005(A)



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July 24, 2015

Mr. Jonathan Sacks, Executive Director  
Michigan Indigent Defense Commission  
P.O. Box 14271  
Lansing, MI 48901

Dear Director Sacks,

On July 11, 2015, the Board of Directors of the Criminal Defense Attorneys of Michigan discussed the first set of proposed minimum standards prepared by the Michigan Indigent Defense Commission. I am pleased to inform you that CDAM supported the proposed standards as presented.

The Board members recognize that you, your staff, and commissioners have a great deal of work ahead and we appreciate the opportunity afforded to CDAM to weigh in and thoughtfully deliberate these proposals. We would appreciate being given the same courtesy as additional proposals are finalized.

Feel free to use CDAM's endorsement of the first set of proposed minimum standards in ways that will help you leverage additional support and visibility. If you need any additional help, please do not hesitate to contact me.

Sincerely,

Patricia A. Maceroni, President  
Criminal Defense Attorneys of Michigan

Cc: Frank D. Eaman, MIDC Commissioner  
John A. Shea, MIDC Commissioner  
William W. Swor, MIDC Commissioner

**Date:** 06/24/2015 [06:17:38 PM]  
**From:** Donald Johnson <djohnson@ladadetroit.org>  
**To:** "info@michiganidc.gov" <info@michiganidc.gov>  
**Subject:** Comment on Proposed Standards

The State Defender Office, Legal Aid and Defender Association, Inc. , represents 25 % of the indigent clients charged with felonies in the 3d Circuit Court for Wayne County. We currently do this with a staff of sixteen lawyers. Our budget of 1.98 million dollars has been frozen since the year 2000. We have lost four lawyers and five full-time investigators during this time. Our investigation is performed by a private contractor for an annual fee of \$21,000. With this background, I offer the following comments:

1. The training can be met. Wayne County has a mandatory training program for all lawyers accepting assignments. This is the Criminal Advocacy Program which offers 10-11 training sessions every fall. The sessions are usually an hour and a half in length. My office also does four training sessions in-house. One attorney is sent to the CDAM trial college every August.
2. Due to staffing issues, we are currently only able to meet this standard on specially assigned cases, usually life offenses. We would need additional lawyers to do a confidential interview prior to the probable cause conference in every case. In most low level felony cases, this occurs at the probable cause conference in the court hallway or lock-up.
3. I have previously mentioned our current ability to investigate. This standard cannot be met without funding being provided. Currently, we only investigate in cases that appear to be headed to trial.
4. Wayne County appoints an attorney after the arraignment on the complaint and warrant. The first court appearance by an attorney is at the new probable cause conference prior to the preliminary examination. My office partnered this year with 3d Circuit Court, the Wayne County Sheriff's Office, Community Corrections, and MDOC in an application for a MacArthur Grant to address this issue. The grant would have addressed the early release or diversion of mentally ill clients as well as providing for counsel at the arraignment on the warrant. Our grant application was denied. Wayne County is facing huge deficit issues. I have been informed by Chief Judge Colombo that any funding increase is out of the question.

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Fred Johnson, Jr., Director  
**MUSKEGON OFFICE OF THE DEFENDER**  
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Monday, July 13, 2015

Judge James H. Fisher, Chairperson  
Michigan Indigent Defense Commission  
[info@michiganidc.gov](mailto:info@michiganidc.gov)

Re: Proposed Minimum Standards

Dear Judge Fisher:

Thank you for the opportunity to weigh in on your proposed Standards for the practitioners of criminal defense law here in the State of Michigan. Prior to my responding, your proposals were disseminated to all of our attorneys (13) with the request that comments and suggestions be submitted to me for organization and then forwarding to you. Here then, is the wisdom of 125 (collective) years of the practice of law. Thank you for your time and attention to our concerns.

#### FEEDBACK

Proposed Standard:

#### **Standard 1 Education and Training of Defense Counsel**

Response:

We are requesting a working definition of “Training” that is broad enough to allow us to design and implement our own. We believe that with shrinking budgets, our ability to travel and participate in training will contract in the foreseeable future. If we are allowed to design and implement programming ourselves we can use that home-grown training to augment those occasions when we can attend traditional training events. If, as we expect, the training we put on at this office will be free to the local bar, it will have the added benefit of attracting private defenders over whom MIDC standards will have only peripheral impact. Many of these

attorneys have not been to training/educational programing since they passed their bar examinations. Again, a broad definition of “training” is the key. Doing more with less requires innovation and experimentation.

We would also ask that some existing legal education be considered training. Allow me to list a few examples:

1. Section membership in addition to basic bar membership. In the case of this office, that would be criminal, family or probate law sections. This policy would have the side benefit of increasing section membership while providing educational tools and opportunities.
2. Credit for subscriptions to learned journals or memberships in organizations that provide the same (i.e.: SADO).
3. Case conferences. Those organizations that offer case conferences wherein lawyers meet, discuss cases, the law, processes, etc. are not given credit for being “educational” but those of us who are lucky enough to participate in them can vouch for their unsurpassed effectiveness in the training process. We believe we should be given credit for them.
4. Internal legal education. We are fortunate in having a dedicated researcher here at the Muskegon Public Defender. He provides us with summations/interpretations/applications of Court of Appeals and Supreme Court rulings. Highly educational.

. . .

The proposed guidelines require public defenders to attend skills training within their first couple years of practice. We strongly support that position and we have the resources to make sure that happens. We are concerned however, for others not so fortunately situated. Desire for training is not an issue as far as we are aware. Participating in training has always included balancing economic and timing issues as well as the need to upgrade one’s skills. As to timing, judges will have to embrace the culture of training by allowing adjournments and other dispositions for training as they now do for vacations and sick leave. Economically, access to scholarships and fee waivers is a must. Private sector attorneys are not earning income while

attending training and also paying fees and expenses to attend. We can argue that training is an investment but that fine, philosophical argument does not pay the secretary. Cost amelioration, it seems to us, must also be part of the package.

Proposed Standard:

**Standard 1  
Education and Training of Defense Counsel**

- A. Knowledge of scientific evidence and applicable defenses.** Counsel shall know all forensic and scientific issues that can arise in a criminal case, know all legal issues concerning defenses to a crime, and be able to effectively litigate those issues.

Response:

We would request the removal of the word, “all” from this proposed standard. We do not know any single or even group of attorneys who know *all* forensic, scientific and legal issues. This standard establishes a potential grievance issue in almost every representation. Perhaps a standard that requires an attorney to consider these issues and keep record that he/she has done so would be a more reasonable requirement. As long as the records each attorney keeps cannot be altered to thwart investigation, the objective of the proposed standard is served. The lawyer can be held responsible should he/she fail to exercise reasonable expertise.

Proposed Standard:

**Standard 1  
Education and Training of Defense Counsel**

- C. Knowledge of technology.** Counsel shall know how to utilize office technology commonly used in the legal community, and technology used within the applicable court system. Counsel shall be able to thoroughly review materials that are provided in an electronic format.

Response:

We believe this requirement is not stringent enough. We do not believe the standard should be “office technology commonly used in the legal system.” We believe that an attorney

should know how to use technology, period. Like forensic issues, knowledge of all technology is not necessary but a reviewable standard is appropriate. Further, we believe attorneys should be motivated. Require us to innovate. Require us to adapt. Require us to be on the cutting edge and not waiting until the technology comes into common use. Were we doctors, or engineers or auto mechanics, we could not survive in those business environments if we did not adapt until tools became common in our community.

Proposed Standard:

**Standard 2  
Initial Interview**

- A. Timing of the Interview:** . . . When a client is in custody, counsel shall conduct an initial client intake interview within 72 hours of appointment. . .

Response:

We are not always the kings and queens of our domains. We work with prosecutors, judges, clerks, secretaries, our clients and their families to do our jobs as defense attorneys. The virtues and limitations of these others impact our ability to control our own calendars. Because of this reality we are concerned with hard timelines. When MIDC proposes we meet with our jailed clients within 72 hours of appointment, it follows that the visit is not just for social purposes. The expectation is that the visit is to be a meaningful visit wherein serious issues are addressed and fair questions answered. The problem is we have little or no control over the notification process that occurs after appointment. Our experience is that notification times vary between jurisdictions, with the volume of cases at the time, and even between individual judges in the same building. It is rare that the advocates are aware our appointments within 72 hours. Further, even when we are notified within the three-day goal, it is rare that our calendars are not

full. Not just our calendars, but the local county jail which requires an appointment prior to visitation is usually booked a minimum of 24 hours in advance.

Preeminent amongst the persons and agencies that would have to buy in to make the 72 hour deadline possible is the local prosecutor's office from which we receive the bulk of our discovery materials. In their defense, they have to be notified of our appointment by the same courts as we do. Only then do they send out discovery materials. Going out to the jail when one has not had access even to police reports means very little productive work can be done. Worse, it breeds contempt in the client toward her counsel. Already suspicious of our competency and loyalty because we are court appointed, arriving unprepared and uninformed would confirm negative stereotypes. Such a poor, per forma meeting means the attorney will have to find time to attend a second meeting when he/she has her act together.

Suggestion: Instead of hard timelines, we suggest a "best practice" requirement. We are suggesting language to the following effect:

"Each attorney is to visit his/her incarcerated client as soon as practicable. In timing said visit, best practice is to balance preparedness for the meeting with the need to build confidence in the client as to the quality and earnestness of his/her representation; to allay as possible the stress of being incarcerated and charged; and, early enough to incorporate the client's wishes and interests into the defense strategy even if said meeting occurs before arraignment."<sup>1</sup>

. . .

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<sup>1</sup> When in private practice, on occasion, I became aware of a pending representation before the official assignment was made at arraignment and sometimes waiting for the official appointment was not in my client's interest. For example: Sometimes the defendant who gets to the prosecutor first gets the best deal. In those circumstances, I am doing my client a disservice by waiting for official appointment. In those circumstances he lawyer who waits loses the race for his client. Sometimes a client has a parole hold and is doing "dead time." Moving as quickly as possible is often in her interests.

## CONCLUSION

Overall the impression from this office is that the Standards are fair, appropriate and necessary. We agreed with the vast majority of the proposals, as is. We congratulate those involved in developing them on and support their enactment.

Respectfully,

Fred Johnson, Jr.  
Director, Muskegon Office of the Public Defender

cc: Jonathan Sacks, Executive Director, MIDC

**Date:** 07/09/2015 [06:48:55 PM]  
**From:** "McKay, Kevin" <kevin.mckay@kentcountymi.gov>  
**To:** "info@michiganidc.gov" <info@michiganidc.gov>  
**Subject:** MIDC Standards

These proposed standards are a great start to fixing Michigan's indigent defense deliver system.

J. Kevin McKay, P44647  
Caledonia, MI

**Date:** 06/24/2015 [03:25:50 PM]  
**From:** Judith Caldwell <tortzwiz@yahoo.com>  
**To:** "info@michiganidc.gov" <info@michiganidc.gov>  
**Subject:** Indigent Counsel Minimum Standards

In addition to the minimum standards for counsel representing indigent clients, there should be a "minimum standard" for states, counties and municipalities that pay attorneys to represent such clients. Currently, there is no standard fee or rate schedule for attorneys willing to take indigent assignments throughout this State. The rates paid vary widely from region to region, county to county, and for the most part, represent fees that do not usually provide adequate compensation for the amount of time and effort expended by the attorney. While it is understood that that counties across the State generally maintain that funds for indigent defense are obtained through income and property tax revenues assessed their residents, and those revenues have decreased due to recent economic downturns, indigent defense is a GUARANTEED RIGHT under the U.S. AND Michigan Constitutions. For the State to provide competent indigent counsel, there has to be a pool of such counsel available to choose from - and those counsel have to be comfortable with the compensation being offered to do such work! As an attorney who has taken on indigent defense for several counties in the past, the saying that "you get what you pay for" definitely has application to the profession concerning indigent defense! Unfortunately, if an attorney can't make a decent living for themselves doing indigent defense, they will be forced to look elsewhere to make their living, despite any passion they may feel for the work! Many good attorneys have stopped taking indigent case assignments because they were unable to make a decent living doing so. A good case in point - Wayne County Probate Court used to pay well for attorneys to perform annual Adult Guardianship Reviews, and now, after a succession of rate cuts over the past 5-6 years, the County no longer pays for such reviews and tells the few attorneys still willing and able to travel all over the tri-County metropolitan area to perform reviews that they must obtain their own compensation whenever possible by billing the ward's estate!! The consequences of such a policy can only spell eminent disaster for numerous wards throughout the State, as there will naturally be little to no oversight from the Court as to the appropriateness of the guardian, the status of the ward, etc. The "logical" outcome would be that, unless the attorney is going to be able to be compensated for efforts, very little effort is going to be expended. If such policies "have to exist" for this Probate Court due to budgetary concerns, what safeguards are there to prevent such policies from being implemented, even if on a limited basis due to Constitutional constraints, in other areas of law and other counties? How would you be able to even get qualified attorneys to "sign up" to do this work with such bleak prospects for compensation?

The only solution I see is to implement some type of State-wide rate standard that will adequately compensate attorneys for their efforts AND allow them to make a decent living/pay their student loans while doing so.

Just adding my "two-cents" worth,

Judith Caldwell

Attorney at Law  
Kyle B. Trevas PLC



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[trevaskyle@gmail.com](mailto:trevaskyle@gmail.com) office 231-929-3611 fax 231-929-3644

8/7/2015

MIDC  
200 N. Washington Square  
Lansing, MI 48933

Re: MIDC Proposed Minimum Standards June 22. 2015

**Standard 1**

**A.**

Requiring knowing all substantive Federal law of someone practicing criminal law in the State Court seems a bit much, this is saying that I am required to know all of the State and Federal statutory law. The Michigan compiled laws fill over sixty volumes.

**B.**

Is yet again an incredibly high standard; "shall know all forensic and scientific issues that can arise in a criminal case". I doubt that even Gil Grissom knows all of the "forensic and scientific issues that can arise in a criminal case".

**Standard 2**

**A.**

72 hours is not a national standard and does not appear in any of the material cited as support for this standard.

In my experience working in rural northwest Michigan, I often don't get appointments until the day after I was appointed and I will almost always do not have any discovery within 72 hours of my appointment. I work three counties

Attorney at Law  
Kyle B. Trevas PLC



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and some prosecutor's offices still use the mail or just leave my paper work in my box in their office.

Given my duty not support perjury I generally want my client to see the police report before they give me their version of events.

Also MCR 6.108 has virtually eliminated any concerns of a defendant going to a preliminary exam without first having consulted with their attorney well ahead of time.

**Standard 3**

**B. & C.**

District Courts don't have the funding and don't want to pay for experts in Circuit Court cases. I would like to be able to get an expert out of the gate but no one is going to pay for it until the case is in Circuit Court. If you can fix this please do so.

**Standard 4**

I have no idea how this will be practical in small Northern Michigan Counties.

In speaking with staff it was indicated that if these measures are not supported and funded then counsel would not have to comply with the unfunded standards, but if the standards are published whether required or not they will be the basis of many a grievance.

Sincerely,

Kyle Trevas

Date: 06/24/2015 [02:29:07 AM]  
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.

Michael L. Bauchan, J.D., B.E.E.  
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Cell 989-387-1284

**Date:** 06/24/2015 [09:07:08 PM]  
**From:** Michael Ewing <michaielewinglaw@gmail.com>  
**To:** info@michiganidc.gov  
**Subject:** Michigan Indigent Defense Commission

Greetings:

I have read the proposed standards, and I can't help but think that there is something missing. Defendants receive better plea offers and have a better chance of having their case tried if the attorney who is representing them is not afraid to try a case. I know, this sounds silly, but in Genesee County, and across the state, we have large numbers of public defenders who do not try cases--and some never have.

I am not criticizing the Genesee County Public Defender's Office by any means. I become concerned when an attorney (often a newer one) has practiced for years and has never tried a single case. The reason? They are afraid to. You cannot convince me that after several years of practice not a single client of our so-called trial attorneys hasn't wanted or needed their case tried--instead of entering into a plea agreement.

The prisoners know which attorneys will try cases--and which ones do not--but if they're indigent they don't get to choose. Personally, I believe that also weakens any plea offer that is made to a client because the prosecutor knows that the attorney will not try the case--and will pressure their client to take a plea deal. What's the solution? I don't know for sure. Perhaps all public defenders should have sat second-chair for one trial before taking defense cases. Maybe all persons who defend FC cases should be required to try one case in a given period of time. I don't know the answer, but the lawyers who are scared to try cases cannot serve all of their clients well.

Finally, providing Westlaw, or something similar, to public defenders could help indigent defense greatly. Many attorneys cannot afford Westlaw and end up using inferior alternates (like Google Scholar). The Genesee County Public Defender's Office has provided our public defenders with Westlaw, and it has leveled the playing field with the prosecutors--who all have access.

There are my two cents. Feel free to contact me with any follow-up.

--

Michael E. Ewing, P70814.  
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## Marla McCowan

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**From:** Nathan Collison <ncollison@saginawcounty.com>  
**Sent:** Friday, August 07, 2015 3:41 PM  
**To:** mmccowan@michiganidc.gov  
**Subject:** Comments

Marla,

I have had the opportunity to get input from our members on the proposed standards. Most of the attorneys that responded agreed that the CLE requirement was good. Some of the members were concerned with the initial contact within 72 hours requirement. For the most part, they were in agreement that initial contact should occur within that time limit. But, some expressed that it could be difficult if the client was in prison. This is especially true when people's schedules have to be rearranged to travel out-of-town. Also, Saginaw County does not pay appointed counsel to travel. The suggestion was made that if the client is in prison, contact should at least be made prior to the first court date.

A main comment was that the standards as proposed do not address compensation. This was a primary issue for respondents.

Finally, some attorneys were concerned over the on-duty arraignment attorney portion. Most of the respondents liked the idea, but again were focusing on compensation versus cost to the county. Additionally, our members were concerned over the amount of time being on arraignment duty, and how it would affect the remainder of their practice. Further, they were curious as to who would do it if a county, like ours, does not have a public defender office.

Hope this helps.

Respectfully,  
Nathan J. Collison  
Assistant Prosecuting Attorney  
Saginaw County Prosecutor's Office  
111 South Michigan Ave.  
Saginaw, MI 48602

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**Date:** 07/09/2015 [06:30:10 PM]  
**From:** "Derks, Nichole Jongsma" <NDerks@fosterswift.com>  
**To:** "'info@michiganidc.gov'" <info@michiganidc.gov>  
**Subject:** Proposed Minimum Standards Set 1 for Distribution

Good Afternoon,

My warmest congratulations on a job well done on the first set of proposed minimum standards. I have thoroughly reviewed the standards and have no suggested changes. I practice in West Michigan as a litigator primarily handling criminal defense and family law. The proposed standards give many reasons to be hopeful that justice for all will prevail with the implementation of improved delivery of defense services to indigent people.

Thank you for your hard work.

Best Regards,

Nichole Derks

**Nichole Jongsma Derks**

**Attorney**

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**Date:** 06/25/2015 [07:18:43 PM]  
**From:** "R. Timothy Kohler" <rtkohlerlaw@gmail.com>  
**To:** info@michiganidc.gov  
**Subject:** response

I sit with a task force in Macomb County.

My questions are;

1. Will the commission request (require) each county to submit a plan mirroring the Commissions Minimum Standards?
2. Will the Commission do reviews like a certification periodically
3. Will there be a minimum protocol for determining indigents?
4. What role will the judiciary play in determining quality of delivery of services?
5. Will these standards be required annually and does the Commission anticipate an annual reapplication by counsel.
6. Will retained trial work qualify
7. Will local CLE programs qualify and will they need to meet minimum requirements, ie submitting agendas, speakers, topics
8. With this proposal done, is that all that is on the agenda of the Commission as to the requirements of the legislation?

# STATE APPELLATE DEFENDER OFFICE

DAWN VAN HOEK  
APPELLATE DEFENDER

MICHAEL MITTLESTAT  
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August 6, 2015

Michigan Indigent Defense Commission  
200 N Washington Square  
Lansing, MI 48933

Dear Commissioners:

I write to express the strong support of the State Appellate Defender Office (SADO) and Michigan Appellate Assigned Counsel System (MAACS) for the MIDC's Proposed Standards 1 and 3, addressing education and training of defense counsel, and use of investigation and experts. As appellate counsel, we represent thousands of clients each year, reviewing cases from every Michigan county. A significant percentage of appeals from criminal convictions involve claims of ineffective assistance of trial-level counsel, some of which are based on claims that counsel made a mistake or was uninformed on the law. Given the complexity and ever-changing nature of criminal law and procedure, it is extremely difficult for counsel to maintain competency. The sheer difficulty of the subject matter is joined by the fact that many trial-level attorneys practice on their own, earning low fees: all are major contributors to the risk of error.

SADO has devoted itself to education and training of defense counsel since its creation in 1969, on the theory that an organized statewide defense office has an obligation not only to litigate for clients, but also improve the practice. SADO's enabling act, MCL 780.717 et seq, specifically authorizes maintenance of resources to be made available to the bar, a provision that led to creation of SADO's Criminal Defense Resource Center (CDRC). The CDRC is currently Michigan's largest provider of training to the criminal defense community, both trial and appellate levels, with four staff members devoted to the work. A summary of 2014 training activity accompanies this letter.

We know the benefits of training for our community, and greatly appreciate the MIDC's prioritization of training as a statewide standard for trial counsel. The proposed standard captures not just the obvious basics, but also the essential need for counsel to understand forensic and scientific issues. We often investigate such issues on appeal, in cases where trial counsel was unable (due to limited resources), or uneducated (due to lack of training). SADO obtained exonerations for clients whose cases involved problems with the Detroit Police Crime Lab, for example, when simple retesting of evidence revealed fatal flaws. With prominent groups like the National Academy of Sciences calling much forensic theory and testing into question, it is very important to train counsel at the trial level.

August 6, 2015

Page two

With training on scientific evidence and applicable defenses, of course, adequate resources for investigation and experts must be provided. A defense attorney well-trained on arson theory can do little on his or her own without funding of an investigator to find reports and witnesses, or an expert to analyze evidence and testify. Our own appellate investigations have led to fact development and exonerations for a significant number of clients, where little or no investigation was done by trial counsel. We believe that in many cases, appointed trial counsel refrains from investigation simply because funding is unavailable.

Thanks for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Dawn Van Hoek".

Dawn Van Hoek  
Appellate Defender

## Training and Support Delivered by SADO's Criminal Defense Resource Center 2014

### Training

#### The Defender Books

The principal training provided by the CDRC on a statewide basis is SADO's "Defender Series" of books: *The Defender Trial Book*, *The Defender Plea, Sentencing and Post-Conviction Book*, *The Defender Motions Book*, and *The Defender Habeas Book*. These books reside on SADO's website, [www.sado.org](http://www.sado.org), and are available at any time to SADO's approximately 600 online subscribers – composed of criminal defense attorneys around the State of Michigan including SADO staff and all full-time public defenders. The electronic version of the books is also available on a flashdrive for a nominal fee for those who prefer to take the books on the go. These four annually-updated books contain well-organized summaries of the law on all aspects of criminal law and procedure, from arrest through appeal. In addition, the Defender Motions and Habeas Books contain model pleadings that can be adapted for use in any case, as well as consulted as writing models. Summaries and analysis of case law, statutes, court rules and legal practice are also included. A small companion to the *Defender Plea, Sentencing, and Post-Conviction Book*, the *Defender Sentencing Guidelines Manual Annotated* remained the most requested new print product developed by the CDRC in the last year, with more than 500 units distributed statewide.

#### Live Defender Book Training Events

Eight live CDRC training events complimented the training book updates during the reporting period. The events were part of the grant funding generously awarded to SADO by MCOLES. Locations and topics were largely driven by request and need from the criminal defense community, and every event was recorded and posted on SADO's website to ensure maximum access to content and updates at the convenience of trainees. The events included:

- October 11, 2013 – "Michigan Legislative and Criminal Law Update" by Michael Mittlestat at Cooley Law School (live in Lansing and simulcast in Grand Rapids, Ann Arbor and Auburn Hills).
- October 18, 2013 – OWI/OUIL Update by Patrick Barone and Michael Nichols in Saginaw.



*Valerie Newman in Muskegon*

- December 6, 2013 – "Felony Sentencing Update" by Anne Yantus at Cooley Law School (live in Lansing and simulcast in Grand Rapids, Ann Arbor and Auburn Hills).

- May 2, 2014 – "COMPAS at Sentencing" by Jacqueline McCann at Cooley Law School (live in Auburn Hills and simulcast in Lansing, Ann Arbor and Grand Rapids).

- July 31, 2014 – “Master Class: Preserving the Record and Looking Down the Road” by Valerie Newman in Muskegon at the Grand Valley State University Alternative and Renewable Energy Center.
- August 7, 2014 – “Michigan Felony Sentencing Law” by Jacqueline McCann at the Emmet County Courthouse in Petoskey.
- August 8, 2014 – “Smarter Sentencing for Criminal Justice Practitioners” by Jacqueline McCann in the Marquette County Circuit Courthouse.
- August 22, 2014 – “Bindovers, Appeals and Innovative Motion Practice” by Neil Leithauser and Kelly McDoniel in the Frank Murphy Hall of Justice in Detroit.

Beginning with the July 2014 events, the CDRC used Eventbrite to manage registrations, a free online service that enabled trainees to RSVP on their own, reducing significant time spent by the CDRC administrative staff in compiling attendance.

#### Legal Technology Training

The CDRC continued<sup>1</sup> to present live demonstrations to defense counsel on the use of a variety of online research tools, including the Defender Books, other web-based legal research, word processing skills, caseload management, electronic filing, and trial presentation skills. These trainings ranged from hour-long brown-bag lunch styled training events to full afternoon sessions for beginners and experienced criminal defense attorneys with varying levels of technological proficiency.

Three shorter sessions took place at public defender offices including Kent, Chippewa and Muskegon Counties during the reporting period. All public defender offices in Michigan were supplied, pursuant to their requests and/or preferences, with paper copies and flash drive versions of the Defender Series of Books. All full time public defenders in Michigan are provided with complimentary access to all SADO resources.

The CDRC team also presented an hour of training to new MAACS lawyers when the roster opened in December 2013, and provided a free year of online access to SADO’s resources for the newest attorneys taking appellate assignments in Michigan.

Afternoon sessions took place at the CDAM conferences in November 2013 and March 2014. At each conference, a two-hour hands-on presentation was provided by the CDRC team, largely using live demonstrations of all of the databases on [www.sado.org](http://www.sado.org). Separately, at each conference a break out session was offered by the CDRC team to provide a working lunch to learn about the latest technology for practicing lawyers.

Hour long sessions were also offered at three prisons in Michigan, based on request and need. Virtually all prison law libraries are now equipped with online access to SADO’s resources, and the CDRC team traveled to Macomb Correctional Facility (New Baltimore), Huron Valley Correctional

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<sup>1</sup> SADO continued to offer the training despite a reduction that removed it from the customary MCOLES award.

Facility (Ypsilanti), and Kinross Correctional Facility (Kincheloe) to demonstrate updates in the online version of the *Defender Habeas Book*, as well as how prisoners can stay current with legal developments as most continue to litigate their cases in *pro per* during post-conviction proceedings.

#### CDAM Conferences, Trial College, and CAP Seminars

Once again, the CDRC included in its MCOLES grant application funding for conferences planned with training partners, the Criminal Defense Attorneys of Michigan (CDAM) and the Criminal Advocacy Programs of Wayne County Circuit Court (CAP). Funding was obtained for twelve trainee scholarships to attend the summer CDAM Trial College, and also for the operational expenses of the ten CAP seminars conducted each fall.

Two CDAM conferences were conducted during the reporting period. The fall conference was held in Traverse City in November 2013 and the spring conference was held in Troy in March 2014. Hundreds of attorneys from all over Michigan attended the trainings.

CDAM's trial college had approximately 35 trainees, with 12 scholarships offered to attendees based on demonstrated need. The trial college was held in Lansing in August of 2014, at the Radisson Hotel and State Bar of Michigan building.

The CAP sessions provide mandatory training for the Wayne County Criminal Defense Bar Association, approximately 500 attorneys taking assignments in criminal cases in Detroit. CDRC maintains a position on the CAP Board to plan the events, all of which receive overwhelmingly positive feedback in evaluations. A list of all prior sessions, with video recordings of the content and handouts provided, are on the CAP's website hosted by SADO, at [www.capwayne.org](http://www.capwayne.org).



*The CAP sessions are held in the auditorium of the Coleman A. Young Municipal Center.*

During the reporting period, one of the CAP sessions was also re-presented live in Saginaw to the bar association members, with grant funding provided for travel and training time to the presenters.

#### In-House Training Events

Adjacent to the CDRC central office area is a training room where several events are conducted throughout the year in an effort to encourage continuing education for all staff on a variety of topics. SADO's Internal Operating Procedures require training for staff and training needs are surveyed routinely. For example, CDRC conducted a thorough review of the "New Hire Training" at the conclusion of the 2012 new-hire's first year (October 2013), which provided invaluable feedback used to inform continuing education and mentorship for our newest assistant defenders.

Multiple events took place during the reporting period, including:

- New Hire training, designed specifically for the staff attorneys after a self-assessment of needs;
- Appellate Timeline Training, designed for new attorneys and serving as an update on rule changes for senior staff;
- Training for SADO's summer interns, an orientation event covering everything from ethics to substantive criminal procedure;
- DNA training by our grant-funded attorney participating in our Wrongful Conviction Unit;
- Sexual Harassment in the Workplace training administered by our Human Resources Manager;
- COMPAS training by Anne Yantus, explaining new policies by the MDOC;
- Hot topics in guilty plea appeals by Jacqueline McCann;
- Multiple roundtable discussions on Juvenile Life Without Parole, hosted by SADO's Deputy and featuring speakers knowledgeable about the issue to interact with line attorneys working on such cases;
- Periodic discussions of SADO's plea unit, designed to address trends and developments in that area of law;
- Group viewings of webinars hosted by the National Association for Public Defense on substantive legal issues relevant to our practice and special topics including speaking with the media.

#### *Non-CDRC-Sponsored Training*

SADO staff members are routinely called upon to present at training events, serving as experts in all areas of criminal defense and sharing their knowledge with members of the criminal defense community. Some examples include:

- SADO staff attorneys served as four of the six presenters at the annual MAACS Fall Training that occurred in October of 2013;
- Michael Mittlestat trained the Macomb and Genesee County Bar Associations on legislative updates;
- Anne Yantus trained the Genesee County Bar and with the Michigan Judicial Institute on Sentencing Law;

- Jacqueline McCann trained the Macomb County Bar on COMPAS at sentencing;
- Valerie Newman presented in New Orleans at a conference of the National Association of Criminal Defense Lawyers;
- Marla McCowan was part of a panel that trained on criminal law updates with the Institute for Continuing Legal Education;
- Katherine Marcuz trained at the Young Lawyers Summit on sentencing issues;
- Jacqueline Ouvry and Nicole George served as presenters for the SBM Prisons and Corrections Section;
- Marilena David-Martin served as a trainer at a CAPPS session;
- The CDRC also co-sponsored the Criminal Law Section's training on scientific issues in Frankenmuth, Michigan, where our Wrongful Conviction Unit attorney was a presenter.

Attorneys and support staff alike are regularly encouraged to attend non-SADO/CDRC sponsored training events *outside of the office* with the understanding that knowledge gained will be provided to staff, after such training. Staff also participated in events out of state, including but not limited to training for Public Defender Managers in Kentucky, Georgia, Illinois and North Carolina; training unique to public defenders with *Gideon's Promise* in Atlanta, Georgia; Innocence Network conferences in Oregon and Louisiana.

Additionally, all SADO staff received individual log-in credentials to access the online training resources of the National Association for Public Defense (NAPD). Dozens of web-based training events are archived for access at the convenience of the trainee.

All SADO staff (100%) attended at least one live training event during the reporting year.



August 6, 2015

p 517-346-6300

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Michigan Indigent Defense Commission  
200 N. Washington Square  
Lansing, MI 48933

Dear Commissioners:

306 Townsend Street  
Michael Franck Building  
Lansing, MI  
48933-2012

At its July meeting, the Board of Commissioners of the State Bar of Michigan considered the Proposed Minimum Standards as posted on June 22, 2015. In its review, the Board considered recommendations from the Committee on Justice Initiatives and the Criminal Jurisprudence & Practice Committee. The Board voted unanimously to support the standards with several amendments and comments suggested by the Committee on Justice Initiatives which are detailed below.

Standard 1 – Education and Training of Defense Counsel

The Board is concerned that it is unreasonable to expect any lawyer (or anyone) to know everything about law, science, and the rapid changes in technology. Therefore, the Board suggests the following changes (in underline and strike-out):

A. Knowledge of the law. Counsel shall be reasonably aware of ~~know~~ substantive Michigan and federal law, constitutional law, criminal law, criminal procedure, rules of evidence, ethical rules and local practices. Counsel has a continuing obligation to ~~know~~ be familiar with and knowledgeable about the changes and developments in the law.

B. Knowledge of scientific evidence and applicable defenses. Counsel shall be reasonably aware of ~~know~~ all forensic and scientific issues that can arise in a criminal case, be familiar with and knowledgeable about ~~know~~ all legal issues concerning defenses to a crime, including challenges to scientific or technological aspects of the case, and be able to effectively litigate those issues.

C. Knowledge of technology. Counsel shall be reasonably aware of ~~know~~ how to utilize office technology commonly used in the legal community, and technology used within the applicable court system. Counsel shall be able to thoroughly review materials that are provided in an electronic format.

For clarification, the following amendment to D is recommended as a style change:

D. Continuing education. Counsel shall annually complete continuing legal education courses relevant to the representation of the criminally accused. All attorneys shall annually complete at least twelve (12) hours of continuing legal education. In addition:

a. Counsel shall participate in skills training and educational programs in order to maintain and enhance overall preparation, oral and written advocacy, and litigation and negotiation skills. Lawyers can discharge this obligation for annual continuing legal education by attending local trainings or statewide conferences.

b. Attorneys with ~~less~~ fewer than two years of experience practicing criminal defense in Michigan shall participate in one basic skills acquisition class. ~~All attorneys shall annually complete at least twelve (12) hours of continuing legal education.~~

#### Standard 2 – Initial Interview

The following amendment to B is recommended as a style change:

B. Setting of the interview: All client interviews shall be conducted in a private and confidential setting. ~~Counsel shall ensure that confidential communications between counsel and the client are conducted in private.~~ Counsel and the indigent criminal defense system shall ensure the necessary accommodations for private discussions between counsel and clients in courthouses, lock-ups, jails, prisons, detention centers, and other places where clients must confer with counsel.

#### Standard 3 – Investigation and Experts

There is a concern that the introductory paragraphs for Standards 1, 2, and 4 specifically include statutory language from the law that created the Michigan Indigent Defense Commission, but Standard 3 does not. The Proposed Standards should include statutory language directly noted in Michigan law.

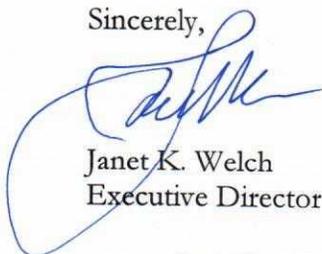
The Board supports this standard, and notes that including the duty to ask for investigations and experts may ensure the request from appointed counsel is taken seriously by the court and funding is authorized.

#### Standard 4 – Counsel at First Appearance

The Board fully supports this standard.

The State Bar of Michigan has been working to improve Michigan's criminal indigent defense system for decades, and this initial set of standards represents a potential for substantial changes in the delivery of those services throughout the state. The State Bar will continue to monitor both the implementation of these standards and additional standards as they are developed.

Sincerely,



Janet K. Welch  
Executive Director

cc: Jonathan Sacks, Executive Director, Michigan Indigent Defense Commission  
Thomas C. Rombach, President

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August 7, 2015

RE: MIDC  
200 N. Washington Square  
Lansing, MI 48933

VIA EMAIL AND US MAIL

**RE: MIDC Proposed Minimum standards**

Standard 1

- A. A practicing criminal attorney should have a solid understanding of federal and state laws. However, it is unreasonable to require an attorney to know each and every federal and state law. Typically, when an unfamiliar issue arises, the attorney will research the matter.
- B. An expert is required. If this were the standard no attorney would be qualified to handle a file. Attorneys and juries for that matter require the assistance of an expert. This matter is more related to funding available. It is unlikely that the district court will appoint an expert prior to the preliminary examination.

Standard 2

- A. It is not reasonable to require that an attorney meet with their client within 72 hours. Most times the appointment paperwork does not immediately follow appointment. What is reasonable is that Attorney has an opportunity to review the discovery once received with the client in advance of the preliminary examination.
- B. Not all facilities have the space contemplated for the requirement. The onus would have to be directed at the facilities not the attorney. The attorney wishes to discuss the case with the client but must do so under the rules and regulations of the facility. It is easier in some facilities than others.

Standard 3

- A. Attorney should ask questions and attempt to interview potential witnesses. However, Attorney requires the assistance of an investigator, as attorney cannot call himself at trial for purposes of impeachment. It is unlikely the district court will appoint an

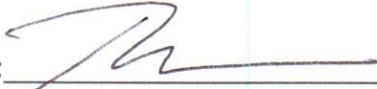
investigator in advance of the preliminary examination. This request is most likely to be granted in circuit court. However, unless we are given unlimited funds, it may prove difficult to obtain same without proper funding. Moreover, if these are requirements of the Act, attorney should not have to file a motion requesting same, they should simply be available. Any motion filed would be ex parte.

#### Standard 4

- A. Typically issues of bond can be revisited at Attorney's first appearance. Appointment of counsel does not generally occur until arraignment and only if Defendant makes a request for an appointment.

Note: The northern courts have generally been reasonable in their payment of fees to attorneys for legal work and for the most part have exhausted their financial resources to provide same. If additional training and work is required the state should consider shouldering the cost.

Dated: August 7, 2015

Signed:   
\_\_\_\_\_  
Thomas J. Seger  
Attorney at Law