



THIRD JUDICIAL CIRCUIT
OF MICHIGAN

ROBERT J. COLOMBO, JR.
CHIEF JUDGE

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June 13, 2018

Michigan Indigent Defense Commission
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Re: Public Comments: Third Circuit Court's Comments to Proposed Standards 5 – 7

Thank you for the opportunity to comment on the proposed standards that the Michigan Indigent Defense Commission (MIDC) will submit to the Michigan Department of Licensing and Regulatory Affairs (LARA) for approval pursuant to the Michigan Indigent Defense Commission Act (MIDC Act), MCL 750.981 et al. The Third Circuit Court submits the following comments and its proposed Local Administrative Order (LAO), previously approved as LAO 2017-04 and withdrawn to permit the development of the necessary infrastructure to effectively implement the LAO, for consideration during this process and asks that

1. Standard 5 – Independence from the Judiciary

The Third Circuit Court recognizes the critical role of defense counsel and the importance of an independent defense free from judicial interference. For that reason, the Court established the presumption in its LAO that appointments are made from a computer generated rotational list. While the list is in development, the Court believes that this electronically generated appointment process will, when paired with the approved Wayne County Compliance Plan, satisfy the independence requirements of this standard. Critical to this consideration is the removal of judges from the appointment process while allowing their voices to be heard regarding the competence of attorneys who perform indigent representation, for it is the judge who must ultimately review the performance of counsel and determine whether it satisfies the constitutional mandates for adequate representation. Thus, any proposal to excise the judiciary from the entire process ignores the critical role of the judiciary in this process.

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2. Standard 6 – Indigent Defense Workloads

The Third Circuit Court recognizes that workload requirements are critical to adequate representation and the ability of counsel to maintain a sustainable practice. The Court further recognizes that the type of cases and clients that one takes directly impacts the workload that an attorney may maintain while delivering constitutionally adequate representation. In an effort to address this issue, the Court developed section VI of the LAO, which contains 12 different considerations administrators will consider when making an appointment. None of the considerations establishes a ceiling for total cases; however, the factors directly address issues that affect continuity of representation and the attorney's workload. The goal of the LAO is to consider the nature of an attorney's practice and the skill of the attorney rather than attaching a talismanic value to a particular number that may not represent an attorney's total workload.

3. Standard 7 – Qualification and Review

The Court developed a qualification and review process in its LAO that addresses this issue. See LAO 2017-04, sections II through V. In accordance with the model developed by the MIDC, the Third Circuit developed tiers that recognize the various levels of complexity and the different skills counsel require to adequately represent criminal defendants. This was critical from the Court's perspective, as the Third Circuit handles approximately 25% of all felony cases and 40% of all capital cases filed within the State. The Third Circuit anticipates that the approved standard 7 will recognize the complexity of criminal defense and permit the development of compliance plans that innovatively permit the qualification, development, and review of attorneys seeking to perform indigent representation as a vocation rather than as a fall back method to pay the bills. Because of the volume of cases heard at the Third Circuit, the Court's needs, and therefore its qualification and review processes, are necessarily more complex. The Court believes the process outlined in the LAO establishes such a system.

Thank you for your consideration.

Very Truly Yours,



Hon. Robert J. Colombo, Jr.
Chief Judge, Third Circuit Court

RJC/k
Enc.