

STATE OF MICHIGAN, 63rd DISTRICT COURT, KENT COUNTY

Hon. Sara J. Smolenski
Chief Judge



Hon. Jeffrey J. O'Hara
District Judge

March 2, 2016

Office of Administrative Counsel
Michigan Supreme Court
PO Box 30052
Lansing, MI 48909

Re: ADM File No. 2015-07; Support of Proposed Standards

Dear Administrative Counsel:

We are writing to express our support for the Proposed Minimum Standards for Appointed Counsel [ADM File No. 2015-07], which were submitted by the Michigan Indigent Defense Commission and proposed for comment by the Michigan Supreme Court on January 11, 2016.

In particular, we strongly support **Proposed Standard 4** [Counsel at First Appearance] and assure other district courts in Michigan that there is a way to fulfill this standard and still maintain the court's level of efficiency with its criminal docket.

During 2014 and 2015, our court conducted two indigent defense pilot projects under a Court Performance Innovation Fund [CPIF] Grant, which provided indigent counsel at first appearance. During the first grant cycle we did experience some operational frustrations, but we made some important procedural changes for the second year that were much more efficient for our court operations. We believe that there is a right way and a wrong way to do fulfill this standard, and we experienced both.

First Grant Project

During the first grant year, county jail correction officers gave all our defendants [misdemeanors only] written notice of their right to appointed counsel during the booking process, and provided them with the form to request court-appointed counsel.

The jail faxed any completed forms to the court prior to the arraignment or after any interim bonds. A district court magistrate or district judge then reviewed the request forms to make the determination of indigency and eligibility of counsel.

We contracted with the Kent County Office of the Defender [KCOD] to have an attorney "on call" each day for video arraignments for any defendants that were determined to be eligible and were appointed counsel. KCOD also had attorneys present each week for bonded arraignments for defendants that were appointed counsel. When a

defendant was appointed counsel, the legal representation was vertical and continued from that point on.

The procedures during the first year of the project turned out to be inefficient and posed a significant burden on both jail and court staff to determine eligibility so quickly. We underestimated the amount of time it took to distribute, collect and review the indigent counsel request forms. This process was a significant burden on staff resources both at the county jail and the court. Therefore, after discussions with 55th District Court (Ingham County), we decided to adopt a similar procedure they were using for their indigent counsel project and it worked much better the next year.

Second Grant Project

During the second grant project, we modified our contract with KCOD to provide an attorney to be present at our court for 7 hours each day for first arraignments to give "limited representation" to all defendants who did not have retained counsel present. This process was much more efficient and less burdensome for court and jail staff.

A KCOD attorney was in the courtroom for each walk-in arraignment, video arraignment, and bonded [scheduled] arraignment by our Judges. This second project included first arraignment for both felonies and misdemeanors [first grant was misdemeanors only]. Prior to the arraignments an attorney would briefly speak to the whole group of defendants to explain the purpose of the arraignment, what their plea options were and how to get court appointed counsel for their case after arraignment. The attorneys did not have police reports and generally did not address specific issues with any particular defendant, but they could address the issue of bond if the person had not already posted an interim bond.

Generally, the KCOD attorney told defendants about the procedures of the arraignment and suggested they might want to plead not guilty so they would have a pretrial conference. They would caution defendants who wanted to plead guilty to be absolutely sure that is what they wanted to do, but they would not prevent anyone from doing so. We also coordinated scheduling with the prosecutor's office to hold immediate pretrial conferences on misdemeanor cases that did not require victim consultation. This helped resolve many cases on the same day as the first arraignment.

For video arraignments, the attorney conducted this group presentation by connecting to the jail using our Polycom system at the court. The first year they did this conversation by video from a courtroom or by telephone if a courtroom was not available. The second year we purchased a webcam and Polycom software for an office computer in a more private setting.

For our weekly bonded and appearance ticket arraignments the KCOD sent one attorney for each of our Judge's courtroom where arraignments were conducted simultaneously.

We strongly believe that **Proposed Standard 4** is the right thing for Michigan, and while each court must determine what is best for them we strongly recommend that district courts be cautious about trying to determine eligibility for court appointed counsel prior to the first arraignment. When we tried to do that, we found it was too cumbersome and slowed down our processes. For us, providing "limited legal representation" for everyone for first arraignment purposes worked better. After

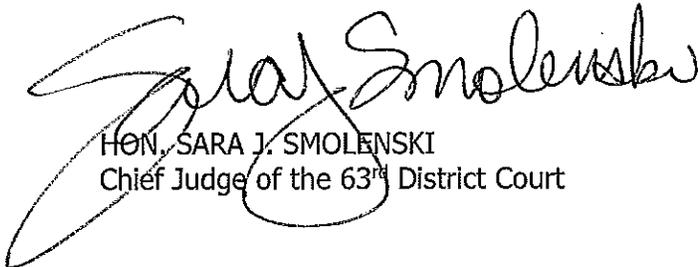
arraignment, if a defendant requests court-appointed counsel for the case, then the eligibility determination and appointment can be done at a later time.

We believe that **Proposed Standard 4**, if implemented properly, will allow district courts to maintain their current case-age disposition rates for misdemeanors. While this standard might not improve a court's time guideline performance on misdemeanors, it should not harm case age if a district court is already doing well in this regard.

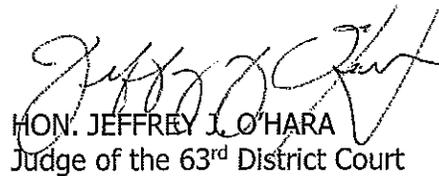
An added benefit to having counsel at all first arraignments is that the discussion that the attorneys have with defendants prior to arraignment can reduce the number of questions defendants want to ask during the arraignment. Defendants will likely feel more comfortable with the proceedings and process, if they have a chance to hear from an attorney prior the arraignment and are told what will happen next in their case. However, if the attorney does not have that brief discussion prior to the arraignment, then it may not shorten the proceeding at all.

Therefore, we support the Proposed Standards in full, but particularly give our strong support to **Proposed Standard 4**, and indicate that this standard can be accomplished to protect criminal defendants' constitutional rights, while still maintaining the court's misdemeanor case age statistics on the SCAO Time Guidelines.

Thank you for your consideration of our support.



HON. SARA J. SMOLENSKI
Chief Judge of the 63rd District Court



HON. JEFFREY J. O'HARA
Judge of the 63rd District Court