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Office of Administrative Counsel
Michigan Supreme Court
Lansing, MI 48909
Submitted by e-mail: ADMcomment@courts.mi.gov

Re: ADM File No. 2015-27: Proposed Minimum Standards for Appointed
Counsel

Dear Sirs/Madams:

We write to express our support of the four standards governing representation of indigent defendants that were recently issued by the Michigan Indigent Defense Commission. The Federal Defender Office is the public defender for the United States District Court for the Eastern District of Michigan. Our office handles over 1000 cases each year. We also administer a panel of 136 Criminal Justice Act (CJA) attorneys. These are private attorneys who represent clients in cases that our office cannot handle, such as when a conflict of interest arises. This experience puts us in an excellent position to review the Commission's proposed standards.

We find the four proposed standards to be in line with the standards of practice with respect to indigent representation in the Eastern District of Michigan. We believe that each standard sets forth important principles that will assist in improving the quality of indigent representation in Michigan and decrease the cost associated with post-conviction litigation.

Standard 1, Mandatory Education and Training of Defense Counsel

Training of CJA panel members is an important priority of Federal Defenders. Ongoing educational opportunities and training should be a priority for attorneys accepting state criminal appointments. CJA panel members in this district must attend a yearly panel seminar in order to maintain their membership in good standing on the panel. In addition, new members must attend the full day orientation seminar as well. Panel members receive periodic legal updates by email, a newsletter, and staff attorneys are available to meet with and field questions in individual cases. Many panel members also take advantage of national seminars that are offered through the training branch of

the Office of Defender Services, which is part of the Administrative Office of the US Courts.

By requiring this continuing education, we seek to insure that our panel attorneys are aware of new developments in criminal law and changes to the relevant statutes and sentencing guidelines. Because many issues in a defendant's case can be waived or forfeited if not timely raised, having trial level counsel aware of these developments is critical to adequate representation.

We believe Standard 1, relating to mandatory continuing education, is a necessary requirement to any adequate and effective system of public defense.

Standard 2, Initial Interview; Standard 4, Counsel Present at First Appearances and Critical Stages

In this district, every indigent person is represented by an attorney from the Federal Defender Office at the initial appearance before the Magistrate Judge. When it is determined that a panel attorney appointment is necessary, bond hearings or other preliminary matters are continued until the client has his or her appointed counsel present. A panel member is selected from the CJA panel roster and appears at the next hearing, which is usually set for the day after the initial appearance. The Federal Marshal lockup facility provides private meeting areas for attorney client consultation.

We have found that the ability to have a meaningful private conversation with the client at his first appearance in court is an essential element in building trust between the defendant and appointed counsel. In addition, counsel often is apprised of information at this appearance that is time-sensitive or can affect the client's custodial status. Even if another attorney substitutes at subsequent hearings, the defendant understands that the indigent defense system is designed to help him navigate his way through his criminal case and that the attorneys who participate in the system are competent, knowledgeable, and working in his best interest. Confidence in the indigent defense system leads to better and more efficient outcomes. Clients are less likely to request substitute counsel, more likely to make knowledgeable and informed choices regarding how they wish to proceed in their cases, and less likely to go to trial against the advice of their attorney.

Standard 3, Investigation and Experts

All counsel appointed to provide representation under the Criminal Justice Act, 18 U.S.C. § 3006A, may request, under subsection (e) of the Act, authorization to obtain investigative, expert, or other services necessary for adequate representation. In our

April 25, 2016

experience, the use of investigators and experts—before trial, at trial, and at sentencing—is often what determines the outcome of the case.

The importance of defense investigators and experts cannot be overstated. An indigent defendant's use of such resources is critical to enable the effective evaluation of the strength of the prosecution's case and to determine the validity of potential defenses to the charges.

This office represents not only criminal defendants, but also petitioners in habeas corpus cases. The majority of our victories in habeas cases are based on failure to investigate claims. Using our staff investigators and hired experts, we are often able to find exculpatory evidence that was not presented at trial. While it is rewarding to have a client released after years in prison, we cannot help but be dismayed by not only the human cost in wasted years, but also the wasted money spent on unnecessary incarceration and litigation. Such waste could have been avoided if the case had been properly prepared for trial through adequate investigation (we include the use of experts as necessary for adequate investigation).

We believe we would be remiss if we did not mention the necessity to adequately fund investigators and experts. Although we understand that the issue of funding is outside the scope of the Commission's current goal of setting standards for adequate representation, this standard will only be meaningful if there are adequate funds available for investigation and the hiring of experts. Without adequate funding, Standard 3 cannot meaningfully change the state of indigent defense in Michigan. We encourage the adoption of Standard 3 and hope that its promise can be fulfilled with additional requirements of adequate funding for these services.

We therefore urge the adoption of the four standards suggested by the Indigent Defense Commission. They are an excellent guidepost for the reform of the public defense system in Michigan. We commend the Commission for its work in proposing the standards and urge them to continue to press all the stakeholders in the Michigan criminal justice system to ensure that the standards are adopted and adequately resourced. Putting in place these reforms will make the implementation of these standards a meaningful reality that transforms the quality of indigent defense representation in this state.

Sincerely,



Miriam L. Siefer
Chief Federal Defender