

State Headquarters
2966 Woodward Avenue
Detroit, MI 48201
Phone 313.578.6800
Fax 313.578.6811
Email aclu@aclumich.org
www.aclumich.org

Legislative Office
115 West Allegan Street
Lansing, MI 48933
Phone 517.372.8503
Fax 517.372.5121
Email aclu@aclumich.org
www.aclumich.org

West Michigan Regional Office
1514 Wealthy SE, Suite 242
Grand Rapids, MI 49506
Phone 616.301.0930
Fax 616.301.0640
Email aclu@aclumich.org
www.aclumich.org

April 28, 2016

Office of Administrative Counsel
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909
Submitted by email: ADMcomment@courts.mi.gov

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

Dear Chief Justice Young and Justice of the Michigan Supreme Court:

The American Civil Liberties Union of Michigan has long worked to improve the level of representation provided to indigent individuals accused of crimes in Michigan. We advocate in the state legislature, we work to educate the public, and, when necessary, we file litigation to protect the right of indigent defendants.

In February 2007, the ACLU filed a class action against the state on behalf of a class of indigent defendants facing felony charges in Berrien, Muskegon and Genesee Counties. We asserted that the state, by delegating complete responsibility for indigent defense to the counties without setting standards, abdicated its responsibility to ensure constitutionally adequate counsel as mandated by *Gideon v Wainwright*, 372 US 335 (1963). We specifically alleged that the state, among many other things, failed to ensure that (1) counsel assigned to represent indigent defendants have the necessary education and training to provide adequate assistance; (2) counsel's initial interview of the client take place in a confidential setting; (3) counsel investigate the charges promptly and have the resources to hire investigators and other experts as appropriate; and (4) counsel appear and provide constitutionally adequate assistance at the defendant's first appearance in court and at other critical stages.¹

We successfully litigated the case for six years up to the Michigan Supreme Court and back to the Court of Appeals. See *Duncan v State of Michigan*, 284 Mich App 246; 774 NW2d 89 (2009) (holding that allegations of widespread constitutional violations in appointment of indigent defense counsel were sufficient to state a claim for declaratory and prospective injunctive relief), *rev'd*, 486 Mich 1071; 784 NW2d 51 (2010), *aff'd on reconsideration*, 489 Mich 874; 795 NW2d 820 (2011), *after remand*, 300 Mich App 176; 832 NW2d 761 (2013). However, the ACLU voluntarily dismissed the case in 2013 because the Michigan legislature enacted the Michigan Indigent Defense Commission Act, a statute designed to carry out the reforms we sought to obtain through the litigation. See *Duncan v State of Michigan*, 494 Mich 879; 832 NW2d 752 (2013). Specifically, the statute established a permanent indigent defense commission to set minimum standards, train criminal defense attorneys, monitor their

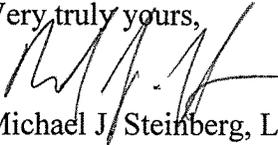
¹ The complaint and other materials about the case may be found at <http://www.aclumich.org/duncan-v-granholm>.

performance and ensure competent legal representation throughout the state. See MCL 780.981 *et seq.*²

The first four standards proposed by the Michigan Indigent Defense Commission, while modest in scope, are an excellent first step towards establishing an indigent defense system that guarantees the constitutional representation of poor people accused of crimes. The ACLU of Michigan fully supports these proposed standards and urges this Court to adopt them as written.

Thank you for considering our views.

Very truly yours,



Michael J. Steinberg, Legal Director
Shelli Weisberg, Legislative Director
Daniel Korobkin, Deputy Legal Director
Miriam Aukerman, Staff Attorney
American Civil Liberties Union of Michigan
2966 Woodward Avenue
Detroit, Michigan 48201
(313) 578-6814
msteinberg@aclumich.org

² The *Duncan* case is just one of many cases the ACLU of Michigan has brought to protect the constitutional rights of poor people accused of crimes to effective counsel. For example, we won a case in the United States Supreme Court establishing the right of Michigan defendants who plead guilty to receive appointed counsel on appeal. See *Halbert v Michigan*, 545 US 605 (2005).