

MICHIGAN INDIGENT
DEFENSE COMMISSION

January 4, 2016

Chief Justice Robert P. Young
Michigan Supreme Court
Michigan Hall of Justice
925 W. Ottawa Street
Lansing, MI 48915

Mr. Chief Justice:

It is my pleasure as Chair of the Michigan Indigent Defense Commission (MIDC) to submit the first set of proposed minimum standards for indigent defense to the Michigan Supreme Court, pursuant to MCL 780.985(3). These initial standards tackle some of the major problems Michigan faces in the delivery of adequate indigent defense systems: training and education of counsel, the initial client interview, use of investigation and experts, and counsel at first appearance and other critical stages. Each standard is based on specific provisions of the Michigan and United States Constitution or the MIDC Act.

These first four standards demonstrate the measured approach of the MIDC to provide effective assistance of counsel for indigent defendants in Michigan. After approval by the Supreme Court, the MIDC Act requires each local indigent criminal defense system to submit a plan for provision of indigent defense systems that meets these standards. MCL 780.993(3). The MIDC anticipates that certain counties and courts will use these standards as a starting point for major system improvements, while others will adjust current delivery models to meet these minimum requirements. In this manner local stakeholders will drive indigent defense reform.

Today's submission then is the first step in an ongoing process. Future standards will involve delivery of indigent defense independent of the judiciary, caseload levels, the assignment of counsel, qualifications and review of counsel, economic incentives and disincentives for the practice of indigent defense, and representation of clients by the same attorney at every court appearance. MCL 780.991.

The MIDC has held a public hearing, solicited public comment, and widely presented these proposed standards to Michigan's criminal justice stakeholders. MCL 780.985(3). This process has allowed for further development and enhancement of the proposed standards. Prior to this Court's approval, which must take place per MCL 780.985(3) within 180 days of this submission, the MIDC anticipates that the public should be afforded the same opportunity to comment as they would with any other rule approved of by this Court.

The MIDC submits the first proposed minimum standards to the Supreme Court for approval pursuant to MCL 780.985 and consistent with the Court's constitutional power to "establish, modify, amend and simplify the practice and procedure in all courts of this state" pursuant to Const 1963, art 6, §5. The Michigan Supreme Court has the exclusive jurisdiction to enact and amend court rules, practice, and procedure. *McDougall v Schanz*, 461 Mich 15; 597 NW2d 148 (1999). "[T]he fundamental and ultimate responsibility for all aspects of court administration, including operations and personnel matters within the trial courts, resides within the inherent authority of the judicial branch." *Judicial Attorneys Ass'n v State* 459 Mich 291, 299; 586 NW2d 894 (1998).

Sections of the first three standards setting training, interview, investigation, and expert requirements for attorneys practicing indigent defense are comparable to Administrative Order 2004-6, Minimum Standards for Indigent Criminal Appellate Defense Services. Certain procedural changes will be required to enable system and attorney compliance with the first three standards and the fourth standard involving counsel at first appearance and other critical stages. These changes are analogous to the standard court rule and administrative order process, where court systems determine administrative changes to ensure compliance.

Specifically, MCR 8.123 requires trial courts to submit plans for selecting, appointing, and compensating counsel for providing indigent defense. This rule stems from the same constitutional authority as the requirement in MCL 780.993(3) for submission of an indigent defense system plan following adoption of minimum standards.¹ The standards also parallel those adopted by the Supreme Courts of other states.²

Thus the adoption of minimum standards and the creation of plans to comply with these standards required by the MIDC Act, MCL 780.993(3), sets up a process of "what has proven to be the rule rather than the exception in the operation of Michigan's trial courts: cooperation, communication, and accommodation between trial courts and their funding units in their exercise of shared responsibility to the public." *Judicial Attorneys Ass'n*, 459 Mich at 304.

¹ Other examples of similar rule-making to the adoption of the proposed Minimum Standards include MCR 1.111 (foreign language interpreters), MCR 6.005 (right to assistance of lawyer), MCR 6.104 (arraignment on the warrant or complaint), MCR 6.106 (pretrial release), MCR 6.125 (mental competency hearing), MCR 8.103 (powers of the State Court Administrator), MCR 8.110(C) (duties and powers of the Chief Judge); MCR 8.112 (local court rules and administrative orders), and MCR 8.202 (payment of assigned attorneys); Administrative Orders 2013-8 (limited English proficiency), 2013-12 (caseflow management), 2015-9 (pilot project for structural reform of appointment of appellate counsel).

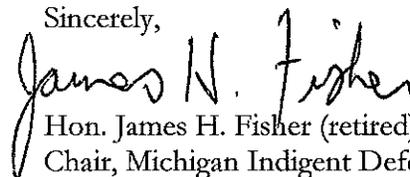
² Supreme Court of Nevada, *In the Matter of Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases*, Orders of January 4, 2008 and October 16, 2008; Supreme Court of Washington, *In the Matter of Adoption of New Standards for Indigent Defense and Certification of Compliance*, Order of June 15, 2012.

Chief Justice Robert P. Young
Page Three

Nothing in this Court's approval process creates a new, substantive right. The MIDC Act makes clear that the standards do not expand upon constitutional case law nor establish a basis for finding ineffective assistance of counsel, nor create a cause of action against the government. MCL 780.1003. Approving the standards allows for implementation of the legislature's intent to improve indigent defense delivery systems.

The MIDC looks forward to working with the Court to provide Michigan with the best possible system for indigent defense as this process develops.

Sincerely,



Hon. James H. Fisher (retired)
Chair, Michigan Indigent Defense Commission

cc: Larry Royster, Clerk
Joseph J. Baumann, General Counsel
Anne Boomer, Administrative Counsel