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April 26, 2016

Mr. Larry S. Royster
Clerk, Michigan Supreme Court
Michigan Hall of Justice
PO 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 Mr. Royster,

I write to express the strong support of the State Appellate Defender Office (SADO) and Michigan Appellate Assigned Counsel System (MAACS) for the MIDC's Proposed Standard 1 addressing education and training of defense counsel, and Proposed Standard 3 addressing the duty of trial counsel to conduct investigations and to use investigators and experts to defend cases.

As appellate counsel, we represent thousands of clients each year, reviewing cases from every Michigan county. A significant percentage of appeals from criminal convictions involve claims of ineffective assistance of trial-level counsel, some of which are based on claims that counsel made a mistake or was uninformed on the law. Given the complexity and ever-changing nature of criminal law and procedure, it is extremely difficult for counsel to maintain competency without proper training and resources. The sheer difficulty of the subject matter is joined by the fact that many trial-level attorneys practice on their own, earning low fees: all are major contributors to the risk of error.

Having trained the criminal defense bar for decades through SADO's Criminal Defense Resource Center, we know the immense need for reliable and affordable trainings and resources in order to deliver our Constitution's promise of effective representation to the poor. Proposed Standard 1 captures not just the obvious basics, but also the essential need for counsel to understand forensic, scientific, and technological issues.

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We often investigate such issues on appeal in cases where trial counsel failed to investigate initially due to limited resources or lack of training. In the recent SADO case of client Derrick Bunkley, an investigation that took place for the first time on appeal revealed irrefutable data from Facebook and cell phones that proved Mr. Bunkley was not the perpetrator of the crime. Based on the appellate investigation, the prosecution stipulated to vacate the conviction and agreed to dismiss the charges. Mr. Bunkley was lucky because he had appellate lawyers who had the knowledge and resources to perform the appropriate investigation that led to his eventual exoneration. Trial counsel, on the other hand, failed to perform any investigation and admitted at trial that he was “totally computer illiterate, I can barely get my email.” The importance of staying up to date on basic measures of technology cannot be understated. Perhaps even more important is an attorney’s ability to recognize his or her own knowledge gaps and to seek appropriate assistance surrounding that absence of knowledge. In this case, principles of effective representation should have required counsel to request the services of an investigator and/or expert who could direct the technological investigation that proved his client’s innocence.

This highlights the fact that adequate resources for investigation and experts must be provided to trial defense counsel. A defense attorney well-trained on issues of forensic science or technology can do little on his or her own without funding of an investigator to find reports and witnesses, or an expert to analyze evidence and testify. Our own appellate investigations have led to fact development and exonerations for a significant number of clients, just like Mr. Bunkley, where little or no investigation was done by trial counsel. We believe that in many cases, appointed trial counsel refrains from investigation simply because funding is unavailable.

It is our hope that with the passage of these standards, adequate funding of indigent defense services can no longer be ignored. For these reasons, SADO recommends that the proposed minimum standards for appointed counsel be approved.

Sincerely,

A handwritten signature in black ink that reads "Dawn Van Hoek". The signature is written in a cursive, slightly slanted style.

Dawn Van Hoek
Appellate Defender