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To: Interested parties,

Commentary on proposed MIDC standards

Commentary in **Bold**

Standard 1

Education and Training of Defense Counsel

A. Knowledge of the law – **The words "substantive" and "shall" have meanings that make this an impossible standard and the MIDC has continued to ignore this problem.**

All of the recommendations in Standard 1 place an extremely high or impossible burden on counsel not the system itself. Also it appears that there is no recourse for the defendant who is not given this prefect knowledge, making this appear to be grievance fodder.

Standard 2

Initial Interview

A. Timing of the Interview - **This is not a national standard and the few states that use or suggest something close to this have substantially different systems and court rules. The effects of the changes to MCR 6.108 and MCR 6.104 (E)(4) should be studied before anything close to this type of standard be considered.**

C. Setting of the Interview - **A first reference to the system. The burden is still also on the defender with little or no power.**

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Commentary on Standards in general

In reviewing these proposed standards, commentary, and statements made by MIDC and its staff I continue to be suspicious. Statutes are taken as they are written and administrative orders are the same. What is promoted by MIDC and what they have put in these standards is different. The standards almost exclusively reference counsel , but MIDC says we are going to change the system to make all of this happen and that we all are just reading their standards wrong. "Counsel shall" does not equal "the system will".

When viewed in concert with MCL 780.991 these rules are lacking and appear to exceed the scope of the statutes direction.

> **the MIDC shall adhere to the following principles: (a) Defense counsel is provided sufficient time and a space where attorney-client confidentiality is safeguarded for meetings with defense counsel's client. (b) Defense counsel's workload is controlled to permit effective representation. Economic disincentives or incentives that impair defense counsel's ability to provide effective representation shall be avoided. The MIDC may develop workload controls to enhance defense counsel's ability to provide effective representation. (c) Defense counsel's ability, training, and experience match the nature and complexity of the case to which he or she is appointed.**

MCL 780.991

These standards and the MIDC appear to ignore that the majority of public defense cases are misdemeanors and the effect these standards will have on a system where a state examination for criminal responsibility is not available.

> **The MIDC minimum standards neither create an independent basis for the challenge of a criminal conviction or sentence, nor expand United States or Michigan Supreme Court law on the effective assistance of counsel. M.C.L. §780.1003.**

Michiganidc.gov/standards/#tab-id-1

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In reviewing the above quote from the MIDC website and the very specific language of the standards, it appears that the standards best use will be as fodder for grievances against attorneys providing public defense to the people of Michigan.

Sincerely,

Kyle Trevas