WOLVERINE BAR ASSOCIATION
535 Griswold, Suite 111-531, Detroit, MI 48226
www.wolverinebar.org
Dedicated to the Principle: *"Equal Access and Equal Justice Under The Law"*
An Active Member of the National Bar Association

May 1, 2016

Office of Administrative Counsel
P.O. Box 30052
Lansing, MI 48909
Via Email
RE: Proposed Minimal Standards for Appointed Counsel (ADM File No. 2015-27)

Dear Michigan Supreme Court Justices and Office of Administrative Counsel:

The Wolverine Bar Association is comprised of over 250 Members. Amongst the Membership are dozens of judges, prosecutors and criminal defense attorneys, who primarily practice in Southeast Michigan. In the Association's estimation, one story of ineffective counsel for an indigent defendant is one too many. As such, the Proposed Minimum Standards for Appointed Counsel are welcomed, as it will promote "*Equal Access and Equal Justice Under the Law*." With that being said, the Association, through its Social Justice Committee, has a few comments about the Proposed Minimum Standards as they move closer to being implemented.

First, the Association suggests that the **Education and Training of Defense Counsel** standard contain an apprenticeship/shadowing component for attorneys practicing less than five (5) years. Shadowing exists in law firm settings to ensure that newly licensed attorneys learn from more experienced attorneys. Over time, newer attorneys will need less and less shadowing. For example, first year attorneys would be required to spend five (5) full days shadowing another more experienced attorney. Each year, the number of apprenticeship days would be reduced by one (1) day.

As it relates to the **Initial Interview** standard, the Association believes that courts, jails, and prisons need to provide adequate interview rooms so that the indigent defendant feels confident that their discussions with appointed counsel are strictly confidential. Additionally, appointed counsel should track when they conduct their initial interview. The Association believes that the initial interview should be conducted with the first week of the appointment of counsel. However, the initial interview is typically done without the benefit of the discovery documents from the prosecutor. Without such documents, the initial interview can prove unproductive and places the appointed counsel in an untenable position of solely relying on the defendant's version of the facts and issues. It is imperative that appointed counsel conducts a "discovery review" interview after he/she receives the discovery documents from the prosecutor. The Association recommends that the "discovery review" interview occur within one (1) week after receiving the documents and should be tracked as well.

The Association joins Brian Schrope's sentiments related to the **Investigation and Experts** standard. Experts are expensive and can cost prohibitive to an indigent defendant. Appointed counsel for indigent defendants need assistance in negotiating an expert's rates of pay and

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obligations to participate in the criminal defense investigation and trial proceedings. If the rates and obligations were pre-negotiated through an agreement with the State Bar of Michigan or the Michigan Supreme Court, it would add much needed predictability to the costs and expectations of experts.

As it relates to the **First Appearance and Other Critical Stages** standard, the Association acknowledges that the continuity of services through having the same attorney present at every stage is preferred. However, the nature of the legal practice is impracticable. The Association recommends that if the lead appointed counsel cannot attend that, with the consent of the defendant, another attorney meeting all of the minimal standards can appear on the case.

Again, the Wolverine Bar Association welcomes the creation of the Minimal Standards for Appointed Counsel. The Association's Membership stands ready to work with the courts to implement these standards. We thank the Michigan Supreme Court and the Office of Administrative Counsel for considering the Wolverine Bar Association's comments.

Sincerely,

Randal Brown, Wolverine Bar Association President

The Wolverine Bar Association's Social Justice Committee Members:

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