



Manistee County Board of Commissioners

Manistee County Courthouse • 415 Third Street • Manistee, Michigan 49660

CHAIRPERSON
Jeffrey Dontz
VICE-CHAIRPERSON
Brook Shafer

Mark Bergström
Karen Goodman
Ken Hilliard
Alan Marshall
Richard Schmidt

CLERK

Jill Nowak
(231) 723-3331

CONTROLLER/ADMINISTRATOR

Thomas Kaminski
(231)398-3504

JOINT MANISTEE-BENZIE COURT COMMITTEE

Thursday, June 16, 2016
3:00 p.m.

Manistee County Courthouse & Government Center
Board of Commissioners Meeting Room

MINUTES

Members Present: Jeff Dontz, Chairman, Manistee County Commissioner; Richard Schmidt, Manistee County Commissioner; Karen Goodman, Manistee County Commissioner; Frank Walterhouse, Benzie County Commissioner; Coury Carland, Benzie County Commissioner.

Members Absent: Vance Bates, Benzie County Commissioner (Mr. Walterhouse substituting for Mr. Bates).

Others Present: Tom Kaminski, Manistee County Administrator/Controller; Mitch Diesch, Benzie County Administrator; David Thompson, Chief Judge; Connie Krusniak, Friend of the Court; Pat Heins, Circuit Court Administrator; Cameron Clark, Director of Juvenile Services; Lisa Sagala, Human Resources Manager/Asst. County Administrator; and Jill M. Nowak, Manistee County Clerk.

The meeting was called to Order at 3:11 p.m.

FEBRUARY 18, 2016 JOINT MANISTEE-BENZIE COURT

COMMITTEE MINUTES

Motion by Schmidt, seconded by Walterhouse to approve the Joint Manistee-Benzie Court Committee Minutes of Thursday, February 18, 2016. (Appendix A)

Motion Carried

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COURT EMPLOYEE WAGE/COMPENSATION PROPOSAL

Judge Thompson explained the written wage/benefit request (Appendix B) for the 19th Circuit Court (Manistee and Benzie Counties), Manistee County Probate Court, Benzie County Probate Court, and the 85th District Court (Manistee and Benzie Counties) for fiscal years 2016/17, 2017/18, and 2018/19. Mr. Kaminski indicated that there was a Budget Study Session scheduled for Friday, June 17, 2016 with the full County Board and he will inform the Board of this request. Mr. Kaminski indicated that the budget is still being worked on but it looks pretty comparable to the current year's budget with having to use approximately \$180,000 of fund balance to balance the budget. Mr. Kaminski also reported that Lisa Sagala was just informed that insurance costs have increased 16% (12% increase + 4% tax) this year which is approximately \$28,000 to \$30,000 increase. Judge Thompson said he would like to see a three (3) year agreement to avoid time being spent on yearly negotiations. Ms. Sagala reported that she has a meeting with 44North to review plans and other options that may be available to help keep costs down.

UPDATE ON MICHIGAN INDEGENT DEFENSE PROPOSED STANDARDS

The Michigan Indigent Defense Commission Act, PA 93 of 2013, of the Michigan Indigent Defense Commission submitted to the Supreme Court proposed standards (Exhibit C), which regulates the manner in which counsel would be appointed to represent indigent defendants in criminal cases. These standards impose specific training, experience and continuing legal education requirements of court appointed attorneys. Investigators and experts may be requested as well. Judge Thompson is concerned some of the standards that will be implemented by this Public Act as they will most likely cost the County money. These standards are awaiting approval by the Supreme Court in the future.

BENZIE DISTRICT COURT EMPLOYEES

Three (3) employees of the Benzie District Court who work 100% of the time for Benzie District court are currently paid through the Manistee payroll system and then are reimbursed at 100% by Benzie County to Manistee County. This is being done as some Court employees are shared County employees and then these costs are reimbursed on a percentage basis. Questions as to medical and retirement benefits arose. The Judges will talk with these employees and get their feedback. One issue that was discussed was they either have to fall under the Manistee payroll with proper reimbursement, policies, benefits and retirement benefits or Benzie's payroll, policies, benefits and retirement benefits, if any. It has to be one way or the other as they can't pick and choose which County would be most beneficial.

Suggestions to make a Joint Operation or Authority was made. Judge Thompson explained that he has other options such as severing Manistee and Benzie County courts if necessary. The Judges will report back in July 2016 after meeting with the affected employees.

OTHER ITEMS FROM COMMITTEE MEMBERS, JUDGES AND STAFF

Video recording was discussed for possible testing in small courtrooms in the future.

District Court Probation Officer has been included in District Court budget for 2016/17.

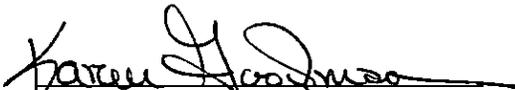
A Management Assistance Project is being completed in the Manistee District Court by the State Court Administrative Office (SCAO). This project analyses policies and procedures, identifies efficiencies, what we do well, what could be done better and the report will act like a mini Strategic Plan to steer us in the right direction. Judge Mead would like to do this project in Benzie District Court as there is no cost to the Counties.

Judge Thompson and Pat Heins reported that employee evaluations went very well. It was very positive for both employers and employees. Ms. Sagala was very helpful in implementing this process.

Mr. Schmidt also spoke of the 21 County Liquor Tax money that is being preserved by the state. Mr. Schmidt is still looking into it.

The meeting was adjourned at the Call of the Chair at 4:36 p.m.

MANISTEE COUNTY


Karen Goodman
Manistee County Commissioner


Jeff Dontz
Manistee County Commissioner


Richard Schmidt
Manistee County Commissioner

BENZIE COUNTY


Frank Walterhouse
Benzie County Commissioner


Court Carland
Benzie County Commissioner

THE CIRCUIT COURT

(Appendix A)

HONORABLE DAVID A. THOMPSON
CHIEF JUDGE

PATRICIA A. HEINS
CIRCUIT COURT ADMINISTRATOR

MICHELE LANTIS, CSR
OFFICIAL COURT REPORTER

KAREN FELICZAK
ADR CLERK



STATE OF MICHIGAN
19TH JUDICIAL CIRCUIT
MANISTEE AND BENZIE COUNTIES

MANISTEE COUNTY COURTHOUSE
415 THIRD STREET
MANISTEE, MICHIGAN 49860
231-723-6664
231-723-1645 (FAX)

BENZIE COUNTY GOVERNMENT CENTER
448 COURT PLACE
BEULAH, MICHIGAN 49817
231-882-9671
1-800-315-3593
231-882-5941 (FAX)

TO: Tom Kaminski, Manistee County Administrator, Mitch Deisch, Benzie County Administrator, and Joint Court Committee Members

FROM: Hon. David A. Thompson, Chief Judge, Hon. Thomas N. Brunner, and Hon. John D. Mead

Date: June 16, 2016

Re: Wage/Benefit Request

Please accept this as the 19th Circuit Court (Manistee and Benzie Counties), Manistee County Probate Court, Benzie County Probate Court, and 85th District Court (Manistee and Benzie Counties) request for the following salary and benefit package for fiscal years 2016/17, 2017/18, and 2018/19.

As you know, the courts have worked diligently in streamlining costs and searching out new and more effective ways to deliver services to the members of our communities. We as public servants, as well as tax payers, are sensitive to the economic climate in our communities and believe that given the past concessions by court employees that the recent economic recovery now being experienced warrant these requests:

2016/17—3% wage increase with benefits and their costs to remain unchanged

2017/18—3% wage increase with benefits and their cost to remain unchanged

2018/19—3% wage increase with benefits and their cost to remain unchanged.

We look forward to discussing these issues at the next joint-court committee meeting.

Regards,

Hon. David A. Thompson,
Chief Judge

Hon. Thomas N. Brunner

Hon. John D. Mead

(APPENDIX A-1)

Manistee County Board of Commissioners

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CONTROLLER/ADMINISTRATOR JOINT MANISTEE-BENZIE COURT COMMITTEE

Thomas Kaminski
(231) 398-3504

Thursday, February 18, 2016
3:00 p.m.

Manistee County Courthouse & Government Center
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MINUTES

- Members Present:** Jeff Dontz, Chairman, Manistee County Commissioner; Richard Schmidt, Manistee County Commissioner; Frank Walterhouse, Benzie County Commissioner.
- Members Absent:** Karen Goodman, Manistee County Commissioner; Vance Bates, Benzie County Commissioner; Coury Carland, Benzie County Commissioner. (Mr. Walterhouse substituting for one of the Benzie Commissioners).
- Others Present:** Tom Kaminski, Manistee County Administrator/Controller; Mitch Diesch, Benzie County Administrator; David Thompson, Chief Judge; Connie Krusniak, Friend of the Court; Pat Heins, Circuit Court Administrator; Lisa Sagala, Human Resources Manager/Asst. County Administrator; and Jill M. Nowak, Manistee County Clerk.

The meeting was called to Order at 3:00 p.m.

SEPTEMBER 8, 2015 JOINT MANISTEE-BENZIE COURT

COMMITTEE MINUTES

Motion by Walterhouse, seconded by Schmidt to approve the Joint Manistee-Benzie Court Committee Minutes of Tuesday, October 13, 2015.

(A-2)

Motion Carried

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EXTRADITION COST REIMBURSEMENT AND PROBATION ABSCONDERS

Judge Thompson explained that extradition costs are paid from the Prosecutor's budget and when they are reimbursed they should go back into the Prosecutors budget. Mr. Kaminski explained that putting the money in the General Fund is just like putting it in the Prosecutors budget. He also explained that they had put \$5,000 in the budget each year but it wasn't used so they lowered it. If more money is needed to cover these costs, just ask. Judge Thompson reiterated we just want to be mindful of the Prosecutor's budget. Mr. Kaminski stated maybe adding an extradition reimbursement line item number would be helpful.

EMPLOYEE PERFORMANCE EVALUATIONS

Judge Thompson is in the process of implementing annual employee performance evaluations. These evaluations are a tool used to identify an employee's strengths, address weaknesses, set goals and achieve the mission of the court.

BENZIE COUNTY JAIL/BAILIFF SUPPORT

This issue has been resolved.

SCHEDULE MEETINGS FOR THE REMAINDER OF 2016

The Joint Manistee/Benzie Court Committee will meet on the following dates alternating between Counties:

- Thursday, April 21, 2016 at 3:00 p.m. in Benzie County
- Thursday, June 16, 2016 at 3:00 p.m. in Manistee County
- Thursday, July 21, 2016 at 3:00 p.m. in Benzie County
- Thursday, August 18, 2016 at 3:00 p.m. in Manistee County
- Thursday, September 15, 2016 at 3:00 p.m. in Benzie County
- Thursday, October 20, 2016 at 3:00 p.m. in Manistee County

OTHER ITEMS FROM COMMITTEE MEMBERS, JUDGES AND STAFF

The courts are using polycom more often for hearings. The system could also be used for Joint Court meetings if needed.

E Filing Fees are being implemented by the State Court effective March 1, 2016 whether or not the Courts accept e-filings. Manistee County does not currently accept e-filing but will request to be placed on the waiting list.

(A-3)

Judge Thompson mentioned that one of his Court Stenographers is on long term leave of absence. The Judge confirmed that short-term and long-term disability run concurrent. The short-term disability costs are not from the Circuit Court budget and therefore the substitute court reporter will be covered from the Courts budget.

Judge Thompson discussed additional Medicaid dollars called a Blended Fund appropriated through the Child Care Fund and Centra Wellness Network.

Mr. Schmidt also spoke of the 21 County Liquor Tax money that is being preserved by the state. Mr. Schmidt is looking into the disbursement of it.

The meeting was adjourned at the Call of the Chair at 3:26 p.m.

MANISTEE COUNTY

Absent
Karen Goodman
Manistee County Commissioner

Jeff Dontz
Manistee County Commissioner

Richard Schmidt
Manistee County Commissioner

BENZIE COUNTY

Frank Walterhouse
Benzie County Commissioner

Absent
Benzie County Commissioner

THE CIRCUIT COURT

Appendix B

HONORABLE DAVID A. THOMPSON
CHIEF JUDGE

PATRICIA A. HEINS
CIRCUIT COURT ADMINISTRATOR

MICHELE LANTIS, CSR
OFFICIAL COURT REPORTER

KAREN FELICZAK
ADR CLERK



STATE OF MICHIGAN
19TH JUDICIAL CIRCUIT
MANISTEE AND BENZIE COUNTIES

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TO: Tom Kaminski, Manistee County Administrator, Mitch Deisch, Benzie County Administrator, and Joint Court Committee Members

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Date: June 16, 2016

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As you know, the courts have worked diligently in streamlining costs and searching out new and more effective ways to deliver services to the members of our communities. We as public servants, as well as tax payers, are sensitive to the economic climate in our communities and believe that given the past concessions by court employees that the recent economic recovery now being experienced warrant these requests:

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We look forward to discussing these issues at the next joint-court committee meeting.

Regards,

Hon. David A. Thompson,
Chief Judge

Hon. Thomas N. Brunner

Hon. John D. Mead

Order

Michigan Supreme Court
Lansing, Michigan

June 1, 2016

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2015-27

Stephen J. Markman
Brian K. Zahra

Administrative Order No. 2016-2

Bridget M. McCormack
David F. Viviano

Regulations Governing a System for
Appointment of Counsel for Indigent
Defendants in Criminal Cases and
Minimum Standards for Indigent
Criminal Defense Services

Richard H. Bernstein
Joan L. Larsen,
Justices

Pursuant to the Michigan Indigent Defense Commission Act, 2013 PA 93, the Michigan Indigent Defense Commission submitted to this Court proposed standards that would regulate the manner in which counsel would be appointed to represent indigent defendants in criminal cases, and would further impose specific training, experience and continuing legal education requirements on attorneys who seek appointment as counsel in these types of cases. The Court published the proposed standards for comment, and after due consideration, conditionally approves the standards as set forth below.¹

This approval is subject to and contingent on legislative revision of the MIDC Act to address provisions that the Court deems to be of uncertain constitutionality. These provisions include:

1. MCL 780.985 creates the MIDC as an “autonomous entity” and places it within “the judicial branch.” Employees of the judicial branch are subject to this Court’s exclusive constitutional authority to exercise general supervisory control. See Const 1963, art 6, §§ 1, 4, and 7; *Judicial Attorneys Ass’n v Michigan*, 459 Mich 291, 298; 586 NW2d 635 (1998). We are concerned that placing the MIDC within the judicial branch, while denying the Court the ability to supervise and direct the commission’s activities and employment, may contravene the general principle of separation of powers under the Michigan Constitution, Const 1963, art 3, § 2, and impinge upon the specific constitutional function of this Court to supervise the judicial branch.
2. MCL 780.983(f) defines “indigent criminal defense system,” an entity subject to the authority of the MIDC, in a manner that includes trial courts, and combines trial courts with nonjudicial local governments. In addition,

¹ The conditional approval reflects the Court’s ongoing authority to establish, implement, and impose professional standards. See Administrative Order No. 1981-7 (approving regulations and standards for the appellate indigent defense system); Administrative Order No. 2004-6 (altering the standards of AO No. 1981-7).

MCL 780.989(1)(a) allows the MIDC to “[d]evelop[] and oversee[] the implementation, enforcement, and modification of minimum standards, rules, and procedures to ensure that indigent criminal defense services providing effective assistance of counsel are consistently delivered to all indigent adults in this state;” and MCL 780.989(1)(b) allows the MIDC “to assure compliance with the commission’s minimum standards, rules, and procedures.” We are concerned that these provisions might contain enforcement mechanisms that present an unconstitutional usurpation of this Court’s authority under Const 1963, art 6, § 4, which provides that the Supreme Court “shall have general superintending control over all courts.” They also raise general separation of powers concerns under Const 1963, art 3, § 2.

3. MCL 780.989(1)(f) and (2) and MCL 780.991(2) arguably allow the MIDC to regulate the legal profession. The Constitution exclusively assigns regulation of the legal profession to the judiciary. See Const 1963, art 6, § 5; *Grievance Administrator v Lopatin*, 462 Mich 235; 612 NW2d 120 (2000); *Attorney General v Michigan Public Serv Comm*, 243 Mich App 487, 517; 625 NW2d 16 (2000).

To promote the goal of providing effective assistance of counsel for indigent defendants in criminal cases without disruption, the Court urges legislative revision of the MIDC Act to address the constitutional concerns raised herein by this Court. If this Court determines before December 31, 2016, that legislative revisions of the MIDC Act have sufficiently addressed our concerns, the standards approved conditionally by this Court today will then take full effect. Otherwise, this Court’s conditional approval of these standards will be automatically withdrawn on December 31, 2016. The Court will then determine what, if any, further action it may take to preserve its constitutional authority.

The conditionally approved standards and requirements, together with the commentary of the MIDC and the MIDC’s description of the principles governing the creation of the standards, are as follows:

Minimum Standards for Appointed Counsel under the MIDC Act

Standard 1

Education and Training of Defense Counsel

The MIDC Act requires adherence to the principle that “[d]efense counsel is required to attend continuing legal education relevant to counsel’s indigent defense clients.” MCL 780.991(2)(e). The United States Supreme Court has held that the constitutional right to

counsel guaranteed by the Sixth Amendment includes the right to the effective assistance of counsel. The mere presence of a lawyer at a trial "is not enough to satisfy the constitutional command." *Strickland v Washington*, 466 US 668, 685; 104 S Ct 2052, 2063; 80 L Ed 2d 674 (1984). Further, the Ninth Principle of The American Bar Association's *Ten Principles of a Public Defense Delivery System* provides that a public defense system, in order to provide effective assistance of counsel, must ensure that "Defense counsel is provided with and required to attend continuing legal education."

The MIDC proposed a minimum standard for the education and training of defense counsel. The version conditionally approved by the Court is as follows:

A. Knowledge of the law. Counsel shall have reasonable knowledge of substantive Michigan and federal law, constitutional law, criminal law, criminal procedure, rules of evidence, ethical rules and local practices. Counsel has a continuing obligation to have reasonable knowledge of the changes and developments in the law. "Reasonable knowledge" as used in this standard means knowledge of which a lawyer competent under MRPC 1.1 would be aware.

B. Knowledge of scientific evidence and applicable defenses. Counsel shall have reasonable knowledge of the forensic and scientific issues that can arise in a criminal case, the legal issues concerning defenses to a crime, and be reasonably able to effectively litigate those issues.

C. Knowledge of technology. Counsel shall be reasonably able to use office technology commonly used in the legal community, and technology used within the applicable court system. Counsel shall be reasonably able to thoroughly review materials that are provided in an electronic format.

D. Continuing education. Counsel shall annually complete continuing legal education courses relevant to the representation of the criminally accused. Counsel shall participate in skills training and educational programs in order to maintain and enhance overall preparation, oral and written advocacy, and litigation and negotiation skills. Lawyers can discharge this obligation for annual continuing legal education by attending local trainings or statewide conferences. Attorneys with fewer than two years of experience practicing criminal defense in Michigan shall participate in one basic skills acquisition class. All attorneys shall annually complete at least twelve hours of continuing legal education. Training shall be funded through compliance plans submitted by the local delivery system or other mechanism that does not place a financial burden on assigned counsel. The MIDC shall collect or direct the collection of data regarding the number of hours of continuing legal education offered to and attended by assigned counsel, shall analyze the quality of the training, and shall ensure that the effectiveness of the training be measurable and validated. A report regarding these data shall be submitted to the Court annually by April 1 for the previous calendar year.

Comment:

The minimum of twelve hours of training represents typical national and some local county requirements, and is accessible in existing programs offered statewide.

Standard 2**Initial Interview**

The MIDC Act requires adherence to the principle that “[d]efense counsel is provided sufficient time and a space where attorney-client confidentiality is safeguarded for meetings with defense counsel’s client.” MCL 780.991(2)(a). United States Supreme Court precedent and American Bar Association Principles recognize that the “lack of time for adequate preparation and the lack of privacy for attorney-client consultation” can preclude “any lawyer from providing effective advice.” See *United States v Morris*, 470 F3d 596, 602 (CA 6, 2006) (citing *United States v Cronin*, 466 US 648; 104 S Ct 2039; 80 L Ed 2d 657 (1984)). Further, the Fourth Principle of The American Bar Association’s *Ten Principles of a Public Defense Delivery System* provides that a public defense system, in order to provide effective assistance of counsel, must ensure that “Defense counsel is provided sufficient time and a confidential space within which to meet with the client.”

The MIDC proposed a minimum standard for the initial client interview. The version conditionally approved by the Court is as follows:

A. Timing and Purpose of the Interview: Counsel shall conduct a client interview as soon as practicable after appointment to represent the defendant in order to obtain information necessary to provide quality representation at the early stages of the case and to provide the client with information concerning counsel’s representation and the case proceedings. The purpose of the initial interview is to: (1) establish the best possible relationship with the indigent client; (2) review charges; (3) determine whether a motion for pretrial release is appropriate; (4) determine the need to start-up any immediate investigations; (5) determine any immediate mental or physical health needs or need for foreign language interpreter assistance; and (6) advise that clients should not discuss the circumstances of the arrest or allegations with cellmates, law enforcement, family or anybody else without counsel present. Counsel shall conduct subsequent client interviews as needed. Following appointment, counsel shall conduct the initial interview with the client sufficiently before any subsequent court proceeding so as to be prepared for that proceeding. When a client is in local custody, counsel shall conduct an initial client intake interview within three business days after appointment. When a client is not in custody, counsel shall promptly deliver an introductory communication so that the client may follow-up and schedule a meeting. If confidential videoconference facilities

are made available for trial attorneys, visits should at least be scheduled within three business days. If an indigent defendant is in the custody of the Michigan Department of Corrections (MDOC) or detained in a different county from where the defendant is charged, counsel should arrange for a confidential client visit in advance of the first pre-trial hearing.

B. Setting of the interview: All client interviews shall be conducted in a private and confidential setting to the extent reasonably possible. The indigent criminal defense system shall ensure the necessary accommodations for private discussions between counsel and clients in courthouses, lock-ups, jails, prisons, detention centers, and other places where clients must confer with counsel.

C. Preparation: Counsel shall obtain copies of any relevant documents which are available, including copies of any charging documents, recommendations and reports concerning pretrial release, and discoverable material.

D. Client status:

1. Counsel shall evaluate whether the client is capable of participation in his/her representation, understands the charges, and has some basic comprehension of criminal procedure. Counsel has a continuing responsibility to evaluate, and, where appropriate, raise as an issue for the court the client's capacity to stand trial or to enter a plea pursuant to MCR 6.125 and MCL 330.2020. Counsel shall take appropriate action where there are any questions about a client's competency.

2. Where counsel is unable to communicate with the client because of language or communication differences, counsel shall take whatever steps are necessary to fully explain the proceedings in a language or form of communication the client can understand. Steps include seeking the appointment of an interpreter to assist with pre-trial preparation, interviews, investigation, and in-court proceedings, or other accommodations pursuant to MCR. 1.111.

Comments:

1. The MIDC recognizes that counsel cannot ensure communication prior to court with an out of custody indigent client. For out of custody clients the standard instead requires the attorney to notify clients of the need for a prompt interview.

2. The requirement of a meeting within three business days is typical of national requirements (Florida Performance Guidelines suggest 72 hours; in Massachusetts, the Committee for Public Counsel Services Assigned Counsel Manual requires a visit within three business days for custody clients; the Supreme Court of Nevada issued a performance standard requiring an initial interview within 72 hours of appointment).

3. *Certain indigent criminal defense systems only pay counsel for limited client visits in custody. In these jurisdictions, compliance plans with this standard will need to guarantee funding for multiple visits.*
4. *In certain systems, counsel is not immediately notified of appointments to represent indigent clients. In these jurisdictions, compliance plans must resolve any issues with the failure to provide timely notification.*
5. *Some jurisdictions do not have discovery prepared for trial counsel within three business days. The MIDC expects that this minimum standard can be used to push for local reforms to immediately provide electronic discovery upon appointment.*
6. *The three-business-day requirement is specific to clients in "local" custody because some indigent defendants are in the custody of the Michigan Department of Corrections (MDOC) while other defendants might be in jail in a different county from the charging offense.*
7. *In jurisdictions with a large client population in MDOC custody or rural jurisdictions requiring distant client visits compliance plans might provide for visits through confidential videoconferencing.*
8. *Systems without adequate settings for confidential visits for either in-custody or out-of-custody clients will need compliance plans to create this space.*
9. *This standard only involves the initial client interview. Other confidential client interviews are expected, as necessary.*

Standard 3

Investigation and Experts

The United States Supreme Court has held: (1) "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland v Washington*, 466 US 668, 691; 104 S Ct 2052, 2066; 80 L Ed 2d 674 (1984); and (2) "[c]riminal cases will arise where the only reasonable and available defense strategy requires consultation with experts or introduction of expert evidence, whether pretrial, at trial, or both." *Harrington v Richter*, 562 US 86, 106; 131 S Ct 770, 788; 178 L Ed 2d 624 (2011). The MIDC Act authorizes "minimum standards for the local delivery of indigent criminal defense services providing effective assistance of counsel..." MCL 780.985(3).

The MIDC proposed a minimum standard for investigations and experts. The version conditionally approved by the Court is as follows:

- A. Counsel shall conduct an independent investigation of the charges and offense as promptly as practicable.
- B. When appropriate, counsel shall request funds to retain an investigator to assist with the client's defense. Reasonable requests must be funded.
- C. Counsel shall request the assistance of experts where it is reasonably necessary to prepare the defense and rebut the prosecution's case. Reasonable requests must be funded as required by law.
- D. Counsel has a continuing duty to evaluate a case for appropriate defense investigations or expert assistance. Decisions to limit investigation must take into consideration the client's wishes and the client's version of the facts.

Comments:

- 1. The MIDC recognizes that counsel can make "a reasonable decision that makes particular investigations unnecessary" after a review of discovery and an interview with the client. Decisions to limit investigation should not be made merely on the basis of discovery or representations made by the government.*
- 2. The MIDC emphasizes that a client's professed desire to plead guilty does not automatically alleviate the need to investigate.*
- 3. Counsel should inform clients of the progress of investigations pertaining to their case.*
- 4. Expected increased costs from an increase in investigations and expert use will be tackled in compliance plans.*

Standard 4

Counsel at First Appearance and other Critical Stages

The MIDC Act provides that standards shall be established to effectuate the following: (1) "All adults, except those appearing with retained counsel or those who have made an informed waiver of counsel, shall be screened for eligibility under this act, and counsel shall be assigned as soon as an indigent adult is determined to be eligible for indigent criminal defense services." MCL 780.991(1)(c); (2) "A preliminary inquiry regarding, and the determination of, the indigency of any defendant shall be made by the court not later than at the defendant's first appearance in court. MCL 780.991(3)(a); (3) ...counsel

continuously represents and personally appears at *every court appearance* throughout the pendency of the case.” MCL 780.991(2)(d)(emphasis added).

The MIDC proposed a minimum standard on counsel at first appearance and other critical stages. The version conditionally approved by the Court is as follows:

A. Counsel shall be assigned as soon as the defendant is determined to be eligible for indigent criminal defense services. The indigency determination shall be made and counsel appointed to provide assistance to the defendant as soon as the defendant’s liberty is subject to restriction by a magistrate or judge. Representation includes but is not limited to the arraignment on the complaint and warrant. Where there are case-specific interim bonds set, counsel at arraignment shall be prepared to make a de novo argument regarding an appropriate bond regardless of and, indeed, in the face of, an interim bond set prior to arraignment which has no precedential effect on bond-setting at arraignment. Nothing in this paragraph shall prevent the defendant from making an informed waiver of counsel.

B. All persons determined to be eligible for indigent criminal defense services shall also have appointed counsel at pre-trial proceedings, during plea negotiations and at other critical stages, whether in court or out of court.

Comments:

1. *The proposed standard addresses an indigent defendant’s right to counsel at every court appearance and is not addressing vertical representation (same defense counsel continuously represents) which will be the subject of a future minimum standard as described in MCL 780.991(2)(d).*

2. *One of several potential compliance plans for this standard may use an on-duty arraignment attorney to represent defendants. This appointment may be a limited appearance for arraignment only with subsequent appointment of different counsel for future proceedings. In this manner, actual indigency determinations may still be made during the arraignment.*

3. *Among other duties, lawyering at first appearance should consist of an explanation of the criminal justice process, advice on what topics to discuss with the judge, a focus on the potential for pre-trial release, or achieving dispositions outside of the criminal justice system via civil infraction or dismissal. In rare cases, if an attorney has reviewed discovery and has an opportunity for a confidential discussion with her client, there may be a criminal disposition at arraignment.*

4. *The MIDC anticipates creative and cost-effective compliance plans like representation and advocacy through videoconferencing or consolidated arraignment schedules between multiple district courts.*

5. *This standard does not preclude the setting of interim bonds to allow for the release of in-custody defendants. The intent is not to lengthen any jail stays. The MIDC believes that case-specific interim bond determinations should be discouraged. Formal arraignment and the formal setting of bond should be done as quickly as possible.*

6. *Any waiver of the right to counsel must be both unequivocal and knowing, intelligent, and voluntary. People v Anderson, 398 Mich 361; 247 NW2d 857 (1976). The uncounseled defendant must have sufficient information to make an intelligent choice dependent on a range of case-specific factors, including his education or sophistication, the complexity or easily grasped nature of the charge, and the stage of the proceeding.*



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 1, 2016

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk