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p 517-346-6300

p 800-968-1442

f 517-482-6248

www.michbar.org

Michigan Indigent Defense Commission
200 N. Washington Square
Lansing, MI 48933

Dear Commissioners:

306 Townsend Street
Michael Franck Building
Lansing, MI
48933-2012

At its July meeting, the Board of Commissioners of the State Bar of Michigan considered the Proposed Minimum Standards as posted on June 22, 2015. In its review, the Board considered recommendations from the Committee on Justice Initiatives and the Criminal Jurisprudence & Practice Committee. The Board voted unanimously to support the standards with several amendments and comments suggested by the Committee on Justice Initiatives which are detailed below.

Standard 1 – Education and Training of Defense Counsel

The Board is concerned that it is unreasonable to expect any lawyer (or anyone) to know everything about law, science, and the rapid changes in technology. Therefore, the Board suggests the following changes (in underline and strike-out):

A. Knowledge of the law. Counsel shall be reasonably aware of ~~know~~ 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 ~~know~~ be familiar with and knowledgeable about the changes and developments in the law.

B. Knowledge of scientific evidence and applicable defenses. Counsel shall be reasonably aware of ~~know~~ all forensic and scientific issues that can arise in a criminal case, be familiar with and knowledgeable about ~~know~~ all legal issues concerning defenses to a crime, including challenges to scientific or technological aspects of the case, and be able to effectively litigate those issues.

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

For clarification, the following amendment to D is recommended as a style change:

D. Continuing education. Counsel shall annually complete continuing legal education courses relevant to the representation of the criminally accused. All attorneys shall annually complete at least twelve (12) hours of continuing legal education. In addition:

a. 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.

b. Attorneys with ~~less~~ 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 (12) hours of continuing legal education.~~

Standard 2 – Initial Interview

The following amendment to B is recommended as a style change:

B. Setting of the interview: All client interviews shall be conducted in a private and confidential setting. ~~Counsel shall ensure that confidential communications between counsel and the client are conducted in private.~~ Counsel and 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.

Standard 3 – Investigation and Experts

There is a concern that the introductory paragraphs for Standards 1, 2, and 4 specifically include statutory language from the law that created the Michigan Indigent Defense Commission, but Standard 3 does not. The Proposed Standards should include statutory language directly noted in Michigan law.

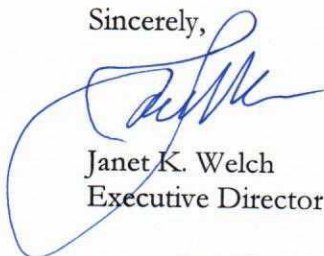
The Board supports this standard, and notes that including the duty to ask for investigations and experts may ensure the request from appointed counsel is taken seriously by the court and funding is authorized.

Standard 4 – Counsel at First Appearance

The Board fully supports this standard.

The State Bar of Michigan has been working to improve Michigan's criminal indigent defense system for decades, and this initial set of standards represents a potential for substantial changes in the delivery of those services throughout the state. The State Bar will continue to monitor both the implementation of these standards and additional standards as they are developed.

Sincerely,



Janet K. Welch
Executive Director

cc: Jonathan Sacks, Executive Director, Michigan Indigent Defense Commission
Thomas C. Rombach, President