

# Supreme Court Improves State's Indigent Defense System

State Bar President Thomas Cranmer devoted his February 2006 "President's Page" column to the issue of indigent criminal defense in Michigan. The article, however, contained outdated information about the current state of Michigan's indigent defense system. The article asserted that "[c]urrently, Michigan has no statewide standards or funding structure to assure adequate representation" for indigent defendants in criminal proceedings. In addition, he quoted a proposal from the National Legal Aid and Defender Association (NLADA) to the State Bar of Michigan, which states that "... we can report that Michigan is the only state in the entire country that cannot accurately account for the total amount of state and local funding dedicated to ensuring people's constitutional right to counsel..." NLADA based this statement on information found in *State and County Expenditures for Indigent Defense Services in Fiscal Year 2002*, published by the American Bar Association, which noted Michigan's lack of data regarding court-appointed counsel for indigent defendants. Since 2002, however, the Michigan Supreme Court has made several important advances in Michigan's indigent criminal defense systems that deserve recognition.

In Michigan, authority for the selection and payment of public defense counsel lies

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with the individual trial courts, and individual counties as the funding unit for local courts. Although some courts and their funding units have developed procedures to remove these responsibilities from the judicial branch of government, the majority of courts are responsible for day-to-day counsel appointments.

In 2003, the Michigan Supreme Court reformed Michigan's indigent criminal defense system by adopting Michigan Court Rule 8.123. The rule requires every trial court to adopt a local administrative order describing how it selects, appoints, and compensates attorneys who represent indigent parties. Each local administrative order was required to be submitted for approval to the State Court Administrator. Today, every trial court in Michigan has adopted such a plan.

MCR 8.123 further requires trial courts to collect and report the total public funds paid to each attorney for any appointments made by the court. Upon the State Court Administrator's request, courts must be able to provide additional data, including the number of appointments given to individual attorneys by each judge of a court and the court as a whole, and the total public funds paid for appointments by each judge and the court as a whole.

The total amount paid for attorney appointments reported by the trial courts in 2004 (the first year for which courts were required to report) was \$66,411,346. In 2005, that figure rose to \$73,221,713, based in part on a change in the reporting requirements to include payments to all court-appointed attorneys, including appointment as a guardian ad litem and as a lawyer-guardian ad litem.

In addition to imposing mandatory reporting requirements, the Supreme Court also revised its minimum standards for indigent criminal appellate defense services in 2005. These standards were based on a proposal by the state Appellate Defender Commission.

The Michigan legislature recently adopted Senate Concurrent Resolution 39. This resolution requests that the State Bar and NLADA, in cooperation with the State Court Administrative Office, collect information and issue a joint report to the Michigan legislature on the costs of indigent criminal cases, the number of criminal cases assigned to court-appointed attorneys, and the types of criminal cases that receive court-appointed attorneys in Michigan. The Michigan Supreme Court, through the State Court Administrative Office, will fully participate in this study, which is consistent with the serious and significant improvements it has made in the last few years on the issue of court-appointed counsel. ♦

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