Move Michigan Forward

To the Editor:

I was pleased to see that the Michigan Supreme Court is committed to improving the defense of indigent persons accused of crime ("Supreme Court Improves State's Indigent Defense System," September 2006). When I was chairperson of the State Bar Task Force on Assigned Counsel Standards in the late 1980s, we were fortunate to have the assistance of the Court, particularly the assistance of Justice Charles L. Levin, who wrote a letter on our behalf to all courts of the states, asking them to supply our task force with their costs of appointed counsel. This survey of costs by the task force was the first time data had been collected to show what all the counties were paying for appointed counsel in misdemeanor and felony cases. We shared the results of our survey with the state court administrator.

Now, as a member of the Michigan Public Defense Task Force (MPDTF), under the leadership of Beth Arnovits of the Michigan Counsel on Crime and Delinquency, I welcome the participation of the State Court Administrative Office (SCAO) in the upcoming National Legal Aid and Defender Association (NLADA) survey of Michigan's criminal defense programs, in conjunction with the State Bar and pursuant to Senate Concurrent Resolution 39, sponsored by Sen. Alan Cropsey.

It is true that the Court, by passing Michigan Court Rule 8.123, took a step in the right direction to gather data on appointed counsel throughout the state. I was one of several members of the MPDTF who testified before the Supreme Court this year, urging them not to cut back on the reported data, but instead to expand the data collected under MCR 8.123. Perhaps after the NLADA survey is completed, the Court will take a further step to expand the data collected by SCAO.

Despite the steps made by the Michigan Supreme Court, SCAO, and the MPDTF, the statements made by former State Bar President Thomas Cranmer in his February 2006 "President's Page" column ("Indigent Criminal Defense Systems in the State of Michigan—A Time for Evaluation and Action") concerning Michigan's public defense system remain true. It is still true that Michigan has no statewide standards for trial counsel in appointed cases. The Bar forwarded standards for trial counsel in indigent felony cases to the Supreme Court in the 1980s; the standards were not accepted by the Court, and the State Bar Representative Assembly later refused to adopt its own standards for assigned counsel. It is also true that there is no funding structure for appointed counsel in the trial courts. Michigan is one of a handful of states across the country that appropriate no state funds for the defense of criminal cases at the trial court level, leaving counties free to fund defense services as they see fit.

I hope that, with the assistance of the Michigan Supreme Court, SCAO, the State Bar, the NLADA, and the MPDTF, Michigan can move forward and improve our state indigent defense system, following the example of other states like Georgia, Montana, North Carolina, and Texas that have moved forward in recent years to establish a state system of public defense that guarantees the constitutional rights of the accused.

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Wishful Thinking

To the Editor:

I cannot resist commenting on the article authored by lawyers employed by the Michigan Supreme Court, suggesting that we have made significant steps toward standardizing indigent defense services and paying for them ("Supreme Court Improves State's Indigent Defense System," September 2006). Contrary to the authors' claim, the adoption of Michigan Court Rule 8.123 had nothing to do with the quality of legal services provided to the poor or how this expense should be measured and managed for their benefit.

MCR 8.123 was adopted by the Supreme Court after Administrative File 2001-10 was published for comment. This proposal was the Court's reaction to several highly publicized instances of judicial misconduct regarding the appointment of counsel. As originally proposed, the local administrative order that was to be adopted by each trial court was required to *de-emphasize* the judge's role in the appointment of lawyers. An overwhelmingly negative response by trial judges resulted in the elimination of this provision, and the rule that was eventually adopted imposed only reporting requirements, showing who was appointed by each judge and how much money was received by each lawyer. The adoption of MCR 8.123 was not the first step in gathering data to assure adequate representation of the poor, but a mechanism to disclose the disproportionate receipt of appointments by a judge's financial supporter or sex partner.

State Bar President Thomas Cranmer's critique of Michigan's indigent defense systems ("Indigent Criminal Defense Systems in the State of Michigan—A Time for Evaluation and Action," February 2006) is true, and his call for "evaluation and action" is urgent. But our present trial court system is a hodgepodge that defies evaluation and prohibits meaningful action. Mr. Cranmer glosses over the broader problem that inhibits the standardization of indigent defense services; the fact that trial courts are primarily funded by counties and municipalities, not by the state. And it's not just defense services that suffer under our schizophrenic system of centralized control and decentralized funding. Almost all trial court functions—information systems, security, probation services, staffing, and case processing—resist standardization and improvement because of it.

We probably should evaluate and measure and do lots of studies. Understand though, the improvement of indigent defense services will require an influx of cash that will not occur absent comprehensive state funding of our trial court system. To pretend otherwise is just wishful thinking.

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