

LAW STUDENT, RECENT GRADUATE AND LAW INTERN PRACTICE COURT RULE

ISSUE

Should the Representative Assembly request that the Michigan Supreme Court amend Michigan Court Rule (MCR) 8.120 to permit law students and recent graduates to practice under the supervision of Michigan Indigent Defense Commission (MIDC) attorneys in private practice similar to how they are permitted to practice in Legal Aid Clinics and Legal Defender Offices?

RESOLVED, that the State Bar of Michigan supports amendment of the Michigan Court Rules to expand the scope of MCR 8.120 to include the ability for law students and recent graduates to practice under the supervision of MIDC attorneys in private practice.

FURTHER RESOLVED, that the State Bar of Michigan proposes the amendment to Chapter 8 of the Michigan Court Rules by amending MCR 8.120, as follows:

Rule 8.120 Law Students and Recent Graduates; Participation in Legal Aid Clinics, Defender Offices, MIDC Compliant Attorneys With 5 Years-Experience, and Legal Training Programs.

(A) [No Change]

(B) MIDC Compliant Attorneys. Law students and recent law graduates, under supervision of a member of the State Bar of Michigan, may staff the private practice of an attorney in the same manner as Legal Aid Clinics and Defender Offices. To qualify as a supervising attorney, the attorney shall:

(1) have a minimum of five (5) years of experience in practice,

(2) be fully compliant with the MIDC, and

(3) carry malpractice insurance.

~~(B)~~ [No Change]

~~(C)~~ [No Change]

~~(D)~~ [No Change]

(1) [No Change]

(2) [No Change in (a)-(b)(i)-(ii)]

The supervising attorney shall assume all personal professional responsibility for the student's or graduate's work, and should consider purchasing professional liability insurance to cover the practice of such student or graduate. Attorneys who supervise law students or recent graduates in private practice shall obtain malpractice insurance as set forth in Section (B).

(3) [No Change]

(4) [No Change]

SYNOPSIS

The proposed addition to the Michigan Court Rules improves the access of indigent criminal defendants to representation by expanding the scope of attorneys under whom law students and recent graduates can gain valuable practical legal experience. The proposed amendment has two purposes: to enhance the profession by providing practical experience that is not taught in law school; and to expand access to legal services for indigent persons.

BACKGROUND

The proposed rule is based upon US. Const., Amend. VI, which provides in relevant part, that “[i]n all criminal prosecutions, the accused shall ... have the Assistance of Counsel for his defence.”

The proposed rule is also based upon Const. 1963, Art 1, Sec. 20, which provides, in pertinent part, that “[i]n every criminal prosecution, the accused shall have the right ... to have the assistance of counsel for his or her defense [and] to have such reasonable assistance as may be necessary to perfect and prosecute an appeal.”

OPPOSITION

None known.

PRIOR ACTION BY REPRESENTATIVE ASSEMBLY

None known.

FISCAL AND STAFFING IMPACT ON STATE BAR OF MICHIGAN

None known.

STATE BAR OF MICHIGAN POSITION

By vote of the Representative Assembly on September 17, 2020

Should the Representative Assembly request that the Michigan Supreme Court amend MCR 8.120 to permit law students and recent graduates to practice under the supervision of MIDC attorneys in private practice similar to how they are permitted to practice in Legal Aid Clinics and Legal Defender Offices?

(a) Yes

or

(b) No