

**REQUEST FOR PROPOSAL
INDIGENT REPRESENTATION AT FIRST ARRAIGNMENT
FY 2019**

The Cass County Courts are seeking proposals for application for an Indigent Defense Contract for First Arraignment for FY 2019 (October 1, 2018 through September 30, 2019).

The award of this Contract is contingent on receipt of state funds through the Michigan Indigent Defense Commission (MIDC).

In order to ensure quality legal representation to all indigent defendants, the Cass County Courts require all proposals to include provisions necessary to comply with the standards set forth by the MIDC. The applicable standards are set forth on Exhibit A and are incorporated into this request by reference.

The Cass County Courts reserve the right to reject any proposal submitted for any reason. Cost is an important consideration, but is not the sole qualification for a successful proposal. Any proposal must be acceptable to the Cass County Courts and approved by the funding unit, Cass County.

PROPOSAL DEADLINES AND PROCESS

Questions on this Request for Proposal are due by: Friday, August 17, 2018, by 5 pm
Proposals due by: Friday August 31, 2018, by 2 pm

A complete original marked as such and three (3) exact duplicate copies marked as such for a total of four complete proposals, evidencing name and address of the proposer(s), as well as any questions on this Request for Proposal, should be submitted to:

Carol Bealor, Court Administrator
60296 M-62
Suite 3
Cassopolis, MI 49031
[269-445-4482](tel:269-445-4482)/carolb@cassco.org

Sealed proposals must be received no later than 2 pm on August 31, 2018 at the address set forth above. Proposals received after 2 pm on August 31, 2018 may not be considered.

Public opening will be on Tuesday, September 4, 2018 at 11:30 am in Judge Dobrich's courtroom in the Law & Courts Building located at 60296 M-62, Cassopolis, Michigan, 49031.

PROPOSAL REQUIREMENTS

- 1. Qualifications**
- 2. Term of Contract**
- 3. Personnel**
- 4. Scope of Representation/Initial Arraignment**
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- 6. Equal Employment Opportunity**
- 7. Gifts/Gratuities**
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- 9. Insurance Requirements**

Qualifications

Proposals may be submitted by individual attorneys, groups of attorneys or firms. Any attorney(s) submitting proposals must have all of the following qualifications:

1. Juris Doctorate degree from an ABA accredited law school
2. Licensed to practice law in Michigan
3. Member in good standing with the Michigan State Bar Association
4. Experience in criminal law work
5. Understand and comply with all applicable federal and state statutes, constitution and case law
6. Understand and comply with applicable Michigan Court Rules
7. Understand and comply with the Michigan Rules of Professional Conduct
8. Understand and comply with ABA Standards of Practice
9. Maintain an office in Cass County
10. Maintain appropriate means of contact to Court and Clients, including but not limited to:
 - Telephone
 - Fax
 - E-mail address
 - Internet access
11. Submit a proposal that complies with the MIDC Standards, I-IV, as approved by the Department of Licensing and Regulatory Affairs (LARA).

Terms of Contract

The term of the agreement shall be from October 1, 2018 through September 30, 2019, subject to receiving funding from the state through MIDC. The parties may agree to renew the agreement for an additional time period if additional funding is received from the state through MIDC.

Personnel

Applicant must provide a minimum of two (2) licensed attorneys, whose names shall be specifically listed in the proposal, as well as the number of years the attorneys have been licensed and the type and years of criminal law experience.

Applicant may have a primary attorney and a back-up attorney to fill the requirements of a minimum of two (2) licensed attorneys.

Any situations requiring more than two (2) attorneys shall be provided by Applicant and Applicant must provide a substitute attorney with commensurate experience, with said substitute attorney approved in advance by the Chief Judge, in situations of conflict, illness, and any other unavailability.

Scope of Representation/Initial Arraignment

The following services and requirements are expected to be provided and complied with:

- Appearance at first arraignment in District Court and adjourned initial appearance hearings in District Court (after first arraignment, clients will be provided with a public defender pursuant to the terms of the indigent defense contract already in place in Cass County)
- All attorneys shall annually complete at least twelve (12) hours of continuing legal education
- All client interviews shall be conducted in a private and confidential setting prior to the date of the next court proceedings to the extent reasonably possible

First arraignments are currently held in District Court every day, Monday through Friday, at 3:30 pm in addition to arraignments occurring on Wednesdays at 9 am. Arraignment times are subject to change.

Applicant attorneys may maintain a private practice; however, Applicant attorneys shall give priority to handling Appearances at first arraignment over private practice matters. Applicant attorneys shall not seek adjournment of first arraignment hearings because of a conflict with a case that is part of their private practice.

Arraignments are currently held 6 times per week. Rotation attorneys in abuse neglect cases currently are paid \$200 per ½ day or \$50 per hour. Projecting that it will take no more than 3.3 hours for the attorneys to meet with all of the defendants and appear at the first arraignment hearings, 6 times per week, this would average \$990 per week to cover all 6 arraignment slots, which results in attorney fees of \$51,480. These estimates are for informational purposes only and are not a limit or representation of fees that will be awarded as a result of this Request for Proposal.

Incurred Costs Disclaimer

The Cass County Courts will not be liable in any way for any costs incurred by Respondents in replying to this proposal request. There are no guarantees of any awards relative to this Request for Proposal.

The Cass County Courts reserve the right to:

- Waive minor technical deficiencies and irregularities, or both in the Request for Proposal, the process of requesting or receiving proposals or the proposals received from submitters.
- Request clarification of all or any portion of a proposal from any or all of the submittals received in response to a request for qualification or proposal or both from any or all of the submitters.
- Accept or reject any or all proposals as determined by the Chief Judge of the Cass County Courts, in her sole discretion, for any reason including but not limited to rejection and disqualification from consideration any or all submissions that the Cass County Courts may deem inaccurate, misleading, exaggerated or unresponsive to the information requested.
- To accept the applicant that, in the sole judgment of the Cass County Courts meets the needs identified in this Request for Proposal and best serves the Cass County Courts overall interests

Equal Employment Opportunity

Any Contractor and subcontractors awarded a contract relative to this Request for Proposal, as required by law, shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly related to employment, because of race, color, religion, national origin, age, sex, or disability that is unrelated to an individual's ability to perform the duties of a particular job or position. Breach of this covenant may be regarded as a material breach by the Contractor of any Agreement resulting from this Request for Proposal.

Gifts/Gratuities

Elected Officials, Department Heads, and/or County and Court employees may not be offered, and shall not accept personal gifts, gratuities, credits or other benefits of economic value due to their official position or business and any Applicant or Contractor shall not offer or make such gifts or gratuities. Breach of this covenant may be regarded as a material breach by the Contractor of any Agreement resulting from this Request for Proposal.

Indemnification and Hold Harmless

The Contractor(s) whose proposal is accepted must agree to the following indemnification and hold harmless responsibilities:

The Contractor(s) shall, at his/her own expense, protect, defend and indemnify and hold harmless the Cass County Courts, its elected and appointed officials, employees and agents from all claims, damages (including but not limited to direct, indirect, incidental, consequential, special and punitive damages), costs lawsuits and expenses including, but not limited to, all costs from administrative proceedings, court costs, and attorney fees, that may be incurred as a result of any acts, omissions or negligence of the selected Contractor(s), its employees or agents or its subcontractors or sub-subcontractors, or any of their officers, employees or agents which may arise out of the contract.

The indemnification responsibilities of the Contractor(s) shall include the sum of damages, costs and expenses which are in excess of the sum paid out on behalf of or reimbursed to the Cass County Courts, its elected and appointed officials, employees and agents or by the insurance coverage obtained and/or maintained by the selected Contractor pursuant to the requirements of this Request for Proposal and the contract entered into.

Insurance Requirements

The Contractor(s) shall carry Professional Liability Insurance at all times a contract is in effect.

The Contractor(s) shall be responsible for insuring all customarily used practice equipment and all materials, which may be used and/or left at the work site. The Cass County Courts shall not be responsible for any loss or damage to the tools and materials of the Contractor(s).

The Contractor(s) shall procure and maintain during the term of the contract Workers' Compensation Insurance, including Employer's Liability coverage, in accordance with the laws of the state of Michigan at all times a contract is in effect.

The Contractor(s) shall provide the Cass County Courts, at the time the contract is executed, the following:

Proof of Professional Liability Insurance and Workers' Compensation Insurance

If any of the required insurance coverages expire during the term of this contract, the Contractor(s) shall deliver renewal certificates to the Chief Judge or her designee at least ten (10) days prior to the expiration date.

Background & Overview of First Four Standards

MIDC was created to improve legal representation for indigent criminal defendants. In October 2011, Governor Snyder issued Executive Order 2011-12, establishing the initial Indigent Defense Advisory Commission, which was responsible for recommending improvements to the state's legal system. These recommendations served as the basis for legislation to address this need and called for the 15-member Indigent Defense Commission that the governor signed into law in July 2013.

MIDC develops and oversees the implementation, enforcement, and modification of minimum standards, rules, and procedures to ensure that indigent criminal defense services providing effective assistance of counsel are delivered to all indigent adults in this state consistent with the safeguards of the United States constitution, the state constitution of 1963, and with the Michigan Indigent Defense Commission Act.

On June 1, 2016, the Michigan Supreme Court conditionally approved the first four standards for indigent criminal defense services. In May, 2017, the four standards were approved by the Department of Licensing and Regulatory Affairs (LARA). Those first four standards cover:

- training and education of counsel,
- the initial client interview,
- use of investigation and experts, and
- counsel at first appearance and other critical stages.

All indigent defense delivery systems in Michigan must submit compliance plans and cost projections to the MIDC no later than November 20, 2017.

Applicable Statutes

§780.997 Duty of compliance with approved plan.

(1) Except as provided in subsection (2), every local unit of government that is part of an indigent criminal defense system shall comply with an approved plan under this act.

(2) A system's duty of compliance with the terms of the plan as prescribed under subsection (1) is contingent upon receipt of a grant in the amount contained in the plan and cost analysis approved by the MIDC.

§ 780.993 Investigation, audit, and review of indigent criminal defense services; cooperation and participation with MIDC; development of plan and cost analysis; award of grant; submission of plan; annual plan; approval or disapproval of plan and cost analysis by MIDC; report; maintenance of local share; necessity for excess funding; appropriation of additional funds; grants to local units of government; compliance with minimum standards; zero grant; funds received by MIDC as state funds.

(1) All indigent criminal defense systems and, at the direction of the supreme court, attorneys engaged in providing indigent criminal defense services shall cooperate and participate with the MIDC in the investigation, audit, and review of their indigent criminal defense services.

(2) An indigent criminal defense system may submit to the MIDC an estimate of the cost of developing the plan and cost analysis for implementing the plan under subsection (3) to the MIDC for approval. Upon approval, the MIDC shall award the indigent criminal defense system a grant to pay the approved costs for developing the plan and cost analysis under subsection (3).

(3) No later than 180 days after a standard is approved by the department, each indigent criminal defense system shall submit a plan to the MIDC for the provision of indigent criminal defense services in a manner as determined by the MIDC and shall submit an annual plan for the following state fiscal year on or before February 1 of each year. A plan submitted under this subsection shall specifically address how the minimum standards established by the MIDC under this act shall be met and shall include a cost analysis. The standards to be addressed in the annual plan are those approved not less than 60 days before the annual plan submission date. This cost analysis shall include a statement of the funds in excess of the local share, if any, necessary to allow its system to comply with the MIDC's minimum standards.

(4) The MIDC shall approve or disapprove a plan or cost analysis, or both a plan and cost analysis, submitted under subsection (3), and shall do so within 60 calendar days of the submission of the plan and cost analysis. If the MIDC disapproves the plan, the cost analysis, or both the plan and the cost analysis, the indigent criminal defense system shall consult with the MIDC and submit a new plan, a new cost analysis, or both within 30 calendar days of the mailing date of the official notification of the MIDC's disapproval. If after 3 submissions a compromise is not reached, the dispute shall be resolved as provided in section 15.

(5) The MIDC shall submit a report to the governor, the senate majority leader, the speaker of the house of representatives, and the appropriations committees of the senate and house of representatives requesting the appropriation of funds necessary to implement the plan for each system approved by the MIDC. The information used to create this report shall be made available to the governor, the senate majority leader, the speaker of the house of representatives, and the appropriations committees of the senate and house of representatives.

(6) Except as provided in subsection (8), an indigent criminal defense system shall maintain not less than its local share. If the MIDC determines that funding in excess of the indigent criminal defense system's share is necessary in order to bring its system into compliance with the minimum standards established by the MIDC, that excess funding shall be paid by this state. The legislature shall appropriate to the MIDC the additional funds necessary for a system to meet and maintain those minimum standards, which funds shall be provided to indigent criminal defense systems through grants as described in subsection (7).

(7) An indigent criminal defense system shall not be required to provide funds in excess of its local share. The MIDC shall provide grants to indigent criminal defense systems to assist in bringing the systems into compliance with minimum standards established by the MIDC.

(8) An indigent criminal defense system is not required to expend its local share if the minimum standards established by the MIDC may be met for less than that share, but the local share of a system that expends less than its local share under these circumstances is not reduced by the lower expenditure.

(9) This state shall appropriate funds to the MIDC for grants to the local units of government for the reasonable costs associated with data required to be collected under this act that is over and above the local unit of government's data costs for other purposes.

(10) Within 180 days after receiving funds from the MIDC under subsection (7), an indigent criminal defense system shall comply with the terms of the grant in bringing its system into compliance with the minimum standards established by the MIDC for effective assistance of counsel.

(11) If an indigent criminal defense system is awarded no funds for implementation of its plan under this act, the MIDC shall nevertheless issue to the system a zero grant reflecting that it will receive no grant funds.

(12) The MIDC may apply for and obtain grants from any source to carry out the purposes of this act. All funds received by MIDC, from any source, are state funds and shall be appropriated as provided by law.

§780.983 Definitions.

(h) "Local share" or "share" means an indigent criminal defense system's average annual expenditure for indigent criminal defense services in the 3 fiscal years immediately preceding the creation of the MIDC under this act, excluding money reimbursed to the system by individuals determined to be partially indigent.

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 Michigan Supreme Court and approved by LARA 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 Michigan Supreme Court and approved by LARA 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 pretrial 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 pretrial 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 Michigan Supreme Court and approved by LARA 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 Page 5 of 10 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 Michigan Supreme Court and approved by LARA 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 incustody defendants. The intent is not to lengthen any jail stays. The MIDC believes that casespecific 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.