Order

Michigan Supreme Court
Lansing, Michigan

Entered: December 13, 2002

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

2001-10

Amendment of Rule 6.005
and Adoption of Rule 8.123
of the Michigan Court Rules

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, Rule 6.005 of the Michigan Court Rules is amended and Rule 8.123 of the Michigan Court Rules is added, effective January 1, 2004.

The adoption of Rule 8.123 at this time will not preclude future Court consideration of methods by which the role of individual judges in the appointment process can be de-emphasized, including the model indigent defense delivery system plan that is currently being designed by the Public Defense Task Force in cooperation with the State Bar of Michigan.

[Rule 6.005 is amended as indicated below.]

Rule 6.005 Right to Assistance of Lawyer; Advice; Appointment for Indigents; Waiver; Joint Representation; Grand Jury Proceedings

(A)-(H) [Unchanged.]

~~(I) Plan for Appointment. In each county, the court with trial jurisdiction over felony cases must adopt and publish a plan to govern the process of selecting and appointing lawyers to represent indigent defendants and file it with the supreme court clerk and the state court administrator under MCR 8.112(B)(3).~~

(~~J~~I) [Subrule (J) re-lettered, but otherwise unchanged.]

[New Rule 8.123 is added as indicated below.]

Rule 8.123 Counsel Appointments; Procedure and Records

(A) Applicability. This rule applies to all trial courts, which means all circuit courts, district courts, probate courts, and municipal courts.

(B) Plan for Appointment. Each trial court must adopt a local administrative order that describes the court's procedures for selecting, appointing, and compensating counsel who represent indigent parties in that court.

(C) Approval by State Court Administrator. The trial court must submit the local administrative order to the State Court Administrator for review pursuant to MCR 8.112(B)(3). The State Court Administrator shall approve a plan if its provisions will protect the integrity of the judiciary.

(D) Required Records. At the end of each calendar year, a trial court must compile an annual written or electronic report of:

(1) the number of appointments given to each attorney by that court;

(2) the number of appointments given to each attorney by each judge of that court;

(3) the total public funds paid to each attorney for appointments by that court; and

(4) the total public funds paid to each attorney for appointments by each judge of that court.

Trial courts that contract for services to be provided by an affiliated group of attorneys may treat the group as a single entity when compiling the required records of appointments and compensation.

The records required by this subrule must be retained for the period specified by the State Court Administrative Office's General Schedule 16.

(E) Public Access to Records. The records must be available at the trial court for inspection by the public, without charge. The court may adopt reasonable access rules, and may charge a reasonable fee for providing copies of the records.

(F) Reports to State Court Administrator. When requested by the State Court Administrator, a trial court must:

(1) provide a copy of its most recent annual report; and

(2) provide data on an individual attorney or judge for a period specified by the request.

Young, J. (*concurring*). Cases of appointment abuse, although not epidemic, are periodically recurrent and of sufficient gravity to require this Court's increased vigilance to safeguard the public

trust as well as the taxpayer's purse. I support the amendments of the court rules. The sunshine requirements imposed by these amendments are a significant step toward enhancing public confidence in the judiciary.

If the changes implemented are insufficient, and local courts continue to exercise their appointment discretion inappropriately, I have no doubt that this Court will take further and more aggressive action to ensure that appointment abuses are eradicated.

Staff Comment: MCR 8.123 was adopted on December 13, 2002, effective January 1, 2004. Subrule (B) requires trial courts to standardize their procedures for selecting and compensating appointed counsel. Subrule (D) requires the courts to maintain records of appointments and compensation. Subrule (E) requires that the records be public records.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.