

# Attorney Waiver and Appointment for Indigent Defendants Checklist<sup>1</sup>

- At the arraignment on the warrant or complaint, advise defendant:
  - of entitlement to a lawyer's assistance at all court proceedings, and
  - that the defendant is entitled to a lawyer at public expense if he/she wants one and is financially unable to retain one. [MCR 6.005\(A\)](#).
- Ask defendant whether he/she wants a lawyer and, if so, whether he/she is financially unable to retain one. [MCR 6.005\(A\)](#).
- If defendant requests a lawyer and claims financial inability to retain one, refer the defendant to the local funding unit's appointing authority for indigency screening, if available. If there is no appointing authority, or if the defendant seeks judicial review of the authority's decision, determine whether the defendant is indigent guided by the following factors:
  - present employment, earning capacity and living expenses;
  - outstanding debts and liabilities, secured and unsecured;
  - whether he/she has qualified for and is receiving any form of public assistance;
  - availability and convertibility, without undue financial hardship to him/her and his/her dependents, of any personal or real property owned;

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<sup>1</sup> For more detailed information on this topic, see the Michigan Judicial Institute's [Criminal Proceedings Benchbook, Vol. 1](#).

- the rebuttable presumptions of indigency listed in the MIDC's indigency standard; and
- any other circumstances that would impair the ability to pay a lawyer's fee as would ordinarily be required to retain competent counsel. [MCR 6.005\(B\)](#).
- Note:** Encourage any defendant who appears without counsel to be screened for indigency and the potential appointment of counsel. [MCR 6.005\(D\)](#).
- Note:** Review of an appointing authority's determination of indigency is de novo and the court may consider information not presented to the appointing authority. [MCR 6.005\(B\)](#).
- Note:** The ability to post bond for pretrial release does not make defendant ineligible for appointment of a lawyer. [MCR 6.005\(B\)](#).
- Note:** If defendant is able to pay part of the cost of a lawyer, contribution to the cost of providing a lawyer and establishment of a plan for collecting the contribution may be required. [MCR 6.005\(C\)](#).
- If it is determined that defendant is financially unable to retain a lawyer, promptly refer the defendant to the local indigent criminal defense system's appointing authority for appointment of a lawyer. [MCR 6.005\(D\)](#).
- Do not permit defendant to make an initial waiver of the right to be represented by a lawyer without first:
  - advising him/her of:
    - the charge;
    - the maximum possible prison sentence for the offense;
    - any mandatory minimum sentence required by law; and
    - the risk involved in self-representation;
  - offering him/her the opportunity to consult with a retained lawyer or, if he/she is indigent, the opportunity to consult with an appointed lawyer. [MCR 6.005\(D\)](#).
- Determine whether defendant has made his/her waiver of the right to counsel unequivocally. *People v Anderson*, 398 Mich 361, 367 (1976).

- Determine whether defendant has made waiver of right to counsel knowingly, intelligently, and voluntarily. *Anderson*, 398 Mich at 368.
- Determine whether defendant is aware of the dangers and disadvantages of self-representation, so that the record will establish that he/she knows what he/she is doing and his/her choice is made with eyes open. *Anderson*, 398 Mich at 368.
- Determine whether defendant's self-representation will disrupt, unduly inconvenience, or burden the court and the administration of the court's business. *Anderson*, 398 Mich at 368.
- Grant or deny defendant's waiver of the right to the assistance of counsel/request for self-representation.

