



MICHIGAN COURTS NEWS RELEASE

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Court Conditionally Approves Initial Standards for Indigent Defense Urges Legislature to take Prompt Action to Address Constitutional Concerns

LANSING, MI, June 1, 2016 – With [Administrative Order No. 2016-2](#), the Michigan Supreme Court today announced its conditional approval of standards that would regulate the appointment of counsel for indigent defendants in criminal cases. The standards, initially submitted by the Michigan Indigent Defense Commission (MIDC), also impose specific training, experience, and continuing legal education requirements on attorneys who seek appointment as counsel in these cases.

The Court took this action to enable the legislatively-approved process, which is intended to promote the goal of providing effective assistance of counsel for indigent defendants in criminal cases, to continue without disruption. Although the Court shares the Legislature's goal of providing effective assistance of counsel for these defendants, the Court's approval is subject to and contingent on legislative revision of the Michigan Indigent Defense Commission Act (the Act) to address provisions of uncertain constitutionality. These provisions include:

- The Act places the MIDC within the judicial branch without providing the Court the ability to supervise and direct the commission's activities and employment. This may contravene the general principle of separation of powers (Const 1963, art 3, § 2) and impinge upon the constitutional function of the Court to supervise the judicial branch.
- Enforcement mechanisms in the Act that allow the MIDC to develop and oversee implementation, enforcement, and modification of minimum standards and to assure compliance might present an unconstitutional usurpation of the Court's authority to "have general superintending control over all courts." (Const 1963, art 6, § 4)
- The Act arguably allows the MIDC to regulate the legal profession; however, the Constitution exclusively assigns regulation of the legal profession to the judiciary. (Const 1963, art 6, § 5)

In the [order](#), the Court urged the Legislature to address these constitutional concerns by the end of the year, at which time the standards would take full effect. If these concerns are not sufficiently addressed, the Court's conditional approval will be automatically withdrawn on December 31, 2016.

The Court also noted that this conditional approval reflects its ongoing authority to establish, implement, and impose professional standards (see Administrative Order No. 1981-7 and No. 2004-6).

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