

**STATE OF MICHIGAN
IN THE SUPREME COURT**

IN RE: WAYNE COUNTY CRIMINAL
DEFENSE BAR ASSOCIATION, and
THE CRIMINAL DEFENSE ATTORNEYS
OF MICHIGAN,

Plaintiffs.

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) Case No. _____
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)
) **ORAL ARGUMENT**
) **REQUESTED**
)

**MEMORANDUM IN SUPPORT OF REQUEST FOR
WRIT OF SUPERINTENDING CONTROL**

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I. Introduction

For over 100 years, Michigan law has required that fees paid to attorneys appointed to represent indigent criminal defendants constitute “reasonable compensation for services performed.” MCL 775.16; MSA 28.1253. This Court has made it clear that it expects the legislature’s mandate to be followed. *See In the Matter of the Recorder’s Court Bar Assoc.*, 443 Mich. 110, 122 (1993) (“[A]ssigned counsel in Michigan presently have a statutory right to reasonable compensation”). Michigan’s law in this regard is laudatory and could be a model for the nation. Unfortunately, however, the judiciary in Wayne County refuses to comply with Michigan’s clear and unambiguous law. As explained in more detail below, fees paid to criminal defense attorneys appointed to represent indigent defendants in Wayne County are among the lowest in the nation and far below anything that could conceivably constitute “reasonable compensation for services performed.”

The plaintiffs in this action -- the Wayne County Criminal Defense Bar Association and the Criminal Defense Attorneys of Michigan -- are two groups whose members accept appointments to represent indigent defendants in Wayne County. The inadequate fees paid to appointed attorneys have already caused, and will continue to cause, substantial harm to both the members of the associations and their clients. Indeed, Robert Spangenberg, a nationally renowned expert in indigent defense services, has investigated the situation in Wayne County and has concluded that fees paid under the current schedule:

- are unrelated to the time an attorney spends completing a task; (Exhibit 1, Spangenberg Aff. ¶ 34(a));
- are unrelated to the effort or skill required to complete the particular task for which they are paid; (*Id.* ¶ 34(a))
- reduce attorneys’ ability and incentives to prepare for trial and encourage attorneys to seek early plea agreements rather than force the government to prove its case; (*Id.* ¶ 34(e))

- virtually eliminate any incentives for attorneys to file motions of any sort, chilling the exercise of their clients' Fourth, Fifth, Sixth, and Eighth Amendment rights. (*Id.* ¶¶ 33-34, 37)

Additional critical facts include that:

- Wayne County's funding for appointed criminal defense attorneys, per capita, is *less than half* of the amount spent by any other major metropolitan center in the country. (*Id.* ¶ 23)
- Wayne County's treatment of the defense bar stands in stark contrast to the prosecution, which receives far more funding despite the fact that it receives far more funding (including millions to renovate its offices) and investigative services (i.e. the police) at no cost. (*See* Exhibit 10)
- Attorneys paid under these schedules often do not earn enough to cover meager, stripped-down overhead expenses, even when those expenses do not include an office, a secretary, or access to legal research. (*Id.* ¶ 34(b), 36; *see also* Ex. 2, Stiffman Aff. ¶ 2, 22)

The Chief Judges of the Wayne County Circuit Court have the authority and the duty to establish a fee schedule that complies with the legislative mandate. *See Recorder's Court Bar*, 443 Mich. at 122. Notwithstanding their concessions -- in private and during legislative hearings -- that the current fee schedule violates the statutory mandate and that a new schedule is necessary, they have failed to implement a compliant schedule. Because the Chief Judges are violating their clear legal duty under MCL 775.16, and because this suit is the only mechanism by which the harm to Plaintiffs can be alleviated, Plaintiffs ask that this Court issue a Writ of Superintending Control to the Chief Judges, ordering them to vacate the current fee schedule and to implement either: (1) a fee schedule providing for hourly rates of \$90; (2) the "Jobes Plan," an event-based fee schedule previously approved by a Special Master appointed by this Court, as adjusted for inflation; or (3) a more detailed event-based fee schedule proposed by the WCCBDA and identified as reasonable by the Chief Judges.

II. Statement of Facts

A. The Origins Of Payment To Appointed Michigan Attorneys.

Attorneys appointed to defend indigent criminal defendants in Michigan have been entitled to some form of compensation since 1857, when the Michigan legislature passed 1857 P.A. 109. *See Recorder's Court Bar*, 443 Mich. at 124. At the time this statute was passed, the United States Supreme Court *had not yet recognized the Constitutional right to counsel*. Nevertheless, the Michigan legislature still saw fit to provide compensation in cases where an attorney was appointed to defend an indigent criminal defendant. *See id.* at 125 (“[I]f an attorney was appointed to represent an indigent criminal defendant, *then* that attorney was entitled to at least *some* compensation.”) (emphasis in original). For a time in the late nineteenth century, the fees were fixed: attorneys defending alleged murderers received \$25, alleged felons \$10, and alleged misdemeanants \$5. *Id.*

In 1893, the Michigan Legislature amended the fixed fee provisions. Instead of setting flat-fees for each case, the new statute provided that appointed counsel was entitled to “reasonable compensation for services performed,” so long as that compensation did not exceed \$50 per case. *See Recorder's Court Bar* at 125; 1893 P.A. 96. The statutory maximum was amended in 1911 to \$250 for murder cases and \$100 in all other cases. *Recorder's Court Bar*, 143 Mich. at 126 n.22; 1911 P.A. 23.

In 1927, the Michigan Legislature again amended the statute by removing any maximum, or any fixed rates for payment. Attorneys were thereafter entitled to “reasonable compensation for services performed,” as determined by judges on an individualized basis. *Id.* at 126 n.22. This framework remained in place when the Supreme Court held, in *Gideon v. Wainwright*, that the Sixth Amendment to the United States Constitution, applied to the states through the Fourteenth Amendment, guaranteed the right to counsel to indigents accused of

felonies. 372 U.S. 335 (1963). The 1927 version of the statute, providing that payments to appointed criminal defense counsel must be “reasonable compensation for services performed,” remains in place today.

B. Wayne County’s Prior Interpretations Of The “Reasonable Fee” Statute And Litigation Arising From Those Interpretations.

1. 1981 And The “Jobes Plan.”

In 1967 and 1970, respectively, the Wayne County Circuit Court and the Recorder’s Court for the City of Detroit established event-based fee schedules to compensate counsel appointed to defend indigents accused of crimes. *See Recorder’s Court Bar*, 443 Mich. at 117; *see also* Exhibit 3, Excerpts from the 1993 Report of Special Master Tyrone Gillespie, at 4. These schedules continued, without an adjustment for inflation, until 1981. Because inflation between 1967 and 1981 substantially reduced the fees paid to appointed counsel, some of the plaintiffs in this case filed a complaint in 1981 for a Writ of Superintending Control in this Court, seeking an increase in fees consistent with the devastating rates of inflation the Detroit area had experienced since 1967. *See id.*

The Chief Judges responded to the 1981 complaint by establishing a committee to study the fee schedule and recommend changes. *See id.* The committee, chaired by Judge Clarice Jobes of the Recorder’s Court, proposed increases to the event-based schedules that roughly tripled the fees established in the 1967 schedules. *See Recorder’s Court Bar*, 443 Mich. at 113 n. 3. The proposed changes became known as the “Jobes Plan.” *See id.*

After receiving the committee’s recommendation, the Chief Judges of the Wayne County Circuit Court and the Recorder’s Court voted to adopt the “Jobes Plan” effective December 1, 1982. *See id.* As a result of the Wayne County courts’ adoption of this new fee

schedule, this Court dismissed the complaint for superintending control as moot. (See Ex. 3, Gillespie Report, at 4)

The “Jobs Plan,” however, was never implemented. *Recorder’s Court Bar*, 443 Mich. at 113 n. 3. Following the dismissal of plaintiffs’ complaint, but before the new fee schedule could take effect, the Chief Judges “succumbed to county budgetary concerns and refused to implement the Plan.” *Id.* Instead, the Chief Judges formulated a different fee schedule that compensated assigned counsel at “significantly lower rates” than the rates provided for in the “Jobs Plan.” *Id.*

2. 1989 And This Court’s Decision In *Recorder’s Court Bar*.

In the late 1980s, Wayne County Court Administrator George Gish was asked to devise a new fee payment system that did not reduce the total pay to appointed criminal defense counsel in Wayne County but did, at the same time, promote docket efficiency and eliminate unnecessary jail stays. *Recorder’s Court Bar*, 443 Mich. at 118. Gish settled on a system which provided payment based exclusively on the prospective sentence of an appointed attorney’s client. Gish apparently came up with his figures based on a statistical analysis, which purportedly found that attorneys generally did more work, and spent more time, on cases where their clients faced longer sentences. *Recorder’s Court Bar*, 443 Mich. at 118.

Because of the low rates of pay they received from the new fee arrangement, and because of the irrationality by which that system operated, some of the plaintiffs in this case (and other plaintiffs) sought a Writ of Superintending Control in this Court in 1989. In that suit, plaintiffs requested that the Court vacate the fee schedule then in place and mandate the implementation of a new fee schedule, such as payments based on a reasonable hourly rate or, alternatively, the “Jobs Plan” (adjusted for inflation). *Id.* at 118-120.

In response to that petition for a writ of superintending control, the Court appointed a Special Master, the Honorable Tyrone Gillespie, to take testimony and make recommendations to the Court. *Id.* at 113. After Judge Gillespie heard testimony from some thirty-two witnesses, he issued his report to this Court. (Gillespie Report, Ex. 3) At the conclusion of his detailed, 226-page report, Judge Gillespie recommended that the then-existing fee schedule be vacated and that a new schedule, either paying on an hourly rate of \$75 or through the Jobes Plan, be implemented. (Ex. 3 at 222-26).

Judge Gillespie's report was considered by this Court in *Recorder's Court Bar*. Adopting Judge Gillespie's factual findings, this Court held that based on Michigan law, the fee schedule must be vacated because it did not provide appointed attorneys with "reasonable compensation for services performed." *Recorder's Court Bar*, 443 Mich. at 116. The Court, however, decided not to mandate a particular fee arrangement; rather, it "elect[ed] instead to leave that determination to the sound discretion of the chief judges of the respective courts." *Id.*

C. The Fee Schedule In Wayne County Today.

Shortly after this Court's decision in *Recorder's Court Bar* in 1993, the Chief Judges of the Wayne County Circuit Court and Recorder's Court (advised again by Mr. Gish) implemented a new fee schedule that established graduated, event-based fees dependent on the seriousness of the offense. This fee schedule, unfortunately, set fees for the defense of some cases that were even lower than the 1967 fee schedule.

The 1994 fee schedule was not formalized into an administrative order until 1998, when the Chief Judges issued Administrative Order 1998-03, a schedule virtually identical to the system implemented in 1994. (See Ex. 4) Thereafter, on June 25, 2001, the Chief Judge entered an administrative order requiring an across-the-board 10% reduction in all fees paid pursuant to

Administrative Order 1998-3. (See Ex. 4-5)¹ Under the “fee schedule” -- Administrative Order 1998-3 reduced by 10% across-the-board -- payments made to appointed Wayne County criminal defense attorneys today are, in many cases, equivalent to or lower than payment for the same tasks in 1967, despite inflation and increased overhead costs.

The fee statute on its face produces anomalous and absurd results. For example:

- An attorney could receive as little as \$54 for spending scores of hours working on a motion to suppress, including investigating the facts underlying the motion, researching the motion, and arguing the motion in front of the court. (Exs. 4-5)
- An attorney can receive a *maximum* of \$225 for spending hundreds of hours investigating a murder case. (Exs. 4-5)
- An attorney can receive a *maximum* of \$45 for interviewing a client in jail for many hours over a period of several days, unless he or she receives special court approval beforehand. (Exs. 4-5)
- An attorney can receive a *maximum* of \$108 for a day of trial if his or her client faces a light sentence, regardless of the length or difficulty of that trial day. (Exs. 4-5)
- Attorneys are paid only half of the amounts stated for defending the same criminal defendant in two separate cases, even if the cases are entirely separate and require completely separate investigation, preparation, and trial. (Exs. 4-5).

As applied in practice, the statute has produced even more egregious results. For example:

- In defending Donald Cole, charged with possession of cocaine, an attorney interviewed the client, took discovery, and appeared in court on five separate occasions including two pretrial conferences, a one-day bench trial, and two days of sentencing (including one in which a bench warrant was set aside). For his approximately 50

¹ Notably, the judges, prosecutors and court employees who have to withstand the same cut have received raises over the last twenty years, while payments to appointed counsel have remained virtually identical, despite inflation and increases in the cost of doing business.

hours of work, he was paid \$400, about \$8.00 per hour. (Ex. 6, Churikian Aff. ¶ 4)

- In defending McKinley Hixon, charged with a third offense of fleeing and alluding, an attorney made five court appearances including a docket conference, a calendar conference, a final pretrial conference and two days of trial, after which his client was found not guilty. For his approximately 70 hours of work, the attorney was paid \$430, an average of \$6.14 per hour. (*Id.* ¶ 5)
- In defending Clarence Burks, charged with multiple counts of first degree criminal sexual conduct (and facing life in prison), an attorney made over ten court appearances including three days of trial, after which the case against Mr. Burks was dismissed. For his well over 100 hours of work, the attorney was paid \$1,910, an average of (at most) \$19.10 per hour. (Ex. 7, O'Meara Aff. ¶¶ 1-6)

These examples are similar to the vast majority of cases where private counsel are appointed to defend indigent criminal defendants in Wayne County.

D. How Wayne County's Fee Schedule Compares Nationally

The funding of the Wayne County indigent defense system is uniquely inadequate when compared to other states across the country. Specifically, Michigan is one of only four states (the others being South Dakota, Utah, and Pennsylvania) where the state government (as opposed to city or county) provide no funds whatsoever for indigent criminal defense at the trial level. (Ex. 1, Spangenberg Aff. ¶ 20) And Wayne County's contribution to indigent criminal defense is far inferior, by any measure, to that provided elsewhere. Wayne County provides approximately \$6.20 per capita for indigent criminal defense. This is *less than half* of the amount provided by any other major metropolitan center in the country. (*Id.* ¶ 23)

Similarly, the manner in which appointed criminal defense attorneys are paid is antiquated and unsatisfactory compared to models employed elsewhere. The event-based fee schedule currently in place is rare today. (Ex. 1, Spangenberg Aff. ¶¶ 27-28) These types of schedules were repealed in other jurisdictions because there "proved to be no rational

relationship between the event and the amount of work required to be performed.” (*Id.*) Accordingly, event-based fees are now employed in very few places across the country, and in no other major metropolitan area other than Wayne County. (*Id.*)

E. Plaintiffs’ Attempts to Alleviate the Problem.

Immediately after the June 25, 2001 10% across-the-board fee reduction, representatives from plaintiffs (and others) met with the then-Chief Judge and attempted to remedy the problem. (Ex. 8, Evans Aff. at ¶¶ 3-4) Beginning in the Spring of 2002, representatives from Plaintiffs engaged in a series of detailed negotiations with the Chief Judges. (*Id.* at ¶¶ 4-5) WCCBDA presented the Chief Judges with a specific proposal for a fee schedule which it believed provided appointed counsel with reasonable compensation for services performed. (*Id.* at ¶ 6)

On August 23, 2002, Wayne County Chief Judge Mary Beth Kelly attended a meeting of the Wayne County Ways and Means Committee in which she described the illegality of the current fee schedule. (*Id.* at ¶ 7) Chief Judge Kelly conceded that the current schedule blatantly violated the statutory reasonableness mandate and that, if Plaintiffs were forced to file a lawsuit challenging the schedule, the suit was quite likely to be successful. (*Id.*) Chief Judge Kelly informed the committee of the amount of funding necessary to comply with WCCBDA’s proposal and requested that it be added to the Court’s budget. (*Id.*)

Despite these admissions and the efforts of Plaintiffs, the Chief Judges have retained the current schedule, refusing to implement one which provides reasonable compensation for services performed. Accordingly, Plaintiffs are faced with no alternative to the present suit.

III. Argument.

A. This Court Has The Power And The Duty To Issue A Writ Of Superintending Control.

This Court has the power and the duty to issue writs of general superintending control over lower courts. *See* MCR 3.302; *Lapeer County Clerk v. Lapeer Circuit Judges*, 640 N.W.2d 567, 572 (Mich. 2002) (“[T]his Court has general system-wide superintending control over the lower courts.”). This responsibility is part and parcel of this Court’s obligation, under the Michigan Constitution, “to issue, hear and determine prerogative and remedial writs” when they are necessary. *See* Mich. Const. Art. VI, § 4; *see In re Huff*, 352 Mich. 402, 417 (1958) (“The superintending control conferred by Constitution on this Court is a power separate, independent and distinct from its other original jurisdiction and appellate powers, its purpose being to keep the courts themselves within bounds and to insure the harmonious working of our judicial system.”) (citations omitted).

The standards for issuing a writ of superintending control are well established. The writ is warranted if: (1) the Chief Judges of the Wayne County Court are violating a clear legal duty; and (2) plaintiffs have no adequate remedy other than the writ sought. *See Recorder’s Court Bar*, 143 Mich. at 116; *Lapeer County Clerk*, 640 N.W.2d at 572; *Frederick v. Presque Isle County Circuit Judge*, 439 Mich. 1, 4 (1991). As described below, both of those standards are satisfied here.

1. The Chief Judges Have Defied A Clear Legal Duty Imposed By Michigan Statute To Establish A Reasonable Fee Schedule.²

This Court established the framework for resolving Plaintiffs' claims in *Recorder's Court Bar*, 443 Mich. at 123-28. There, the Court considered whether the fee schedule then in place provided "reasonable compensation for services performed," and held that it did not. *Id.*

In *Recorder's Court Bar Association*, this Court held that "the compensation actually paid must be reasonably related to the representational services that the individual attorneys actually perform." *Id.* at 131 (emphasis in original). The Court declined to establish a "specific definition or formula" for calculating what would constitute "reasonable compensation." *Id.* at 129. The Court did, however, identify the following factors as relevant in ascertaining whether fees were reasonable:

- the experience and ability of the attorney
- the time and labor needed to perform the legal service properly
- the novelty and difficulty of the issues involved
- the fee customarily charged in the locality for similar circumstances
- the time limitations imposed on the lawyer by the representation

² Besides the Chief Judges' violation of MCL 775.16, Plaintiffs have also alleged in their Complaint that the Wayne County fee schedule creates a systemic violation of the Sixth Amendment to the United States Constitution. Complaint ¶ 37; see, e.g., *Luckey v. Harris*, 860 F.2d 1012, 1017 (11th Cir. 1988); *State v. Smith*, 681 P.2d 1374 (Ariz. 1984); *Makemson v. Martin County*, 491 So.2d 1109 (Fla. 1986); *State v. Peart*, 621 So.2d 780 (La. 1993); *Jewel v. Maynard*, 383 S.E.2d 536, 543-46 (W.Va. 1989). However, in *Recorder's Court Bar*, this Court saw fit to decide Plaintiffs' request for a Writ of Superintending Control based solely on Michigan law, see 143 Mich. at 112 & n.2, and Plaintiffs agree that a similar framework is appropriate here. Because Plaintiffs do not want to burden the Court with unnecessary briefing, Plaintiffs have not briefed the systemic Sixth Amendment issue here. However, if the Court believes that the current fee schedule complies with Michigan law, or if the Court desires briefing on the 6th Amendment issue, Plaintiffs request leave to, and reserve their right to, brief the issue.

- the lawyer's out-of-pocket expenses
- the rate paid to prosecution attorneys

Id. at 129 & n.26.³

Importantly, the Court also held that some factors were *not* relevant in determining whether a fee schedule provided reasonable compensation:

- a fee schedule did not provide “reasonable compensation” merely because attorneys were willing to take cases at those rates. *Id.*
- budgetary concerns could be relevant in determining whether fees paid were “reasonable,” but these considerations “should seldom, if ever, be controlling.” *Id.* at 129 n.6. Rather, “[t]he counties have a duty to fund whatever the chief judge, in the exercise of sound discretion, deems appropriate.” *Id.*

Applying the seven factors identified in *Recorder's Court Bar* to the facts of this case confirms that the fee schedule currently in place in Wayne County violates the Michigan statute. Specifically:

a. ***Experience or Ability of the Attorney:*** On its face, the schedule does not base compensation in any respect on the experience or ability of the attorney who performs the services. Rather, payments to attorneys two weeks out of law school are identical to those made to skilled, veteran practitioners with a wealth of experience. This weighs against the “reasonableness” of the fee schedule. Compare *Hulse*, 306 N.W.2d at 710 (finding unreasonable an award of attorney's fees that did not take into account the experience and standing of the attorney performing the services); *Johnson*, 441 N.E.2d at 948 (finding abuse in discretion in trial court's award of attorney's fees that did not contemplate the attorney's skill

³ These factors have been applied, virtually uniformly, across jurisdictions. See *State v. Crittendon County*, 896 S.W.2d 881 (Ark. 1995); *Tappe v. Circuit Court, Sixth Judicial Circuit*, 326 N.W.2d 892, 895 (S.D. 1982); *State v. Sidney*, 225 N.W.2d 438 (Wisc. 1975); *Lascher v. State*, 414 P.2d 398 (Cal. 1966); *Lindh v. O'Hara*, 325 A.2d 84 (Del. 1974); *People v. Johnson*, 441 N.E.2d 946 (Ill. 1982); *Hulse v. Wifvat*, 306 N.W.2d 707 (Iowa 1981); *State v. McKenney*, 582 P.2d 573 (Wash. 1978).

and experience); *Sidney*, 225 N.W.2d at 438 (holding that a determination of reasonable compensation must include consideration of the professional skill and experience called for and the standing of the attorney); *Crittenden County*, 896 S.W.2d at 886 (holding that, in making a determination of reasonable compensation for legal services, a trial court must consider the experience and ability of the attorney); *Zarabia v. Bradshaw*, 912 P.2d 5, 8 (Ariz. 1996) (en banc) (same).

b. ***Time Needed to Perform Services:*** In practice, the current fee schedule does not provide payment reasonably related to the time an attorney needs to perform the services for which he is paid. To the contrary, in many cases, the fee schedule provides payment entirely disproportionate to the time an attorney spent completing the task (Ex. 1, Spangenberg Aff. ¶ 34). Moreover, many of the tasks, such as investigation and preparation for a trial, cannot in most cases be completed, consistent with Sixth Amendment standards, for the minimal amount attorneys are paid for those services. (*Id.* ¶¶ 34-37) This fact alone demonstrates that the fee schedule is unreasonable. *See Recorder's Court Bar*, 143 Mich. at 131; *compare Hulse*, 306 N.W.2d at 710 (finding unreasonable an award of attorney's fees that did not take into account the time necessarily spent performing the services); *Johnson*, 441 N.E.2d at 948 (same); *Tappe*, 326 N.W.2d at 895 (same); *Crittenden County*, 896 S.W.2d at 886 (holding that, in making a determination of reasonable compensation for legal services, a trial court must consider the time and labor required to perform the legal services properly).

c. ***Difficulty of the Services Performed:*** In practice, the current fee schedule provides payments entirely unrelated to the difficulty of completing a particular task (Ex. 1, Spangenberg Aff. ¶ 34(a)). This, too, contributes to the unreasonableness of the fee schedule. *Compare Hulse*, 306 N.W.2d at 710 (finding unreasonable an award of attorney's fees

that did not take into account the nature, extent, or difficulty of the services provided); *Sidney*, 225 N.W.2d at 438 (holding that a determination of reasonable compensation must include consideration of the character of the services provided, the trouble involved in providing the services, and the character and importance of the litigation); *Tappe*, 326 N.W.2d at 895 (finding unreasonable an award of fees, where trial court did not consider the nature of the services rendered, the complexity of the case, or the character and importance of the litigation); *Crittenden County*, 896 S.W.2d at 886 (holding that, in making a determination of reasonable compensation, a trial court must consider the novelty and difficulty of the issues involved).

d. ***Fee Customarily Charged in the Locality for Similar Services:***

The fees paid to appointed criminal defense counsel under the fee schedule are a mere fraction of the amount paid to retained attorneys (Ex. 2, Stiffman Aff. ¶ 25), who theoretically perform identical services. As other courts have held, this weighs against the reasonableness of the fee schedule. See *McKenney*, 582 P.2d at 578 (finding unreasonable a court award of fees which represented less than one-half of what was considered a reasonable compensation for similar work in the community); *Hulse*, 306 N.W.2d at 710 (finding unreasonable an award of attorney's fees that did not take into account the fee customarily charged for similar services); *Lindh*, 325 A.2d at 93 (finding abuse of discretion in trial court's award of fees and holding that a determination of reasonable compensation must include the 'going rate' prevailing in other comparable jurisdictions for similar services); *Crittenden County*, 896 S.W.2d at 886 (holding that, in making a determination of reasonable compensation for legal services, a trial court must consider the fee customarily charged in the locality for similar legal services).

e. ***Time Limitations Imposed on the Lawyer by the Representation:***

The low fees provided appointed counsel in Wayne County force attorneys taking such cases to

take on tremendous caseloads, which do not allow sufficient devotion to each case and forces attorneys to make unfortunate, but unavoidable, resource allocation decisions. (Ex. 1, Spangenberg Aff. ¶ 34(b-d)). This contributes to the unreasonableness of the fee schedule. *Compare Crittenden County*, 896 S.W.2d at 886 (holding that, in making a determination of reasonable compensation for legal services, a trial court must consider the time limitations imposed upon the defense or by the circumstances of the case).

f. ***The Lawyer's Out-of-Pocket Expenses:*** On its face, the fee schedule includes no provision to compensate an attorney for his or her out-of-pocket expenses. Moreover, the fee schedule frequently fails to cover the overhead expenses incidental to an attorney's law practice. (Ex. 2, Stiffman Aff. ¶¶ 2, 22) This fact weighs heavily against reasonableness. *Compare McKenney*, 582 P.2d at 578 (finding unreasonable a court award of fees which represented only one-half of the overhead chargeable to the appointed counsel); *Johnson*, 441 N.E.2d at 948 (holding that a fee award which is insufficient to cover reasonable office overhead and expenses of trial is clearly unreasonable); *Tappe*, 326 N.W.2d at 895 (same); *Zarabia*, 912 P.2d at 8; *Smith*, 747 P.2d at 816.

g. ***The Rate Paid to Prosecution Attorneys:*** The fee schedule under which appointed criminal defense counsel are paid stands in stark contrast to Wayne County's funding of its prosecutors, who are given *double* the aggregate funds provided for criminal defense services despite the fact that Wayne County prosecutors receive fees to modernize their offices and new furniture directly from the County, and investigative services from the police for free. This disparity weighs heavily against a finding of reasonableness. *Compare Lindh*, 325 A.2d at 93 (holding that a determination of reasonable compensation must include the general level of compensation paid to prosecutors in the jurisdiction); *Lascher*, 414 P.2d at 690 n. 2

(holding that the trial court could not make an award of reasonable fees without considering the compensation paid to public officers).

What appears to be driving the current fee schedule are not those factors this Court has found appropriate for consideration, but rather budget problems in Wayne County. The only rationale given by the Chief Judge to support his 2001 10% reduction in fees was that it was necessary to address a county budget dilemma. The only rationale given by the Chief Judges for why they have not implemented the proposal of WCCBDA was budget considerations. But such a rationale is inconsistent with this Court's holding in *Recorder's Court Bar* that budget considerations "shall seldom, if ever, be controlling," in deciding whether payments to appointed attorneys constitute reasonable compensation for services performed. See *Recorder's Court Bar*, 443 Mich. at 129 & n.27 ("The counties have a duty to fund whatever the chief judge, in the exercise of sound discretion, deems appropriate."); see also *Withey v. Osceola Circuit Judge*, 108 Mich. 168 (1895); *People ex rel Schmitt diel v. Wayne County*, 13 Mich. 233 (1865); *People v. Macomb County*, 3 Mich. 475 (1855).

Apart from the above analysis, perhaps the most obvious indication of the current schedule's inadequacy is that the Chief Judges themselves concede it is unreasonable. (Ex. 8, Evans Aff. at ¶ 7) It is simply beyond doubt that the schedule violates MCL 775.16 and must be replaced by a schedule that truly provides "reasonable compensation for services performed."

2. A Writ Of Superintending Control Is Plaintiffs' Only Remedy.

Plaintiffs have no other remedy to achieve the relief they seek than the present request for a writ of superintending control. Currently, the only remedy for an attorney who believes he or she did not receive "reasonable compensation for services performed" is to file a petition for "extraordinary fees" with the Chief Judge. But such petitions are rarely granted and, in any event, this Court has already held that such a mechanism does not provide adequate relief.

See Recorder's Court Bar, 443 Mich. at 135 (“[T]he extraordinary fee mechanism fails to provide an adequate legal remedy to cure the systematic unreasonableness of the current compensation system.”).

B. Plaintiffs' Proposed Remedy.

As explained above, the current fee schedule grossly undervalues, and is entirely unrelated to, appointed attorneys' time, skill, and efforts. (Ex. 1, Spangenberg Aff. ¶ 34) The various Chief Judges, moreover, have shown no indication that they are willing to provide appointed attorneys with “reasonable compensation for services performed.” Accordingly, Plaintiffs respectfully request that merely vacating the current fee schedule is insufficient to remedy the problem. Plaintiffs suggest an Order mandating that the Chief Judges implement one of three fee plans: a system paying an hourly rate of \$90 per hour; the Jobs Plan, as adjusted for inflation; or the WCCBDA proposed plan, which the Chief Judges have previously conceded to be reasonable.

**1. An Hourly Rate of \$90 Would Provide Appointed Counsel
“Reasonable Compensation For Services Performed”**

Effective May 1, 2002, private counsel appointed to defend indigents accused of crimes in the Federal Court covering Wayne County are paid at the rate of \$90/hour. *See* 18 U.S.C. 3006A(d)(1) (2002); Exhibit 9 (announcing new payment amount).⁴ Plaintiffs believe that a *minimum* of \$90 per hour -- the amount paid appointed federal counsel before May 2, 2002 -- is necessary to provide appointed counsel with “reasonable compensation for services performed.”

⁴ Notably, the Federal Criminal Justice Act provides some caps on total fees payable under those hourly rates, but the Federal Statute expressly (unlike Michigan law) is “not intended to provide full compensation.” *United States v. Tutino*, 419 F. Supp. 246, 248 (S.D.N.Y. 1976).

Like the federal system, the Circuit Court could develop procedures to eliminate any abuse of the hourly fee system. In federal court, counsel are required to present fee petitions, which describe in some detail the tasks they performed, why the service was necessary to defend the client, and how long the task took them. The presiding circuit, district, or magistrate judges oversee the process and authorize payment of fees. 18 U.S.C. § 3006A. Plaintiffs respectfully submit that a \$90/hour rate, with judges retaining similar oversight responsibilities, would provide “reasonable compensation for services performed.”

2. If the Court Desires To Mandate An “Event-Based” System, The Jobes Plan, Adjusted for Inflation, Or the WCCBDA Plan, Provide More Reasonable Compensation Than The Current System.

Plaintiffs do not believe that any “event-based” system like the fee schedule currently in place could assure that appointed counsel receive “reasonable compensation for services performed” in all cases. But if the Court mandates that event-based fee schedule remain in place, a more logical schedule like the “Jobes Plan,” as adjusted for inflation, or a more detailed schedule like the WCCBDA plan, would run far closer to the statutory mandate.

Specifically, in 1982, the “Jobes Plan” was accepted by all parties of interest because it appeared to provide “reasonable compensation for services performed” while still being reasonably affordable for Wayne County. In 1993, Special Master Gillespie similarly found that the “Jobes Plan,” adjusted for inflation, would provide reasonable compensation. Accordingly, Plaintiffs believe that this event-based fee schedule -- once adjusted for inflation -- would provide appointed counsel with far closer to “reasonable compensation for services performed” than the current schedule.

The WCCBDA plan, too, would be far more consistent with the statutory reasonableness mandate. This plan was developed by a number of attorneys who routinely

accept appointed cases under the fee schedule after a lengthy period of review and study. (Ex. 8, Evans Aff. at ¶ 6) Indeed, Chief Judge Kelly has previously conceded that this plan is, like the statute mandates, reasonable. (*Id.* at ¶ 7)

**3. Any Reasonable Fee Schedule Must Provide Some Provision
For Increases To Account For Inflation.**

Regardless of the type of fee schedule employed by the Court, the Court's remedial Order must include a provision for increases, on a periodic basis, to account for inflation. The absence of such a clause would inevitably produce an unreasonable level of payment in a matter of several years. This issue can be solved by tying the new fee schedule directly to the Detroit Consumer Price Index ("CPI"). Providing such a provision in the new fee schedule is necessary in order to provide plaintiffs complete relief by ensuring that the schedule continues to provide reasonable compensation over time, to avert future litigation over the reasonableness of compensation under MCL 775.16, and to make certain that criminal defendants will be adequately represented in the future. *See, e.g., Report of the Committee to Review the Criminal Justice Act*, 52 Crim. L. Rep. (BNA) 2265, 2284 (1993) (using the CPI to calculate what fees for appointed counsel should be).

C. Plaintiffs' Proposed Procedure

Plaintiffs respectfully submit that the record provided with their Complaint and Memorandum is sufficient to grant the relief requested. However, if the Court has any doubt about the facts underlying Plaintiffs' allegations, Plaintiffs respectfully request that the Court appoint a Special Master, as it did in 1993, to take testimony and make recommendations to the Court for a decision based on a full and complete record.

IV. Conclusion

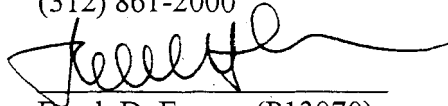
For the reasons explained above, the Chief Judges of Wayne County Court are violating the clear legal obligation imposed upon them by MCL 775.16. Plaintiffs have no adequate remedy at law to challenge the Chief Judge's failure other than this suit. Accordingly, Plaintiffs respectfully request that this Court issue a Writ of Superintending Control to the Chief Judges of Wayne County Court, mandating that they:

- vacate the fee schedule currently in place;
- vacate the June 25, 2001 Administrative Order which mandated that private defense attorneys receive an across-the-board 10% reduction in fees;
- implement an hourly-based pay system providing compensation either at \$90 per hour, based on the event-based "Jobes Plan," as adjusted for inflation, or based on the WCCBDA plan;
- implement a fee schedule which provides for periodic increases to account for inflation; and
- pay appointed attorneys within a reasonable time, no longer than 30 days, of the date they rendered services.

Respectfully submitted,



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Michael B. Slade
KIRKLAND & ELLIS
200 East Randolph Drive
Chicago, IL 60601
(312) 861-2000



Frank D. Eaman (P13070)
BELLANCA, BEATTIE and DE LISLE P.C.
20480 Vernier Rd
Harper Woods, MI 48225
(313) 882-1100

Attorneys for Plaintiffs

Dated: November 8, 2002

CERTIFICATE OF SERVICE

I hereby certify that the foregoing MEMORANDUM IN SUPPORT OF COMPLAINT
FOR WRIT OF SUPERINTENDING CONTROL was served on November 12, 2002, upon:

The Honorable Timothy Kenny
Wayne County Circuit Court
1441 Saint Antoine
Detroit, Michigan 48226
by hand delivery

Mr. Edward Ewell
Chief Corporation Counsel
Wayne County
600 Randolph, Suite 253
Detroit, Michigan 48206
by hand delivery

The Honorable Mary Beth Kelly
Wayne County Circuit Court
710 Coleman A. Young Municipal Center
Detroit, Michigan 48226
by hand delivery



Frank D. Eaman

tab 2

**WAYNE COUNTY CRIMINAL DEFENSE
BAR ASSOCIATION and THE CRIMINAL
DEFENSE ATTORNEYS OF MICHIGAN,**

v.

Defendant.

Case No. _____

STATE OF MICHIGAN)
) ss
COUNTY OF WASHTENAW)

DR. LAWRENCE H. STIFFMAN, being duly sworn, deposes and says:

1. I make this affidavit based on personal knowledge acquired through my work at Applied Statistics Laboratory, Inc. ("ASL").
2. Based on the data and methodology detailed in this affidavit, the following is a summary of my conclusions: (1) the median 2002 hourly overhead cost for all attorneys in Southeastern Michigan is \$23.14, with a range of \$19.76 for sole practitioners to \$30.64 for attorneys practicing in firms consisting of up to ten attorneys; (2) under the fee schedule currently in place in Wayne County, attorneys sometimes do not earn enough to cover their overhead expenses; and (3) the median 2002 hourly billing rate for all attorneys in Southeastern Michigan is \$139 to \$161 per hour.
3. In 1965, I graduated from the University of Pittsburgh with a Bachelors of Science degree in Zoology. In 1968, I received a Masters Degree in Environmental

Sciences from the University of Michigan. In 1978, I received a Ph.D. in Public Health also from the University of Michigan.

4. I am the Owner of ASL, a survey and market research firm based in Ann Arbor, Michigan. ASL specializes in legal economics, survey research, market research and quantitative analysis. In particular, ASL has conducted thirty surveys on behalf of and under contract with various state bar associations concerning the economics of the practice of law.

5. From 1981 to the present, I have been commissioned by various state bar associations to design, conduct and analyze surveys of their members. These include the bar associations of Arizona, Colorado, Florida, Iowa, Kansas, Maine, Michigan, New Hampshire, New Mexico, New York and Ohio.

6. In addition to my work with ASL, for the past 16 years I have researched and analyzed labor utilization and billing practices at law firms nationally for the Institute of Law Firm Management's Annual Survey on Law Firm Compensation, published by the University of Michigan's Institute of Continuing Legal Education. I have testified more than 25 times as an expert witness with regard to legal fees and prevailing hourly rates, and have prepared affidavits or reports in an additional 50 matters, including recent testimony (December 2001) concerning reimbursement of assigned counsel/panel attorneys practicing in New York City.

7. In 2000, ASL was commissioned to assist the State Bar of Michigan ("SBM") in conducting an economic survey of its members (the "Survey"). Specifically, ASL created the questionnaire used in the Survey, developed the sampling protocols and procedures, prepared and analyzed the data, and generated a report interpreting the results. A report encompassing key results of the Survey was published by the SBM as

The 2000 Desktop Reference on the Economics of Law Practice in Michigan in the November 2000 issue of the *Michigan Bar Journal*.

8. The Survey was mailed to a random sampling of SBM members during June and July of 2000. It contains 45 questions on various economic and demographic aspects of the respondents' legal practice for 1999 and 2000.

9. The SBM generated a geographically representative sample of 8,000 in-state, active SBM members by categorizing all members by office zip code and then randomly selecting 25% of those members in each zip code to receive questionnaires. The sampling was conducted in this manner to assure a proportionate sample was obtained within each zip code.

10. ASL received responses from approximately 1,600 attorneys statewide. About 28% of the respondents were sole or small firm practitioners (10 or less attorneys in the firm) with offices located in Southeastern Michigan. Attached as Exhibit A is a true and accurate copy of the questionnaire used in the Survey (the "Questionnaire").

11. Attached as Exhibit B is a summary I have prepared of survey data concerning unit (hourly) costs of office overhead expenses for sole practitioners and small firm practitioners in Southeastern Michigan (the "Summary").

12. The Summary provides separate data for different firm size groups. Firm size is defined as the total number of attorneys in the firm. Both the *median* (50th percentile or middle-value in an ordered distribution) and *mean* (arithmetic or simple average) values are reported. For the purposes of this analysis, three firm size categories are considered: sole practitioners and two-person firms or space sharers, firms with three to six attorneys, and firms with seven to ten attorneys. This information is provided in

Column A. The source of this information is Item 12 of the Questionnaire requesting the number of attorneys in the respondents' organization.

13. Column B shows four categories of unreimbursed expenses (*i.e.*, expenses that are not directly billed) incurred by the practitioner or the firm on a per attorney basis, including associates, for 1999: salary and fringe benefits of all non-lawyer personnel ("NONLAWYER LABOR"), occupancy-related costs ("OCCUPANCY"), including phone and utilities, all other expenses ("OTHER EXPENSES") and total expenses ("TOTAL EXPENSES"). These statistics are derived from Item 39 of the Questionnaire.

14. Columns C and D reflect the mean and median values of all the expense data collected from the survey respondents. As some respondents only provided total estimates, the reported total statistics do not just represent the simple sum of the component expense categories. The "median" value is the middle value of a distribution that is ordered from low to high or high to low. It is a measure of central tendency which is not distorted by "outliers," which are very high values or very low values. The "mean," or arithmetic average, is the simple average of all values in the distribution. It is another measure of central tendency but is more influenced by outliers, such as an expense value of \$200,000. In a perfectly normal situation (bell-curve shaped distribution of statistics), the mean equals the median.

15. Columns E and F reflect the compilation of median hours worked and hours billed per week for an average workweek in 1999. Item 20 of the Questionnaire requested statistics regarding billable legal work, office administration and marketing and unbilled legal work. *Total hours* is the sum of these values and is therefore a more conservative measure by which to calculate hourly overhead costs than *billable hours*.

There was little variation between firm size categories in median total hours worked per week (45 to 50 hours) compared with billable hours worked per week (30 to 40 hours).

16. Weekly hours are converted to annual hours by multiplying by 50 which, by convention, represents the average number of weeks worked per year in the United States economy. Median annual *hours worked* statistics are shown as Columns G (Total hours) and H (Billable hours only).

17. Based on the Survey data, the Summary displays the derived overall hourly cost per attorney of maintaining a practice in 1999. The Summary calculates this figure by dividing the median value of the statistic by the median value of total hours worked per year. The resultant statistics are found under Columns I and J.

18. Because these statistics represent data reported in 1999, it is necessary to adjust them for inflation to reflect overall hourly cost per attorney in 2002. Inflation, overall, was moderate between 1999 and 2002 in most sectors of the United States economy. For the purposes of this analysis, CPI Urban Wage Earner information was utilized at the 3.5% annual rate and is utilized to adjust 1999 values for inflation as follows:

Base Year (1999)	1.00
2000	1.035
2001	1.035 X 1.035
2002	1.035 X 1.035 X 1.35 = 1.11

19. As reflected above, assuming an inflation rate of 3.5% per year, and estimating based on changes in the CPI index of urban wage-related prices in the services sector in Southeastern Michigan as published by the United States Bureau of Labor Statistics, there is an inflation factor of 11% (or 1.11). In my opinion, this is a

conservative estimate given increases in the price of legal services as reflected by the change in median hourly billing rates for legal services during the 1990's from \$105/hour in 1990 to \$150/hour in 2000 or 4.5% per year.

20. Values for 1999 (Columns I and J) are adjusted for inflation utilizing an inflation factor of 1.11. Resultant 2002 estimates are found as Columns K and L.

21. Derivations of total overhead expenses by firm size category are highlighted on Exhibit B. Total overhead expenses per attorney increase with firm size. Based upon the derivation of unit costs utilizing reported *total hours worked per year* as the denominator, estimates of 2002 hourly overhead cost per attorney range from \$19.76 per hour to \$30.64 per hour for attorneys practicing in firms consisting of up to ten attorneys. The median value for all attorneys, regardless of firm size is \$23.14 per hour.

22. When these reimbursement rates are considered and converted to an hourly rate against the hourly overhead cost based on total hours (the more conservative estimate), it is clear that assigned/appointed counsel would have great difficulty maintaining a law practice in Wayne County, Michigan. Under the Wayne County Fee Schedule, attorneys sometimes do not earn enough to cover their overhead expenses.

23. Overhead costs are fixed costs, faced by practitioners regardless of the volume of work produced. Practitioners also face variable costs that are not included in the Summary. These costs may or may not be reimbursed and may or may not be collectable.

24. These difficulties are exacerbated by the fact that these figures are all calculated before federal, state and local tax deductions. When income taxes are considered, an attorney may earn only from 50 to 67% of his income before taxes.

25. Fees paid to assigned/appointed counsel, prepared from survey data concerning hourly billing rates of attorneys, currently are a fraction of the fees received by retained attorneys. Attached as Exhibit C is a summary of attorney billing rates for attorneys practicing in Michigan with practice-related factors related to this matter.

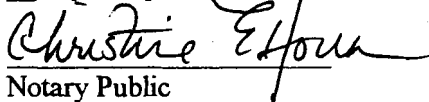
Question 24 requests the current (2000) hourly billing rate, Question 1 addresses office location, Question 12, the number of attorneys practicing in firm or organization, and Question 21, areas of legal concentration/specialization. Year 2000 reported values are adjusted for inflation to derive 2002, estimates. The shaded areas of Exhibit C denote areas of central tendency- that is , the median and mean levels of hourly billing rates.

26. For attorneys in six areas of legal practice, in sole practice or working in firms of various sizes in Southeastern Michigan, the range of the 2002 hourly billing rates is \$139-\$161/hour (median values) and \$149-171 (mean or average values). The midpoint of these two distributions is \$150/hour and \$155/hour.



Dr. Lawrence Howard Stiffman

Sworn to before me is
22nd day of April, 2002


Notary Public

CHRISTINE E HOUK
Notary Public, Washtenaw County, MI
My Commission Expires May 28, 2005

Tab A



Economics of Law Practice Questionnaire

Sponsored by the
Law Practice Management Section

June 2000

The completed questionnaire is absolutely confidential. You cannot be individually identified in any way. Please do not sign it, or provide any other identifying information. Please return it by June 26, 2000. Thank you.

PART I: TO BE ANSWERED BY ALL ATTORNEYS

☐ ☐ ☐ ☐ ☐

1. If your office is in the Detroit Metropolitan Area (Macomb, Oakland, and Wayne Counties), please indicate where you maintain your principal office:

- | | | |
|---|--|---|
| ☐ 1. Downtown Detroit | ☐ 4. Pontiac | ☐ 7. Mount Clemens |
| ☐ 2. Detroit, but not downtown | ☐ 5. North Oakland County | ☐ 8. Macomb County |
| ☐ 3. Out county, but in Wayne | ☐ 6. South Oakland County | |

If not in the Detroit Metropolitan Area, indicate where you maintain your principal office:

- | | | |
|---|---|---|
| ☐ 10. Ann Arbor | ☐ 14. Grand Rapids | ☐ 18. Muskegon |
| ☐ 11. Battle Creek | ☐ 15. Jackson | ☐ 19. Saginaw |
| ☐ 12. Bay City | ☐ 16. Kalamazoo | ☐ 20. Out State, lower peninsula |
| ☐ 13. Flint | ☐ 17. Lansing | ☐ 21. Upper peninsula |

2. Please indicate your age: _____ and gender ☐ 1. male ☐ 2. female
3. Please indicate if you are: ☐ 1. African American ☐ 2. Asian American ☐ 3. Caucasian
☐ 4. Hispanic
4. Indicate the year you were admitted to the Bar: 19____ and the number of years in practice: ____yrs
5. Which law school did you attend? ☐ 1. Cooley Law School ☐ 2. Detroit College of Law/MSU
☐ 3. University of Detroit/Mercy ☐ 4. University of Michigan ☐ 5. Wayne State University
☐ 6. Law school not in Michigan
6. Did you borrow money from any from any source to attend law school? ☐ 1. Yes ☐ 2. No
If no, please go to Question 10.
7. If yes to Question 6, my approximate total debt load at graduation was: \$ _____ (round to nearest thousand)
8. If applicable, my current monthly debt repayment schedule is: \$ _____/month
9. Did or does law school debt keep you from considering, or keeping, a public interest job?
☐ 1. Definitely ☐ 2. To some extent ☐ 3. Not at all

10. Is the practice of law your full-time occupation? ☐ 1. Yes ☐ 2. No If no, select *one* reason:
☐ 1. Approaching retirement ☐ 2. Economic necessity ☐ 3. Other businesses ☐ 4. Family considerations
11. Please indicate your primary legal occupation and your *net income before taxes* from *this* activity for the year 1999, or the last fiscal year reported to the IRS. Include all income derived from legal work. If you were active for less than one year in the classification you selected, please annualize your response (i.e., 6 months of income in latest position, multiply by 2).

Private Practice of Law	Net Income (nearest \$1000)	Government Service	Net Income (nearest \$1000)
☐ 1. Sole practitioner	\$ _____	☐ 8. Judge	\$ _____
☐ 2. Sole practitioner with one or more associates	\$ _____	☐ 9. Arbitrator/Mediator/ALJ	\$ _____
☐ 3. Sole practitioner sharing space	\$ _____	☐ 10. City/State/County	\$ _____
☐ 4. Partner in firm with two to seven partners	\$ _____	☐ 11. Federal	\$ _____
☐ 5. Partner in firm with eight or more partners	\$ _____	Other Legal Occupations	
☐ 6. Associate in firm with two to seven partners	\$ _____	☐ 12. House Counsel	\$ _____
☐ 7. Associate in firm with eight or more partners	\$ _____	☐ 13. Professor of Law	\$ _____
		☐ 14. Counsel w/legal service agency	\$ _____
		☐ 15. Lobbyist/Trade Association	\$ _____
		Other	
		☐ 16. Unemployed/currently seeking legal position	
		☐ 17. Not practicing as a lawyer	
		☐ 18. Retired	

12. Please indicate the total number of lawyers in the firm or organization in which you practice: _____
13. With regard to your *own* activities, the quantity of your work is:
☐ 1. Insufficient to keep you busy ☐ 2. All you can handle ☐ 3. More than you prefer to handle
14. Do you consider the number of lawyers in the community in which you practice to be:
☐ 1. About right ☐ 2. Too many ☐ 3. Too few
15. Compared to last year, on the whole, are the economic circumstances of law:
☐ 1. Better ☐ 2. Worse ☐ 3. About the same?
16. Next year, will these economic circumstances be: ☐ 1. Better ☐ 2. Worse ☐ 3. About the same?
17. Do you agree or disagree that stress from law practice has begun to affect your job performance?
☐ 1. Strongly agree ☐ 2. Somewhat agree ☐ 3. Neutral ☐ 4. Somewhat disagree ☐ 5. Strongly disagree
18. How much satisfaction do you get from your day-in, day-out practice of law?
☐ 1. A great deal ☐ 2. Quite a bit ☐ 3. A fair amount ☐ 4. A little ☐ 5. None
19. I see the future of law practice in my major area of interest as:
☐ 1. More satisfying and challenging ☐ 2. Remaining the same ☐ 3. Less satisfying and challenging
☐ 4. Unsatisfying enough to change major practice area ☐ 5. Unsatisfying enough not to practice law
20. Please indicate, *on average*, the hours per week you engage in the following activities (nearest hour):

	Hours/week		Hours/week
1. Billable legal work (total)* →		4. Unbilled community/public service	_____
based on hourly rate	_____	5. Non-legal employ./personal invest.	_____
based on flat/fixed rate	_____	6. Total hours in work week (1-5 above): →	
based on contingency work	_____	7. Continuing Legal Education	_____
2. Office administration	_____	8. Unbilled (pro bono) legal work	_____
3. Marketing Activities	_____		_____

*For those not private practitioners, number of hours of legal work.

21. Below is a list of various fields of law. Rank the *three* fields which provide the *highest source of income* to you during 1999 or your last fiscal year. Rank them in order of income generated by inserting a "1," "2," and "3" in the appropriate boxes. If income is received as a result of your work from only one or two fields of law, mark only that field or those fields with the number "1" or the numbers "1" and "2."

- | | | |
|--|--|--|
| ☐ 1. Administrative Law | ☐ 10. Environmental Law | ☐ 20. Professional Malpractice |
| ☐ 2. Bankruptcy | ☐ 11. General Practice | ☐ 21. Public Benefits |
| ☐ 3. Civil Rights | ☐ 12. Health and Hospital Law | ☐ 22. Real Property Law |
| ☐ 4. Collections | ☐ 13. Immigration Law | ☐ 23. Securities Law |
| ☐ 5. Corporate/Business Law | ☐ 14. Intellectual Property | ☐ 24. Taxation |
| ☐ 6. Criminal (Pub. Def.) | ☐ 15. Labor Law (Management) | ☐ 25. Trial Practice (Civil-Personal) |
| ☐ 7. Criminal (Priv. Def.) | ☐ 16. Labor Law (Labor) | ☐ 26. Trial Practice |
| ☐ 8. Criminal (Prosecution) | ☐ 17. Municipal Law | ☐ (Civil-Commerical) |
| ☐ 9. Domestic Relations | ☐ 18. Personal Injury/Ins. (Def.) | ☐ 27. Wills, Estates & Probate |
| ☐ (Family Law) | ☐ 19. Personal Injury/Ins. (Plntf.) | ☐ 28. Workers' Compensation |

22. Do you keep time records on your work? ☐ 1. Always ☐ 2. Usually ☐ 3. Sometimes ☐ 4. Never
23. If *yes*, the tracking unit used is: ☐ 1. 6 min ($\frac{1}{10}$ hour) ☐ 2. 10 min ☐ 3. 15 min ☐ 4. 30 min ☐ 5. None
24. If applicable, do you have a standard or usual hourly rate which you currently apply as a guide, starting point, or basis for fee computation? ☐ 1. Yes ☐ 2. No

If *yes*, what is your current hourly billing rate? \$_____/hr for trial work? \$_____/hr

Please ask an administrator or a knowledgeable person if you need help with these questions:

25. How many computer workstations are installed? _____ Personal Digital Assistants? _____
How many lap tops are available for out-of-office use? _____
26. For wordprocessing, we primarily use: ☐ 1. WordPerfect (DOS) ☐ 2. WordPerfect (Windows)
☐ 3. Word (Windows) ☐ 4. Word (Mac) ☐ 5. Other
27. Which operating system do you use? ☐ 1. DOS ☐ 2. Win95 ☐ 3. Win98 ☐ 4. Win2000
☐ 5. NT ☐ 6. Other
28. If you use Wordperfect products (DOS- or Windows-based), do you plan to switch to Microsoft products in the future? ☐ 1. Yes ☐ 2. Considering ☐ 3. No ☐ 4. Don't know
29. What Internet connection do you use? ☐ 1. Dial-up modem ☐ 2. DSL ☐ 3. Cable ☐ 4. T1
☐ 5. Other ☐ 6. Not connected

PART II: TO BE ANSWERED BY PRIVATE PRACTITIONERS ONLY

PLEASE COMPLETE THIS SECTION ONLY IF YOU ARE: A SOLE PRACTITIONER, SPACE SHARER OR THE DESIGNATED MEMBER HAVING KNOWLEDGE OF FIRM'S EXPENSES. If more than one questionnaire is received, *this section* should be completed ONCE by the Managing Partner or Office Administrator.

30. How long ago did you or your firm change your usual hourly rate?
☐ 1. 0-6 months ☐ 2. 7-11 months ☐ 3. 1-2 years ☐ 4. More than 2 years
31. If applicable, indicate the percentage of change the last time you or your firm changed your hourly rate:
☐ 1. Increase 5% or less ☐ 2. Increase 6-10% ☐ 3. Increase 11-19% ☐ 4. Increase 20% or more
32. Do you charge for time spent on telephone calls? ☐ 1. Always ☐ 2. Usually ☐ 3. Sometimes ☐ 4. Never
33. Approximately what percentage of the fees you bill are uncollectable?
☐ 1. 2% or less ☐ 2. 3-8% ☐ 3. 9-12% ☐ 4. 13% or more
34. How much time does it usually take to collect your fees? ☐ 1. 30 days ☐ 2. 60 days
☐ 3. 90 days ☐ 4. 120+ days

35. Do you have a written agreement concerning service charges? ☐ 1. Yes ☐ 2. No
36. If yes, how often do you add a service charge to a delinquent account?
☐ 1. Always ☐ 2. Usually ☐ 3. Sometime Charge is ☐ 4. less than 1% ☐ 5. 1-2% ☐ 6. over 2%
37. How often do you send an engagement letter?
☐ 1. Always ☐ 2. Usually ☐ 3. Sometime ☐ 4. Never

38. Do you market legal services? ☐ 1. Yes ☐ 2. No If yes, check all appropriate vehicles:

- ☐ 1. Yellow page block display ☐ 5. Newspaper advertising ☐ 9. Client newsletters – paper based
☐ 2. Firm brochure & résumé ☐ 6. Marketing plan
☐ 3. Newspaper/periodical articles ☐ 7. Radio/television ads ☐ 10. Web page
☐ 4. Employment of PR firm ☐ 8. Seminars

39. Estimate below the *total unreimbursed (not directly billed) expenses* incurred by you or your firm *per lawyer* including associates for 1999 or your last fiscal year for the following overhead categories:

Average expense per lawyer

A. Salaries and fringes of all non-lawyer personnel \$ _____
 B. Rent (cost of space if owner), phone and utilities \$ _____
 C. All other expenses \$ _____
 D. Total expenses per lawyer (A-B above): _____ → \$

40. Estimate gross receipts per lawyer for this same period: _____ → \$

41. Indicate below the *average annual* salary levels and current hourly billing rates for the following:

Level	CURRENT (2000) AVG. ANNUAL SALARIES FOR:			CURRENT AVG. BILLING RATE	
	Associates	Paralegals	Secretaries	Associates	Paralegals
Current Employees without experience	\$ _____	\$ _____	\$ _____/year	\$ _____	\$ _____/hr.
with at least 3 years experience	\$ _____	\$ _____	\$ _____/year	\$ _____	\$ _____/hr.
with at least 5 years experience	\$ _____	\$ _____	\$ _____/year	\$ _____	\$ _____/hr.
with at least 10 years experience	\$ _____	\$ _____	\$ _____/year	\$ _____	\$ _____/hr.

42. Would your firm hire part-time lawyers? ☐ 1. Yes ☐ 2. No Part-time staff? ☐ 1. Yes ☐ 2. No

43. What is the ratio of full-time equivalent* secretaries to lawyers in your office?

- ☐ 1. More than one secretary per lawyer ☐ 4. One secretary to two lawyers
☐ 2. One secretary to one lawyer ☐ 5. One secretary to two-and-a-half lawyers
☐ 3. One secretary to one-and-one-half lawyers ☐ 6. One secretary to three lawyers
 (Two secretaries to three lawyers) ☐ 7. One secretary to more than three lawyers

*(Full-time equivalent is defined as total hours worked by all secretaries in a week divided by 40.)

44. How many full-time equivalent* legal assistants (LAs)/paralegals do you employ?

*(Full-time equivalent is defined as total hours worked by all legal assistants in a week divided by 40.)

- ☐ 1. None ☐ 2. One ☐ 3. Two ☐ 4. Three ☐ 5. Four to six ☐ 6. Seven to ten ☐ 7. Eleven or more

45. If you employ LAs, how do you bill your clients for the services performed by your LAs/paralegals?

- ☐ 1. No charge: included in attorney's hourly rate ☐ 3. Self-developed fee schedule
☐ 2. Time basis ☐ 4. Other system

**NOW THAT YOU HAVE COMPLETED THE QUESTIONNAIRE, PLEASE
 ACCEPT OUR THANKS AND MAIL IT IN THE ENVELOPE PROVIDED.
 DO NOT SIGN THE QUESTIONNAIRE OR IN ANY WAY IDENTIFY YOURSELF.**

Lose envelope? Mail to ASL, 5590 West Liberty, Ann Arbor, MI 48103

State Bar of Michigan • Law Practice Management Section

Tab B

[illegible]

***Formulae Used in Exhibit B to
Calculate 2002 Overhead Costs per Hour
for Solo Practitioners and Small Law Firms
in Southeastern Michigan***

Annual Overhead Costs Reported for CY 1999 (Col D)
_____ = **Overhead Costs/Hour in 1999 (Col I)**

Total Hours in the Workweek X 50 Weeks/Year (Col E)

Overhead Costs/Hour in 1999 X 1.11 = **Overhead Costs/Hour in 2002 (Col K)**
Where 1.11 is the compound interest rate factor
of 3.5% per annum inflation over 3 years *or*
(1.035 X 1.035 X 1.035 = 1.11)

Impact* of Current Hourly Reimbursement Given = \$38.75/ hour - Overhead Costs/Hour
2002 Overhead Costs per Hour (Cols M & N)

Where \$38.50 hour represents \$310/day reimbursement
based on an 8 hour day

Impact refers to amount of reimbursement remaining after overhead is accounted for.

Exhibit B arrays these formulae for **thres sets of attorneys** by firm size and all attorneys and for
4 overhead factors (labor, occupancy, other and total expenses)

Source of Data: 2000 State Bar of Michigan Economics Survey prepared by Applied Statistics Laboratory, 2000.

Tab C

Tab 3

STATE OF MICHIGAN
I N T H E S U P R E M E C O U R T

86099

IN THE MATTER OF THE RECORDER'S COURT
BAR ASSOCIATION, THE CRIMINAL DEFENSE
ATTORNEYS OF MICHIGAN, THE MICHIGAN TRIAL
LAWYERS ASSOCIATION, WOMEN LAWYERS
ASSOCIATION OF MICHIGAN, and THE SUBURBAN
BAR ASSOCIATION,

Petitioners,

v

WAYNE COUNTY CIRCUIT COURT AND
RECORDER'S COURT,

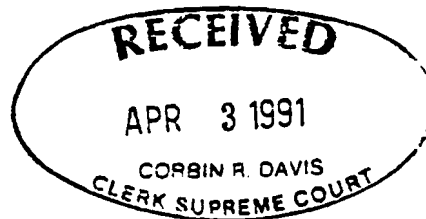
Respondents,

and

WAYNE COUNTY,

Intervening Respondent.

REPORT OF SPECIAL MASTER - HONORABLE TYRONE GILLESPIE



I N D E X

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I N T R O D U C T I O N

On May 5, 1989, an association of several local and specialized bar associations, whose members consist primarily of attorneys engaged in criminal defense, filed a Complaint in the Michigan Supreme Court seeking superintending control by the Supreme Court over the Chief Judges of the Wayne County Recorder's and Circuit Courts. The object of the suit was to eliminate a fee schedule established by the Chief Judges in July 1988 for representation of indigent defendants and to establish a schedule of fees recommended in 1982 by a committee chaired by Judge Clarice Jobs of the Recorder's Court which plaintiffs feel is fair if enhanced for inflation.

The schedule of 1982 provided for guidelines for payments based on various tasks performed in the course of the defense of the criminal charges against indigent defendants. The schedule adopted by Administrative Order of the Chief Judges in 1988 is based on a flat fee for representation, based on the nature of the crime charged, and is not delineated as to amount of work performed or number of motions brought or hearings held.

It is the position of the plaintiffs that the 1988 schedule is inequitable to participating attorneys and results in a criminal defense system which induces attorneys to counsel their clients to enter guilty pleas, thereby violating the clients' rights under the Fifth, Sixth and Fourteenth Amendments to the U. S. Constitution.

directly from the county budget. The county's case was presented by Ms. Karen Watkins, an Assistant Corporation Counsel.

Also participating in the proceedings was Michigan Appellate Assigned Counsel System (MAACS) by its Administrator Barbara R. Levine as amicus curiae.

On November 6, 1989, the Michigan Supreme Court entered an order, No. 86099, granting Wayne County's Motion to Intervene and MAACS' motion to file a brief.

This order further appointed Tyrone Gillespie, retired circuit judge from Midland County, as Special Master to take evidence and make proposed findings of fact as follows:

" * * * (1) the various rates of reimbursement for appointed counsel in Michigan; (2) the amount of overhead and expenses typically incurred by attorneys who accept appointments to represent indigent criminal defendants; (3) the amount of income which may typically be generated by acceptance of appointments; (4) the amount of attorney and staff time spent to generate amounts of income from appointments; (5) instances of pressures to under-represent indigent defendants; and (6) any other topics which any party or the special master thinks will help this Court resolve the issues presented in this case. The complaint for superintending control remains under consideration."

The order, as originally issued, called for a rather sweeping investigation into the subject of indigent attorneys fees. This was later refined by oral communications to limit the study to the Wayne County problem.

Testimony was taken from 32 witnesses, which is summarized herein.

HISTORY

H I S T O R Y

The order which is the subject of this suit is Joint Administrative Order 1988-2 setting up a flat fee schedule effective July 1, 1988 which is currently in use. The order and schedule are set forth as follows:

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT AND THE
RECORDER'S COURT FOR THE CITY OF DETROIT

JOINT ADMINISTRATIVE ORDER
1988-2

IT IS ORDERED:

The attached fee Schedule G representing fees for assigned counsel is adopted for all vouchers submitted after July 1, 1988. Joint Administrative Order 1988-1 including Schedule F is set aside and replaced by this Order and Schedule G.

Counsel appointed for indigent defendants may make no expenditure, other than for subpoena fees, for which he or she expects reimbursement except upon prior approval and order of the trial judge on motion for good cause shown.

In any case in which more than one criminal offense is charged, payment shall be made for only the charge carrying the greatest potential term of imprisonment.

Counsel is required to consult with the defendant prior to the preliminary exam. Consequently, if the defendant is in jail counsel must attach to the fee voucher evidence of a jail visit; and if the defendant is not in jail, counsel must attach to the fee voucher an executed form available from the office of the Circuit Court Administrator or Recorder's Court Administrator verifying that counsel has met with the defendant prior to the preliminary exam. Failure to attach this document to the voucher will result in a \$75.00 deduction from the appropriate fixed fee.

In all cases, counsel may petition the Chief Judge for the payment of extraordinary fees. All petitions for extraordinary fees must include an analysis of all assigned cases for the previous one year.

DATED: June 27, 1988

/s/ Richard C. Kaufman
RICHARD C. KAUFMAN
EXECUTIVE CHIEF JUDGE

II. ACTIVITY AT THE APPELLATE LEVEL

Non-frivolous Motion for New Trial Together with Memorandum of Law by Trial Counsel After a Jury or Non-jury Trial:	\$125.00
Transcript: Every 400 pages or major fraction thereof other than guilty plea cases	200.00
Guilty plea cases	100.00
Claim of Appeal Brief and All Proceedings: Other than guilty plea cases	500.00
Guilty plea cases	350.00
Visit to Prison Facilities:	
Wayne County facilities	75.00
Camp Pellston and all UP facilities	400.00
All others	200.00
Appeal to Higher Courts for Each One-half Day Spent in Trial Court:	75.00
Appearance at Habeas Corpus:	50.00

III. MISCELLANEOUS ACTIVITY

Show-ups:		
Full day standby		200.00
Per hour		50.00
Psychiatric Cases in Which the Maximum Penalty is Life Imprisonment:		
Interview and written evaluation		300.00
Attendance in court		150.00
Other Experts:		
Interview and written evaluation		200.00
Attendance in court		150.00
Interpreters:		
Per day		150.00
Half day		75.00

IV. PATERNITY CASE ACTIVITY

Preparation, Non-trial Court Appearance(s), Trials and All Other Trial Court Proceedings:	150.00
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V. SPOUSE ABUSE CASES

Preparation, Non-trial Court Appearance(s), Trials and All Other Trial Court Proceedings:	150.00
---	--------

Another Complaint for Superintending Control was filed by Wayne County and the Detroit Bar Association, which was dismissed by the Supreme Court for lack of proofs.

In April 1983, the Chief Judges promulgated a New Joint Administrative Order No. 1983-1 which set aside Administrative Order 1982-1 and set the following schedules:

- A. For services provided between December 1, 1982 and April 30, 1983, appearance for trial of a capital case would be paid \$300 a day and for a non-capital case \$200.
- B. For services provided between May 1, 1983 to April 30, 1984 such appearance would be paid at \$200 a day for capital cases and \$135 for non-capital cases.
- C. For services provided between May 1, 1984 to November 30, 1984 such appearance would be paid at \$250 a day for capital cases and \$165 for non-capital cases.
- D. For services performed after December 1, 1984 such appearance would be paid at \$300 a day for capital cases and \$200 for non-capital cases.

In 1985, a new order issued setting trial fees at \$150 a day without distinction between capital and non-capital cases. This brought a suit in circuit court which was dismissed by Chief Judge Richard C. Dunn of the Third Circuit in an opinion which denies that the circuit court has subject matter jurisdiction and denied an evidentiary hearing.

STATE OF MICHIGAN
IN THE RECORDER'S COURT FOR THE CITY OF DETROIT
AND IN THE THIRD JUDICIAL CIRCUIT

MISCELLANEOUS COURT ADMINISTRATIVE
MATTER:

Hon. Richard D. Dunn
(P13025)

IN RE: SCHEDULE "E"

No. 85-519626 CZ

OPINION

In the instant case various attorney organizations (hereinafter, the petitioners) have filed a "Miscellaneous Court Administrative Matter: In re Schedule E" challenging the legality of the fee schedule established by AO 1985-6, Fee Schedule E (hereinafter the Schedule) which sets the rate of compensation which is to be paid to attorneys who are appointed by the Third Judicial Circuit Court or the Recorder's Court for the City of Detroit to represent indigent defendants in criminal cases.

At issue is a provision in the Schedule which establishes the rate of compensation for all trials to be \$150 per day of trial and one which limits compensation for jail visits for two jail visits for capital offenses, and one jail visit for non capital offenses. In their initial pleading petitioners contend that the amounts paid are under the Schedule are so low as to be unreasonable and hence violative of indigent defendant's rights to effective assistance of counsel contrary to US Const Amend VI, and of their rights to due process and equal protection contrary to US Const, Amend XIV; and violative of the statutory mandate under MCLA 775.16 which entitles attorneys who are appointed by the courts to represent indigent criminal defendants to reasonable compensation for such representation.¹ The case is presently before the Court on petitioner's motion for an evidentiary hearing. In their brief in support of said motion petitioners assert that they want to have an evidentiary hearing in order to present proofs which support their contention that the fee for trials established by the Schedule is unreasonable under MCLA 775.16. Petitioners also assert that in a prior case before the Michigan Supreme Court which allegedly addressed a similar subject, the action had been dismissed for lack of a factual record. The motion is opposed by the Chief Judge of the Recorder's Court, (hereinafter the respondent) on the basis that the statute does not contemplate holding a hearing

¹ MCLA 775.16 states in relevant part,

The attorney appointed by the court shall be entitled to receive from the county treasurer, on the certificate of the chief judge that the services have been rendered, the amount which the chief judge considers to be reasonable compensation for the services performed.

for an evidentiary hearing.⁴

Further consideration of the petitioners' request for relief⁵ in their initial pleading would result in a denial of the relief therein sought. Petitioners' argument as to why the schedule is invalid is essentially twofold:

First, as noted earlier, part of the bases for petitioners' challenge to the legality of the Schedule is premised on alleged constitutional defects. However, in In re Meizlish, 387 Mich 228 (1972), the Court rejected substantially similar arguments that the fee schedule then in effect for the payment of assigned counsel appointed by the judges of the Wayne County Circuit Court violated indigent's and the attorney's constitutional rights. Meizlish is thus dispositive of petitioners' constitutional arguments, and no relief could be granted based thereon.

The court next turns to petitioners' second line of argument. Petitioners assert that the fees paid under the Schedule are unreasonable, and hence violative of MCLA 775.16, because they do not approximate or are far below the fees typically paid to private practitioners or to the prosecutor's office. For the following reasons this argument, even if factually correct is without merit.

It has long been recognized that an attorney does not have a right to be compensated for his or her representation of indigents absent some statute compelling payment. See Bacon v County of Wayne, 1 Mich 461, 462-463 (1850)⁶; State v Rush, 46 NJ 399, 217 A2d 441 (1966), cited with approval in, In re Meizlish,

⁴ Petitioners also argued that they were entitled to an evidentiary hearing based on the language of the Supreme Court's order of dismissal for want of an adequate basis for decision in Wayne County, et al v Chief Judge of the Third Judicial Circuit et al, (Docket No. 70647, March 22, 1983). That case, unlike the present case primarily involved, as noted in the Court's order, the County's "duty to pay" or an attorney's "right to be paid in accordance with a fee schedule." That case is thus inapposite to the case at bar, and thus not controlling.

⁵ Petitioners ultimately seek to have the Court retract the Schedule. This, of course, would result in the prior fee schedule, Schedule D, one again becoming effective. The fees allowed under Schedule D were higher than those under the present Schedule.

⁶ Indeed, it may be surmised that it was as a consequence of the Court's decision in Bacon, that the first of these statutes was passed which provided for some compensation to attorneys who were appointed to and did represent indigent defendants. See 1857 PA 109.

However, [§ 775.5, The Code] does not purport to provide full compensation nor it is intended to permit payment of fees in such cases which would be charged to nonindigent clients. Its purpose is to insure representation of an indigent defendant in a criminal case on as basis which would alleviate the financial burden on individual lawyers in light of the developing law of an indigent's right to counsel under recent decisions of the United State Supreme Court and this court.

The reasons for this have been stated in various ways by a number of courts. In all of them, however, an important consideration is the recognized duty of a lawyer to represent the defenseless and the oppressed. Jackson v State, 413 P2d 488, 491 (Alaska 1966); Lascher v State, 64 Cal 2d 687, 51 Cal Rptr 270, 414 P2d 398, 400, cert. denied, 385 US 928, 87 S Ct 287, 17 L Ed 2d 211 (1966); Lindh v O'Hara, 325 A2d 84, 93 (Del 1974); Warner v Commonwealth, 400 SW2d 209, 211 (Ky App 1966); State v Rush, 46 NJ 399, 217 A2d 441, 447-48 (1966); State v Lehirondelle, 15 Wash App 502, 550 P2d 33, 34 (1976); State v Sidney, 66 Wis 2d 602, 225 NW2d 438, 442 (1975). Contra, Baer v O'Keef, 235 NW2d 885, 891 (ND 1975).

In Gant v State, 216 So2d 44, 47 (Fla Dist Ct App 1968), the court said:

Attorneys rendering services pursuant to appointment by the court. . . should not expect, nor are they entitled as a matter of right to receive compensation in amounts commensurate with that which would normally be paid for similar services emanating from a voluntary-attorney client relationship.

In Bennet v Davis County, 26 Utah 2d 225, 487 P2d 1271, 1272 (1971), the court stated its position this way:

The objective of this corrective legislation [allowing fees for court appointed lawyers] was to ameliorate the prior condition, wherein an officer of the court was compelled to contribute his time and efforts gratuitously. Consider within this context, there is no basis to hold that "reasonable compensation" is synonymous with the rate which an attorney might charge for legal services in his private practice.

Thus, for the reasons summarized by the Court in Soldate, MCLA 775.16 cannot be construed to entitle court-appointed attorneys to compensation at a rate equal to that received by other practitioners. This being so, petitioners' argument that the fees set in the Schedule are unreasonable compensation because such fees do not approximate fees received by other practitioners cannot be deemed to overcome the presumption of reasonableness which attaches to the Schedule. Accordingly, petitioners' second argument, as does the first, does not afford a basis for granting relief. For

RECORDED'S COURT FOR THE CITY OF DETROIT

13

FINDINGS OF FACT

FINDINGS OF FACT

A. The Third Circuit and the Recorder's Court of Detroit were merged in 1987. The Chief Judges of each court still sit as Chief Judge of their courts, but they interchange as Executive Chief Judge.

There are 29 Recorder's Court judges and 35 Circuit Court judges.

The Recorder's Court of Detroit has jurisdiction of all criminal matters arising out of crimes charged in the City of Detroit. Since the merger a panel of five judges from the circuit court are assigned for arraignment and trial purposes to the Recorder's Court so, in essence, it is one court for the county handling all criminal matters within the county. If a defendant is not a resident of Detroit, he or she technically under Local Court Rule 6.102 could demand arraignment before one of the circuit judges, but practically the judges operate interchangeably between the two courts in criminal matters on an assigned basis.

The procedure, upon arrest, is that the defendant is arraigned on the warrant before a magistrate or judge in the 36th District Court, either in the city or out county. At that point it is determined whether the defendant will be incarcerated or bonded and whether he demands or is unable to hire counsel. In the event that he or she wants counsel, the matter is assigned to an assignment judge, which judge is assigned by the Executive Chief Judge for a brief period of one week. This position is not provided for by statute and some judges refuse the assignment.

time elapsed from the appointment of counsel to AOI is 17 days in jail cases and 24 days in bail cases. If the defendant pleads guilty at AOI, sentencing is set for 10 days later.

If the defendant is bound over, he or she is next required to appear before one of the executive floor judges who will arraign him or her on the information or indictment. If at that time the defendant stands mute or pleads not guilty, the case is assigned to a judge for trial. The attorneys then meet with the trial judge to establish a trial track for motions to quash, Walker hearings and trial date and other preliminary matters.

The Chief Judge of the Recorder's Court is responsible for moving the docket and he may, and often does if there is an overload, remove a case or cases to his docket for disposition. If the trial lasts for more than three days, the Recorder's Court automatically allows \$300 per day for trial time. In circuit court, the attorney must apply to the Chief Judge for extraordinary fees which are often allowed in whole or in part. Many attorneys are reluctant to ask for extraordinary fees or compensation for unusual expenses, fearing that such requests may prejudice their standing or possibilities for assignment with the judges and, accordingly, pay such costs themselves. Petitions for extraordinary fees are filed in two percent of the cases and are rarely granted in full. The Public Defender's Office is rarely granted any fees beyond the schedule amounts.

B. The present system of paying for assigned counsel on a flat fee basis has merit for the following reasons:

of constitutional rights.

2. While the system discourages the filing of frivolous motions, it also gives disincentive to file serious motions, as no additional compensation is paid for greater effort.
3. The system discourages plea bargaining in that the prosecutor is aware that the defense attorney has no financial incentive to go to trial and will assent to a guilty plea to a higher charge.
4. While the flat fee system is not directly related, the fact that guilty pleas are well rewarded allows assigning judges to appoint favorites to a volume of cases. One case was cited where an assigning judge appointed a female attorney, with whom he was friendly, to the majority of his assigned cases which required only pleas to be entered.
5. The system also supports a group of substandard attorneys, estimated to be 10 to 15% of the criminal bar, to operate without offices, secretaries, files, from pocket notes and to make a living on guilty pleas.

C. At the beginning of 1990, there were 630 attorneys eligible for appointment. One hundred eighty-six of those did not receive appointments, leaving four hundred forty-four who were appointed in 1989. One hundred seventy-seven attorneys who were not on the eligible list did receive assignments; forty-five

\$56 million owed to the State from previous loans to help the county's deficit situation.

In order to rectify this situation, the County, in 1988, negotiated the debt settlement agreement with the State of Michigan, wherein the county was able to borrow \$120 million from the State Emergency Loan Board and the county received permission to borrow \$103 million in fiscal stabilization bonds.

As conditions for the debt settlement agreement, the county, pursuant to state law, its charter and the additional debt settlement agreement, is required to maintain a balanced budget.

A failure on the part of Wayne County to maintain a balanced budget would require it to pay 10% interest on the sum owing to the state, e.g., \$10 million, and may result in the state invoking the provisions of the legislation authorizing the solvency package and place the county in receivership.

In 1989, the county's budget for indigent attorney fees was \$13.2 million for circuit, Recorder's, and probate courts, and expenses were approximately \$16.7 million, an overrun of approximately \$3 1/2 million.

The county budgeted approximately \$15.8 million for indigent attorney fees for 1990 -- \$9.2 million for Circuit and Recorder's Courts and \$6.6 million for probate.

In 1989, by comparison, the county budgeted approximately \$12.9 million for the prosecutor's office. The prosecutor's office, of course, has no rent factor in its budget. It also has no factor for investigations or fringe benefits and has some income

services to defendants who are unable to pay in full for representation have been somewhat successful. This system would refer a defendant who pleads indigency to an assignment attorney who works for the system. The assignment attorney would determine what, if any, assets are available to the defendant to fund the defense. If the defendant is employed or has other assets, the attorney would take an assignment of the assets or note payable over a period of time from the defendant. On some occasions, a credit card has been used. In any case, the payment of the attorney's fee is guaranteed by the court and collection, if any, is made by the assignment attorney. It has been the experience in some counties that 10% of assessed attorney fees are collected from defendants, usually as a condition of probation.

G. The Federal Court for the Eastern District of Michigan reimburses assigned attorneys at a rate of \$75 an hour. There is no distinction made between in-court and out-of-court time and expenses are routinely reimbursed.

Testimony revealed that in Wayne County, when extraordinary fees are requested and allowed, the Chief Judge in Recorder's Court utilizes a figure of \$300 a day which is fairly automatic. The Chief Judge in Wayne Circuit computes such fee at \$35 an hour.

The fees paid for expert witnesses such as psychologists, psychiatrists, medical experts, interpreters, investigators and other supplemental requirements are so low as to make their services unavailable without supplementation of funds by the

J. From a review of the Prosecuting Attorneys Association Report for 1989 (Pl. Ex. 35) and the State Bar Association Defender and Services Committee Report for 1989 (Pl. Ex. 36) the following information would appear. The reliability of the information was not tested.

The annual budget for prosecutors in Michigan in 1989 was \$61.5 million. The annual budget for prosecutors in Wayne County was \$14,110,982, or 23% of the total state budget for prosecutors. The state population was shown to be 9,201,716 according to the 1980 census. Wayne County's population was shown as 2,337,240 or 25.4% of the state population. There were 73,857 felony warrants issued in Michigan. 19,024 of such warrants, or 25.75%, emanated in Wayne County. The above figures are fairly consistent, however the statewide budget for felony defense in the state totalled about \$22.5 million. The amount spent in Wayne County on felony defense was listed as \$9.26 million, or 41% of the state total budget for defense. This figure was affirmed by the testimony of Mrs. Lannoye as to the Wayne County expenditure.

It is interesting to note that statewide the budget for defense is 36% of the budget for prosecution, which does not include rent, investigations and other factors before mentioned.

K. Under the present system of assigning attorneys, there are at all times over 400 attorneys willing to take assignments which is a number that is entirely adequate.

It appears that in a few complex and unpopular cases, such as the famous Easter Case, the judges have had to use their

L. The 1982 recommendation on assigned attorneys fees was a carefully considered plan of compensation on an event basis. It had the endorsement of attorneys and judges. Fear on the part of Wayne County Administrators induced them to dissuade the Chief Judges from putting it into effect because of a possible impact on the budget.

Criminal defense does not have great popular appeal and administrators and supervisors, when allocating limited money, are not inclined to give top priority to defending people who have committed crimes.

The current schedule was developed by George Gish at the direction of Judge Roberson. The schedule was adopted by Judge Roberson and Judge Kaufman with the best of motives of moving their crowded dockets and keeping the jail from overcrowding.

The record reflects little change in case movement since the advent of the present schedule. There are a few more guilty pleas. There are more short bench trials, known as "long pleas", due to the hard position on plea bargaining taken by the prosecutor. Due to lack of plea bargaining, the success rate on trial has dropped. On cases that go to trial, 63.5% of murder charges result in conviction of lesser offenses. 76.7% of all assault with intent to murder charges are reduced. The Wayne County bench trial rate is 15 times higher than the state average.

C O M M E N T

C O M M E N T

1. The Michigan Supreme Court in response to the complaint filed in this case is taking another step in attempting to alleviate a problem of which all judges and most lawyers are subliminally aware. How to structure and finance a system to provide counsel to all persons charged with crime to insure due process rights. Pressures from the Federal Government, in particular the United States Supreme Court, has made mandatory constantly expanding rights of persons to be represented by competent counsel. This movement also has found support in state constitutions, statutes and court decisions.

Particularly relevant decisions of the United States Supreme Court are:

Powell v Alabama, 287 US 45 (1932) (defense in capital cases)

Johnson v Zerbst, 304 US 458 (1938) (expanded to all federal criminal cases)

Townsend v Burke, 334 US 736 (1948) (sentencing)

Hamilton v Alabama, 368 US 52 (1961) (arraignment)

Gideon v Wainwright, 372 US 335 (1963) (expanded to all state courts in felony cases)

Douglas v California, 372 US 353 (1963) (appeal of right)

Miranda v Arizona, 384 US 436 (1966) (custodial interrogation)

In re Gault, 387 US 1 (1967) (expanded to juveniles)

Johnson v Avery, 393 US 483 (1969) (collateral attack)

Coleman v Alabama, 399 US 1 (1970) (preliminary hearings)

Kirby v Illinois, 406 US 682 (1972) (pre-indictment lineups)

Argersinger v Hamlin, 407 US 25 (1972) (all imprisonments)

Gagnon v Searpelli, 411 US 778 (1973) (parole and probation revocation).

rights for the client. Only the very conscientious will do the latter against his or her own interests.

7. In common with the last comment, there has developed a number of lawyers characterized as "waivers and pleaders" who operate from pocket notes without secretaries or offices who live on guilty pleas.

8. The method of assigning cases in Wayne County appears to use judicial time which could be converted into clerk time if an assignment clerk were appointed to supervise the assignment of cases under direction of the chief judge. This would also terminate the occasional instance of a judge assigning favored people and bring greater equity into the system. The result would free enough judicial time to be the equivalent of adding an additional judge without the ancillary expense of staff and courtroom.

9. The system of payment according to the seriousness of the crime rather than on hours spent or work performed (events) is not reasonable or just and is a disincentive to due process.

10. The testimony of some of the witnesses, particularly the judge witnesses, that no effort is made to determine indigency or no system of recoupment would be anything but counterproductive may be correct. However, experience in other courts indicates that such efforts produce about a 10% return would mean an increase in funds for criminal defense in Wayne County which should net between \$1 and \$2 million more for criminal justice activity before expenses. There exists significant material on the operation of such systems in the literature.

R E C O M M E N D A T I O N S

RECOMMENDATIONS

1. That the fixed fee schedule based on maximum possible sentence be found unreasonable in that it only includes one factor of what this Court found to be the test of reasonableness in WOOD v D.A.I.I.E., 413 Mich 573, 588 (1982). That decision did not determine "reasonableness" in a criminal context but discussed reasonableness in a general context.

The factors to be considered, as in that case defined, are:

1. The professional standing and experience of the attorney;
2. The skill, time and labor involved;
3. The amount in question (in this case maximum potential sentence.
4. The results achieved;
5. The difficulty of the case;
6. The expenses incurred;
7. The nature and length of the professional relationship.

Having found the schedule based solely on maximum possible sentence unreasonable, several alternatives could be offered.

A. That a study be made of reasonable time involved to defend each of the crimes in the present schedule, thus establishing a norm similar to those used by garages in estimating repair work. If the fee request submitted falls within the norm, it would be automatically approved for the time expended at a reasonable rate of \$60 to \$70 per hour. Excesses would have to be justified.

B. Do as the plaintiff asks and install the Jobs Committee report with a reasonable escalator based on inflation since 1982.

C. Direct the court to devise an alternative plan within a reasonable time which would: (1) compensate attorneys

pensions and have been pushed back by the legislature and thereafter forgotten. It seems appropriate that, if due process in Michigan is to be maintained, the state should include the cost in the budget.

In the matter of In re Frederick, SC No. 90310, which was heard by this Court on March 7, 1991, this precise issue was raised. Frederick was appointed to defend an indigent, David Cook, on appeal. The Court of Appeals found no law to effect payment for his services. This Court must find the system to pay Frederick. If this Court finds Frederick must be paid, then it must be decided by whom.

The mechanism for designating attorneys for appeals was set up in detail in MCL 780.711 et seq. (the Appellate Defender Act). In this Act, section MCL 780.717 provides for contracts for special assistant appellate defenders, but does not provide for single appointments of non-contract attorneys.

The Supreme Court could clarify in an appropriate opinion that it was the intent of the legislature to set up an appellate scheme to handle all appeals to the Michigan Court of Appeals and to the Michigan Supreme Court between the State Appellate Defender's Office and the Michigan Appellate Assigned Counsel Service.

That having been decided, then the legislature should be called upon to correct the glaring funding omission of the Appellate Defender Act.

If this were accomplished not only would the system in Wayne County be relieved, but also the system in every county of

sitting judges who must accept the recommendations, as it is their responsibility to operate their courts efficiently and economically. It is also their responsibility to convince county supervisors to fund the program.

4. In Wayne County, the chief judges should be encouraged to devise a plan to eliminate the criticism of assigning attorneys who operate from their cars and by telephone and live on payment for pleas and waivers.

Likewise chief judges should be made aware that the Supreme Court is aware that instances exist of appointment of attorneys who have personal relationships with assigning judges and that such appointments are not favored. There is, of course, no criticism of those judges who have had to use personal relationships to obtain competent counsel for hard cases.

5. It should be pointed out that MCL 780.711, § 2 specifically puts the supervision of the state agencies whose duties are the operation and management of appellate defense under the State Court Administrator. In practice, it does not operate that way.

If the appellate services were centralized in the Supreme Court Administrator's Office and funded by the state, much of the problems on the appellate level statewide would disappear.

At the trial level, if the 55 circuits were operating under standard rules for those utilizing public defender offices, and a separate set of standards for those not using the public defender system, most of the grievances of the plaintiffs in the Wayne County case would be met.

Tab 4

**WAYNE COUNTY CIRCUIT COURT - CRIMINAL DIVISION
PROPOSED ATTORNEY FEE SCHEDULE**

<u>EVENT</u>	<u>SENTENCE (MONTHS)</u>				
	<u>24-60(+)</u>	<u>84-120(+)</u>	<u>160-240(+)</u>	<u>LIFE MAX(+)</u>	<u>MURDER 1 (+)</u>
Pre Exam	90	110	130	190 (40)	250 (60)
AOI	40	50	60	80 (10)	100 (10)
Inves.&Prep	110	140	170	210 (10)	270 (20)
Plea	110	140	170	210 (10)	260 (10)
Motion	60	70	90	110 (10)	140 (10)
Cal. Conf.	50	50	50	60 (10)	60 (10)
Final Conf.	40	50	60	80 (10)	100 (10)
Hearings, half day	80	80	80	100 (20)	100 (20)
Hearings, full day	160	160	160	200 (40)	200 (40)
Trial, half day	90	110	130	160 (10)	210 (20)
Trial, full day	180	220	260	320 (20)	420 (40)
Sentence	60	70	90	110 (10)	140 (10)

Note: \$50 increase for pre-exam waiver program (non-capital) not included above.

Note: All Adjourned Hearings - except those adjourned by Defense receive 1/2 event fee.

The following adjournments are considered not caused by the defense:

1. Unavailability of defendant
2. Unavailability of the court.
3. Competency referrals requested by the defense.
(Under review)

Tab 5

For Release June 11, 2001

WAYNE COUNTY CIRCUIT COURT CHIEF JUDGE MICHAEL F. SAPALA

ADDRESSES COURT DEFICIT

Effective October 1, 1997, the Legislature abolished the Detroit Recorder's Court, merging its judges, personnel and functions into the Wayne County Circuit Court. At the same time, by legislative enactment, the Family Division of the Circuit Court was created. The new Wayne County Circuit Court was, and continues to be, located in six sites: the Coleman A. Young Municipal Center, the Penobscot Building, the Frank Murphy Hall of Justice, the Lincoln Hall of Justice, the Juvenile Detention Facility, and the Westland Branch office.

The budget since court reorganization has not kept pace with the level of funding required for court operations. The revenues needed by the Court to provide the necessary judicial services for the people of Detroit and Wayne County have remained virtually the same since court reorganization. Unfortunately, the expenditures required to maintain appropriate, necessary and reasonable services have continued to increase since October of 1997. Unless and until the County of Wayne and the State of Michigan provide additional funding, the Court must reduce its expenditures and services in order to eliminate a deficit which currently stands at 1.2 million dollars.

Expenditure increases have occurred in the following areas:

- Personnel – Increases in salaries and benefits for employees, and other costs, necessary to provide the required level of service to those who rely upon the Court. As a result of court reorganization, the Court was faced with salaries and benefits that were dramatically different from division to division. The Court has worked diligently with our unions to lessen this gap. We continue to be committed to resolving this issue, while working within the confines of our budget;
- Security – Costs have dramatically increased to fulfill the obligation to provide a safe environment for employees, families, children, parties, witnesses, jurors, attorneys, the general public and others who must utilize the services of the court in its several locations;
- Facilities – Costs of leased space and maintenance have increased. Court reorganization did not take into consideration the physical, logistical and funding requirements of multiple sites. Cost savings for a single operation or site have not been realized;
- Assigned Counsel Fees – Expenditures have increased due to state mandated hearings in juvenile proceedings, specialized dockets in criminal cases and personal protection proceedings in family matters. These services are necessary to promote the fair and prompt disposition of cases and to ensure public safety;
- Technology – Including the increased cost of network communications between court facilities and other related agencies; and computers, training, hardware, software and programming;

In order to achieve the required decreases in expenditures, it is absolutely necessary that I order spending reductions. Accordingly, effective June 25, 2001, the following reductions, with the exception of security, will be put in place:

- Personnel – In an effort to avoid immediate layoffs, payless paydays and/or interruption of services, all personnel need to accept a reduction or adjustment in pay. The present level of benefits will be maintained;
- Security – The present level will be maintained;
- Assigned Counsel Fees – Across the board reduction of scheduled payments of 10% per case. This reduction will affect the private bar and the Legal Aid and Defender's Association;
- Technology – Development will be curtailed to provide only maintenance and continuity of service, i.e., help desk and network communications;

In an attempt to evaluate those concerns associated with funding requirements and limitations, the Court, in conjunction with Wayne County, will soon engage professional services to identify, review and resolve issues associated with court reorganization and funding.

It is my belief that these changes, along with necessary assistance from the state, county and federal governments, will achieve our budget objectives by the end of the next fiscal year.

#####

Tab 6

**STATE OF MICHIGAN
IN THE SUPREME COURT**

WAYNE COUNTY CRIMINAL	)	
DEFENSE BAR ASSOCIATION, and	)	
THE CRIMINAL DEFENSE	)	
ATTORNEYS OF MICHIGAN	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
THE CHIEF JUDGE OF WAYNE	)	
COUNTY CIRCUIT COURT,	)	
	)	
Defendant.	)	
	)	

AFFIDAVIT OF SAMUEL CHURIKIAN

I, Samuel Churikian, being of legal age, and first duly sworn, do hereby swear and affirm that the following is true and accurate to the best of my knowledge and ability:

1. I am an attorney and a member of the Wayne County Criminal Defense Bar Association. I graduated from Wayne State University Law School in 1978, and have been practicing criminal law since that time. I routinely accept appointments to defend indigents accused of crimes in Wayne County Circuit Court.

2. When I accept appointments to defend indigents accused of crimes in Wayne County Circuit Court, I am paid according to the fee schedule known as Administrative Order 1998-03. Since June 25, 2001, each payment listed in that schedule has been further decreased by 10% through an administrative order of the Chief Judge.

3. This affidavit describes two recent appointments that I have received, the work I did, and the amounts I was paid for those appointments. These two examples are fairly typical examples of appointments I routinely receive to defend indigents accused of crimes in Wayne County Circuit Court.

Donald Cole

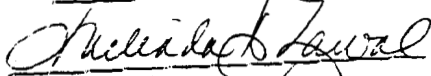
4. I was appointed to defend Donald Cole of charges of possession of cocaine in Case No. 01-11621. In representing Mr. Cole, I spent time interviewing him, requesting and reviewing discovery, and made five (5) court appearances, including a pretrial conference, a final pretrial conference, a one-day trial, and two separate days of sentencing, the second day of which included a *capias* hearing. All told, I spent approximately 50 hours representing Mr. Cole, approximately 10 of which was spent in court. I was paid \$400 for my work, approximately \$8.00 per hour. The voucher evidencing this payment is attached as Exhibit A.

McKinley Hixon

5. I was appointed to defend McKinley Hixon of a third offense of fleeing and alluding in case No. 01-1249. In representing Mr. Hixon, I spent time interviewing him and other witnesses and made five (5) court appearances including a docket conference, a calendar conference, a final pretrial conference, and two days of trial, after which my client was found not guilty. All told, I spent well over 70 hours representing Mr. Hixon. For this work, I was paid \$430, approximately \$6.14 per hour. The voucher evidencing this payment is attached as Exhibit B.

Sworn to before me

this 25th day of April, 2002



Notary Public

MELINDA D. ZAWAL

NOTARY PUBLIC MACOMB CO., MI
MY COMMISSION EXPIRES Jun 18, 2004
ACTING IN WAYNE COUNTY, MI



Samuel Churikian

Tab A

**COUNTY OF WAYNE
DEPARTMENT OF MANAGEMENT AND BUDGET
SERVICE VOUCHER
PERSONAL SERVICE**

DATE 8/16 2001

W.C. DEPT. Circuit

VENDOR NO.

VOUCHER NO.

CHECK NO.

CASH:
GL NO. 00000

TREAS. CODE

METHOD OF PROCESSING:

CDA ☐

MANUAL ☐

WIRE TRANSFER ☐

FED. TAX I.D. NO. OR
SOC. SEC. NO.

PAYEE'S NAME
(LAST) (FIRST) (MIDDLE INIT.)

362-60-0537

Churkian, Samuel

STREET NO. AND NAME

5M E Larned, #240

CITY Detroit

STATE
MICH.

ZIP CODE

48226

PARTY REPR OR SVS
TYPE
(LAST NAME ONLY)
(FOR PARTY REPR)

BAR NO.
ATTY'S ONLY

APPTG. JUDGE
INITIALS
ATTY'S ONLY

ACCT. NO.

COUNTY DEPT.
CASE NO.
MUST BE FILLED IN

Cole, Donald

29888

Ryan

835-13270 8/40/01

01-11624

ORIGINAL
CHARGE

Poss Cocaine

45249

AMT

400

DATE	DESCRIPTION OF SERVICES RENDERED	FEE OR COST
2/9/01	P/T -	
3/16/01	FPTC -	
	Prep	
7/2/01	Trial (w) Guilty	
8/1/01	Sentence - Capias	SE 400
8/2/01	Capias Hrg & Sentence - Capias set aside	
	2yrs Prob.	

EXTENSIONS CHECKED

PAYMENT AUTHD. (BUDGET)

TOTAL

I hereby certify that the services described above were rendered to the County, and that no part of the same has been previously paid.

Signature [Signature]

Department/Division _____

Date/Title _____

MANAGEMENT & BUDGET APPROVAL

Signature _____

Date _____

- Distribution:
- 1. Yellow - Management & Budget
 - 2. Pink - Remittance Copy
 - 3. Green - Initiating Department

10/13

Tab B

COUNTY OF WAYNE
DEPARTMENT OF MANAGEMENT AND BUDGET

DATE 8/16/01

SERVICE VOUCHER
PERSONAL SERVICE

W.C. DEPT.

Circuit

VENDOR NO.

VOUCHER NO.

CHECK NO.

CASH:
GL NO. 00000

TREAS. CODE

METHOD OF PROCESSING:

CDA ☐

MANUAL ☐

WIRE TRANSFER* ☐

FED. TAX I.D. NO OR
SOC. SEC. NO.

PAYEE'S NAME

(LAST)

(FIRST)

(MIDDLE INIT.)

362-60-0537

Chunkian, Samuel

STREET NO. AND NAME

577 E. Walled, #240

CITY

Detroit

STATE

MICH.

ZIP CODE

48226

PARTY REPR OR SVS
TYPE
(LAST NAME ONLY)
(FOR PARTY REPR)

BAR NO.

ATTY'S ONLY

APPTG. JUDGE
INITIALS

ATTY'S ONLY

ACCT. NO.

COUNTY DEPT.
CASE NO.
MUST BE FILLED IN

Hixon, M.

29888

CAHALAN

835-13220-814010

01-001249

ORIGINAL
CHARGE

F+E 3rd

11509

AMT

430

DATE

DESCRIPTION OF SERVICES RENDERED

FEE OR COST

2/15/01 Disp Copy - ✓

2/23/01 Cal. Copy -

3/23/01 FP TC -

Prep

7/26/01 Trial - Contd

7/31/01 Trial - NG ✓ (2 days)

TW

430

EXTENSIONS CHECKED

PAYMENT AUTHD. (BUDGET)

TOTAL

I hereby certify that the services described above were rendered to the County, and that no part of the same has been previously paid.

Signature

Department/Division

Date/Title

MANAGEMENT & BUDGET APPROVAL

Signature

Date

- Distribution:
- 1. Yellow - Management & Budget
 - 2. Pink - Remittance Copy
 - 3. Green - Initiating Department

10/13

Tab 7

AFFIDAVIT

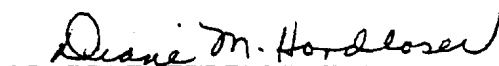
I, Corbett O'Meara, hereby affirm that the following is true:

- 1) I was assigned to represent Clarence Burks in Wayne County Circuit Court, case no. 99-010712.
- 2) Mr. Burks was charged with multiple counts of Criminal Sexual Conduct in the first degree.
- 3) Mr. Burks faced life in prison if convicted.
- 4) I spent in excess of one hundred hours working on Mr. Burks case.
- 5) After three days of trial and over ten court appearances, Mr. Burks case was dismissed.
- 6) I was paid \$1,910.00 for this case, pursuant to the scheduled fees in Wayne County Circuit Court.

I hereby affirm the foregoing is true,


Corbett O'Meara

Subscribed and sworn before me this 25th day of April, 2002.


Notary Public

DIANE M. HANDLOSER
Notary Public, Wayne County, MI
My Commission Expires Oct. 11, 2006

Tab 8

**STATE OF MICHIGAN
IN THE SUPREME COURT**

WAYNE COUNTY CRIMINAL DEFENSE)
BAR ASSOCIATION, and)
THE CRIMINAL DEFENSE ATTORNEYS)
OF MICHIGAN.)

Plaintiffs,)

v.)

THE CHIEF JUDGES OF WAYNE)
COUNTY CIRCUIT COURT,)

Defendant.)

Case No. _____

AFFIDAVIT OF MATTHEW EVANS

I, Matthew Evans, being first duly sworn, hereby depose and say as follows:

1. I am the President of the Wayne County Criminal Defense Bar Association ("WCCDBA"). I submit this affidavit on behalf of the complaint of WCCDBA and the Criminal Defense Attorneys of Michigan ("CDAM") for writ of superintending control over the Wayne County Circuit Court.

2. For the past 20 years, payments by Wayne County to attorneys appointed to defend indigents accused of felonies have been woefully insufficient. Throughout that time period, WCCBDA, CDAM, and others have fought to place Wayne County's system in line with national norms and Michigan law, which requires such payments to be reasonable. Periodically, WCCBDA, CDAM and others have been forced to file lawsuits to alleviate these problems.

3. On June 25, 2001, the then-Chief Judge of the Wayne County Circuit Court entered an Administrative Order unilaterally reducing all fees paid appointed counsel by

10%, across-the-board. This reduction -- made solely for budget purposes -- exacerbated an already unbearable situation for appointed counsel and the clients they represent.

4. WCCBDA and others immediately attempted to negotiate with then-Chief Judge of Wayne County Circuit Court, the Wayne County Commission, and others, to raise fees and become compliant with the requirements of Michigan law. WCCBDA, CDAM and others retained counsel to advise them on the propriety of filing a lawsuit to fulfill the legislative mandate. A complaint was prepared and presented to the new Chief Judges in May 2002, who requested that we negotiate to see if a solution could be reached absent litigation.

5. In May of 2002, myself (on behalf of WCCBDA) and others began a series of meetings with the Chief Judges of Wayne County Circuit Court, Mary Beth Kelly and Timothy Kenny, concerning the problems with the current fee schedule. These meetings continued through September of 2002.

6. During those negotiations, I surveyed a number of lawyers who routinely take appointments to defend indigents accused of crimes. I discussed with them the difficulty of performing a number of tasks we must perform as diligent defense attorneys. We also discussed the length of time each event usually takes to complete. Based upon those discussions, I put together a concrete proposal for a new fee schedule which provides reasonable compensation for services performed. This proposal (the "WCCBDA Proposal"), which was presented to the Chief Judges, is attached to this Affidavit as Exhibit A.

7. On August 23, 2002, I attended a meeting of the Wayne County Commission Committee on Ways & Means. Also attending that meeting was counsel for WCCBDA and CDAM, as well as Chief Judge Kelly. Chief Judge Kelly presented the WCCBDA Proposal (Exhibit A) to the Committee and described how, due to the present

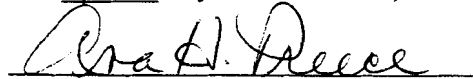
schedule's unreasonableness, something needed to be done to raise indigent attorney's fees.

Chief Judge Kelly stated specifically at that hearing that the WCCBDA Proposal (Exhibit A) was not unreasonable and that the Commission should provide her with the funding to implement it.

8. No action has been taken by the Court to implement the WCCBDA Proposal. Accordingly, WCCBDA and CDAM have been left with no alternative but to file the present suit.

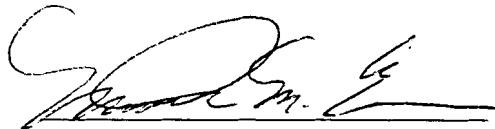
Sworn to before me

this 7 th day of November, 2002



Notary Public **AVA H. PREECE**
NOTARY PUBLIC WAYNE CO., MI
MY COMMISSION EXPIRES Sep 1, 2006

My Commission Ends:



Matthew Evans

Tab A

WAYNE COUNTY CRIMINAL DEFENSE BAR ASSOCIATION
PROPOSED FEE SCHEDULE

Crime Class A, All Homicides and CSC 1 & 3

Event	Preparation Time	Event Time	Total Time	Hourly Rate	Proposed Fee	Current Fee
Preliminary Exam	3.0	3.5	6.5	100	650	250
AOL	0.0	2.0	2.0	100	200	100
Plea	2.0	0.0	2.0	100	200	260
Pre-Exam	0.0	2.0	2.0	100	200	50
Bond Hearing	0.0	1.0	1.0	100	100	0
Competency Hearing	0.0	1.0	1.0	100	100	0
Docket Conference	0.0	2.0	2.0	100	200	0
Investigation & Prep	0.0	0.0	0.0	100	0	270
Final Conference	0.0	2.5	2.5	100	250	100
Sentence	1.5	2.0	3.5	100	350	140
Calendar Conf.	0.0	1.0	1.0	100	100	80
Pre-Trial Conf	0.0	1.0	1.0	100	100	80
Motion (No Testimony)	3.0	2.0	5.0	100	500	140
Motion (With Testimony)	1.5	3.0	4.5	100	450	100
Motion (With Testimony/full day)	1.5	6.0	7.5	100	750	200
Jail Visits	0.0	1.0	1.0	100	100	50
Trial Preparation (Jury)	20.0	0.0	20.0	100	2000	0
Trial Preparation (Bench)	12.0	0.0	12.0	100	1200	0
Trial Full Day	2.0	7.0	9.0	100	900	420
Trial Half Day	2.0	4.0	6.0	100	600	210
Probation Violation:						
Plea and Sentence Same Appearance					100	
Plea and Sentence Separate Appearance					175	
				Current Fee	Proposed Fee	
Plea				1020	1400	
Half Day Bench Trial				1150	3350	
Three Day Jury Trial				2200	6250	

Crime Classes B, C, D, and any other offense requiring mandatory MDOC sentence

Event	Preparation Time	Event Time	Total Time	Hourly Rate	Proposed Fee	Current Fee
Preliminary Exam	2.0	3.5	5.5	85	468	180
AOL	0.0	2.0	2.0	85	170	80
Plea	2.0	0.0	2.0	85	170	210
Pre-Exam	0.0	2.0	2.0	85	170	50
Bond Hearing	0.0	1.0	1.0	85	85	0
Competency Hearing	0.0	1.0	1.0	85	85	0
Docket Conference	0.0	2.0	2.0	85	170	0
Investigation & Prep	0.0	0.0	0.0	85	0	210
Final Conference	0.0	2.5	2.5	85	213	80
Sentence	1.0	2.0	3.0	85	255	110
Calendar Conf.	0.0	1.0	1.0	85	85	60
Pre-Trial Conf	0.0	1.0	1.0	85	85	60
Motion (No Testimony)	2.5	2.0	4.5	85	383	110
Motion (With Testimony)	1.5	3.0	4.5	85	383	100
Motion (With Testimony/full day)	1.5	6.0	7.5	85	638	200
Jail Visits	0.0	1.0	1.0	85	85	50
Trial Preparation (Jury)	12.0	0.0	12.0	85	1020	0
Trial Preparation (Bench)	8.0	0.0	8.0	85	680	0
Trial Full Day	2.0	7.0	9.0	85	765	320
Trial Half Day	2.0	4.0	8.0	85	510	160
Probation Violation:						
Plea and Sentence Same Appearance					100	75
Plea and Sentence Separate Appearance					175	75
				Current Fee	Proposed Fee	
Plea				800	1063	
Half Day Bench Trial				880	2381	
Three Day Jury Trial				1690	4506	

Crime Classes E, F, G, H

Event	Preparation Time	Event Time	Total Time	Hourly Rate	Proposed Fee	Current Fee
Preliminary Exam	1.0	3.0	4.0	75	300	110
AOL	0.0	3.0	3.0	75	225	50
Plea	2.0	0.0	2.0	75	150	140
Pre-Exam	0.0	2.0	2.0	75	150	50
Bond Hearing	0.0	1.0	1.0	75	75	0
Competency Hearing	0.0	1.0	1.0	75	75	0
Docket Conference	0.0	2.0	2.0	75	150	0
Investigation & Prep	0.0	0.0	0.0	75	0	140
Final Conference	0.0	2.5	2.5	75	188	50
Sentence	0.5	2.0	2.5	75	188	70
Calendar Conf.	0.0	1.0	1.0	75	75	50
Pre-Trial Conf	0.0	1.0	1.0	75	75	50
Motion (No Testimony)	2.5	2.0	4.5	75	338	70
Motion (With Testimony)	1.5	3.0	4.5	75	338	80
Motion (With Testimony/full day)	1.5	6.0	7.5	75	563	160
Jail Visits	0.0	1.0	1.0	75	75	50
Trial Preparation (Jury)	8.0	0.0	8.0	75	600	0
Trial Preparation (Bench)	8.0	0.0	6.0	75	450	0
Trial Full Day	1.0	7.0	8.0	75	600	220
Trial Half Day	1.0	4.0	5.0	75	375	110
Probation Violation:						
Plea and Sentence Same Appearance					100	75
Plea and Sentence Separate Appearance					175	75
				Current	Proposed	
				Fee	Fee	
Plea				510	863	
Half Day Bench Trial				580	1801	
Three Day Jury Trial				1130	3378	

Tab 9



LEONIDAS RALPH MECHAM
Director

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

CLARENCE A. LEE, JR.
Associate Director

WASHINGTON, D.C. 20544

March 22, 2002

MEMORANDUM TO ALL: JUDGES, UNITED STATES COURTS OF APPEALS
JUDGES, UNITED STATES DISTRICT COURTS
UNITED STATES MAGISTRATE JUDGES
CIRCUIT EXECUTIVES
FEDERAL PUBLIC/COMMUNITY DEFENDERS
DISTRICT COURT EXECUTIVES
CLERKS, UNITED STATES COURTS OF APPEALS
CLERKS, UNITED STATES DISTRICT COURTS

SUBJECT: Implementation of a Criminal Justice Act Panel Attorney Rate Increase
(INFORMATION)

The FY 2002 judiciary appropriations bill includes funds to support a rate of \$90 per hour for in-court and out-of-court work in all judicial districts for private "panel" attorneys accepting appointments under the Criminal Justice Act (CJA), 18 U.S.C. § 3006A. **The new CJA panel attorney hourly rate of \$90 will apply to in-court and out-of-court work performed on or after May 1, 2002.** This includes that portion of work performed on or after May 1, 2002, in representations where the appointment of CJA counsel occurred prior to that date.

In addition to the copy of this memorandum that I am providing to the CJA panel attorney representative from each district, please ensure that panel attorneys in your respective jurisdictions are informed of this rate adjustment. If you have any questions concerning this matter, please contact the Defender Services Division Duty Attorney on (202) 502-3030.

A handwritten signature in cursive script, reading "Leonidas Ralph Mecham".

Leonidas Ralph Mecham

cc: CJA District Panel Attorney Representatives

Tab 10

Prosecuting Attorneys Coordinating Council 2001 - ANNUAL PROSECUTION SURVEY

(All dollar figures are rounded to the nearest thousand)

County (population order)	Population	APAs	Office Mgr./Adm	V-W Staff	Clerical	Criminal Investigator	Child Support Invest	OFFICE BUDGET				PA Status	Civil Counsel	PA Salary	STAFF SALARY RANGES						
								County Funds (incl. Chy. CRP portion)	State CRP Funds	Other Funds	Total Office Budget				CAPA	APA	Office Mgr.	Victim/Witness Staff	Clerical	Criminal Invest.	Child Support Invest.
1) Wayne	2,061,162	160	18	28	66	11	-	24,000.3	-	874.6 ¹ 457.8 ² *1,278.7 ³	*26,611.4	A	N	131.5	82.5 - 133.5	39.6 - 126.5	30.7 - 102.4	19.1 - 69.2	19.1 - 44.6	49.7	-
2) Oakland	1,194,156	107	1	8	65	4	2	*16,508.6	*1,426.7	*180.0 ¹ *501.8 ²	18,617.1	A	N	120.3	103.7	47.2 - 100.2	39.3 - 51.1	26.9 - 57.0	21.2 - 46.5	50.2	50.2
3) Macomb	788,149	57	1	5	36	6	2	7,445.6	862.6	242.4 ¹	8,550.8	B	N	100.6	91.6	43.3 - 86.1	47.2 - 59.0	28.9 - 46.4	20.6 - 36.8	28.1 - 45.5	28.1 - 42.8
4) Kent	574,335	35	3	11	29	-	1	4,812.6	771.6	120.0 ¹ 89.6 ²	5,793.7	A	N	103.0	67.8 - 96.4	40.5 - 79.8	35.0 - 69.6	22.0 - 50.7	22.0 - 35.1	-	39.7 - 57.5
5) Genesee	436,141	36	1	6	29	1	3	3,449.8	1,555.3	392.3 ¹ *400.0 ² *5.0 ³	5,797.5	B	N	93.3	88.4	28.5 - 75.8	30.5 - 44.5	22.9 - 46.1	21.1 - 36.3	31.7 - 49.2	31.7 - 49.2
6) Washtenaw	322,895	32	1	6	14	-	1	3,589.5	352.1	125.0 ¹ *20.0 ² 3,360.7 ³	7,447.3	A	N	94.4	52.5 - 77.7	39.5 - 56.2	47.3 - 70.0	26.9 - 47.1	23.6 - 30.9	-	26.3 - 36.0

+ PA receives divorce fees pursuant to MCL 552.45.
* Estimated data
**Data not available

OFFICE BUDGET: OTHER FUNDS
¹Victim Rights
²Assets Forfeiture
³State/Federal Grants
⁴Other Sources

PA STATUS - CODE
 (A) Full-time; private practice prohibited by agreement with county
 (B) Full-time; rarely or never handles private practice by choice.
 (C) Works 40 hours per week or more on official duties; some private practice.
 (D) Works less than 40 hours (avg.) on official duties; divides time with private practice

PA STATUS AND SALARY
 Average PA Salary: \$74.2
 33 Counties = (A) "No Private Practice" agreement with county: \$82.8
 38 Counties = (B) "No Private Practice" by choice: \$72.3
 12 Counties = (C&D) "Some Private Practice": \$56.9

Population taken from the 2000 Census of Population & Housing,
 U.S. Dept. of Commerce, Bureau of Census

This report is compiled from a written response of most counties to PAAM's Annual Survey. Some counties do not respond, and other responses are incomplete; local processes for recording vary widely. We try to correct and minimize errors with telephone follow-up, but some information is not available, and some responses defy interpretation. Only through a contact with an individual county can any data in this report be verified.