

Standard 5 - Independence from the Judiciary

The MIDC Act requires the agency to establish minimum standards, rules, and procedures to adhere to the following: “The delivery of indigent criminal defense services shall be independent of the judiciary but ensure that the judges of this state are permitted and encouraged to contribute information and advice concerning that delivery of indigent criminal defense services.” MCL 780.991 (1)(a).

The United States Supreme Court addressed the issue of independence in *Polk v Dodson*, 454 US 312, 321-322; 102 S Ct 445, 451; 70 L Ed 2d 509 (1981):

First, a public defender is not amenable to administrative direction in the same sense as other employees of the State. Administrative and legislative decisions undoubtedly influence the way a public defender does his work. State decisions may determine the quality of his law library or the size of his caseload. But a defense lawyer is not, and by the nature of his function cannot be, the servant of an administrative superior. . . *Second, and equally important, it is the constitutional obligation of the State to respect the professional independence of the public defenders whom it engages.* (Emphasis added.)

The MIDC proposes a minimum standard to ensure that indigent criminal defense services are independent of the judiciary:

A. The indigent criminal defense system (“the system”) should be designed to guarantee the integrity of the relationship between lawyer and client. The system and the lawyers serving under it should be free from political and undue budgetary influence. Both should be subject to judicial supervision only in the same manner and to the same extent as retained counsel or the prosecution. The selection of lawyers and the payment for their services shall not be made by the judiciary or employees reporting to the judiciary. Similarly, the selection and approval of, and payment for, other expenses necessary for providing effective assistance of defense counsel shall not be made by the judiciary or employees reporting to the judiciary.

B. The court’s role shall be limited to: informing defendants of right to counsel; making a determination of indigency and entitlement to appointment; if deemed eligible for counsel, referring the defendant to the appropriate agency (absent a valid waiver). Judges are permitted and encouraged to contribute information and advice concerning the delivery of indigent criminal defense services, including their opinions regarding the competence and performance of attorneys providing such services.

Staff Comment:

Only in rare cases may a judge encourage a specific attorney be assigned to represent a specific defendant because of unique skills and abilities that attorney possesses. In these cases, the judge’s input may be received and the system may take this input into account when making an appointment, however the system may not make the appointment solely because of a recommendation from the judge.