

STATE OF MICHIGAN
IN THE SUPREME COURT

In Re:
THE RECORDERS'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,

Plaintiffs,

v.

CHIEF JUDGES OF WAYNE COUNTY CIRCUIT
COURT AND RECORDER'S COURT

Defendants,

COMPLAINT FOR WRIT OF SUPERINTENDING CONTROL
TO THE CHIEF JUDGE OF THE WAYNE COUNTY CIRCUIT
COURT AND TO THE CHIEF JUDGE OF THE
RECORDER'S COURT FOR THE CITY OF DETROIT

NOW COME, 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, Plaintiffs,
by their attorney, FRANK D. EAMAN of BELLANCA, BEATTIE AND DE LISLE, and they
say as follows:

I. ISSUES

1. Plaintiffs seek a writ of superintending control to the Chief
Judge of the Wayne County Circuit Court and to the Chief Judge of the
Recorder's Court for the City of Detroit requiring that there be put in place
a schedule of fees which provides for reasonable fees for counsel appointed to

represent indigents accused of crimes in those courts.

2. Plaintiffs seek this writ of superintending control to enforce MCL 775.16; MSA 28.1253 which reads as follows:

When a person charged with having committed a felony appears before a magistrate without counsel, and who has not waived examination on the charge upon which the person appears, the person shall be advised of his or her right to have counsel appointed for the examination. If the person states that he or she is unable to procure counsel, the magistrate shall notify the chief judge of the circuit court in the judicial district in which the offense is alleged to have occurred, or the chief judge of the recorder's court of the city of Detroit if the offense is alleged to have occurred in the city of Detroit. Upon proper showing, the chief judge shall appoint or direct the magistrate to appoint an attorney to conduct the accused's examination and to conduct the accused's defense. 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. (emphasis added)

3. Plaintiffs ask that this court set aside the fee schedule recently approved by those chief judges and attached hereto as Exhibit A, for the reason that the schedule, on its face, does not provide for "reasonable fees" for trials or a method for paying "reasonable fees" to attorneys appointed to represent indigent defendants and because that schedule results in a system of providing criminal defense which systematically violates the Fifth, Sixth and Fourteenth Amendments of the U.S. Constitution.

4. Plaintiffs seek to reinstate the fee schedule originally set in 1982 by the chief judges and attached hereto as Exhibit B. Even though the 1982 schedule is almost seven years old, it would provide for a higher and fairer fee for trials than is now paid, because trial fees have been steadily reduced since 1982. The 1982 schedule was set as a result of a previous

superintending control action having been filed in this court. That superintending control case was dismissed, without prejudice, because of the fee schedule in Exhibit B. See Exhibit C, Order of Supreme Court, attached hereto.

II. JURISDICTION

5. Plaintiffs invoke the jurisdiction of this Court pursuant to MCR 3.302 and 8.112 and pursuant to the decisional authority provided by Morcom v Recorder's Court Judges, 15 Mich App 358 (1968), cited with approval by the Supreme Court in People v Blachura, 390 Mich 326, 344-345 (1973), and request an immediate consideration and disposition of this matter.

6. Plaintiffs have no adequate legal remedy to challenge or question the administrative actions of chief judges in setting maximum fee amounts for attorneys representing defendants in indigent criminal cases in part because those judges have circumvented MCR 8.112 by unilaterally enacting a "schedule" for fees instead of local court rule.

7. The parties who bring this complaint for superintending control seek the relief of the court because they, their members and their clients have been injured, are being injured, and will continue to be injured until the new unreasonable fee schedule is set aside and a fee schedule which allows for reasonable trial fees to be paid to attorneys consistent with MCL 775.16; MSA 28.1253, is established in its place.

8. Much of the injury done by the new fee schedule is continuing and irreparable to the members of the Plaintiff's groups, who as this complaint is being filed, continue to be paid for trials in accordance with the fee schedule challenged by this complaint.

9. No legally cognizable interest of the chief judges will be harmed by granting the relief here requested, and this court always retains the power and authority to supervise the jurisdiction of the courts to see that statutes are enforced, courtrules are enforced, and the proceedings of the court are otherwise legal, lawful and reasonable.

III. PARTIES

10. The parties who instituted this complaint for superintending control are either unincorporated voluntary associations or non-profit corporations, some or all of whose members or employees are routinely appointed to represent indigent defendants in criminal actions pending before the Wayne County Circuit Court and the Recorder's Court for the City of Detroit.

11. The parties against whom relief is sought are the chief judges of Recorder's Court and Wayne County Circuit Court (Third Judicial Circuit) who are, respectively, the Hon. Dalton A. Roberson and the Hon. Richard C. Kaufman.

IV. SUMMARY OF THE COMPLAINT

12. In or about 1967, the Wayne County Circuit Court and the Recorder's Court for the City of Detroit, acting separately or in concert, put in place similar schedules of fees to be paid to counsel appointed to represent indigent defendants in criminal actions pending before those courts; those schedules were amended in 1970. The Wayne County Circuit Court's schedule is attached hereto as Exhibit E to this Complaint and the Recorder's Court's schedule is attached hereto as Exhibit F, and these Exhibits, by this reference, are made a part of this Complaint.

13. From 1967 through 1981, counsel appointed to represent indigent criminal defendants brought before the Wayne County Circuit Court and the Recorder's Court for the City of Detroit were paid in accordance with Exhibits E and F, despite the fact that the rate of inflation in Detroit was tremendous during that fourteen year period.

14. In 1982, some of the Plaintiffs in this action, along with other plaintiffs, brought a complaint for superintending control against the chief judges of the Recorder's Court and the Wayne County Circuit Court, who at that time were the Honorable Samuel C. Gardner and Richard C. Dunn. As a result of that complaint, those chief judges revised those fee schedules in effect in those courts and raised the fees consistent with the increase in the cost of living in the Detroit area; that revision resulted in the proposed fee schedule which is attached hereto as Exhibit B.

15. As a result of the new fee schedule, this court dismissed the complaint for superintending control, without prejudice to the parties bringing the matter back before the court should the fee schedule not be placed in operation (Exhibit C, Order of Supreme Court).

16. However, before that fee schedule could go into effect, the Chief Judges reduced the fees and unilaterally promulgated another fee schedule in October of 1982, which schedule is attached to this Complaint as Exhibit D. That schedule reduced trial fees from three times the 1967 rates to double the 1967 rates.

17. Subsequent to the dismissal of the original complaint for superintending control, the County of Wayne filed a second complaint for superintending control in this court, which was also dismissed without prejudice to the County or any party bring subsequent legal action in the

courts below. (See Exhibit G, Order of the Supreme Court)

18. Subsequent to additional legal action being filed in the Wayne County Circuit Court, the chief judges of Recorder's Court and the Wayne County Circuit Court enacted a new, revised fee schedule which resulted in a gradual increase of fees in the Wayne County Circuit Courts and Recorder's Court for the City of Detroit (See Exhibit H).

19. That soon after the fees were finally raised in 1984, the chief judge of the Recorder's Court for the City of Detroit, acting as executive chief judge for both Recorder's Court and for Wayne County Circuit Court, reduced the trial fees to a lower level by issuing an administrative order in 1985 (Exhibit J) that order set trial fees back to the same rate they had been in 1967.

20. Some of the plaintiffs in this action instituted a complaint in the Wayne County Circuit Court against the fees of 1985 (Exhibit I), which was dismissed by the Honorable Richard C. Dunn with the issuance of an opinion which effectively upheld the new, reduced trial fees (Exhibit J).

21. On July 1, 1988, the Honorable Dalton A. Roberson and the Honorable Richard C. Kaufman, as chief judge of the Recorder's Court for the City of Detroit and for the Wayne County Circuit Court, respectively, again changed the fees in a new "schedule" issued by the court; that new schedule required that "flat fees" be paid in each case, that is, that the fee that an attorney receive for each case would not vary, regardless of the work done, but, rather, would depend only on maximum penalties faced by the defendant in each case. That schedule was promulgated without consultation with any of the Plaintiffs or any other attorney's groups or bar associations.

22. That the new fee schedule is, on its face, per se unreasonable and

in violation of MCL 775.16; MSA 28.1253, because it provides a system and schedule for the payment of unreasonable fees:

A. The rates ordered to be paid to attorneys for trials are below the effective rates provided for in the 1967 fee schedule and well below the 1982 fee schedule, which was promulgated by the chief judges of the Recorder's Court and the Wayne County Circuit Court in response to the previous complaint for superintending control.

B. A flat fee schedule is per se unreasonable, in that there is no relationship between the amount of work performed and the amount of fee to be paid to the attorney. Attorneys who try cases will receive the same fees as attorneys who plead their clients guilty. An attorney who represents a defendant in a complex criminal case with a low statutory maximum sentence will receive inadequate compensation for the complex legal representation because the "ceiling" set on the payment of fees is related only to the maximum penalty his or her client faces.

C. It is per se unreasonable to provide a fee schedule which, by flat fees in every case, operates as an economic disincentive to lawyers to try cases or to perform the maximum work they are required to perform in various cases for the reason that they retain little hope of being paid for such work. Such a system for payment of fees provides a chilling effect on the rights of defendants accused of crimes who receive appointed counsel in the Recorder's Court for the City of Detroit and the Wayne County Circuit Court, and those rights, as secured by the Fourth, Fifth,

Fourteenth, and Sixth Amendment of the United States Constitution, are in jeopardy if the court allows such a fee schedule as herein to be maintained.

D. Attorneys retain the right to collect reasonable fees for their services pursuant to MCL 775.16; MSA 28.1253, and a schedule which imposes flat fee rates in each case is per se unreasonable and violates the aforesaid statute by not allowing for reasonable fees to be paid to attorneys on a case by case basis based on the amount of work performed.

E. The schedule provides an institutionalized method and system which will result in a criminal defendant receiving ineffective assistance of counsel in a substantial number of cases, in violation of the Sixth Amendment of the United States Constitution.

F. The actions of the judges in creating a "schedule" to set fees is illegal, unlawful and unreasonable pursuant to MCR 8.112 which requires the court to adopt as a local court rule any practice of the trial court not specifically authorized by the Michigan Court Rules and which reasonably depends on attorneys and litigants being informed of the practice of that matter for their effectiveness; neither is the schedule appropriate for an administrative order, because MCR 8.112 provides that administrative orders are limited only to those matters governing internal court management.

23. The fee schedule in Exhibit A which has been approved by the chief judges of the Recorder's Court for the City of Detroit and the Wayne County Circuit Court is inconsistent with the maintenance in the courts of Wayne

County of a sound criminal justice system which protects the rights of all parties in the system and provides for the effective assistance of counsel to indigents accused of crimes in those courts.

24. If this court grant the relief requested by the Plaintiffs and order reinstatement of the 1981 fee schedule (Exhibit A attached hereto) there are no questions of fact the resolution of which is necessary before this court can reasonably grant the requested relief.

25. If this court chooses to allow parties to present evidence the Plaintiffs can prove to this court that the new fee schedule is also unreasonable for the following reasons:

A. The maximum fees set per case are well below the prevailing rates of attorneys fees paid in the jurisdiction for which the fees have been set; indigent defendants are being asked to accept attorneys who are being paid less than twenty-five (25%) percent of the customary and reasonable rate that attorneys receive for the defense of criminal cases when they are retained by defendants who can afford counsel, and out of those fees the attorneys must pay for the overhead of their offices.

B. The system violates the rights of the attorneys pursuant to the equal protection clause of the United States Constitution, when the attorneys participate as court appointed members of the system of justice and are paid at a rate less than the going rates for attorneys in retained cases and are paid at a rate which is less than the comparable rates received by judges and prosecutors, who are not asked to participate in a criminal justice system at a reduced rate or at reduced compensation merely because the

defendant is indigent.

C. The fee schedule deprives indigents accused of crimes in Wayne County of representation by experienced lawyers expert in the science and art of criminal defense who, because they will not receive reasonable compensation as appointed counsel engage themselves elsewhere.

D. The fee schedule and system violates equal protection and due process provisions of the Constitution of the United States in that lawyers who defend criminal defendants are paid at a lower rate than other lawyers; such a system is a taking of the property of attorneys (their skill and time) in violation of the Fifth Amendment of the United States Constitution, because lawyers who choose to defend criminal cases in a government system are paid at a lower rate than other lawyers.

E. The fee schedule and system violate the equal protection and due process provisions of the United States Constitution because only a few members of the bar work at the low rates set in Schedule A; the burden of providing low-cost services falls unequally on certain members of the bar.

F. A reasonable rate of compensation of court appointed counsel is \$75.00 to \$125.00 an hour see, "Economics of the Practice of Law", 67 Mich SBJ Vol 67, No 11B (November, 1988) p. 23.

26. The schedule and system now in effect in Wayne County violates the Sixth Amendment of the United States Constitution because the burden of the representation of indigent defendants falls not on the State, but on the members of the Plaintiffs' groups.

27. The Plaintiffs ask this Court to take judicial notice of the economic survey of the State Bar of Michigan, which found that the average hourly rate for attorneys who practice criminal law is \$75.00 to \$125.00 an hour "Economics of the Practice of Law", 67 Mich SBJ Vol 67, No 11B (November, 1988) p.23.

V. RELIEF

WHEREFORE, the parties who file this action ask the court to:

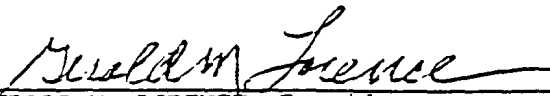
A. Issue its writ of superintending control to the chief judges of the Wayne County Circuit Court and Recorder's Court for the City of Detroit requiring that they put in place forthwith the fee schedule of 1982 (Exhibit B attached hereto) to provide for a reasonable schedule of fees to be paid to counsel appointed to represent indigent's accused of crimes in their respective courts.

B. Issue its writ of superintending control to the Defendant chief judges forthwith requiring that they cease and desist from approving payment pursuant to the fee schedule enacted July 1, 1988 (Exhibit A attached hereto).


C. Adopt a court rule or administrative order to set guidelines for the payment of reasonable fees to attorneys who represent indigent defendants in the courts of this state; this action is necessary to avoid repetitious and continuing litigation regarding fees in indigent criminal cases.

D. Issue such other writs and orders as the court in good conscience feels are required in the premises.

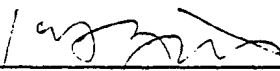
RECORDER'S COURT BAR ASSOCIATION

BY 
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1750 Penobscot Building
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BELLANCA, BEATTIE & DE LISLE

BY 
FRANK D. EAMAN (P13070)
Attorneys for all Plaintiffs

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WOMEN LAWYERS ASSOCIATION OF MICHIGAN

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SUBURBAN BAR ASSOCIATION

BY

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President-Elect
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Plymouth, Michigan 48170
(313) 451-0475

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



RICHARD W. KAUFMAN
EXECUTIVE CHIEF JUDGE

JUL 30 1982



The Circuit Court

for the Third Judicial Circuit of Michigan

and

the Recorder's Court for the City of Detroit

1201 CITY-COUNTY BUILDING
DETROIT, MICHIGAN 48226

RICHARD D. DUNN
EXECUTIVE CHIEF JUDGE

June 23, 1982

TELEPHONE
313-224-1000

Honorable Mary S. Coleman
Chief Justice
Michigan Supreme Court
P. O. Box 30052
Lansing, MI 48909

Dear Chief Justice Coleman:

The benches of both Recorder's Court for the City of Detroit and the Third Judicial Circuit Court have approved the proposed attorney fee schedule for the representation of indigent defendants for implementation as of December 1, 1982.

It is my intent to submit this schedule to the Wayne County Board of Auditors for inclusion in the final 1982-1983 budget. Under separate cover, our court administrator will be forwarding a letter to Mr. Hoag to repeal Local Court Rule 14.13 for the Third Circuit and the appropriate appendix to Local Court Rule 10 for Recorder's Court.

It was further agreed by each court that this schedule will be utilized in both courts.

Please do not hesitate to contact me if you require further information.

Very truly yours,

Richard D. Dunn

CAJ/j

Enclosure

cc Honorable Samuel C. Gardner,
Executive Chief Judge Pro tem
Mr. L. M. Jacobs, IV
Mr. George Gish

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arraignment on the Warrant	50.00
re-exam Jail Visit (one only)	50.00
Preliminary Examination - waived	100.00
- conducted	150.00
First Post Exam Jail Visit	50.00
Second Post Exam Jail Visit	35.00
Capital Cases: No more than three visits	
Non-capital Cases: No more than two visits	
Investigation and Preparation of Cases for Trial or Plea	150.00
Written Motion with Brief and Oral Argument (Excepting standard discovery orders)	75.00
Calendar Conference and Arraignment on Information (For each appearance)	50.00
Final Conference (For each appearance as long as adjournment not by defense)	50.00
Walker Hearing - One-half Day or Less	75.00
Full Day and Each Day Thereafter	150.00
Evidentiary Hearing - One-half Day or Less	75.00
Full Day and Each Day Thereafter	150.00
Attendance in Court for Trial Per Day or Fraction Thereof -	
Capital Cases	450.00
Non-capital Cases	300.00
Pretrial Conference	100.00
Forensic Sanity Hearing - Witnesses Waived	50.00
Hearing Held, One-half Day	75.00
Hearing Held, Full Day	150.00
Attendance in Court for Sentence	75.00
Probation Violation Hearing	75.00
Unfrivolous Motion for New Trial Together With Memorandum of Law by Trial Counsel After a Jury or Non-jury trial	125.00
FEELS	
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
Cost to Prison Facilities:	
Wayne County Facilities	75.00
Camp Pellston and all UP Facilities	400.00
All Others	200.00
MISCELLANEOUS FEE SCHEDULE	
W-ups - full Day Standby	200.00
Per Hour	50.00
Psychiatrists - Cases in Which the Maximum Penalty is Life Imprisonment	
Interview and Written Evaluation	300.00
Attendance in Court	150.00
or Experts - Interview and Written Evaluation	200.00
Attendance in Court	150.00
Interpreters - Per Day	150.00
Half Day	75.00

APR 11 1983

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, held at the Supreme Court
Room, in the City of Lansing, on the 8th day of
April in the year of our Lord one thousand nine hundred and eighty-three.

Present the Honorable

22/March/83

G. MENNEN WILLIAMS,
Chief Justice
THOMAS GILES KAVANAGH,
CHARLES L. LEVIN,
JAMES L. RYAN,
JAMES H. BRICKLEY,
MICHAEL F. CAVANAGH,
Associate Justices.

WAYNE COUNTY, a Michigan county,
Plaintiff,

and

THE DETROIT BAR ASSOCIATION, et al,
Intervening Plaintiffs,

v

SC: 70647

CHIEF JUDGE OF THE THIRD JUDICIAL
CIRCUIT, CHIEF JUDGE OF THE RECORDER'S
COURT FOR THE CITY OF DETROIT, and
STATE COURT ADMINISTRATOR, in their
official capacities,

Defendants.

On order of the Court, the complaint for superintending control and the briefs and oral argument of the parties have been considered. It has become evident that the record in this original proceeding is an inadequate basis for decision because of factual questions and disputes which must be resolved before judgment, but which have never been the subject of proofs by the parties. Accordingly, it is ordered that the complaint for superintending control be DISMISSED.

This dismissal is without prejudice to the institution of an appropriate action in circuit court by any of the parties to this action or by individuals or entities not parties to this action for a determination of the duty to pay or the right to be paid in accordance with a fee schedule for the compensation of lawyers representing indigent defendants.

The emergency motion to compel payment of assigned counsel and the motion for order of discovery are accordingly denied.

STATE OF MICHIGAN -- ss.

I, CORBIN R. DAVIS, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at

Lansing this 8th day of April
in the year of our Lord one thousand nine
hundred and eighty-three.



Corbin R. Davis Clerk
Deputy

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT COURT
RECORDER'S COURT

JOINT ADMINISTRATIVE
ORDER NO. 1

NO. 1982-

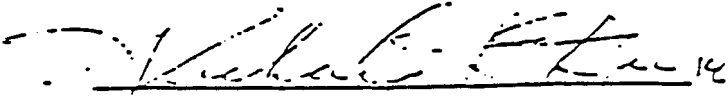
At a session of said court held
in Room 1201 City-County Building,
Detroit, Michigan 48226 on

NOVEMBER 22, 1982

PRESENT: Honorable Richard D. Dunn,
Executive Chief Judge

Pursuant to a review of the Assigned Counsel Fee Schedule for the Third Judicial Circuit Court and Recorder's Court, each Bench approved the attached fee schedule for services performed after November 30, 1982 by attorneys for indigent defendants.

IT IS HEREBY ORDERED on behalf of both courts that the aforementioned Fee Schedule for Assigned Counsel be utilized for remuneration of attorneys representing indigent defendants for services performed after November 30, 1982.


Richard D. Dunn
Executive Chief Judge

FEE SCHEDULE FOR ASSIGNED COUNSEL

REVISED 10/13/8

Arraignment on Warrant	\$ 75.
Pre-exam - Jail Visit (one only)	50.
Office Visit	25.
Preliminary Examination	125.
First Post Exam Jail Visit	50.
Second Post Exam Jail Visit	35.
Capital Cases: No more than three visits	
Non-capital Cases: No more than two visits	
Investigation and Preparation of Cases for Trial or Plea	150.
Written Motion with Brief and Oral Argument (Excepting standard discovery orders)	75.
Calendar Conference and Arraignment on Information (For each appearance)	50.
Final Conference (For each appearance as long as adjournment not by defense)	50.
Walker Hearing - One-half Day or Less	75.
Full Day and Each Day Thereafter	150.
Evidentiary Hearing - One-half Day or Less	75.
Full Day and Each Day Thereafter	150.
Attendance in Court for Trial Per Day or Fraction Thereof -	
Capital Cases	300.
Non-capital Cases	200.
Plea	100.
Forensic Hearing - Witnesses Waived	50.
Hearing Held, One-half Day	75.
Hearing Held, Full Day	150.
Attendance in Court for Sentence	75.
Probation Violation Hearing	75.
Non-frivolous Motion for New Trial Together With Memorandum of Law by Trial Counsel After a Jury or Non-jury trial	125.

APPEALS

Transcript -	Every 400 pages or major fraction thereof other than guilty plea cases	200.C
	Guilty plea cases	100.C
Claim of Appeal, Brief and All Proceedings -	Other than guilty plea cases	500.C
	Guilty plea cases	350.C
Visit to Prison Facilities -	Wayne County Facilities	75.0
	Camp Pellston and all UP Facilities	400.0
	All Others	200.0
Appeal to Higher Court for each one-half day sent in trial court:		75.C
Appearance at Habeas Corpus		50.C

MISCELLANEOUS FEE SCHEDULE

Show-ups -	Full Day Standby	200.C
	Per Hour	50.C
Psychiatric Cases in Which the Maximum Penalty is Life Imprisonment		
	Interview and Written Evaluation	300.0
	Attendance in Court	150.0
Other Experts -	Interview and Written Evaluation	200.0
	Attendance in Court	150.0
Interpreters -	Per Day	150.0
	Half Day	75.0

PATERNITY

Preparation	150.0
Non-trial Appearance	75.0
Trial per day	150.0

CIRCUIT COURT—WAYNE COUNTY Rule 14.5

Rule 14.5 Fees for Assigned Counsel.

Any attorney assigned by a judge of this court to defend an indigent person charged with a crime, shall, before payment therefor, file with the Clerk a written statement that he has not received or been promised payment from any other source.

On certification of the trial judge, such attorney shall be entitled to receive from the Wayne County Treasurer:

- (a) A fee not to exceed \$50.00 for appearance by the attorney at arraignment on the warrant.
- (b) A fee for appearance by the attorney at the examination:
If Examination is waived, \$50.00
If Examination is adjourned at the request of the prosecutor or on Court's own motion, each adjournment, but not to exceed two adjournments, \$50.00.
If Examination is conducted where testimony is taken or if Motion to Dismiss is granted for each day or portion thereof, \$100.00.
- (c) A fee for appearance by the attorney at the arraignment in Circuit Court, \$50.00.
- (d) A fee for preparation of case for trial in Circuit Court; defendant on bond, including plea, \$100.00:
For preparation of case for trial in Circuit Court: If defendant is in jail and is interviewed by attorney at the jail, including plea, \$125.00.
- (e) A fee for appearance on written Motion in Circuit Court when the Motion is actually argued: A fee of up to \$50.00 to be awarded at the discretion of the judge hearing the Motion.
- (f) In addition, a fee for attendance in Circuit Court for trial:
Cases in which the maximum penalty is life imprisonment, for each day or portion thereof, \$150.00: All other cases, for each day or portion thereof, \$100.00.
- (g) A fee for appearance at time of sentence, \$50.00.
- (h) A fee for appearance at probation violation hearing: For each one-half day, \$50.00.
- (i) A fee for appearance at sanity hearing, for each day or portion thereof, \$100.00.
- (j) A fee for filing written Motion for new trial and arguing the same, filing of briefs thereof, etc., \$50.00.

Rule 14.5 CIRCUIT COURT—WAYNE COUNTY

- (k) In all cases of appeals to a higher court, a fee not to exceed \$50.00 for each one-half day spent in the Circuit Court, plus \$100.00 for every 400 pages of transcript, or major fraction thereof, but not less than \$100.00; plus \$250.00 for all proceedings in the higher court where claim of appeal and brief is filed.

No attorney appointed pursuant to this rule shall incur any expense to the county in preparing the indigent's defense without written permission of the trial judge or of the presiding judge, except for ordinary witness fees.

Upon its adoption, this rule shall be effective for all services rendered subsequent thereto. Amended July 26, 1968.

Rule 14.6 Payment of Counsel for Appeals. [Repealed]

Rule 14.7 Reports in Criminal Actions.

All probation, psychiatric, psychological and medical reports submitted to the court to aid it in passing sentence in criminal cases shall be deemed suppressed information and shall be kept confidential, and the contents thereof shall not be published without consent of the court.

No probation officer, clerk or other officer of this court, nor any other person, shall divulge any information contained in such reports, except to those entitled to access thereto as provided by law.

RULE 15—PATERNITY ACTIONS CALENDAR

(Attorneys filing paternity complaints should consult the Prosecuting Attorney's Office, or the Paternity Division of the Friend of the Court as to the proper procedure and forms).

Rule 15.1 Issuance of Summons or Warrant.

Upon filing of a paternity complaint with the Clerk of the Court a summons shall issue, or if a warrant is requested, the paternity complaint shall be referred to the Presiding Judge, who may issue a warrant instead of a summons.

The summons shall require the defendant to appear before the Presiding Judge on Friday at 10:00 A.M. to admit or deny paternity as set forth in the complaint.

See Administrative Orders 1972-2 and 3 in Administrative Orders, Volume I as to assigned counsel for indigent defendants in criminal cases. See Administrative Order 1975-9 as to appointment of counsel in certain criminal appeals.

Sec. 1. Volunteer Legal Counsel. If it is made to appear by affidavit of the defendant or otherwise, that defendant is an indigent person, the Examining Magistrate may grant permission for temporary volunteer counsel to serve without compensation and to assist the defendant before proceeding with the Arraignment.

Sec. 2. Appointed Legal Counsel. At the conclusion of the Arraignment on the Warrant the case of the indigent defendant shall be referred to the Presiding Judge for the appointment of trial counsel, as provided by law, who shall personally represent the defendant in all further proceedings. Appointed counsel shall not be removed except upon notice and hearing and for good cause.

Sec. 3. Fee Schedule for Assigned Counsel. An attorney assigned by a Judge of this Court pursuant to law to defend or represent an indigent person in any matter within the jurisdiction of this Court shall file with the Clerk of the Court a written statement to the effect that he has not theretofore received nor has he requested nor been promised payment from any other source.

Any such attorney who accepts or solicits payment from any other source for his services as assigned counsel in this Court shall be subject to punishment for contempt.

On certification of the Judge before whom such service was rendered or the Presiding Judge, such attorney shall be entitled to receive from the Wayne County Treasurer compensation in accordance with the Fee Schedule for Assigned Counsel as the same shall be amended and revised from time to time. The current Fee Schedule is attached as an appendix to this Rule.

EXAMINING MAGISTRATE COURT RCR 10

APPENDIX

Fee Schedule for Attorneys Assigned to Defend Indigent Felony Defendants.

(Eff. May 27, 1970)

On certification of the Trial Judge, an attorney shall be entitled to receive from the Wayne County Treasurer:

- (a) a fee for appearance by the attorney at the Examination:
If examination is waived--\$50.00
If Examination is conducted where testimony is taken, or if Motion to Dismiss is granted, for each day or portion thereof--\$50.00
- (b) a fee for preparation of case for trial, including plea--\$100.00
If defendant is interviewed by the attorney at Wayne County Jail, the fee for preparation, including plea, shall be--\$125.00
- (c) a fee for appearance on written Motion when the Motion is actually argued--up to \$50.00 to be awarded at the discretion of the Judge hearing the Motion
- (d) in addition, a fee for attendance in Court for trial:
Cases in which the maximum penalty is life imprisonment, for the first day and for each succeeding day or fraction thereof--\$150.00
All other cases--\$100.00
- (e) a fee for appearance at time of sentence--\$50.00
- (f) a fee for appearance at probation violation hearing for each one-half day--\$50.00
- (g) a fee for appearance at sanity hearing for each day or portion thereof--\$100.00
- (h) a fee for filing written Motion for New Trial and arguing the same, filing of briefs thereof, etc.--\$50.00
- (i) in all cases of appeals to a higher court, a fee of \$100.00 for every 400 pages of transcript, or major fraction thereof, but not less than \$100.00; plus \$250.00 for all proceedings in the higher court where claim of appeal and brief is filed.
- (j) for a necessary visit to Jackson or other prison facility within a radius of 100 miles, an expense allowance of \$100.00 and for distances in excess of that radius, an expense allowance of \$150.00
- (k) for attendance at police show-ups on assignment of the Court, \$25.00 for each hour or fraction thereof.

Upon its adoption, this rule shall be effective for all services rendered subsequent thereto.

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court
Room, in the City of Lansing, the 8th day of
April in the year of our Lord one thousand nine hundred and eighty-three.

22/March/83

Present the Honorable

G. MENNEN WILLIAMS,

Chief Justice

THOMAS GILES KAVANAGH,

CHARLES L. LEVIN,

JAMES L. RYAN,

JAMES H. BRICKLEY,

MICHAEL F. CAVANAGH,

Associate Justices.

WAYNE COUNTY, a Michigan county,

Plaintiff,

and

THE DETROIT BAR ASSOCIATION, et al,

Intervening Plaintiffs,

v

SC: 70647

CHIEF JUDGE OF THE THIRD JUDICIAL
CIRCUIT, CHIEF JUDGE OF THE RECORDER'S
COURT FOR THE CITY OF DETROIT, and
STATE COURT ADMINISTRATOR, in their
official capacities,

Defendants.

On order of the Court, the complaint for superintending control and the briefs and oral argument of the parties have been considered. It has become evident that the record in this original proceeding is an inadequate basis for decision because of factual questions and disputes which must be resolved before judgment, but which have never been the subject of proofs by the parties. Accordingly, it is ordered that the complaint for superintending control be DISMISSED.

This dismissal is without prejudice to the institution of an appropriate action in circuit court by any of the parties to this action or by individuals or entities not parties to this action for a determination of the duty to pay or the right to be paid in accordance with a fee schedule for the compensation of lawyers representing indigent defendants.

The emergency motion to compel payment of assigned counsel and the motion for order of discovery are accordingly denied.

STATE OF MICHIGAN -- ss.

I, CORBIN R. DAVIS, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at

Lansing this 8th day of April
in the year of our Lord one thousand nine
hundred and eighty-three.



Janet L. MacKinnon Clerk
Dugan

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT COURT
AND RECORDER'S COURT

JOINT ADMINISTRATIVE
ORDER NO. 1983-1

At a session of said Court, held in Room 1201
City-County Building, Detroit, Michigan on
April 28, 1983

PRESENT: HONORABLE RICHARD D. DUNN
Executive Chief Judge

Pursuant to a review of the Assigned Counsel Fee Schedule
heretofore adopted by the issuance of Joint Administrative Order
No. 1982-1, dated November 22, 1982;

Upon approval by the Judges of each of said Courts, respec-
tively;

IT IS HEREBY ORDERED on behalf of both of said Courts that
the Assigned Counsel Fee Schedule promulgated under Joint Adminis-
trative Order No. 1982-1 be, and same hereby is set aside and Fee
Schedules designated Schedules "A", "B", "C" and "D" which are
attached hereto and made a part hereof, are hereby adopted nunc
pro tunc as of December 1, 1982 and that said Schedules be util-
ized in fixing remuneration of attorneys for services rendered
within the dates designated in each Schedule, in the representa-
tion of indigent defendants.

A TRUE COPY
JAMES R. KILLEEN
CLERK

BY J. Killeen
DEPUTY CLERK

Richard D. Dunn
RICHARD D. DUNN
Executive Chief Judge

EE SCHEDULE FOR ASSIGNED COUNSEL

Arraignment on Warrant	75.00
Re-exam - Jail Visit (one only)	50.00
Office Visit	25.00
Preliminary Examination - Held or Waived	125.00
- Adjourned	75.00
First Post Exam Jail Visit	50.00
Second Post Exam Jail Visit	35.00
Capital Cases: No more than three visits	
Non-capital Cases: No more than two visits	
Investigation and Preparation of Cases for Trial or Plea in Trial Court	150.00
Written Motion with Brief and Oral Argument (Excepting standard discovery orders)	75.00
Calendar Conference and Arraignment on Information (For each appearance)	50.00
Final Conference (For each appearance as long as adjournment not by defense)	50.00
Walker Hearing - One-half Day or Less	75.00
Full Day and Each Day Thereafter	150.00
Evidentiary Hearing - One-half Day or Less	75.00
Full Day and Each Day Thereafter	150.00
Plea - Dismissal - "ROC" on Trial Day in Trial Court	100.00
Forensic Hearing - Witnesses Waived	50.00
Hearing Held, One-half Day	75.00
Hearing Held, Full Day	150.00
Attendance in Court for Trial Per Day or Fraction Thereof -	
Capital Cases	300.00
Non-capital Cases	200.00
Attendance in Court for Sentence	75.00
Probation Violation and Extradition Hearing	75.00
<u>APPEALS</u>	
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 Court for each one-half day spent in trial court	75.00
Appearance at Habeas Corpus	50.00

MISCELLANEOUS FEE SCHEDULE

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

PATERNITY

Preparation	150.00
Non-trial Court Appearance	75.00
Total	

FEE SCHEDULE FOR ASSIGNED COUNSEL

Arraignment on Warrant	\$ 60.00
Re-exam - Jail Visit (one only)	50.00
Office Visit	25.00
Preliminary Examination - Held or Waived	110.00
- Adjourned	60.00
First Post Exam Jail Visit	15.00
Second Post Exam Jail Visit	10.00
Capital Cases: No more than three visits	
Non-capital Cases: No more than two visits	
Investigation and Preparation of Cases for Trial or Plea in Trial Court	115.00
Written Motion with Brief and Oral Argument (Excepting standard discovery orders)	60.00
Calendar Conference and Arraignment on Information (For each appearance)	50.00
Final Conference (For each appearance as long as adjournment not by defense)	35.00
Walker Hearing - One-half Day or Less	60.00
Full Day and Each Day Thereafter	115.00
Evidentiary Hearing - One-half Day or Less	60.00
Full Day and Each Day Thereafter	115.00
Plea - Dismissal - "ROC" on Trial Day in Trial Court	65.00
Forensic Hearing - Witnesses Waived	15.00
Hearing Held, One-half Day	25.00
Hearing Held, Full Day	115.00
Attendance in Court for Trial Per Day or Fraction Thereof - Capital Cases	200.00
Non-capital Cases	135.00
Attendance in Court for Sentence	60.00
Probation Violation and Extradition Hearing	60.00

<u>APPEALS</u>	
Non-frivolous Motion for New Trial Together With Memorandum of Law by Trial Counsel After a Jury or Non-jury trial	75.00
Transcript - Every 400 pages or major fraction thereof other than guilty plea cases	135.00
Guilty plea cases	100.00
Claim of Appeal, Brief and All Proceedings - Other than guilty plea cases	335.00
Guilty plea cases	285.00
Visit to Prison Facilities - Wayne County Facilities	60.00
Camp Pellston and all UP Facilities	300.00
All Others	135.00
Appeal to Higher Court for each one-half day spent in trial court	60.00
Appearance at Habeas Corpus	50.00

MISCELLANEOUS FEE SCHEDULE

Show-ups - Full Day Standby	165.00
Per Hour	50.00
Psychiatric Cases in which the Maximum Penalty is Life Imprisonment	
Interview and Written Evaluation	255.00
Attendance in Court	135.00
Other Experts - Interview and Written Evaluation	165.00
Attendance in Court	100.00
Interpreters - Per Day	85.00
Half Day	45.00

PATERNITY

Preparation	115.00
Non-trial Court Appearance	75.00
Trial per day	115.00

Regule "C"

SCHEDULE FOR ASSIGNED COUNSEL

Arrestment on Warrant \$ 65.00

Pre-exam - Jail Visit (one only) 50.00

Office Visit 25.00

Preliminary Examination - Held or Waived 115.00

- Adjourned 65.00

First Post Exam Jail Visit 35.00

Second Post Exam Jail Visit 25.00

Capital Cases: No more than three visits

Non-capital Cases: No more than two visits

Investigation and Preparation of Cases for Trial or Plea in Trial Court 135.00

Written Motion with Brief and Oral Argument (Excepting standard discovery orders) 65.00

Calendar Conference and Arraignment on Information (For each appearance) 50.00

Final Conference (For each appearance as long as adjournment not by defense) 40.00

Pre-hearing - One-half Day or Less 65.00

Full Day and Each Day Thereafter 135.00

Pre-hearing - One-half Day or Less 65.00

Full Day and Each Day Thereafter 135.00

Plea - Dismissal - "ROD" on Trial Day in Trial Court 85.00

Pre-hearing - Witnesses Waived 35.00

Hearing Held, One-half Day 50.00

Hearing Held, Full Day 135.00

Attendance in Court for Trial Per Day or Fraction Thereof -

Capital Cases 250.00

Non-capital Cases 165.00

Attendance in Court for Sentence 65.00

Probation Violation and Extradition Hearing 65.00

APPEALS

Non-frivolous Motion for New Trial Together With Memorandum of Law

by Trial Counsel After a Jury or Non-jury trial 100.00

Transcript - Every 400 pages or major fraction thereof other

than guilty plea cases 165.00

Guilty plea cases 100.00

Claim of Appeal, Brief

and All Proceedings - Other than guilty plea cases 415.00

Guilty plea cases 315.00

Visit to Prison

Facilities - Wayne County Facilities 65.00

Camp Pellston and all UP Facilities 350.00

All Others 165.00

Appeal to Higher Court for each one-half day spent in trial-court 65.00

Appearance at Habeas Corpus 50.00

MISCELLANEOUS FEE SCHEDULE

Show-ups - Full Day Standby 185.00

Per Hour 50.00

Psychiatric Cases in which the Maximum Penalty is Life Imprisonment

Interview and Written Evaluation 285.00

Attendance in Court 140.00

Other Experts - Interview and Written Evaluation 185.00

Attendance in Court 125.00

Interpreters - Per Day 115.00

Half Day 60.00

PATERNITY

Preparation 135.00

Non-trial Court Appearance 75.00

Trial per day 135.00

FEE SCHEDULE FOR ASSIGNED COUNSEL

Arraignment on Warrant	\$ 75.00
Pre-exam - Jail Visit (one only)	50.00
Office Visit	25.00
Preliminary Examination - Held or Waived	125.00
- Adjourned	75.00
First Post Exam Jail Visit	50.00
Second Post Exam Jail Visit	35.00
Capital Cases: No more than three visits	
Non-capital Cases: No more than two visits	
Investigation and Preparation of Cases for Trial or Plea in Trial Court	150.00
Written Motion with Brief and Oral Argument (Excepting standard discovery orders)	75.00
Calendar Conference and Arraignment on Information (For each appearance)	50.00
Final Conference (For each appearance as long as adjournment not by defense)	50.00
Walker Hearing - One-half Day or Less	75.00
Full Day and Each Day Thereafter	150.00
Evidentiary Hearing - One-half Day or Less	75.00
Full Day and Each Day Thereafter	150.00
Plea - Dismissal - "ROC" on Trial Day in Trial Court	100.00
Forensic Hearing - Witnesses Waived	50.00
Hearing Held, One-half Day	75.00
Hearing Held, Full Day	150.00
Attendance in Court for Trial Per Day or Fraction Thereof -	
Capital Cases	300.00
Non-capital Cases	200.00
Attendance in Court for Sentence	75.00
Probation Violation and Extradition Hearing	75.00
<u>APPEALS</u>	
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 Court for each one-half day spent in trial court	75.00
Appearance at Habeas Corpus	50.00
<u>MISCELLANEOUS FEE SCHEDULE</u>	
Snow-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
<u>PATERNITY</u>	
Preparation	150.00
Non-trial Court Appearance	75.00

ORDER

At a session of said Court, held in the
City-County Building, Detroit, Michigan

on NOV 22 1985

PRESENT: HON. RICHARD D. DUNN
- Chief Judge

The Court being fully informed in the premises,
and in accordance with the foregoing Opinion;

1) Treating the papers wherein the instant action
is filed as if on a complaint for superintending control, and
it appearing that this Court lacks subject matter jurisdiction
in this case;

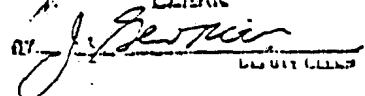
IT IS ORDERED that the instant case be and the
same is hereby DISMISSED;

2) Alternatively, treating the instant action
as one over which this Court has subject matter jurisdiction;

IT IS ORDERED that the Motion for an Evidentiary
Hearing be and the same is hereby DENIED;

IT IS FURTHER ORDERED AND ADJUDGED that A.O.
1985-6, Schedule E is valid, and that thus the relief requested
by the petitioners be and the same is hereby DENIED.


Chief Judge

A TRUE COPY
JAMES R. KILLEEN
CLERK

CLERK

a basis for granting relief. For the above expressed reasons, therefore, even if the nature of the instant action were such that this Court had subject matter jurisdiction, the Court would deny the relief requested by petitioners.

Dated:

Valent D. Lunn
Circuit Judge

A TRUE COPY
JAMES R. KILLEEN
CLERK

BY J. Geran
DEPUTY CLERK

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); Laschner 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 Soldat, 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

are below the level of fees that might be obtained by an attorney working in private practice or in the prosecutor's office. This argument, however, even if true, is largely beside the point since it runs contrary to the real purpose of statutes, such as MCLA 775.16, which merely provide for "reasonable compensation." The Iowa Supreme Court, in construing the purpose of a statute, § 775.5, the Code 1977, which was similar to MCLA 775.16, stated in Soldat v Iowa District Court for Emmet County, 283 NW2d 497; 498-499 (1979):^{7/}

In considering this matter, we look to several well-established principles. Attorneys are not expected to defend an accused gratuitously. Woodbury County v Anderson, 164 NW2d 129, 132 (Iowa 1969); Schmidt v Uhlenhuth, 253 Iowa 771, 775, 140 NW2d 118, 122 (1966). Neither are they entitled to compensation on the same basis as they might justifiably charge one who had privately engaged them.

In Woodbury County, 164 NW2d at 132, we said:

However, [§ 775.5, The Code] does not purport to provide full compensation nor is it 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 a 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 States Supreme Court and this court.

The reasons for this have been stated in various ways by a number of courts. In all

^{7/} It should be noted that in Iowa the legislature through the Passage of § 775.7, the Code 1977, enacted a statute which entitled court appointed attorneys to a fee according to the "ordinary and customary charges for like services in the community." This statute superceded the Court's holding in Soldat, see Hulse v Wifvat, 306 NW2d 707 (Iowa, 1981). While certainly this legislative solution remains available to the Michigan legislature, it is clear that the legislature has not, as yet, opted for this approach.

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, *supra*, 240; In re Shuster, 38 Mich App 138, 139 (1972). In Michigan an attorney's right to compensation therefore flows from and is dependent on the statutory provisions now embodied in MCLA 775.16, as quoted above.

It is unquestioned that, ordinarily it lies within the Court's discretion to determine what constitutes reasonable compensation. Withey v Oscola Circuit Judge, 108 Mich 168, 169 (1895); In the Matter of Hayes, 55 Mich App 30, 33 (1974). In the Third Judicial Circuit Court and Recorder's Court this discretion to set reasonable compensation has been exercised through the fixing of fees in the Schedule, the constitutionality of which was upheld by the Court in In re Meizlish, *supra*; See In the Matter of Hayes, *supra*, 32-33. Once set and reviewed by the State Court Administrator, see MCR 8.112(B)(3), in a sense these fees presumptively become the amount under the statute which constitutes "reasonable compensation." See In the Matter of Ritter, 399 Mich 563 (1977) *rev'ing*, 63 Mich App 24 (1975) (reversing lower court's deviation from the fee schedule).

In an effort to overcome this presumptive validity, in this case petitioners, as noted above, have argued that the fees set in the Schedule are unreasonable per se because they

^{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.

so, an evidentiary hearing would be unnecessary to a determination of the issues as framed by the petitioners' pleading. It follows therefore that even if the Court had jurisdiction in this action it would deny petitioners' motion for an evidentiary hearing.^{4/}

Further consideration of the petitioners' request for relief^{5/} 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

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, once again becoming effective. The fees allowed under Schedule D were higher than those under the present Schedule.

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 to determine the reasonableness of attorney fees in which there is no specific case before the Court.

As a preliminary matter the Court would note that it appears that it has no subject matter jurisdiction to entertain this action.^{2/} In reviewing the petitioners' pleading the Court notes that said pleading contests this Court's and the Recorder's Court general practice in establishing an appointed counsel fee schedule and paying appointed counsel in the amounts

^{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.

^{2/} While the Court recognizes that this issue was not raised by either the petitioners or the respondent, the issue of this Court's subject matter jurisdiction goes to the authority of this Court to act at all in this matter and may be raised by the Court on its own motion. See, Teeter v Teeter, 332 Mich 1, 5-6 (1952).

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

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

NOV 26 1985

FEE SCHEDULE FOR ASSIGNED COUNSEL

Arrestment on Warrant	\$ 75.
Pre-exam - Jail Visit (one only)	50
Office Visit	25
Preliminary Examination - Held or Waived	125
- Adjourned	75
First Post Exam Jail Visit	50
Second Post Exam Jail Visit	35
Capital Cases: No more than two visits	
Non-capital cases: No more than one visit	
Investigation and Preparation of Cases for Trial or Plea in Trial Court	150.
Written Motion with Brief and Oral Argument (Excepting standard discovery orders)	75.
Calendar Conference and Arrestment on Information (For each appearance)	50.
Final Conference (For each appearance as long as adjournment not by defense)	50.
Walker Hearing - One-half Day or Less	75.
Full Day and Each Day Thereafter	150.
Evidentiary Hearing - One-half Day or Less	75.
Full Day and Each Day Thereafter	150.
Plea - Dismissal - "ROC" on Trial Day in Trial Court	150.
Forensic Hearing - Witnesses Waived	50.
Hearing Held, One-half Day	75.
Hearing Held, Full Day	150.
Attendance in Court for Trial Per Day or Fraction Thereof	150.
Attendance in Court for Sentence	75.
Probation Violation and Extradition Hearing	75.
<u>APPEALS</u>	
Non-frivolous Motion for New Trial Together With Memorandum of Law by Trial Counsel After a Jury or Non-jury Trial	125.
Transcript - Every 400 pages or major fraction thereof other than guilty plea cases	200.
Guilty plea cases	100.
Claim of Appeal, Brief and All Proceedings - Other than guilty plea cases	500.
Guilty plea cases	350.
Visit to Prison Facilities - Wayne County Facilities	75.
Camp Pellston and all UP Facilities	400.
All Others	200.
Appeal to Higher Court for each one-half day spent in trial court	75.
Appearance at Habeas Corpus	50.
<u>MISCELLANEOUS FEE SCHEDULE</u>	
Show-ups - Full Day Standby	200.
Per Hour	50.
Psychiatric Cases in which the Maximum Penalty is Life Imprisonment	
Interview and Written Evaluation	300.
Attendance in Court	150.
Other Experts - Interview and Written Evaluation	200.
Attendance in Court	150.
Interpreters - Per Day	150.
Half Day	75.
<u>PATERNITY</u>	
Preparation	150.
Non-trial Court Appearance	75.
Trial per day	150.