

## **An Open Letter to the Criminal Defense Bar September 7, 2006**

By Jill Price  
President, CDAM

Michigan is fast approaching a pivotal moment in our long struggle to improve criminal defense services. It is vital that all of you handling appointed cases become involved in these efforts. We have all complained about the low pay, late pay and no pay of the current system. It is now up to all of us to support these efforts and stay involved to assure that whatever reform happens is good for us and for our clients.

**Activity of the Michigan Citizen's Task Force on Public Defense:** This task force was convened by the Michigan Council on Crime and Delinquency in 2000. It is comprised of lawyers, judges, prosecutors, prison officials, treatment agencies and public citizen groups with the express purpose of examining the Michigan assigned counsel system – or lack thereof – and making recommendations for its improvement. It issued a report in 2002 recommending, among other things, that Michigan shift to state funding for all services, organize defense services at a statewide level, adopt standards for a statewide system and attorney performance, and ensure that the system complies with “Eleven Principles of a Public Defense Delivery System.” The Task Force simultaneously released a “Model Plan for Public Defense Services in Michigan.” In May of 2005, the Task Force approved draft legislation incorporating the Eleven Principles and basic elements of the Model Plan. Comments on the draft bill are encouraged: see [www.mipublicdefense.org](http://www.mipublicdefense.org).

**Eleven Principles of a Public Defense System:** The American Bar Association adopted the 10 Principles of a Public Defense System ([www.sado.org/publicdefense/tenprinciplesbooklet.pdf](http://www.sado.org/publicdefense/tenprinciplesbooklet.pdf)) about 5 years ago. Shortly thereafter, the Michigan Public Defense Task Force presented its version -- the Eleven Principles of a Public Defense Delivery System -- to the State Bar of Michigan's Representative Assembly, which adopted them as Bar policy in April, 2002. Both the ABA and Michigan principles require that any delivery system be independent, have controlled caseloads to assure quality, have private places and time to meet with clients, have training programs, and pay commensurate with experience, among other things. The 11<sup>th</sup> principle, added in Michigan, calls for defender offices to get involved in efforts that will lower the likelihood of their clients' recidivism. These are the guiding principles of the reform efforts in Michigan. The principles are available at [www.mipublicdefense.org/about/eleven.html](http://www.mipublicdefense.org/about/eleven.html).

**Joint Resolution of the Michigan Legislature:** In the past months, under the leadership of Senator Alan Cropsey, Concurrent Resolution SCR 39 passed. It calls for a study to be made by the Michigan State Bar and the National Legal Aid and Defender Association, in cooperation with the State Court Administrative Office, of the Michigan assigned counsel system's workload and costs. Independent funding has been obtained to underwrite this effort. It will investigate data from more than ten counties, in depth, at all levels of the

system, and will compile data for the rest of the counties and circuits. This effort will occur this fall. The resolution is available at [www.mipublicdefense.org/2006-SACRH-0039.pdf](http://www.mipublicdefense.org/2006-SACRH-0039.pdf)

**National Foundation Grant:** A major grant has been given to a consortium of groups to support the reform effort in Michigan. The groups are the National Association of Criminal Defense Lawyers, the Brennan Center for Justice at New York University School of Law, and the Michigan and National American Civil Liberties Union. This is one of the largest grants ever made to support public defense reform in the United States. It will support data collection, public education, litigation and media efforts. This grant will make it possible to sustain and substantially improve the reform effort to completion in Michigan.

**CDAM's Task Force On Assigned Counsel Fees:** Consistent with these efforts, and recognizing that any reform that would impact those currently providing assigned counsel services might be years in the future, in 2006 CDAM formed a task force to support efforts to increase the fees paid to assigned counsel. Chaired by Frank Eaman and Dawn Van Hoek, this committee will not only advise and support attorneys in fee disputes, but will actively support their efforts to overturn low fees through litigation. Frank is a past president of CDAM and the lead attorney in the litigation efforts in Wayne County as counsel for the Recorder's Court Bar Association and its successor the Wayne county Criminal Defense Attorneys. Information about the task force is available at [www.CDAM.net](http://www.CDAM.net)

**All of the above has happened. What is about to happen is the effort to implement the reforms.**

**Criminal Law Section Meeting At The State Bar's Annual Meeting, Friday September 15<sup>th</sup>:** The Criminal Law Section will have a program that will be headlined by **Barry Scheck** of the Innocence Project, who represented Eddie Joe Lloyd of Detroit, **David Carroll of NLADA**, who will be conducting the data study of Michigan, and with taped remarks from former **Attorney General Janet Reno**. Panelists will be representatives from Georgia and Montana, two of the many states that have recently implemented statewide reforms. This will be accompanied by a press conference that will include the current and six former presidents of the Michigan State Bar in support of the reform efforts.

**Statewide Litigation:** In addition to the CDAM taskforce, a coalition of law firms, legal organizations and the ACLU have been on the ground in Michigan assembling information, court-watching and interviewing lawyers, legal organizations and clients, and examining the possibility of bringing litigation challenging the current delivery systems in Michigan. The law firms are Dykema Gossett, from Michigan, and Cravath and Swain, from New York. The organizations are the state and national ACLUs and the Brennan Center at NYU University.

**Statewide Legislation:** As noted above, legislation has been drafted and the hope is that it will be introduced after the statewide study is completed and analyzed. The data produced by the statewide study, the litigation, and the efforts of those concerned with the final product may influence the final draft of the legislation.

**Education and Media Outreach:** This effort will be developed in conjunction and coordinated with the efforts to achieve sustainable reform in Michigan.

**Your Involvement and Our Commitment:** This part is up to you. Much of what occurs from here forward will be in public for the legislature, education, courts and data collection efforts. Michigan is far from the first state to engage in this effort. We have the benefit of learning from these efforts, the support of a major grant and national groups who have been significantly involved in successful campaigns for reform in other states and you have the opportunity to make Michigan's effort even better. The entire process will clearly be better and more likely to happen if you speak up and get involved. For our part we will continue to keep you informed and respond to your in-put and we will work to make us all proud of the system we finally put in place.