

NOV 27 1992

STATE OF MICHIGAN  
IN THE SUPREME COURT

IN RE:

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,

Original Action  
Supreme Court No.  
86099

-v-

CHIEF JUDGES OF WAYNE COUNTY CIRCUIT  
COURT and RECORDER'S COURT,

Respondents,

and

COUNTY OF WAYNE,

Intervening Respondent.

RESPONDENT WAYNE COUNTY CIRCUIT COURT CHIEF JUDGE'S  
AMENDED SUPPLEMENTAL BRIEF ADDRESSING REPORT OF  
SPECIAL MASTER HON. TYRONE GILLESPIE

PROOF OF SERVICE

[ORAL ARGUMENT REQUESTED]

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STATEMENT OF QUESTIONS INVOLVED

- I. Is the Case at Bar an Appropriate One for the Exercise of the Supreme Court's Superintending Control Jurisdiction?

Respondent, Chief Judge of the Wayne County Circuit Court, would submit that the answer is "No."

Petitioners would submit that the answer is "Yes."

- II. Do the Adduced Facts Support a Conclusion That in Implementing and Executing the Extant Fee Schedule Respondent Chief Judge Violated a Clear Legal Duty Such That a Writ of Superintending Control Should Lie?

Respondent, Chief Judge of the Wayne County Circuit Court, would submit that the answer is "No."

Petitioners would submit that the answer is "Yes."

- A. Do the Facts at Bar Establish That Pursuant to the Extant Fee Schedule, Indigent Criminal Defendants or Their Assigned Counsel Have Been Denied Federal and State Constitutional Guarantees?

Respondent, Chief Judge of the Wayne County Circuit Court, would submit that the answer is "No."

Petitioners would submit that the answer is "Yes."

- B. Does the Subject Fee Schedule Provide for Reasonable Fees within the Intendment of MCL 775.16?

Respondent, Chief Judge of the Wayne County Circuit Court, would submit that the answer is "Yes."

Petitioners would submit that the answer is "No."

III. Do the Comments and Recommendations of the Special Master Fail to Establish an Adequate Basis for Superintending Control Relief?

Respondent, Chief Judge of the Wayne County Circuit Court, would submit that the answer is "Yes."

Petitioners would submit that the answer is "No."

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SPECIAL MASTER HON. TYRONE GILLESPIE

NOW COMES respondent, Richard C. Kaufman, Chief Judge  
in and for the Wayne County Circuit Court, by and through his  
attorney, Joseph F. Chiesa (P-25514), and states as follows:

INTRODUCTION

The cause sub judice arises from an original action  
commenced in this Court for the extraordinary writ of



superintending control. Upon review, the Court ordered hearings to be conducted for the purpose of examining inter alia the issue of the adequacy of fees paid to counsel representing indigent criminal defendants in this Circuit.<sup>1</sup> Upon plenary hearings, respondent Chief Judge submits that the following facts appear of record.<sup>2</sup>

#### STATEMENT OF FACTS

1. All criminal felony cases in the Third Judicial Circuit are tried in the edifice housing the Recorder's Court for the City of Detroit, as a result of the consolidation of the criminal dockets of the Circuit and Recorder's Courts in the Third Judicial Circuit.

2. Trial level criminal assignments are made by the judges thereof, mindful of established attorney eligibility lists, see Appendix II, post.

3. Attorney fees are paid by the County of Wayne.

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<sup>1</sup> Originally it was contemplated that the hearings would be more expansive in scope, embracing other jurisdictions as well. The plan was thereafter jettisoned; of this, more in due course.

<sup>2</sup> To the extent that the Special Master's comments and recommendations are in disagreement, they will be addressed in argument III, infra

4. Attorney fees are paid pursuant to a fixed fee schedule (as adopted on or about July 1, 1988).

5. Such fees may be augmented by petitions for extraordinary fees (with minor differences in practice between the Circuit and Recorder's Court practice).

6. Testimony evaluating the quality of representation accorded to indigents in this Circuit failed to establish any generalized ineffectiveness, nor did the testimony establish a superiority of assigned counsel in other jurisdictions.

7. No testimony identifying with particularity the cases (and names of attorneys and defendants) in which inadequate representation allegedly appeared were cited.

8. Testimony comparing the adequacy of representation before and after the adoption of the subject fee schedule failed to establish any consequential deprivation of constitutional rights.

9. Testimony regarding the quality of representation accorded indigent defendants vis a vis defendants with retained counsel failed to intimate any distinction of constitutional dimension.

10. Although general testimony appeared to the effect that some attorneys no longer take assignments, there appears no diminution in the number of available attorneys subsequent to adoption of the subject fee schedule.

11. Although it was charged that the fee schedule created a disincentive to try cases and induced pleas of guilty and waiver of jury trials, the record does not support such averments.

12. The record establishes that under the CAP program and consistent with the rendition of assignment packets and the availability of library services, attorneys are given the opportunity to be better prepared today in the representation of their assigned clientele than ever before.

13. The record reflects that a small percentage of attorneys have availed themselves of the opportunity to petition for extraordinary fees.

14. Of those petitioning for extraordinary fees, the majority have prevailed at least in part; almost none have sought appeal from the decisions of the Chief Judges.

15. Testimony tended to establish a high quality of representation in the Wayne County criminal defense bar (Recorder's and Circuit Court).

16. The record reflects a natural attrition in the ranks of assigned counsel consistent with a perception of the opportunity to realize increased revenue in private practice and a defection to civil practice; such tendency is not unique to the extant fee schedule.

17. The record reflects that many junior attorneys gain valuable experience in the defending of indigents.

18. Albeit averments to the contrary, the record reflects that many assigned counsel have realized substantial amounts of money in compensation thereof.

19. Testimony was adduced establishing the substantial burden upon the County in defraying the costs of assigned counsel; such burden has been shown to be a problem of national scope.

20. The record establishes that approximately twenty-five percent (25%) of indigent criminal cases in this Circuit are assigned to the public defender, and that that office has been generally accorded the approbation of the bench and bar.

21. The record reflects that the public defender office generally affords a creditable quality of representation in indigent cases.

22. There was testimony of record intimating that for a long period of time, antedating adoption of the flat fee schedule, some few attorneys acted in their own self interest, sometimes inimically to that of their clients; no substantial relationship between their lack of professionalism and the fee schedule was established.

23. Evidence comparing the rate of compensation in Wayne County vis a vis other jurisdictions was inconclusive; some were higher, some lower.

24. Testimony tended to establish that alternative compensation systems and assigned counsel plans are subject to

not only the same defects as allegedly obtain in the current system, but others as well.

25. Testimony of record reflected that instances of alleged inadequacy of representation were a result of unprofessionalism, not the fee schedule.

26. Testimony of record established that the County of Wayne expends similar funds for the defense as it does for the prosecution.

27. The evidence establishes that the extant schedule was implemented to expedite the disposition of cases, foster administrative efficiency and alleviate the problem of jail overcrowding.

28. No evidence appears to indicate that the present fee schedule was implemented to reduce the compensation paid to assigned counsel; nor evidence to the effect that it has in fact done so.

29. The governing situation applicable to assigned appellate counsel was demonstrably similar to that of trial level assigned counsel in terms of the factors discussed above.

## ARGUMENT

### Preface

Preliminary to submission of respondent's arguments of merit, respondent Chief Judge would in limine address the specific inappropriateness of superintending control in the case at bar.

Although respondent would endorse, applaud and cooperate in any endeavor to examine and improve upon the judicial system as it relates to the assignment and payment of attorneys for indigent defense services, respondent submits that the procedural vehicle of superintending control was not, as employed here, an appropriate mechanism.

First, an action for superintending control is a legal action in which it is incumbent upon the petitioner to establish by admissible evidence that the respondent has and is failing to perform a clear legal duty, Fort v City of Detroit, 146 Mich App 499 (1985). While respondent appreciates that the trial court did not limit the proofs to admissible evidence (allowing the admission of unsubstantiated opinion and hearsay), in order to preserve the integrity of the bench and bar, respondent submits that such procedures tend to denigrate the integrity of the writ itself and renders the enforceability of the judicial acts of the trial court dependent on the arguably self-interested views of the attorneys called upon to bear witness. Accordingly, respondent urges that to the extent

the Court desired to commission a fact-finding study, that such study be conducted outside of the judicial process.

Second, considerate of the fact that any forthcoming opinion of this Court regarding the system for paying assigned counsel could foreseeably have far-reaching implications for circuits and funding units beyond the third circuit, it would seem only fair that other interested parties be accorded an opportunity to participate in such study.<sup>3</sup>

Mindful of the preceding, respondent shall proceed to the arguments of merit and contends that, individually and/or collectively, they warrant dismissal of the action and denial of the relief sought.

I. The Case at Bar is an Inappropriate One for the Exercise of the Supreme Court's Superintending Control Jurisdiction.

In the case at bar petitioners have prayed for the extraordinary relief of superintending control. Respondent submits that the writ will not lie. The rationale is twofold.

First, MCR 3.302(B) provides:

(B) Policy Concerning Use. If another adequate remedy is available to the party seeking the order, a complaint for superintending control may not be

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In this light the voice of the less experienced, more recent members of the bar should be considered as well.

filed. See subrule (D)(2), and MCR 7.101(A)(2), and 7.304(A).

See also, Beer v City of Fraser Civil Service Comm, 127 Mich App 239 (1983); Young v Oakland General Hospital, 175 Mich App 133 (1989).

In the subject case, petitioners aggrieve the adequacy of the fee schedule for assigned counsel. Yet the schedule itself embodies a remedy for exactly that problem, to wit, that they might petition for extraordinary fees when concerned about the sufficiency of fees in a particular cause. Contrary to unsupported allegations to the contrary, the record reflects: 1) the simplicity in the manner in which such petitions may be filed, Tr XI-146;<sup>4</sup> 2) the fact that very few attorneys have chosen to prosecute that remedy, and 3) the fact that the substantial majority of petitions so filed have been successful (partial relief has been granted). Given the fact that this plain, speedy and adequate remedy has been cavalierly ignored by the practicing bar, it cannot be said that no other remedy appears. Nor can petitioners be heard to urge a denial of due process.

On appeal to this Court, Jacobs and the MAACS first claim that it was a denial of due process for the trial court to reduce Jacobs' fee without giving him notice and an opportunity to be heard.

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<sup>4</sup> Volumes of the Certified Record of Proceedings below have been chronologically designated.



MCR 6.425(F), formerly MCR 6.101(J), requires the trial court to appoint appellate counsel upon request by an indigent criminal defendant, and, under MCR 7.208(G), the trial court retains that authority during the pendency of an appeal unless this Court orders otherwise. Compensation for court-appointed counsel in Michigan is governed by MCL 775.16; MSA 28.1253, which in part provides:

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.

In Matthews v Eldridge, 424 US 319, 333; 96 S Ct 893; 47 L Ed 2d 18 (1976), the United States Supreme Court stated: "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" (Citation omitted). Unlike other legal rules, due process is a flexible concept, and the amount of process due depends on the circumstances.

[O]ur prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function

involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. [Id. at 334-335 (citation omitted).]

Because a vehicle existed for Jacobs to have a hearing if he wanted one, we find that there was no denial of due process. The private interest involved is financial, and the risk of an erroneous deprivation under the existing procedures is minimal. Appointed counsel may provide the trial court with any information desired in the attorney's petition or MAAC's statement or at a hearing on the record. Finally, requiring a full-blown hearing in every indigent appeal case handled by appointed counsel would be enormously expensive and time consuming and, in most cases, totally unnecessary. Accordingly, we find that existing procedures were sufficient to satisfy the requirements of due process.

In re Jacobs, 185 Mich App 642, 644-646 (1990).

Another viable and adequate remedy being extant, an action for superintending control should not be allowed.

Further, MCR 3.302(D)(2) states:

(2) When an appeal in the Supreme Court, the Court of Appeals, the circuit court, or the recorder's court is available, that method of review must be used. If superintending control is sought and an appeal is available, the complaint for superintending control must be dismissed.

And similarly...

(A) When Available. A complaint may be filed in the Supreme Court to

implement the Court's superintending control power when an application for leave to appeal cannot be filed. A complaint for mandamus may be filed to implement the Court's superintending control power over the Board of Law Examiners, the Attorney Discipline Board, or the Attorney Grievance Commission.

MCR 7.304(A).

See also Southfield Associates v Michigan Dept of Public Health, 82 Mich App 678 (1978).

It is clear that unsuccessful petitioners for extraordinary fees might, and yet may, seek relief by way of appeal in the Court of Appeals and thereafter the Supreme Court from unsuccessful petitions for extra fees. The record adduced establishes that such appeals have been virtually nonexistent. In the face of the fact that another plain, speedy and adequate remedy as well as appellate prerogatives have been ignored, mindful of MCR 3.302 and MCR 7.304, the action sub judice should be dismissed; the writ will not lie.

II. The Adduced Facts Fail to Establish That in Implementing and Executing the Extant Fee Schedule Respondent Chief Judge Acted in Derogation of a Clear Legal Duty.

In support of their complaint for superintending control, petitioners must necessarily establish that respondent so abused his discretion as to fail to perform a clear legal duty. They have advanced two theories in support of their position. Each shall be addressed separately.

A. The Record Fails to Establish That the Extant Fee Schedule Deprives Indigent Criminal Defendants of the Right to Effective Assistance of Counsel or Deprives Assigned Counsel of Property Without Due Process of Law.

Although the record teems with vignettes and anecdotal testimony regarding untoward professional practices, no direct evidence appears supporting the premise that specific indigent defendants have been effectively denied the right to counsel by virtue of the implementation of the fixed fee schedule. To the contrary, the record reflects that: 1) no constitutionally inimical condition appears from the face of the subject schedule and 2) as applied, the evidence demonstrates that the flat fee schedule has neither diminished nor tended to diminish the indigent defendant's right to effective assistance of counsel under the federal and state constitutions and further reflects that petitioners' critical allegations of the extant indigent assigned counsel system are either unsubstantiated by the record generally or unrelated to the flat fee schedule. Each of the foregoing shall be addressed in the succeeding.

1. The flat fee schedule is not unconstitutional on its face.

Petitioners have failed to establish any legally cognizable basis, in law or in fact, for a finding that the subject fee schedule (petitioners' exhibit 1) either deprives

petitioners of property without due process of law or the indigent accused of the effective assistance of counsel, US Const, Amend V, VI, XIV.

The flat fee schedule providing for a flat fee for the compensation of counsel who voluntarily undertake the representation of indigents, which fee is subject to enhancement by a petition for extraordinary fees, evinces no constitutionally subversive condition. The rationale is several.

First, the propriety of using an assigned counsel fee schedule has repeatedly received the endorsement of the appellate courts.

This cause having been brought to this Court by appeal from the Court of Appeals and having been argued by counsel, and due deliberation had thereon by the Court, It is ordered that the judgment of the Court of Appeals and the orders of Detroit Recorder's Court dated December 13, 1973 and April 9, 1974, which set the attorney fee for each petitioner at \$300, be and the same are hereby reversed and the cause is remanded to Detroit Recorder's Court for the entry of an order granting petitioner Ritter an attorney fee of \$925 and petitioner Willis an attorney fee of \$950. On review of the record, it appears that the petitions for attorney fees were based on the fee schedule in Recorder's Court Rule 10. The Court is not persuaded that there was adequate justification for deviating from the schedule.

In the Matter of Ritter, 399 Mich 563 (1977) (emphasis, respondent's).

Additionally, the United States Supreme Court has of late reaffirmed the employment of a maximum fee schedule.

We decline to accept petitioner's request that we adopt an individual case-by-case approach to counsel fees. Such an inquiry is time consuming, its result necessarily imprecise, and it would lead us into an area in which we have little experience. It would not be a wise expenditure of this Court's limited time and resources to deal with fee applications such as those of petitioner on an individualized basis.

In re Berger, 498 US \_\_\_\_\_; 112 L Ed 2d 710, 714; 111 S Ct 628 (1991).

Second, constitutional challenges to the vitality of such schedules have been clearly and consistently rejected, In re Meizlish, 387 Mich 228 (1972). Petitioners have failed to establish that the fee schedule in the instant case is contrary to governing constitutional principles, In re Klevorn, 185 Mich App 672, 677, 678 (1990).

Petitioners do not claim that they are unaware of the governing fee schedule at the time of appointment, nor that they moved to decline the appointment in the light of the fact that it would unduly burden their ability to pursue a livelihood. Rather, petitioners accept the assignment mindful of the fee schedule, see Klevorn, supra, 676, perform their professional obligations and now upon completion or anticipation of such, assert a "right" to compensation more in keeping with the

fees they or others negotiate with retained clients.

Petitioners should be estopped from invoking this contention.

Appellant's contention that he has been deprived of due process and equal protection under the United States Constitution and Michigan Constitution 1963 has been discussed and decided adversely to him by numerous courts in this country. In United States v Dillon, 346 F2d 633 (CA 9, 1965), cert den 382 US 978; 86 S Ct 550; 15 L Ed 2d 469, the Court rejected an attorney's contention that property was taken in violation of due process of law when he was forced to defend an indigent defendant without compensation. The Court stated (p 635):

"An applicant for admission to practice law may justly be deemed to be aware of the traditions of the profession which he is joining, and to know that one of these traditions is that a lawyer is an officer of the court obligated to represent indigents for little or no compensation upon court order. Thus, the lawyer has consented to, and assumed, this obligation and when he is called upon to fulfill it, he cannot contend that it is a 'taking of his services.'"

Meizlish, supra, 236.

Clearly admeasurement vis a vis what other private attorneys would charge retained clients is an inappropriate legal standard, Smolen v Dahlmann Apts Ltd, 186 Mich App 292 (1990). To the extent a comparison is warranted, it should be made of prosecutors, friend of the court attorneys, and other public service attorneys.

Third, petitioners' argument totally ignores the fact that Joint Administrative Order 1988-2 takes cognizance of extraordinary circumstances which might justify the allowance of additional fees upon petition to the Chief Judge.

Fourth, insofar as petitioners suggest that the existing fee schedules jeopardize the rights of the accused, their argument must also fail. The constitution guarantees adequate and effective representation by counsel; it does not guarantee counsel paid at a specific rate of compensation. If petitioners maintain that their professionalism is compromised in the light of allegedly inadequate fees, there are numerous remedies available to the indigent accused.

The Court in Rush also dealt with appellant's claim that an indigent defendant is denied his constitutional right if lawyers are forced to defend without compensation. The Court stated (pp 405-407):

"In strictness counsel for an indigent defendant is hardly in a position to claim compensation on the ground that the rights of his assigned client have been infringed. However, we appreciate that counsel's purpose is to place a pressing problem before us rather than to gain a dollar result for himself. In fact, he expressly asks that, should he prevail, the award for his services be limited to six cents. To the end that all phases of the issue may be in view, we will assume he has the status to press the constitutional claims of defendants charged with crime.

"As to the right of an accused, appellant contends that counsel, if



unpaid, cannot by his performance satisfy the constitutional guarantee of the right to the aid of counsel. We know of no data to support a claim that an assigned attorney fails or shirks in the least the full measure of an attorney's obligation to a client. Our own experience, both at the bar and on the bench, runs the other way. A lawyer needs no motivation beyond his sense of duty and his pride.

"Nor can it be said that assigned counsel are less qualified than counsel privately retained. As in other callings, some men acquire reputations for excellence. In numbers they are few, and sometimes it is not clear why fortune has chosen them alone. It is understandable that a defendant will seek a lawyer of wide repute if he can afford him, but of course the Constitution does not assure every man, indigent or not, that only a leader of the bar will speak for him. Even the State cannot command such representation; most criminal cases are prosecuted by young men who have yet to be acclaimed but who are not in the last unequal to their responsibility on that account. Nor does preeminence at the bar necessarily bespeak special experience in criminal matters. In the State courts, criminal work is not too rewarding financially. Very few specialize in that area, and overall the well known lawyers have had but sporadic exposure to it.

"Nor is prior experience in criminal matters essential. The law is a vast field and no man is in command of all of it. Lawyers, as to judges, move from scene to scene, absorbing the special features of each. A capacity to that end goes to the essence of the practice of law. A lawyer's training equips him for it, and his every experience sharpens that skill. And although a new scene may demand a greater initial

effort, the newcomer may well bring a zeal and a freshness long lost to a tired or comfortable expert.

"Moreover, few cases really turn upon the skill of the advocate. The facts and the applicable law are quite compelling, and a lawyer who has both on his side will do well against anyone. No doubt a small number of cases are lost through lack of skill or poor preparation, but while the legal profession, like all others, suffers to a degree from the inept and the indolent, the phenomenon cannot be said to be related to a system of assignment of counsel. Further, illogical though it may be, judges tend to have a larger sense of responsibility for the performance of lawyers they assign than for the performance of counsel privately retained, and to the extent that this is true, there may be an advantage for the indigent accused.

"We are satisfied our system of assignment yields representation equal to that obtained by defendants who retain their own counsel. This is not to say that another approach would not be more desirable. Rather our point is that what we have meets the constitutional demand, and to recur to the precise point counsel here seeks to make, we are satisfied that our assignment system does not fall short because assigned counsel are unpaid."

We agree with the New Jersey Court that an indigent defendant is not deprived of his constitutional rights by the appointment of unpaid counsel. Dedication and diligence to a client's cause should not be altered because of the payment of a higher fee. Judging by the numerous complaints received by the State Bar Grievance Administrator, the payment of minimum fees does not insure the quality of work from retained

counsel. Most attorneys are dedicated and will zealously protect the rights of any client they defend."

Meizlish, supra, 238-40.

The foregoing remains the governing law of this jurisdiction to the present, see In re Jacobs, supra.

Fifth, the evidence adduced before this forum militates against a finding of unconstitutionality. Of the many distinguished jurists and other legal luminaries to appear, the overwhelming majority could perceive no basis for a finding that the flat fee schedule was unconstitutional on its face, Tr I-84; IV-128; VI-157; VIII-51; VIII-84, 89; VIII-131; X-157; XI-95; XII-94, 100.

Resultingly, petitioners' averments to the effect that the flat fee schedule is facially in derogation of US Const, Amend V, VI and XIV should be dismissed.

2. The record fails to establish that the flat fee schedule as applied deprives indigent accused of the effective assistance of counsel.

Petitioners further submit that the implementation of the flat fee schedule has led to a de facto deprivation of the right to effective assistance of counsel.

To the extent that petitioners urge that the implementation of the flat fee schedule has occasioned a resultant decline in the quality of the defense bar such that indigent

accused are no longer being ably represented, that contention flies directly in the face of the record as made.

The record reflects that the flat fee schedule has not diminished the quality of the bar, Tr I-91; I-135; IV-186; V-29; V-136; VIII-153; XI-123; XII-92, 93, and that the quality of the bar continues to receive the highest endorsement, Tr I-74; I-118; III-144; IV-104; IV-143; IV-179; V-133; VIII-83; VIII-100; VIII-127; X-98; XI-123; XII-92, 93.

Similarly, to the extent that petitioners submit that the flat fee schedule has precipitated a decline in the availability of the members of the bar to accept criminal assignments, that contention is belied by the record, Tr I-137; XI-127, 128; VIII-11, 12, 20; X-45; X-101; XI-97; XI-117; XII-102, 150, see also Appendix II hereto attached, and notwithstanding any discontent, many able attorneys have testified that they do and will continue to take assignments, Tr I-185; I-226; II-117; IV-219; VI-168; VIII-72; VIII-118; VIII-133.

Additional testimony of record serves to establish that far from deteriorating, the criminal defense system in this jurisdiction has initiated a number of positive innovations tending to improve the quality of the criminal defense bar, such as the CAP program, Tr I-125; IV-172, 173, the availability of library services, Tr VIII-61, and the dispensation

of discovery packets to facilitate prompt and effective representation by assigned counsel, Tr X-137; X-146; XII-76, 77, 78.

Consistent with the foregoing, respondent submits that the quality of the assigned counsel defense bar not only remains high but many salutary measures have been undertaken to further enhance the quality of representation and an ample and able number of defense attorneys stand ready to effectively represent the indigent accused, see Appendix II.

Notwithstanding the preceding, petitioners aver, however, that the flat fee schedule has induced attorneys to take shortcuts constitutionally repugnant to the interests of their clients. Petitioners have argued that the flat fee schedule has promoted increases in guilty pleas, waiver trials, and a decline in hearings and motions. Apart from the fact that petitioners have wholly failed to establish that such allegations, if true, are necessarily representative of untoward practice or result in constitutional disservice to defendants, these averments have been disestablished by the record.

The testimony reflects no perceptible statistically demonstrable increase in guilty pleas, waiver trials or declines in hearings or motions, Tr IV-151; VIII-163, 164; VIII-167; X-107; X-112; XI-96. The testimony further reflects that the flat fee schedule was never intended to and has not significantly reduced counsel fees and has led to a reduction

in jail and confinement time, Tr VIII-165, 166, 171; X-93; X-115; X-119; XI-94.

Further, to the extent that petitioners would urge that some lawyers do in fact curtail their services consistent with the adage that time is money, no nexus has been demonstrated serving to establish a relationship between the flat fee schedule and unethical or unprofessional practice.

First, the record tends to reflect that the legal profession, as all others, has long endured the existence of unethical attorneys, Tr VI-123; IV-183; VIII-141; XII-3, and that such abuses are evident under alternative (e.g., hourly, event, contractual) fee systems as well, Tr V- 139; VI-68; VI-114-115; XI-130. This is not, of course, to suggest that such wrongs go unredressed; rather, only that the problem lies not with the fee schedule.

Second, of the many able attorneys who testified, they uniformly related that once they accepted a criminal assignment, their individual economic benefit is no longer relevant, Tr II-139; VIII-48, 50; VIII-130.

Third, insofar as the petitioners would contend that assigned counsel are inferior to retained counsel (irrelevant in any event), the evidence is disputed, see for example, Tr III-128; V-140.

Fourth, although the record abounds with selected apocryphal examples of untoward practices, 1) these instances

remain unsubstantiated; 2) no correlation to the flat fee schedule has been made; and 3) the instances in any event were not so inimical to orthodox notions of professionalism as to induce complaints to the bench or bar, Tr I-90; I-171; I-196, 197; IV-85.

Consistent with the foregoing, petitioners have a priori failed to establish an unconstitutional application of the fee schedules such that indigent criminal defendants have been denied constitutional rights.

B. The Subject Fee Schedule Provides for Reasonable Fees within the Intendment of MCLA 775.16.

Petitioners' principal argument asserts that the fixed fees embodied in Schedule G are violative of MCLA 775.16, in that they are allegedly unreasonable. Petitioners' arguments in this regard are unpersuasive in law and in fact.

1. The current fee schedule is as a matter of law reasonable.

To the extent that petitioners rely on the differences in the governing fees charged in the private sector vis a vis the subject assigned counsel fee schedule, that reliance is irrelevant and the legal hypothesis eventuating therefrom untenable, see Smolen, supra.

It has long been recognized that an attorney does not have a right to be compensated for his or her representation of

indigents absent statutory authority compelling payment. See Bacon v County of Wayne, 1 Mich 461, 462-463 (1850); State v Rush, 46 NJ 399; 217 A2d 441 (1966), cited with approval in In re Meizlish, 387 Mich 228, 240 (1972); In re Shuster, 38 Mich App 138, 139 (1972). In Michigan an attorney's right to compensation emanates from and is dependent on MCLA 775.16.

It is unquestioned that ordinarily it lies within the court's discretion to ascertain what constitutes reasonable compensation, Withey v Osceola Circuit Judge, 108 Mich 168, 169 (1895); In the Matter of Hayes, 55 Mich App 30, 33 (1974).

We, therefore, hold that the right of the trial judge to determine or deny fees to appointed counsel should remain clear and unalterable, save for a gross abuse of discretion. We find none under the facts of this case.

In the Matter of Hayes, 55 Mich App 30, 34 (1974).

Consistent with the above, an abuse of discretion has been defined as follows:

...In view of the frequency with which cases are reaching this Court assailing the exercise of a trial court's discretion as an abuse thereof, we deem it pertinent to make certain observations with respect thereto in the interests of saving expense to the litigants and avoiding delay in reaching final adjudication on the merits. Where, as here, the exercise of discretion turns upon a factual determination made by the trier of the facts, an abuse of discretion involves far more than a difference in judicial opinion between the trial and appellate courts. The term discretion itself involves the idea of choice, of



an exercise of the will, of a determination made between competing considerations. In order to have an "abuse" in reaching such determination, the result must be so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias.

Spalding v Spalding, 355 Mich 382, 384, 385 (1959).

It is well to note that the court in In the Matter of Hayes, supra at 33, referred to a gross abuse of discretion. The standard of review is, in a jurisprudential sense, a salutary and reasonable one. If the rule were otherwise, a virtually limitless number of cases requesting de novo review by the appellate courts would result. Such cases would serve to beleaguer the time and resources of our appellate court system, see In re Berger, supra. Additionally, it is clear that the trial courts are better placed to resolve such issues. The record clearly reflects that for purposes of the uniform, speedy and efficient administration of justice, the ultimate responsibility for the implementation and execution of a fee schedule should be within the auspices of the executive chief judge of the circuit, Tr VI-152; X-159; XI-107.

In the Third Judicial Circuit Court and Recorder's Court the discretion to set reasonable compensation has been exercised through the fixing of fees in the schedule. In a sense the 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), Tr XI-98.

In an effort to overcome this presumptive validity, petitioners have argued that the fees set in the schedule are unreasonable because they are below the level of fees that might be obtained by an attorney engaged in private practice. This contention, however, even if true, is largely irrelevant since it runs afoul of 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, sec 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):

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 Uhlenhopp, 258 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, [sec 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 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 den, 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, 447-448 (1966); State v Lahirondelle, 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. Considered 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 commensurate with that received by private practitioners. Had the legislature so intended they might easily have done so. 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. As to said presumption, see the Statement of the Chief Judge, incorporated as Appendix I, infra.

Petitioners' contention that the fees dispensed under the flat fee schedule are, pursuant to MCLA 775.16, unreasonable ought also be dismissed in that participation in the assigned counsel system is totally voluntary. Attorneys who voluntarily undertake criminal assignments knowing in advance the rate of remuneration that has been fixed should be estopped to deny the reasonableness of the fees. There is not a

scintilla of evidence to suggest that participation is not voluntary, Tr I-132; V-142.

Respondent would additionally submit that any deficiency in the rate of compensation for assigned counsel is systematically resolved by virtue of the schedule's provision for a petition for extraordinary fees. The overwhelming evidence reflects 1) that in the majority of cases in which such petitions have been properly filed, extra compensation has been conferred, Tr I-143; I-164; IV-35; IV-133; IV-164; VIII-149; XI-101; Circuit Court exhibits 4 and 5; and 2) that many attorneys do not see fit to either petition for added fees or appeal in the event extraordinary fees have been denied, Tr II-149; IV-170; V-55; XI-100.

Consistent with the preceding, the Court should not entertain a petition for the extraordinary remedy of superintending control where the exact relief requested, additional compensation, is available through petition to the trial court and is often granted, where petitioners have pell mell neglected the remedy and in the event they are discontent with same have failed to prosecute an appeal, see Jacobs, supra.

Accordingly, it is clear that the extant fee system in place in this circuit is definitionally reasonable by virtue of the fact that it has been voluntarily accepted by those participating in the system. Petitioners have failed to establish that the pay rate is unreasonable. There is no

persuasive evidence of record intimating that any other system would function more effectively; each alternative is beset by similar problems. In the wake of the fact that few if any attorneys otherwise in government service (and that is, of course, a more appropriate comparison, not with private attorneys) are compensated at or near the rates suggested by petitioners' witnesses, see for example Tr VI-67 and the substantial economic burdens befalling the funding authority, Tr IX-18 et seq; IX-90 et seq, in addition to the other considerations set forth supra, it must be concluded that the current flat fee schedule containing a provision for extraordinary fees is reasonable, as a matter of law, within the intendment of MCLA 775.16.

2. The current fee schedule is consistent with the legislative requirement of "reasonable compensation".

The crux of the suit at bar revolves upon the construction to be placed upon the legislature's use of the term "reasonable compensation" in MCL 775.16.

Petitioners, having voluntarily agreed to represent indigent accused at a known rate prescribed by the fee schedule with the opportunity for additional remuneration pursuant to a petition for extraordinary fees, now assert that such fees are not reasonable in a statutory sense.

Inasmuch as the legislature has not seen fit to

define "reasonable",<sup>6</sup> it is incumbent upon the judiciary to determine their intent. A number of alternative theories have been advanced.

Respondent would submit that reasonable compensation should be construed as the amount necessary to secure a sufficient number of able counsel to adequately represent the indigent accused. Such a construction is preferable for an array of reasons and is currently fulfilled by the extant fee schedule.

First, it is consistent with the legislative obligation to provide adequate representation. The record reflects that isolated and unidentified instances of inadequate representation bear no correlation to the fee schedule, but rather are imputable to the individual unethical practitioner.

Second, the present system minimizes the drain on the public coffers.

Third, it is consistent with the law of the marketplace. A garage mechanic is paid at a rate both (s)he and the consumer of his service voluntarily agree upon. The record evinces no shortage of able attorneys willing to voluntarily

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<sup>6</sup> This ambiguity in itself negatively speaks to the question of whether or not the respondent has violated a clear legal duty.

undertake representation of indigents at a predetermined presumptive rate (subject to augmentation as discussed above).

Fourth, had the legislature desired to define reasonable in terms of fees available in private practice or on some other formula based upon the varying expenses, overhead, skill, time and energy devoted by the practitioners, they could have done so, but did not.

Petitioners would reject the foregoing formulation of reasonableness. Although they maintain that such factors as private practice rates, overhead expenses, skill, time and energy should be considered, they have afforded no concrete definition of reasonableness.

Since it is clear that all of the foregoing factors differ (sometimes substantially) from attorney to attorney, petitioners suggest employment of medians, means and averages. Query as to why it is more reasonable to pay sixty to seventy dollars (\$60-\$70) per hour to every attorney? Some charge \$150 per hour in retained cases; some \$25. Some have overheads of \$100 per hour; some \$10. Some spend thirty hours preparing a motion; some thirty minutes. Some have fifty years experience; some fifty days. Unlike petitioners' proposed method of compensation, the current system's provision for petition for extraordinary fees takes cognizance of these factors as well as others in addressing the statutory requirement of reasonableness.



To construe reasonable compensation to be some amorphous amount beyond that necessary to attract a sufficient number of able attorneys to adequately represent the indigent accused would be tantamount to arrogating the legislative function of allocating the public's resources.

Schedule G fulfills the statutory requirement of reasonable compensation; resultingly, petitioners' prayer for superintending control should be denied.

III. The Comments and Recommendations of the Special Master Fail to Provide a Sufficient Basis for the Issuance of Superintending Control Relief.

In addition to the foregoing arguments of merit which respondent Chief Judge contends are of themselves dispositive, respondent must individually<sup>7</sup> address the comments and recommendations of the Special Master, notwithstanding the undeniable devotion to duty he exemplified.

A. Comments

In response to the Special Master's comments, respondent Chief Judge states as follows:

1. Respondent acknowledges the problems perceived by the Special Master of finding an assigned counsel system

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<sup>7</sup> The numbering system hereinafter employed parallels that utilized by the Special Master in his report, p 218, et seq.

ensuring the due process rights of the defendants. But while respondent would endorse any efforts the Court might take to ameliorate these problems, same have not been presented herein as an academic exercise, but rather in the context of a suit for superintending control. Accordingly, the Court is called upon to decide the matter as such.

2. Respondent agrees that sufficient sums are currently expended for assigned case work.

3. The record as made reflects no statistically demonstrable change in the rate of guilty pleas, dismissals, guilty pleas on arraignment, waiver and jury trials since implementation of the subject fee schedule, nor does the record reflect that any negligible change is attributable to the adoption of the schedule, Tr IV- 151; VIII-163, 164; VIII-167; X-107; X-112; XI-96.

4. Respondent endorses the Special Master's view that docket delay is inimical to due process.

5. Respondent accedes to the Special Master's finding herein.

6. Responsive to the Special Master's observations:  
1) The record fails to reflect any significant increase in the rate of guilty pleas; 2) The relationship between the time expended and the money earned by assigned counsel exists independent of the fee schedule. The problem of unconscientious attorneys who sublimate their clients' interests to maximize

their earnings is not a function of the fee schedule; 3) The record fails to reflect any diminution in the number of motions filed subsequent to the adoption of the schedule; 4) There is no conflict between an attorney's need to be paid for his services and obtaining the full panoply of rights for the client. An ethical attorney who voluntarily undertakes to represent an indigent at a known rate with an opportunity to petition the court for extraordinary fees will fulfill his constitutional obligations. Only the unconscientious would do less.

7. The record reflects the existence of "waivers and pleaders" well antedating the initiation of the flat fee schedule, and that such practitioners have consistently plied their trade without regard to the type of compensation system in place. Such problem is related to the assignment of counsel, not the payment of counsel.

8. Respondent submits that the method of assignment is outside the scope of the action at bar.

9. Respondent denies that payment is based on the seriousness of the offense. The present fixed fee schedule was based upon a study finding a correlation between the total amounts previously paid (based upon events) and seriousness, Tr XI-36; X-92. Further, hours spent and work performed may be reflected in a petition for extraordinary fees.

10. Respondent welcomes any additional study and/or input regarding the viability of alternative systems for recoupment.

B. Recommendation

In answer to the Special Master's Recommendations, p 221, respondent Chief Judge submits the following:

1. Respondent first disputes that the fee schedule is based solely on the seriousness of the offense for the reasons aforestated, see Section A, paragraph 9, supra. Respondent, secondly, submits that Wood v DAIE, 413 Mich 573 (1982), as invoked by the Special Master, is inapposite to the case at bar. That case addresses reasonableness in a civil context without measurable relationship to the instant cause.

1A. Respondent contends that such a study was conducted and that, based upon prior history of payment, presumptive norms were established as embodied in the flat fee schedule. Similarly, deviations from the norm may be justified in a petition for extraordinary fees. On the record as made, respondent disputes that sixty to seventy (<sup>8</sup>\$60-\$70) per hour is impelled by the constitution or governing statute.

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<sup>8</sup> Seventy dollars per hour within the framework of a forty hour week and a fifty-two week year produces an annual yield of \$145,600.

1B. While respondent accedes to the premise that a system promulgated by Judge Jobs may well prove operable, respondent urges that the system presently in place provides for a reasonable compensation plan and satisfies constitutional and statutory requirements.

1C. Respondent maintains that the present system providing for voluntary acceptance of a flat fee schedule, subject to embellishment by petition for extraordinary fees, provides fairly for assigned counsel compensation. Respondent further would urge that the record fails to establish guilty pleas engendered by pressures attributable to the fee schedule.

2. Respondent would endorse any efforts which purposefully endeavor to render the coordinate branches of state government more responsive to the problem of funding state appeals.

3. Responsive to paragraph three of the Special Master's Recommendation, respondent similarly would welcome any further study of the dynamics of a state-wide assigned counsel system.

Insofar as the Special Master found that different defendants are represented differently, and that the quality of representation is not always the same in each case, respondent concurs but submits that such differences are 1) inevitable and 2) without legal moment inasmuch as the Constitution only mandates adequate, not equal, representation.

Respondent further submits that the record is inconclusive as to the differences in quality of representation between retained and assigned counsel in any event.

4. Respondent would welcome any assistance or counsel on how to best ensure the quality of candidates for appointment.

5. Respondent would invite further study of plans to fund and improve both trial and appellate level assigned counsel systems, both in terms of funding and enhancing the quality of services.

#### Conclusion

The case at bar sounds in superintending control. It is thus necessary for the petitioners to establish that respondent Chief Judges, in adopting and executing the subject fee schedule for the compensation of assigned counsel, so abused their discretion as to constitute a failure to perform a clear legal duty. During the course of hearings as adduced below, two theories were addressed.

Petitioners would first urge that the current schedule is violative of the Constitution in that it deprives indigent accused of effective assistance of counsel.

Such allegation is patently unsupported. No showing was made to the effect that there is a correlation between the fee schedule and anecdotally introduced isolated instances of

untoward and unprofessional practice. No significant quantifiable departures from the traditional indicia of sound criminal defense were manifested, nor did the record tend to establish a noteworthy increase in the conviction rate, the rate of guilty pleas, or bench trials.

At most, the record reflected the continued participation of some few self-interested and/or unethical attorneys whose inadequacies bear no tenable relationship to the flat fee schedule. The hypothesis that such a class of attorneys will minimize their energies and time in furtherance of their self interest and in derogation of the interests of their clients is, if true, extraneous to any systemic analysis. If so motivated, any such attorney will continue to so act. Certainly a pecuniary disincentive to time and effort exists under a contract system or event based system as well.<sup>9</sup> Obviously the problem lies, in this regard, not in the manner of compensation but rather in the appointment process and the regulation of the practicing bar.

Consistent with the preceding, respondent submits that the at issue fee schedule evinces no constitutionally

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An event based system, while superficially attractive, would result in the generation of nominal events, however insubstantial.

subversive condition; accordingly, petitioners' argument in this vein should be consigned to oblivion.

The second argument advanced by petitioners is that the fee schedule does not provide for reasonable fees within the intendment of MCL 775.16. The record similarly fails to establish any violation of the statute. The rationale is several.

First, the petitioners do not, nor could they, maintain that participation in the assigned counsel system is not voluntary. The record reflects no diminution in the number of prospective attorneys standing ready to participate. These attorneys are fully aware of the presumptive fees established in the schedule and now seek to immanetize the system by alleging unreasonableness.

Second, assuming arguendo that the presumptive fees set forth in the schedule are low, the problem is ameliorated by provision for petition for extraordinary fees. The record reflects that the few who seek such fees have in the main been successful and the disgruntled have failed to seek appeal, instead reposing reliance on a visceral intuition that they will be penalized for seeking extra fees. In light of the fact that this remedy has been cavalierly ignored, petitioners should be precluded from invoking the extraordinary remedy of superintending control.



Third, petitioners' reliance on a selective comparison to the governing rates in the private sector is misplaced. The record is devoid of any proofs tending to establish a legislative intent equating reasonableness with the rates exacted by the elite of the private criminal defense bar, or for that matter, the civil arena. Logically, the legislative intent ought be intuited to provide for the minimum statutory fee required to secure adequate representation by counsel. The presumptive fees set forth in the schedule have accomplished that end. If any comparison is justified, it should be measured by the rates paid to assigned counsel vis a vis that realized by other attorneys serving the public interest.

The fixed fee schedule sub judice has accorded, and to date continues to accord indigents defense consistent with constitutional principles and attorneys the statutory requirement of reasonable fees.

Prayer For Relief

Pursuant to the foregoing, the action of the respondent was considerate of governing standards and reasonable under relevant constitutional principles and existing statutory law; accordingly, petitioners' prayer for relief should be denied and the complaint at bar dismissed.

Respectfully submitted,



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JOSEPH F. CHIESA (P-25514)  
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DATED: September 25, 1992

STATE OF MICHIGAN  
IN THE SUPREME COURT

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IN RE:

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,

Original Action  
Supreme Court No.  
86099

-v-

CHIEF JUDGES OF WAYNE COUNTY CIRCUIT  
COURT and RECORDER'S COURT,

Respondents,

and

COUNTY OF WAYNE,

Intervening Respondent.

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PROOF OF SERVICE

Sandra Kirkendall being duly sworn deposes and says that she is employed in the office of the Judicial Assistant for the Wayne Circuit Court; that enclosed in envelopes were two copies of the Respondent Wayne County Circuit Court Chief Judge's Amended Supplemental Brief Addressing the Report of Special Master Hon. Tyrone Gillespie as filed in this matter in said cause on the 25 day of September, 1992; that the envelopes were sealed and addressed as follows:

Frank D. Eaman, Esq.  
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Kimberley D. R. Reed, Esq.  
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Hon. Joseph P. Swallow  
Chief Judge, 26th Circuit Court  
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and she deposited said envelopes in a government mail receptacle located in Detroit, Michigan on said date.

Affiant further states that she placed such amount of postage on the envelopes as is required by postal regulations to permit first class passage of the envelopes.

  
\_\_\_\_\_  
SANDRA KIRKENDALL

Subscribed and sworn to before me  
this 25 day of September, 1992.

  
\_\_\_\_\_  
Notary Public, County of Wayne  
My commission expires: 2/13/96

STATE OF MICHIGAN  
IN THE SUPREME COURT

IN RE:

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-

Original Action  
Supreme Court No.  
86099

CHIEF JUDGES OF WAYNE COUNTY CIRCUIT  
COURT and RECORDER'S COURT,

Respondents,

and

COUNTY OF WAYNE,

Intervening Respondent.

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APPENDIX I

STATEMENT OF THE EXECUTIVE CHIEF JUDGE OF  
THE WAYNE COUNTY CIRCUIT COURT AND  
RECORDER'S COURT FOR THE CITY OF DETROIT

JOSEPH F. CHIESA (P-25514)  
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STATE OF MICHIGAN  
IN THE SUPREME COURT

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,

No. SC 86099

Petitioners,

v

Special Master  
Hon. Tyrone Gillespie

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

Respondents,

and

WAYNE COUNTY,

Intervening Respondent.

STATEMENT OF THE EXECUTIVE CHIEF JUDGE OF THE WAYNE COUNTY  
CIRCUIT COURT AND RECORDER'S COURT FOR THE CITY OF DETROIT

(The areas covered in this "Statement" are the same areas I intend to cover at Oral Argument. Given, however, the time limitation that will be placed upon me at oral argument, I have written this "statement" as an Exhibit to my Brief in order to assure that any areas I am unable to cover at Oral Argument are still available to you for your consideration.)

MCL 775.16 states, in part,

"The attorney appointed by the Court shall be entitled to receive from the county treasurer ... the amount which the CHIEF JUDGE considers to be reasonable compensation for the services performed." (emphasis added)

In attempting to comply with this statute, and, promote other beneficial purposes of the criminal justice system in

Wayne County, Judge Roberson, Chief Judge of the Recorder's Court for the City of Detroit, and I submitted Joint Administrative Order 1988-2 (hereafter referred to as the "JAO"), which became effective on July 1, 1988. This JAO changed the system for payment of assigned criminal counsel in Wayne County.

Judge Roberson and I, along with our staffs, worked hard to try to balance all the important societal and governmental interests before drafting and submitting this JAO. We think this JAO not only complies with the mandate of MCL 775.16, but is innovative and should be considered as a future model for others to follow. In fact, Judge Roberson and I are flattered to report that the mother of our democracy has recently decided to follow our lead. The Lord Chancellor of England has announced that he intends to replace the present "hourly rate" system of compensating assigned criminal attorneys "with a structure of fixed fees."

This case presents you with the opportunity to second guess what Judge Roberson and I did back in 1988. Before making that "second guess", I wanted this opportunity to try to inform you as to what went into our "first guess."

I believe the answers to a series of questions stemming from one general question will provide the path to



STATEMENT OF EXECUTIVE CHIEF JUDGE

APPENDIX I

deciding this case. Let me begin with the general question:

DID JUDGE ROBERSON AND I ABUSE THE DISCRETION MCL  
775.16 GIVES US BY SUBMITTING AND IMPLEMENTING JAO  
1988-2?

I phrase the general question this way because MCL 775.16 expressly states that the amount to be paid to assigned counsel is "the amount which the Chief Judge considers to be reasonable." What this language suggests, and what a plethora of case law establishes, is that a "reasonable amount" is not a precise amount, but a range, and if the amount determined by the Chief Judge falls into this range, it is lawful.

If the JAO provides an opportunity for assigned counsel to receive reasonable compensation, the attack this case makes on the JAO must fail. This is true even if an attorney in a particular assigned case is determined not to have received reasonable compensation. It is important to remember that this case is an attack on the system of determining reasonable compensation in Wayne County, not a vehicle for remedying unreasonable compensation in any particular case. Let me give an example:

Assigned counsel in a robbery armed case submits her regular voucher and receives \$750.00. The defense of this case took many hours more than a normal robbery armed case, and the attorney's effective hourly pay was \$20.00 per hour.

If this is the only assignment this attorney

received in a calendar year, we can all agree she did not receive reasonable compensation. However, the reason the attorney did not receive reasonable compensation was not the fault of the JAO. It was directly related to the attorney's failure to use the provision of the JAO that allows petitioning for extraordinary fees, a rather simple procedure for a lawyer to follow. By using this procedure, expressly authorized by the JAO, the attorney could have received reasonable compensation. Any suggestion, that the petition for extraordinary fees is not a cure for cases where the presumptive flat fee is inadequate, is just wrong. In Wayne County Circuit Court extraordinary fee requests produced the following results:

<u>1989</u>	100% granted in whole or in part
<u>1990</u>	100% granted in whole or in part
<u>1991</u>	93% granted in whole or in part

The record before you in this case contains not one specific example of an attorney, who has used all procedures available under the JAO, who has not received reasonable compensation.

This discussion, however, leads to the obvious question before you:

DOES JAO 1988-2 PROVIDE AN OPPORTUNITY FOR AS-SIGNED TRIAL COUNSEL IN WAYNE COUNTY TO RECEIVE REASONABLE COMPENSATION?

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To answer this question, this Court must do something the Petitioners have failed to do, the Special Master has failed to do and, to some extent, we, Defendants, have failed to do. You must define the term "reasonable compensation" in the context of paying assigned counsel. I believe all the issues in this case will be answered quite easily, after you do that.

In coming up with that definition I start with the 6th Amendment to the U.S. Constitution. It requires that all criminal defendants, who cannot afford to hire their own attorneys, have the right to be provided effective and competent counsel. Consequently, I suggest the word "reasonable" in MCL 775.16 was the state legislature's shorthand for saying "You must pay enough to make sure an indigent defendant is provided effective and competent counsel, and if you do pay enough to give an indigent defendant effective and competent counsel, then the amount you are paying is reasonable."

I submit that the definition of "reasonable compensation" as that term is used in the statute is as follows:

THE AMOUNT OF MONEY NECESSARY TO ACQUIRE COUNSEL  
THAT MEETS THE 6TH AMENDMENT REQUIREMENT OF  
EFFECTIVE AND COMPETENT COUNSEL

One way to assess the merit of this definition is

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to ask these questions: What else could it mean? What other definition could there be? Could there be a definition that permitted the payment of less compensation? Could there be a definition that permitted or required the payment of more money?

We can all agree that it would be a violation of the statute, if the JAO provided less than "the amount necessary to acquire counsel that meets the 6th Amendment requirement of effective and competent counsel."

Therefore, the key question is whether the definition of "reasonable compensation" requires the payment of more money than is necessary to acquire counsel that meets the 6th Amendment requirement of effective and competent counsel. The Petitioners and the Special Master implicitly answer "yes" to this question. They do not tell you, exactly, what their definition is, but they know, you know, and Judge Roberson and I know, that unless you define "reasonable compensation" to mean more than my definition, they must lose.

A few undisputed facts make it easy to see that Wayne County is paying enough money to acquire competent and effective counsel. There are 589 lawyers, as of 7-2-92, approved to receive assignments in criminal cases at the trial stage (see attached exhibit). Let me tell you about

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these 589 attorneys:

1. They all voluntarily applied to be approved to receive assignments pursuant to the pay schedule in the JAO.
2. They all have received CAP certification (i.e. attendance at the Criminal Advocacy Program).
3. They all have been approved by a judges' committee after an individualized review of their application.

If I had the opportunity, I would ask the Petitioners, how many of these 589 approved attorneys meet the 6th Amendment requirement of effective and competent counsel. Would they answer 50%, 80%, 90%? Surely, this listing of attorneys, combined with what they were required to do to be approved for assignments, shows that the amount of money paid pursuant to the JAO is sufficient to acquire effective and competent counsel to represent indigent criminal defendants. Clearly, the amount of money paid pursuant to the JAO has attracted hundreds of attorneys who meet and exceed that standard.

If an incompetent or unethical attorney is appointed for a defendant in a criminal case in Wayne County, it is not because the level of compensation does not attract competent, ethical counsel; it is not because this list does not contain competent ethical counsel; it is because a judge does not take the time, or have the predilection, to pick from this list a competent and ethical counsel. Any judge in

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Wayne Circuit or Recorder's Court, who is intent on only appointing competent, ethical counsel from this list, can accomplish that goal easily. Therefore, unless the Michigan Supreme Court expressly or implicitly defines "reasonable compensation" to require the payment of more money than is necessary to acquire effective and competent counsel, Petitioners must lose.

I respectfully submit, however, that paying more money than necessary to acquire competent counsel would be just as unreasonable as not paying enough money. Furthermore, I believe it would be a breach of the public trust for Judge Roberson and I to authorize the payment of more money to assigned counsel than is necessary to acquire competent counsel.

On a personal level, I have a strong desire to see many of the competent, hardworking lawyers who accept criminal assignments get more money. I have the highest respect for their difficult job. I used to do it. As the Chief Judge of the largest court in the State, however, I do not believe I have the luxury of using more tax dollars than necessary to purchase essential services for the Court.

An interesting question to ponder is what would happen if fees were raised? Would the quality of assigned counsel change? Would the attorneys who are presently on

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this list be eliminated? NO. Would judges appoint different lawyers? I doubt it. The probable answer is that the same attorneys, who have voluntarily agreed to take assignments under the present system, would just get more money.

When I authorize the purchase of supplies for the Court, if I can buy a quality pencil for 25 cents, am I breaching a public trust if I buy the same pencil for 30 cents from another vendor whom I like better. Judge Roberson and I, however, recognize that in using public funds to purchase necessary services, we have a duty to not pay more than is necessary to acquire the service.

The Petitioners in this case, and the Special Master have, at least, implied that more than this market rate should be paid. They have sought to require that the hourly rate of attorneys working in other areas of the law, be a guide to the hourly rate they are entitled to receive. This type of analysis does not stand up under scrutiny. Just as some types of doctors make a lot more than other kinds of doctors, some lawyers make more than other kinds of lawyers. If the market required the County to pay \$150 per hour to attract competent counsel for indigent defendants, could the County force attorneys to accept \$80 per hour because some lawyers working in other areas of the law were

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only being paid that amount? If the level of compensation becomes too low to attract competent attorneys, the level of compensation would have to be raised. Clearly, the JAO, presently, authorizes the payment of a sufficient amount of money in Wayne County to acquire competent attorneys.

The Wood Test, cited by the Special Master, is not applicable. The factors in the Wood Test are those that go into determining the market. The Wood factors are not a substitute for the market rate. Instead they are normally a limitation on the market, not a license for the trial court to order more. Wood implies that an attorney should usually not receive more than what he actually charged his client. Wood established that the trial court can order less than the actual amount, if the actual amount is unreasonable. I believe it is an incorrect reading of Wood to argue that Wood generally permits the granting of attorney fees beyond those actually incurred.

There is certainly much more I could say on this subject. However, allow me at this point to merely submit that there is no other workable, realistic definition of this term, other than a market one.

As I have shown the JAO allows the payment of a sufficient amount of money to assigned attorneys in order to acquire competent attorneys. In fact, we may be paying more



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than is necessary because we have no difficulty in attracting competent attorneys pursuant to the present level of compensation.

At this point I would like to briefly look at exactly what the JAO does. It does three basic things:

1. It sets a presumptive level of compensation for assigned trial counsel: The schedule anticipates that the annual cost to the County for assigned criminal counsel would be approximately nine million dollars.
2. It sets a presumptive form of compensation for trial counsel: a graduated flat fee schedule based on the maximum penalty for the most serious charged crime.
3. It permits the filing of extraordinary fee petitions in every case in which the assigned attorney believes the amount received in a particular case, based on the presumptive fee amount in the fee schedule, is below the range of reasonable.

I have already spent a long time explaining why I think the level of compensation is adequate. Let me turn briefly to the claim that the presumptive form is illegal (i.e. the graduated flat fees). Presumptive fee schedules have been sustained by the appellate courts of this State. There are three types of presumptive fee schedules: event-based; hourly-based; and flat-fee based. The first two encourage delay because the longer a case proceeds, the more court events are required and the amount of hours worked is increased. The fixed fee encourages efficiency because

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lawyers benefit from the expeditious processing of cases. If an attorney is willing to violate his ethical duty to represent his client zealously by cutting corners because of the fixed fee, is he not just as likely, or more likely, to milk the system under the other two methods?

At the Special Master's hearing no evidence admissible under the M.R.E. established any specific example of an attorney breaching his duty because of the flat fee schedule. In fact a comprehensive national study on assignment of counsel systems conducted by the National Center for State Courts entitled "Indigent Defenders Get the Job Done & Done Well" published in May '92 discussed the change in Wayne County to a graduated flat fee system. At pp. 77-78 the study concludes:

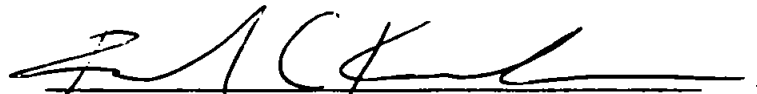
"Not surprisingly, controversy accompanied initiation of the new fee policy. Lawyers argued that the shift from an event-based fee schedule to a flat fee schedule created an incentive for indigent defenders to plead their clients inappropriately. This cynical perspective is not supported in the AOC study. These results indicate that (1) there was no statistically significant change in the percentage of motions or hearings held, the percentage of cases disposed of at trial, the percentage of defendants found guilty at trial, or the incarceration rates following the change in fee structure, and (2) there was no statistically significant change in the plea rate, although pleas occurred earlier and the number of dismissals increased.

In addition a number of benefits to the criminal justice system result from the flat fee system: it helps bring

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certainty to County budget; it acts as restraint on prosecutor overcharging; it has a beneficial impact on jail overcrowding.

I conclude where I started: The JAO establishes a system of compensation for assigned counsel in Wayne County, that is not only lawful by providing for reasonable compensation, but is progressive and innovative, and should be supported by this Court.



Richard C. Kaufman,  
Executive Chief Judge of  
Wayne County Circuit Court  
and Recorder's Court for  
the City of Detroit

DATE: 9-22-92

STATE OF MICHIGAN  
IN THE SUPREME COURT

IN RE:

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,

Original Action  
Supreme Court No.  
86099

-v-

CHIEF JUDGES OF WAYNE COUNTY CIRCUIT  
COURT and RECORDER'S COURT,

Respondents,

and

COUNTY OF WAYNE,

Intervening Respondent.

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JUDGES' APPROVED ATTORNEY ASSIGNMENT LIST

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Chief Judge,  
Wayne County Circuit Court  
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Revised on July 2, 1992

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C.C.	BOLDEN, CARL B., JR.	P10964	871-2112
	BOLZ, RONALD, J.	P43897	563-7680
	BOYER, BARRY PATRICK	P29940	259-2002
C.C.	BRACY, WARREN D.	P24825	393-0047
C.C.	BRADFIELD, CLARENCE M.	P11098	961-2772
	BRADLEY, AVERY	P33630	962-6020
C.C.	BRADY, MICHAEL J.	P30410	559-5667
	BRANCH, WILLIAM, F.	P26846	574-9400
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	BRAVERMAN, SAMUEL	P11150	381-0119
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	BRIDGES-FORTSON, PEGGY	P33970	669-3860
	BROWN, LORNE L.	P44690	961-0646
C.C.	BROWN, MARK L.	P39562	963-2550
	BRUNELL, DAVID C.	P41265	563-0461
C.C.	BRUSSTAR, JOHN, W.	P36920	963-5440
	BUDAK, JANE LYNN	P43792	882-2847
C.C.	BULLOCK, STEVEN C.	P37974	562-6500
	BURGER, ROBERT J	P41267	388-3600
C.C.	BURGESS, LAURENCE C.	P11405	961-4382
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	CASSAR, RAYMOND	P36875	278-8811
	CASSAR, RAYMOND A.	P36875	278-8811
C.C.	CELESKEY, GERALD T.	P11752	893-1966
C.C.	CENTNER, CHARLES W.	P11754	824-9699
	CHATMAN, GEORGE	P34577	534-6840
	CHEDRAUE, GEORGE	P41732	842-1292
C.C.	CHENAULT, JILL C.	P42553	964-3960
	CHERNIAK, EDWARD, A.	P11823	282-1580
	CHERNIKOV, LESLIE, S.	P24047	525-2233
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	CLARK, LAVELLE W.	P11934	963-6222
	CLAY, HENRY BERNARD, III	P25249	867-7611
C.C.	COHEN, MARJORY B.	P26415	962-7210
C.C.	COHEN, ROBERT B.	P12025	593-4230
C.C.	COLLINS, JEFFREY G.	P37260	963-5440
C.C.	COOK, DONALD R.	P30565	964-6677
	COOPER, C. LANCE	P38435	961-4046
C.C.	COOPER, LESLIE D.	P30857	965-2188
C.C.	COOPER, RENE A.	P30566	965-2188
	COTTON, HORACE, D.	P33268	963-3150
	COURTNEY, MICHAEL A.	P32570	326-2889
	COURTRIGHT, JOHN T.	P40153	928-4005
	COUTTS, ROBERT P.	P43430	381-1440
	COVERT, MARCIA	P33836	963-9170

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	CULPEPPER, W. OTIS	P23520	961-2255
C.C.	CURTIS, PAUL D.	P29737	964-5755
C.C.	DAGGS, LEROY W.	P12435	961-2041
C.C.	DALY, CRAIG A.	P27539	963-1455
	DANIEL, ERIC	P37068	965-8833
C.C.	DANIEL, WILLIAM B.	P12479	964-4200
	DASARO, ROSE M.	P44416	963-8050
C.C.	DAVIS, HUGH M.	P12555	961-2255
	DAVIS, JR., WENDELL	P27470	864-0234
	DAVIS, KAREN J.	P43711	884-7230
C.C.	DEAN, THADDEUS K.	P32113	964-6970
	DECKER, GEORGE	P12606	961-2443
	DEINEK, THOMAS, W.	P32987	446-1736

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Type Atty ====	Attorney =====	Bar Number =====	Telephone Number =====
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	DICKINSON, TERENCE	P24861	571-7500
C.C.	DILLARD, GODFREY J.	P22802	963-3135
	DILLON, JOHN R.	P44167	886-3455
	DOAN, JEFFREY	P28008	965-4054
	DOBRA, PETER M.	P30651	730-0170
C.C.	DOBROWOLSKY, JAROSLAW	P30432	962-6046
	DOCKERY, PATRICIA J.	P44725	345-4429
	DONALDSON, MICHAEL	P35780	476-2411
C.C.	DONOHUE, GILBERT	P12886	596-0200
C.C.	DORF, JOEL M.	P22927	962-3303
	DOUGLAS, VICTOR	P43669	371-7211
	DOVAS, GEORGE	P12915	722-1640
C.C.	DRAZNIN, ILSA	P31891	945-8358
C.C.	DuBOSE, SEQUOIA	P35734	964-2920

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Type Atty ====	Attorney =====	Bar Number =====	Telephone Number =====
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	ECHARTEA, LAURA	P41489	965-5119
C.C.	EDICK, ROBERT E.	P25432	274-9100
C.C.	EDISON, JEFFREY L.	P25912	964-5755
	EKLUND-EASLEY, MOLLY, S.	P30653	837-1111
C.C.	ELLIOTT, LEODIS	P31365	372-9119
	ELSEY, ROBERT R. (OTHER TELEPHONE NUMBER - 445-0900)	P24519	567-3388
	ERNST, KEVIN	P44223	965-4818
	ERWIN, SALLE, A.	P32405	965-7997
	ESBROOK, JO ALLYN (OTHER TELEPHONE NUMBER 358-2141)	P34984	965-7997
C.C.	ESPER, DAVID J.	P26430	274-9100
C.C.	EVELYN, GERALD K.	P29182	964-3960
	FADER, THEODORA B.	P45143	837-1111
	FAIN, JANEL S.	P39044	552-7215
	FARDIG, ELIZABETH	P35319	255-6604

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Type Atty ====	Attorney =====	Bar Number =====	Telephone Number =====
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C.C.	FEINBERG, JAMES L.	P13341	962-8280
	FENNER, STEVEN	P29506	961-0690
	FERRY, GERALD	P44630	873-1835
D.O.	FINK, DARRYL, J.	P43340	965-4384
C.C.	FINN, FREDERICK	P32268	964-1383
	FORD, DEBORAH G.	P35273	963-2840
	FORLETTA, J. ALLEN	P41872	795-7490
	FORREST, THELMA	P45206	259-6900
	FOSTER, ALTHEA, LYNN	P43488	838-7268
	FOSTER, VALERIE A.	P44459	855-8300
	FRANCZAK, ROBERT C.	P42477	277-0018
	FREEMAN, CRAIG	P34733	965-4300
	FRONTCZAK, FRANK M.	P29184	573-0431
	FULLER, ALFONSO C.	P13759	963-1885

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	GELLER, JOHN	P13908	885-8893
	GELLER, STEVEN	P41626	851-5140
C.C.	GEORGE, JACQUELINE	P26320	961-1159
	GETSCHMANN, ANDREAS	P27630	235-4770
	GHERMAN, JOHN	P34392	422-5958
	GILES, ALAN, F.	P33137	962-3500
C.C.	GILES, RONALD	P38107	259-4742
	GILLIESPIE, FRANK L., IV	P37513	345-2900
	GIOVANNI, VINCENT	P26442	851-2280
	GLANDA, RICHARD	P32990	965-1905
	GLENN, KRISTI	P39996	961-3100
	GLENN, LUTHER W. JR	P38683	961-3100
	GLENN, WILLIAM	P36794	961-3100

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	GOLDFARB, CARIN	P33138	932-3500
	GOLDSTEIN, ROBERT	P38298	965-4179
	GOODMAN, LOREN P.	P14164	365-1366
	GOODMAN, MORRIS	P14166	837-1111
	GOODWIN, JR., CLYDE	P44461	965-3507
	GORDON, HENRY, L.	P37613	965-8840
C.C.	GORDON, JOSHUA R.	P37782	961-0020
	GRAHAM, KENNETH, N.	P44333	774-9111
	GRANT, DONNA	P35083	540-1222
	GREEN, RODERICK	P33837	965-5770
D.O.	GREENBERG, BETH	P38897	965-4384
C.C.	GREENE, LAWRENCE R.	P14336	961-3222
	GRIEM, THOMAS	P14371	961-9240
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	GRONER, DAVID	P37921	255-0200
	GROVES, JOHN W.	P43681	963-1028
	GRZADZINSKI, MARCIANN	P44641	881-7776
	HAAS, CHARLES A.	P14486	278-4922
C.C.	HAGUE, WILLIAM C.	P14521	964-0033
C.C.	Haidar, MARK	P35143	336-8662
	HAKIM, DAVID C.	P14529	372-1467
	HALL, CARL E.	P14542	963-7922
	HALL, JAMES C.	P39216	567-9700
C.C.	HALL, MARK R.	P24478	567-9700
	HAMBURGER, ROBERT L.	P14570	838-0020
	HAMEL, DOUGLAS	P29768	961-5529
	HAMILTON, REGINALD	P26213	968-3960
C.C.	HAMZEY, MICHAEL A.	P38020	964-3313
	HARPER, CAPERS	P24653	964-4165
	HARRIS, DAVID	P14670	961-6361

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C.C.	HARRIS, IRA G. (OTHER TELEPHONE NUMBER - 965-5252)	P14675	352-6880
	HARRIS, JEROME	P14676	478-0060
C.C.	HARRIS, LYLE B	P42870	961-9090
	HARRIS, RICHARD R.	P14682	864-2828
C.C.	HARRIS, WARREN, E.	P44199	259-3330
	HATHAWAY, CYNTHIA GRAY	P40096	961-6367
	HECK, ERMA J	P38689	1-647-9000
D.O.	HEDIN, JANET ANN	P35709	965-4384
	HENRY, KATHY	P41314	964-2525
	HETMANSKI, VIRGINIA	P14923	886-4240
	HIDALGO, MICHAEL	P29668	961-2350
C.C.	HILL, MARSHALL C.	P14971	963-2344
C.C.	HLAVAC, EDWARD A.	P23871	961-4015
	HOLLAND, KEVIN W.	P45387	295-2009
	HOLLER, JOHN J. III	P43344	963-1455
	HOLWIG, WILLIAM M.	P44555	422-0209

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	HOWELL, VICKY O.	P44329	961-5935
	HUBBARD, SUSAN L.	P44546	277-0950
	HUDSON, DENISE, M.	P42979	964-5945
C.C.	HUGHES, PAUL M.	P36421	964-6465
	HUGHES, SHEILA	P23195	352-4690
	HUSTER, BETTE	P25562	963-7240
C.C.	HYLTON, KENNETH N., JR.	P31657	259-1700
	IDELSHON, CHARLES BRUCE	P36799	450-0128
	ISON, DAWN	P43111	961-3100
	JACKSON, JAMES D.	P15375	838-7798
C.C.	JACKSON, JAMES, JR.	P15377	964-4220
	JACKSON, JOSEPH E.	P15380	871-3355
D.O.	JACKSON, KERRY	P41971	965-4384
C.C.	JACOBS, ELIZABETH L.	P24245	962-4090
	JAMES, FRANK, D.	P43469	962-2240
	JAMESON, JOHN S.	P43045	963-7333
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C.C.	JOHNSON, CARLA J.	P36282	965-6690
	JOHNSON, CLAYTON, V.	P40001	963-0040
D.O.	JOHNSON, DONALD L.	P34170	965-4384
	JOHNSON, JOSEPH A.	P44703	965-8868
C.C.	JOHNSON, KIM D.	P37520	961-6367
	JOHNSON, LAWRENCE	P35570	964-0670
	JOHNSON, WILLIAM L.	P15552	567-0086
	JORDAN, TERI A.	P45580	864-4711
	KAIGLER, JOHN CLIFFORD (OTHER TELEPHONE NUMBER - 962-6440)	P42873	965-4384
	KAPPLER, SCOTT D	P41750	464-4500
C.C.	KARWOWSKI, ROMAN S.	P22830	963-7603
	KAYE, DOUGLAS A.	P45750	427-1599
	KELLEY, WILBOURNE A	P42415	259-1700
	KENT, LEE A.	P26966	864-2828
C.C.	KERWIN, ADA	P35796	642-9222

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	KIDSTON, BRIAN C.	P39028	453-2005
C.C.	KIMBER, C. MICHAEL	P15962	965-1145
D.O.	KINCAID, JAMES M.	P34414	965-4384
	KING, CHARLES, R.	P25860	842-5600
C.C.	KINNEY, ROBERT	P35842	961-0021
	KINZER, ROBERT	P15993	961-3216
	KIPKE, LARRY	P39926	963-1360
	KOKLANARIS, GEORGE N.	P40005	965-3040
C.C.	KORN, RICHARD	P32958	864-3116
	KOWAL, CHRISTINE A.	P44122	965-8155
	KRAIZMAN, JACK	P16198	961-7078
C.C.	KRAIZMAN, SIDNEY	P16199	961-7078
D.O.	KROGSRUD, JAMES	P28046	965-4384
C.C.	KUBILUS, INGRID (BEEPER NUMBER 943-1489)	P30959	531-8354
	KURZ, WALTER	P16306	962-2564
	KYLE, ROBIN H.	P33330	961-3975

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C.C.	LA FLORA, MICHELE T.	P37572	567-9600
	LAITUR, TIMOTHY JOHN	P43873	291-3019
	LANDAU, ARTHUR	P16381	963-0505
	LANGOIS, JOSEPH L.	P43050	963-4893
D.O.	LANKFORD, DAVID, EUGENE	P43536	965-4364
	LARAMIE, ROBERT	P26464	964-3300
	LASTER, ERNEST	P37396	259-4522
C.C.	LECH, ROBERT J.	P24088	964-0234
	LEDERMAN, HOWARD, Y.	P36840	963-0490
C.C.	LEDFORD, MARCIA	P39795	522-6070
C.C.	LEDWON, CLARENCE	P16498	352-7020
	LEE, DAVID	P39305	963-6508
	LEES, PATRICIA P.	P45393	824-6922
	LEITHAUSER, NEIL J.	P33976	545-7540
	LEITHAUSER, NEIL J.	P33976	964-2727
	LEONE, JOHN F.	P38938	563-1200
	LESS, ROSANNE	P41983	565-4677

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	LEVENTER, JAN (BEEPER 440-5075)	P28670	961-2436
	LEWIS, WENDY T.	P39505	942-0272
	LEWIS, WILLIAM S. or 923-1983	P43413	924-1056
	LIPSHY, MORRIS	P16720	381-0121
	LOCKHART, STEVE	P32090	885-1767
C.C.	LOEB, THOMAS M.	P25913	354-6330
D.O.	LONEY, JOSEPH W.	P33250	965-4384
C.C.	LORENCE, GERALD	P16801	961-9055
	LOVASZ, CHRISTOPHER M.	P44472	261-4700
	LUMLEY, JAMES	P23676	961-2239
	LUMUMBA, CHOKWE	P25914	964-5755
C.C.	LUSBY, CHARLES D.	P24661	567-2977
	LUTOMSKI, JOSEPH, V.	P16871	961-7080
	MAC DONALD, LAWRENCE B.	P16915	963-7040
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C.C.	MADDEN, PEGGY (BEEPER NUMBER - 436-6574)	P39308	425-8100
C.C.	MAGIDSON, MARK	P25581	963-4311
	MAGUIRE, RAYMOND P.	P40724	451-0926
	MAHON, DENNIS J.	P42135	365-1366
	MAKOWSKI, STEVEN	P33335	283-2580
	MALLETTE, JR., LONZO	P44585	962-2240
C.C.	MALLORY, ROBERT, R.	P17027	964-1190
	MANN, JOHN R., III	P27231	965-3540
C.C.	MANN, ROBERT	P17056	964-0033
D.O.	MANNARINO, MARIA	P39531	965-4384
	MANZIE, GEORGIA D.	P42614	963-6592
	MARDIROSIAN, ELAINE	P33528	881-0296
C.C.	MARGOLIS, ELLIOT D.	P28078	963-5090
	MARKS, PHYLLIS A.	P33731	393-3775
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	MARSH, JOHN	P30048	965-0380
	MARTIN, WILLIAM G.	P26667	282-6900
C.C.	MATEO, JUAN A.	P33156	962-3500
	MATHIS, C. MICHAEL	P27293	891-9319
	MAYER, WENDY	P43828	961-1944
	MAYS, ANDRE F.	P46265	963-2593
D.O.	MC CAMERON, SHERRY	P25297	965-4384
	MC CARTY, JEFFREY T.	P42633	961-9520
C.C.	MC CLINTON, ROBERT L.	P31315	534-6840
	MC GINNIS, JAMES	P29323	962-2240
C.C.	MC GUIRE, DANIEL M.	P39843	965-6939
	MC KEE, MAXIMILIAN, B	P41758	961-2483
	McBREARTY, JR., WILLIAM	P43445	823-2378
	McCANN, JAMES, C.	P39311	421-7333
	McCANN, SUSAN	P43185	846-1324
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	McCOTTER, THADDEUS G.	P44613	464-0874
	McQUEENEY, PATRICK J.	P45797	779-0180
	McRIPLEY, GIL W.	P41150	963-1533
	MEISNER, IVAN	P17599	961-2667
C.C.	MELICAN, DANIEL	P38603	961-5246
	METEVIER, THOMAS	P17654	964-3960
C.C.	MEYERS, WALTER D.	P17679	963-4044
	MILLER, D. RICHARD	P33456	645-5557
	MILLER, WILLIAM E. (BEEPER 599-1097)	P32321	867-7245
	MITCHELL, KARRI	P42028	963-0560
C.C.	MITCHELL, ROBERT F.	P17838	961-8122
C.C.	MOGILL, KENNETH M.	P17865	962-7210
	MOLENDIA, PAUL B.	P39929	271-5517
	MOORE, GREGORY	P34437	961-0192
	MOORE, W. FREDERICK	P33341	961-3133

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	MORENCY, TERRI	P40726	965-8155
	MORGAN, JOAN E.	P34482	963-5230
C.C.	MORGAN, ROBERT M.	P23144	961-7070
	MORGAN, STEPHAN W.	P44533	961-0590
	MORMAN, ARTHUR	P22786	961-6611
	MORRISON, CURTIS W.	P29984	868-4931
D.O.	MORROW, BRUCE U.	P32526	965-4384
	MOSLEY, ELTON	P37579	964-1458
	MOTHERSHEAD, MARTHA F.	P38068	884-8370
C.C.	MUECKENHEIM, MERCEDES D.	P25201	963-0570
	MUECKENHEIM, ROBERT	P25202	963-0570
	MULLINS, J. D.	P37989	965-1777
	MURPHY, BRIAN J.	P39728	398-5757
C.C.	MURPHY, TIMOTHY P.	P25941	964-5849
	MURRAY-GRIER, NITA	P38507	961-4276
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C.C.	NELSON, RICHARD R.	P18237	961-3022
	NELSON, RICKY J. OTHER PHONE NUM: 292-3894	P39317	441-1100
	NEWMAN, DAVID S.	P42153	963-1028
	NEWTON, MARLENE	P40342	824-8159
	NOBLE, CHARLES, H.	P18316	963-7633
C.C.	NOLAN, JAY M.	P18323	676-1726
C.C.	O'CONNELL, MARY ELLEN	P30482	961-2237
D.O.	O'DONNELL, JAMES	P42585	965-4384
D.O.	OTTO, INA N	P41320	965-4384
	PAIGE, RAY ANTHONY (OTHER TELEPHONE NUMBER 968-5777)	P41848	963-1080
	PALMIERI, ANGELA	P28567	422-5640
	PARZEN, GEORGE	P18677	961-2311
	PARZEN, STEVEN	P23129	961-2310
	PASCUT, DAVID B.	P44201	963-9225
	PATTERSON, JOEL D.	P41674	963-5090
	PATTON, CAROL, P. (BEEPER 846-1425)	P37530	882-9833
C.C.	PAYNE, JOHN B., JR.	P35472	562-5440

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	PAYNE, SHARON, A.	P38749	424-9270
	PEARSON, ELEANOR L.	P32893	491-8540
	PEISNER, ALLEN, MARK	P41159	557-5023
	PENWARDEN, JACK, R.	P28326	561-2510
	PERKINS, LINDA	P36136	965-8855
	PERLMAN, JEFFREY	P36664	358-4110
C.C.	PERSONS, FRED K.	P18814	961-5532
C.C.	PESSINA, CYRIL	P34814	839-7441
	PIETROSKI, DAVID, A.	P43312	962-0220
	PITETTI, GIANLUCA	P43974	259-1700
	PLAWECKI, MARK	P40391	963-1871
C.C.	PLUMPE, ROBERT W.	P22965	882-1630
	POMANN, JOHN J.	P18989	525-1776
C.C.	POOKRUM, WALTER C.	P26058	961-4210
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	POSNER, SEYMOUR	P19026	961-6615
	POTESTIVO, BRIAN, A.	P42893	963-3910
	POWELL, MICHAEL, S.	P43851	464-2073
	POWERS, RICHARD E.	P43883	822-7600
	PRICE, TERRY, ALLEN	P43003	273-2984
C.C.	PRICE, WILLIAM L.	P19098	965-6000
	PRIMEAU, ROBERT J.	P23146	261-7775
	PRINCE, LELAND	P30686	962-2240
	PRITZKER, HERBERT, E.	P43975	283-6499
C.C.	QUARTERMAN, THOMAS E.	P28616	961-0808
	RABAUT, WILLIAM F.	P37586	961-5520
C.C.	RADULOVICH, SUE E.	P33346	965-3090
	RADZINSKI, PAMELA	P43451	389-1330
	RANDOLPH, THOMAS	P44624	837-1960
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C.C.	REDSTONE, DAVID	P41761	965-3322
C.C.	REED, JESSE W., JR.	P23863	342-3817
D.O.	REED, KIMBERLEY	P33955	965-4384
C.C.	REED, ROSALIND K.	P26151	965-6775
C.C.	REED, SUSAN F.	P26897	963-4090
	REID, DANIEL (BEEPER NUMBER - 275-3353)	P30965	874-3750
C.C.	REMSKI, STEVEN J.	P30309	961-6270
	RENWICK, WILLIAM	P32421	962-6440
	RHODES, FRANK	P24119	964-3300
C.C.	RICE, WILFRED C.	P19411	873-7423
	RICHARDSON, MARK	P28091	962-0185
C.C.	RICHARDSON, MAX C., JR.	P39800	864-3902
C.C.	ROBERTS, RANDALL, C.	P28595	961-5567
C.C.	ROBINER, NORMAN R.	P19515	331-1111
C.C.	ROBINSON, ROSE MARY	P19529	964-0088
	ROCK, SUSAN	P34497	965-7997
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C.C.	ROTH, BENJAMIN	P19688	965-5655
	ROYAL, JOHN F.	P27800	962-7210
C.C.	RUBACH, STANFORD	P19723	961-4646
	RUDICK, STUART	P24176	525-2233
	RUEMENAPP, RAYMOND V.	P35094	961-2124
C.C.	RUMORA, MATTHEW	P24361	779-7767
C.C.	RUST, DANIEL J.	P32856	837-7734
C.C.	RUTLEDGE, CHARLES, E.	P19786	963-8533
	SAFFORD, BEVERLY	P31753	961-9322
	SALTZMAN, ALAN	P26684	596-0225
	SARNACKI, PAUL, A.	P41596	347-6226
	SAROKI, PAULINE	P43477	963-5310
	SASSE, KENNETH (BEEPER - 780-9107)	P24365	965-6775
C.C.	SCAVONE, JOHN ALAN	P33788	884-6806
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	SCHLAFF, JAMES	P30720	446-1732
	SCHNEIDER, CHARLES	P27598	963-1003
	SCHULLER, WALTER	P20090	871-4307
	SCHWARTZ, ALLEN	P25910	892-1961
C.C.	SCHWARTZ, JEFFREY G.	P32076	965-8168
	SCHWARTZ, STEVEN L.	P43733	892-1961
C.C.	SEITZ, PAUL JEROME	P40696	964-5010
	SEMAAN, ANTHONY	P37589	963-8050
	SEMAAN, JOHN	P42557	961-8998
	SENER, RICHARD H.	P20221	884-4173
	SHAW, EDWARD	P43061	963-3910
	SHEEHAN, JAMES, J.	P34021	962-0600
	SHREWSBURY, DENNIS F.	P34128	451-0475
	SIEGEL, BARRY	P20426	964-1190
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	SIMMONS, MELODIE S.	P44447	963-4740
C.C.	SIMMONS, ROBERT J.	P20492	965-9510
	SIMON, CALEB M.	P20493	335-0900
	SIMON, JONATHAN	P35596	964-0533
C.C.	SIMON, MARKUS S.	P20503	273-1045
C.C.	SIMON, SAMUEL	P32947	273-1045
C.C.	SIMPSON, SAMUEL L.	P20515	963-8080
	SIMPSON, W. BRUCE	P20518	757-2356
C.C.	SIMS, ANGELA R.	P27392	965-8846
	SISTRUNK, MARY, CAROLYN	P41079	965-8865
C.C.	SLAMEKA, ROBERT E.	P20567	961-5011
	SLATE, JOHN, R.	P25757	382-3130
	SLAVENS, MARK	P31672	421-5210
C.C.	SLOMSKI, PATRICIA S.	P29001	961-7311
	SMITH, CORNEL	P20633	963-7665
	SMITH, ELEANOR CATRON	P29738	963-1114

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	SMITH, FREDERICK J.	P41308	964-2525
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	SMITH, VIRGIL (DETROIT NUMBER - 891-1699)	P20714	517 373-7748
	SMOKLER, DAVID N.	P29284	541-9060
C.C.	SNOW, GREGORY	P20745	649-9700
	SOBLE, MARC, H.	P41764	965-7997
	SOLTESZ, JAMES S.	P20781	386-5010
	SOMERVILLE, LEE A.	P41168	644-8211
	SORISE, DOMNICK	P25622	776-0700
	SOWELL, MYZELL	P20806	964-3960
C.C.	SPEARS, ARTHUR R., JR.	P29922	588-6660
	SPICER, HOYT	P20835	824-4100
	SPIROFF, THOMAS W.	P29793	565-2000
	SPRINGS, BRENDA H.	P44590	393-2670
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	STARKEY, RICHARD F.	P23460	822-1043
	STATEN, PAUL G.	P37498	259-0196
	STEINGOLD, DAVID S.	P29752	963-1700
	STEWART, JOSEPH	P21016	559-0100
	STIER, PAUL	P40464	963-4044
	STOYCHOFF, PAUL, M.	P35906	446-6863
C.C.	STRAUCH, THOMAS NORBERT	P38652	567-7794
C.C.	STREETER, PATRICIA A.	P30022	962-1177
	STRICHARTZ, SUSANNE	P44018	562-3415
	STRUGS, GEORGE, W.	P27889	342-1998
	SULLIVAN, BRIAN	P21134	568-6775
C.C.	SUROWIEC, GERALD S.	P21172	855-2505
	SWAYZE, MARK, M.	P41170	886-6634
	SWINK, NANCY M.	P39768	963-4044
	TARGAN, ROYAL G.	P21265	561-2900
	TAUB, ROBERT (BEEPER NUMBER - 599-2583)	P30198	961-7533

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Type of Atty	Attorney	Bar Number	Telephone Number
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	TAYLOR, SEAN	P35051	884-3300
	TEICHMAN, DONALD	P37817	965-3525
	TEKLINSKI, MARK H.	P21319	892-1961
	TESFAMARIAM, LUCILLE T.	P37099	863-4330
	THIGPEN, DON C.	P46040	393-8590
	THOMAS, DEBORAH	P28734	342-1999
	THOMAS, STEPHEN A.	P43260	963-2889
	THUMIN, HENRY	P21441	961-2436
	TOMAK, ROBERT	P26506	722-5940
	TORNGA, DAVID L.	P28962	222-0358
	TOTH, STEVEN S.	P44487	261-4700
	TRENT, MURIEL	P34910	567-6022
	TRIST, BRENT	P27659	961-4382
C.C.	TROPP, EDMUND W.	P21586	881-6272
	TYLER, JOHN J., II	P39781	441-1100
	UHLAR, RUDOLF	P28038	962-6300
	URICH, WILLIAM R.	P43273	961-5935

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	VETTING, RONALD L.	P44743	965-8155
C.C.	VILLARRUEL, FRANCISCO J. (FAX NUMBER - 963-3314)	P34147	963-3311
	VLACHOS, CAROL	P35224	283-2255
	WADE, DANA K	P42194	473-5533
	WALDEN, G. ROBERTA	P34993	961-4046
	WALDHORN, KENNETH M.	P37819	567-9700
	WALKER, DAVID R.	P38431	259-3200
	WALKER, MARILYN	P34050	965-7997
	WALLACE, THEODORE	P33050	259-4595
	WALLING, PHILLIP X.	P35229	965-5168
	WALSH, JOHN F.	P33815	261-3385
	WALTERREIT, DENIS D.	P44522	671-8355
C.C.	WALTON, ANTHONY	P36628	963-5440
	WALTON, KATHLEEN M.	P38081	381-0121
C.C.	WARN, GLEN R.	P33481	961-1885

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Type Atty ====	Attorney =====	Bar Number =====	Telephone Number =====
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	WASH, TERRY	P39788	963-1080
	WASHINGTON, EARL SANDY	P31383	963-2840
C.C.	WASKE, JAMES A.	p31546	569-6686
	WASZAK, DANIEL, C.	P35225	965-1210
	WATERMAN, MARY	P35654	963-5990
	WATERS, THOMAS F.	P28760	965-7997
	WATSON, STEPHANIE A.	P32305	964-1340
	WATT, CORAL MARIE	P41508	963-8464
	WATTS, RODNEY	P26832	934-1500
	WELTON, JOSEPH	P24731	891-7232
C.C.	WERTHEIMER, WILLIAM A JR	P26275	962-2767
	WHITE, BENJAMIN JEROME Other No. 345-1216	P40300	964-0202
	WILLIAMS, CURTIS R.	P26915	964-0020
	WILLIAMS, GAYLE F. (OTHER TELEPHONE NUMBER - 345-1216)	P35963	961-4046
	WILLIAMS, ROY	P27965	964-3300

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Type Atty ====	Attorney =====	Bar Number =====	Telephone Number =====
C.C.	WILLIAMS, TERRY	P37545	963-2840
C.C.	WILLIS, RAYMOND E.	P22379	961-4445
	WILSON III, CHARLES, W.	P41287	945-8991
	WILSON, GARY M.	P41288	885-4400
	WILSON, JACKIE	P33636	831-1870
	WILSON, JR., LOVESTER J.	P35831	491-0563
C.C.	WILSON, MONSEY G. (OTHER TELEPHONE NUMBER - 964-0066)	P23974	961-1951
C.C.	WINTERS, WILLIAM, J.	P35975	963-1120
	WOLL, PAULINE, J.	P41180	961-0130
	WOLL, PETER	P42801	961-0130
	WOODS, ARLENE	P40039	961-0192
	XUEREB, JOSEPH M.	P40124	441-1100
	YANOSCHIK, JOSEPH	P44023	274-2772
	YOTT, CYNTHIA	P33361	962-2240
	YOUNG, RITA F.	P44626	963-3730
	YURA, SAMUEL	P22666	962-9697
	ZANGLIN, JOSEPH, P.	P22692	961-4243

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Type Atty ====	Attorney =====	Bar Number =====	Telephone Number =====
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C.C.	ZIEMBA, CARL	P22728	962-0525
	ZWICK, MARC ELI	P43860	522-5610