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MI Coalition for Justice

Seeking a justice system that works for everyone in Michigan

Duncan, et. al. v. State of Michigan **Executive Summary**

The State of Michigan has a constitutional obligation to provide all persons accused of crimes who cannot afford to hire an attorney with counsel. The mere presence of an attorney is not enough. The state must ensure that the attorney has the resources to provide competent and effective representation.

The State of Michigan has long abdicated this constitutional duty by failing to fund or provide oversight for public defense services. Instead, Michigan has delegated to each of its 83 counties the responsibility for funding and administering the right to counsel in trial courts within their borders. As a result, public defenders lack the resources they need to represent their clients.

This lawsuit is not about individual attorneys or errors that may have occurred in individual cases. It is about a system that, as a result of the state's neglect, is so broken and underfunded that it prevents well-intentioned lawyers from providing constitutionally adequate representation.

The state does nothing to ensure that any county has the funding or the policies, programs, guidelines, and other essential resources in place to enable the attorneys it hires to provide constitutionally adequate legal representation. As a result, in Berrien, Muskegon and Genesee Counties, and many other counties in Michigan, defendants who cannot afford private counsel do not receive equal justice.

- There is no adequate attorney training or qualification standards, so public defense lawyers frequently lack the experience and skills necessary to handle the cases to which they have been assigned.
- There are no attorney workload standards and public defense lawyers are burdened by overwhelming caseloads.
- There are no written attorney performance standards or meaningful systems of attorney supervision and monitoring.

Moreover, the counties have been dramatically underfunding public defense for years, without any state intervention or assistance. In Genesee County, for example, the prosecution receives three times the funding of the public defense system. In Berrien County, the disparity is close to four to one.

The result is that the public defense provided in each of the three counties, and likely throughout Michigan, does not meet even the minimal constitutional requirements for effective assistance, no less the national standards established by the American Bar Association. Overwhelming caseloads mean that lawyers do not meet with their clients, appropriately investigate the charges, file necessary pre-trial motions, or prepare properly for court appearances. And without resources, lawyers cannot hire investigators or experts, even when necessary for an adequate defense. The cases of the named plaintiffs demonstrate these deficiencies:

- Most of the plaintiffs met with their lawyers only briefly and generally the meetings occurred only immediately before a hearing. For example, plaintiff Brian Secret met with his attorney twice – both times on the same day as a hearing in his case - and the meetings lasted only a few minutes.
- Most of the attorneys failed to conduct any factual investigation and, despite this lack of investigation, permitted their clients to plead guilty to the crime charged. In many of the cases, the defendants had obvious and potentially viable defenses. For example, plaintiff Christopher Duncan was charged with breaking and entering and his attorney allowed him to plead guilty to the crime despite evidence that he did not commit the crime as charged.

When the fundamental right to counsel is violated in this fashion, the justice system cannot function. The result is errors – people spend much longer in jail than appropriate or worse, the wrong people are convicted. Michigan has had two such exonerations – Eddie Joe Lloyd and Ken Wyniemko. In such a system, everyone loses.

Local and national experts have been warning Michigan about its failure to provide constitutionally adequate legal representation for over thirty years.

1975 – The defense services committee, created by Michigan Chief Justice Thomas G.

Kavanaugh found the county-based system significantly flawed.

1986 – The Special State Bar Task Force on Assigned Counsel Standards noted the absence of any attorney performance standards for public defense providers and recommended the adoption of specific standards.

1992 – A special issue of the Michigan Bar Journal on public defense was published in which a former prosecutor observed that “the methods we use to appoint, pay, train and supervise appointed counsel virtually guarantee that many will not perform their role effectively.”

2005 – A Michigan Lawyers Weekly article notes that personnel in all branches of the criminal justice system universally acknowledge that the underfunding of public defense services in Michigan is a serious and growing problem.

2005 – An American Bar Association report on the state of public defense across the country repeatedly singled out Michigan for failing to meet the ABA Ten Principles, which are considered the fundamental criteria a system must meet to provide effective, efficient, ethical public defense. Noted deficiencies included lack of appropriate funding, inadequate access to investigators, experts and technology resources, and lack of training.

All of these warnings have been disregarded.

By its inaction, the state is in clear violation of the US and Michigan constitutions. This lawsuit seeks to compel the State of Michigan to meet its constitutional obligation to provide appropriate defense services for those who cannot afford private counsel real in Michigan. It asks the court to declare the current public defense system unconstitutional and order the state to provide representation consistent with the requirements of the US and Michigan constitutions.

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