



Indigent Defense Services

Qualification of Attorney

Standard 7 Performance Review and Core Competencies

Under the Michigan Indigent Defense Commission (MIDC) Act and Wayne County Ordinances, the Wayne County Indigent Defense Services Department (IDSD) oversees the management and operation of the county's indigent defense system. The IDSD is responsible for establishing policies and procedures governing the determination of eligibility, assignment of counsel, payment for services, and performance monitoring of managed assigned counsel appointed to represent individuals charged with felonies in Wayne County. This policy outlines key guidelines and performance standards for managed assigned counsel. It should be reviewed in conjunction with other relevant policies, which collectively define performance expectations.

Standard 7 Performance Review

The MIDC Act requires that defense counsel be “systematically reviewed at the local level for efficiency and for effective representation according to MIDC Standards.” MCL 780.991(2)(f). Standard 7 further mandates that the quality of representation provided by indigent defense providers be monitored and regularly assessed (see Standard 7, Section C). All managed assigned counsel accepting appointments in Wayne County are expected to comply with all performance measures, ensuring both efficient and effective representation. Attorneys must perform to a high professional standard and demonstrate a commitment to excellence in representation.

Service on the Wayne County Managed Assigned Counsel (MAC) Roster is a privilege, not a right, and continued participation is contingent upon compliance with all applicable performance expectations and core competencies. At any time, a need-based review of an attorney may be performed if, in the discretion of the Assigned Counsel Administrator (ACA), it is warranted. Managed assigned counsel that are subject to potential sanctions, suspensions or removal will receive written notification from the ACA outlining the findings and recommended action. The formal review processes are outlined below. These processes are designed to ensure transparency in the review process and to guarantee

that the quality of representation provided by assigned counsel in Wayne County is systematically monitored, evaluated, and improved, in full compliance with the requirements of the MIDC Act and Standard 7.

Annual Review During Application Period

Each year, during the MAC application period, the Wayne County Assignment Committee will review every applicant's file to determine if: complaints regarding performance were filed, requests for investigation were submitted, assigned counsel is compliant with MIDC Standards 1,2 and 3, or concerns regarding billing practices were raised. This information will be considered as part of the Assignment Committee's voting process.

Biennial Performance Review Process

Every two years, approximately one-third of assigned counsel will be subject to a performance review by the Assignment Committee. The performance review process will also include a review of the core competencies.

Review Steps

Step 1: Self-Assessment Request
The Compliance Attorney/Evaluator, in consultation with the ACA, will email selected managed assigned counsel requesting:
• A recent legal writing sample (accompanied by a brief summary of the case and basis for the writing);
• A list of upcoming court hearings over the next 30 days; and
• A completed self-assessment form addressing compliance and IDSD policy questions. Unless good cause is shown, all materials must be submitted within three (3) weeks of the request.

Step 2: Performance Information Gathering
The Compliance Attorney/Evaluator will collect and review performance-related information, which may include:
• Invoice reviews;
• In-court observations; and
• Stakeholder and judicial feedback.

Step 3: File Review and Interview
--

The Compliance Attorney/Evaluator will meet with the managed assigned counsel and orally review at least three (3) recent cases. Privileged material will not be reviewed.
--

Step 4: Report and Recommendation
--

The Compliance Attorney/Evaluator will compile a written Standard 7 Evaluator's Report and make a recommendation to the Committee.
--

The Committee will:

- | |
|---|
| <ul style="list-style-type: none">• Review the documentation; |
| <ul style="list-style-type: none">• Adopt or revise the recommendation; and |
| <ul style="list-style-type: none">• Transmit the finalized recommendation to the managed assigned counsel via email |

Lawyer's Right to Reconsideration

If the managed assigned counsel disagrees with the recommendation, they may submit a written response with supplemental information **within fourteen (14) days** explaining objections and/or providing additional context.

Step 5 (If Applicable): Reconsideration/Final Committee Action

After considering any managed assigned counsel response, the Committee will:
--

- | |
|--|
| <ul style="list-style-type: none">• Accept the recommendation; |
| <ul style="list-style-type: none">• Accept with modifications; or |
| <ul style="list-style-type: none">• Reject the recommendation in full. The managed assigned counsel will be notified in writing of the Committee's final action. |

Appeal Process

If managed assigned counsel disagrees with the Committee's final determination—particularly regarding identified performance deficiencies or a required improvement plan—they may request review by the IDSD Director, within seven (7) days of receipt of the determination. The IDSD Director will consider:
--

- | |
|---|
| <ul style="list-style-type: none">• The Standard 7 Evaluator's Report; |
| <ul style="list-style-type: none">• The Committee's recommendation; and |
| <ul style="list-style-type: none">• The managed assigned counsel's written response (if submitted). |

If an attorney disagrees with determination made after the compliance review, they may request a review by the Director of the IDSD. While the Director's determination is deemed final, certain matters may be referred to Wayne County Corporation Counsel for legal review and resolution, depending on the nature of the issue.

Core Competencies

These following core competencies are designed to ensure transparency in the review process and to provide measurable benchmarks for evaluating the quality of representation delivered by assigned counsel in Wayne County. They directly support the requirements of the MIDC Act and Standard 7 for systematic monitoring, evaluation, and improvement of indigent defense services.

1. Advocacy

Communication • Competency • Advocacy • Efficiency • Counseling

Definition: Counsel must demonstrate commitment, dedication, and zeal in representing clients at all stages of the case and proceedings.

“A lawyer should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client’s behalf.” MRPC 1.3, comment.

Why it matters: Advocacy is paramount to effective representation.

Meets Expectations	Does Not Meet Expectations
Writes and speaks clearly, concisely, and persuasively.	Does not communicate clearly, concisely, and persuasively.
Demonstrates competency in legal research and a thorough knowledge of law through arguments and motions.	Fails to demonstrate competency in legal research and a thorough knowledge of law through arguments and motions.
Appropriately advocates for client during all stages of the case/proceedings.	Does not appropriately advocate for client during every stage of the proceeding.
Works in an efficient manner.	Bills for more time than an attorney of like experience would bill under similar circumstances.
Considers and counsels clients about collateral consequences.	Fails to consider or counsel clients about collateral consequences.

2. Case Development

Definition: Counsel must conduct thorough investigation and preparation to build strong defenses tailored to each case.

“[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Strickland v. Washington*, 466 U.S. 668, 691 (1984).

Why it matters: Effective case development requires that counsel be thoroughly familiar with the facts and evidence. Sometimes effective case development requires counsel to retain the services of other professionals like experts and investigators.

Meets Expectations	Does Not Meet Expectations
Counsel attempts to uncover evidence about their cases outside of what is available through discovery and engages in independent fact-finding beyond discovery.	Counsel fails to look for evidence about their cases outside of what is available through discovery.
When appropriate, counsel timely engages experts and investigators (I/E) in all capital cases and when appropriate in other cases as early as possible.	Counsel fails to engage experts and investigators when appropriate in all capital cases and other cases where I/E is appropriate yet no I/E engagement happen or fails to engage them in a timely manner.
Counsel is able to explain why an expert or investigator was not retained for a particular case.	Counsel fails to assess whether an expert or investigator is appropriate for the particular case.

3. Client Relations

Definition: Counsel must establish trust, respect, and effective communication with clients.

“A strong attorney-client relationship will help the lawyer foster a sense of loyalty and fidelity to the client and will allow the client to develop respect and trust for the advocate.” Rapping, *You Can’t Build on Shaky Ground: Laying the Foundation for Indigent Defense Reform Through Values-Based Recruitment, Training, and Mentoring*, 3 Harvard L & Policy Rev 161, 171 (2009).

Why it matters: Every person charged with a crime in this system who cannot afford to hire an attorney must receive competent, compassionate, caring, and effective legal representation. Having a strong attorney-client relationship facilitates these aims.

Meets Expectations	Does Not Meet Expectations
Treats clients with respect and in a professional manner.	Does not consistently treat clients with respect and in a professional manner.
Responsive to client requests and maintains regular contact with clients.	Does not consistently respond to client requests or fails to maintain regular contact with clients.

Complies with MIDC Standard 2.	Does not comply with MIDC Standard 2.
--------------------------------	---------------------------------------

4. Case Management

Definition: Counsel must manage cases efficiently, maintaining organization and meeting all deadlines.

“In all professional functions a lawyer should be competent, prompt and diligent.” MRPC 1.0, preamble. This is impossible to accomplish without effective case management. “Case management” [also] refers to things like file maintenance, scheduling, and deadline tracking.

Why it matters: Sound case management prevents missed deadlines, ensures preparedness, and reflects professionalism and diligence.

Meets Expectations	Does Not Meet Expectations
Maintains organized case files—physical or electronic—that document case activity and client contacts.	Case files are disorganized, missing documents, and have incomplete information about case activity or client contacts.
Accurately schedules appointments, events, and meeting court deadlines. Timely attends all court proceedings. Meets deadlines.	Fails to properly schedule all appointments, events, and deadlines. Does not timely attend all court proceedings. Does not meet all deadlines.
Submits properly completed invoices that accurately reflects the time spent on each case.	Submits invoices that are incomplete or incorrect and/or that do not accurately reflect the time spent on each case.

5. Communication

Definition: Counsel must communicate effectively with all stakeholders in the justice system.

There is a correlation between strong oral and written communication skills and high-quality criminal trial court representation. Communication is effective when it is clear, civil, and timely. Sometimes clarity requires the use of interpreters or other accommodations. Counsel should also be mindful of culture’s significant impact on communication and understanding.

“Through our invisible cultural lens, we judge people to be truthful, rude, intelligent or superstitious based on the attributions we make about the meaning of their behavior.” **Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 Clinical L. Rev. 33, 40 (2001).** Accordingly, effective communication can also require cultural competence.

Meets Expectations	Does not Meet Expectations
Effectively communicates with judges, prosecutors, court staff, witnesses, IDSD staff, and other individuals related to a case.	Fails to effectively communicate with judges, prosecutors, court staff, witnesses, IDSO staff, and other individuals related to a case.
Complies with Guideline 10.1.	Does not comply with Guideline 10.1.
Complies with Guideline 10.2.	Does not comply with Guideline 10.2.

6. Training and Professional Development

Definition: Counsel must remain current in law, science, and technology relevant to criminal defense.

To do your best work for your clients, it is important that you know the law (including potential defenses), understand scientific evidence, and effectively utilize technology. The Michigan Indigent Defense Commission requires experienced attorneys to complete 12 hours of continuing legal education (CLE) a year. You should take courses that will help you meet the three aims above and relate to the individualized needs of your caseload.

Why it matters: Ongoing training ensures attorneys are prepared to provide high-quality, up-to-date representation in a rapidly evolving legal and technology landscape. Properly trained attorneys will demonstrate through their advocacy a strong understanding of relevant state and federal criminal law and recent changes in the law, knowledge of the scientific principles relevant to their cases, and a familiarity with relevant technology.

Meets Expectations	Does Not Meet Expectations
Fulfills annual CLE requirement (12 hours) per Standard 1 and takes courses relevant to caseload.	Does not fulfill annual CLE requirements or fails to take courses relevant to caseload.
Stays abreast of caselaw and emerging legal trends and incorporates them into advocacy.	Does not stay abreast of current law. Fails to demonstrate knowledge of law in advocacy.
Demonstrates familiarity with the technologies that are reasonably necessary to provide competent representation and to maintain a law practice.	Cannot competently use the technologies that are reasonably necessary to provide competent representation and to maintain a law practice.

7. Professionalism and Civility

Definition: Counsel, at all times, engages in a courteous conduct and a professional attitude toward the judge, opposing counsel, witnesses, jurors, courtroom staff and others. As an officer of the court, counsel should support the authority and dignity of the court by adherence to rules of professionalism. In court as elsewhere, counsel should not display or act out of any improper or unlawful bias.

Why it matters: Professionalism and civility are not just niceties – they are essential to the integrity, effectiveness, and reputation of the legal profession. Civility fosters trust and cooperation, even in adversarial settings. Respectful communication with opposing counsel can lead to more productive negotiations, efficient case management, and better settlement outcomes. Conversely, uncivil behavior breeds mistrust, escalates conflict, and can make resolution more difficult

Meets Expectations	Does Not Meet Expectations
Maintain a professional and independent relationship in all contact with the courts, the judiciary, prosecutor, other counsel and the public.	Does not maintain a professional and independent relationship in all contact with the courts, the judiciary, prosecutor, other counsel and the public.
Develops and maintains courteous and civil working relationships with judges and prosecutors.	Does not develop and maintain courteous and civil working relationships with judges and prosecutors.
Maintains a professional and independent relationship in all contacts with judges, and other counsel.	Does not maintain a professional and independent relationship in all contacts with judges, and other counsel.
Addresses the court and should not address other counsel directly on any matter relating to the case, when court is in session, on the record, unless otherwise permitted by the court.	Does not address the court, but addresses other counsel directly on any matter relating to the case, when court is in session, on the record, unless otherwise permitted by the court.
Respectfully evaluates and responds to opposing counsel's arguments and representations and avoids unnecessary personalized disparagement, in all written filings.	Does not respectfully evaluate and respond to opposing counsel's arguments and representations and engages in unnecessary personalized disparagement, in written filings.
Complies promptly and civilly with a court's orders or seeks appropriate relief from such order. If counsel considers an order to be significantly erroneous or prejudicial, counsel should ensure that the record adequately reflects the events. Counsel has a right to make respectful objections and reasonable requests for reconsideration, and to seek other relief as the law permits. If a judge prohibits making an adequate objection, proffer, or record,	Does not comply a court's orders promptly and civilly and does not seek appropriate relief from such order If defense counsel considers an order to be significantly erroneous or prejudicial, defense counsel should ensure that the record adequately reflects the events. Defense counsel has a right to make respectful objections and reasonable requests for reconsideration, and to seek other relief as the law permits. If a judge prohibits making an adequate objection, proffer, or record, counsel may

counsel may take other lawful steps to protect the client's rights.	take other lawful steps to protect the client's rights take other lawful steps to protect the client's rights.
Complies with Guideline 10.5 Civility with Courts, Prosecutors, and Others	Does not comply with Guideline 10.5 Civility with Courts, Prosecutors, and Others

This language is largely taken from Standard 4-7.2, *ABA Criminal Justice Standards for the Defense Function* 4th ed (2017).

Implementation in Reviews

During the IDSD Evaluator and Assignment Committee's performance reviews, each attorney will be evaluated on the core competencies referenced above in addition to compliance with all applicable MIDC Standards, IDSD processes and policies, as well as other relevant performance expectations.

Source: Some criteria taken from, or inspired by, Office of the Ohio Defender, *Performance Reviews: A Guide for Public Defenders*.