

This case has been designated as an eFiling case. To review a copy of the Notice of Mandatory eFiling visit [www.oakgov.com/efiling](http://www.oakgov.com/efiling).

**STATE OF MICHIGAN  
IN THE 6<sup>TH</sup> CIRCUIT COURT FOR THE COUNTY OF OAKLAND**

THE COUNTY OF OAKLAND,

Plaintiff,

Case No. 18-        -CZ  
Hon.

vs.

2018-170456-CZ

THE MICHIGAN INDIGENT  
DEFENSE COMMISSION,

JUDGE SHALINA  
KUMAR

Defendant.

---

OAKLAND COUNTY CORPORATION COUNSEL  
Keith Lermينياux (P30190)  
Peter Menna (P72671)  
Attorneys for Plaintiff  
1200 N. Telegraph Rd., Dept. 419  
Pontiac, MI 48341  
(248) 858-0550  
[lermينياuxk@oakgov.com](mailto:lermينياuxk@oakgov.com)  
[mennap@oakgov.com](mailto:mennap@oakgov.com)

---

**COMPLAINT**

THERE IS NO OTHER PENDING OR RESOLVED CIVIL ACTION ARISING OUT OF THE SPECIFIC TRANSACTION OR OCCURRENCE ALLEGED IN THIS COMPLAINT. A CIVIL ACTION BETWEEN THESE PARTIES ARISING OUT OF THE MIDC ACT WAS PREVIOUSLY FILED IN THE COURT OF CLAIMS (CASE NO. 17-000216-MZ)

The County of Oakland (The County) brings this Complaint for equitable relief as follows:

**I. Parties**

1. Plaintiff is a municipal corporation organized and existing in accordance with Michigan law and is the funding unit for the 6<sup>th</sup> Circuit Court and the four divisions of the 52<sup>nd</sup> District Court.

2. Pursuant to the Michigan Indigent Defense Commission Act (The Act) (MCL 780.981, et. seq.), Plaintiff is an “Indigent Criminal Defense System.”
3. Defendant, the Michigan Indigent Defense Commission (hereinafter “MIDC”) is an executive branch commission within an executive branch department enabled by statutory authority.
4. Defendant has the authority to, among other things, propose minimum standards for the local delivery of indigent criminal defense services.
5. Defendant also has the authority to accept or reject compliance plans and cost analyses prepared by an indigent criminal defense system.

## **II. Jurisdiction**

6. This Court has jurisdiction over this action pursuant to MCL 780.995(3).
7. Pursuant to MCL 780.995(3)(d), in an action such as this, the state court administrator must assign an active or retired judge from a judicial circuit other than the 6<sup>th</sup> Judicial Circuit to hear the case.
8. This is an action seeking equitable relief.

## **III. General Allegations**

9. The Act ushered in a complete overhaul of the way in which indigent criminal defense services are provided in Michigan.
10. The Act created the MIDC and gave it power and authority to create minimum standards governing the provision of indigent criminal defense services.

11. To date the MIDC has created four separate minimum standards which have the force of law.
12. All local units of government that fund trial courts are Indigent Criminal Defense Systems under the Act.
13. The County funds two trial courts – the 6<sup>th</sup> Circuit Court and the four separate divisions of the 52<sup>nd</sup> District Court.
14. The County also funds the Oakland County Prosecutor’s Office.
15. As an Indigent Criminal Defense System, the County was required to submit a Compliance Plan to the MIDC specifically addressing how it would meet the minimum standards and how much money it would cost to do so (the Cost Analysis).
16. The MIDC has the power to approve or disapprove both the Compliance Plan, and the Cost Analysis and the statute is silent on what standard the MIDC is required to use when making that decision.
17. The MIDC voted to disapprove all compliance plans and cost analyses submitted by Indigent Criminal Defense Systems that contained increased prosecutor costs on December 19, 2017.
18. The MIDC rejected the County’s original Compliance Plan and Cost Analysis on December 19, 2017.
19. The MIDC also rejected the two subsequent modified Compliance Plans and Cost Analyses submitted by the County on March 28, 2018 and June 14, 2018, respectively.
20. All of the County’s Compliance Plans and Cost Analyses included costs for prosecutors that will need to be hired to comply with Standard 4 adopted by Defendant, as well as

increased magistrate costs that will be incurred as a result of adoption of that same standard.

- 21. After these three rejections, the parties attempted to resolve their disputes by mediation, as required by the Act.
- 22. The parties did not come to a resolution of the dispute during mediation.
- 23. The MIDC imposed a final Compliance Plan and Cost Analysis on the County on October 16, 2018. The imposed Compliance Plan and Cost Analysis deleted the County's request for prosecutor costs and increased magistrate costs.
- 24. The County is aggrieved by the final Compliance Plan and Cost Analysis as imposed by the MIDC.

**IV. Count One**  
**Statutory Claim for Relief Pursuant to MCL 780.995(3)(a)**

- 25. The County incorporates all of the General Allegations into this section by reference.
- 26. The County is filing this action for equitable relief pursuant to MCL 780.995(3)(a).
- 27. A person who is charged with a misdemeanor or felony in the State of Michigan must appear in court for an arraignment.
- 28. An arraignment is the criminal defendant's first court appearance, and is typically conducted by a District Court Judge or Magistrate.
- 29. At the arraignment, the District Court Judge or Magistrate must set a bond for the criminal defendant.
- 30. This bond can range anywhere from a personal bond, to a cash/surety bond, to a complete denial of bond.

31. Generally, lawyers do not appear at arraignments, either to represent the criminal defendant or the People of the State of Michigan.
32. Historically, indigent criminal defendants have not been entitled to the appointment of an attorney to represent them at the arraignment because arraignments have not been considered “critical stages” of the criminal proceeding. *People v Horton*, 98 Mich App 62, 72 (1980).
33. The minimum standards adopted by the MIDC, specifically Standard 4, substantially changed the way in which arraignments are conducted in Michigan.  
*[Approved Standards 1-4 are attached to this Complaint as Exhibit 1].*
34. The minimum standards have the force of law, and all Indigent Criminal Defense Systems and indigent criminal defendants’ attorneys must comply with them.
35. Standard 4 has transformed the arraignment into a critical stage of the criminal proceeding.
36. Because the arraignment is now a critical stage, criminal defendants must be screened prior to the arraignment to determine if they are indigent.
37. This pre-arraignment indigency screening has not been required prior to the Act, and it will require an increased time commitment from arraigning Magistrates in order to comply with Standard 4.
38. An indigent criminal defendant must establish his or her indigency in order to be eligible for appointed counsel under the Act. MCL 780.991(3)(d).
39. Indigency is defined by the Act. MCL 780.991(3)(b).
40. Standard 4 mandates that appointed counsel must be assigned to a criminal defendant as soon as he or she is determined to be indigent.

41. Standard 4 mandates that appointed counsel must represent an indigent criminal defendant at the arraignment.
42. Because the arraignment is now a critical stage of the criminal proceeding, it is by definition an adversarial or contested judicial proceeding.
43. At an adversarial, contested judicial proceeding both parties must be represented.
44. An *ex parte* proceeding is one in which only one party is represented.
45. The Michigan Code of Judicial Conduct, specifically Canon 3, prohibits judges from permitting or considering *ex parte* communications.
46. The Michigan Rules of Professional Conduct, specifically Rule 3.5, prohibits lawyers from engaging in *ex parte* communications with a judge.
47. As recognized by the Michigan Supreme Court in *Grievance Administrator v Lopatin*, 462 Mich 235, 262-263 (2000), the following dangers are associated with *ex parte* communications:
  - a. They deprive the absent party of the right to respond and be heard;
  - b. They suggest bias or partiality on the part of the judge;
  - c. They can be misleading;
  - d. The information given to the judge may be incomplete or inaccurate;
  - e. They expose the judge to one-sided arguments, which carried a risk of an erroneous ruling on the law or the facts;
  - f. They are an invitation to improper influence if not outright corruption.
48. At the arraignment, Standard 4 requires the indigent criminal defendant's attorney to argue bond.

49. Defense counsel will be expected to minimize the severity of the crime, the defendant's criminal history, and the danger to the community if the defendant were to be released from custody.
50. Defense counsel will be expected to portray in the best possible light the defendant's ties to the community, employment prospects, and likelihood of appearance for future court proceedings.
51. In order for this new arraignment procedure to comply with the law, the Prosecutor must also have a representative present.
52. The presence of an Assistant Prosecutor at the arraignment ensures that it is not an *ex parte* proceeding.
53. It also ensures that both sides are able to make the necessary arguments regarding the amount of bond that is appropriate in each case.
54. To that end, the County included a section entitled "Assistant Prosecuting Attorneys at Arraignments" in its proposed Compliance Plan.
55. The County outlined the reasons why it could not comply with Standard 4 unless an Assistant Prosecutor is present at every arraignment.
56. The Oakland County Prosecutor's Office will be forced to hire additional staff in order to have an Assistant Prosecutor available for every arraignment.
57. Because the County is the funding unit for the Prosecutor's Office, this increase in staff will require an increased expenditure of money from the County.
58. The County included this required increased expenditure in its proposed Cost Analysis.
59. The MIDC rejected the portion of the County's proposed Compliance Plan regarding the presence of an Assistant Prosecutor at every arraignment.

60. The MIDC also rejected the corresponding portion of the County's proposed Cost Analysis.
61. The County also included in its proposed Cost Analysis the projected increase in Magistrate costs associated with the increased time Magistrates will need to spend in order to comply with Standard 4.
62. The MIDC rejected this portion of the County's proposed Cost Analysis.
63. The MIDC has now imposed a Compliance Plan and Cost Analysis on the County which does not acknowledge the requirement that an Assistant Prosecutors attend every arraignment, or the increased cost required for Magistrates to comply with Standard 4.  
*[Red-lined Compliance Plan attached as Exhibit 2 showing the portions of the County's proposed Compliance Plan that were deleted by the MIDC].*  
*[County's Proposed Cost Analysis attached as Exhibit 3].*  
*[Cost Analysis imposed on the County by the MIDC attached as Exhibit 4].*

**V. Relief Requested**

64. The Act gives the Court the power to sit in equity in this case and to approve, reject, or modify the Compliance Plan and Cost Analysis imposed on the County by the MIDC, and to issue any orders necessary to obtain compliance with the Act.
65. The County requests that the Court issue an order that the County cannot and is not required to comply with Standard 4 unless an Assistant Prosecutor is present at every arraignment, since arraignment is now a critical stage of the proceeding and a contested, adversarial hearing.



66. Pursuant to that order, the County requests that the Court order the Compliance Plan and Cost Analysis to be modified based on the increased cost required to provide an Assistant Prosecutor for every arraignment.
67. The County requests that the Court issue an order that the County cannot and is not required to comply with Standard 4 without increasing the work time requirements of arraigning Magistrates.
68. Pursuant to that order, the County requests that the Court order the Compliance Plan and Cost Analysis to be modified based on the increased cost associated with the Magistrates' increased work time requirements.
69. The County requests that the Court modify the Compliance Plan and Cost Analysis imposed on the County by the MIDC as follows:
  - a. Include in the Compliance Plan the section entitled "Assistant Prosecuting Attorneys at Arraignments," which was rejected by the MIDC;
  - b. Include in the Compliance Plan an acknowledgement that increased Magistrate work time requirements will be necessary, which was rejected by the MIDC;
  - c. Include in the Cost Analysis the increased cost required in order to provide an Assistant Prosecutor for every arraignment, which is currently estimated at \$2,805,563 (two-million, eight-hundred five thousand, five-hundred sixty-three dollars).
  - d. Include in the Cost Analysis the increased cost required due to the increased Magistrate work time requirements, which is currently estimated to be \$148,475 (one-hundred forty-eight thousand, four-hundred seventy-five dollars).

70. The County requests that the Court issue an order that the County is not required to comply with the Act until it receives a grant in the amount contained in the above requested modified Cost Analysis pursuant to MCL 780.997.

WHEREFORE, Plaintiff prays that this Court order relief as requested above, and that the Court order such other and different relief as Plaintiff may be entitled to.

Respectfully submitted,

OAKLAND COUNTY CORPORATION COUNSEL

/s/Keith Lermينياux

Keith Lermينياux (P30190)

Peter Menna (P72671)

Attorneys for Plaintiff

1200 N. Telegraph Road, Bldg 14E

Pontiac, Michigan 48341-0419

(248) 858-0550

lerminiauxk@oakgov.com

mennap@oakgov.com

Date: 12-11-18