

**TESTIMONY OF MATTHEW EVANS ON BEHALF OF THE
WAYNE COUNTY CRIMINAL DEFENSE BAR ASSOCIATION**

MAY 7, 2013

INTRODUCTION

Mr. Chairman, and honorable committee members, on behalf of the Wayne County Criminal Defense Bar Association (WCCBDA) I would like express our opposition to Senate Bill 300, in its current form. The WCCBDA is a group of over 500 of the most highly skilled and experienced criminal defense attorneys in Michigan. I am a past president of this organization. The WCCBDA represents lawyers who practice in the criminal division of the Wayne County Circuit Court, Michigan's busiest and most specialized criminal court. Our members handle the vast majority of the most serious criminal cases in the state.

The WCCBDA has long been in the forefront of the struggle to obtain adequate compensation for attorneys who take on the often-thankless task of defending the poor. The WCCBDA, and its predecessor organization, the Recorder's Court Bar Association, have been the lead plaintiffs in *Recorder's Court Bar Ass'n v Wayne Circuit Court*, 443 Mich 110 (1993) and I was one of the named plaintiffs in *Wayne County Criminal Defense Bar v Chief Judges of Wayne Circuit Court*, 468 Mich 1244 (2003).

We also have been on the cutting edge of training and support for attorneys who represent the poor. We offer annually a series of 10 seminars on a wide variety of criminal law topics. We require new attorneys participate in our mentoring program where they get to participate in the important aspects of a case under the eye of an experienced attorney. We fund research attorneys who are available to research complex legal issues. We also fund an education center at the courthouse that provides much needed research tools and support including Westlaw, Internet access, copy machines and computers. All these costs are borne by our members and were done on our own initiative.

I have been a solo practitioner since 1996 concentrating almost exclusively in criminal defense. I have successfully defended thousands of felony cases and have handled some of the most notorious and shockingly brutal cases in Wayne County. In sum, I am thoroughly familiar with the criminal division of

the Wayne County Circuit Court and the way Defender Offices, including the criminal division of the Detroit Legal Aid and Defender Association, generally operate.

I hope that you will therefore accept my views as sincere and honest expressions of how the proposed "Michigan Indigent Defense Commission Act" may be improved so it may effectively serve the people who are most affected: the poor and underprivileged.

Bar Association Position

It is the position of the members of the Wayne County Criminal Defense Bar Association that we support the proper funding of indigent defense and fully embrace common sense regulations that would improve the level of representation of the indigent. However, the bill in its current form will not attain those goals.

We ask the committee to keep in mind that regardless of what they may have been told, the vast majority of the attorneys who perform these services do so with zeal far in excess of the extremely low compensation they receive.

Composition of the Commission

Our objection to the composition is two fold. First, the bill as introduced forbids any attorney who takes assignments from being a member of the commission. Representing an indigent client is much more difficult than a retained client. Those that cannot afford retained counsel generally are less educated than the retained client and more often than not have mental health issues. Having attorneys on the commission that have experience with the unique issues that exists in representing the poor seems indispensable.

If this legislation is passed in its current form it would create is the only regulatory commission that denies the representation of the people being regulated. If you do not make the attorneys partners in the process, this legislation will not succeed in its intended purpose.

Our second objection is the few slots allotted for criminal defense attorneys, especially those that practice in the

largest circuits. We ask that the committee consider at a minimum of setting aside three seats for defense attorneys from the three largest circuits. These circuits represent more than 50% of all criminal cases in the state. To ensure that the smaller circuit's concerns are addressed we ask that a minimum of one seat be reserved for a member that does not come from the three largest circuits.

Caseload Standards

There are no agreed upon standards of how many cases an attorney should handle because it is simply impossible to evaluate what an individual attorney can handle. In practice the better the attorney the more cases they can handle. By instituting caseload standards you will ensure competent and experienced attorneys receive fewer cases than they can handle and less competent attorneys receive more than they can handle. It is no coincidence that the busiest attorneys are the best attorneys.

The Elephant in the Room

There is no doubt that there are serious problems with the current system. We must understand that the source of most of these problems is the lack of adequate funding. The current fee schedule used to pay attorneys in Wayne County is virtually identical to the one used in 1982. Is it any surprise to anyone that attorneys are skipping steps when the total paid for ALL investigation and preparation for a First Degree Murder case totals a mere \$275.00? Or when an attorney would be paid more for a plea than they would if they took a case to trial and won?

The elephant in the room is the cost to the state. We have conservatively estimated that the additional cost to the state to fully fund this initiative at a minimum of \$80 million. You are now involved in the difficult task of passing a budget. Of the many important programs, which are you willing to cut to pay for this legislation? Education? Corrections? Road Repair? If each of you is not willing to cut these other areas to fund this legislation passing it will do far more harm than good. All you would have accomplished is another unfunded mandate from Lansing.

Conclusion

I am here at my own expense, I am not being paid a salary while I am sitting here in front of you as opposed to others you may here today collecting a salary from the state or some other organization.

Myself, and others like me, everyday try to do the best job for their clients in situations that are difficult to say the least. I find it hard to believe that a commission in Lansing knows better what my clients require.

This legislation is a solid start in trying to address the deficiencies of our indigent system and we ask that our modest, common sense suggestions be incorporated into the final bill.

I am available at your convenience to discuss these issues further.

