

MSC Order: Class action challenging public defender system remanded for do over

1. May 2010 By Matthew Nelson

Despite the extensive fanfare surrounding the Michigan Supreme Court's decision to hear *Duncan v. Michigan*, No. 139345, the Court's remanded the case involving constitutional challenges to the State's court-appointed defense counsel program on procedural grounds. In *Duncan*, the the government moved to dismiss the plaintiff's constitutional challenges to the funding and administration of the court-appointed defense counsel programs in Berrien, Genesee, and Muskegon counties on governmental immunity and other grounds. The plaintiffs moved for class certification. The Ingham County Circuit Court denied the government's motion for summary disposition on the pleadings and granted the motion for class certification. The Court of Appeals [affirmed](#) the trial court's decision in a lengthy decision. The Michigan Supreme Court granted leave to appeal, but after oral argument, the Court vacated the trial court's order granting class certification and remanded the matter to the Ingham Circuit Court for consideration of the motion in light of *Henry v. Dow Chemical Co.*, 484 Mich. 483 (2009). The Court further affirmed denial of the government's motion for summary disposition, albeit for different reasons. Citing the fact that the case is still at the pleadings stage, the Court concluded that the motion for summary disposition was premature. The Court's order deprives the Court of Appeals' decision of precedential and law-of-the-case effect, preserving the government's arguments for summary disposition after discovery.