STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v PAMELA JEAN TAYLOR, Defendant-Appellant. _____/	Supreme Court No. 168814 Court of Appeals No. 375391 Osceola County Circuit Court (49th Circuit)

BRIEF AMICUS CURIAE OF RITA WILLIAMS, EDITOR OF CLUTCH JUSTICE IN PARTIAL SUPPORT OF DEFENDANT-APPELLANT

ORAL ARGUMENT NOT REQUESTED

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STATEMENT OF QUESTIONS PRESENTED

I. If the Court holds that MCL 769.1k(1)(b)(iv) permits attorney fees against a defendant who was appointed counsel because of indigency, must the record show the amount of the fee and its defendant-specific basis, as *People v Lewis*, 503 Mich 162 (2018), requires?

Amicus curiae answers: Yes.

II. Under *People v Jackson*, 483 Mich 271 (2009), which allows the ability-to-pay inquiry to wait until enforcement, must the record give the defendant notice of the right to contest and show a written determination when the defendant does?

Amicus curiae answers: Yes.

III. When a fee is imposed or enforced on a record without those findings, is the remedy a remand for findings rather than an assumption that they were made?

Amicus curiae answers: Yes.

INTEREST OF AMICUS CURIAE

Amicus curiae Rita Williams is the founder and editor of Clutch Justice, an independent, Michigan-focused accountability journalism publication, and files in her own name.[1] Clutch Justice reports on Michigan courts, prosecutors, and local governments. On October 1, 2026, it published an investigation of what it costs to use a Michigan court, including the fees and costs placed on people who are charged with crimes and cannot afford a lawyer. Amicus does not have an in-house legal department.

Amicus writes about the record. A person reading a Michigan judgment of sentence usually cannot tell from the document whether anyone decided what the defendant's lawyer cost, whether anyone decided the defendant could pay, or when that question will be asked again. The Court's questions will settle the law on those points. This brief addresses what the record has to show for that law to be applied the same way in every county, and for an appellate court, a county, or a member of the public to check that it was.

The parties and the amici who have appeared are better placed than amicus to brief the statutory and constitutional questions, including whether MCL 769.1k(1)(b)(iv) permits attorney fees against a defendant who was appointed counsel because of indigency. Amicus takes no position on that question. Amicus asks the Court, whatever its answer, to say what the record must contain.

Amicus has not reviewed the trial-court record in this case and does not characterize it. The brief rests on this Court's docket and orders and on published authority.

STATEMENT OF FACTS

Amicus draws the facts below from this Court's docket and orders. Amicus has not reviewed the trial-court record.

This case arises from the 49th Circuit Court in Osceola County. The Court of Appeals, in Docket No. 375391, denied the application for leave to appeal by order dated May 28, 2025. The order did not include an opinion.

On May 27, 2026, this Court ordered oral argument on the application and directed the parties to file supplemental briefs. The Court's questions concern the assessment of attorney fees against a defendant who was appointed counsel because of indigency. They refer to the Michigan Indigent Defense Commission Act, MCL 780.981 *et seq.*, MCL 769.1k(1)(b)(iv), MCR 6.005(C), and this Court's decisions in *People v Jackson*, 483 Mich 271 (2009), and *People v Lewis*, 503

[1]Pursuant to MCR 7.312(H)(5), amicus curiae states that (a) no counsel for a party authored this brief in whole or in part; (b) no party and no counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief; and (c) no person or entity other than amicus curiae made such a monetary contribution. Amicus curiae appears in propria persona.

Mich 162 (2018). They ask, among other things, whether the trial court made the findings those authorities require and whether a hearing is required.

Amicus curiae briefs have been accepted or filed on behalf of the Prosecuting Attorneys Association of Michigan, the American Civil Liberties Union of Michigan, and the Criminal Defense Attorneys of Michigan together with the Michigan Indigent Defense Commission.

STANDARD OF REVIEW

The questions before the Court are questions of law: the meaning of MCL 769.1k and MCR 6.005(C), the effect of this Court's decisions in *Jackson* and *Lewis*, and the requirements of due process. This Court reviews questions of that kind de novo.

SUMMARY OF ARGUMENT

A fee judgment against a person the court has already treated as indigent can be checked only through the record the court makes. This Court said as much in *Lewis*: the trial court must make findings of fact about the cost of the legal assistance the defendant received. *Lewis*, 503 Mich at 163–164, 168. A published Court of Appeals decision issued this year shows that a fee can still be imposed with a single sentence in place of those findings. *Bell*, ___ Mich App ___.[2]

Jackson adds a second point at which the record matters. It allows the inquiry into a defendant's ability to pay to wait until the fee is enforced. *Jackson*, 483 Mich at 275, 292. That rule is workable only if the record preserves the moment the inquiry begins: the defendant is told, the defendant can contest, and the court decides and writes down what it decided. *Bell* shows what happens when the court skips that step. The enforcement order issued without any analysis, and the Court of Appeals vacated it.

The Court should say what the record must contain, in terms that every trial court in the state can apply without a new form or a new hearing for every defendant: the amount and its basis, the defendant's status at appointment, notice on the judgment of the right to contest at enforcement, and a written determination when enforcement begins. Findings of that kind also serve a function beyond the individual case. They are what let a county, an appellate court, or a member of the public confirm that a court, and not a fee schedule, set the amount. When the record is silent, the remedy is a remand for findings, as this Court ordered in *Lewis*.

[2] *People v Bell*, ___ Mich App ___ (Docket No. 374765, July 30, 2026). The Court of Appeals issued *Bell* as an unpublished opinion on June 22, 2026, and approved it for publication on July 30, 2026. Because the opinion has no reporter citation yet, amicus cites it by docket number.

ARGUMENT

I. A fee judgment against a person the court has already treated as indigent is reviewable only if the record shows how it was decided.

A. This Court has already required findings.

MCL 769.1k(1)(b)(iv) allows a court, on conviction, to impose "[t]he expenses of providing legal assistance to the defendant." In *Lewis*, this Court held that a trial court must determine the cost of the legal assistance the particular defendant received and make findings of fact to support the amount. The cost-calculation language in subparagraph (iii) does not extend to attorney fees under subparagraph (iv). *Lewis*, 503 Mich at 163–164, 168.

That holding is a rule about the record. A fee that is correct but undocumented cannot be distinguished, on appeal, from a fee that was assigned by habit. The requirement of findings exists so that someone other than the sentencing judge can tell the difference.

This Court and the Court of Appeals have applied the same reasoning to related questions. A court that capped a fee at a county schedule's plea-case maximum, without asking whether the amount was reasonable for the services actually rendered, erred. *In re Ujlaky Attorney Fees*, 498 Mich 890 (2015). A court may not order reimbursement of appointed-counsel costs where the prosecution has been abandoned. *People v Jose*, 318 Mich App 290, 296–299 (2016). Each case turns on whether the court did the work the statute assigns and left a record that shows it.

B. The one-line fee order has not disappeared.

Lewis was decided in 2018. On July 30, 2026, the Court of Appeals approved for publication a decision that vacated an attorney-fee order because the trial court had said only that it found an attorney fee of $750 appropriate and gave no factual basis. *Bell*, ___ Mich App ___ (Docket No. 374765). The court applied *Lewis* and remanded for findings.

Bell shows how the requirement in *Lewis* operates in practice. It is enforced when someone appeals. An appeal needs a defendant who knows the finding is missing, counsel who can raise it, and time to do so. A record that was never made is also a record that is rarely challenged.

II. *Jackson* allows the ability-to-pay inquiry to wait. That works only if the record shows when it begins.

A. What *Jackson* allows, and what depends on it.

This Court held in *Jackson* that a trial court need not analyze a defendant's ability to pay before imposing an attorney fee. The analysis is required when the fee is enforced and the defendant contests it. *Jackson*, 483 Mich at 275. When the analysis is triggered, the court must consider whether the defendant remains indigent and whether repayment would cause manifest

hardship. *Id.* Before a fee is enforced, the court must give the defendant notice and an opportunity to contest enforcement on grounds of indigency. *Id.* at 292.

The rule has a practical consequence that deserves the Court's attention. It moves the protection from the day of sentencing to a later day that the judgment does not mark. The judgment need not schedule a hearing or say that one is available. Enforcement can follow by a remittance order directed at a prisoner's account, as it did in *Bell*, without a judge reading anything about the defendant's present circumstances. If the protection is to exist in practice, something in the record must tell the defendant, and anyone reviewing the file, that the question remains open and how to raise it.

B. *Bell* shows the gap at enforcement.

In *Bell*, the defendant contested his ability to pay after the court entered a remittance order directing the Department of Corrections to collect from his prisoner account. The Court of Appeals held that the contest triggered the *Jackson* requirement and that the trial court's order contained no analysis and no determination. It vacated the order and remanded for the trial court to decide whether the defendant's circumstances rebutted the presumption of non-indigency that attaches to such remittance orders. *Bell*, ___ Mich App ___.

The remand in *Bell* repaired one defendant's order. The structural problem is that *Jackson* places the safeguard at a point where nothing in the ordinary course of a criminal case produces a record. A rule that identified what the enforcement-stage order must say would cost a trial court a paragraph. It would give the defendant, and a reviewing court, a document to read.

C. The constitutional baseline depends on practice, not on text.

The United States Supreme Court has upheld recoupment schemes that protect people who cannot repay. *Fuller v Oregon*, 417 US 40, 45–46, 53–54 (1974). It has held that a state may not convert a failure to pay into punishment without inquiring into the reason for the failure. *Bearden v Georgia*, 461 US 660, 672–673 (1983). And it has held that a state may not impose collection terms on people without means that it does not impose on others. *James v Strange*, 407 US 128 (1972).[3]

Each of those decisions treats the protection for people who cannot pay as part of what makes the scheme lawful. A protection that exists in a statute but cannot be seen in a court file is difficult to distinguish, from the defendant's side, from no protection. Requiring the record to show the protection operated is how Michigan can say, county by county, that it did.

[3]Amicus cites the federal cases for the constitutional baseline they set. The parties and the other amici address the constitutional questions in detail.

III. The Court should state what the record must contain, in terms any trial court can apply.

The Court has stated the substantive rules in *Lewis* and *Jackson*. What remains is to state what a court must write down to show it followed them. Amicus does not ask for a new hearing in every case. If the Court holds that attorney fees may be assessed against a defendant who was appointed counsel because of indigency, amicus asks that it hold the following:

(1) **The amount and its basis.** The record must show the cost of legal assistance to this defendant and how the court arrived at it, as *Lewis* requires. A schedule maximum is not a finding. *Ujlaky*, 498 Mich 890.

(2) **The defendant's status at appointment.** The judgment or the findings must state that the defendant was found indigent for purposes of appointed counsel and whether the court has any information that the defendant's circumstances have changed.

(3) **Notice on the judgment.** The judgment must tell the defendant that the fee may be contested on grounds of indigency when enforcement begins, and how to do that. *Jackson*, 483 Mich at 292.

(4) **A written determination at enforcement.** When a defendant contests, the court's order must state whether the defendant remains indigent and whether repayment would cause manifest hardship. *Jackson*, 483 Mich at 275; *Bell*, ___ Mich App ___.

The first and fourth elements restate *Lewis* and *Jackson*. The second and third add a sentence to a document the court already writes. The common requirement is that the court do the work where a reviewing court can see it.

The Court has authority to say this in its opinion and, if it chooses, in a rule. Const 1963, art 6, § 5, directs the Court to establish rules of practice and procedure for the courts of the state. The Court may also wish to refer the question of standard judgment and order language to the State Court Administrative Office. A form is an administrative answer to the same point: a record that reads the same in every county can be read in every county.

IV. Findings on the record are what let anyone other than the sentencing judge confirm that a court, and not a schedule, set the fee.

Michigan has 83 counties and many trial courts. A practice that exists only in the courtroom does not travel beyond it. The record travels. It is what an appellate court reads, what a county reads when it decides how to collect, what a defense lawyer reads in the next case, and what a reporter reads to find out whether a fee that someone is being asked to pay was set by a judge or by a number on a sheet.

Ujlaky involved a schedule. *Lewis* and *Bell* involved fees imposed without the findings the statute requires. In each, the document did not say how the number was reached. A requirement that the record answer that question closes the gap for the case before the Court and for the cases that follow it.

A defendant who was found indigent at appointment needed the state to supply counsel. When enforcement begins, the defendant may no longer have a lawyer and is the person least able to find out what the court decided and when. The written record is the one thing that does not depend on the defendant having a lawyer on that day.

V. When the record is silent, the remedy is a remand for findings, not an assumption that they were made.

A reviewing court that finds no findings has two choices. It can assume that the trial court considered what it was required to consider and affirm. Or it can send the matter back so that the trial court can make the findings and put them in writing. This Court chose the second in *Lewis*, reversing on the attorney-fee issue and remanding for the trial court to support its findings. The Court of Appeals chose the second in *Bell*, vacating the fee and the enforcement order and remanding for a factual basis and a determination. *Lewis*, 503 Mich at 168; *Bell*, ___ Mich App ___.

The second choice is the only one consistent with the purpose of requiring findings. If silence is read as compliance, the requirement stops mattering in the cases where it is most needed, because those are the cases in which the court said nothing. A reviewing court that supplies the missing finding itself takes a role the statute gives to the trial court, which saw the defendant, the plea, and the work of counsel.

The remand is also inexpensive. A trial court that did consider the defendant's circumstances can say so in a paragraph. A trial court that did not can do so. In either case the defendant, the county, and any later reviewer have a document to read. Amicus asks the Court to state in its opinion that a fee imposed without the findings described above is remanded for findings, and that a silent record is not treated as a finding.

CONCLUSION AND RELIEF REQUESTED

Amicus takes no position on whether MCL 769.1k(1)(b)(iv) permits attorney fees against a defendant who was appointed counsel because of indigency. If the Court holds that it does, amicus asks the Court to hold that the record must show (1) the amount of the fee and its defendant-specific basis; (2) the defendant's status at appointment; (3) notice on the judgment of the right to contest at enforcement; and (4) a written determination, when a defendant contests, of whether the defendant remains indigent and whether repayment would cause manifest hardship. Amicus further asks the

Court to hold that a fee imposed without those findings is remanded for findings, and that a silent record is not treated as a finding. Amicus asks the Court to apply those requirements to the fee in this case in the manner it finds appropriate on the record.

Respectfully submitted,

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WORD-COUNT CERTIFICATION

This brief contains 2,481 words, counting only the statement of facts, standard of review, summary of argument, argument, and relief requested, as MCR 7.212(B) provides.

/s/ Rita Williams

CERTIFICATE OF SERVICE

I certify that on October 30, 2026, I filed the foregoing brief amicus curiae through the MiFILE electronic filing system, which serves registered counsel of record, and that I served a copy by email on counsel for each party and each amicus curiae on the service list for this case.

/s/ Rita Williams
Rita Williams