



MICHIGAN INDIGENT
DEFENSE COMMISSION

Michigan Indigent Defense Commission Meeting Minutes
200 N. Washington Square, 3rd Floor
Lansing, MI 48933
October 20, 2015
Time: 1:00 PM

Commission Members Present

James Fisher, Chair, Joseph Baumann (non-voting member), Thomas Boyd, Jon Campbell (joined the meeting at 1:30 pm), Nancy Diehl, Frank Eaman, Richard Lindsey, Shela Motley, Kevin Oeffner, Michael Puerner, Brandy Robinson, David Schuringa, John Shea, William Swor, and Gary Walker

Members of the Public Present

David Bennett, Peter Cunningham (State Bar of Michigan), Marissa Geyer, Brad Hall (Michigan Appellate Assigned Counsel System), R. Timothy Kohler, Kay Perry (Michigan CURE), and Dawn Van Hoek (State Appellate Defender Office)

Staff Members Present

Jonathan Sacks, Marla McCowan, Jonah Siegel and Marcela Westrate

The meeting was called to order at 1:05 pm.

Roll call and opening remarks

Chair Fisher asked Ms. Westrate to call roll.

Public Comment

David Bennett asked for time to comment. He is a consultant that has been retained by Macomb County to look at that county's criminal justice policies. Mr. Bennett told the Michigan Indigent Defense Commission (MIDC) members about his project and the potential coordination with the MIDC's efforts.

Approval of August minutes

MIDC members reviewed the August minutes. Judge Boyd moved that the minutes be approved; Ms. Robinson seconded. The motion carried; all members unanimously supported the motion.

Report from the Chair

Chair Fisher gave his report. The MIDC received a letter with Cletus Smith's resignation from the Commission. Mr. Smith submitted a separate letter to Governor Snyder's office. Chair Fisher asked members to contact Mr. Sacks if they have suggestions on a new MIDC member.

Executive Director Report

Mr. Sacks reported on the MIDC's request for increased appropriations, which was completed and forwarded to the State Court Administrative Office in September. As previously discussed, the MIDC is requesting increased funding to support permanent staff levels. Mr. Sacks thanked Mr. Baumann and SCAO for their assistance.

Mr. Sacks discussed the shift from hiring full-time staff with the carry forward funding from previous fiscal years to hiring independent contractors. These contractors will serve as Regional Consultants; Mr. Sacks intends to contract with a maximum of six individuals. Ms. Diehl asked about the hours. Mr. Sacks stated that he anticipated the positions would be for a minimum of 20 hours per week. Additional carry forward funding may be used to develop minimum standards and for other contract employees.

Mr. Sacks discussed the revised standards that were forwarded to MIDC members. All of the committees made changes to their respective standards based on testimony during the public hearing and comments submitted through the website. Mr. Sacks made changes to the preamble based on the suggestions from various groups.

The next step in the process will be for the MIDC to formally approve the final version of the standards and to approve their submission to the Michigan Supreme Court (MSC). This will be on the agenda for the December meeting. After the standards are submitted, the MSC will call for public comment and will hold an administrative conference. After that, they will promulgate the standards.

Mr. Sacks has made several presentations since the August meeting including presentations to the Wayne County District Court, the members of the Kalamazoo bench, the members of the Ottawa bench, and the Kent County Public Defender. Additionally, Mr. Sacks observed the Kent County pilot project that provides attorneys at arraignment. Mr. Sacks participated in the hiring process for Lenawee County's new public defender. Berrien County is also looking at a public defender system and has contacted the MIDC.

Ms. Diehl and Mr. Sacks participated in a panel hosted by the State Bar of Michigan's Criminal Law Section. The panel discussed indigent defense and included representatives of various stakeholder groups.

Ms. Westrate discussed the Regional Consultant positions. She and Mr. Sacks talked to Professor Nicole Appleberry from the University of Michigan's Low-Income Taxpayer Clinic and Ed Zobeck, SCAO Human Resources Director. Mr. Sacks and Ms. Westrate are confident that the positions are properly classified as independent contractor positions.

Ms. McCowan gave an update of her outreach activities. She has been working on the website and is including photographs from various events. She encouraged members to follow on Instagram and Twitter (@michiganidc on both sites) and let members know that they could view the posts from these sites directly from the website. She has also updated the standards portion of the website. The

most recent version of the standards is online and all of the comments the MIDC has received are posted.

Mr. Siegel gave a presentation on the MIDC's survey. He discussed the data collected and the results that he is seeing. He answered questions from commissioners and members of the public. He plans to attend two upcoming conferences on indigent defense data.

The MIDC recessed from 2:45 pm to 3:00 pm

When the meeting resumed, Chair Fisher asked Mr. Sacks to give an overview of the changes made to the standards since the last meeting. Mr. Sacks indicated that the preamble was amended to include suggestions from the Michigan Judges Association.

Each subcommittee chair discussed the changes made to the standards.

Standard 1

Ms. Robinson indicated that changes were made to incorporate suggestions made by the State Bar of Michigan. Ms. Diehl suggested that the language in the staff comment be modified to reference *local* Michigan requirements instead of Michigan requirements.

The Executive Director of the Oakland County Bar Association contacted Mr. Oeffner about the third staff comment and inquired whether a testing component should be within the standard itself instead of in the staff comment. Ms. Robinson stated that the MIDC could look at this in compliance plans.

Standard 2

Mr. Puerner reviewed the changes made to Standard 2. In section A, the requirement that an attorney visit a client was changed from 72 hours to three business days. Language changes were also made in sections B and B2.

The commissioners discussed the language that required counsel and the indigent criminal defense system to ensure that private discussions between attorney and client could be held. The commissioners did not change the language because the defense attorney needs to share the obligation with the system and needs to report instances when there are not appropriate accommodations for discussions. Ms. Diehl suggested changes to be made to make the standards consistent with each other. Staff will make these changes before the December meeting.

Standard 3

Mr. Puerner reviewed the changes made to Standard 3. Ms. Diehl suggested changes for consistency between standards. Ms. Robinson noted that the language requiring reasonable requests to be funded shifted the responsibility to the court to fund so the obligation wasn't solely on counsel to ask.

Standard 4

Ms. Diehl reviewed the changes made to Standard 4. Prior versions included a requirement for attorneys to be appointed when "case-specific interim bonds" were set. The subcommittee reworked the language after comments from Ottawa County and Mr. Walker. Mr. Walker previously stated that an interim bond was not presumed to be valid like other bonds.

The commissioners discussed feedback that has asked how to comply with this standard when an indigency determination has not been made. Judge Boyd discussed the way this was handled in his court's pilot project. Mr. Swor discussed how the federal system addressed this issue.

Staff will modify the standards and have a revised document available prior to the December meeting.

Creation of new work and advisory groups

Chair Fisher and Mr. Sacks have discussed creating additional work groups to assist the MIDC's efforts. Mr. Sacks stated that he anticipates the committees that considered the standards will shift towards considering compliance models between the time that the first set of standards is approved and the second set of standards is developed. Mr. Sacks indicated that the appropriations and legislation committee will likely have a larger role in the MIDC's advocacy and will be engaged if needed for comment on proposed court rules.

Chair Fisher and Mr. Sacks would like to create two new working groups. The first will be on data and best practices and the second will be on recommendations and complaints. Commissioners will receive a survey and will be able to indicate which groups are of interest. Judge Boyd suggested that the appropriations and legislation committee might wish to look at Michigan Court Rule (MCR) 6.005(A)(2) which requires the court to appoint a lawyer. Mr. Sacks indicated that this would be considered as well as modifications to MCR 8.123 which requires data to be collected about appointment of counsel to indigent defendants but does not require criminal cases to be separated from other cases where counsel is appointed.

Mr. Eaman moved to authorize the formation of the data and best practices committee and the recommendations and complaints committee. Judge Boyd seconded the motion. The motion carried; all members unanimously supported the motion.

Mr. Sacks indicated that he and Ms. McCowan would like to have interested commissioners more involved in community outreach. This will be included on the survey and follow-up will be done with commissioners.

Dr. Schuringa asked whether there was a process if commissioners were asked to speak in a public forum or interview. Mr. Sacks said that staff would appreciate knowing about the event or interview and would be happy to assist with talking points if notified ahead of time.

Chair Fisher asked commissioners to begin thinking about how money should be distributed if the MIDC's full request to fund compliance plans is not granted. He said that the MIDC could opt to spread it around the state to impact many areas or focus on an area that is in great need of assistance. Mr. Shea stated that are ways that the MIDC could help attorneys, such as giving funds for training or electronic research. This assistance might help practitioners feel like some of their issues are being addressed. Judge Boyd stated that each of the standards will give practitioners additional compensation. The MIDC agreed that the research component is critical and that lawyers should have access to electronic resources in a way that does not break the bank.

Mr. Swor moved that the meeting be adjourned. Ms. Diehl seconded. The motion carried; all members unanimously supported the motion.

The meeting adjourned at 3:55 p.m.

Respectfully submitted,
Marcela Westrate