



## MICHIGAN INDIGENT DEFENSE COMMISSION

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### Michigan Indigent Defense Commission Meeting Minutes

200 N. Washington Square, 4<sup>th</sup> Floor

Lansing, MI 48933

Date: June 9, 2015

Time: 1:00 PM

#### **Commission Members Present**

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

#### **Commission Members Absent**

Cletus Smith

#### **Staff Members Present**

Jonathan Sacks, Marla McCowan, Jonah Siegel, and Marcela Westrate

#### **Others Present**

Peter Cunningham (State Bar of Michigan), Justin Hinkley (Lansing State Journal), Kay Perry (Michigan CURE), Andrew Sullivan (ACLU-MI), Shelli Weisberg (ACLU-MI), and Jessica Zimbelman (State Appellate Defender Office)

The meeting was called to order at 1:10 p.m.

#### **Roll call and opening remarks**

The members of the Michigan Indigent Defense Commission (MIDC), staff, and guests introduced themselves.

#### **Public comment**

No members of the public wished to comment.

#### **Additions to the agenda**

There were not any additions to the agenda.

## **Approval of minutes from April meeting**

MIDC members reviewed the April meeting minutes. Mr. Eaman moved that the minutes be adopted. Ms. Diehl seconded the motion. The motion carried; all members participating unanimously supported the motion.

## **Report from the Chair**

Chair Fisher provided a report to members with an overview of the activities since the last meeting. Chair Fisher, Judge Boyd, and Mr. Sacks will be presenting at the Michigan District Judges Association conference in August.

## **Executive Director Report**

Mr. Sacks provided an update on the status of appropriations legislation that includes funding for the MIDC. That legislation has been approved by the House and the Senate and is awaiting the Governor's signature.

Mr. Sacks discussed his plan for increasing staff levels to implement the standards and monitor compliance. The plan includes five regional administrators that will be assigned to various areas of the state. Support staff will also be added. MIDC plans to add a grant administrator to oversee the funding that will flow to the counties for compliance plans, and one grant assistant. Total employee increase will be from current 6 FTEs to 15 FTEs by the end of October of 2016. Initial costs of the increased staffing will be met by carryover appropriations from prior fiscal years. Mr. Sacks anticipates a major budget request for the following fiscal year to maintain staffing. Ms. Westrate updated the members on projected spending and carryover amounts. Ms. Diehl asked what the hiring process would be for the new positions. Mr. Sacks indicated that it would be a standard process with advertising in a variety of different publications.

Mr. Sacks reviewed the process the MIDC will use to approve its first set of standards. He plans to widely publish a final set of standards within two weeks. The MIDC will solicit public comment through its website and will hold its August public hearing on the standards at Cooley Law School in Lansing. Cooley will utilize its videoconferencing capabilities to allow members of the public to comment while attending the meeting at the Auburn Hills and Grand Rapids campuses. If the MIDC members support the standards, the vote will occur at the August meeting. If not, an additional meeting will be scheduled prior to October 1. The standards must be submitted to the Michigan Supreme Court by October 1 so that the Court can hold an administrative conference and a second public meeting on the standards prior to the Court's approval.

Mr. Sacks reviewed meetings that he has had with interested parties through the state. Several areas have indicated interest in creating a public defender system. The MIDC will look into creating a blueprint for local systems who choose to utilize this system.

The Answering Gideon's Call grant that was discussed at last month's meeting has been submitted.

## **Staff Reports**

Ms. Westrate updated the MIDC on the status of the organization's Freedom of Information Act policies.

Ms. McCowan provided an overview of the MIDC's website. She also updated the MIDC on her training and outreach activities.

Mr. Siegel updated the MIDC on the status of the survey. It will be distributed in July to chief judges and court administrators and will be accompanied by a letter from the Chief Justice of the Michigan

Supreme Court. Chair Fisher asked about the time required to complete the survey. Mr. Siegel estimates that it will take between 40 and 45 minutes. The survey will be done online but individuals will receive an Adobe pdf of the survey so that they can review the questions prior to beginning the survey. Mr. Oeffner said that he completed the survey and it took approximately 30 minutes.

**Reports from standards committees and discussion of draft standards.**

Ms. Robinson provided an overview of Standard 1. The MIDC discussed the standard. Judge Boyd stated the importance of providing citations to the MIDC's enabling legislation in each standard, and in making the introductions to the standards as consistent as possible. Staff will review each introduction and make them consistent. Mr. Shea suggested removing "discoverable" from line 3 of C. The MIDC agreed to this change. Mr. Puerner suggested inserting "at least" in line 7 of D. following "complete." The revised sentence would read: "All attorneys shall annually complete at least twelve (12) hours of continuing legal education." The MIDC agreed with this change.

Mr. Puerner provided an overview of Standard 2. The MIDC discussed the standard. Dr. Schuringa raised the issue of communicating with individuals that have various disabilities. Mr. Puerner recommended adding "or other required accommodation" in line 3 of D. 2. Following "interpreter" to address the issue of when a person might need assistance beyond an interpreter to comprehend the proceedings. Mr. Puerner recommended a similar change in line 1 of the same section, following "differences" insert "or other disabilities" so that the standard would include language differences and others. The MIDC agreed with the changes.

Chair Fisher recommended that the sentence beginning with "Counsel" on line 3 of B. be amended to read: "Counsel and the indigent criminal defense system shall assure that there are necessary accommodations for private discussions between counsel and clients in courthouses, lock-ups, jails, prisons, detention centers, and other places where clients must confer with counsel." The MIDC agreed with the change.

Mr. Shea recommended deleting "law enforcement reports" from line 3 of C, and inserting "discoverable material". The MIDC agreed with these changes.

Mr. Puerner provided an overview of Standard 3. The MIDC discussed the standard. Mr. Puerner suggested deleting "court" from line 1 of b and "from the court" in line 1 of c. The MIDC agreed with these changes.

Mr. Shea suggested deleting "witnesses" from line 1 of c. and modifying "expert" in that line to "expert(s)" and deleting "witness" from line 2 of d. He stated that sometimes individuals are used as experts but do not testify as witnesses and the standard should include those individuals. The MIDC agreed with these changes.

Ms. Diehl provided an overview of Standard 4. After a discussion about Standard 4, the MIDC decided that additional research was necessary. Chair Fisher asked that the footnote be clarified to reflect that courts are able to use an arraignment attorney that would only provide counsel on arraignment and a different attorney could be appointed for future proceedings. MIDC staff will work on this language. The MIDC discussed how compliance might be achieved in rural

communities with few attorneys. Judge Boyd indicated that a pilot project was conducted in Kent County using videoconferencing to provide counsel at arraignment.

Judge Boyd suggested that “an interim bond” in line 5 of A. be replaced with “a case-specific interim bond while the defendant is in custody.” Ms. Diehl and the members of the committee (Judge Boyd, Mr. Oeffner, and Mr. Shea) will do additional work on the standard. Staff will work with the State Court Administrative Office on how various bonds are set. The committee will review the standard and will provide its final recommendation to the MIDC at its August meeting.

Mr. Walker moved that the first three standards be approved by the MIDC with the agreed upon changes. Mr. Shea seconded the motion. After discussion, Mr. Walker withdrew the motion. Without objection the motion was withdrawn.

Mr. Walker moved that the MIDC authorize the publication of the four standards after the four committee chairs approve final copies via electronic mail. Mr. Swor seconded the motion. The motion carried; all members present unanimously supported the motion.

### **Report of Nominating Committee**

Judge Boyd provided the report of the nominating committee. The committee met via conference call and respectfully recommends that the MIDC elect Mr. Puerner for Vice Chair and Ms. Robinson for Secretary for the balance of the year. Ms. Diehl moved that nominations be closed and a unanimous vote for those nominated be cast. Mr. Swor seconded. The motion carried; Mr. Puerner and Ms. Robinson abstained from the vote.

### **Creation of Appropriations/Legislation Committee**

Chair Fisher will work on recommendations for this committee over the next several weeks. He stressed the importance of building a relationship with legislators as we move towards requesting increased funding so that statutory mandates could be met. Several MIDC members have relationships with legislators and could assist the MIDC in its efforts.

### **Adjourn**

The next meeting will be August 18, 2015 at 1:00 pm. This meeting will be a public hearing on the proposed standards.

Mr. Walker moved that the meeting be adjourned. Mr. Swor seconded. The motion carried; all members present unanimously supported the motion. The meeting adjourned at 3:39 pm.

Respectfully submitted,

Marcela Westrate