

Michigan Indigent Defense Commission Meeting Minutes  
200 N. Washington Square, 3<sup>rd</sup> Floor  
Lansing, MI 48933  
October 15, 2019  
Time: 11:00 am

**Commission Members Present**

Michael Puerner, Chair, Kimberly Buddin, Tracey Brame, Judge Thomas Boyd, Nathaniel Crampton, Andrew DeLeeuw, Judge James Fisher, Christine Green, Joseph Haveman, James Krizan, Margaret McAvoy, Tom McMillin, John Shea, Gary Walker

**Participating via Telephone**

Nancy Diehl and William Swor

**Commission Members Absent**

Judge Jeffrey Collins and Frank Eaman

**Members of the Public Participating Included:**

Courtney Adams, Michael Boucher, Malcolm Brown (via telephone), Chris Dennie, Bob Hamilton, Thomas Hausmann, James Heath, Brian Kennedy, Melissa King (via telephone) Deb Kubitskey, David Makled, Manda Mittner, Elaine Moore (via telephone), Karen Moore, Angela Peterson, Brandy Robinson, Scott Smith, Drew Van de Grift, Dawn Van Hoek

**Staff Members Present**

Loren Khogali, Barbara Klimaszewski, Marla McCowan, Kelly McDoniel, Rebecca Mack, Susan Prentice-Sao, Jonah Siegel, Nicole Smithson, Kristen Staley, Melissa Wangler and Marcela Westrate

Chair Puerner called the Michigan Indigent Defense Commission (“MIDC” or “the Commission”) meeting to order at 11:12 am.

Chair Puerner invited members of the public to introduce themselves.

**Additions to the Agenda**

Mr. Shea moved that the agenda be approved with no additions. Mr. Walker seconded. The motion carried.

**Consent Agenda**

Ms. McAvoy moved that the Consent Agenda containing the August minutes be approved. Mr. Krizan seconded the motion. The motion carried.

**Chair Report**

Chair Puerner provided an overview of the agenda.

The Executive Committee met with Department of Licensing and Regulatory Affairs (LARA) Deputy Director Adam Sandoval prior to the full Commission meeting. Mr. Shea asked whether the

Department had provided a timeline for approval of the second set of standards submitted by the MIDC. The Commission discussed potential timeline.

### **Public Comment**

Ms. Van Hoek offered comments on behalf of Wayne County.

Ms. Robinson updated the Commission on the Neighborhood Defender Office's progress.

Mr. Smith offered comments on behalf of the City of Wyoming's request to modify its already-approved compliance plan.

Mr. Dennie offered comments in support of the City of Wyoming's proposal.

Mr. Hamilton offered comments in support of Ottawa County's plan.

Ms. Karen Moore offered comments on behalf of changes made to the already-approved plans for Newaygo, Lake, Clare and Gladwin Counties.

Mr. Brown updated the Commission on Oakland County's decision to dismiss its lawsuit against the MIDC and LARA with prejudice.

Ms. King offered to answer questions that the Commission had about the City of Roseville's plan.

Ms. Elaine Moore offered to answer questions that the Commission had about Huron County's plan.

### **Reconsideration of the Agenda**

Judge Boyd moved that the approved agenda be amended to include a discussion of potential actions the Commission could take on the second set of standards submitted to LARA. Mr. Shea seconded the motion. The motion carried. The item was added as the first item under Commission Business.

### **Executive Director Report**

Ms. Khogali distributed copies of the RAND caseload report. Nice Pace from RAND will present his findings to the Commission in December.

The MIDC will be a recipient of a Byrne JAG grant for the second consecutive year. The funding will be used to expand the program completed this year which offered hands-on skills training in rural areas.

Ms. Khogali will participate in a panel at the National Legal Aid and Defender Association conference being held in Detroit in November.

The Commission has received 82 requests to spend FY 19 funding in FY 20. These requests have been submitted to LARA for signature and will be signed by Ms. Khogali and the local system.

## **Commission Business**

### **Standard 5 Discussion**

Judge Boyd moved that the Commission specifically request that the director of LARA approve Standard 5 independently and to do it by a date that is more than 180 days ahead of the start of the planning process for FY 21. Mr. McMillin seconded the motion. The motion carried. Ms. Khogali will work to draft a letter to LARA with a recommended date.

### **Attorney General MOU**

Ms. Khogali presented a draft MOU between LARA, the MIDC and the Attorney General. This MOU combined two MOUs that were in place for the previous fiscal year.

Judge Boyd moved that Commission staff be authorized to move forward with the MOU. Ms. Brame seconded the motion. The motion carried.

### **Approval for Travel/Training for MIDC Staff**

Ms. Khogali presented requests for three staff members to travel to two different conferences. Chris Sadler would attend the Criminology Conference and present as part of a panel. The second conference is the NAPD Executive Leadership Institute. Ms. Khogali would like to have two of the managers attend this conference.

Judge Boyd moved that the staff travel be approved. Ms. Green seconded the motion. The motion carried.

### **2020 Defender Leadership Summit**

Ms. Khogali presented a proposal to have the summit occur on two separate days instead of one. One day would be dedicated to helping managed assigned counsel offices and the second for public defender office.

Judge Boyd moved that staff be authorized to hold the 2020 Defender Leadership Summit. Mr. Shea seconded the motion. The motion carried.

### **FY 19 Grants, Compliance Plan Adjustments and Highlights**

Ms. Mack approved budget adjustment requests that did not require Commission approval. These adjustments did not impact the total system costs. Crawford County initially submitted a budget adjustment request but withdrew its request.

Budget adjustment requests were granted to the following counties:

- Cass County
- Calhoun County
- D 29 – Wayne
- D 45 – Oak Park
- D 50 – Pontiac
- D62a - Wyoming
- D63 – Kent County
- Iron County
- Presque Isle
- Macomb County
- Ottawa County
- Saginaw County
- Schoolcraft County
- St. Clair County

### **Discussion of Systems Operating Outside of Budget Adjustment Process**

The Commission discussed systems who had made changes to cost analyses outside of the process previously approved by the Commission. After discussion, Chair Puerner indicated that it was sufficient for Ms. Mack to treat this as any other budget adjustment. No motion was made and staff authority to continue to process requests as approved was continued.

### **Requests for Plan Adjustments**

Ms. McCowan provided an overview of the plan changes requested by Iron and Schoolcraft Counties. Both systems are seeking permission to implement their FY 20 approved plans to create defender offices prior to the signing of the FY 20 contract. MIDC staff recommends approval.

Judge Boyd moved that the staff recommendation be adopted and that the plan changes requested by Iron and Schoolcraft Counties be approved. Mr. Krizan seconded the motion. The motion carried.

Ms. McCowan provided an overview of the plan changes requested by Jackson and Lapeer Counties. Both counties are requesting permission to implement their FY 20 plans in FY 19. Neither county has had its FY 20 plan approved prior to the Commission's October meeting. Staff recommends approval of the requested plan changes.

Judge Boyd moved that the staff recommendation be adopted and that the plan changes requested by Jackson and Lapeer Counties be approved. The motion carried.

### **Update on Quarterly Financial Reporting by Local Systems**

Ms. Khogali and Ms. Mack updated the Commission on the progress in collecting quarterly finance reports from the local systems. Two systems, Inkster and Highland Park, have not yet submitted reports for the 3<sup>rd</sup> quarter. Ms. Mack indicated that those systems are having resource issues and that she would assist in compiling the information.

### **Status Report, Compliance Goals and Benchmarks**

#### **Status Report on Compliance Monitoring**

Ms. McCowan updated the Commission on the Regional Managers' efforts to compile information from each system using the rubric previously approved by the Commission. Dr. Siegel answered questions from the Commission.

#### **Approach to Addressing Noncompliance**

The Commission discussed the process that should be in place to address systems that are not in compliance. Chair Puerner asked Ms. Khogali to draft a proposal for the Commission's review. The proposal should distinguish between major issues of noncompliance that frustrate the implementation of justice and more minor technical reporting infractions.

### **Status of Standard 1 Continuing Legal Education (CLE) Requirements**

Ms. McCowan reported that the Training Committee held a call on October 11.

Ms. McCowan presented a memo to the Commission that outlined what she would like to add to the MIDC website regarding training. This would assist MIDC staff, who receive many of calls per

week with questions about complying with the Standard 1. The Commission discussed the approval process for various CLE offerings.

Mr. Haveman moved that MIDC staff be authorized to put the CLE information on the MIDC website with the changes discussed by the Commission. Judge Boyd seconded the motion. The motion carried.

The Commission recessed from 1:23 pm until 1:45 pm. Mr. Haveman left the meeting during the recess.

### **Ad Hoc Committee on MIDC Authority Report**

Judge Boyd distributed a written report of the Committee's activities. He expects that the Committee's work be completed by the December meeting. Judge Boyd presented a resolution for the Commission's review and consideration.

The Commission discussed the Committee's activities and proposed resolution.

Mr. McMillin left the meeting during the discussion.

Mr. Shea moved that the Commission accept the Committee's report. No action was taken on the proposed resolution. The Commission discussed the proposed resolution. Ms. Shea, Ms. Green and Judge Fisher asked that Ms. Khogali work with MIDC staff to compile their thoughts on how the proposed resolution would impact MIDC staff activities. The Commission requested that Ms. Khogali draft a procedure for reviewing issues that arise in the course of compliance planning and present that document to the Commission for its review. Ms. Green supported the motion. The motion carried.

### **FY 20 Grant Contract**

Ms. Khogali thanked MIDC Commissioners Deleeuw and McAvoy for their assistance in finalizing the draft of the FY 20 contract. The draft does contain a section with a waiver that is specific to the Oakland County case that has been dismissed by the County, that section can be removed. Ms. McAvoy thanked the Michigan Association of Counties for that organization's assistance in convening a workgroup to discuss the issues with the contract.

Ms. McAvoy moved that the contract be adopted with the amendment of removing the waiver referring to the Oakland County case. Mr. Shea supported the motion. The motion carried.

### **FY 20 Compliance Plans**

#### **Resubmitted Previously Approved Compliance Plans**

The following systems have plans for FY 20 that are already approved by the Commission. These systems, however, resubmitted revised plans for FY 20:

- Bloomfield Hills
- Clare and Gladwin Counties
- Grand Traverse County
- Hillsdale County
- Ionia County
- Lake County
- Newaygo County
- Oakland County
- Ogemaw County
- Otsego County
- Wyoming

The Commission discussed the plans. No action was taken.

### **Ad Hoc Plan Review Committees**

Ms. McCowan updated the Commission on the meetings held by the plan review committees.

The Committee on District Court Spending over \$500,000 held a conference call on Thursday October 10th at 1:30 p.m.

The Committee discussed the following plans and recommendations by MIDC staff:

- 37<sup>th</sup> District Court – Warren/Centerline
- 38<sup>th</sup> District Court - Eastpointe
- 39<sup>th</sup> District Court – Roseville
- 41a2 District Court – Shelby Twp.
- 43-1 District Court – Hazel Park
- 43-3 District Court – Madison Hgts.

The Committee on Plans Seeking over \$1 million in Grant Funding held a conference call on Thursday October 10th at 3:00 p.m.

The committee discussed the following plans and recommendations by MIDC staff:

- Isabella County
- Saginaw County
- Jackson County
- Calhoun County
- Muskegon County
- Ottawa County
- Lapeer County
- Macomb County
- St. Clair County
- Wayne County

The Committee on Construction over \$25,000 held a conference call on Friday October 11th at 9:30 a.m.

The committee discussed the following plans and recommendations by MIDC staff:

- Barry County
- Calhoun County
- 37<sup>th</sup> District Court – Warren/Centerline
- Saginaw County

The Committee on Ancillary Spending held a conference call on Friday October 11th at 12:30 p.m.

The topic of supplanting was discussed in the following plans. The need for a formal policy is being developed by staff:

- 35<sup>th</sup> District Court – Plymouth
- 61<sup>st</sup> District Court – Grand Rapids
- 62b District Court – Kentwood

The new ancillary staffing positions in the following plans were described by staff:

- 27<sup>th</sup> District Court - Wyandotte
- 37<sup>th</sup> District Court – Warren
- 38<sup>th</sup> District Court – Eastpointe
- 39<sup>th</sup> District Court – Roseville
- 41a2 District Court - Shelby Twp.
- 43-1 District Court - Hazel Park
- 43-3 District Court – Madison Hgts.

**Failure to submit a plan or cost analysis**

MIDC staff recommends that the Commission treat the failure of the 36<sup>th</sup> District Court in Detroit to submit a plan and cost analysis be treated as an incomplete plan and disapproved cost analysis.

Judge Boyd moved that the staff recommendation be adopted and that the 36<sup>th</sup> District Court's failure to submit a plan and cost analysis be treated as an incomplete plan and disapproved cost analysis. Judge Fisher seconded the motion. The motion carried.

**Disapprove Plan/Disapprove Cost Analyses**

MIDC staff recommends that the Commission disapprove the plan and disapprove the cost analyses submitted by the 22<sup>nd</sup> District Court in Inkster and the 62B District Court in Kentwood.

Mr. Shea moved that the staff recommendation be adopted and that the Commission disapprove the plan and disapprove the cost analyses for the 22<sup>nd</sup> District Court in Inkster and the 62B District Court in Kentwood. Ms. Green seconded the motion. The motion carried.

**Approve Plan/Disapprove Cost Analysis**

Ms. McCowan and Ms. Smithson presented an overview of the plan resubmitted by Lapeer County. MIDC staff recommends that the plan be approved but the cost analysis be disapproved.

Judge Boyd moved that the staff recommendation be adopted and that Lapeer County's resubmitted plan be approved but the cost analysis be disapproved. Mr. Krizan seconded the motion. The motion carried.

**Disapprove Cost Analysis (Plan Previously Approved)**

Ms. McCowan, Ms. Smithson and Ms. Prentice-Sao presented an overview of the resubmissions from the following systems:

- 35<sup>th</sup> District Court – Plymouth
- 43-1 District Court – Hazel Park
- 43-3 District Court – Madison Heights
- 61<sup>st</sup> District Court in Grand Rapids
- Ottawa County

Plans for the systems listed above were approved by the Commission at previous meetings. MIDC staff recommends that the resubmitted cost analyses for the systems listed above be disapproved.

Mr. Hamilton offered comments in support of his county's cost analysis.

Judge Boyd moved that the staff recommendation be adopted and that the cost analyses for the systems listed above be disapproved. Ms. Green supported. The motion carried. Judge Fisher disclosed that, though his wife is employed by the 61<sup>st</sup> District Court, he had reviewed LARA's conflict of interest policy and did not have a conflict.

### **Approve Cost Analysis (Plan Previously Approved)**

Ms. McCowan and Ms. Prentice-Sao presented an overview of the resubmission from Barry County. Ms. McCowan and Ms. Klimaszewski presented an overview of the resubmission from Isabella County. MIDC staff recommends that the cost analyses for these two counties be approved.

The Commission discussed the inclusion of local bar dues in compliance plans.

Mr. Shea moved that the cost analyses from Barry and Isabella Counties be approved but that the portion of state funding being used for local bar dues be disapproved. Judge Boyd seconded the motion. The motion carried. Ms. McAvoy recused herself from the Commission's vote because of a conflict of interest.

Ms. McCowan and the respective Regional Manager provided overview of the following systems:

- Calhoun County
- 23rd District Court – Taylor
- 24th District Court - Allen Park
- 37th District Court - Warren/Centerline
- 39th District Court – Roseville
- 45th District Court - Oak Park
- 41a2 District Court - Shelby Township
- Grosse Pointe Park
- Huron County
- Iosco County
- Jackson County
- Muskegon County
- Macomb County
- Saginaw County
- St. Clair County
- Wayne County

MIDC staff recommends that the cost analyses resubmitted by the systems listed above be approved.

Judge Boyd moved that the staff recommendation be adopted and that the cost analyses resubmitted by the systems listed above be approved. Mr. Shea supported the motion. The motion carried.

### **Approve Plan/Approve Cost Analysis**

MIDC staff recommends that the plans and cost analyses resubmitted by the following systems be approved:

- 38<sup>th</sup> District Court – Eastpointe
- 27<sup>th</sup> District Court – Wyandotte
- Grosse Pointe Farms
- Grosse Pointe Woods

Mr. Shea moved that the staff recommendation be adopted and that the plans and cost analyses resubmitted by the four systems listed above be approved. Ms. Green seconded the motion. The motion carried.

Ms. Brame left the meeting but rejoined via the telephone.



Judge Fisher moved that the Commission go into closed session under section 8(h) of the Open Meetings Act to discuss material that is exempt from public disclosure under section 13(1)(g) of the Freedom of Information Act which exempts from public disclosure information or records subject to attorney-client privilege. Mr. Walker seconded the motion. Chair Puerner requested a roll call vote.

The Commission moved into closed session at 4:05 pm, the following members supported the motion to do so: Chair Puerner, Ms. Buddin, Ms. Brame, Judge Boyd, Mr. Crampton, Mr. DeLeeuw, Ms. Diehl, Judge Fisher, Ms. Green, Mr. Krizan, Ms. McAvoy, Mr. Shea, Mr. Swor and Mr. Walker.

Mr. Walker moved that the Commission return to open session. Judge Boyd seconded the motion. Chair Puerner requested a roll call vote.

The Commission returned to open session at 4:20 pm, the following members supported the motion to do so: Chair Puerner, Ms. Buddin, Ms. Brame, Judge Boyd, Mr. Crampton, Mr. DeLeeuw, Ms. Diehl, Judge Fisher, Ms. Green, Mr. Krizan, Ms. McAvoy, Mr. Shea, Mr. Swor and Mr. Walker.

Mr. Walker moved that the Commission accept the order for dismissal with prejudice in the Oakland County lawsuit. Judge Fisher supported the motion. The motion carried.

Judge Fisher moved that the meeting be adjourned. Ms. Green seconded the motion. The motion carried.

The Commission meeting adjourned at 4:38 pm.

The next meeting is December 17, 2019.

Respectfully submitted,

Marcela Westrate