

Michigan Indigent Defense Commission Meeting Minutes

507 S. Grand Avenue

Lansing, MI 48933

February 11, 2020

Time: 11:00 am

Commission Members Present

Michael Puerner, Chair, Tracy Brame, Kimberly Buddin, Judge Thomas Boyd, Nathaniel Crampton, Andrew DeLeeuw, Judge James Fisher, Christine Green, Joseph Haveman, James Krizan, Margaret McAvoy

Participating via Telephone

Judge Jeffrey Collins, William Swor and Gary Walker

Commission Members Absent

Nancy Diehl, Frank Eaman, Tom McMillin, Cami Pendell (non-voting member) and John Shea

Members of the Public Participating Included:

Courtney Adams (via telephone), Dwayne Anderson, John Biscoe, Malcolm Brown, Russell Church, Tim Havis, Mary Ann Jerge (via telephone), Meghann Keit, Debra Kubitskey, Judge William McConico, Karen Moore, Craig Paull, Adam Sandoval, Marianne Talon, Drew Van De Grift, Eric Wilson

Staff Members Present

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

Chair Puerner called the Michigan Indigent Defense Commission (“MIDC” or “the Commission”) meeting to order at 11:04 am.

Introduction of Commission members and guests

Chair Puerner announced that Commissioner Eaman has asked not to be reappointed to the Commission. His appointment expires in April. The Governor’s Appointments Office will work with CDAM to find a replacement.

Public Comment

Chair Puerner invited members of the public to introduce themselves if they wished and to make comments to Commissioners.

Mary Ann Jerge offered comments in support of written comments submitted by the Michigan Association of Counties.

Meghann Keit offered comments on behalf of MAC.

Marianne Talon offered to answer questions the Commission had regarding Wayne County's request to extend and amend its planning grant.

Karen Moore offered comments on the need for an indigency standard.

Judge William McConico, Chief Judge of the 36th District Court, and Dwayne Anderson offered comments in support of the City of Detroit's compliance plan submission.

Eric Wilson offered comments on behalf of Madison Heights and Hazel Park.

Vicki Wolber offered comments in support of Macomb County's plan revision.

Debra Kubitsky offered comments on behalf of Jackson County.

John Biscoe offered comments in support of Lapeer County's compliance plan submission.

Additions to the Agenda

Mr. Swor moved that the agenda be approved. Ms. McAvoy seconded. The motion carried.

Consent Agenda

Judge Boyd asked that his comments from the December meeting expressing his concern that systems will not have money on October 1, 2020 to maintain their plans be included in the minutes. He is very concerned because systems will not have unexpended funds remaining at the end of the 2020 fiscal year and will be out of money to implement fiscal year 2021 plans on October 1.

Mr. Krizan moved that the minutes be adopted as amended. Ms. Brame seconded. The motion carried.

Chair Report

Chair Puerner provided an overview of the agenda and materials.

The Executive Committee met in January. The Committee is working on ways to consolidate agenda items to have more efficient meetings.

Chair Puerner introduced Department of Licensing and Regulatory Affairs (LARA) Deputy Director Adam Sandoval. Chair Puerner led a discussion of the Commission's autonomy from LARA, stemming from MCL 780.985(2). One issue that has arisen is the MIDC's current lease, which expires in July.

Mr. Sandoval provided an overview of the services that LARA can provide the MIDC. He reviewed the opportunity for the MIDC to be housed within LARA's building and provided the Commission a cost analysis and floor plan for its review. Commissioners discussed and asked questions regarding the proposal that MIDC be housed in the Ottawa building. Commissioners referenced the potential benefits and financial savings and discussed concerns about the potential impact on the autonomy of the Commission. There was additional discussion related to the Commission's autonomy as related to Department policies, specifically the recent Legal Risk Management Procedures.

Chair Puerner indicated that the Executive Committee would take Commissioners' comments into account and would let the Commission know how it would proceed.

Executive Director Report

Ms. Khogali gave an overview of the written report she provided to Commissioners. She expressed her appreciation of the continued support from Governor Whitmer's administration and provided an overview of the Governor's Executive Recommendation for the FY 2021 fiscal year.

Commission Business

Plan Changes

Delta county request a plan change to increase the hourly rate of pay for conflict counsel from \$55/hour to proposed MIDC rates, and to reimburse mileage/travel for attorneys traveling to Delta to provide representation. The County submitted a memo which was provided to Commissioners for their review. MIDC staff recommended approval.

Mr. Haveman moved that the staff recommendation be adopted and that Delta County's plan change be approved. Mr. Swor seconded. The motion carried.

The 33rd District Court in Woodhaven requested a plan change to increase the rates that attorneys are paid. Attorneys in this system are paid on a full day/half day basis. Increasing the rate would mean attorneys are paid approximately \$83 per hour. MIDC staff recommended approval of the change.

Ms. Brame moved that the staff recommendation be adopted and that the plan change for the 33rd District Court be approved. Mr. Swor seconded the motion. The motion carried.

Macomb County submitted a request to change its plan to move towards creating a public defender office earlier than it initially anticipated. The County has requested an amendment to add a new Public Defender and appropriate the workload of the staff involved in opening the new office. MIDC staff recommended approval of the change.

Ms. McAvoy moved that the staff recommendation be adopted and that the change to Macomb County's FY 2020 compliance plan be approved. Mr. Walker seconded. The motion carried.

Substantive Review of Third/Final Submissions

To date, four systems have not had their plans approved: the 36th District Court/City of Detroit, 43-1 District Court in Hazel Park, Lapeer County and the 22nd District Court in Inkster. Three of the plans are before the Commission for its consideration at this meeting; the 22nd District Court in Inkster will be before the Commission at its April meeting.

Ms. McCowan provided an overview of the 36th District Court – City of Detroit's plan. Staff recommended approval of the plan and cost analysis.

Judge Boyd moved that the staff recommendation be adopted and that the 36th District Court – City of Detroit's plan and cost analysis be approved. Judge Fisher seconded. The motion carried.

Ms. McCowan provided an overview of the 43-1 District Court in Hazel Park's revised cost analysis. The Commission previously approved the system's compliance plan. All issues of concern to MIDC staff have been addressed in the final cost analysis; staff recommended approval.

Ms. Brame moved that the staff recommendation be adopted and that the revised cost analysis for 43-1 District Court in Hazel Park be approved. Ms. Buddin seconded the motion. After discussion, Chair Puerner called for a vote. The motion carried; the following Commissioners opposed the motion: Judges Boyd and Fisher.

Ms. McCowan provided an overview of Lapeer County's revised cost analysis. MIDC staff recommended that the Commission disapprove the cost analysis. Staff has concerns with the rate of pay for the salaried attorney administrator and the amount of indirect costs that are assessed. Mr. Biscoe offered comments on behalf of Lapeer County.

Ms. Brame moved that the staff recommendation be adopted and that the revised cost analysis submitted by Lapeer County be disapproved. Ms. Green seconded the motion. After discussion, the motion was withdrawn.

Judge Fisher moved that the cost analysis be approved up to \$1,001,776 and that MIDC staff work with Lapeer County to revise the cost analysis to reflect the approved compliance plan. Mr. DeLeeuw seconded the motion. The motion carried.

Local Share Adjustments

Gratiot County, Kalamazoo County and Otsego County have each requested that their local share be lowered because of errors in initially calculating the share. Ms. McCowan provided an overview of the individual systems and their requests.

Ms. Green moved that the local share for FY 2020 be adjusted for these systems. Mr. Krizan seconded. The motion carried.

Otsego County requested that its FY 2019 local share be adjusted and that it be reimbursed for this adjustment in its FY 2020 plan. The amount of the reimbursement request is \$80,502.

Mr. Swor moved that Otsego County's local share be adjusted for FY 2019 and that the county be reimbursed \$80,502 for this adjustment. Ms. Green seconded the motion. The motion carried.

FY 2019 Plan Implementation Update

Ms. Khogali and Ms. Mack provided an overview of fourth quarter reporting, financial adjustments and unexpended balances. The Commission discussed the process for preparing contracts and distributing them to systems.

Judge Boyd moved that any system with an approved plan and cost analyses be offered a contract for signature as soon as possible. Mr. DeLeeuw seconded the motion. The motion carried.

Ms. Khogali and Ms. Mack gave an overview on the financial reporting from the 22nd District Court in Inkster.

Ms. Green moved that the commission forbear on the mediation with the 22nd District Court in Inkster and that MIDC staff and the local funding unit work to complete the FY 2019 financial reporting. Judge Fisher seconded the motion. The motion carried.

Ms. Khogali provided an overview of the issues MIDC staff has raised with Jackson County's reporting. Ms. Kubitsky provided an overview of the issues from the County's perspective. Commissioners discussed the issues.

Judge Boyd moved that the Commission approve partial payments for corrections officers that would not be needed, but for Public Act 93 of 2013. The payments for the two corrections deputies should be in the amount of \$56,605.26 for the cost of the deputies from March through September of 2019 and that Jackson County be paid for the officers for FY 2020. Ms. McAvoy supported the motion. The motion carried.

The Commission recessed for 20 minutes, the meeting resumed at 2:20 pm.

Mr. Haveman left during the recess.

Wayne County Extension of Planning Grant

Ms. Talon gave an overview of the County's request to extend the term of the planning grant and to transfer \$40,000 from various lines to increase the amount paid to Dawn Van Hoek.

Judge Boyd moved that the County's request be approved, that the planning grant be extended until the funds are expended and that the County be authorized to use remaining funding in the grant to fund the Wayne County Public Defense Services Research Project and to increase the amount of money paid to Ms. Van Hoek. Judge Fisher seconded the motion. The motion carried.

Judge Boyd left the meeting at approximately 2:30 pm.

Update: Office of Internal Audit Services (OIAS)

Ms. Khogali updated the Commission on MIDC staff's work with OIAS.

Training and Education Committee Report

Ms. McCowan provided a written update to the Commission on the Training and Education Committee's recent meeting.

Discussion of FY 2021 Draft Grant Manual

Chair Puerner suggested that he lead the Executive Committee in an editorial session of the grant manual in a way that reflects the input that the Commission has received from its members and stakeholders. Chair Puerner invited Commissioners to contact him within the next three weeks with suggestions for changes to the document.

Ms. Khogali provided a memo to the Commission in the meeting materials, which identified potential subjects that the grant manual may need to address is anticipation of fiscal year 2021 compliance planning. One question was whether there should be any differentiation in the way that the local share and state grant may be spent or for purposes of the grant. In response to a request for a recommendation, Ms. Khogali recommended that the local share and any state grant funding in

excess of the local share, which comprises the total grant amount, be treated as a single pot of funding.

Judge Fisher moved to accept the recommendation with respect to the local share for use as the Executive Committee meets to review and revise the manual. Mr. Krizan seconded the motion. After discussion, the motion carried, Commissioners DeLeeuw and McAvoy opposed the motion.

Indigent Standard Memorandum and Update

Ms. Khogali provided an overview of the focus groups with attorneys and judges that were hosted by MIDC staff and thanked Nicole Smithson for her leadership in organizing the focus groups. Ms. Smithson prepared a memo included in the meeting materials that summarized the staff's efforts in gathering information that will inform a draft standard.

Chair Puerner noted that the next meeting would be April 21, 2020 at 11:00 am.

Ms. Brame moved that the meeting be adjourned. Mr. DeLeeuw seconded the motion. The motion carried. The meeting adjourned at 3:03 pm.

Respectfully submitted,
Marcela Westrate