

Michigan Indigent Defense Commission Meeting Minutes

507 S. Grand Avenue

Lansing, MI 48933

December 17, 2019

Time: 11:00 am

Commission Members Present

Michael Puerner, Chair, Kimberly Buddin, Judge Thomas Boyd, Judge Jeffrey Collins, Nathaniel Crampton, Andrew DeLeeuw, Judge James Fisher, Christine Green, James Krizan, Margaret McAvoy, Tom McMillin, Cami Pendell (non-voting member), William Swor

Participating via Telephone

Nancy Diehl and Gary Walker

Commission Members Absent

Tracy Brame, Frank Eaman, Joseph Haveman and John Shea

Members of the Public Participating Included:

Courtney Adams, Michael Boucher, Malcolm Brown (via telephone), Russell Church, Chris Dennie, Chris Forsyth, Tim Havis, Mary Ann Jerge, Meghann Keit, Steve Morton, Karen Moore, Craig Paull, Scott Smith, Eric Wilson

Staff Members Present

Loren Khogali, 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 11:02 am.

Public Comment

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

Mr. Forsyth made comments on behalf of Grand Traverse County.

Mr. Smith made comments on behalf of the City of Wyoming

Ms. Moore made comments on behalf of Newaygo County.

Mr. Morton and Mr. Wilson made comments on behalf of the Cities of Hazel Park and Madison Heights.

Additions to the Agenda

Mr. McMillin requested that an item to discuss the Michigan Supreme Court’s proposed amendment to court rule 8.115 be added to the agenda.

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

Consent Agenda

Judge Collins moved that the minutes from the open and closed sessions of the October 18, 2019 meeting be approved. Mr. Walker seconded the motion. The motion carried.

Chair Report

Chair Puerner welcomed Ms. Pendell to the Commission.

Mr. Swor will serve as Chair-Elect of the American Board of Criminal Lawyers. Chair Puerner and the Commission congratulated him on this position.

Chair Puerner provided an overview of the agenda and materials.

Executive Director Report

Ms. Khogali gave an overview of the written report she provided to Commissioners.

Commission Business

Appointment of New Commissioner

Chair Puerner indicated that he received a letter from Chief Justice Bridget McCormack appointing Ms. Pendell as the Chief Justice's designee on the Commission. Ms. Pendell will serve in an ex-officio capacity. Ms. Pendell introduced herself.

Engagement of the Office of Internal Audit Services

Ms. Khogali updated the Commission on staff's work with the Office of Internal Audit Services (OIAS). Ms. Mack provided information to assist with OIAS's work. OIAS will conduct a financial audit and will work with Regional Managers to better understand what is being audited.

Chair Puerner requested that calendar of the timing for review and the plan for reviews be presented to the Commission in February.

Implementation of eGrams Grant Management System

Ms. Khogali provided an update on the progress with the system. MIDC staff continues to work with DTMB and eGrams on developing the system.

Request for Approval of New Position

The MIDC received an additional appropriation for FY 20 to fund one employee to assist Ms. McCowan with tracking training and CLE completion. Ms. Khogali provided an overview of the draft position. Commissioners requested additional information about the pay range for the position. The anticipated civil service classification and corresponding salary range was provided by staff.

Mr. Swor moved that Ms. Khogali move forward with adding this position. Ms. Green seconded the motion. The motion carried, the majority of members voting in support of the motion.

Transition to DTMB

Ms. McCowan is working with the Department of Licensing and Regulatory Affairs (LARA) to transition the MIDC website to LARA and DTMB format. There will be no loss of functionality with this transition.

FY 19 Plan Implementation Update

Program Rubric Completions and Court Watching

Ms. McCowan provided an overview of the court watching Regional Managers are doing. The court watching is being conducted on days planned with the State Court Administrative Office's Regional Directors for the MIDC Regional Manger's corresponding region.

Fourth Quarter Reporting, Final Adjustments, Unexpended Balances

Ms. Mack continues to review the reports from the fourth quarter and working with systems to obtain additional documentation when necessary. She anticipates that local systems will have between \$42 and 43 million in unexpended funds.

JUDGE BOYD STATED THAT THE COMMISSION NEEDS TO REVIEW HOW IT IS DISTRIBUTING FUNDING. HE IS VERY CONCERNED THAT SYSTEMS WILL NOT HAVE MONEY ON OCTOBER 1, 2020 TO MAINTAIN THEIR PLANS SINCE THERE WILL NOT BE THE SAME AMOUNT OF UNEXPENDED FUNDS REMAINING AT THE END OF THE CURRENT FISCAL YEAR. SYSTEMS WILL BE OUT OF MONEY AND WILL NOT BE ABLE TO IMPLEMENT THEIR PLANS FOR THE 2021 FISCAL YEAR.

Financial Reporting

Ms. Khogali and Ms. McCowan provided an overview of the three systems that had not completed FY 19 reporting requirements. Those systems are the 22nd District Court – City of Inkster, the 43-1 District Court – City of Hazel Park and Jackson County. Mr. Crampton joined MIDC staff in attending a meeting with Jackson County officials.

Ms. Green moved that MIDC staff be authorized to advise the local systems to submit the required reporting within 30 days and, if those efforts fail, to activate the mediation process. Judge Fisher seconded the motion. The motion carried.

Ms. Mack approved budget adjustment requests pursuant to the MIDC's process. These adjustments did not impact the total system cost. The following systems had approved requests to their FY 19 plans:

- Alger
- Isabella
- Jackson
- Macomb
- Marquette
- Ottawa

FY 20 Compliance Planning Process

Ms. Khogali and Ms. McCowan updated Commissioners on the total amount of approvals to date and the number of contracts that have been distributed to systems for review.

Calhoun and Oakland Counties had mathematical errors in the planning funding total. Mr. Swor moved that the Commission approve the revised planning costs and that the systems be paid the revised amounts. Judge Collins seconded the motion. The motion carried.

Substantive Change to MIDC Award

Ms. McCowan provided an overview of the change requested by the 44th District Court in Royal Oak. The system requested a plan modification that will allow for the creation of a driving while

license suspended (DWLS) docket to be staffed by house counsel attorneys who will be paid \$400 per docket. MIDC staff recommends approval of this change.

Mr. McMillin moved that the staff recommendation be adopted and that Royal Oak's request be granted. Ms. Green seconded the motion. The motion carried. Mr. Krizan abstained from the vote because of his employment with the City of Royal Oak.

The Commission recessed from 12:50 pm until 1:15 pm.

Report by RAND Corporation – “Caseload Standards for Indigent Defenders in Michigan”

The Commission moved to item 8h on the agenda, Report by RAND Corporation. Nick Pace of the RAND Corporation attended remotely to provide a presentation about the organization's caseload standards report. Commissioners discussed the report and asked questions about the findings.

Substantive Change to MIDC Award

The Commission returned to Substantive Change to MIDC Award to discuss Genesee County's plan. Ms. McCowan provided an overview of the changes to the plan. The plan has been submitted for the Commission's review to correct the total system cost. The staff recommendation is to approve both the plan and the cost analysis.

Mr. Swor moved that the staff recommendation be adopted and that Genesee County's revised plan and cost analysis be approved. Judge Collins seconded the motion. The motion carried.

Resubmission of fully approved plans and cost analysis

The following systems submitted requests to change their respective plans and cost analyses:

- 48th District Court – Bloomfield Hills
- 62a District Court – Wyoming
- Grand Traverse County
- Oakland County
- Otsego County

The following systems submitted requests to change their respective cost analyses:

- Clare/Gladwin Counties
- Hillsdale County
- Ionia County
- Lake County
- Newaygo County
- Ogemaw County
- Sanilac County

The staff recommendation is that the MIDC continue to work with systems to accomplish the plan changes using the amount of money already included in the approved cost analyses, that any requests for changes to the approved totals be denied, and that any reimbursements be included as part of the systems' FY 21 plans.

Mr. McMillin moved that the staff recommendation be adopted and that MIDC staff work with the systems listed above to accomplish the plan changes using the amount of money already included in the approved cost analyses, that any requests for changes to the approved totals be denied, and that any reimbursements be included as part of the systems' FY 21 plans. Mr. Swor seconded the motion.

The Commission discussed the motion.

Mr. Smith again commented on behalf of the City of Wyoming's request.

Ms. Moore again commented on behalf of Newaygo County's request.

Mr. Forsyth again commented on behalf of Grand Traverse County.

Mr. McMillin withdrew his motion.

Judge Fisher moved that the plan changes be approved as requested and that any increase in funding to accomplish the changes be approved for the current fiscal year. Judge Collins seconded the motion. The Commission discussed the motion. Judge Fisher stated that he made the motion because systems brought the issue to the Commission's attention early in the fiscal year and that the Commission will treat such requests on a case by case basis and may decide to handle this issue differently with respect to subsequent requests. Chair Puerner called for a roll call vote. The motion carried, 13 members voting yea, 0 members voting nay and 5 members absent.

Substantive Review of Third/Final Submissions

Staff recommends that the Commission approve the cost analyses for the following systems:

- 35th District Court – Plymouth
- 43-3 District Court – Madison Heights
- 61st District Court – Grand Rapids
- 62B District Court – Kentwood
- Ottawa County

Judge Fisher moved that the staff recommendation be adopted and cost analyses for the five systems listed above be approved. Judge Collins seconded the motion. The motion carried.

Four systems remain for consideration at the February 11, 2020 meeting:

- 22nd District Court – City of Inkster
- 36th District Court – City of Detroit
- 43-1 District Court – City of Hazel Park
- Lapeer County

Discussion of FY 21 Draft Grant Manual

Judge Boyd moved that the resolution presented and tabled at the October 15, 2019 meeting be removed from the table and added to the agenda. Judge Fisher seconded the motion. The motion carried.

Chair Puerner provided a summary of the Commission's previous discussion about this issue.

Ms. Khogali provided an overview of the Draft Grant Manual.

Judge Boyd moved that the resolution he presented (attached at the end of this document) be adopted. Judge Fisher supported the motion. After discussion, Chair Puerner called for a roll call vote. The motion failed with 5 yeas, 7 nays and 6 members absent.

Court Rules Committee Report

Ms. Khogali reported that work on the draft court rules is continuing. Ms. Westrate worked with Judge Boyd on a revised draft that was forwarded to the committee for its review.

Proposed Changes to MCR 8.115

The Commission reviewed the amendment currently being considered by the Michigan Supreme Court. Chair Puerner provided an overview of the issue.

Mr. Swor moved that the Commission support the proposed amendments to MCR 8.115. Mr. McMillin seconded the motion. The motion carried. Judge Boyd abstained from the vote because of his position with the Michigan District Judges Association.

The next meeting is February 11, 2020 at 11:00 am.

Mr. Swor moved that the meeting be adjourned. Ms. Green seconded the motion. The motion carried.

The meeting adjourned at 4:01 pm.

Respectfully submitted,
Marcela Westrate