

## **Michigan Indigent Defense Commission Meeting Minutes**

The meeting was held electronically via Zoom.

The notice included information for members of the public on how to participate.

March 27, 2020

Time: 1:06 pm

### **Commission Members Participating**

Michael Puerner, Chair, Tracy Brame, Kimberly Buddin, Judge Jeffrey Collins, Nathaniel Crampton (left the meeting prior to the final vote because of technological issues), Andrew DeLeeuw, Judge James Fisher, Christine Green, Joseph Haveman, James Krizan, Margaret McAvoy, Tom McMillin, John Shea, William Swor, Gary Walker

### **Commission Members Absent**

Nancy Diehl, Frank Eaman, Cami Pendell

### **Staff Members Participating**

Loren Khogali, Barbara Klimaszewski, Marla McCowan, Kelly McDoniel, Rebecca Mack, Deborah Mitchell, Susan Prentice-Sao, Christopher Sadler, 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 11:04 am.

### **Introduction of Commission members and guests**

#### **Public Comment**

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

Kyle Trevas previously emailed a question for the Commission’s consideration:

“In Leelanau, Antrim, and Grand Traverse Counties the compliance plans call for scheduled arraignment days that are assigned to counsel and paid at a flat rate. These scheduled arraignment days have been assigned to contract attorneys though the end of the year. We have been told we will not be paid for scheduled days that have been cancelled by the court. For the most part all arraignments are being handled in Grand Traverse as it is the same District for all three counties. That has effectively ended payments in Leelanau and Antrim Counties. Per the plan in Grand Traverse two attorneys are assigned Monday-Friday to handle arraignments. One for defendants in the jail and one for out of custody defendants. Grand Traverse is still currently scheduling arraignments Monday-Friday but will only pay one attorney.

Grand Traverse has also added weekend arraignment days to get people out of the jail faster. When this was created and scheduled last week we (attorneys) were told we would be paid for both days whether or not we were needed. Now we are being told we will only be

paid for if needed and we will be told at 7:30 am that morning if we need to be there by 8:30 am.

Should these Counties have to honor their plans, grants, and agreements with attorneys?"

Mr. Trevas provided public comment.

Chantá Parker, Managing Director of NDS Detroit officered comments about the work being done by her office and challenges faced in meeting the needs of clients during COVID-19.

Lillian Diallo of the Wayne County Criminal Defense Bar Association offered comments regarding Wayne County's system and the efforts made and challenges faced by the private bar handling appointed cases during COVID-19.

Janet Mistele provided public comment.

Chad Catalino, Chief Public Defender in Allegan/Van Buren Counties offered public comment.

Josh Hilgart, Kalamazoo County Public Defender, offered public comment.

Beth Morrow of the Wayne County Criminal Defense Bar Association offered her comments.

### **Adoption of the Agenda**

Chair Puerner provided an overview of the agenda. Judge Collins moved to approve the agenda as presented. Mr. Krizan seconded the motion. The motion carried.

### **Consent Agenda**

Chair Puerner presented the consent agenda containing the minutes from the February 11, 2020 Commission meeting. Judge Fisher moved that the consent agenda be approved. Ms. McAvoy seconded the motion. The motion carried.

### **Chair Report**

Chair Puerner announced that Judge Boyd has resigned from his position as a district court judge to accept a position as the State Court Administrator. He submitted a letter of resignation from the MIDC to the Governor. The Michigan District Judges Association is working with the Governor's Appointments Office to fill the position.

### **Executive Director Report**

Ms. Khogali invited the MIDC's Regional Managers to provide reports on each of their regions and discuss the innovations they are seeing in response to the COVID-19 crisis.

Kristen Staley presented an update on the South Central Michigan region. She provided examples she is seeing from Genesee and Ingham Counties.

Nicole Smithson presented an update on the Lapeer, Macomb, Oakland and St. Clair region. She provided examples from the 45th District Court in Oak Park and Lapeer County.

Melissa Wangler presented an update on the Northern Michigan region. She provided examples from Iron County.

Barbara Klimaszewski presented an update on the Mid-Michigan region. She provided examples from Tuscola County.

Susan Prentice-Sao presented an update on the Western Michigan region. She provided examples from Kent, Berrien and Kalamazoo Counties.

Kelly McDoniel presented an update on Wayne County. She detailed successes from throughout the county including NDS-Detroit.

### **Commission Business**

#### **MIDC Internal Operational Response to COVID-19**

Ms. Khogali provided an update on the operational status of MIDC in response to COVID-19. As of March 23, all staff members have been working remotely. Regional staff members have been working with local systems remotely. Ms. Khogali noted that she has been working in partnership with the MIDC's partners at the Department of Licensing and Regulatory Affairs; Deputy Director Adam Sandoval was helpful in assisting the MIDC in getting the few tools it needed to work remotely. The MIDC continues to meet with legislators to discuss the MIDC's work and appropriations needs, these meetings are being held remotely.

#### **Compliance with MIDC Minimum Standards During COVID-19 Pandemic**

The Commission discussed the need to provide access to counsel remotely in response to COVID-19. Ms. Khogali advised the Commission of staff's initial response to reports received from attorneys in some systems that access to counsel was not being provided for meetings and/or hearings. Ms. Khogali urged that all funding units should be actively working to facilitate Standards 1, 2 and 4 through technology solutions. To gather additional information, MIDC staff created and distributed a survey to criminal defense attorneys in Michigan about remote access to clients for meetings and initial appearances during the COVID-19 pandemic. The survey generated over 400 responses over a couple of days.

After discussion, Mr. Shea moved the following: "The MIDC's standards for the timing of initial interviews and counsel appearing at arraignment and all critical proceedings remain in effect. The MIDC staff will work with funding units to facilitate any necessary modifications to compliance plans and/or budgets to ensure confidential attorney-client meetings take place remotely during the state of emergency and that attorneys appear in court for in-custody clients through technological means." Mr. Swor seconded the motion. The motion carried.

#### **Completion of Standard 1 training requirement via video and remote training**

Ms. McCowan gave an overview of the questions she is receiving regarding what training is going to look like with a prohibition on gatherings currently in place. She is also receiving questions about web-based training. MIDC staff can work with systems to identify good training opportunities that would be available.

Judge Collins moved the following: "The annual requirement for continuing legal education as set forth in MIDC Standard 1 remains in effect. The Commission strongly recommends, and would deem it to be compliant, that local funding units temporarily lift any restrictions prohibiting training by video as a method of compliance with the CLE requirement. The MIDC's staff will work with

funding units to identify and publicize appropriate options for training by video or video conferencing.” Mr. Swor seconded the motion. The motion carried.

### **Other Issues Related to COVID-19**

#### **Payment of MIDC grant-funded ancillary employees impacted by the slowdown of work as a result of COVID-19**

#### **Payment of grant-funded attorneys impacted by the slowdown of work as a result of COVID-19**

Ms. Khogali provided an overview of the issues and the questions staff are receiving. The Commission discussed.

Mr. Trevas provided additional comments about what was occurring in the counties with whom he contracts.

Chair Puerner requested that staff continue to gather information on this issue and report to the Commission.

John Fanto provided comments about his experience in the 23<sup>rd</sup> District Court in Taylor.

### **Compliance plan submission deadline and reporting deadline**

Ms. Khogali stated that some funding units have largely shut down or designated staff as non-essential. Staff has been discussing upcoming compliance plan submission and reporting date internally. The deadline for compliance planning is not statutory. We also have contractual programmatic and financial reporting due at the time.

Ms. McAvoy moved that the compliance plan submission deadline be extended to May 31, 2020. Mr. DeLeeuw seconded the motion. After discussion, Chair Puerner requested a roll call vote. The following Commissioners voted yes: Buddin, DeLeeuw, Fisher, Krizan, McAvoy, Shea, Swor. The following Commissioners voted no: Puerner, Collins, Green, Haveman, McMillin, Walker. Ms. Brame abstained from voting and as such was not counted in the number of members entitled to vote. Chair Puerner ruled that the motion carried.

The next meeting will be April 21, 2020 at 11:00 am. This meeting may also be held remotely.

Mr. Walker moved that the meeting be adjourned. Judge Fisher seconded. The motion carried. The meeting adjourned at 3:36 pm.

Respectfully submitted,

Marcela Westrate