

# final minutes

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## State Drug Treatment Court Advisory Committee Meeting

9:00 a.m. • Tuesday, May 23, 2006

Legislative Council Conference Room • Boji Tower Building

### Members Present:

Judge Patrick Bowler, Chair  
Judge William Schma, Vice Chair  
Ken Aud  
Constance Laine  
Judge Brian MacKenzie

Beth Morrison  
Judge William Rush  
Jeffrey Sauter  
Homer Smith  
Phyllis Zold-Kilbourn

### Members Excused:

Lawrence Belen  
Kathleen Brickley  
Andrew Konwiak  
Terrence Sizeland  
Judge Edward Sosnick  
Chuck Spence

### Others Present:

John Strand, Legislative Council Administrator  
Susan Cavanagh, Legislative Council Administrator's Office  
(One other individual was present, but did not identify himself.)

### I. Convening of Meeting

The Chair called the meeting to order at 9:10 a.m. and asked the clerk to call the roll. A quorum was present. **Judge Rush moved, seconded by Judge Schma, to excuse all absent members. The motion was unanimously adopted and all absent members were excused.**

### II. Approval of Minutes

The Chair asked for a motion to adopt the minutes of the March 28, 2006 State Drug Treatment Court Advisory Committee meeting. **Ms. Laine moved, seconded by Mr. Aud, to approve the minutes of the March 28, 2006 meeting. There was no further discussion. The minutes were unanimously adopted.**

### III. Discussion and Conference Call

The Chair opened the discussion and pointed out that in addition to establishing what should be reported to the Legislature, the timing of the report should also be considered. Dr. Zold-Kilbourn noted that the primary objective of the meeting was to come up with a recommendation to the Legislature to resolve the LEIN issue. She pointed out that one of the participants in the conference call, Robin Kandel, wanted it to be clear that she is not speaking on behalf of SAMHSA\*. Copies of 42 CFR Part 2 were distributed and a brief synopsis of the specific issues relating to 42 CFR Part 2 was included in the meeting folders. After Committee members had the opportunity to comment on the objectives of the conference call, the Chair asked the clerk to contact Judge Bill Meyer and Robin Kandel. The conference call began at 9:30 a.m.

Once Judge Meyer and Ms. Kandel were on the line, members introduced themselves and the Chair designated Dr. Zold-Kilbourn as the point person to begin the discussion. Dr. Zold-Kilbourn thanked Judge Meyer and Ms. Kandel for their participation and pointed out that the key issue is whether or not Michigan's statute, which requires the outcome of the defendant's participation in a drug treatment court be put into the LEIN system indefinitely, is in conflict with 42 CFR Part 2. She then asked Judge Meyer and Ms. Kandel to give their interpretation based upon their experiences and expertise. Judge Meyer acknowledged that he had expressed concern that there are parts of the Michigan statute that conflict with federal confidentiality statutes and regulations. He explained that the original purpose of the federal legislation was to give people the opportunity to seek drug and alcohol treatment without being branded as a substance abuser. Given the nature of drug treatment courts in Michigan and their close ties to treatment, in his opinion, using a central registry approach is a violation of the federal law. Ms. Kandel concurred with Judge Meyer's assessment of the potential problem and offered that there are many other states that want to use various databases in drug court programs and are running into similar concerns with 42 CFR Part 2. In response to Judge Schma's inquiry as to whether there is any movement to amend the federal regulation or if any

enforcement action has been taken, Judge Meyer explained that there is no effort being made by the National Drug Court Institute or the National Association of Drug Court Professionals. Ms. Kandel added that she is not aware of any push to revamp 42 CFR Part 2 in the near future. Judge Meyer indicated that he is also not aware of any state or program where the federal government has penalized or cut funding for violating 42 CFR Part 2, but he cautioned that there are several watchdog groups that could petition a writ of prohibition at any time.

The issues of informed consent, time limitations for the consent, and disclosure of the recipients of the information were then discussed extensively. The possibility of limited reporting and narrowing access to the records was also explored. Judge Bowler suggested that a concerted national effort is needed to deal with 42CFR and that perhaps the National Association of Drug Court Professional could suggest amendatory language to the federal law. Ms. Kandel pointed out that the language in the Michigan statute defines drug courts as drug treatment courts or AOD programs. She concluded that she likes the Michigan statute, but the sections on the LEIN system, what needs to be recorded, and how it goes into the database are problems. Judge Meyer offered two options that could ameliorate the issue. First, a virtual database could be established that would include the names and identifiers of all drug court participants. If a defendant were being considered for a drug court program, the defendant would sign a release allowing the prosecutor to access the database for the purpose of determining if the defendant had previously participated in a Michigan drug court. Second, a statewide procedure could be institutionalized that would require defendants to take an oath attesting that he/she has never participated in a Michigan drug court.

Judge Bowler reiterated that a concerted national effort is needed to reconcile the confidentiality issue and 42CFR and added that the committee would appreciate Judge Meyer's and Ms. Kandel's recommendations as to the specific language that could be modified to bring the statute more in conformance with the federal regulations. Judge Meyer noted an excellent resource ("The Guide to the Federal Alcohol and Drug Confidentiality Law and HIPPA") published by the Legal Action Center is being updated next month and is the most comprehensive analysis of federal confidentiality laws. In response to Judge Schma's inquiry, Ms. Kandel was unaware of a specific contact person from HHS, but directed members to Sarah Ludtenberg at SAMHSA as the go-to-person for information on HIPPA and drug courts. Other recommended resources include a comparison document already given to Dr. Zold-Kilbourn, the National Drug Court Institute's "Federal Confidentiality Laws and How They Effect Drug Court Practioners," and "A Practical Guide to Applying Federal Confidentiality Law to Drug Courts."

After the conference call with Judge Meyer and Ms. Kandel ended, the members continued the discussion and Mr. Sauter offered that the Committee's recommendation should be that the Legislature amend the statute to 1) specify that the diversionary disposition is a non-public disposition, 2) require that the offender being admitted to a drug court must consent to a review of the records, and 3) pull the language that talks about success or failure away from the disposition and measure the success of drug courts with an anonymous statistical analysis. The Chair asked Mr. Sauter to put these recommendations in writing. Dr. Zold-Kilbourn asked that the two options offered by Judge Meyer also be considered and suggested when drafting recommendations to the Legislature that the Committee consider the options of eliminating any language in the statute that would indicate that drug courts are AOD programs and the provisions that require the reporting of treatment outcomes to LEIN. Urging the inclusion of legislative intent was also considered. The proposed language of the recommendation will be presented for a vote at the next meeting on July 25.

**Judge Schma moved that the Committee send a letter to the National Drug Court Association urging them to take up the issue of revising 42 CFR Part 2 at the next annual meeting. The motion was seconded by Judge Rush and was passed unanimously.**

#### **IV. Public Comment**

The Chair asked for public comment. There was none.

**V. Adjournment**

**Having no further business, Ms. Laine moved, supported by Ms. Morrison, to adjourn the meeting. Without objection, the motion was approved.** The meeting was adjourned at 11:45 a.m.

**NEXT MEETING DATE**

The next full Committee meeting is scheduled for **Tuesday, July 25, 2006**. A proposed agenda and the location of the next meeting will be sent to members.

\*At the July 25, 2006 SDTCAC committee meeting, the Chair requested and the members approved that the attached disclaimer be made an official part of the committee meeting record.

*(Minutes were amended and approved by Committee on July 25, 2006.)*

Robin Kandel's Disclaimer Statement

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