

Minutes

State Drug Treatment Court Advisory Committee Meeting

9:30 a.m. • Tuesday, January 23, 2007

Legislative Council Conference Room • Boji Tower Building

Members Present:

Judge Patrick Bowler, Chair
Judge William Schma, Vice Chair
Ken Aud
Kathleen Brickley
Andrew Konwiak
Constance Laine

Judge Brian MacKenzie
Judge William Rush
Jeffrey Sauter
Homer Smith
Dr. Chuck Spence
Phyllis Zold-Kilbourn

Members Excused:

Lawrence Belen
Beth Morrison

Others Present:

Susan Cavanagh, Office of the Legislative Council Administrator
Judge Harvey Hoffman
Dawn Monk, State Court Administrative Office

I. Convening of Meeting

The Chair called the meeting to order at 9:35 a.m. and asked the clerk to call the roll. A quorum was present.

Judge MacKenzie moved, seconded by Judge Rush, to excuse all absent members. There was no further discussion. All absent members were excused.

II. Approval of Minutes

The Chair asked for a motion to adopt the minutes of the November 28, 2006 State Drug Treatment Court Advisory Committee meeting.

Dr. Spence moved, seconded by Judge Rush, to approve the minutes of the November 28, 2006 meeting. There was no further discussion. The minutes were unanimously adopted.

III. Defense Attorney Participation Issue

The Chair called on Ms. Brickley to provide an explanation of the defense attorney participation issue. After summarizing the issue, she asked for input as to whether or not the statute as written requires defense attorney involvement beyond the memorandum of understanding. If it does not, she asked if the Committee should recommend a change to not only require, but also fund defense attorney involvement in the drug court process to protect a participant's due process rights. The issue was discussed further and Judge MacKenzie suggested that this may not be a legislative problem. Judge Bowler shared that the national conference has addressed many of the due process issues and asked if a subcommittee should be appointed to study the issue further and bring something back to the group. **Judge Schma moved, seconded by Judge Rush, to appoint a Defense Attorney Involvement subcommittee consisting of Judge MacKenzie as Chair and Kathleen Brickley.** The Chair noted that the idea of adding an Assistant Prosecutor to the subcommittee would be endorsed if anyone wished to bring forward someone for appointment. Dr. Spence then raised the issue of whether there is agreement that the defense attorney is an important player in the process both legally and therapeutically. Responses included comments from Dr. Zold-Kilbourn who pointed out that there are many elements of drug court procedures that are inherent in the 10 key components that could be looked at as well; and Ms. Laine who noted that she does not think it is a philosophical issue, but more of a funding issue. She added that it might lend legitimacy if State grants and Byrne grants paid for defense counsel involvement. The Chair shared that he senses there is a general consensus that the defense attorney does have a major role as part of the team and Judge Schma stressed that the defense attorney issue is critical to the functioning of an integral court system. **There was no further discussion. The motion was unanimously adopted.**

IV. Confidentiality Issue

Dr. Spence provided an update on the confidentiality issue and called on Dr. Zold-Kilbourn to report on SCAO's position regarding the recommendations proposed in the Sauter memo and transmitted to SCAO pursuant to the Chair's request at the last meeting. Dr. Zold-Kilbourn noted that the SCAO legal department agreed with many of the suggestions in Mr. Sauter's memo; however, they do not feel it resolves the 42 CFR issue in terms of reporting into LEIN. Mr. Sauter pointed out that the memo acknowledged that it was the Committee's consensus that we could not satisfy 42 CFR and have the current structure of drug courts in Michigan. He continued with an explanation of the political considerations and noted there would be concerns by the law enforcement community in general with a system that is created in such a way that it does not include good public oversight as to how drug courts are operating and how diversions are handed out. Because the Legislature wants a way to evaluate the success or failure of drug courts, his proposal attempts to identify a way to get closer to complying with 42 CFR by making the report into LEIN be non-public. The restriction on the use of information as stipulated in 42 CFR was raised by Dr. Zold-Kilbourn and Dawn Monk offered additional comments to clarify SCAO's position

that they will not tell courts to violate federal regulations. A discussion regarding the Committee's ability to resolve the issue and what to report to the Legislature followed. **Judge MacKenzie moved the issue be tabled until the next meeting. Judge Schma seconded the motion. The motion passed unanimously.** Judge Schma suggested a discussion with someone at the federal level is needed to find a resolution to the conflict.

V. Drug Court Loan Program

The Chair called on Judge Harvey Hoffman to provide background information on a proposal that would provide funding for drug courts through bank loans to individual participants. Judge Hoffman brought the idea forward for the Committee to consider as a recommendation to the Legislature and is seeking the Committee's support of legislation that could be crafted to make this type of loan on a state level more attractive to the banks. He noted that Senator Cropsy is willing to get behind the idea and introduce legislation if the SDTCAC felt it was appropriate. He added that changes could also be built-in to assist other potential funding alternatives such as the successful 501c foundation program in Kalamazoo. Judge Schma shared other funding ideas including a law that provides up to a \$200 tax credit for contributions to a drug court program. It is his understanding that Senator George has requested the legislation, but warned that funding will be an issue. Another possibility is setting up a mechanism whereby if an organization can show it is saving the State money, the State would release equal amounts of money back to that organization. Judge Hoffman requested that a work group be set up to look at the bank loan idea and other funding alternatives. **Judge Rush moved, seconded by Judge Schma, to appoint a Funding Alternatives Committee consisting of Judge Hoffman as Chair, Judge Schma, and Dawn Monk. There was no further discussion. The motion was unanimously adopted.**

At this point, Judge Hoffman asked to comment on two other matters. First, he shared that the interlock legislation will be introduced soon and he wanted members to be aware that it is important to make sure the legislation allows for flexibility regarding technology. Secondly, he inquired if there is a provision that allows a person to be transferred between a circuit drug court and a district drug court. The consensus was that it does allow for assignment between courts with SCAO approval. Mr. Aud added that there could be a DOC screening problem with misdemeanors going up to felony courts.

VI. High BAC Issue

Mr. Smith suggested the Committee wait to issue a recommendation on the High BAC issue until the legislation is introduced. He explained that the legislation that is being drafted is the same as last year except for two changes which were recommendations from the prosecutors. The opportunity for restricted licenses for those in repeat offender programs was raised by Judge Bowler. Mr. Smith and Mr. Aud responded that issues at the federal level may need to be addressed first. The Chair asked Mr. Smith to provide the clerk with any updates which will then be distributed to committee members.

VII. Juvenile and Family Treatment Courts Subcommittee and Committee Vacancies

The Chair noted that additional members need to be appointed to the Juvenile and Family Treatment Courts Subcommittee and there are three vacancies currently on the full committee (a judge of the family division of a circuit court who has presided over a juvenile drug court program, an individual who has successfully completed a drug treatment court program, and an individual who has successfully completed a juvenile drug court program). He asked the members to personally contact potential candidates and have them contact him so that their names can be submitted to the Legislature. The recommendations will be discussed at the next meeting.

VIII. Annual Report

The Chair reported that the framework of the annual report has started, but the report will not be completed by February 1. A draft report will be included in the next meeting material. The Chair asked members to submit any changes, deletions, and/or additions to the draft by email.

IX. Public Comment

The Chair asked for public comment. There was none.

X. Adjournment

Having no further business, Judge MacKenzie moved, supported by Judge Rush, to adjourn the meeting. Without objection, the motion was approved. The meeting was adjourned at 11:30 a.m.

NEXT MEETING DATE

The next full Committee meeting is scheduled for **Tuesday, March 27, 2007**. A proposed agenda and the location of the next meeting will be sent to members.

(Approved and adopted at the March 27, 2007 SDTCAC meeting.)