

## MEMORANDUM

DATE: January 18, 2023

TO: Kelly Mitchell, Chair, M.S.G.C.  
Nate Reitz, Executive Director, M.S.G.C.

CC: Brooke Morath, Commissioner, M.S.G.C.  
Mohamoud Ibrahim, Commissioner, M.S.G.C.

FROM: Michelle A. Larkin, Commissioner, M.S.G.C.

RE: Request to Correct Statements Made at the January 12, 2023 Meeting

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Greetings. I write to request correction of the following statements, which were made at the January 12, 2023 commission meeting. The statements were transcribed from the publicly posted video of the commission's January 12, 2023 meeting (minute marker 44:03).

*I'll be honest Judge Larkin, this is the *third time that you have caused the delay* on this issue. And we are going into *our third year because you have caused this delay*. I am not going to sugarcoat it. *This is what's happened every single time. Every single time the week before we were going into a final vote, you came up with a reason why it wasn't going to work, and we weren't able to vote on it*. I can only imagine how frustrated the public is that we are not resolving this issue.*

The statements assert that on three occasions over the past two-plus years, the commission was not able to take a final vote on the merits of a proposal to resolve the partial-custody-point issue, due to the actions of a judge. The reference to three lost opportunities to resolve the partial-custody-point issue aligns with the scheduled final votes on three different proposals that had been the subject of public hearings. The record of the

three commission meetings that followed those public hearings show that the statements are inaccurate.

The Approved MSGC Meeting Minutes – January 14, 2021, show that the commission *unanimously voted* to reject the pending proposal to resolve the partial-custody-point issue. Contrary to statements made at the January 12, 2023 commission meeting, I did not prevent a vote on the proposal and I was not the reason for the resulting delay. Instead, the *entire commission* voted to reject the proposal. The relevant portion of the minutes follows.

**B. Partial Points in Criminal History Score**

Director Reitz explained that this proposal was published in Section B of the Public Hearing Notice. Director Reitz further explained that the Commission proposed to modify the 2020 Minn. Sentencing Guidelines sections 2.B & 2.B.1.i; to add a new Comment 2.B.04; and to amend Comment 2.B.102, and that these modifications clarified that if the unrounded sum of the criminal history score points is not a whole number, the criminal history score must be rounded down to the nearest whole number.

**Motion** by Commissioner Middlebrook and second by Commissioner Larkin to reject the proposal in the Public Hearing Notice, Section B.

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The Commission discussed the motion. While expressing support for the motion, some Commissioners also expressed the need for the Commission to resolve the partial-point issue identified in the proposal within a reasonable time period in order to provide guidance to staff and practitioners.

**Motion carried** unanimously on an 11–0 roll-call vote.

Voting “Yes” were Chair Mitchell, Vice-Chair Estrada, Commissioner Dietzen, Commissioner Honold, Commissioner Honsey, Commissioner Ladd, Commissioner Larkin, Commissioner Mark, Commissioner Middlebrook, Commissioner Omari, and Commissioner Schnell.

Commission members expressed an interest in staff presenting interim solutions to the Commission in February.

The Approved MSGC Meeting Minutes – January 13, 2022, show that the commission *unanimously voted* to withdraw action on the partial-custody-point issue at that time. Contrary to statements made at the January 12, 2023 commission meeting, I did not prevent a vote on the pending proposal and I was not the reason for the resulting delay. Instead, the *entire commission* once again voted not to adopt the pending proposal. The relevant portion of the minutes follows.

**5. Accept or Reject Proposal to Amend the Sentencing Guidelines (Action)**

This was on the agenda as an action item. Chair Mitchell recognized Commissioner Schnell who gave remarks related to the proposal and made the following motion:

Motion by Commissioner Schnell and second by Vice-Chair Estrada to:

1. Withdraw action on the custody status point issue at this time for the Commission to continue its study of the custody status point as a sentencing policy; and
2. Make concerted efforts to engage and educate community members, system stakeholders, and legislators as the Commission further assesses the implications of the custody status point policy; and
3. Address the handling of the half point issue by issuing interim guidance to criminal justice practitioners that aligns with the nonprecedential Minnesota Court of Appeals case State v. Eubanks to direct that whenever one-half custody status point is calculated, the half point shall be rounded down for purposes of determining the criminal history score.

**Discussion:** A lengthy discussion ensued in which several commissioners spoke about the proposal and the motion.

**Motion carried** unanimously on an 11–0 roll-call vote. Voting “Yes” were Chair Mitchell, Vice-Chair Estrada, and commissioners Blakey, Honsey, Knutson, Ladd, Larkin, Middlebrook, Moore, Morath, and Schnell.

The publicly posted video recording of the January 12, 2023 commission meeting shows that a majority of the commission voted to reject the most recent proposal. The vote was seven-to-four, with the commissioner-of-corrections, law-enforcement, prosecutorial, victim, and judicial representatives voting in favor of the motion. Contrary to statements

made at the January 12, 2023 commission meeting, I did not prevent a vote on the pending proposal and I was not the reason for the resulting delay. Instead, *a majority* of the commission once again voted not to adopt the pending proposal.

In sum, the commission's actual records establish that resolution of the partial-custody-point issue has been deferred three times based on the commissioner's unanimous and majority votes not to adopt the proposals that have gone to public hearings. Thus, the assertion that my actions have delayed resolution of the issue for over two years are refuted by the commission's own records. The statements making that assertion are simply false.

Several of the current commissioners had not been appointed at the time of the relevant meetings and are likely unfamiliar with the commission's records. Moreover, the public likely does not know that the statements are inconsistent with the commission's records. Yet, those statements inaccurately imply improper conduct by a judge and could cause the commissioners, the bar, and the public to question my integrity. I have therefore copied the two newest commissioners on this memorandum, and I urge the chair and executive director to publicly correct the erroneous statements as soon as possible.

M.A.L.