COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

September 21, 2022

The monthly meeting of the Committee for Public Counsel Services was held by video conference and in person on Wednesday, September 21, 2022, beginning at 5:41 p.m. Joseph L. Kociubes, Chairman, presiding.

MEMBERS PARTICIPATING: Messes. Alvarado, Ball, Chester, Petropoulos
Messrs. Healy, Kociubes, Miller, Stern, White

The record will reflect that due to the Coronavirus pandemic, a hybrid meeting was held with some members in person and some members via videoconference.

Introductions: Mr. Benedetti and the Committee congratulated Denise Simoni, Executive Assistant to the Chief Counsel on her retirement and thanked her for decades of dedicated service. Kerry Batte was welcomed in her new role. Mr. Benedetti also welcomed the Committee to the new 75 Federal Street, Boston office space.

1. **Minutes of July 21, 2022 Meeting**

The minutes of the July 21, 2022 meeting were approved as presented.

2. **Contract – Special Education Advocacy Attorney Mentors**

Ms. Dulcineia Goncalves, Deputy Chief Counsel for the Youth Advocacy Division, presented Special Education Advocacy Attorney Mentors Contract. In 2021, YAD received a grant from the Department of Justice, Office of Juvenile Justice and Delinquency Prevention. The grant helps enhance representation and defense of juveniles both in the YAD Division as well as the CAFL Division regarding education advocacy. The grant funds one attorney from the EdLaw Project and the Special Education Advocacy Mentor Attorneys (SEAM) support panel. The estimated annual cost of these contracts is $344,000 for a 3-year timeframe. The goal of this pilot project is to show with data and measurable outcomes that SEAM mentors successfully support the work of YAD and CAFL with hopes of future sustainability.

MOTION: Mr. White. That the Committee approve the EdLaw Project's Special Education Advocacy Attorney Mentors FY 2023 Contracts as presented.

SECOND: Mr. Stern.

VOTE: Unanimous.

3. **Insurance Coverage for Board of Bar Overseer Actions**

Mr. Marty Healy recused himself and left the meeting at 5:47 p.m.

Mr. Sam Aylesworth, Assistant General Counsel, briefed on proposed Insurance Coverage for Board of Bar Overseer Actions for CPCS Staff Attorneys which would provide $50,000 of litigation cost coverage for claims filed against them at the BBO. The annual premium is a little over $68,000 which breaks down to about $166 per attorney. The proposed insurance coverage is limited to costs of defense and would not cover any sort of fines that would be imposed on attorneys. Providing insurance for BBO representation would be a cost-effective, additional benefit for CPCS staff attorneys and is designed to support staff retention. Without this insurance coverage, CPCS staff attorneys would need to face BBO complaints by representing themselves (a very complex area of practice), pay for representation, or work with CPCS to try to secure a pro bono attorney.

Mr. Terry Welsh, MBA Insurance President has been extremely helpful, and the product created for CPCS serves the specific needs identified.

MOTION: Ms. Alvarado. That the Committee approve the purchase of Errors and Omissions Insurance to cover Board of Bar Overseer Actions for all CPCS Staff Attorneys as presented.

SECOND: Mr. Miller.

VOTE: 7 votes in favor. 1 member rescued themself. Motion carried.

4. **Assigned Counsel Manual – Update**

Mr. Sam Aylesworth, Assistant General Counsel, highlighted changes to the Assigned Counsel Manual since 2018 within the six-page memo titled Update on Substantive Edits, Updates and Changes to the Assigned Counsel Manual (ACM).

A number of changes reflect amendments to Chapter 221 D, namely increases in private attorney hourly compensation rates. The numbered changes pointed out below are a portion of a whole number of changes.

17). In recent legislative session, CPCS was able to increase the rate of pay for assignments ($60/hour to $65/hour; $75/hour to $85/hour; $110/hour to $120/hour).

13). Chapter 5(Q) (Para. 3-4) ("Billable Hour Limit Per Fiscal Year") was changed following amendment to G.L. c. 211 D, §11(b) and (c) for an increase in billable hours, from 1,650 hours to 2,000 hours.

12). ACM Statutory Amendment shortens the period of time closed out bills by private counsel can be processed.

5&6). ACM clarified responsibilities of private counsel to notify CPCS regarding filing notice of appeal. Processes and forms have been streamlined.

9&10). ACM edits performance standards some of which include raising the presumptive maximum number of hours which can be billed for a single day from 8 to 10, increasing the billable hourly rate for associates to $45/hour, and a no case duty day policy allowing 6 hours to be billed when no cases are assigned and explicitly permitting billing waiting time on duty days.

7). Chapter 2 the case file retention policy was also amended so that it is consistent with the Massachusetts Rules of Professional Responsibility.

3.) ACM changes to clarify that when private counsel seeks to represent an assigned client on a collateral matter, application can be made to CPCS Deputy Chief Counsel or panel Director ***or their "designee."***

5. **Facilities Request**

Mr. Kevin Lucchetti, Chief Financial Officer, presented Facilities request. The Facilities and IT Departments at CPCS are requesting permission from the Committee to purchase a medium-duty 2023 Ford T250 van for $47,561. Cost includes maintenance agreement. The van will be purchased within State Contract with one of two dealers that can secure the vehicle during challenging pandemic supply. CPCS doesn't expect van delivery for about six months but is proactively beginning procurement process.

Under the leadership of AJ Peters, Director of Facilities, CPCS has realized that there is a significant amount of time and efficiency lost when using Staff's personal vehicles or rental vehicles to move offices, file cabinets, computer equipment, etc. CPCS is currently relying too heavily on the use of Staff's personal vehicles, availability of rental vehicles is sometimes an issue during busy moving seasons, open trucks cannot move in inclement weather, and heavy volume of over a hundred Facilities requests in a 30-day timeframe creates difficulties.

Continuing to build a robust CPCS Facilities Department focuses on two key principles: 1. Future new lease for warehouse space 2. Van purchase. The new van will be stored at the future warehouse and assets and inventory will be delivered and deployed centrally from that site. Policies are being developed for appropriate van use and storage. Leasing a van or purchasing an electric van are not available options.

MOTION: Ms. Ball. That the Committee approve purchase of Facilities/IT Cargo Van as presented.

SECOND: Ms. Petropoulos.

VOTE: Unanimous.

6. **Monthly Financials Overview Report**

Mr. Kevin Lucchetti, Chief Financial Officer, presented the Monthly Financials Overview Report. Mr. Lucchetti reviewed funding, spending, and surplus for the last FY2022 Monthly Financials Overview (Final) Reported September 2022. FY2022 is now closed. Spending came in at $273.8 million. CPCS most recent forecast was very close at $275.8 million. CPCS estimated projected surplus at $17.4 million and actual surplus was a bit higher at $19.3 million which includes all three accounts: Administration/Operations, Private Counsel, and Court Costs/Experts. Legislature carried forward or Prior Appropriation Continued (PAC) 2 accounts: 0321-1500 with $3.1 million surplus, and 0321-1520 with 9.3 million. CPCS is very pleased about the surplus being carried forward and this will be beneficial to the good work we aim to do in the current FY. Work is also being done with legislators to PAC the Private Counsel 0321-1510 surplus. Work on the proposed FY2024 budget will begin a bit later than usual, most likely in November with a new Governor coming into office in January.

7. **Commitments $10,00 and Over Report**

Mr. Kevin Lucchetti, Chief Financial Officer, presented three items for the Commitments $10,000 and Over Report. The first two are items to mention, and the last item seeks Committee approval.

42. Post Office Square Redevelopment Corp for PDD – Parking Investigators – for about 3 parking spaces.

44. Redishread of New England Inc – FACS-Shredding/Recycling Services – to replace Stericycle as quality of service has deteriorated. There may be some financial offset with the change. The Western MA/Springfield CPCS office is piloting Redishread and CPCS is hoping that Redishread services move East into Boston.

31. Citron Hygiene US Corp – to replace Cintas as quality of service has deteriorated. During the pandemic, there has also been business consolidation, lack of staff, labor issues, and vendors not showing up when they are expected to. Some offset may be expected during the shift.

MOTION: Mr. Miller. That the Committee approve FY2023 Citron Hygiene US Corp contract for $27,533.

SECOND: Ms. Chester.

VOTE: Unanimous.

8. **Election of Officers**

Mr. Paul White recommended consideration for reelection

Joseph Kociubes, Chair

Derege Demissie, Vice Chair
Mia Alvarado, Secretary

There were no other nominations for offices other than those that were presented.

MOTION: Ms. Ball. That the Committee close nominations.

SECOND: Ms. Chester.

VOTE: Unanimous.

MOTION: Ms. Petropoulos. That the Committee reelect Joseph Kociubes Chair, Derege Demissie Vice Chair, and Mia Alvarado Secretary.

SECOND: Mr. Miller.

VOTE: Unanimous.

9. **Chief Counsel Report**

Counsel Crisis Update

Mr. Benedetti stated that challenges continue with hiring and retaining counsel, but he believes that the hourly rate change will have a positive effect. There are still not enough private attorneys and high caseloads continue. CPCS had a meeting with District Court Chief Judge Fortes to update her on the Council situation and to explain how the court could be helpful. There are some instances across the state of Massachusetts where people are still without counsel, primarily in Western, MA. Some staff attorneys are leaving to join the private panel due to the new higher rates and some are leaving after 10+ years and obtaining student loan forgiveness.

CPCS is continuing to expand and improve upon efforts to recruit and hire. A new Talent Outreach position has been created and Mr. Kuda Chidzonga has been hired. He has already had conversations with traditionally black and brown law schools to encourage attorneys to work for CPCS in Massachusetts.

Children and Family Law continues to be challenged in Western, MA with 81 people currently without counsel. CPCS is still requesting additional funding from the Legislature to open another conflict office in Western, MA. The CAFL Western New England Law School initiative is underway. The program will have students taking a class, doing groundwork, and receiving certification that will help them in their CPCS job application or to join the private panel. Jacquelyn O'Brien, CAFL Managing Director, expects internships and externships for the program in spring and summer 2023. A similar program is likely at New England Law School primarily due to Committee member Jack Cinquegrana's efforts.

Private Loan Forgiveness Update

CPCS is advocating for private attorneys who bill a certain number of hours annually and do CPCS work close to full-time to be eligible for loan forgiveness just like Staff attorneys. Ms. Rose King, Criminal Trial Support Unit Director, and Ms. Vanessa Velez, Deputy Chief Counsel for Private Counsel Division, have worked incredibly hard on the loan forgiveness project. The SJC Well-being Committee and private consultant and advisor Heidi Alexander have been the lead in this effort. Five of the DA's, Massachusetts Bar Association, Boston Bar Association, Affinity Bar Association, and the Massachusetts Congressional delegation, especially Senator Warren and Congresswoman Pressley, have been very supportive of this effort.

Internal Control Plan, Risk Assessment, Business Continuity Plan

CPCS is working on a salary package to bring to the Committee next month. CPCS advocated for and received funding that would allow for a $68,000 starting attorney salary.

Work continues on the CPCS Audit being done by the State Auditor. Mr. Bill Shay, Mr. Kevin Lucchetti, Ms. Lisa Hewitt, and IT team are leading the effort in responding to the audit. Focus includes policy and procedures and IT security. CPCS will have opportunity to respond to audit prior to its release in October. Mr. Kociubes shared that he was interviewed by the auditors, and it went well.

CPCS is working on updating our Internal Control Plan. A Risk Assessment is being done and involves a wide-range survey of the entire operation and certain legal staff to identify risk factors that need to be mitigated. From there a Business Continuity Plan will be developed.

Mr. Benedetti introduced Mr. Jon Bartelson, Chief Information Officer and Mr. Ted Waterman, Chief Human Resource Officer.

A Mass Equal Pay Act (MEPA) analysis is also underway and going well.

The next Committee meeting on October 19, 2022 is expected to be hybrid.

There being no further business to come before the Committee, the Committee adjourned at approximately 6:40 p.m.

Respectfully submitted

Mia Alvarado

_____

Mia Alvarado, Secretary