COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

July 15, 2015

The monthly meeting of the Committee for Public Counsel Services was held in the Committee's conference room at 40B Bromfield Street, 1st Floor, Boston, MA on Wednesday, July 15, 2015, beginning at 5:40 p.m. R.J. Cinquegrana, Chairman, presiding.

MEMBERS PRESENT: **Messrs. Gosselin, Kennedy, Kociubes, McGuire, Stern, and Mr. White**

TELECONFERENCING: **Mses. Craven and Tewksbury, and Mr. Watkins**

1. **Approval of June 17, 2015 Minutes**

The minutes of the June 17, 2015 meeting were approved as submitted.

2. **Amicus Request**

Radha Natarajan, staff attorney, sought Committee approval to submit an amicus brief in the matter of *Commonwealth* v. *Kyle Johnson*, SJC-11876. The Supreme Judicial Court (SJC) sought input in the case on the following two questions:

(1) In a case involving an eyewitness identification made without the participation of the Commonwealth, whether the principles of *Commonwealth v. Jones*, 423 Mass. 99 (1996), should be revisited in light of the 2013 report and recommendations of the SJC's Study Group on Eyewitness Evidence.

(2) For purposes of an in-court identification, whether the court should revisit the independent source doctrine in light of *Commonwealth v. Crayton*, 470 Mass. 228 (2014), and *Commonwealth v. Collins*, 470 Mass. 255 (2014).

Attorney Natarajan has participated in the SJC's Study Group on Eyewitness Evidence and is currently participating in the SJC's Standing Committee on Eyewitness Evidence. She will write the brief on behalf of CPCS with the input and assistance of Attorney Benjamin Keehn, the attorney who litigated *Commonwealth* v. *Jones*.

CPCS clients would benefit from a new rule expanding pretrial hearings on eyewitness identification cases and a rule that would further limit in-court identifications.

MOTION: **Mr. White. That the Committee approve the request to**

submit an amicus brief in the matter of *Commonwealth* v. *Kyle Johnson*.

SECOND: **Mr. McGuire.**

VOTE: **Unanimous.**

3. **Salary / Equity Adjustment**

Nancy Bennett, Deputy Chief Counsel, Private Counsel Division, sought Committee approval for a salary / equity adjustment for Attorney Lisa Kavanaugh, Director of the Innocence Program. Ms. Kavanaugh's salary was limited by the funding available through the federal grant that funded the creation of the program and her salary was initially slotted on the salary scale with the managers in the class of 2006 when in fact her class is 2000. Attorney Kavanaugh's position was moved into the agency's operating account; however her salary was not changed. The correction of this error will result in an increase of her annual salary from $78,500 to $83,750.

MOTION: **Mr. Kociubes. That the Committee approve the salary /equity adjustment for Attorney Lisa Kavanaugh, resulting in an increase in her annual salary from $78,500 to $83,750.**

SECOND: **Mr. McGuire.**

VOTE: **Unanimous.**

4. **Travel Reimbursement Increase**

Mr. Benedetti sought Committee approval to increase the current mileage reimbursement rate to that of both the Executive branch and the Judiciary from $.30 per mile to $.45 per mile. This request is contingent upon the FY 2016 budget supporting the increase. Approval of this request with a September 1st rate increase means that CPCS would expect to spend $725,000 in FY 2016, an increase of approximately $207,000 from FY 2015.

MOTION: **Ms. Tewksbury. That the Committee provisionally approve the mileage increase from $.30 per mile to $.45 per mile, contingent upon the FY 2016 budget supporting the increase.**

SECOND: **Ms. Craven.**

VOTE: **Unanimous.**

5. Financial Overview Report

FY 2015

Kevin Lucchetti, Chief Financial Officer, submitted the monthly financial overview report to the Committee for review. He indicated that there were no changes in the spending forecast for line items 0321-1510 and -1520 from the previous month. As of July 7th, a surplus of approximately $47,000 was projected in line items 0321-1500 and -1504.

Mr. Benedetti mentioned that in regards to line items 0321-1510 and -1520, staff has been regularly informing the Administration and the House and Senate Committees on Ways and Means of the run-out date on these accounts. Payments for line item 0321-1510 will be processed for July 21st and on August 4th either a partial or full payment will be processed. Payments in line item 0321-1520 will be processed through the end of next week, but will run out by the end of July. The Administration and Ways and Means are fully aware of this information.

Lisa Hewitt, General Counsel, indicated that she was able to contact Ways and Means Committee staff and they expressed hope that the supplemental budget would be completed after the Governor returns the budget.

Discussion ensued.

FY 2016

Mr. Benedetti indicated that the basic overview of the FY 2016 budget is similar to that of the FY 2015 budget, but includes an additional $2.5M, $1.5M of which is allocated for raises in line item 0321-1504 for case-taking attorneys; the balance of the increase is in 0321-1500. The hope is that there will be sufficient funding to provide meaningful raises to all staff. The budget does not support staffing for the 25% mandate of accepting assigned cases. He is hopeful that meaningful raises will help with the attrition problem and thereby aid in getting CPCS closer to the 25% mandate.

Mr. Lucchetti distributed a document that provides a breakdown of the current year spending, the FY 2016 maintenance request, the Governor's budget, the House budget, the Senate budget, and the Conference Committee report.

Discussion ensued.

It was requested, in addition to reporting retention data to the Legislature as mandated, that staff track data throughout the year relative to the behavior of employees who receive an increase by different variables, such as caseload and attrition, and report that information to the Committee. It was expressed that by doing this analysis, it will determine whether the salary increase has an impact on attrition rates.

6. Chief Counsel Report

Mr. Benedetti reviewed with the Committee what the Criminal Justice Commission that Governor Patrick established (and the Legislature made permanent in statute) has been working on since its creation two years prior. A Report was issued in late December 2014, and contains a number of recommendations, one of which was the elimination of mandatory minimum sentences. He will forward the Report to all.

There being no further business to come before the meeting, the Committee adjourned at approximately 6:30 p.m.

Respectfully submitted,

Joseph L. Kociubes, Secretary