COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

October 20, 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 Tuesday, October 20, 2015, beginning at 5:38 p.m. R.J. Cinquegrana, Chairman, presiding.

MEMBERS PRESENT: **Messrs. Gosselin, Healy, Hernando, Kennedy and Messrs. Kociubes, McGuire, Watkins and White**

TELECONFERENCING: **Ms. Tewksbury**

1. **Approval of September 16, 2015 Minutes**

The minutes of the September 16, 2015 meeting were approved with an addition to reflect Ms. Tewksbury was present at the meeting.

2. **Amicus Request(s)**

Mr. Healy indicated that the amicus subcommittee had reviewed all the requests submitted and that the subcommittee was recommending that all be approved.

- **Adoption of Douglas**

Michael Dsida, Deputy Chief Counsel of the Children and Family Law Department (CAFL), sought Committee approval to submit an amicus brief in the matter of Adoption of Douglas, SJC-11918. The Supreme Judicial Court (SJC) accepted Adoption of Douglas on further appellate review. The case involves important questions that relate to post-termination and post-adoption visitation between children and their parents. Post-termination visitations are visitations from the date parental rights are terminated until the date of adoption and post-adoption visitations are visitations after a child is adopted.

Andrew Cohen, Director of the CAFL Appellate Panel, and Jaime Prince, Staff Attorney in the CAFL Administrative Office, would draft the amicus brief. The brief would be due on or about November 20, 2015.

MOTION: **Mr. Cinquegrana. That the Committee approve the filing of the amicus brief in the matter of the Adoption of Douglas, SJC-11918.**

SECOND: **Mr. White.**

VOTE: **Unanimous.**

- **Commonwealth v. Mercado**

Wendy Wayne, Director of the Immigration Impact Unit (IIU), sought Committee approval to submit an amicus brief in the matter of Commonwealth v. Mercado, SJC-11964. The case presents the last unanswered question in Massachusetts regarding the retroactivity of Padilla v. Kentucky, 130 S. Ct. 1473 (2010). The SJC has accepted direct appellate review to determine whether Padilla retroactivity should be extended back to April 24, 1996. The law currently states Padilla is retroactive in Massachusetts to April 1, 1997.

Mr. Mercado's CPCS appointed appellate attorney reached out to the IIU for amicus support. The defendant's brief must be filed by October 28, 2015, and amicus should be filed at the same time. The amicus brief will likely provide a combination of legal argument, the history of immigration law changes in 1996 and 1997 relevant to criminal conviction, and individual stories to assist the SJC in analyzing this complex area of law.

MOTION: **Mr. Kociubes. That the Committee approve the amicus request in the matter of Commonwealth v. Mercado, SJC-11964.**

SECOND: **Mr. White.**

VOTE: **Unanimous.**

- **Commonwealth v. Frank Valdez**

Ms. Wayne sought Committee approval to submit an amicus brief, if application for further appellate review (FAR) is allowed by the Supreme Judicial Court (SJC), in the matter of Commonwealth v. Frank Valdez, FAR-23809, or to submit a letter in support of the FAR.

The case addresses the prejudice requirement in motions to vacate pleas due to violations of the judicial immigration warning statue. The statute requires a judge, prior to accepting a guilty plea or admission to sufficient facts, to advise a defendant that the plea or admission could have immigration consequences of "deportation, exclusion from admission to the United States, or denial of naturalization." If the court fails to give the proper warning a defendant is entitled to vacate his/her plea if he/she establishes that the conviction "may have or has had one of the enumerated consequences" about which he/she was not warned. The SJC has interpreted this prejudice requirement to require "more than a hypothetical risk".

Ms. Wayne went on to explain that based on the language in the SJC decisions, the prejudice requirement for motions to vacate under Ch. 278, §29D has become increasingly difficult to establish. Unless a defendant currently is or has been in removal proceedings based on the criminal conviction, which he seeks to vacate, trial courts and the Appeals Court have repeatedly denied such motions, finding that the defendants have failed to demonstrate prejudice.

The amicus brief would seek to further clarify for the SJC the very real, not hypothetical, risks noncitizen defendants face with criminal convictions even if they have not yet been placed in removal proceedings.

MOTION: **Mr. Kociubes. That the Committee approve the amicus request in the matter of Commonwealth v. Frank Valdez, FAR-23809, if application for further appellate review is allowed by the SJC or to submit a letter in support of the FAR.**

SECOND: **Mr. Watkins.**

VOTE: **Unanimous.**

3. Lease Approval(s)

Mr. Benedetti sought Committee approval for new leases for the Framingham and Dedham offices.

The Framingham office currently located at 2 Bishop Street, Framingham was declared not to be in compliance with the Americans with Disabilities Act and so the lease cannot be renewed. The proposed office space is located at 300 Howard Street, Framingham, MA. The annual rent will be $56,950 (year 1) for 4,154 sq. ft. at $13.7 /sq. ft. (year 1). The cost of the lease escalates to $14.27 / sq. ft. in year 5. The lease term is from May 1, 2016 through April 30, 2021.

MOTION: **Mr. Hernando. That the Committee approve the new lease for the Framingham office to relocate to 300 Howard Street, Framingham, MA for an annual rent of $56,950 (year 1) for 4,154 sq. ft. at $13.71 /sq. ft. (year 1) to $12.27 sq. ft. (year 5).**

SECOND: **Mr. White.**

VOTE: **Unanimous.**

The Dedham office has been evicted from 450 Washington Street, Dedham, MA, effective December 31, 2015, and will be relocating to 57 Providence Highway in Norwood. The annual rent will be $71,260 (year 1) for 2,545 sq. ft. at $28.00 /sq. ft. (year 1). The cost of the lease escalates to $30.00 sq. ft. in year 5. The lease term is from December1, 2015 through November 30, 2020.

MOTION: **Mr. White. That the Committee approve the new lease for the Dedham office to relocate to 57 Providence Highway, Norwood, MA for an annual rent of $71,260 (year 1) for 2,545 sq. ft. at $28.00 sq. ft. (year 1) to $30.00 sq. ft. (year 5).**

SECOND: **Mr. McGuire.**

VOTE: **Unanimous.**

4. **Commitments $10,000 and Over Report**

Kevin Lucchetti, Chief Financial Officer, presented the FY 2016 commitments report to the Committee for review. This month there are four new commitments: HR Self-Serve Time and Attendance (chargeback – Human Resources Employment Service Center), Strategy Matters, LLC (strategic planning consultant services), HRCMS administrative costs (chargeback – human resources administrative expenses), and James Butler (IT consulting services).

5. **FY 2016 Monthly Financial Overview Report**

Mr. Benedetti updated the members on the FY 2015 supplemental budget request. The request is currently being reviewed by both the House and Senate. Approximately $3.9M is needed to pay outstanding bills submitted in accounts 0321-1510 (private attorney line item) and 0321-1520 (court cost line item) at the end of the fiscal year.

Mr. Lucchetti presented the monthly financial overview report to the Committee for review. He indicated that there has been no change from the previous month. Anticipated spending for the year is approximately $215M, with an operating deficiency of approximately $44M in the 0321-1510 and 0321-1520 accounts.

6. **Chief Counsel Report**

Mr. Benedetti informed the members that the Senate followed up on the action of the House of Representatives by overriding the Governor's veto of the increased compensation rates of private assigned counsel. As a result of the override, effective July 1, 2016, the compensation rates for the private bar will increase as follows: district and juvenile court from $50/hr. to $53/hr., and Children and Family Law cases from $50/hr. to $55/hr. Mr. Benedetti expressed appreciation to the House and Senate Leadership, Speaker DeLeo and Chairman Dempsey, as well as Senate President Rosenberg and Senate Ways and Means Chair Karen Spilka for their initiative and support. He also recognized the Massachusetts Bar Association and especially Committee member Marty Healy for his continued efforts to secure these increases.

Mr. Healy conveyed his appreciation to Speaker DeLeo for his initiative on the matter and to Chairman Dempsey for his support.

There being no further business to come before the meeting, the Committee adjourned into Executive Session at approximately 6:13 p.m.

Respectfully submitted,

Joseph L. Kociubes

Joseph L. Kociubes, Secretary