

COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

FEBRUARY 17, 2016

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, February 17, 2016, beginning at 5:41 p.m. R.J. Cinquegrana, Chairman, presiding.

MEMBERS PRESENT: Ms. Ball, Messrs. Gosselin, Kennedy, and Kociubes
Ms. Shah and Mr. Stern

TELECONFERENCING: Mr. Healy and Ms. Tewksbury

1. Approval of January 19, 2016 Minutes

The minutes of the January 19, 2016 meeting were approved as submitted.

2. Amicus Request(s)

A. Commonwealth v. Carter, SJC-12043

Josh Dohan, Director of the Youth Advocacy Division, sought Committee approval to submit an amicus brief in the matter of Commonwealth v. Carter, SJC-12043.

The defendant in this case was indicted as a youthful offender for manslaughter for allegedly encouraging a friend to commit suicide. The Supreme Judicial Court will consider the sufficiency of the evidence supporting this indictment. The Youth Advocacy Division of CPCS will submit an amicus brief arguing that in determining whether a juvenile has committed involuntary manslaughter by engaging in wanton and reckless conduct, the Court should not ask, as it normally would, whether the juvenile acted "with knowledge of facts that would cause a **reasonable person** to know that a danger of serious harm existed." Instead, the court should apply a juvenile-specific standard that asks whether **a reasonable juvenile of a similar age** would have known that a danger of serious harm existed. This standard is in line with recent case law acknowledging that "children are different" and that the law must take this difference into account. It is also in line with what multiple other jurisdictions have done for decades.

MOTION: Ms. Ball. That the Committee approve the submission of an amicus brief in the matter of Commonwealth v. Carter, SJC-12043

SECOND: Mr. Kociubes.

VOTE: Unanimous.

B. Clay v. Tressler, SJC-12032

Mr. Dohan sought Committee approval to submit an amicus brief in the matter of Clay v. Tressler, SJC-12032.

This case is about the legality of a 2012 statute requiring that prisoners serving life sentences get a supermajority, rather than a majority, of the parole board to win parole. Specifically, the issue is whether this is an unconstitutional ex post facto law as applied to prisoners whose crimes occurred before the statute's effective date. While this issue affects both adults and juveniles, it has a disproportionate impact on juveniles—like Clay—who were convicted of first-degree murder and sentenced to life-without-parole sentences that were later found to be unconstitutional in Diatchenko v. Dist. Attorney for the Suffolk Dist., 466 Mass. 655 (2013). The Youth Advocacy Division of CPCS would like to file an amicus brief focused on this disproportionate effect.

For the reasons stated, he is respectfully requesting the amicus request be approved.

MOTION: Mr. Kociubes. That the Committee approve the filing of an amicus brief in the matter of Clay v. Tressler, SJC- 12032.

SECOND: Ms. Ball.

VOTE: Unanimous.

3. Update on S.J.C. Rule 3:10 (Indigency Determination)

Lisa Hewitt, General Counsel, presented an update on the Supreme Judicial Court Rule 3:10 review.

In 2013 the Chief Counsel requested Ms. Hewitt to create a working group to review Rule 3:10 of the SJC. The working group consisted of members from each division of the agency as well as members from the Registry of Motor Vehicles, Department of Revenue, Department of Transitional Assistance, and the Probation Department.

G.L. Section 2 of Chapter 211 D mandates CPCS to establish a definition of indigency. In 1991 and 1993, CPCS proposed amendments to the SJC to amend the rules so that there were no inconsistencies.

Mr. Cinquegrana established a subcommittee of the following members: Mr. Watkins, Mr. Healy and Mr. McGuire, to review the proposal. A few suggestions were made to the draft and presented to the full Committee at the July 15, 2014 meeting. After the CPCS meeting the draft proposal was then sent to the SJC for their consideration.

The SJC created a committee consisting of many clerks, members of the probate court, and members of probation. Mr. Kennedy represented the House of Representatives and Senator Brownsberger represented the Senate. Also involved were members of the Massachusetts Taxpayers Foundation. Discussed were misconceptions about the protocol for determining indigency.

The SJC will be issuing a final draft shortly and will seek public comment.

4. Election of Officers

Mr. Cinquegrana reported that it is time for the annual election of officers. He has selected Mr. White to serve as the nominating person and requested that any Committee member interested in serving as an officer of the Committee should inform Mr. White.

Mr. Cinquegrana also stated that the subcommittees of the Committee will be reevaluated once the officers are elected.

5. Monthly Financial Overview Report

Kevin Lucchetti, Chief Financial Officer, presented the FY 2016 monthly financial overview report to the Committee for review. As of mid-February, total spending is approximately \$106M with total estimated spending for FY 2016 forecast at \$215M. The Governor has filed a supplemental funding bill to cover the deficiency in line items 0321-1510 and 0321-1520. Mr. Benedetti indicated that efforts continue at securing funds for Hinton Drug Lab related expenses.

6. Commitments \$10,000 and Over Report

Mr. Lucchetti presented the commitments over \$10,000 report. There were no new commitments to report this month.

7. FY 2017 Budget Update

Mr. Benedetti reported on the Governor's FY 2017 budget proposal. The overall appropriation is closer to what CPCS estimates for spending in FY 2017; however, the proposal does not include funding to annualize raises given to staff in January; does not include funding for staff needed to handle 25% of the caseload; and also, the proposal rolls back the modest increase in hourly rates for the private bar scheduled to take place on July 1, 2016. The proposal also does not include any funding for continued staff salary and private bar compensation relief. Mr. Benedetti pointed out that the proposal does appear to provide further compensation relief for Assistant District Attorney's.

The Governor's budget proposal includes an outside section which calls for a study of CPCS with an appropriation of \$250,000. It provides for an independent consultant to evaluate measures of the workload of the staff and the private bar, and to make recommendations on strategies to maximize the efficiency and effectiveness within the CPCS.

Staff worked closely with the Governor's staff as they prepared for their budget proposal providing detailed information and answering numerous questions.

Budget advocacy work continues with the Legislature with the Joint Committee on Ways and Means holding its budget hearing on February 23, 2016.

There being no further business to come before the meeting, the Committee adjourned at approximately 6:31 p.m.

Respectfully submitted,

Joseph L. Kociubes, Secretary