

COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

MARCH 15, 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, March 15, 2016, beginning at 5:42 p.m. R.J. Cinquegrana, Chairman, presiding.

MEMBERS PRESENT: Messrs. Gosselin, Hernando, and Kociubes
Ms. Shah and Messrs. Stern, Watkins, and White

TELECONFERENCING: Mr. Kennedy and Ms. Tewksbury

1. Approval of February 17, 2016 Minutes

The minutes of the February 17, 2016 meeting were approved as submitted.

2. Amicus Request(s)

Wendy Wayne, Director of the Immigration Impact Unit (IIU), sought Committee approval to submit an amicus brief in the matter of Nanje v. Chaves, U.S. Court of Appeals for the First Circuit, No. 15-2254.

Ms. Wayne explained that this is the second amicus request that the IIU has requested to submit an amicus on a 1st circuit case.

In this case pending in the First Circuit Court of Appeals, Judge Dougan of the Boston Municipal Court found that the amount of loss tied to a particular fraud conviction was no more than \$6,000. Despite this factual finding by the trial court, immigration authorities and subsequently the federal district court concluded that the loss was in fact greater than \$10,000 and as a consequence the offense constituted an aggravated felony. The federal district court therefore affirmed the denial of the plaintiff's application for U.S. citizenship because an aggravated felony conviction barred the plaintiff from citizenship. She explained that immigration law permits an applicant for citizenship to appeal a denial to federal court. It also makes him subject to virtually certain removal.

Counsel for the appellant contacted the IIU for amicus support. The National Immigration Project of the National Lawyers Guild has agreed to sign the brief CPCS authors. This case raises issues of great import to both Massachusetts defense counsel and CPCS noncitizen clients. A rule that permits re-litigating factual issues decided in a criminal proceeding means that noncitizen defendants could never be sure of the immigration consequences of certain criminal

dispositions and defense counsel would be hard-pressed to meet their obligations under *Padilla v. Kentucky*.

The CPCS amicus would likely explore these policy concerns, while also expanding on the legal arguments that bind immigration authorities to the factual determinations made in criminal cases.

For these reasons, she respectfully requests that this recommendation be approved.

MOTION: Mr. Kociubes. That the Committee approve the request to file an Amicus brief in the matter of Nanje v. Chaves, U.S. Court of Appeals for the First Circuit, No. 15-2254.

SECOND: Mr. White.

VOTE: Unanimous.

3. Contract(s)

A. Web Application Security Testing

Anthony J. Benedetti, Chief Counsel, sought Committee approval for mobile device containerization software to improve secure management of mobile email. The technology allows CPCS to manage CPCS content synchronized to these containers while not affecting anything else on the personal device.

CPCS is currently evaluating solutions from three leading vendors with the intent to acquire before the end of FY 2016 in an amount up to \$50,000, including professional services.

MOTION: Mr. Hernando. That the Committee approve the contract for a mobile device containerization software in an amount up to \$50,000, including professional services.

SECOND: Mr. Kociubes.

VOTE: Unanimous.

B. Painting – Springfield Office

Mr. Benedetti sought Committee approval to continue an existing project to paint the Springfield Office. The project began in July of 2015, for work initiated for the first floor only at a cost of \$15,500. In February 2016, an additional estimate was requested to paint the second floor for an additional \$13,500 bringing the total cost up to \$30,000. Painting the second floor will complete this project.

MOTION: Mr. White: That the Committee approve the project of painting

of the Springfield office, bringing the total cost of the project to \$30,000.

SECOND: Ms. Shah.

VOTE: Unanimous.

4. Election of Officers

Mr. White, as nominating committee member, recommended the re-election of Mr. Cinquegrana as Chair, Mr. Kociubes as Vice-Chair, and Mr. Hernando agreed to serve as Secretary. He did not hear from any other interested parties. He indicated the three are well-experienced and committed members of the Committee, and that it will be helpful for the stability of the agency going forward to elect all three.

Mr. Cinquegrana mentioned the various subcommittees and solicited interest in service on the committees. The subcommittees are: executive committee, budget and fiscal, personnel, training and qualifications, and amicus.

If anyone is interested in serving on a committee, they should contact Mr. Cinquegrana or Mr. Benedetti.

MOTION: Mr. Watkins. That the Committee elect the following as officers of the Committee: Mr. Cinquegrana as Chair; Mr. Kociubes as Vice-Chair; and Mr. Hernando as Secretary.

SECOND: Ms. Shah.

VOTE: Unanimous.

5. Audit and Oversight Department Overview

William Shay, Director of the Audit and Oversight Department (A&O), presented an overview to the Committee. The A&O Department was created in 1991 and is comprised of six professionals that fulfill the mandate to monitor the bills submitted by and compensation paid to private counsel and court cost vendors. The department's critical function serves to protect both the clients and the agency.

CPCS processes over a half million bills a year. In order to fulfill the mandate the department utilizes a number of internal controls within the billing system. In addition, the department serves to:

- Educate and train the private bar by explaining the billing rules and statutory limitations on billing.

- Explain what the expectations are for billing records.
- Explain the record keeping requirements.
- Inform private counsel they will be asked to provide support for bills submitted and services provided.

He then proceeded to highlight three areas of reviews conducted. They are:

- Targeted reviews of complex cases.
- Random audits.
- Full audit.

In addition to the reviews, there are a number of internal controls. They include, among others:

- The eight hour daily limit on billable hours and the option of counsel to obtain a waiver.
- The practice that late bills will not be paid unless they meet statutory criteria (results tracked).

The Committee has adopted, at the recommendation of A&O, strengthening certain controls, such as policies related to attorney malpractice insurance.

In 2007 and 2011, the agency was audited by the Office of the State Auditor (OSA). In 2011, they reviewed e-bill, internal controls, audit plan, the random audit files, full audit files, and court cost vendor billing. Ultimately, the Auditor found that all the recommendations from the 2007 audit were fulfilled. The Report of the OSA did not make any additional recommendations on how the agency could improve the current auditing and concluded that all the auditing functions and internal controls were satisfactory (the Auditor's highest rating).

Mr. Shay then introduced the staff:

- Maura Dupray, staff counsel
- George Earley, staff counsel
- Renay Costa, staff counsel
- Denise Torracco, staff auditor
- Sasha Brown, Administrative Assistant
- James Terrasi, Chief Auditor.

In conclusion, Mr. Shay indicated he would like to think that the department serves a critical function in the agency by providing assurance and demonstrating that the funds that are dedicated to indigent defense and the representation of indigent people are well spent, well accounted for, and that we have systems and internal controls in place that prevent fraud and overbilling within a system that provides the best indigent defense to clients.

Several members stressed the diligence of the department and that they are a valuable function of the agency.

6. 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-March, total spending is approximately \$123M with total estimated spending for FY 2016 forecasted at \$215M.

Discussion ensued.

7. Commitments \$10,000 and Over Report

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

8. Chief Counsel Report

Mr. Benedetti reported on the following:

Senate Appointments

The Senate President reappointed Kathrine Craven for another term and appointed Professor Bruce Miller of Western New England School of Law. He teaches constitutional law along with other subjects related to public law and litigation related issues. His focus is on legal issues that affect the poor. He is president of No More Guantánamos and serves on the board of the Rosenberg Fund for Children.

Attrition

Attrition is continuing to be reviewed. At this point in time, projected for FY 2016, attrition is at 14.5%. In FY 2015 it was 13.2% and FY 2014 it was 14.9%. He indicated it was too early to determine whether the salary increase would have any effect on attrition. As of February 22, 2016, 73 people have left the agency, of which 45 were attorneys. Of the 73, 37% had less than three years of service and another 40% had three-six years of service.

The agency has been implementing other ways to retain staff other than compensation, such as strategic planning, improving communication, and senior leadership group meetings.

Discussion ensued.

Budget

The FY 2017 budget advocacy is on-going. The House is expected to release their budget in mid-April with the Senate following in mid-May.

Legislation

The Governor signed the Opioid bill on March 14, 2016. Both the Speaker of the House and the Senate President gave CPCS the opportunity to weigh in on the concern regarding the 72 hour hold period, which did not end up in the final bill.

A House and Senate Conference Committee compromised on the automatic suspension of drivers' licenses of those convicted of certain drug offenses.

On a final note the Senate voted on a bill that would increase the threshold of larceny charges.

There being no further business to come before the meeting, the Committee adjourned at approximately 6:47 p.m.

Respectfully submitted,

Julio Hernando, Secretary