

COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

September 21, 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, September 21, 2016, beginning at 5:38 p.m. R.J. Cinquegrana, Chairman, presiding.

MEMBERS PRESENT: Ms. Ball, Messrs. Hernando, Rosenfeld, Stern and
Messrs. Watkins and White

TELECONFERENCING: Ms. Craven, Mr. Gosselin and Ms. Tewksbury

1. Minutes of the July 19, 2016 Meeting

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

2. Contract – Attorney Dorothy Storrow

Amy Karp, Training Director for the Children and Family Law Division, sought Committee approval to enter into a contract with attorney Dorothy Storrow in the amount of \$33,150 for the period of October 1, 2016 through June 30, 2017. Attorney Storrow will be paid with funds awarded to CPCS from the federal Court Improvement Program administered by the Supreme Judicial Court (SJC). She will be reimbursed on an hourly basis at the rate of \$60 per hour for a maximum of 540 hours.

Attorney Storrow will take the lead on planning and presenting new curriculum, including training programs on client relations and ethical issues, expert witnesses and negotiation skills. She will also continue to help with presenting lectures and coaching small group exercises at certification training.

MOTION: Ms. Ball. That the Committee approve the contract with Attorney Dorothy Storrow in the amount of \$33,150 for the period of October 1, 2016 through June 30, 2017, to be paid with funds from the federal Court Improvement Program administered by the Supreme Judicial Court.

SECOND: Mr. Hernando.

VOTE: Unanimous.

3. Monthly Financial Overview Report

Kevin Lucchetti, Chief Financial Officer, presented the monthly financial overview report for FY 2016 to the Committee for review.

He explained that staff is currently in the process of dealing with three fiscal years simultaneously: closing out FY 2016, operating in FY 2017 and starting the process for the FY 2018 budget.

For FY 2016, the accounts payable period has closed and we are waiting for \$4.9M in supplemental funds for 0321-1510 and 0321-1520 to pay all outstanding bills and close out the fiscal year. Mr. Lucchetti explained that he had examined the growth in the court cost line item (0321-1520) for the two year period between FY 2014 and FY 2016 to see what might be driving the increase in spending. The review showed that there has been an overall increase in bills by 13.5% or 8,000 more bills in 2016 than in 2014. The average bill cost has risen by approximately 10%. This growth has resulted in an increase of \$4M in spending in the line item over the two year period. The increase is being driven in each division by certain categories of experts – private investigators from district court cases; psychiatrists/psychologists in mental health cases; and social workers/psychiatrists in children and family law cases.

Mr. Lucchetti also mentioned that he is continuing to examine the expert utilization rate; in district court, experts are being used more on a per case basis, bringing the usage rate to 13% in FY 2016, which is a significant increase from FY 2014.

Mr. Benedetti stated that the Committee had implemented several cost-controlled measures in previous fiscal years in the court cost area. In 2008, the maximum rates for all experts was reduced by 5% and in 2011 the rates were reduced an additional 5% for psychiatrists and psychologists.

Discussion ensued regarding the availability of experts and rates/caps for the experts.

In FY 2017, Mr. Lucchetti is currently estimating a small deficiency in the operating account, (0321-1500) of approximately \$425,000 and in line items 0321-1510 and 0321-1520 the deficiency is estimated to be approximately \$54M.

Plans were discussed to schedule meetings for the budget subcommittee with a plan to present the FY 2018 budget proposal to the full Committee at the November meeting.

4. Commitments \$10,000 and Over Report

Mr. Lucchetti presented the commitments \$10,000 and over to the Committee for review. There were no new commitments to report that have not been previously preapproved.

5. Other Matters

*Policy Changes

Lisa Hewitt, General Counsel, informed the members of two major CPCS policy issues that will be brought to the Committee for discussion and approval in the next few months. The redrafts are:

- Assigned Counsel Manual –The ACM contains all the regulations governing private counsel practice on CPCS appointed cases including the areas of billing, discipline, training, and performance requirements. The proposed draft will encompass needed legal updates and suggested clarifying language. The substantive changes that require Committee approval will be presented once a final draft is ready for review.
- The CPCS Personnel Policy Manual – The CPCS Personnel Manual contains the rules and regulations relative to employment at CPCS. A working group was created to review the present policies consisting of the General Counsel, members of the Human Resources Department, and consultant Elizabeth Kilcoyne. Outside employment law counsel will also be consulted.

*Bridgeman Litigation

Nancy Bennett, Deputy Chief Counsel for the Private Counsel Division, updated the members on the *Bridgeman* litigation, which is the litigation regarding the Hinton Lab Drug misconduct of chemist Annie Dookhan. CPCS is an intervening party. The American Civil Liberties Union (ACLU) and other pro bono counsel represent the petitioners who brought a Chapter 211, Section 3 action in 2014. The case was reported to the full bench of the SJC in August 2016 on the question of whether the court should order dismissal of 24,000 Dookhan related cases.

Prior to this action, Judge Botsford, sitting as the Single Justice required the District Attorneys in the affected counties to produce lists of all cases with adverse decisions where Dookhan was a participant in the testing. At that time CPCS filed affidavits stating that we had limited capacity to assign cases and requested a global solution. The SJC then solicited amicus briefs in September to address the question as to whether the Dookhan defendants were entitled to a comprehensive remedy, including whether all cases involving misconduct by Dookhan should be dismissed or subjected to a court-imposed deadline.

*Sonja Farak – Amherst Drug Lab

Randy Gioia, Deputy Chief Counsel for the Public Defender Division, updated the members on the Sonja Farak scandal, which involved an analyst from the Amherst Drug Lab who was using/stealing drugs for many years while on the job.

The Court is presently considering motions to Dismiss on Prosecutorial Misconduct filed by Attorney Luke Ryan and CPCS Attorney Rebecca Jacobstein and several other attorneys. Evidentiary hearings on these motions are scheduled to begin on October 17, 2016 in Hampden

Superior Court in front of Judge Richard Carey. Approximately 15 cases have been consolidated for these hearings.

*Braintree Police Department

In May 2016, the Mayor of the town of Braintree ordered that an audit be conducted of the evidence room at the Braintree police department. It has been widely reported that the evidence officer committed suicide when informed an audit was to be conducted. The audit period examined the handling of evidence from 1999 to the present. The Audit revealed approximately 5,000 pieces of narcotics evidence missing; 2,500 pieces of property; \$400,000 in cash; and 60 firearms. Complicating this audit was the fact that in 2012 Braintree police conducted a purge of some evidence; however, there was poor documentation of the evidence purge. As a result of these findings the District Attorney's office identified 200 cases going back to 2012, sent notices to attorneys, identified people in custody to expedite their cases for review and have ultimately dismissed several drug cases. Staff offices and the Bar Advocate Program in Norfolk County are working together to identify affected cases and seek relief for all affected clients.

*Lee Police Department

A recent newspaper article in a Springfield newspaper reported that money and drugs were stolen from the town of Lee Police Department.

6. Chief Counsel Report

Mr. Benedetti told members that he, Lisa Hewitt and Kevin Lucchetti had an initial meeting with the Administration to discuss the FY 2018 budget. Present at the meeting were the Governor's legal staff and Administration and Finance fiscal and legal staff. Result of the meeting is that it is clear that the Administration will be looking to achieve savings in every agency in the Commonwealth and will be looking for CPCS to produce cost-savings ideas.

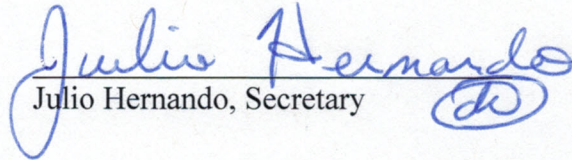
Mr. Benedetti reported on two other items:

- A private counsel survey is being prepared for distribution. The staff has collaborated with the expert polling group MassInc to produce a survey to assess CPCS' private counsel capacity, both current and future. The survey will gather information about private counsel availability and future plans, as well as information about how CPCS and Court policies impact private counsel participation on CPCS panels. The survey was prepared in late summer due to staff concerns about private counsel capacity to meet the needs for assigned counsel but was not distributed while lack of funding left some FY16 bills unpaid. We anticipate distributing the survey during October.
- There are currently two pending press inquiries around the CPCS budget and staff is responding to requests for information; additional information will be provided to the Committee as staff learns more.

The meeting ended with a discussion on dates for the Committee meetings in October and November. Denise Simonini will inquire of members as to their availability for October and inform them of the result.

There being no further business to come before the meeting, The Committee adjourned at approximately 7:10 p.m.

Respectfully submitted,


Julio Hernando, Secretary