COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

November 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 Tuesday, November 15, 2016, beginning at 6:10 p.m. R.J. Cinquegrana, Chairman, presiding.

MEMBERS PRESENT: Ms. Ball, Messrs. Hernando, Kennedy, and Kociubes
Mr. Rosenfeld, Ms. Tewksbury and Messrs. Watkins and White

TELECONFERENCING: Mr. Gosselin

1. **Minutes of the October 18, 2016 Meeting**

The minutes of the October 18, 2016 meeting were approved subsequent to the following amendment made by Mr. Hernando: "Kevin Lucchetti, Chief Financial Officer, presented the monthly financial overview report for FY 2017 to the Committee for review."

2. **Amicus Request(s)**

The amicus subcommittee reviewed both requests and unanimously approved the filing of both amicus briefs.

A. **Commonwealth v. James Keown, SJC-10593**

Nancy Bennett, Deputy Chief Counsel, sought Committee approval to submit an amicus brief in the matter of Commonwealth v. James Keown, Supreme Judicial Court (SJC) No. 10593.

Ms. Bennett indicated that there has not been an amicus solicitation from the SJC, but a request came directly from assigned appellate counsel. Counsel seeks support for the following argument:

> In order for a search warrant to issue for the forensic examination of digital devices, such as computers and cellphones, the search protocol must be specified in the warrant and the manner of the search must be limited so as to comport with the particularity requirements of the Fourth Amendment and Art. 14.

Counsel is requesting amicus support not only from CPCS but also from the Massachusetts Association of Criminal Defense Lawyers (MACDL) and the American Civil Liberties Union

(ACLU). MACDL has obtained support from Goodwin Proctor and it may be possible for CPCS to sign on to the brief prepared by that firm.

MOTION: **Mr. Rosenfeld. That the Committee approve the filing of an amicus brief in the matter of Commonwealth v. James Keown, SJC No. 10593**

SECOND: **Mr. Watkins.**

VOTE: **Unanimous.**

B. Commonwealth v. N.M., SJC-12152

Joshua Dohan, Director of the Youth Advocacy Division (YAD), sought Committee approval to submit an amicus brief in the matter of Commonwealth v. N.M., SJC-12152. The request is on a youthful offender issue regarding the right to file an interlocutory appeal when a motion to dismiss a youthful offender indictment is denied in the trial court.

The case is presently pending before the full bench of the SJC, but has not yet been scheduled for oral argument. At this point, the Court has not issued an amicus solicitation, but it did specifically direct the Juvenile to brief the issue of whether a juvenile "is entitled as a matter of right to review [of an order denying a motion to dismiss a youthful offender indictment] pursuant to G.L. c. 211, §3."

The brief will focus on two issues: 1) that the single justice was correct in Felix F, when he permitted review under G.L. c. 211, §3, based on a finding "that there is no other adequate appellate remedy to the loss of the protective nature of juvenile proceedings if a juvenile is erroneously tried as a youthful offender." and 2) that granting children the right to file interlocutory challenges in orders denying motion to dismiss youthful offender indictments will not create undue administrative burdens for the Court. The key issue is that unless a juvenile defendant has the opportunity for an interlocutory appeal, s/he will essentially have no right to appeal because given the amount of time that passes for an ordinary appeal to be filed and heard, by the time such a case is decided the defendant will be too old to benefit.

Attorney Beth Eisenberg, CPCS's former Director of Special Litigation, has agreed to write the brief on behalf of YAD.

MOTION: **Mr. Rosenfeld. That the Committee approve the filing of an Amicus brief in the matter of Commonwealth v. N.M., SJC-12152.**

SECOND: **Mr. White.**

VOTE: **Unanimous.**

3. Lease Extension

Anthony Benedetti, sought Committee approval for an extended five year lease term for the Roxbury office, located at 7 Palmer Street, Roxbury, Massachusetts, effective December 14, 2016 through December 13, 2021 for 6,231 sq. ft. at $29.25 per sq. ft. for an annual rate of $182,257.

MOTION: **Mr. Hernando. That the Committee approve the extension lease for the Roxbury office, located at 7 Palmer Street, Roxbury, Massachusetts, effective December 14, 2016 through December 13, 2021 for 6,231 sq. ft. at $29.25 per sq. ft. for an annual rate of $182,257.**

SECOND: **Mr. Kociubes.**

VOTE: **Unanimous.**

4. Monthly Financial Overview Report

Kevin Lucchetti, Chief Financial Officer, presented the monthly financial overview report of FY 2017 to the Committee for review. There were no changes in the report from the previous month.

5. Commitments $10,000 and Over Report

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

6. Chief Counsel Report

Mr. Benedetti updated the Committee on the following items:

- A *Boston Globe* article was published in today's (November 15th) paper that discussed cost of Independent Medical Examinations (IMEs), and other related issues. CPCS had been receiving inquiries from the reporter since August 31, 2016 with information being exchanged on numerous occasions. The Committee had been briefed previously; at last month's meeting, Mark Larsen, Director of the Mental Health Division, gave a detailed update on this topic. Mr. Cinquegrana, as well as General Counsel Lisa Hewitt and Mr. Larsen, all provided information to the reporter. The number of inaccuracies in the article were discusses but all members unanimously agreed that there should be no response.

- Arguments before the SJC in the Kevin Bridgeman & Others v. District Attorney for Suffolk County & Others (Hinton Drug lab/ Annie Dookhan case) are scheduled for November 16, 2016
- The MACDL annual winter meeting is scheduled for November 16, 2016 at which Committee member retired Judge Carol Ball, former CPCS staff Beth Eisenberg, and Attorney Patty Garin will be honored.
- Arguments were heard by the SJC in the Deputy Chief Counsel for the Public Defender Division & Another v. The Acting First Justice of the Lowell District Court case on November 9, 2016. The SJC will consider whether a judge can choose the lawyers who serve in drug court and the role of CPCS in appointing counsel in the Lowell Drug Court. There was an article in *The Boston Globe* on November 10, 2016 that touched upon the conflict between CPCS and the judge.
- Mr. Benedetti provided an update on the Human Resources Director hiring process. The position has been posted a second time, as the first search did not yield a candidate.
- The review of CPCS personnel policies continues with Phase 1 to be presented to the appropriate Committee representatives soon.

The Committee adjourned into Executive Session at 6:57 p.m. and returned to open session at 8:23 p.m.

Upon return to open session, Chairman Cinquegrana affirmed the following motions made during Executive Session.

MOTION 1: **Mr. Hernando. That the Committee approve the maintenance budget request of $242,765,104, as recommended by the Budget Subcommittee, with a request that the Legislature amend the annual budget requirement language that staff handle "not less than 25 percent of indigent clients" to "not less than 20 percent of indigent clients".**

SECOND: **Mr. White.**

VOTE: **Unanimous.**

MOTION 2: **Mr. Hernando. That the Committee approve the aspirational budget request of $258,299,129, as recommended by the Budget Subcommittee, with a request that the Legislature amend the annual budget requirement language that staff handle "not less than 25 percent of indigent clients" to "not less than 20 percent of indigent clients".**

SECOND: **Mr. Kociubes.**

VOTE: **Unanimous.**

MOTION 3: **Mr. Hernando. That the Committee direct the staff to prepare a budget estimate based on the level of funding that would be required, including the necessary staff salary levels, to meet the current requirement with a request that the Legislature amend the annual budget requirement language that staff handle "not less than 25 percent of indigent clients" to "not less than 20 percent of indigent clients".**

SECOND: **Mr. White.**

VOTE: **Unanimous.**

MOTION 4: **Mr. Hernando. That the Committee approve the 2017 salary increases for managers, as recommended by the Budget Subcommittee, for a total annualized cost of $95,691.**

SECOND: **Mr. Kociubes.**

VOTE: **Approved. Mr. Watkins abstaining.**

MOTION 5: **Mr. Hernando. That the Committee approve the 2017 salary increases for the Senior Leadership Team, as recommended by the Chief Counsel, for a total annualized cost of $24,826.**

SECOND: **Mr. White.**

VOTE: **Unanimous.**

There being no further business to come before the meeting. The Committee adjourned at approximately 8:28 p.m.

Respectfully submitted,

Julio Hernando

Julio Hernando, Secretary