COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

February 15, 2017

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 15, 2017, beginning at 5:35 p.m. Mr. Hernando, Secretary, presided at the start of meeting with Mr. Cinquegrana, Chairman, concluding.

MEMBERS PRESENT:	Ms. Alvarado, Messrs. Healy, Kennedy, and Rosenfeld Ms. Shah, Messrs. Stern, Watkins, and White
TELECONFERENCING:	Messrs. Kociubes and Miller, and Ms. Tewksbury

1. **Amicus Request(s)**

The amicus subcommittee has reviewed both requests and has unanimously approved them.

a. Commonwealth v. Fernando Perez, SJC-12251

Josh Dohan, Director of the Youth Advocacy Department, sought Committee approval to submit an amicus brief in the matter of Commonwealth v. Fernando Perez, SJC-12251. The case presents the following issue: Whether a juvenile convicted of non-homicide offenses and sentenced to 27.5-34 years in prison is entitled to be resentenced to a term that entitles him to a parole hearing sooner than a juvenile convicted of first-degree murder.

MOTION: **Mr. White. That the Committee approve the filing of an amicus brief in the matter of Commonwealth v. Fernando Perez, SJC-12251.**

SECOND: **Mr. Kociubes.**

VOTE: **Unanimous.**

b. Commonwealth v. Moses Ehiabhi, SJC-12259

Randy Gioia, Deputy Chief Counsel for the Public Defender Division, sought Committee approval to submit an amicus brief in the matter of Commonwealth v. Moses Ehiabhi, SJC-12259. The Supreme Judicial Court (SJC) has issued the following amicus solicitation:

> "Does G. L. c. 94C, § 32A, vest improper discretion in the prosecutor to determine what subsection an individual will be charged under [i.e., G. L. c. 94C, § 32A (b) or § 32A (d),] particularly in light of the statement made to [the trial judge] that

generally, prosecutors charge individuals under the more stringent subsections of the statute without further explanation or justification; and/or is the statute ambiguous in imposing contradictory mandatory minimum sentences on the same subsequent offense, requiring application of the rule of lenity." (Reported issue).

MOTION: **Mr. Watkins: That the Committee approve the filing of an amicus brief in the matter of Commonwealth v. Moses Ehiabhi, SJC-12259.**

SECOND: **Mr. Healy.**

VOTE: **Unanimous.**

Mr. Hernando turned over the Chair of the meeting to Mr. Cinquegrana.

2. Monthly Financial Overview Report

Kevin Lucchetti, Chief Financial Officer, presented the monthly financial overview report to the Committee for review. The current estimated deficiency in the 0321-1510 and the 0321-1520 line item accounts is approximately $62M. The run out dates in the private attorney line accounts (1510) are estimated to be in mid-April and mid-May for the indigent court cost account (1520).

On-going communications have been held with the Administration and Finance and the Committees on Ways and Means regarding the need for supplemental funding.

3. Commitments $10,000 and Over

Mr. Lucchetti presented the Commitments of $10,000 and Over report to the Committee for review. There were no changes from the previous month.

4. Private Counsel Survey Results – Compensation Issues

Nancy Bennett, Deputy Chief Counsel for the Private Counsel Division, presented to the Committee several options for the Committee to reverse the reductions in compensation to the private bar set by the Committee in 2008 and 2010 in response to the extraordinary financial crisis facing the Commonwealth at that time. The proposals were in response to a request by several Committee members following the presentation of the private counsel survey results. The reductions had been for time spent travelling to court, unavoidable time waiting in court up to three hours per day and compensation (for attorneys handling at least 600 hours per year of assigned cases) for continuing legal education required by CPCS up to eight hours per year.

Discussion ensued.

MOTION: **Mr. Healy. That the Committee support the request to reverse the reductions placed on the private bar by the Committee in 2008 and 2010 as presented.**

SECOND: **Mr. Rosenfeld.**

VOTE: **Unanimous.**

5. **Increasing Use of Associates in CAFL Cases**

Michael Dsida, Deputy Chief Counsel, Children and Family Law Division (CAFL) sought Committee approval to amend the Assigned Counsel Manuel Chapter V, Section 25, to expand the permissible use of associates by private panel trial attorneys in CAFL cases. The proposal is to allow associates to perform the following:

- Attend and participate in Department of Children and Family (DCF) foster care reviews, residential treatment meetings, school meetings, and any other meetings at the request of appointed counsel. At those meetings, associates would be permitted to negotiate within the confines set by the attorney of record.
- Appear for appointed counsel at uncontested hearings (if the associate is a member in good standing of the CAFL Trial Panel) or for the purpose of handling a continuance. This could enable appointed counsel to attend to responsibilities requiring more knowledge or skill.
- Allow associates to bill for travel time.

Staff was instructed to provide guidelines for panel members with respect to use of associates on assigned cases.

Discussion ensued.

MOTION: **Mr. Rosenfeld. That the Committee approve the amendment to the Assigned Counsel Manuel Chapter V, Section 25, to expand the permissible use of associates by private panel trial attorneys in CAFL cases as presented.**

SECOND: **Mr. Watkins.**

VOTE: **Unanimous.**

6. **Chief Counsel Report**

Mr. Benedetti updated the members on the following matters:

New CPCS Committee Member
Mr. Benedetti welcomed new member, Mia Alvarado. Ms. Alvarado is the Executive Director of Roxbury Youthworks who has a wealth and breadth of knowledge on delinquency and child welfare issues. She brings her experience working with juveniles who are caught up in a culture of poverty and violence, and helping them transition into adulthood.

Hinton Drug Lab Scandal
Mr. Benedetti informed members that in his budget meeting with the Chair of the House Committee on Ways and Means, he informed him of agency challenges with respect to the 24,000 cases stemming from the Hinton drug lab scandal. The Chair requested a cost per case analysis.

He also informed members that SJC Justice Botsford has formed a working group of two district attorneys and two defense attorneys to continue working on all drug lab issues.

CAFL Counsel Crisis
The next meeting of the working group composed of representatives of the court, DCF and other stakeholders is February 28, 2017. The purpose of the meeting is to continue to discuss short and long term solutions. Case filings in all counties have flattened, except in the Springfield area.

Leadership Development

- Supervising Attorney Adrian Angus from the Worcester Public Defender office was selected to participate in the Massachusetts Bar Association Leadership Academy. The program was created to develop future leaders within the bar. The agenda over the year includes exposure to a number of different aspects of management and leadership.
- Dulcineia Goncalves, Attorney-in-Charge of the Youth Advocacy Division Quincy office, was selected to participate in a leadership development program at The Partnership, Inc., an organization that works with mostly private organizations and corporations to increase the number of multicultural professionals at all levels of leadership, and to create a climate that encourages diversity and helps multicultural professionals thrive. Atty. Goncalves is being sponsored by the TJX Corporation and her training will focus on leadership, relationship, and organizational skills.

7. Other Matters – Immigration

Mr. Gioia updated the members on immigration matters as they relate to clients affected by three recent Executive Orders by President Trump.

1. January 27th – Banning of refugees from seven counties – currently on hold. Attorneys had been advised that if they had clients from the selected countries, that they advise them about the travel ban.
2. January 25th – Building of wall on the Mexican border.
3. January 25th – Interior enforcement of immigration policy. Advisories have been distributed to attorneys on how to deal with the expanded enforcement; "Know Your

Rights" forms have been created for attorneys to give to clients; staff have facilitated "Know Your Rights" presentations for clients at two locations in the greater Boston area.

A staff attorney currently represents an individual who is challenging the legality of Immigration and Customs Enforcement (ICE) detainers. The Single Justice of the Supreme Judicial Court (SJC) has reported the matter to the full court of the SJC.

There being no further business to come before the meeting, the Committee adjourned to executive session at approximately 6:51 p.m.

Respectfully submitted,

Julio Hernando

Julio Hernando, Secretary