

COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

October 18, 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, October 18, 2017, beginning at 5:37 p.m. R.J. Cinquegrana, Chairman, presiding.

MEMBERS PRESENT: Messrs. Healy, Hernando, Kociubes, Miller, and Rosenfeld
Ms. Shah and Mr. Stern

TELECONFERENCING: Ms. Alvarado and Ms. Tewksbury

1. **Minutes of September 19, 2017 Meeting**

The minutes of the September 19, 2017 meeting were approved as presented.

2. **Attorney Shortage Update**

Mr. Benedetti requested each division provide an agency-wide overview regarding the shortage of attorneys and the ability to have a sufficient number of attorneys to represent all clients in all the practice areas across the state. A document was presented to the members that listed all steps taken to increase the availability of attorneys to take cases. Mr. Benedetti stated that the problem is a long-range issue due to a number of factors, but primarily a result of the insufficient hourly rate.

Children and Family Law Division (CAFL)

Presented by Michael Dsida, Deputy Chief Counsel

- Current situation in Springfield Juvenile court – 80 individuals without counsel
- Spot shortages in various other courts – most recently in Franklin/Hampshire Juvenile Court as well as in Worcester Juvenile court
- In Care and Protection cases counsel should be assigned immediately in order to prepare for custody hearing – currently not occurring in every case
- Supreme Judicial Court (SJC) working group continues to conduct meetings to discuss various options to alleviate the situation

Mr. Miller indicated that he would be willing to coordinate recruitment efforts at Western New England School of Law.

Mental Health Litigation Division (MHL D)

Presented by Mark Larsen, Director

- Increase in the number of cases by approximately one-third over the past five years
- Panel members have been reduced by one-quarter as a result of age and changes in the attorneys' practice areas
- Additional hospitals have been opening up providing additional beds which has resulted in more cases being brought
- Of the attorneys we have trained, only one half become vendors and approximately 20% of those end up taking a significant number of cases
- In response to a particular need in the southeast region, a training was organized for commitment cases in Brockton
- Increased the restriction of travel from 30 to 45 miles the distance that attorneys in eastern Massachusetts can travel from their office to a commitment hearing in eastern Massachusetts (western Massachusetts attorney do not have a limit of distance they can travel)
- Utilized Law Office Management Program (part of Lawyers Concerned for Lawyers) to help with organization of their practice

Private Counsel Division

Presented by Nancy T. Bennett, Deputy Chief Counsel

- Difficulty attracting attorneys in Franklin, Hampden and Bristol counties; problem is starting to affect district court cases
- Difficulty assigning superior court cases in Hampden county
- Working closely with the Hampden County Lawyers For Justice to track outstanding cases and facilitate communication between bar advocate program and staff offices
- There is a large number of qualified attorney in Hampden county to accept cases but there is not enough interest from members of the bar to accept cases for \$50/hour
- Criminal appeals area has been stressed due to the drug lab scandal why?

Youth Advocacy Division (YAD)

Presented by Joshua Dohan, Director

- Biggest concern is not being able to assign enough attorneys for duty days
- Recruiting attorneys – added 44 new attorneys to the panel during the last fiscal year
- District Court attorneys are standing in during arraignment when necessary
- Current attorney shortage is in Springfield and Western Massachusetts; but shortages occurring in various other locations throughout the year
- Significant drop in number of juvenile cases over the last ten years
- Reserved staff capacity in order to handle more cases in the months of May and June
- Survey of attorneys who bill 1,600-1,650 hours annually indicated they would increase their hours to 2,000 if allowed

Mr. Benedetti mentioned that the agency has been requesting an hourly rate increase every year, and has been informing legislators of the counsel shortage issue. Staff has been discussing the possibility of asking the Legislature for a supplemental budget request to increase the hourly rates. CPCS has consistently been requesting an hourly rate increase that reflects the hourly rates recommended by the so-called Rogers legislative commission from twelve years ago.

Discussion ensued about the possibility of creating a pilot program in western Massachusetts with incentives of a higher hourly rate to handle the cases to alleviate the attorney shortage.

General discussion ensued.

3. Monthly Financial Overview Report

Mr. Lucchetti presented the final FY 2018 monthly financial overview report to the Committee for review. He projected estimated spending of \$233.7M for FY 2018 with an estimated deficit of \$61M between the 1510 and 1520 line items.

Mr. Benedetti reminded the members that in the FY 2018 budget, a reserve account was created within the Executive Office of Administration and Finance to provide supplemental funds for CPCS as well as the sheriffs, and the Massachusetts Transportation Trust Fund. At this point in time, it is not known how or when the money will be distributed.

Mr. Lucchetti updated the members regarding the lease for the Quincy office located at 10 Granite Street. In July of 2016 the Committee approved the lease for the Quincy office. The Division of Capital Asset Management and Maintenance (DCAMM) advised staff to file only a one year lease extension because of their concerns with the current landlord. The property is now up for sale and DCAMM does not want to finalize the lease. As a result of the potential sale, DCAMM is now recommending a Request for Proposal (RFP) because the potential new landlord at 10 Granite Street is not obligated beyond the current lease which ends in January.

The budget subcommittee is scheduled to meet on Monday, October 23, 2017, to begin discussions about the FY 2019 budget request.

4. Commitments \$10,000 and Over Report

Mr. Lucchetti presented the commitments of \$10,000 and over report to the Committee for review. There was one new commitment that was not previously discussed for Kennedy Carpet Sales for carpet repairs and replacement.

5. Chief Counsel Report

Mr. Benedetti informed the Committee that Governor Baker nominated CPCS Pittsfield supervising attorney Jennifer Tyne for a judgeship in the Pittsfield District Court.

Mr. Benedetti introduced Randy Gioia, Deputy Chief Counsel for the Public Defender Division, who would provide an update on the breathalyzer matter and Farak drug lab scandal. Mr. Gioia proceeded to update the Committee on two matters:

Breathalyzer Update

- Secretary Bennett issued his report of the investigation into what occurred at the Office of Alcohol Testing (OAT)
- Secretary Bennett found that the leadership at OAT made serious errors in judgment in providing discovery to the defendants
- The head of OAT has been terminated
- Disclosure has been ordered of the entire database of all testing done by the Drager 9510 machine since 2011
- Next hearing will be held on November 15, 2017, to decide what next steps will be

Farak – drug lab scandal

- A Section 211, §3 petition has been filed – no response as of this date
- SJC Justice Frank Graziano has been assigned to the case and has scheduled a pre-response hearing for October 31, 2017
- Response received from Middlesex District Attorney's office with a list of approximately 250 cases with docket numbers
- A meeting with Middlesex has been scheduled to determine whether the DA is amenable to dismissing the 250 cases with prejudice

Mr. Benedetti introduced Ms. Hewitt to provide an update to the members on the Senate Criminal Justice Reform bill. Debate is scheduled for October 26, 2017. The House is planning on releasing its version before the holidays.

Ms. Hewitt provided an overview of the bill which she described as one of the biggest pieces of criminal justice legislation put forward in over 35 years.

Pros

- Eliminates some minimum mandatories
- Repeals non-weight mandatories
 - School zone
 - Second offense distribution (A, B, C)
 - Cocaine distribution
- Repeals low weight mandatories on cocaine
- Making some changes to length of solitary confinement
- Proposal to raise the age of juvenile jurisdiction to 19
- Expands diversion
- Abolishes collateral consequences
- Reduces fees imposed on criminal defendants
- Makes improved CORI changes
- Creates a Romeo & Juliet consideration in stat rape cases

Cons

- Changes the bail statute – adds dangerousness consideration under §58
- Allows for conditions on client in §58, which could cause violations and result in detention pretrial
- Creates new mandatory for Fentanyl and Carfentanyl and similar chemicals in Class A drugs and shifts them into the mandatory structure for trafficking
- Preserves higher weight trafficking mandates for both cocaine and heroin

Also mentioned was the possibility that wiretapping may be included in the bill. The bill currently being reviewed is the one that was reported favorably by the Joint Committee on the Judiciary Committee – only Senate members voted. It is presently pending in Senate Ways and Means. CPCS staff have had extensive conversations with Senate Ways and Means staff on the bail issue have occurred and have asked that this section be deleted from the bill or in the alternative have suggested extensive rewrites of the proposal.

Discussion ensued.

6. **Other Matter**

Mr. Cinquegrana requested that Denise Simonini send to members the updated subcommittee list. He thanked Mr. Miller for joining the Training & Qualifications subcommittee.

There being no further business to come before the meeting, the meeting adjourned at approximately 7:16 p.m.

Respectfully submitted,

Julio R. Hernandez /ds/

Julio R. Hernandez, Secretary