COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

July 15, 2014

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, June 17, 2014, beginning at 5:48 p.m. Hon. W. Paul White presiding.

MEMBERS PRESENT: Messrs. Drechsler, Gosselin, and Kociubes (via teleconference)
Messrs. Rosenfeld (via teleconference) and Watkins

After reviewing the Committee Rules and Regulations, Mr. White indicated that seven members of the Committee or the majority of the executive committee respectfully represented at the meeting shall constitute a quorum for the transaction of the business of such Committee. There being a majority of the executive committee present the meeting proceeded.

1. **Approval of June 17, 2014 Minutes**

The minutes of June 17, 2014 meeting were approved as submitted.

2. **Amicus Request(s)**

Anthony Benedetti, Chief Counsel, informed the members that one of the requests on the agenda be withdrawn, John Doe v. SORB, due to the fact that CPCS represents the defendant in that case. Therefore, the attorney on staff will be able to raise any issues in that case.

Attorney Ira Gant, staff counsel from the Innocence Project, presented the case of Commonwealth v. Robert DiCiccio. Mr. Gant sought Committee approval to submit an amicus brief to the Supreme Judicial Court (SJC) in support of Mr. DiCicco's appeal of the denial of his motion for new trial and motion for funds. He informed the members that they may be familiar with the case due to the fact in February 2014 the Committee voted its approval for the Innocence Project to file an amicus letter in support of Mr. DiCicco's Application for Further Appellate Review. Subsequently, the SJC granted review and the matter has been docketed. The two issues to be raised are: 1) the judge denying funds for expert assistance; and 2) the court's opinion that over time the evidence was too degraded or contaminated.

Mr. Watkins informed the members that the amicus subcommittee has approved the request.

MOTION: **Mr. Watkins. That the Committee approve the amicus request in the matter of Commonwealth v. Robert DiCiccio.**

SECOND: **Mr. Kociubes.**

VOTE: **Unanimous.**

3. **Strategic Planning Proposal**

Mr. Benedetti sought Committee approval to engage in long term strategic planning to define and clarify the agency mission and core values, to develop specific objectives to improve the agency, to establish a structure to ensure that the objectives are met, and to outline specific steps to be taken to meet each key objective.

He explained that the strategic planning would be divided into two phases. In Phase 1, CPCS will identify its mission and core values, and engage in a SWOT analysis (performing an environmental scan to analyze the strengths, weaknesses, opportunities, and threats to CPCS in meeting its goals) to serve as a framework for developing objectives to improve the organization. CPCS will define no more than six key objectives that grow out of the mission and that can be completed within a three-year time frame. In Phase 2, CPCS will implement the work that would be needed to achieve the objectives.

He is seeking approval to begin the Request for Proposal (RFP) process with the hopes to return in the fall with the proposals that have been received from the various venders.

Debra Krupp, Training Coordinator, added that part of Phase 1 will be looking at the agency structure, and whether it is appropriate for moving forward or whether it should be adjusted considering how the agency has grown dramatically. She also indicated that most executive agencies have been through strategic planning during the last several years and the process supports the Office of the State Comptroller's requirement that state agencies undertake a Risk Assessment analysis.

Mr. Benedetti said that staff has done a lot of preliminary work reviewing what other agencies have done and how they have gone about their strategic planning process. He explained the benefit of completing strategic planning in two phases: the agency can obtain two separate consultants for each phase, or the same one depending on how well staff likes the work the initial consultant does. The cost for Phase 1 would be approximately $75,000 and would be completed in approximately six months to a year. The cost is driven by how much engagement is conducted.

Mr. Rosenfeld stressed his reservations about the request. He proposed that the focus of the Committee should be staff salaries. He indicated that the goals of the agency are set out clearly in the statute and does not see the need for a consultant. Mr. Rosenfeld requested to see the RFP before it is posted.

Mr. Kociubes voiced his agreement with Mr. Rosenfeld's statement with respect to the goals/mission of the agency. He sees two different objectives: 1) risk assessment analysis and 2) are there ways for the agency to manage itself more cost effectively, both of which he feels should be done periodically.

Mr. Gosselin explained what he viewed as the benefits for agencies to undertake strategic planning giving as an example an agency goal of reducing the high attrition rate of the first, second, and third year lawyers below the current 67% rate. He stated that strategic planning has been extremely valuable for the executive branch and other agencies.

MOTION: **Mr. Drechsler. That the Committee approve staff to proceed with the process of creating a Request for Proposal and to circulate it to the executive committee, before sharing the RFP with the full Committee at the September 16, 2014 meeting.**

SECOND: **Mr. Gosselin.**

VOTE: **Unanimous.**

4. **Proposed Change to Language on Attorney Professional Liability Insurance**

William Shay, Director of the Audit and Oversight Department (A&O), reminded the members that at the June 17, 2014 meeting he sought Committee approval of a proposed change to language in Chapter II, section 10 of the Assigned Counsel Manual. The new language expands upon the current language and specifies the Committee's insurance requirements, the purpose of the requirements, and what the consequences are when an assigned counsels' insurance policy lapses. The purpose of the policy is to ensure insurance coverage exists for services provided by assigned counsel. At that meeting, the members requested that he report back to the Committee in July with a plan to address compliance with the new policy language.

Mr. Shay recommended verification of insurance coverage of all attorneys during the first year and a combination of verification, random auditing, and review of Board of Bar Overseers data to ensure attorneys were covered by insurance in subsequent years. Specifically, 1) all attorneys who belong to a bar advocate program will be required to provide a copy of their policy to the program; 2) all attorneys not belonging to a bar advocate program will be required to provide a copy of their insurance information in accordance with the revised Committee policy to A&O during calendar year 2014; 3) the information will be entered into the CPCS's database; 4) effective January 1st, the assignments and bills of any attorney who did not comply will be rejected. In FY 2016 and subsequent years, all attorneys will be required to provide their insurance information in keeping with the revised policy to their bar advocate program at the beginning of the fiscal year. The bar advocate programs will report to CPCS anyone who has not provided to them proof of insurance in keeping with the revised policy and random sampling of attorneys will be conducted by the Audit and Oversight Department along with an annual check against the Board of Bar Overseers Registration data.

Mr. Shay indicated using the above is a multi-step approach designed to provide a higher level of assurance that attorneys maintain professional liability insurance, and the combined efforts of the bar advocate programs and Audit and Oversight should better ensure that the Committee policy is being followed to protect the clients and the Commonwealth in the event of a claim.

MOTION: **Mr. Drechsler. That the Committee approve the proposed change to the language on attorney professional liability insurance.**

SECOND: **Mr. Gosselin.**

VOTE: **Unanimous.**

5. **Proposed Standards and Procedures for Indigency Review**

Mr. Benedetti sought Committee approval of the Proposed Standards and Procedures for Indigency Review. He informed the members that Chapter 211D, section 2 requires the Committee promulgate standards, which the Supreme Judicial Court then has to adopt. The Standards presented to the Committee, if approved, would next be submitted to the Supreme Judicial Court.

Lisa Hewitt, General Counsel, explained that a working group was organized that consisted of members of every practice area of CPCS, counsel and probation officers from the Office of the Commission of Probation, counsel from the Probate Court, and technical staff and counsel from the Department of Revenue, all of whom contributed to the effort. The working group met extensively to review the practical implications of what the rule currently states. Former Chief Counsel, William Leahy, was also consulted regarding the institutional history of how changes to the rule were dealt with in the past. The rule has not been changed since 1991 and many of the provisions are outdated. Ms. Hewitt mentioned that the SJC will form a committee to review the CPCS recommendation and will also post for comments.

Ryan Schiff, staff counsel from the Special Litigation Unit, indicated that the significant part of what the task force did was to clarify the language and went on to explain what the changes were.

Ms. Hewitt explained that the Probation Department participated in the working group, but reserved their right to contribute to the ongoing discussion before the SJC adopts the rule.

Mr. Watkins mentioned that Mr. Cinquegrana formed an indigency subcommittee to review the proposal. The subcommittee consisted of Mr. Healy, Mr. McGuire, Mr. Cinquegrana, and Mr. Watkins. The subcommittee reviewed the proposal and submitted comments that were incorporated into the proposal. The subcommittee recommended that the proposed changes be adopted and submitted to the SJC.

MOTION: **Mr. Watkins. That the Committee approve the Proposed Standards and Procedures for the Determination of Indigency by the Courts, in accordance with Supreme Judicial Court Rule 3:10 and G.L. c.211D, Sec. 1 et seq. and submit them to the Supreme Judicial Court for adoption.**

SECOND: **Mr. Drechsler.**

VOTE: **Unanimous (proxy of both Mr. Kociubes and Mr. Rosenfeld to the Chair).**

6. **FY 2015 Anticipated Expenditures**

Susan Burstein, Chief Financial Officer, sought Committee approval on all annual anticipated expenditures exceeding $25,000 for fiscal year 2015. This is a new process following the adoption of the new procurement procedures and amendment to the Committee Rule. The following expenditures presented were broken down by 1) vendor; 2) estimated spending; 3) purpose; and 4) type.

Vendor	Annual Estimated Spending	Purpose	Type
Hampton Inn	$34,500	new lawyer training	Event
Board of Bar Overseers	$130,000	bar registration fees	Intermittent
DSCI	$30,000	purchase telephone equip.	Intermittent
Pitney Bowes	$30,000	postage for postage meters	Intermittent
Resource Connection	$150,000	temporary staffing services	Intermittent
Stamps.com Inc.	$80,000	postage from the USPS	Intermittent
W.B. Mason	$165,000	office supplies	Intermittent
W.B. Mason	$35,000	small office furniture	Intermittent
Cellco Partnership dba Verizon Wireless	$40,000	wireless telephones	Monthly
Comcast	$80,000	data connections	Monthly
DSCI	$510,000	data connections including internet voice services	Monthly
Global Tel Link	$45,000	inmate collect calls	Monthly
Iron Mountain Records	$35,000	offsite records storage	Monthly

Nstar Electric	$55,000	electric utilities not included in rent	Monthly
Reed Elsevier, Inc.	$140,000	lexis-nexis	Monthly
Ricoh Americas Corp	$120,000	photocopier leases	Monthly
Securus Technologies, Inc.	$75,000	inmate collect calls	Monthly
Verizon	$80,000	voice service	Monthly
Xerox Corp	$180,000	photocopier leases	Monthly

She indicated that intermittent expenditures are expenses that are procured on an as needed basis and the estimate is based on expenses from the previous year.

Mr. Gosselin requested that in the future, for clarification, to include whether the expenditure is a continuance or new, and from which appropriation they will be paid.

MOTION: **Mr. Drechsler. That the Committee approve the anticipated FY 2015 obligations over $25,000 that were presented.**

SECOND: **Mr. Watkins.**

VOTE: **Unanimous.**

7. **<u>Monthly Financial Overview Report</u>**

Susan Burstein, Chief Financial Officer, presented the monthly financial overview to the Committee for review. With regards to FY 2014 budget, she indicated that there has not been a significant change from the previous month and that approximately $900,000 would be reverted back to the General Fund. She is still waiting for final accountings of the figures for the end of FY 2014.

Mr. Benedetti mentioned that there are two items that CPCS has asked be included in a final supplemental: 1) transferability language to allow for movement of money between line items, and 2) a prior appropriation continued (PAC) to allow for FY’14 remaining funds to be available for FY’15.

Mr. Benedetti presented the FY 2015 overview to the Committee referring to a chart showing a comparison between the House and Senate language of the FY 2015 General Appropriation, the outside sections of the budget, budget line-item language, and a line-item that is a reserve to assist in covering the costs of board of bar overseers (BBO) fees. The final budget requires quarterly reports be filed, maintains mandate of staff accepting 25% of assignments, and has new language that states CPCS should, where feasible, assign attorneys to district and superior court. It eliminates the retain revenue fund (line item 0321-1518). The funding levels for 0321-1500 and 0321-1504 (administration and operations line items) are underfunded by approximately $4M. Communication with the Administration and the Legislature will be ongoing throughout the fiscal year to advocate for additional funding for these line items if necessary.

Mr. Gosselin suggested that the spending plan due in September would be a good time to advocate for additional funds for the administration and operations line items.

On a final note, Mr. Benedetti informed the members of a provision in the final budget that increased the salaries of the elected District Attorneys, as well as the Chief Counsel whose salary is linked by statute. The Governor sent this provision back indicating his support, but asking the Legislature to set up a legislative commission composed of a number of representatives to examine the salaries of public defenders and assistant district attorneys and to report back findings and recommendations, if any, no later than November 15, 2014.

8. **Justice Management Institute Report**

Mr. Benedetti presented the Justice Management Institute Report (JMI). In FY 2013 the Legislature had a requirement in the budget that the Office of the Inspector General seek an RFP to obtain an independent group to study the CPCS expansion proposal, the result and effectiveness of the expansion, and how CPCS implemented the process. In 2012, the Office of the Inspector General hired JMI to complete this study. Overall, the report states that CPCS did everything possible to implement the mandated change. The report noted that although the 25% mandate was not met in the timeline, it was essentially due to obstacles CPCS faced, primarily an extremely high attrition rate. The JMI report did not come to a conclusion in terms of what was the effect of the expansion on cost and quality, stating that there was no evidence that the expansion saved any money. JMI did acknowledge that additional time would be needed before being able to come to a conclusive determination. Overall, the report states that CPCS did everything it could in a relative short timeframe and acknowledges the challenges faced to accomplish the mandate.

9. **Other Business**

Mr. White brought to the members' attention the historical perspective regarding the salary for the District Attorneys and the Chief Counsel of the CPCS. At the time of CPCS's creation he was in the Legislature and was involved in the drafting of Chapter 211D. At that time, it was felt that it was very important and significant to compensate the head of the agency that is defending in the courts of the Commonwealth at the same level of compensation as the District Attorneys. He stressed that the belief was that going forward, the head of CPCS must be treated with the respect and level of responsibility of the position. No one anticipated this raise occurring at this time. He stressed his wish that more could have done for the entire staff at this time and that the agency will continue to fight on their behalf.

Mr. Drechsler pointed out that during all the times that the budget subcommittee met with the Chief Counsel at no time did he advocate a raise for himself. His main focus was always for staff. The Chief Counsel rejected the possibility that the subcommittee enhance the Chief Counsel's salary. Mr. Benedetti dictated to the subcommittee that he did not want an increase in his own salary and his main focus was for the staff.

There being no further business to come before the meeting, the Committee adjourned at 7:17 p.m.

Respectfully submitted,

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Joseph L. Kociubes
Secretary