

COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

September 16, 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, September 16, 2014, beginning at 5:36 p.m. R. J. Cinquegrana, Chairman, presiding.

MEMBERS PRESENT: Messrs., Gosselin, Healy, Hernando, Kennedy, and Kociubes
Mr. McGuire, Ms. Tewksbury, Messrs. Watkins, and White

Chairman Cinquegrana and Chief Counsel Anthony Benedetti expressed their congratulations to former member Thomas Drechsler who was appointed as a Superior Court judge. They both acknowledged his years of service on the Committee, and as an active participant on a number of committees and for providing guidance on a number of difficult issues.

Mr. White suggested that the Chairman send a letter of acknowledgement to Mr. Drechsler for his years of service.

Mr. Cinquegrana welcomed new member, Jane Tewksbury.

1. Approval of July 15, 2014 Minutes

The minutes of July 15, 2014 meeting were approved as submitted.

2. Amicus Request(s)

Randy Gioia, Deputy Chief Counsel for the Public Defender Division, sought Committee approval to submit an amicus brief in the matter of Commonwealth v. Arzola. He informed the members that the Supreme Judicial Court issued the following solicitation for amicus briefs in the case:

Whether the extraction of DNA evidence from an item seized without a warrant constitutes a separate search for which a warrant is required prior to conducting any testing of the DNA evidence.

Mr. Gioia indicated that the issue presented is unquestionably important and the absence of an argument relying on the heightened protections of art. 14 should be remedied by the submission of an amicus by our agency.

MOTION: Mr. Kociubes. That the Committee approve the amicus request in the matter of Commonwealth v. Arzola.

SECOND: Mr. White.

VOTE: Unanimous.

Mr. Gioia sought Committee approval to submit an amicus brief in the matter of Commonwealth v. Evelyn. He informed the members that the Supreme Judicial Court has issued the following solicitation for amicus briefs in this case:

Whether a defendant is deprived of due process and his right not to incriminate himself when, in an opening statement of a criminal trial, his counsel effectively concedes the defendant's guilt on a lesser offense, but there is no colloquy with the defendant to ensure that the concession was knowing and voluntary on his part; in other words, whether due process requires anything more than the effective assistance of counsel in such circumstances.

Mr. Gioia indicated that the due process question has system-wide impact on the conduct of trials and on the procedural rights of defendants. He recommended that CPCS weigh in as amicus curiae for greater protections for defendants to ensure that concessions of guilt are made knowingly and voluntarily.

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

SECOND: Mr. White.

VOTE: Unanimous.

3. Encumbrance Report

Susan Burstein, Chief Financial Officer, presented the encumbrance report listing all encumbrances over \$10,000 to the Committee for review. She indicated that this is the first encumbrance report being submitted to the Committee following the adoption of the new procurement procedures, at the April 15, 2014 meeting. The list showed the encumbrances that were entered against ones that have already been approved as well as the ones over \$10,000. There were two items listed that are over \$25,000 that were not pre-approved, but she indicated they are charges from other state agencies for shared services and that the estimated amounts were not known in July.

4. Monthly Financial Overview Report

Ms. Burstein presented the monthly financial overview reports for fiscal years 2014 and 2015 for review.

In FY 2014, at close of fiscal year 2014, a total balance of \$1,695,064 exists in line items 0321-1500, 1518, and 1520.

The FY 2015 overview does not include line item 0321-1518 which was not included in the budget. Counsel fees collected will now go into the general fund. Ms. Burstein reports that the current budget forecast projects a total deficiency of \$40,523,716. This year, there is a projected deficiency of approximately \$2.9M in the operating accounts.

Mr. Benedetti explained that there is an outstanding request to the Legislature for The FY 2014 surplus of \$1,695,064 to be PAC'd forward for use in fiscal year 2015 and also for transferability language to provide flexibility. He discussed the effect the deficiency in the operating account would have and also specifically the effect it would have on the ability for staff to handle 25% of the caseload.

In FY 2014, staff handled 22.1% of the overall caseload, an increase from FY 2013, despite the high attrition rate.

Discussion ensued regarding salaries, attrition, and the effects of the underfunding on the 25% mandate.

Mr. Kennedy mentioned that the Legislature has consistently funded the supplemental request submitted by CPCS. He requested an overview of the last ten fiscal years to show the supplemental funding that has been provided. He stated that the Legislature has historically appropriately funded the organization. Although he realizes there is an issue this year, he is confident that the shortfall will be addressed by the Legislature. He also mentioned that the Governor has created a Special Commission to address salaries for public defenders and district attorneys and that he has been appointed to serve on it by the Speaker.

Staff pointed out to the Committee that historically the administration and operations line items have not been underfunded like they have been in the private counsel compensation line item (1510) and the indigency court cost lime item (1520).

Mr. Benedetti indicated that a request has been made for the \$1,695,064 in additional funding from the FY 2014 surplus. Additionally, staff continues to examine the budget for ways to meet the appropriation, to determine what can be accomplished with current funding levels and to work with the Legislature.

Discussion ensued regarding possible ways to accomplish meeting the 25% mandate.

Mr. Gosselin offered, as part of the personnel subcommittee, to work with a group of public defenders to develop a proposal on how to retain attorneys so that they stay longer, are able to maintain a full caseload, and help the agency to reach the 25% mandate.

Mr. Cinquegrana indicated that the budget subcommittee should begin working with staff to develop a plan for the current year and for next year's budget.

5. Chief Counsel Report

Mr. Benedetti welcomed new Committee member Jane Tewksbury. Ms. Tewksbury was appointed by the Governor to replace Marilyn Chase. She brings to the Committee a background in juvenile issues and positive youth development.

He then introduced the new Chief Information Officer, Daniel Saroff. Mr. Saroff comes to CPCS with a vast background in IT in the private sector working on staff and as a consultant.

Mr. Benedetti noted, as Mr. Kennedy mentioned earlier, the Governor has created a Special Commission to study the compensation of public defenders and assistant district attorneys, consisting of the following representatives:

CPCS Appointments: Anthony Benedetti, CPCS Chief Counsel and R.J. Cinquegrana, Chairman

Private Criminal Defense Bar Representative: David Hoose, Hampden County Lawyers for Justice, Inc., President

Speaker of the House Designee: James Kennedy, Chief Legal Counsel to the House of Representatives and CPCS Committee member

Senate President Designee: Senator William Brownsberger, Senate Chair of the Judiciary Committee

District Attorney Appointments: John Blodgett, Essex County and Michael O'Keefe, Cape and Islands

Massachusetts Bar Association Representative: Marsha Kazarosian, Current MBA President

Boston Bar Association Representative: Carol Starkey, Current BBA Vice-President

Office of the Governor's Chief Legal Counsel: Kate Cook (Ex Officio)

The Attorney General's office has not yet made their appointment to the Commission.

Secretary of Public Safety and Security Andrea Cabral (Co-Chair)

Secretary of Administration and Finance Glen Shor (Co-Chair)

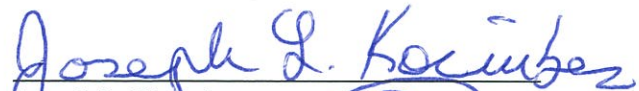
A report by the Commission is due by mid-December.

Mr. Benedetti indicated that he and Mr. Cinquegrana had a meeting with new Supreme Judicial Court Chief Justice Ralph Gants, who has indicated support for increasing the salaries of CPCS staff and for sentencing reform. Also discussed was the Sentencing Commission, which should be holding its first meeting in the near future and the current CPCS Committee vacancy.

Mr. Kociubes requested a presentation on CAFL or YAD issues be added as an agenda item to update all the members as to the status of those practice areas.

There being no further business, the Committee adjourned into executive session at 6:49 p.m.

Respectfully submitted,


Joseph L. Kociubes
Secretary 