

# COMMITTEE FOR PUBLIC COUNSEL SERVICES

## MINUTES OF MEETING

JULY 19, 2017

The monthly meeting of the Committee for Public Counsel Services was held in the Committee's conference room at 40B Bromfield Street, 1<sup>st</sup> Floor, Boston, MA on Wednesday, July 19, 2017, beginning at 5:39 p.m. R.J. Cinquegrana, Chairman, presiding.

MEMBERS PRESENT: Ms. Ball, Messrs. Miller, Rosenfeld, Stern, and White

TELECONFERENCING: Mr. Kociubes and Ms. Tewksbury

Prior to the start of the meeting, Chairman Cinquegrana appointed Mr. White as Secretary Pro Tem.

### 1. Minutes of June 20, 2017 Meeting

The minutes of the June 20, 2017 meeting were approved as presented.

### 2. Amicus Request(s)

Joshua Dohan, Director of the Youth Advocacy Division (YAD) sought Committee approval for the following amicus requests:

#### A. Commonwealth v. A Juvenile, SJC-12351

The Supreme Judicial Court issued an amicus solicitation in this case addressing the following matter:

Whether the prosecution of the juvenile for rape of a child violates the juvenile's rights under the due process or equal protection clause or otherwise contravenes Massachusetts law and policy, where both the juvenile and the alleged victim were under sixteen years of age; whether G.L. c. 265 §§ 22A and 23, are unconstitutional as applied to the juvenile.

The brief would argue that prosecuting a minor for engaging in consensual sexual activity with another minor violates the constitutional prohibition against cruel and unusual punishment and/or violates due process.

**MOTION:** Mr. Stern. That the Committee approve the filing of an amicus brief in the matter of Commonwealth v. A Juvenile, SJC - 12351.

**SECOND:** Mr. White.

**VOTE:** Unanimous.

B. Commonwealth v. A Juvenile, SJC-12354

The Supreme Judicial Court issued an amicus solicitation in this case on the following matter:

Whether a Juvenile Court judge has the authority to dismiss a complaint before arraignment based on the best interests of the juvenile (even in the presence of probable cause).

The amicus brief would argue the following: 1) that the authority of Juvenile Court judges to dismiss complaints prior to arraignment should extend to any legally valid grounds for dismissal and 2) that Juvenile Court judges should also have the authority to dismiss complaints based on the best interests of the juvenile, pursuant to G.L c. 119, sec. 53.

**MOTION:** Mr. Rosenfeld. That the Committee approve the filing of an amicus brief in the matter of Commonwealth v. A Juvenile, SJC - 12354.

**SECOND:** Mr. Miller.

**VOTE:** Unanimous.

### 3. Monthly Financial Overview Report

Anthony Benedetti, Chief Counsel, presented an updated monthly FY 2017 financial overview report to the Committee. The updated overview incorporated supplemental funding that was received by CPCS one week ago. He reported that payments to the private bar and vendors were made quickly once the supplemental funds were made available to CPCS. FY 2017 is now closed.

Discussion ensued.

### 4. FY 2018 Budget Update

Mr. Benedetti and Lisa Hewitt, General Counsel, updated the members on the FY 2018 budget. It is estimated that the final FY 2018 budget will result in a funding shortfall of approximately \$62M. The highlights are:

- A reserve account of \$104M was created (line item 1599-1690) within Administration and Finance– the account is designed to provide supplemental funds for CPCS, the 14 sheriffs’ offices, and the Massachusetts Transportation Trust Fund.
- The Governor filed legislation to add an additional \$94M to the reserve account to better ensure funding is available to fully meet the obligations of CPCS and the other two state agencies.
- A reserve account of \$750,000 was created (line item 1599-0054) for costs associated with the investigation and response related to the allegations of misconduct at the former Hinton Laboratories.
- The mandate that staff attorneys handle 25% of all indigent cases statewide has been reduced to 20%.
- Funding for staff and operations has been consolidated into one line item. Historically, CPCS had a single line item to pay for staff salaries and operations; however, several years ago the Legislature split these into two line items (0321-1500 and 0321-1504). The return to a single line item will provide the flexibility to better manage CPCS funds.

Discussion ensued.

## 5. **Chief Counsel Report**

### A. **Drug Lab Update**

Nancy Bennett, Deputy Chief Counsel, Private Counsel Division, provided an update on the Western Massachusetts drug lab issue. She reported the following:

- Judge Carey issued a decision in June, 2016 regarding Sonja Farak who was a chemist at the Hinton lab and then transferred to the Amherst lab in 2004.
- Farak was arrested in January, 2013, and at that time the Amherst lab was shut down.
- Rule 30 motions were filed on behalf of clients where Farak was the chemist certifying the evidence.
- Litigations ensued before Judge Kinder, and then Judge Carey after Judge Kinder went to the Appeals Court.
- During the litigations it appeared in Judge Carey’s decision that the Attorney General’s office became aware of evidence when Farak was arrested that showed she was using drugs during work for over a year, at least.
- Attorneys representing defendants in the Rule 30 matters were consistently inquiring about Farak’s drug use pertaining to their clients who had pending cases.
- In the fall of 2014, Attorney Luke Ryan obtained the records that had been withheld since January of 2013, and proceeded to distribute those records to other counsel after they were un-impounded.
- The Supreme Judicial Court’s (SJC) decision in the case of Commonwealth v. Cotto, ordered an investigation in the matter.
- Cotto was represented by staff attorney Rebecca Jacobstein.
- The Attorney General’s office selected retired Judge Velis to conduct the investigation.

- Judge Velis' report came back finding no misconduct and no obstruction of justice.
- In light of Judge Carey's decision finding two Assistant Attorney Generals (AAGs) committed fraud upon the court and in light of evidence that was elicited during the litigation, it appears there is a good argument that all defendants whose evidence was certified to be drugs by Chemist Farak going back to 2004 is entitled to dismissal of their charges.
- Discussions are currently being held with all participants in the Hinton Lab litigation to determine what strategies should be pursued to speedily seek relief for the over 20,000 people affected.
- Judge Carey's decision regarding the misconduct of the two AAGs has been reported to the Board of Bar Overseers by one of the private attorneys involved in the litigation under M.R.P.C. Rule 8.3.

Discussion ensued.

#### B. Chief Counsel Review

Mr. Benedetti noted that the minutes of the June 19, 2017 meeting reflected the results of the Chief Counsel's performance review. He thanked the Committee for the positive review, the process, and their support.

Mr. Cinquegrana also thanked the subcommittee members who were involved with the review, as well as the members of the senior management team. He mentioned that it was an opportunity for the subcommittee members to learn more about the agency and the work being done by all of the staff and private counsel in the various practice areas.

### 6. Other Matters

#### A. Timothy Watkins

Mr. Cinquegrana informed everyone that member Timothy Watkins has resigned his position on the board and will be moving to Washington, D.C. to serve on the United States Sentencing Commission beginning in August.

Mr. Benedetti reflected on Mr. Watkins' years of service with the board and as a staff attorney prior to working with the Federal Defenders office.

Everyone thanked him for his 15 years of service on the Committee and congratulated him on his new position.

#### B. Prisoners Legal Services

Mr. Stern requested support for Prisoners Legal Services whose budget was vetoed by the Governor in the amount of approximately \$120,000.

C. National Association of Criminal Defense Lawyers Award (NACDL)

Ms. Hewitt informed the members that Mr. Benedetti is the recipient of the NACDL 2017 Champion of State Criminal Justice Reform Award. He will be presented with the award on July 28, 2017, at the State Criminal Justice Network Conference in San Francisco.

There being no further business to come before the meeting, the meeting adjourned at approximately 6:37 p.m.

Respectfully submitted,

  
Paul White, Secretary Pro Tem