

COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF EMERGENCY MEETING

February 20, 2018

An emergency 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, February 20, 2018, beginning at 4:05 p.m. R.J. Cinquegrana, Chairman, presiding.

MEMBERS PRESENT: Ms. Alvarado, Mr. Rosenfeld, Ms. Shah, Messrs. Stern and White

TELECONFERENCING: Mr. Miller and Ms. Tewksbury

The emergency meeting was called to address the newly enacted legislation regarding the Children and Family Law (CAFL) crisis in Hampden County.

The meeting adjourned into Executive Session at approximately 4:06 p.m.

Upon return to open session at approximately 4:22 p.m., Mr. Cinquegrana called for a vote to approve the following resolution, as submitted by the staff:

WHEREAS, pursuant to M.G.L. Chapter 119 Section 29, children, indigent parents, and indigent guardians who are parties to care and protection cases have a right to court-appointed counsel; and

WHEREAS, pursuant to M.G.L. Chapter 211D, it is the responsibility of the Committee for Public Counsel Services to plan, oversee, and coordinate the delivery of those mandated legal services; and

WHEREAS, the number of care and protection cases filed by the Department of Children and Families in Hampden County has resulted in a significant increase in the demand for attorneys to represent the parties in those cases; and

WHEREAS, the Committee has made extensive efforts to increase the supply of attorneys available to provide representation in care and protection cases, and to more efficiently manage their use, efforts that have included additional hiring of staff attorneys assigned to care and protection cases, and the recruitment, training, and certification of more private attorneys appointed to handle those cases; and

WHEREAS, despite these efforts there is a growing shortage of attorneys for appointment to care and protection cases in Hampden County; and

WHEREAS, care and protection cases involve multiple parties whose interests regularly conflict, which prevents the Committee from remedying this shortage of attorneys using existing staff resources; and

WHEREAS, because of the shortage of attorneys, hundreds of children and parents have not been provided counsel, or provided counsel promptly; they have not been provided a timely “72-hour hearing;” and they have not been represented in connection with critical events occurring in their cases; and

WHEREAS, as of January 31, 2018, there were 128 people (including 56 children) who were parties in care and protection cases in the Springfield Juvenile Court who were entitled to, but had not been provided, court-appointed counsel;

NOW, THEREFORE, BE IT RESOLVED THAT the Committee declares that an emergency exists in Hampden County based on the limited availability of qualified private counsel for appointment or assignment to care and protection cases; and

BE IT FURTHER RESOLVED THAT the Committee authorizes a temporary increase in the rate of compensation in care and protection cases to \$75 per hour for private counsel who accept at least one appointment in a care and protection case after the date of this Resolution and who, prior to the declaration of this emergency, have billed not less than 350 hours in the current fiscal year as private counsel appointed or assigned to care and protection cases, or who have billed not less than 700 hours in the previous fiscal year as private counsel appointed or assigned to care and protection cases, said increased rate to be applied for the duration of such assignments.

IN FAVOR: Ms. Alvarado, Messrs. Cinquegrana, Miller, Rosenfeld, Ms. Shah, Mr. Stern, Ms. Tewksbury and Mr. White.

OPPOSED: None

PROXY TO THE CHAIRMAN IN FAVOR: Messrs. Kociubes, Healy, Hernando and Kennedy.

Twelve of the fourteen members of the Committee, all of whom were either present or submitted a proxy, voted in favor and none opposed.

Other Matter

One final matter discussed was Section 3 of the newly enacted legislation, which eliminates the following restriction previously contained in Section 1 of chapter 211D of the General Laws: “While serving on the committee, no member shall be assigned or appointed to represent indigent defendants before any court of the commonwealth.”

Mr. Benedetti stated that the stricken language was added as part of legislation that was enacted in 2011 that resulted in a change to the delivery system of CPCS mandating that staff counsel

handle 25% of the caseload, and made changes to the Committee structure. The deletion of this language will allow attorneys to serve on the CPCS Committee who are on CPCS panels and who have an expertise in the various practice areas in which we provide services. It could also help to bring increased diversity to the Committee.

Issues discussed by the Committee included members taking court appointed cases who would be supervised by CPCS staff; what notice should be provided to the full Committee if a member were taking cases; and the need for members to recuse themselves from votes where they may have a self-interest based on the acceptance of appointments.

Lisa Hewitt, General Counsel, informed the members that there is specific language in chapter 211D addressing ethical issues. She suggests any Committee member who is going to accept court appointed cases would be advised to call the State Ethics Commission and seek their guidance.

Mr. White commented that the Committee has benefitted in the past by having members who had direct experience in the court system. He also mentioned that it was always the individual member's responsibility to be aware of and report on any potential conflict.

Mr. Benedetti and Mr. Dsida thanked the Committee and expressed appreciation for their attention to the CAFL crisis, and their prompt response to the newly enacted legislation.

There being no further business to come before the meeting, the meeting adjourned at approximately 4:31 p.m.

Respectfully submitted,

/s/ *R. J. Cinquegrana*

R. J. Cinquegrana, Chairman