

COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

MARCH 15, 2016

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, March 15, 2016, beginning at 5:42 p.m. R.J. Cinquegrana, Chairman, presiding.

MEMBERS PRESENT: Messrs. Gosselin, Hernando, and Kociubes
Ms. Shah and Messrs. Stern, Watkins, and White

TELECONFERENCING: Mr. Kennedy and Ms. Tewksbury

1. Approval of February 17, 2016 Minutes

The minutes of the February 17, 2016 meeting were approved as submitted.

2. Amicus Request(s)

Wendy Wayne, Director of the Immigration Impact Unit (IIU), sought Committee approval to submit an amicus brief in the matter of Nanje v. Chaves, U.S. Court of Appeals for the First Circuit, No. 15-2254.

Ms. Wayne explained that this is the second request that the IIU has made to submit an amicus on a 1st circuit case.

In this case pending in the First Circuit Court of Appeals, Judge Dougan of the Boston Municipal Court found that the amount of loss tied to a particular fraud conviction was no more than \$6,000. Despite this factual finding by the trial court, immigration authorities and subsequently the federal district court concluded that the loss was in fact greater than \$10,000 and as a consequence the offense constituted an aggravated felony. The federal district court therefore affirmed the denial of the plaintiff's application for U.S. citizenship because an aggravated felony conviction barred the plaintiff from citizenship. She explained that immigration law permits an applicant for citizenship to appeal a denial to federal court. It also makes him subject to virtually certain removal.

Counsel for the appellant contacted the IIU for amicus support. The National Immigration Project of the National Lawyers Guild has agreed to sign the brief that CPCS submits. This case raises issues of great import to both Massachusetts defense counsel and CPCS noncitizen clients because a rule that permits re-litigating factual issues decided in a criminal proceeding means that noncitizen defendants could never be sure of the immigration consequences of certain

criminal dispositions and defense counsel would be hard-pressed to meet their obligations under *Padilla v. Kentucky*. The CPCS amicus would likely explore these policy concerns, while also expanding on the legal arguments that bind immigration authorities to the factual determinations made in criminal cases.

MOTION: Mr. Kociubes. That the Committee approve the request to file an Amicus brief in the matter of Nanje v. Chaves, U.S. Court of Appeals for the First Circuit, No. 15-2254.

SECOND: Mr. White.

VOTE: Unanimous.

3. Contract(s)

A. Web Application Security Testing

Anthony J. Benedetti, Chief Counsel, sought Committee approval for mobile device containerization software to improve secure management of mobile email. The technology will allow CPCS to manage CPCS content synchronized to these “containers” while not affecting anything else on the personal device.

CPCS is currently evaluating options from three leading vendors with the intent to acquire before the end of FY 2016 in an amount up to \$50,000, including professional support.

MOTION: Mr. Hernando. That the Committee approve the contract for a mobile device containerization software in an amount up to \$50,000, including professional support.

SECOND: Mr. Kociubes.

VOTE: Unanimous.

B. Painting – Springfield Office

Mr. Benedetti sought Committee approval to continue an existing project painting the Springfield Office. The project began in July of 2015, for work initiated for the first floor only at a cost of \$15,500. In February 2016, an estimate for painting the second floor was done at an additional cost of \$13,500 bringing the total cost up to \$30,000. Painting the second floor will complete this project.

MOTION: Mr. White. That the Committee approve the additional spending of \$13,500 for painting the second floor of the Springfield office, bringing the total cost of the project to \$30,000.

SECOND: Ms. Shah.

VOTE: Unanimous.

4. Election of Officers

Mr. White, as nominating committee member, recommended the re-election of Mr. Cinquegrana as Chair and Mr. Kociubes as Vice-Chair. He also recommended that Mr. Hernando be elected to serve as Secretary. He did not hear from any other interested parties. He indicated that the three are well-experienced and committed members of the Committee, and that it will be helpful for the stability of the agency going forward to elect all three.

Mr. Cinquegrana mentioned the various subcommittees and solicited interest from members in serving on the committees. The subcommittees are: executive committee, budget and fiscal, personnel, training and qualifications, and amicus. Anyone interested in serving on a committee was asked to contact Mr. Cinquegrana or Mr. Benedetti.

MOTION: Mr. Watkins. That the Committee elect the following as officers of the Committee: Mr. Cinquegrana as Chair; Mr. Kociubes as Vice-Chair; and Mr. Hernando as Secretary.

SECOND: Ms. Shah.

VOTE: Unanimous.

5. Audit and Oversight Department Overview

William Shay, Director of the Audit and Oversight Department (A&O), presented an overview to the Committee of the A&O Department. He gave a detailed history of the Department, which was created in 1991 and is comprised of six professionals that fulfill the mandate of the Department to monitor the bills submitted by and compensation paid to private counsel and court cost vendors. He explained that the department's critical function serves to protect both the clients and the agency.

Some specifics that Mr. Shay mentioned:

CPCS processes over a half million bills a year and the department utilizes a number of internal controls within the billing system. In addition, the department also serves to:

- Educate and train the private bar on the billing rules and statutory limitations on billing.
- Explain what the expectations are for billing records and record keeping requirements

Mr. Shay also highlighted three of the ways that reviews are conducted: Targeted reviews of complex cases, random audits and full audits.

Mr. Shay also reviewed the various internal controls that exist including:

- The eight hour daily limit on billable hours and the option of counsel to obtain a waiver
- The practice that late bills will not be paid unless they meet statutory criteria

Finally, Mr. Shay reviewed recent audits that the agency has undergone and that A&O staff worked on. In 2007 and 2011, the agency was audited by the Office of the State Auditor (OSA). In 2011, they reviewed the e-bill billing system, the internal control plan, audit plan, the random audit files, full audit files, and court cost vendor billing. Ultimately, the Auditor found that all the recommendations made by the OSA in the 2007 audit had been fulfilled by CPCS. The Report of the OSA did not make any additional recommendations on how CPCS could improve the current auditing and concluded that all the auditing functions and internal controls were satisfactory (the Auditor's highest rating).

Mr. Shay then introduced members of the Department:

- Maura Dupray, staff counsel
- George Earley, staff counsel
- Renay Costa, staff counsel
- Denise Torracco, staff auditor
- Sasha Brown, Administrative Assistant
- James Terrasi, Chief Auditor.

Mr. Shay stated to the Committee that the Department serves a critical function in the agency by providing assurance and demonstrating that funds appropriated for providing legal services to indigent citizens are well spent and well accounted for, and, that CPCS has systems and internal controls in place to ensure that funds go to providing the best indigent defense to clients.

Several Committee members commented on their experience with the Department, complimenting their diligence and stating that A&O provides a valuable function of the agency.

6. Monthly Financial Overview Report

Kevin Lucchetti, Chief Financial Officer, presented the FY 2016 monthly financial overview report to the Committee for review. As of mid-March, total spending is approximately \$123M with total estimated spending for FY 2016 forecasted at \$215M.

Discussion ensued.

7. Commitments \$10,000 and Over Report

Mr. Lucchetti presented the commitments over \$10,000 report. There were no new commitments to report this month.

8. Chief Counsel Report

Mr. Benedetti reported on the following:

Senate Appointments

The Senate President reappointed Katherine Craven for another term and appointed Professor Bruce Miller of Western New England School of Law as a new member. Professor Miller teaches constitutional law along with other subjects related to public law and litigation related issues. His focus is specifically on legal issues that affect the poor. He is president of “No More Guantanamo’s” and serves on the board of the Rosenberg Fund for Children.

Attrition

Attrition of staff continues to be reviewed. At this point in time the attrition rate for FY’16 is projected to be 14.5%. In FY 2015 it was 13.2% and FY 2014 it was 14.9%. Mr. Benedetti indicated it was too early to determine whether the salary increase would have any positive effect on attrition. As of February 22, 2016, 73 people have left the agency, of which 45 were attorneys. Thirty-seven percent of the 73 who have left had less than three years of service and another 40% had between three to six years of service.

The agency also continues to work on reducing attrition in other non-monetary ways.

Discussion ensued.

Budget

The FY 2017 budget advocacy is on-going. The House is expected to release their budget in mid-April with the Senate following in mid-May.

Legislation

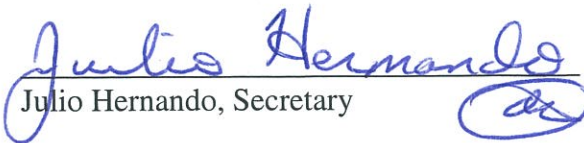
The Governor signed the Opioid bill on March 14, 2016. CPCS provided input on the bill to both the House and Senate, including the House and the Senate leadership, with several positive changes emerging in the final legislation.

A House and Senate Conference Committee have produced a compromise version of legislation that would eliminate automatic suspension of drivers’ licenses of those convicted of certain drug offenses.

The full Senate voted favorably on a bill that would increase the threshold of larceny charges.

There being no further business to come before the meeting, the Committee adjourned at approximately 6:47 p.m.

Respectfully submitted,


Julio Hernando, Secretary