

COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

April 10, 2018

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, April 10, 2018, beginning at 5:50 p.m. R.J. Cinquegrana, Chairman, presiding.

MEMBERS PRESENT: Ms. Alvarado, Messrs. Kennedy, Kociubes, Miller and Stern

TELECONFERENCING: Ms. Tewksbury and Mr. Rosenfeld

1. **Minutes of March 14, 2018 Meeting**

The minutes of the March 14, 2018 meeting were approved as presented.

2. **Amicus Request(s)**

Both amicus requests were unanimously approved by the amicus subcommittee.

A. *Commonwealth v. Carter*, No. SJC-12502

Joshua Dohan, Director, Youth Advocacy Division, sought Committee approval to submit an amicus brief in the case of *Commonwealth v. Carter*, SJC-12502. The Supreme Judicial Court (SJC) granted direct appellate review. The amicus brief will address two issues: 1) the reach of the youthful offender statute, in particular the legal definition of "infliction of bodily harm." When juveniles are adjudicated as youthful offenders, the Juvenile Court can sentence those children to adult sentences; and 2) that Carter's actions should have been judged under a juvenile specific manslaughter standard, and that the trial judge should have permitted expert testimony about adolescent brain development.

Attorney Eva Jellison of Wood & Nathanson has agreed to draft the brief.

MOTION: Mr. Miller. That the Committee approve the submission of an amicus brief in the matter of *Commonwealth v. Carter*, SJC-12502.

SECOND: Ms. Alvarado.

VOTE: Unanimous.

B. *Commonwealth v. Perez*, No. SJC-12498

Mr. Dohan sought Committee approval to submit an amicus brief in the case of *Commonwealth v. Perez*, SJC-12498. This case occurred prior to the *Miller* and *Diatechenko* decisions (juvenile life without parole cases). The amicus brief would address two primary issues: 1) offer a clear explanation of the purpose of a *Miller* hearing and 2) describe what we think a constitutionally adequate *Miller* hearing looks like.

The attorney representing Perez has requested the hearing be expedited and that motion was granted by the Court. The brief must be filed by April 26, 2018. Due to the expedited time frame, the original attorney writing the brief is no longer available. Staff is looking for another attorney to file the brief, and there is a possibility that the amicus brief will not be filed.

MOTION: Mr. Stern. That the Committee approve the submission of an amicus brief in the matter of *Commonwealth v. Perez*, SJC-12498.

SECOND: Mr. Kociubes.

VOTE: Unanimous.

3. **IT Case Management Update**

Daniel Saroff, Chief Information Officer, provided an overview on the status of work being done to develop a new, unified agency case management system, which his team has been working on since the middle of last year. The project, currently referred to as Project Zeno, is scheduled to be completed by December 31, 2018.

Mr. Saroff explained the issues with current systems:

- Three case management systems with incompatible data
- Inconsistent data standards
- Poor design and usability
- Antiquated security and permissions models
- Poor search and reporting
- Antiquated technology
- Deficient mobile ability

The new, unified, modern, case management system will take the best of the current system and introduce new elements that will address the following:

- Scaling the system to address a larger / complex organization
- Enable better data-driven decision making
- Driving functionality through user requirements
- Leveraging modern developer models and technology

Requirements gathering has been extensive, involving over 100 individual interviews, multiple group sessions, cross-divisional and role (e.g., attorneys, SSAs, investigators, AAs, etc.) data gathering, mining of complaint tickets, approximately 250 survey responses, and recommendations from the Gideon Project. A third party was engaged for staff augmentation and project management, including a full-time professional project manager. The project is being built in the Microsoft Cloud infrastructure and the data will be encrypted. As a result it will enable the system to be scalable and more reliable and secure. It is being designed for key elements (run sheets, conflict checking, and contacts) to be mobile friendly.

Finally, the key phases of the projects are:

- Requirements analysis
- Project planning
- Project development
- Quality assurance
- Communication
- Training

Currently, the project is in the project development phase.

Discussion ensued.

4. Monthly Financial Overview Report

Anthony Benedetti, Chief Counsel, presented the monthly financial overview report to the Committee for review. There is no change in the estimate spending of \$152.8M for line item 0321-1510. The forecast for line item 0321-1520 is 22.04M.

As mentioned at several of the past Committee meetings, the Administration and Finance (ANF) reserve account (1599-1690 Caseload and Deficiency Reserve), which includes funding to supplement CPCS in line items 0321-1510 (private attorney compensation) and 0321-1520 (indigent court costs), has received regular infusions. The next payment of approximately \$12M is scheduled for April 18, 2018.

The run out dates for both 0321-1520 and 0321-1510 is in late June, early July.

The House Ways and Means FY 2019 budget will be released on Wednesday, April 11, 2018. Amendments are due by Friday, April 13, 2018. The House will debate the budget the week of April 23, 2018. The Senate budget should be released the week of May 21, 2018.

5. Commitments \$10,000 and Over Report

Mr. Benedetti presented the commitments of \$10,000 and over report to the Committee for review. There were no new commitments to report. It is anticipated that Chief Financial Officer will present the FY 2019 pre-approval list at the May 2018 meeting.

6. Strategic Planning Update

Debra Krupp, Director of Administration and Oversight, provided members with an update on the Strategic Planning process.

Ms. Krupp provided a background on the steps taken to this point. The senior management team (SMT), as well as other senior leaders in the agency drafted a strategic plan, which consisted of a mission statement, agency values, goals, strategies, and initiatives. The draft strategic plan was presented to the full Committee in December 2015.

Following the presentation to the Committee, the plan was then made public to the staff and private panel members, who were asked to complete a survey regarding mission and values, as well as the initiatives. Over 850 people responded to the survey. After a review of the survey responses by the SMT, the managing directors, and the heads of the trial panels, the decision was made to move forward on four initiatives: improving agency diversity and cultural competence, strategically allocating appellate resources, strategically allocating training resources, and strategically allocating resources to appropriately support both private assigned counsel and staff clients.

Teams of eight to nine members, composed of volunteers and senior leader recommendations, were created to draft proposals for each initiative. The teams consisted of both staff and private counsel and were diverse by geography, practice area, years of experience, and race. At the same time, a process management team determined how the project should be managed. The teams began work in 2017 and checked in with the SMT with a mid-project review.

The Appellate Resources, Training Resources, and Equitable Resources teams presented their proposals in the summer of 2017, and the Diversity and Inclusion team presented in November 2017.

The SMT reviewed and discussed all the team proposals making decisions on how to move forward. The majority of the proposals from the Appellate Resources, Training Resources, and Diversity and Cultural Competence Teams were accepted and implementation has been ongoing. The Equitable Resources Team presented a number of proposals that are still under consideration because the proposals require review, input and implementation plans from our Finance, Audit & Oversight, and IT Units. Staff expects to return to the Committee with specific Equitable Resource proposals later this fiscal year.

A decision was made to engage a consultant to assist the SMT with the creation of an Equity and Inclusion Chief (EIC) position, proposed by the diversity team. The consultant will help the

SMT establish the EIC's primary responsibilities and help develop a plan for the first year. Specifically, the consultant is expected to: provide anti-racism training to senior managers so that the SMT is well prepared to hire an effective EIC and to effectively support a diversity and inclusion plan; advise the SMT on how EIC positions have been designed in other similar organizations, including identifying primary responsibilities and advising on whether an EIC position is best situated inside or outside HR; provide the SMT with an objective view of the agency and help the SMT prioritize CPCS's needs; know the market and be able to advise staff on how best to make the EIC position attractive to qualified individuals; develop a first year plan for the EIC; help the SMT develop an effective communication plan to staff and private assigned counsel about the Diversity Plan; and help evaluate current CPCS racial & ethnic disparities initiatives.

A Request for Proposals (RFP) for the consultant will be completed and staff will return to the Committee for approval of the contract assuming it is over the \$10,000 threshold.

7. Chief Counsel Report

Mr. Benedetti updated the members on the following items:

- Acting Deputy Chief Counsel - He introduced and thanked Priscilla Duffy for agreeing to serve as Acting Deputy Chief Counsel for the Private Counsel Division position. Ms. Duffy has been with the agency since 1992, first as a public defender in Brockton taking adult criminal cases and then delinquency cases. Prior to stepping into the Acting Deputy Chief position, she was the Assistant Director in the Youth Advocacy Division.
- Petition for Writ of Protection pursuant to G.L. c. 211, § 3 Immigration and Customs Enforcement (ICE). A Single Justice hearing has been scheduled for May 18, 2018. District Attorney Marian Ryan submitted a letter in support of the petition, as did the Boston Bar Association, the Victim's Rights Center, and a number of other civil legal rights organizations.
- Criminal Justice Reform Bill – An overview of the bill was recently distributed by email to the members by General Counsel Lisa Hewitt. The Governor has until April 15, 2018 to sign the new Legislation.

Mark Larsen, Director of the Mental Health Litigation Unit, and Randy Gioia, Deputy Chief Counsel for the Public Defender Division, provided updates on the following matters.

Mr. Larsen gave an overview of two cases before the SJC that have an impact in the mental health field:

- Two arguments were held last week. One was held by staff attorney Alice Wiseberg on a case where the issue is mootness. This case arose as a result of a motion to continue that was denied and the client was committed. At the same time, another case was on its way to the SJC with the same issue. In that case, the SJC determined that, as a matter of due process, the first motion to continue should be granted, unless there is an overriding reason not to. The matter was moot because the legal issue was decided and the client

was released. This was challenged on two grounds: 1) the stigma associated with being committed; and 2) in 2016 the Chapter 123 statute was changed to provide mandatory reporting to a federal database.

- The second case that was argued in the SJC, *Williams v. Stewart's Hospitals*, may also have a significant impact on mental health cases. The plaintiff's attorney raised, in a wrongful death case, the obligation of the hospital to oversee the discharge of committed psychiatric patients. In this case, the person was committed to the custody of the Carney Hospital and was not to be released until they were no longer a danger to themselves or others. The plaintiffs secured an expert whose affidavit criticized the hospital for discharging the patient. A decision that finds the hospital has a duty, independent of the treating doctor, to assess the dangerousness of the patient, could significantly lengthen the duration of a client's stay in the hospital and could change the process of the discharge.

Mr. Gioia updated the members on the Sonja Farak drug lab matter reporting that on April 5, 2018, Justice Gaziano, sitting as a Single Justice, dismissed 11,000 cases involving approximately 7,500 defendants. These were based on interim lists submitted by the Attorney General's Office. The bulk of the convictions vacated were from Hampden, Berkshire, Franklin and Hampshire counties. The District Attorneys must submit a final list by April 30, 2018 which will include the following:

- Convictions of additional Farak defendants that the respondents agree should be vacated and dismissed – approximately 1,000.
- Convictions of Farak defendants that the respondents do not agree should be dismissed with prejudice – approximately 25-30.
- A list of Ruffin defendants (defendants who pled guilty before the lab analysis was completed in their case) – approximately 750 cases.

In addition to the Single Justice case, there is the full bench case that is currently pending. The brief was filed on March 13, 2018. The respondents' brief is due on April 12, 2018, and oral argument is scheduled for May 8, 2018. Attorney Rebecca Jacobstein from the Appeals Unit will be arguing the case.

The issues in front of the full bench are:

- Whether, given the unprecedented scope of the prosecutorial misconduct, the SJC should dismiss with prejudice all drug convictions arising from the Amherst Lab during Farak's tenure.
- Whether to ensure that this type of misconduct never happens again, the SJC should impose prophylactic measures, including standing orders and monetary sanctions.

On a final note, Mr. Benedetti asked that the Committee meeting adjourn in memory of Ernie Vesperi. Attorney Vesperi was a long-time, CPCS/Massachusetts Defenders Committee employee for twenty-eight years. He spent his last seven years with the agency as Attorney-in-Charge of the Brockton office before representing clients as a member of the Pilgrim Advocate

bar advocate program for ten years. Attorney Vesperi was well-respected as an attorney throughout the agency and Plymouth County serving as a mentor and influencing many new attorneys, including Mr. Benedetti, Ms. Duffy and Ms. Krupp. He leaves a great legacy of zealous representation for the poor in Massachusetts.

There being no further business to come before the meeting, the meeting adjourned into Executive Session at approximately 7:06 p.m.

Respectfully submitted,

by Joseph L. Kociubes

Joseph L. Kociubes, Vice-Chairman