

COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

July 19, 2023

The monthly meeting of the Committee for Public Counsel Services was held by video conference on July 19, 2023, beginning at 5:34 p.m. Joseph L. Kociubes, Chairman, presiding.

MEMBERS PARTICIPATING: Messes. Alvarado, Ball, Conrad, Petropoulos

Messrs. Apfel, Cinquegrana, Kennedy, Kociubes, Miller,
Stern, White

1. **Minutes of June 21, 2023 Meeting**

The minutes of the June 21, 2023 meeting were approved as presented.

2. **Legal – Request for Committee action**

a. **Commonwealth v. Warrens Gelin, SJC-13433**

Juvenile Appeals Staff Counsel Sarah LoPresti presented an amicus recommendation for Commonwealth v. Warrens Gelin, SJC-13433. The amicus was approved by the Amicus Subcommittee. The issue is whether a motion brought pursuant to Commonwealth v. Long, which raises an equal protection challenge to police enforcement of traffic laws and other laws is recognizable in probation violation hearings.

Commonwealth v. Olsen held that in the context of a Fourth Amendment or Article 14 challenge, the exclusionary rule would not be applied at probation violation hearings. The ACLUM and CPCS will collaborate to argue that Olson does not foreclose bringing an equal protection challenge where the remedy is application of the exclusionary rule to the evidence that was seized in violation of the equal protection class and that the court should explicitly hold that those claims are viable at a probation violation hearing. The brief would point to the language in Olsen that limits that case to the Fourth Amendment and Article 14 context. For example, Olsen specifically reserved the possibility that in cases of egregious police misconduct the exclusionary might be appropriate and that racial profiling is always an egregious police misconduct and therefore should always be available for those claims. The amicus brief will also speak to the difference between an equal protection challenge and a Fourth Amendment Challenge and why that may weigh in favor of a different rule. CPCS will also express support for a separate brief by the Criminal Justice Institute and the Massachusetts Association of Criminal Defense Lawyers which will argue that Olsen should be overturned, and that the defendant should not only be able to bring protection challenges at the violation of probation hearing, but also Fourth Amendment and Article 14 challenges.

MOTION: Ms. Conrad. That the Committee approve the amicus recommendation for Commonwealth v. Warrens Gelin, SJC-13433

SECOND: Mr. Miller.

VOTE: Unanimous.

b. Commonwealth v. Jean Rezac, SJC-13445

Juvenile Appeals Staff Counsel Sarah LoPresti presented an amicus recommendation for Commonwealth v. Jean Rezac , SJC-13445. The amicus was approved by the Amicus Subcommittee. This case involves an interesting question about criminal responsibility and whether when it is fairly raised by a defendant, the Commonwealth is required to prove that the defendant did not lack the substantial capacity to appreciate both the criminality and the moral wrongfulness of their conduct.

The case involves tragic circumstances where a mom attacked her 12-year-old autistic son, which fortunately did not result in significant injury. It is agreed that the mother believed that this was the only way to get her son out of a terrible situation and that death was preferable to what he was going through. The judge concluded that it was enough that the mother understood that her conduct was criminal, and that the Commonwealth did not need to prove that she was not operating under delusions. The amicus brief will provide background regarding some related out of state cases as other jurisdictions treat the defendant's appreciation of both the criminality of conduct and moral wrongfulness.

MOTION: Mr. Miller. That the Committee approve the amicus recommendation for Commonwealth v. Jean Rezac, SJC-13445

SECOND: Ms. Conrad.

VOTE: Unanimous.

c. Commonwealth vs. Denzel McFarlane, SJC-13430

Director of Strategic Litigation Rebecca Jacobstein presented an amicus recommendation for Commonwealth vs. Denzel McFarlane, SJC-13430. The amicus was approved by the Amicus Subcommittee. The Supreme Judicial Court solicited amicus briefs on the issue of whether failure to disclose information about a pending civil case was a violation of Brady. The McFarlane case is a Hampden County case. The amicus brief will provide another opportunity to explain defense difficulties that arise when the Hampden County District Attorney's Office takes a very narrow approach to Brady. The amicus brief will address two main topics 1) that the Appeals Court applied the wrong standard of review 2) the Commonwealth's unduly narrow view of what

constitutes Brady materials and their obligations. After recently receiving the Commonwealth's brief, CPCS may want to address a couple of other issues which will include separation of powers and seeking clarity that these matters fall under Rule 14, and not Rule 17.

MOTION: **Mr. Apfel. That the Committee approve the amicus recommendation for Commonwealth vs. Denzel McFarlane, SJC-13430**

SECOND: **Ms. Petropolulos.**

VOTE: **Unanimous.**

3. Monthly Financial Overview

CFO Kevin Lucchetti presented the Monthly Financials Overview Report. Mr. Lucchetti reviewed fiscal year end dates: FY 23 close/soft close on June 30, 2023 and FY 23 hard stop at the end of August 2023. CPCS continues to pay bills against FY 23 until the end of August. As of July 8, 2023 CPCS has spent approximately 83% or \$277.8M of the \$336M that is available across all line-item accounts. CPCS anticipates FY 23 spending to be approximately \$315.5M and projects a FY 23 surplus in the amount of approximately \$20.5M across all accounts.

- The surplus in the Administration/Operations 1500 account will likely fall between \$1M and \$2M. The surplus is projected to increase before the end of the FY as some obligations, contracts, and services may not be complete by June 30th and will fall into FY 24. For example, new furniture has been purchased and received in FY 23 for the Lawrence offices, but installation will occur in FY 24.
- The surplus in the Private Counsel 1510 account is approximately \$4.2M. Estimated spending is conservative.
- The surplus in the Court Costs/Experts 1520 account is approximately \$15.5M and estimated spending is approximately \$24M.

If the legislature authorizes a Prior Authorization Continued (PAC) then the FY 23 surplus may be carried forward into FY 24.

4. Commitments \$10,000 and Over Report

Kevin Lucchetti presented the Commitments \$10,000 and Over Report. He seeks the approval of three contracts for a total commitment of approximately \$510,000 where estimated spending exceeds the original June 2022 preapprovals by more than 10%.

- Signet Electronic Systems LLC – Audio Video services
- WB Mason – office supplies
- Iron Mountain Information Management – retention services

Mr. Lucchetti reported one vendor Dominion Solutions Inc. for business cards where spending is expected to exceed \$10,000. Employees desiring business cards with the new CPCS logo, office and address changes, and new attorneys needing cards have driven cost a little higher. This item does not need Committee approval.

MOTION: Mr. White. That the Committee approve three contracts totaling \$509,832 – Signet Electronic Systems LLC for \$340,432 WB Mason for \$98,808 and Iron Mountain Information Management for \$70,592.

SECOND: Ms. Conrad.

VOTE: Unanimous.

5. Police Misconduct Database

Rebecca Jacobstein presented on the Police Misconduct Database. The name of the project is the Full Disclosure Project. For two years, the National Association of Criminal Defense Lawyers (NACDL) worked with CPCS on the project. The database is shared with the Youth Advocacy, Mental Health, and Adult Criminal panels, and the American Civil Liberties Union (ACLU), Federal Public Defenders, Harvard Defenders, and Criminal Justice Act (CJA) attorneys.

The Police Misconduct Database is an immediately accessible materials resource for attorneys to get information about police officers in their cases. The database also allows the Strategic Litigation Unit to look for and analyze trends within the information. The database is a warehouse for logging judicially determined prosecutorial errors.

Ms. Jacobstein demonstrated how the database works by sharing her screen. Both a person search and police department search can be utilized. The database will pull up basic information such as if the officer is on a Brady List, whether the officer has been certified by the POST Commission, identifying employee numbers, and what Police Department the officer works for and if they have been transferred. The next section of information covers Known Incidents and includes civil lawsuits and settlements, complaints and what the allegations were, any criminal charges, and internal investigations and whether the allegations were sustained. The database can also store media articles. The database may also include court transcripts and a judge's orders that show an officer's problematic misconduct. A section of the database is dedicated on how to provide CPCS with information about police or prosecutorial misconduct, how to submit questions, comments, concerns, or corrections, and it also gives the general database email address.

In response to Committee members questions:

- Criminal defense bar attorneys and MACDL individuals can request access to the database.
- The database is live, but trainings are pending.
- With regards to filtering information, public records are automatically included in the database. Motions will be filtered by redacting the defendant's name and docket number. The standard for filtering other information is that the experience must be validated by a judge for inclusion.
- List serves will continue to act as a place for defense counsel comments and experiences with police officers as this would be difficult to maintain within the database.

The Committee commended the Police Misconduct Database work and its use as a powerful tool.

6. Chief Counsel Report

Chief Counsel Anthony Benedetti provided updates on state-wide counsel capacity issues. The Mental Health Litigation Division and CAFL Division incentive programs have helped to improve the counsel shortage in Western counties through the end of the fiscal year. There are some slight delays in providing counsel to Mental Health Division clients, but much progress has been made. There are about 90 people who are currently waiting for representation in the CAFL Division across the state. Delay in counsel sometimes occurs during the summer due to vacations and fiscal year end.

Two recruitment positions have been created and filled to recruit for the private bar. These are two-year positions. One Private Attorney Outreach Partner served as a private attorney previously, so he understands what the work entails. The other Private Attorney Outreach Partner has a background in marketing, civil aid recruitment, and pro bono recruitment. Mr. Benedetti hopes to be able to introduce the Private Attorney Outreach Partners to the Committee soon.

Private bar Public Service Loan Forgiveness (PSLF) through the federal government is close to being finalized and CPCS is hopeful that this will be beneficial to as many attorneys as possible, and lead to attorneys handling more cases to qualify. Employment can also be certified retroactively to 2007. CPCS is engaging with consultant Heather Jarvis who has been working with the SJC Wellness Committee to help us provide information to the private attorneys. Town Halls will be held to provide information and guidance regarding the PSLF process. Private Counsel Deputy Chief Counsel Vanessa Valez, Private Counsel Director of Criminal Trials Rose King, General Counsel Lisa Hewitt, and Assistant General Counsel Sam Aylesworth have been instrumental in the PSLF work.

Mr. Benedetti shared very positive results regarding the State Auditor's report of CPCS. The report included complimentary language regarding the work of CPCS' Director of A&O Bill Shay, Chief Auditor Jim Terrasi, and the entire Audit & Oversight team. Mr. Benedetti also praised the work of CIO Jon Bartleson and the IT team, Kevin Lucchetti, Lisa Hewitt, and the Finance team – all of whom were instrumental to the positive audit report.

Mr. Benedetti thanked the Committee for approving the vacation buyout proposal last month. Approximately 340 employees took advantage to buy back some vacation time. The vacation buyout option helped give employees some extra money and reduced CPCS' future payout exposure obligations for departing or retiring staff.

Mr. Benedetti provided update regarding request to bring POST Commission litigation, noting nothing had been filed yet as CPCS hopes to engage in productive conversations during an August meeting with POST.

The next meeting is planned for in person. There being no further business to come before the Committee, the Committee adjourned at approximately 6:44 p.m.

Respectfully submitted

/s/ Mía Alvarado

Mia Alvarado, Secretary