COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

DECEMBER 17, 2020

The monthly meeting of the Committee for Public Counsel Services was held by video conference on Thursday, December 17, 2020 beginning at 5:36 p.m. Joseph L. Kociubes, Chair, presiding.

MEMBERS PARTICIPATING: Messes. Alvarado, Ball, and Chester
Messrs. Apfel, Cinquegrana, Demissie, Healy, Kennedy, Miller, and White

The record will reflect that due to the ongoing coronavirus pandemic, the meeting was held via videoconference.

1. **Minutes of November 19, 2020 Meeting**

The minutes of the November 19, 2020 meeting were approved as presented.

2. **Amicus Request(s)**

Doe No. 7546 v. *Sex Offender Registry Board*, SJC-13032

Larni Levy, Director, Alternative Commitment and Registration Support Unit, sought Committee approval to file an amicus brief in the case of *Doe No. 7546.* v. *Sex Offender Registry Board*, SJC-13032. The Supreme Judicial Court (SJC) will hear Doe's appeal of a decision by the Sex Offender Registry Board denying Doe's motion to vacate her classification as a level 3 sex offender.

MOTION: **Mr. Miller. That the Committee approve the filing of an amicus brief in the case of *Doe No. 7546 v. Sex Offender Registry Board, SJC-13032.***

SECOND: **Mr. Apfel.**

VOTE: **Unanimous.**

Due to staff learning of the solicitation after the meeting materials were sent to Committee members, , the next amicus request, *Commonwealth* v. *Harris*, SJC-13046, was not included on

the agenda and was not sent in advance with the materials sent to the Committee last week. According to the Rules and Regulations of the Committee, consideration of the request requires a majority vote of the Committee.

The following vote was then made.

MOTION: Mr. White. That the Committee approve to entertain hearing the request for an amicus brief in the case of *Commonwealth* v. *Harris,* SJC-13046.

SECOND: Mr. Healy.

VOTE: Unanimous.

Commonwealth v. *Ronnie Harris,* SJC-13046

Rebecca Kiley, Attorney-in-Charge, Public Defender Division Appeals Unit, sought Committee approval to file an amicus letter in the case of *Commonwealth v. Harris*, SJC-13046. The defendant is appealing the denial of a motion to stay his sentence, pending his appeal of the denial of a Rule 30(b) motion for new trial. The SJC ordered the parties to brief their positions on the Appeals Court panel decision denying the stay, and to address the following question: "whether and in what circumstances a court has authority to grant a stay of execution of a sentence pending appeal from the denial of a motion for a new trial, as opposed to a direct appeal from a conviction. Cf. *Commonwealth* v. *Charles*, 466 Mass. 63 (2103)."

MOTION: Ms. Ball. That the Committee approve the filing of an amicus letter in the case of *Commonwealth v. Harris,* SJC-13046.

SECOND: Ms. Chester.

VOTE: Unanimous.

3. **<u>CAFL Counsel Shortage – Emergency Language</u>**

Michael Dsida, Deputy Chief Counsel for the Children and Family Law Division (CAFL) sought Committee approval to declare that there is a shortage of attorneys for care and protection cases in Berkshire, Hampden, and Worcester Counties and to authorize qualifying attorneys in those counties to be paid $75/hour through June 30, 2021. Currently there are approximately 118 individuals without counsel in these three counties. The shortage continues despite fewer petitions being filed this fiscal year due to a number of factors including an aging bar; losing attorneys with experience; and the difficulty of the cases and the practice.

Staff is working with Western New England Law School to provide internships and on other ways to entice new graduates to join the CAFL trial panel. They are also encouraging attorneys

from distant counties to accept cases in Western Massachusetts. Staff is also continuing to conduct certification trainings. The next training is scheduled for January, 2021.

Language in an Outside Section of the FY 2021 budget allows the Committee to declare an "emergency" if they determine there is limited availability of qualified private counsel for care and protection cases. Upon a declaration of an "emergency" the Committee may increase the compensation from the present rate up to $75/hour. This language is the same that has been included in previous year budgets as a tool for the Committee to address the counsel shortage in care and protection cases.

He proceeded to request the Committee to approve the following:

a. Declare that an emergency exists in Berkshire, Hampden, and Worcester Counties based on the limited availability of certified private counsel to accept appointments in care and protection cases;
b. Authorize a temporary increase in the rate of compensation in care and protection cases to $75 per hour for private counsel on any new appointment they accept between the date of its declaration of an emergency and June 30, 2021, which will be applicable for the duration of the assignment; and
c. Limit this authorization to attorneys who, prior to the date of its declaration and authorization, 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 billed not less than 700 hours in fiscal year 2020 as private counsel appointed or assigned to care and protection cases.

Discussion ensued.

MOTION: Mr. White. That the Committee declare that an emergency exists in care and protection cases in Berkshire, Hampden, and Worcester Counties and authorizes a temporary rate increase to $75/hr. for new appointments until June 30, 2021 and to limit this declaration to attorneys that meet the criteria as presented.

SECOND: Mr. Demissie.

VOTE: Unanimous.

4. **Monthly Financial Overview Report**

Mr. Lucchetti, Chief Financial Officer, presented the monthly financial overview report to the Committee for review.

At this point in the fiscal year, the agency has spent approximately $71M out of available funds in all line items.

Based on current calculations, Mr. Lucchetti expects a surplus in both the private counsel line item 0321-1510 and the court cost vendor line item 0321-1520. Finance will continue to monitor the data.

5. **Commitments $10,00 and Over Report**

Mr. Lucchetti provided the commitments $10,000 and over report for review. He highlighted five items that deviated more than 10% from the pre-approved amount: Signet Electronic Systems, Inc. (audio video/security car access/cabling); Winslow Technology Group, LLC (IT equipment); Granite Telecommunications (telephone – data lines/analog/fax); The Ripples Group, LLC (management training program); and TIC Business Consulting (IT consulting). Mr. Lucchetti asked for approval of the new amounts for the five vendors. In addition, Complete Recycling Solutions, LLC (equipment recycling) was not included in the original preapproval list and he is asking for approval for an amount up to $20,000.

MOTION: **Mr. Miller. That the Committee approve the current spending estimates for Signet Electronic Systems, Inc.; Winslow technology Group, LLC; Granite Telecommunications, LLC.; The Ripples Group, LLC; and TIC Business Consulting, as presented, as well as approval for Complete Recycling Solutions, LLC for an amount up to $20,000.**

SECOND: **Mr. Cinquegrana.**

VOTE: **Unanimous.**

6. **FY 2022 Budget Proposal – Maintenance Request**

The budget subcommittee met last week to begin consideration of the FY 2022 budget proposal. Due to the pandemic the budget process is behind schedule and it is necessary to provide the maintenance budget request to the Governor's administrative finance office as soon as possible. Staff and the budget subcommittee will meet again to consider any expansion requests and will return to the full Committee at a later date likely seeking approval for an increase in the private counsel hourly rates.

Mr. Lucchetti proceeded to provide an overview of the FY 2022 maintenance request that was unanimously approved by the budget subcommittee. He requested the Committee approve a total FY 2022 Maintenance Request of $259.3M which includes a one-time, non-annualized payment to staff of approximately $1.4M. The amount requested is approximately 1.2% higher than the current FY 2021 spending estimate.

Lisa Hewitt, General Counsel, explained that language in the 211D statute requires staff to hold compensation hearings not more than three years apart. These hearings provide private counsel

an opportunity to provide input regarding the rates of compensation paid to the private bar. It is a chance for members of the Committee to hear directly from the private bar on issues related to compensation. It is anticipated that the compensation hearings will be held remotely in late January.

Discussion ensued.

Mr. Benedetti thanked the budget subcommittee for their work thus far and stated that he looks forward to continuing the conversation regarding the private counsel rates.

MOTION: Mr. Cinquegrana. That the Committee approve the FY 2022 Maintenance Request of $259.3M as presented.

SECOND: Mr. White.

VOTE: Unanimous.

7. **Chief Counsel Report**

Mr. Benedetti provided updates on the following items

Loan Forgiveness Letter
In conjunction with the Supreme Judicial Court's Standing Committee on Lawyer Well-Being, a communication was sent to the education transition team for President-elect Joe Biden requesting that the incoming administration consider expanding the Public Service Loan Forgiveness program to include private lawyers who take court appointed cases. This is part of CPCS's ongoing efforts to recruit and be able to retain private attorneys who do this critical work. The letter asks the incoming administration to expand the definition of "public service".

Project Goldwater
Randy Gioia, Deputy Chief Counsel for the Public Defender Division, reported on the Goldwater Project which is a program designed to address forfeiture cases. The Institute, which is located in Arizona, contacted CPCS looking to assist clients needing counsel in civil forfeiture cases. Notices have been sent to staff and the private bar that Goldwater is a possible resource for their clients who are facing civil forfeitures. Goldwater will either assign one of their staff attorneys or they will make arrangements with local counsel.

Counsel Capacity Issues:
There are currently no new issues with respect to counsel capacity in the criminal or mental health areas. In Western Massachusetts, out-of-county attorneys have been helpful in providing coverage for the criminal division.

Personnel Subcommittee
Mr. Miller, Chair of the Personnel Subcommittee, informed the members that an initial meeting was held December 14, 2020. The subcommittee is in the process of gathering information and

reviewing attrition data from the last five/six years. John Lozada, Equity and Inclusion Director, will present at the next meeting to discuss the steps he is taking to address issues of diversity and inclusion.

The next meeting is tentatively scheduled for January 6, 2021.

COVID-19 Update

Mr. Benedetti informed the members that litigation will soon be filed against the Sheriffs to address two ongoing issues – confidential client communications and the lack of ongoing consistent COVID testing. Staff has had recent communication with the new head of the Sheriff's Association and the Vice-President to discuss these issues. They are aware the litigation is forthcoming and have committed to working with CPCS on all issues.

A recent Zoom call meeting was held with Trial Court leadership to discuss all pandemic-related issues within the courts. The primary focus of the meeting was to hear the Court's plan for dealing with the current caseload backlog and plans moving forward. CPCS requested that regular meetings be held to provide an opportunity for defense bar input on such plans. A follow-up letter will be sent reiterating the issues raised in the meeting.

On a final note, Mr. Benedetti mentioned that staff is working on discussions with DOC and the administration to get them to rethink the policy regarding the requirement to produce a negative COVID test prior to visiting inmates.

There being no further business to come before the Committee, the Committee adjourned at approximately 7:27 p.m.

Respectfully submitted

/s/ *Mia Alvarado*

_____

Mia Alvarado, Secretary