

COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

April 13, 2022

The monthly meeting of the Committee for Public Counsel Services was held by videoconference on Wednesday, April 13, 2022 beginning at 5:38 p.m. Joseph Kociubes, Chairman, presiding.

MEMBERS PARTICIPATING: Messes. Alvarado, Chester, and Petropoulos
Messrs. Apfel, Healy, Kennedy, Stern, and White

The record will reflect that the meeting was held via videoconference due to the Coronavirus pandemic.

1. Minutes of March 16, 2022 Meeting

The minutes of the March 16, 2022 meeting were approved as presented.

2. Amicus Requests

a) *Commonwealth v. Silva-Prentice*, FAR-28707

Rebecca Kiley, Public Defender Division Appeals Unit Attorney-in-Charge, sought Committee approval to file a letter in support of the defendant's application for further appellate review (FAR) and if granted, to file an amicus brief. The amicus letter would present three issues:

- 1) that gang evidence must be carefully scrutinized because of outsized significance it assumes in jurors' minds;
- 2) that the gang evidence against the defendant was unreliable and insufficient to establish gang membership, and
- 3) that even if his alleged gang membership were established, there was no nexus between it and his alleged participation in the crime.

MOTIOIN: Ms. Chester. That the Committee approve the filing of a letter in support of the defendant's application for FAR and if granted, to file an amicus brief in the case of *Commonwealth v. Silva-Prentice*, FAR-28707.

SECOND: Mr. Apfel.

VOTE: Unanimous.

b) *Russo v. Cummings*, SJ-2002-0071

Wendy Wayne, Immigration Impact Unit Director, sought Committee approval to provide amicus support in the above case by submitting a letter supporting the request to reserve and report the case to the full bench of the Supreme Judicial Court (SJC) and if approved, to submit an amicus

brief. The matter is regarding a taxpayer lawsuit filed by Lawyers for Civil Rights challenging the authority of the Barnstable County Sheriff to contract with Immigration and Customs Enforcement to enforce federal civil immigration laws.

MOTION: Mr. Healy. That the Committee approve filing a letter in support of the case of *Russo v. Cummings*, SJ-2002-0071, and if accepted, to file an amicus brief.

SECOND: Mr. Apfel.

VOTE: Unanimous

c) No. 22-16-03, *Matter of Cisneros*

Ms. Wayne sought Committee approval for CPCS to sign on to an amicus brief in this case, in response to an amicus invitation from the Board of Immigration Appeals (BIA). The Alameda County Public Defender's Office is taking the lead in drafting the amicus brief on behalf of public defender offices across the county.

The main issue is, what factors, if any, the BIA should consider when deciding whether to reopen a prior removal order that was premised on a subsequently vacated criminal conviction. The issue is critical to CPCS clients who were ordered deported based on unlawful convictions.

MOTION: Mr. White. That the Committee approval the joining of the amicus brief in the No. 22-16-03, *Matter of Cisneros*.

SECOND: Mr. Apfel.

VOTE: Unanimous.

d) Springfield Courthouse Litigation

Rebecca Jacobstein, Strategic Litigation Director, sought Committee approval to file an amicus brief in this matter. Former and current court employees filed suit asking the SJC to close the building until it is safe to go there. Retired Justice Spina has been appointed as the special master. The court has requested CPCS to file an amicus brief to provide further argument as to how the administration of justice is impacted by the environmental issue.

MOTION: Ms. Chester. That the Committee approve filing an amicus brief in the Springfield Courthouse Litigation.

SECOND: Ms. Alvarado

VOTE: Unanimous.

3. Contracts

a) FY 2023 Bar Advocate Supervising Attorneys

Rose King, Criminal Trial Support Unit Director, sought Committee approval for the FY 2023 Supervising Attorney Contracts. The Supervising Attorneys provide oversight of private attorneys handling assignments through the bar advocate programs, including evaluations of compliance with CPCS Performance Standards, complaint investigations, mentoring, and input into the periodic recertification of private counsel. The total cost of the contracts is a maximum amount of \$1,502,800, which includes an additional \$176.8K if the Private Bar Superior Court rate is raised to \$85/hour.

MOTION: Mr. White. That the Committee approve the FY 2023 Bar Advocate Program contracts for a maximum amount of \$1,502,800 as presented.

SECOND: Ms. Petropoulos.

VOTE: Unanimous.

b) FY 2023 Juvenile Supervising Attorneys

Erica Cushna, Youth Advocacy Division Trial Panel Director, sought Committee approval for the FY 2023 Juvenile Supervising Attorney Contracts. The Juvenile Supervising Attorneys provide training, performance evaluations, mentoring, complaint referral and investigation, and oversight of private attorneys handling delinquency and youthful offender assignments through the bar advocate programs.

The contracts for all supervising attorneys would provide for a rate of \$75 per hour for approximately 2.5-10 hours per week. This rate would change if the Superior Court and Youthful Offender rate increases in the 2023 budget. The total cost of the proposed contracts is a maximum of \$453,050 which includes an additional \$53,300 in the event the Private Bar Superior Court rate is increased to \$85/hr.

MOTION: Ms. Alvarado. That the Committee approve the FY 2023 Juvenile Supervising Attorney contracts for a maximum amount of \$453,050 as presented.

SECOND: Mr. Apfel.

VOTE: Unanimous.

4. Lease Approvals

144 Main Street, Brockton, MA and 221 Main Street, Brockton, MA

Kevin Lucchetti, Chief Financial Officer, sought Committee approval to extend the leases via a Short-Term Tenancy Agreement (STTA) for an additional 12 months, from April 19, 2022, through April 18, 2023 for both Brockton office locations. Costs will remain the same as the current lease for both locations - \$257,004 (144 Main Street) and \$84,210 (221 Main Street).

MOTION: Mr. White. That the Committee approve the lease extensions for

144 Main Street and 221 Main Street, Brockton, MA as presented.

SECOND: Ms. Petropoulos.

VOTE: Unanimous.

5. Monthly Financial Overview Report

Mr. Lucchetti presented the monthly financial overview report to the Committee for review, informing them that current estimated spending for all line items is approximately \$28M.

Currently there is a surplus in line item 0321-1500 (administrative line) of approximately \$1.6M and in item 0321-1520 (court costs/experts) of approximately \$8.5M, with an overall surplus in all line items of approximately \$10M.

He reminded the Committee that the agency received \$4.5M in funds from the American Rescue Plan Act (ARPA) with funds earmarked for responding to the Western Mass. counsel crisis for both the Public Defender Division and Children and Family Law Division. In addition, funds are being used for improving and developing our vendor onboarding system.

6. Commitments \$10,00 and Over Report

Mr. Lucchetti provided the commitments of \$10,000 and over report for review, highlighting three items that deviated more than 10% from the pre-approved amount.

- Winslow Technology Group, LLC (IT hardware/software) - \$1,034,331
- SHI International Corp. (IT hardware/software) - \$541,634
- TBNG, Inc. (IT network and security solutions) - \$503,751).

Mr. Lucchetti requested approval for the adjusted amounts for the three vendors.

MOTION: Ms. Chester. That the Committee approve the current spending estimates for the three vendors as presented.

SECOND: Ms. Alvarado.

VOTE: Unanimous.

7. FY 2023 Budget Update

Lisa Hewitt, General Counsel, provided an update on the FY 2023 budget process. The House Ways and Means (HWM) released their budget and proposed funding CPCS at a similar rate as what was included in the Governor's Budget.

The Operation Line (0321-1500) proposed a funding level of \$79,011,013. In the private bar line item (0321-1510), the recommendation included increased rates for the private bar and funding in the amount of \$207,565,150. Finally, in the indigent court cost line item (0321-1520), the funding provided \$24,165,014, and included language to carry funds over from the current fiscal year.

In addition, the HWM budget included two outside sections that propose eliminating all probation and parole supervision fees.

Ms. Hewitt thanked Mr. Healy and members of the Massachusetts Criminal Defense Lawyers (MACDL) for their work in helping to advocate for the CPCS budget, specifically the request for increased hourly rates for the private bar. She also expressed appreciation to House Speaker Ron Mariano, House Ways and Means Chairman Aaron Michlewitz and Judiciary Chairman Michael Day for funding the agency at the level requested by CPCS.

Anthony Benedetti, Chief Counsel, thanked the budget subcommittee for their work on the budget proposal and the entire Committee for their support.

The next step in the process is for the House to debate the full budget followed by release of the Senate Ways and Means proposal in mid-May.

8. Western Mass. Counsel Crisis – Special Master Report

The Special Master recently submitted his Report to the Single Justice of the Supreme Judicial Court. In the Report he recommended higher hourly rates for the private bar, as well as increased staffing. The Report was out of date and did not include recent developments and also did not include information provided to him regarding all of the various reasons attorneys are not willing to take cases.

The Single Justice requested parties in the case submit responses in response to the Report, along with all updated information. Staff is in the process of putting this together for filing.

9. Chief Counsel Report

Mr. Benedetti provided the following updates:

Personnel Matters

He informed the members that Mark Larsen, Deputy Chief Counsel of the Mental Health Division and Denise Simonini, Executive Assistant will both be retiring in the summer.

The time that staff have for Use or Lose vacation time has been extended. Staff will be able to carry over up to a maximum of 35 hours to be used by the end of the calendar year. All other time will expire at the previously approved deadline of April 23rd. This extension was presented to both the Personnel Subcommittee and the Executive Committee, who both approved the request pursuant to the CPCS Personnel Policy.

Meeting with Chief Justice Budd

Mr. Benedetti, along with the practice area Deputies and Ms. Hewitt, had a meet and greet with Chief Justice Budd recently to discuss a number of issues including those she intends to focus on during her tenure and ones which the defense bar were able to raise.

Staff raised the toxic conditions at the Springfield courthouse as a serious problem and also concerns with remote proceedings, and getting back to full in-person proceedings.

The meeting covered a wide range of topics and the hope is that consistent communication with the Chief Justice will occur going forward.

Western Mass. Counsel Crisis

Mr. Benedetti informed the members that the counsel crisis in Western Mass. continues. The Children and Family Law Division (CAFL) has approximately 190 clients without counsel, despite the incentive program that was recently put in place.

The Private Counsel Division is initiating two innovative programs to help alleviate the counsel crisis. Vanessa Velez, Deputy Chief Counsel for the Private Counsel Division, explained the two programs:

1. Rule 8 duty day attorney program – a superior court certified attorney would be appointed only for superior court matters. The attorney will not take district court cases and will receive \$75/hour for the day. The attorney would be on call and will not have to be present in court. This will be a voluntary program.
2. D+ certification to accept superior court-only jurisdiction cases while pending in district court. The attorney will need to have at least one jury trial and complete a training on conducting 58A and probable cause hearings to be eligible. The attorney will receive the superior court rate while handling the 58A hearing.

OCA Report

The Office of the Child Advocate (OCA) is investigating the disappearance of Harmony Montgomery and the work that was done on the case by all involved stakeholder agencies, and will be issuing a report soon. Staff received a draft portion of the report as it pertains to CPCS and were asked to respond to it.

Michael Dsida, Deputy Chief Counsel for the Children and Family Law Division (CAFL), along with members of his staff and Ms. Hewitt, have engaged with the OCA in a number of ways – meetings, written communications, and oral communications.

The OCA's report is expected to be out soon.

10. Other Matters

Mr. Kociubes reminded the members that the May 18, 2022 meeting will be held in person at the CPCS office, 75 Federal Street, Boston. He stressed that it is important to gather periodically in person, but if anyone is uncomfortable to reach out to him or Mr. Benedetti.

There being no further business to come before the Committee, the Committee adjourned at approximately 6:57 p.m.

Respectfully submitted

/s/ *Mia Alvarado*

Mia Alvarado, Secretary