COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

April 19, 2023

The monthly meeting of the Committee for Public Counsel Services was held by video conference and in person on April 19, 2023, beginning at 5:42 p.m. Joseph L. Kociubes, Chairman, presiding.

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

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

1. **Minutes of March 15, 2023 Meeting**

The minutes of the March 15, 2023 meeting were approved as presented.

2. **Innocence Program**

Innocence Program Director Ms. Lisa Kavanaugh gave a presentation for the Committee about the CPCS Innocence Program which the included the history of the CPCS Innocence Program, external partnerships and grants, policy initiatives, and future areas of reform. Ms. Kavanaugh shared an Exoneree Network Video which highlighted important stake holder collaborations, client-centered representation, and how CPCS is working with other Massachusetts based innocence organizations to impact policy and case law. Exonerees shared their pain and struggles and also spoke of the support they receive in their exoneree community.

Ms. Kavanaugh shared that last week the Innocence Program staff attended the Innocence Network Conference in Arizona, an event that draws 1,100 attendees, which included, 300 exonerated people who had collectively spent almost 6,000 years in prison along with attorneys, family, and loved ones. She stated that these innocent clients and their remarkable stories have shaped the way the courts view wrongful convictions as well as the concept of confluence of factors.

Ms. Kavanaugh highlighted the history of the Innocence Program. The CPCS Innocence Program was established in February 2010 through a grant received from the Bureau of Justice Assistance and at that time was called the Wrongful Conviction Review Program. Ms. Deborah Krupp was the first Wrongful Conviction Director. Ms. Kavanaugh has been the CPCS Innocence Program Director since 2011. The program has received a total of 8 grants totaling nearly 3.4 million dollars. Grants are received in partnership with external stakeholders and in collaboration with subrecipients. One grant helped to establish an Innocence Program at Boston College which has since been responsible for several exonerations. An expert and investigator fund was established to help give post-conviction people access to money, DNA based grants have also been awarded, and most recently three grants funded data analysis on IP's case work. Another Microscopic Hair Review project with pro bono partner Ropes and Gray reviews whole categories of cases where a type of forensic evidence was introduced and is either invalid or overstated. Grants have also

helped support staff expansion, so that the IP team now includes a Staff Counsel, a grant funded Staff Counsel Rotation, a Lead Investigator, a Paralegal, and an Administrative Assistant.

Since the beginning of the program, 1,100 applications have been received with 10 to 15% resulting in assignment of counsel. Ms. Kavanaugh explained that cases are accepted when set criteria are met and when there is a viable path to challenge the conviction with factual innocence. 61 new motion trials have been filed and 26 motions for new trials have been allowed, which have resulted in 19 full exonerations and 8 pending cases.

Future initiatives include policy initiatives that support open file discovery and presenting the program's data project locally as a litigation training tool. An upcoming summit in partnership with the New England Innocence Project on May 12th will focus on the role of official misconduct and new strategies for looking at issues systemically.

The Committee thanked the Innocence Program team for their remarkable progress, good work, and growth.

3. **Vendor Rate Review**

Forensic Program Director Mr. Ira Gant presented a proposal to increase vendor hourly rates and the vendor mileage reimbursement rate. Mr. Gant shared a "Vendor Rate Increase" slide which summarized the detailed memorandum submitted. Increasing the hourly rates are needed to recruit and retain a diverse pool of experts, compete with caseworker experts, police experts, and technology, and keep pace with inflation.

The last time the vendor rates were increased was 22 years ago in 2001. Although the vendor rates have changed since 2001, there has not been an actual increase since that time. Effectively, lack of increase has been an approximately 41% pay cut to every vendor category.

The Forensic Services Staff, Directors of Social Work Vendors, and the Finance team reviewed all vendor rates, what vendors are being paid in other states and in the private market, and they also considered cost-of-living increases since 2001.

CPCS recommends that the hourly vendor rate should be increased by 7% across all categories. CPCS also recommends that the hourly vendor rate for 21 other specific categories should be increased an additional 28% to reflect the level of vendor education and experience. An additional increase is also recommended because of vendor retention issues which leaves attorneys with a small pool of experts and impacts how that expert's work is received by opposing counsel and the court. Lastly, CPCS recommends increasing the vendor mileage reimbursement rate so that it has parity with the attorney mileage reimbursement rate, from $.0.30 to $0.58. The total annual incremental cost is approximately $6,077,358. Vendor rates will continue to be reviewed to ensure positive progress.

MOTION: Mr. Cinquegrana. That the Committee approve the recommended vendor hourly rate increase and the vendor

mileage reimbursement rate increase for approximately $6,077,358.

SECOND: **Ms. Petropoulos.**

VOTE: **Unanimous.**

4. **Monthly Financials Overview Report**

CFO Mr. Kevin Lucchetti presented the Monthly Financials Overview Report. CPCS has spent approximately 60% or $196 million of the $336 million that is available across all line-item accounts. Currently there is a surplus in all three accounts: Administration/Operations 0321-1500, Private Counsel 0321-1510, and Court Costs/Experts 0321-1520. Attrition, back filling positions with less experienced attorneys and other staff, as well as supply chain constraints have all pushed up the surplus in the Administration/Operations account. There are currently approximately 90 vacant positions. CPCS expects to spend a total of $313 million in FY23 and the total expected surplus is approximately $23 million across all accounts.

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

Mr. Lucchetti presented items for the Commitments $10,000 and Over Report. He highlighted three facilities vendors where estimated spending exceeds ten percent of the original or subsequent approval. Donnegan System Inc provides scanning and digitizing paper management, Signet Electronic Systems Inc provides audio and video and key card access, and New Horizons Communications Corp provides phone and internet connectivity. The current total of these contracts is $758,149.

MOTION: **Mr. White. That the Committee approve Donnegan System Inc, Signet Electronic Systems Inc, and New Horizons Communications Corp where estimated spending exceeds ten percent of the original or subsequent approval for approximately $758,149.**

SECOND: **Ms. Chester.**

VOTE: **Unanimous.**

6. **Chief Counsel Report**

As part of the Chief Counsel Report, CFO Mr. Kevin Lucchetti and General Counsel Ms. Lisa Hewitt provided FY 2024 Budget Update. General Counsel Hewitt reported on the release of the FY 2024 Budget Recommendation by the House Ways and Means last week. Mr. Lucchetti reviewed a slide chart "CPCS – Budget Appropriation Summary" highlighting the 2024 CPCS Maintenance and Initiative Requests and the Governor's and House Ways and Means' budgets.

The House's total recommendation was approximately $330 million. The House's recommendation was lower than the requested Maintenance amount for the

Administrative/Operations account by $5,632,489 and the Private Counsel account by $6,121,147. Ms. Hewitt stated that the House's FY 2024 recommendation in the Private Counsel account is not sufficient to make projected payments through the end of next year. CPCS has obtained support for four budget amendments that would address the areas which were not funded as requested, including an hourly rate increase and Title IV-E trust fund money. Committee member Mr. James Kennedy stated his opinion that the House Ways and Means recommended budget is solid and appropriate due to accounts being mostly case driven and that he does not share the same concerns as Ms. Hewitt.

Chief Counsel Anthony Benedetti reported that Chief Justice Locke's Care & Protection working group is finalizing recommendations and CPCS is hopeful that the recommendations will be meaningful and propose change we have been pushing for years. The working group is made up of representatives from CPCS, the Juvenile Court, the Executive Office of Health & Human Services, and the Office of the Child Advocate.

Mr. Benedetti shared that counsel capacity challenges continue in certain offices across the state with many clients without counsel for extended periods of time. One hundred and ninety people currently need Care & Protection case representation. On the adult criminal side, the collaboration with the Hampden County bar advocate program has resulted in a much-improved calendar schedule and greater initial coverage. Counsel capacity challenges continue in Suffolk County with the reasons as previously highlighted. Case loads of attorneys remain high. Mr. Benedetti emphasized that CPCS continues to work on long-term solutions for increasing counsel capacity, including another hourly rate increase, a new talent and acquisition position for staff, and a new temporary position to focus on private bar recruitment. Recruitment efforts have been geared to getting information out regarding the varied practice areas at CPCS particularly in the Mental Health & CAFL Divisions.

Mr. Benedetti shared that CPCS participated in four panels at four different law schools around the state acknowledging the 60th Anniversary of Gideon v. Wainwright. Mr. Benedetti shared that he attended all the events, which were well attended and led to numerous students expressing interest in working for CPCS in the future. Ms. Arnie Stewart, Ms. Duci Goncalves, Ms. Nan Whitfield, Ms. Jackie O'Brien and several private bar members participated.

Mr. Benedetti reported to the Committee on several CPCS staff who have been recognized for their excellent work:

- John Lozada, Equity & Inclusion Director was named one of Boston's "Most Influential Men of Color" by Get Konnected! in the Diversity, Equity and Inclusion category

- Arnie Stewart, PDD Deputy Chief, will receive the Kevin Larkin Memorial Award for Public Service by the Massachusetts LGBTQ Bar Association

- Connor Barusch, Legal Training Attorney, will receive the Gwen Bloomingdale Pioneer Spirit Award by the Massachusetts LGBTQ Bar Association

- Carolyn McGowan, Senior Trial Counsel, will receive the Defender Award during the MBA Access to Justice Awards

- Julie Silvestris, Worcester CAFL office paralegal, will be honored by Massachusetts Lawyers Weekly for "Excellence in Paralegal Work."

- Makis Antzoulatos, Supervising Staff Attorney, and Josh Raisler Cohn, Legal Training Attorney both of the Roxbury Defenders Unit, will be honored by the National Lawyers Guild with NLG Lawyer Awards

Mr. Benedetti shared that the CPCS Annual Awards Ceremony will be held on May 23, 2023 at Suffolk University Law School and invited all Committee members to attend.

Mr. Benedetti also noted that the new membership of the judicial nominating committee was announced and includes Ms. Nancy Hathaway, Ms. Linda Thompson, former PDD attorneys and at least one long-time private counsel. CPCS is hopeful that the new makeup of people on the Judicial and Commitment Order will lead to a greater diversity and defense perspective on the bench.

Mr. Benedetti thanked the Committee for their support with the amicus requests. Recently, Committee members were sent a description summary of all the decisions for 2022 in which CPCS submitted an amicus brief. Mr. Benedetti also made note of the recent amicus Commonwealth v. Guardado, in which the SJC threw out a gun possession conviction citing a recent U.S. Supreme Court decision on the right to carry a gun in public. Mr. Guardado was sentenced to 10 years in prison and because of the decision, will now be released.

Next meeting, May 17, 2023

There being no further business to come before the Committee, the Committee adjourned at approximately 6:59 p.m.

Respectfully submitted

/s/ Mia Alvarado

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Mia Alvarado, Secretary