

COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

December 16, 2021

The monthly meeting of the Committee for Public Counsel Services was held by videoconference on Thursday, December 16, 2021 beginning at 5:48 p.m. Joseph Kociubes, Chairman, presiding.

MEMBERS PARTICIPATING: Messes. Ball and Petropoulos
Messrs. Apfel, Cinquegrana, Demissie, Kennedy,
Miller, and White

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

1. Minutes of November 18, 2021 Meeting

The minutes of the November 18, 2021 meeting were approved as presented.

2. Amicus Request(s)

Commonwealth v. Joseph Pope, SJC-13202

Lisa Kavanaugh, Director of CPCS Innocence Program, sought Committee approval to submit an amicus brief in the case of Commonwealth v. Joseph Pope, SJC-13202. The case is before the Supreme Judicial Court (SJC) following the allowance by a single justice of the defendant's application for leave to appeal an order of the Suffolk Superior Court denying his second new trial motion. The defendant raises two issues in his petition: 1) a *Brady* violation; and 2) a claim that the Court should retroactively apply *Commonwealth v. Brown*, which abolished felony-murder liability from our common law of murder.

Attorney John Barter, an attorney on the CPCS post-conviction panel, has indicated he is available to draft the amicus brief.

MOTION: Mr. Apfel. That the Committee approve the filing of an amicus brief in the case of Commonwealth v. Joseph Pope, SJC-13202.

SECOND: Mr. Miller.

VOTE: Unanimous.

On a final note, Ms. Kavanaugh provided a brief update on the Innocence Program's successes.

3. Personnel Policy – Extension of Use or Lose Policy (Reporting Only)

Chief Counsel Anthony Benedetti reported that the Personnel Subcommittee recommended and the Executive Committee approved a temporary, one-time change to the current personnel policies manual that extended the deadline for carrying over use or lose accrued vacation and personal leave from December 31, 2021 to April 24, 2022. As a result of the pandemic and other related issues, staff have been unable to use much of their saved vacation time. The Executive Branch and The Trial Court recently announced a similar extension for their employees.

4. Monthly Financial Overview Report

Chief Financial Officer Kevin Lucchetti presented the monthly financial overview report to the Committee for review, informing them that current estimated spending is approximately \$293M. As mentioned last month, leftover funds from last fiscal year (PAC) \$7.5M has been transferred and is reflected in the overview presented.

5. Commitments \$10,00 and Over Report

Mr. Lucchetti provided the commitments of \$10,000 and over report for review. He highlighted one item that deviated more than 10% from the pre-approved amount: Dell Marketing LP. (IT Software Licensing) - \$654,905

Mr. Lucchetti requested approval for the adjusted amount for the vendor.

MOTION: Mr. White. That the Committee approve the current spending estimate for Dell Marketing up to \$654,905 as presented.

SECOND. Mr. Apfel.

VOTE: Unanimous.

6. FY 2023 Budget Proposal – Initiative Request

Mr. Lucchetti provided an overview of the FY 2023 maintenance request that was unanimously approved by the full Committee at the November 16, 2021 meeting. The Committee had approved a maintenance proposal of \$301.6M for fiscal year 2023.

He proceeded to breakdown the FY 2023 budget initiative proposal, which consists of accelerated private bar rate increases and annual cost of living adjustment (COLA) framework for rates.

Last year's budget initiative request proposed a rate structure for the private bar over a three year period. The budget subcommittee recommended to combine years two and three and present that as the overall initiative request for FY 2023 for a total estimated cost of \$19.1M.

Also discussed was an annual COLA framework for the private bar of either a 3% or 4% increase. An annual COLA framework would mean that staff would inform the Legislature that it would request rate increases of 3% or 4% on an annual basis.

For reference, staff calculated the total three year cost for a 3% COLA framework (\$32.2M) and calculated the total three year cost for a 4% COLA framework (\$36.5M).

The total approved FY 2023 budget request (maintenance and initiative) is approximately \$321M.

Mr. Cinquegrana proceeded to explain the budget subcommittee recommendation to accelerate years two and three of the previous years' proposal to the following rates:

District Court:	\$65/hr.	Mental Health	\$65/hr.
CAFL	\$85/hr.	Juvenile Court	\$65/hr.
Appeals	\$85/hr.	Murder	\$120/hr.
Superior Court	\$85/hr.	CRAs	\$65/hr.

MOTION: Mr. Apfel. That the Committee approve the FY 2023 initiative request of approximately \$19.1M for a total FY 2023 request of \$321M as presented.

SECOND: Mr. White.

VOTE: Unanimous.

Discussion ensued regarding the proposal.

MOTION: Mr. Cinquegrana. That the Committee direct staff to 1) present a three-year plan for private bar rates; 2) that the three-year plan be in the nature of cost-of-living increases across all practice areas; and 3) that staff is given discretion to adjust the hourly rates as necessary in practice areas where it is needed the most.

SECOND: Mr. Miller.

VOTE: Unanimous.

7. Chief Counsel Report

Mr. Benedetti provided the following update regarding the counsel shortage.

Children and Family Law Division – there are a number of clients waiting to have counsel appointed primarily in Hampden County, however, the situation has dramatically improved in large part due to the outreach by the new CAFL contract attorney. Staff is also moving forward with opening a new office in Western Mass.

The Mental Health Division – there continues to be difficulty assigning attorneys to handle appeals. Also, due to the higher increase in the CAFL rates, there has been a great deal of attrition in the panel with attorneys moving to that panel.

Youth Advocacy Division – currently there are no issues assigning counsel.

Adult Criminal – Suffolk County and Norfolk County are both having challenges assigning counsel in Superior Court. The shortage of counsel continues in Western Mass. Counties.

Carrasquillo Litigation – as previously reported, former Appellate Court Judge Carhart has been appointed as Special Master to review the crisis and work with the various parties and recommend potential solutions. All parties have agreed that the rates are the biggest problem.

Mr. Benedetti also referenced for informational purposes the latest compilation of hourly rates/pay structures for private bar across the country that was sent to the Committee prior to the meeting.

There being no further business to come before the Committee, the Committee adjourned into Executive Session to discuss a staff initiative matter at approximately 7:16 p.m.

At approximately 7:25 p.m. the Committee returned to open session and announced there was no action taken in the Executive Session.

There being no further business to come before the Committee, the Committee adjourned at approximately 7:26 p.m.

Respectfully submitted

/s/ *Joseph L. Kociubes*

Joseph L. Kociubes, Chair