

COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

February 22, 2022

The monthly meeting of the Committee for Public Counsel Services was held by videoconference on Wednesday, February 22, 2022 beginning at 5:36 p.m. Paul White presiding.

MEMBERS PARTICIPATING: Messes. Ball, Chester, Craven, and Petropoulos
Messrs. Apfel, Cinquegrana, Healy, Kennedy, and Miller

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

1. **Minutes of January 19, 2022 Meeting**

The minutes of the January 19, 2022 meeting were approved as presented.

2. **Amicus Request(s)**

Commonwealth v. Tate, SJC-13227

Elizabeth Dembitzer, Director of the Private Counsel Division Criminal Appeals Unit, sought Committee approval to file an amicus brief in the above case. The case is a consolidated appeal from a second-degree murder conviction and the denial of a new trial motion.

The Supreme Judicial Court (SJC) issued the following amicus solicitation:

Where a lawyer receives evidence from a third party that incriminates the lawyer's client, whether the information is "confidential" for purposes of Mass. R. Prof. C. 1.6; whether the lawyer has an obligation to disclose that information to the Commonwealth.

MOTION: Mr. Healy. That the Committee approve filing an amicus brief in the case of Commonwealth v. Tate, SJC-13227.

SECOND: Mr. Miller.

VOTE: Unanimous

Commonwealth v. Malakai Nicholas-Taylor, SJC-13206

Afton Templin, Director of Juvenile Appeals, sought Committee approval to file an amicus brief in the above case. The issue before the Court is whether a Superior Court judge has the

discretion to order a youth charged with murder and other non-murder offenses to be held in DYS custody on the non-murder charge after the age of 18.

MOTION: Mr. Miller. That the Committee approve the filing an amicus brief in the case of Commonwealth v. Malakai Nicholas-Taylor, SJC-13206.

SECOND: Ms. Petropoulos.

VOTE: Unanimous.

3. Contract – Post-Conviction Resource Attorneys

Ms. Dembitzer sought Committee approval to initiate contracts for resource attorneys to provide support and oversight of private attorneys handling CPCS post-conviction assignments. The Private Counsel Division Criminal Appeals Unit is responsible for assigning all post-conviction cases (approximately 1,300 per year) and for the support and oversight of approximately 500 post-conviction panel attorneys statewide.

The Resource Attorneys will provide support and oversight of private attorneys handling post-conviction assignments to ensure panel members are in compliance with the CPCS Performance Standards and provide opportunities for panel members to develop and enhance their appellate practice.

The Resource Attorneys will conduct case evaluations, investigate complaints, observe oral arguments, evaluate appellate briefs and other post-conviction filings, conduct appellate trainings and workshops, and provide mentoring.

The total estimated annual cost of these proposed contracts is \$540,000 for 15 attorneys at 30 hours a month at \$75 an hour for 12 months.

MOTION: Ms. Chester. That the Committee approve initiating contracts for the post-conviction resource attorneys for an estimated annual cost of \$540,000 for 15 attorneys at 30 hours a month at \$75 an hour for 12 months.

SECOND: Mr. Cinquegrana.

VOTE: Unanimous.

4. Lease Approval

Kevin Lucchetti, Chief Financial Officer, sought Committee approval to enter into a lease agreement with Trident Holyoke, LLC for temporary office space for the new Holyoke office located at 100 Front Street, Holyoke, MA. The proposed annual rent is \$72,000 for 4,636 square feet at \$15.53/sq. ft.

MOTION: Mr. Healy. That the Committee approve the lease agreement with Trident Holyoke, LLC for temporary office space for the new Holyoke office located at 100 Front Street, Holyoke, MA for an annual rent of \$72,000 for 4,636 sq. ft. at \$15.53/sq. ft.

SECOND: Mr. Miller.

VOTE: Unanimous.

Mr. Lucchetti mentioned that there are a number of leases that are due for renewal and he anticipates bringing these before the Committee for approval in the next month or two.

5. 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 for all line items is approximately \$285M.

6. Commitments \$10,00 and Over Report

Mr. Lucchetti provided the commitments of \$10,000 and over report for review. There were no new commitments to report.

7. FY 2023 Budget Update

Anthony Benedetti, Chief Counsel, provided an update on the FY 2023 budget following up on an email communication General Counsel Lisa Hewitt distributed to the members on January 27, 2022 after the Governor released his budget recommendation.

Mr. Lucchetti provided a breakdown of the line-items from the Governor's budget:

- \$76,705,125 - 0321-1500 (Administration / Oversight)
- \$207,565,150 - 0321-1510 (Private Counsel)
- \$30,165,014 - 0321-1520 (Court Costs/Experts)

The Governor's total recommendation for CPCS is \$314,435,289.

Lisa Hewitt, General Counsel, mentioned that the Governor's recommendation included \$19M for rate increases for the private bar in every practice area. In addition to the rate increase for the private bar the Governor's budget includes two outside sections - Section 70 and 71 - that proposes to eliminate all probation and parole supervision fees. This is the first step in the process. These recommendation need to be adopted by both the House and the Senate before being signed into law.

Ms. Hewitt also mentioned advocacy focused on constructing a school loan repayment plan for attorneys.

The next step in the process is the hearing before the Joint Committee on Ways and Means, expected to be sometime in March.

8. Chief Counsel Report

Mr. Benedetti provided the following updates:

Personnel Matters

The new Chief Information Officer, Jon Bartelson is starting in mid-March. Mr. Bartelson is an attorney and his most recent position was Chief Information Officer at Rhode Island College.

The search for a Human Resource Director continues. Mark Conlon continues to serve as the acting HR Director. He is keeping things running smoothly as well as making improvements to many of our systems.

Ann O'Connor, who is the CAFL Appellate Director, was selected as a Massachusetts Lawyers Weekly lawyer of the year. The article highlighting her accomplishments will be distributed to the members.

Carrasquillo Litigation

The Special Master, former Appellate Court Judge Carhart, is in the process of writing his report. He chose to proceed without any testimony but rather by meeting with the parties and asking for written affidavits.

Counsel Crisis

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

Mental Health – cases are being assigned within a day or two; however there are a number of attorneys who accept civil commitments who are approaching their maximum billing hours. There is a training course scheduled for both guardianship and appeals starting soon, and there has been a good response from the private attorneys for both sessions.

Children and Family Law Division – there are approximately 200 individuals without counsel, with approximately 170 of them in Hampden County. Progress was being made, but there were two attorneys who had medical issues which resulted in their cases needing to be reassigned.

Michael Dsida, Deputy Chief Counsel, and his team are working on possible ideas for incentives.

Criminal Division – there are two or three individuals without counsel. Staff continues to do a great job at reaching out and getting counsel to take cases. The biggest challenge is in Hampden County. Back in September there were approximately 116 district court defendants who needed

counsel, four of them were in custody and there were 13 superior court defendants who needed counsel, three of whom in custody. On February 17, 2022, there were no district court defendants in Hampden County without counsel and superior court had eight but none in custody. This is a result of a number of factors, but in large part, due to the opening of the Holyoke Public Defender trial office.

Mr. Benedetti acknowledged everyone involved in getting the Holyoke office up and running.

Audit

The State Auditor is conducting a routine audit of the agency; the last one was in 2017. The focus of the audit is on money the agency received as a result of the Federal ARPA bill. They will also be looking at issues related to IT and the systems in place to protect data.

Mr. Benedetti requested to proceed into Executive Session to discuss a litigation matter. As this was not an item on the agenda, consideration of the request required a majority vote of the Committee.

The following vote was then made:

MOTION: Ms. Ball. That the Committee adjourn into Executive Session.

SECOND: Mr. Kennedy.

VOTE: Unanimous.

There being no further business to come before the Committee, the Committee adjourned into Executive Session at approximately 6:27 p.m.

At approximately 6:44 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 6:45 p.m.

Respectfully submitted

/s/ *Paul White*

Paul White