

COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

January 19, 2022

The monthly meeting of the Committee for Public Counsel Services was held by videoconference on Wednesday, January 19, 2021 beginning at 5:37 p.m. Joseph Kociubes, Chairman, presiding.

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

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

1. **Minutes of December 16, 2021 Meeting**

The minutes of the December 16, 2021 meeting were approved as presented.

2. **Insurance Coverage for Bar Advocate Supervising Attorneys**

William Shay, Director of Audit and Oversight Unit, sought Committee approval to purchase Errors and Omissions Insurance for 41 bar advocate program supervising attorneys. The insurance is designed to protect these attorneys against claims brought against resulting them from completing performance evaluations and complaint investigations pursuant to agreement with CPCS. The annual cost is approximately \$10,596.60 or \$258.45 per attorney.

MOTION: Mr. White. That the Committee approve the purchase of Errors and Omissions Insurance for the 41 bar advocate program supervising attorneys for an annual cost of approximately \$10,596.60.

SECOND: Mr. Stern.

VOTE: Unanimous.

Mr. Healy abstained from the conversation and vote and arrived after the discussion on the insurance coverage request due to the Massachusetts Bar Association being involved in obtaining the policy.

3. **Amicus Request(s)**

Commonwealth v. Lindsay Hallinan, 1336CR3327

Ira Gant, Director of Forensic Services Unit, sought Committee approval to file a letter in support of an Application for Direct Appellate Review and if the Supreme Judicial Court (SJC) accepts the case to file an amicus brief.

The defendant in this case filed a motion to vacate her 2013 admission to sufficient facts to OUI 2nd offense based on the Commonwealth's misconduct in withholding exculpatory evidence regarding the breathalyzer used in the case. The defendant also argued that such withholding was a *Brady* violation and constituted newly discovered evidence.

MOTION: Mr. White. That the Committee approve filing a letter in support of an application for direct appellate review in the case of Commonwealth v. Lindsay Hallinan, 1336CR3327, and if accepted by the SJC to file an amicus brief.

SECOND: Mr. Miller.

VOTE: Unanimous

Due to staff learning of the solicitation after the meeting materials were sent to Committee members, the next amicus request, DCF v. Mother, SJC-13220, 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. Miller. That the Committee waive the submission deadline and take action on the amicus recommendation.

SECOND: Ms. Ball.

VOTE: Unanimous.

DCF v. Mother, SJC-13220

Ann O'Connor, Attorney-in-Charge, Worcester Children and Family Law (CAFL), sought Committee approval to file an amicus brief in support of the appellant-mother in DCF v. Mother, SJC-13220. The SJC sought amicus solicitation on the following:

Whether, where a parent objects to conducting a virtual trial to determine whether to terminate parental rights, via Zoom or a similar platform, conducting the trial virtually constitutes a per se violation of a parent's due process rights or whether, with adequate safeguards, a termination trial may be held virtually, regardless whether a parent request an in-person trial.

The amicus brief would address three issues: 1) outside of this pandemic context, it is a per se denial of due process to hold a virtual termination trial over the objection of a parent; 2) even in

an emergency a virtual termination trial, or other consequential hearing or trial, should not be allowed unless the “adequate safeguards” set further in *Vasquez Diaz* and *Curran* are actually in effect; and 3) the amicus brief would also build on Justice Kafker’s concurrence in *Vasquez Diaz* regarding the problems virtual evidentiary trials and hearings present.

Attorney Ann Balmelli O’Connor, Attorney-in-Charge of the CAFL Appellate Unit, will be the primary author of the amicus brief.

MOTION: Ms. Ball. That the Committee approve the filing an amicus brief in the case of DCF v. Mother, SJC-13220.

SECOND: Ms. Alvarado

VOTE: Unanimous.

4. Training Department Presentation

Melissa Dineen, Training Chief, provided an update to the Committee on some of the happenings within the training division.

The training department has pivoted from in-person training to primarily remote due to the pandemic. During last fiscal year there were 137 separate trainings covering all practice areas with over 12,000 people attending. During the next year the department plans on a similar number of programs and have worked to ensure that trainings are offered to both staff and the private bar.

The Unit consists of four practice area training directors that oversee trainings for their practice areas, and also head up cross practice area working groups. The forensic services unit is also now within the training department and Ms. Dineen provided information on how forensic services supports each of the practice areas as well as conducts trainings. In addition, the agency has created a racial equity training position.

Ms. Dineen explained the learning management system that is being to provide online courses in collaboration with the National Association for Public Defense (NAPD), as well as the knowledge management system, My Gideon, used for storing files and sharing resources. She also discussed the following cross-practice workings groups: 1) racial equity; 2) representing emerging adults; 3) holistic defense; 4) professional development; 5) trial skills; and 6) wellness.

Several committee members commented on how impressed they were by the thoroughness and comprehensiveness of the work being done by the Training unit.

5. Personnel Subcommittee Update

Mr. Miller provided an update on the personnel subcommittee’s work on diversity, equity and inclusion. He reminded everyone that approximately one year ago, Chair Joe Kociubes asked the subcommittee to focus on these issues. The personnel subcommittee, consisting of Mr. Miller,

Ms. Chester, Mr. Demissie, Ms. Alvarado, and Ms. Petropoulos, has been meeting regularly with John Lozada, Director of Equity and Inclusion, and several other staff members. Mr. Miller reported that as a result of those meetings, the subcommittee has been encouraged about Mr. Lozada's work and the fact that hiring, retention and culture are clearly at the forefront of agency leadership.

The agency is building on efforts around recruitment and hiring at both the intern and professional levels. An internship coordinator position has been established to maximize internship opportunities within the agency for students of color. A talent acquisition specialist will focus in large part on recruiting diverse candidates. As a result of efforts by staff, the retention of staff of color has improved in the last year.

Mr. Miller reported that trainings have occurred that focus on issues of racial justice and cultural competency, and affinity groups for staff have been established.

Mr. Miller indicated that the subcommittee is planning on meeting with Mr. Lozada on a quarterly basis to get updates and to be as supportive as possible.

6. 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 \$293M.

Discussion ensued.

7. Commitments \$10,00 and Over Report

Mr. Lucchetti provided the commitments of \$10,000 and over report for review. He highlighted one item that was preapproved but only now showing up on the report: Carahsoft Technology (Information Technology – expert vendor application project).

8. Chief Counsel Report

Mr. Benedetti provided the following updates:

Personnel Matters

The Chief Information Officer position is close to being filled and there are two finalist for the HR Director position. Mr. Benedetti is hopeful that both positions will be filled soon.

Miscellaneous

The Governor recently commutated the sentences of two inmates – Thomas Koonce and William Allen. CPCS weighed in on the issue signing on to a letter that was sent to Governor Baker.

Counsel Shortage

Carrasquillo Litigation – as previously reported, former Appellate Court Judge Carhart has been appointed as Special Master (SM). He is accepting all testimony by affidavits. All parties are making recommendations as to what they believe will solve the counsel crisis and recommending what they think other agencies could do to help solve the issue. The next hearing on the matter is scheduled for January 28, 2022. The SM seems to be very aware of the challenges that face the private bar, especially the hourly rate.

Criminal Division – staff is in the process of opening up a Holyoke office. It will be comprised of 12 attorneys, including the Attorney-in-Charge, a Supervising Attorney, social worker, an investigator and an administrative assistant. The office will be opening within a few weeks with attorneys signing up to take duty days.

There have been a number of defendants in several counties who have been held without counsel for periods of time. There have also been a number of counties having issues getting duty day coverage. Although the Trial Court has delayed all trials for the month of January, there has not been consistency in how courts have been following the Standing Order when it comes to whether the matter should be heard in person or remote.

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

The Mental Health Division – challenges continue with 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 MH panel with attorneys moving to the CAFL panel. Mark Larsen, Deputy Chief Counsel for MH, is working on a plan to address the shortfall.

Children and Family Law Division – staff is moving forward with opening a CAFL conflict office in Holyoke. All necessary steps are being taken, to address all ethical rules in setting up the office.

Michael Dsida, Deputy Chief Counsel for CAFL, informed the members that he has a meeting scheduled for Thursday, January 20, 2022, with Chief Justice Nechtem of the juvenile court to inform her about the new conflicts office. He will also be informing the first justices in Hampden County.

Mr. Benedetti stated that finance is working with the Division of Capital Asset Management and Maintenance (DCAMM) to obtain office space as quickly as possible.

Several Committee members suggested staff consult with the Board of Bar Overseers to obtain input from them about any issues they believe should be addressed regarding conflict and ethical issues.

There being no further business to come before the Committee, the Committee adjourned into Executive Session to discuss a personnel matter at approximately 7:06 p.m.

At approximately 7:19 p.m. the Committee returned to open session and reaffirmed the following motion:

MOTION: Mr. Healy. That the Committee approve the salary adjustment for the HR Assistant Director and the Facilities Director as presented.

SECOND: Mr. Miller.

VOTE: Unanimous.

There being no further business to come before the Committee, the Committee adjourned at approximately 7:20 p.m.

Respectfully submitted

/s/ *Mia Alvarado*

Mia Alvarado, Secretary