

COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

JULY 15, 2021

The monthly meeting of the Committee for Public Counsel Services was held by video conference on Thursday, July 15, 2021 beginning at 5:45 p.m. Joseph L. Kociubes, Chairman, presiding.

MEMBERS PARTICIPATING: Messes. Alvarado, Ball, and Chester
Messrs. Healy, Kennedy, Miller, Stern, and White

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

1. **Minutes of June 17, 2021 Meeting**

The minutes of the June 17, 2021 meeting were approved as presented.

2. **Amicus Request(s)**

a. Commonwealth v. Richard Comenzo, SJC-13119

Attorney Matthew Spurlock, staff attorney with the Appeals Unit, sought Committee approval to submit an amicus brief in the case of Commonwealth v. Richard Comenzo, SJC-13119. The Supreme Judicial Court (SJC) solicited amicus briefs addressing the following questions:

In a case involving the denial of a motion to suppress evidence in which a search warrant rested, in part, on evidence provided by a pole camera trained on an apartment building and used to determine the location in the building where the defendant lived, whether the judge erred in his application of the two-prong test announced in Commonwealth v. Mora, 485 Mass. 360 (2020).

A CPCS amicus brief in this case would help shape the development of the so-called “mosaic theory” of art. 14, which supports “an aggregation principle for the technological surveillance of public conduct.” Commonwealth v. McCarthy, 484 Mass. 493 (2020). An amicus brief should be submitted to guide the Court’s analysis of novel technologies used to surveil movement in public, and address how courts should analyze surveillance techniques that disclose an intrusive mosaic of their targets’ lives.

MOTION: Mr. Miller. That the Committee approve the filing of an amicus brief in the case of Commonwealth v. Richard Comenzo, SJC-13119.

SECOND: Mr. Stern.

VOTE: Unanimous.

- b. Rodriguez v. Massachusetts Parole Board, Middlesex Superior Court Civil Action No. 20-1099-B

Mara Voukydis, Director of the Parole Advocacy Unit, sought Committee approval to file an amicus letter in support of a juvenile lifer parole client's application for direct appellate review (DAR) and if approved to file an amicus brief in support of the case.

The letter would urge the court to grant DAR because the case raises at least two important issues regarding parole release deliberations for juvenile lifers, with implications for other prisoners as well. The letter would highlight CPCS's concerns about the lack of tailoring of the risk assessment for juvenile lifer populations and note the categories within the tool that disadvantage a juvenile lifer. The letter would also address the due process concern which could set the stage for further advocacy around this issue.

MOTION: Ms. Ball. That the Committee approve the filing of an amicus letter in support of an application for direct appellate review in the case of Rodriguez v. Massachusetts Parole Board, Middlesex Superior Court Civil Action No. 20-1099-B and if DAR is approved to file an amicus brief in support of the case.

SECOND: Mr. Stern.

VOTE: Unanimous.

3. Monthly Financial Overview Report

Mr. Lucchetti presented the monthly financial overview report to the Committee for review.

The current spending for all line item accounts is approximately \$216M as of July 14, 2021. The majority of remaining spending will be for line items 0321-1510 and 0321-1520 and will be made through July and August.

Mr. Lucchetti anticipates an end of fiscal year surplus in all line items of approximately \$31.5M

4. Commitments \$10,00 and Over Report

Mr. Lucchetti provided the commitments of \$10,000 and over report for review. He highlighted four items that deviated more than 10% from the pre-approved amount. The total amount of these four items is approximately \$1.7M and are as follows:

- Office Resources (furniture/space planning) \$987,582
- Dell Marketing, LP (IT software and equipment) \$358,077
- TBNG, Inc. (IT network and security consulting) \$284,384
- Cellco/Verizon Wireless (telephone monthly service charges and equipment) \$59,527

He also highlighted one vendor (Pitney Bowes, Inc. – postage/postage supplies; \$15,000) that was not discussed during the preapproval process. No action is necessary as it does not exceed \$25,000.

He requested approval of the new amounts for the four vendors.

MOTION: Mr. White. That the Committee approve the current spending estimates for the four vendors for a total amount of approximately \$17M.

SECOND: Mr. Miller.

VOTE: Unanimous.

5. FY 2022 Budget Update

Lisa Hewitt, General Counsel, provided an update on the FY 2022 budget. The Conference Committee completed their deliberations and finalized their FY 2022 budget proposal which has been sent to the Governor. The budget proposes fully funding all three CPCS' line items and included \$168M in the 0321-1510 private assigned counsel line item, along with an additional \$21M carried over from FY 2021 funds that will help fund the implementation of the first year of the rate increase for the private bar.

Ms. Hewitt thanked House Speaker and Senate President for their ongoing support, Ways and Means Chairs Michlewitz and Rodrigues, as well as Judiciary Chairs Eldridge and Day. She also expressed thanks to the Massachusetts Bar Association, the Massachusetts Association of Criminal Defense Lawyers and lawyers from all practice areas who reached out to their legislators.

The Governor has until next week to sign the budget. Once the budget is signed, the rate increase for the private bar will be effective as of July 1, 2021.

6. Chief Counsel Report

Anthony Benedetti, Chief Counsel, provided updates on the following matters.

Special Litigation in Children and Family Law (CAFL) Matters

Mr. Benedetti reminded the members that during the Executive Session last month discussion ensued regarding a potential litigation issue around CAFL. Litigation has been filed on language access against the Department of Children and Families (DCF). CPCS is not currently part of that litigation, but staff is considering the best way to proceed on behalf of clients and will report back to the Committee. A copy of the litigation filed will be distributed to the members.

Mental Health Update

A draft memo was provided to the Executive Committee regarding the courts wanting to proceed virtually with civil commitment hearings. There was a trial ready to take place and the individual attorney on the case filed a Ch. 211, Section 3 petition. Mark Larsen, Director of the Mental Health Division, provided an update on the matter.

Mr. Larsen explained that a recent SJC Order went into effect requiring that all matters should be moved from remote to in-person proceedings unless the parties agreed to it. This was in conflict with the Standing Order issued in May and Standing Order effective June 1st issued by the district and municipal courts. The only proceeding that was to proceed remotely was civil commitment proceedings from the private and public hospitals because of mental health reasons.

The Chapter 211, Section 3 petition was filed in the case and the court ruled that the trial should take place in person at the hospital and not virtually. After the trial, the client was released.

Mr. Larsen expressed his appreciation with the Executive Committee willing to consider this issue. He also indicated there may be other issues that need to be addressed regarding due process as well as cases in violation of the Americans with Disabilities Act.

Counsel Capacity Issues

Mr. Benedetti indicated that the counsel capacity issue is a matter that is dealt with every year at this time due to vacation schedules and attorneys reaching their caseload caps. However, the situation is much worse as a result of the pandemic and the large backlog of cases resulting from the pandemic.

CAFL

Michael Dsida, Deputy Chief Counsel for the Children and Family Law Division, indicated he is hopeful that once the Governor signs the budget, there is a positive response to the higher hourly rate from the private bar. He mentioned that the Hampden and Worcester county clerk's office are doing a good job of communicating with panel members trying to encourage them to take cases.

Criminal

Mr. Benedetti mentioned that staff continue to work on addressing the attorney shortfall in Hampden County.

Vanessa Velez, Deputy Chief Counsel, Private Counsel Division, informed the members that panel attorneys are picking up cases but there are currently 17 clients without counsel in Hampden County. There are many duty days that are not being adequately covered. High caseloads is the major issue as a result of the backlog. Out of County attorneys have been taking the majority of cases. In addition, the programs are losing attorneys for a variety of reasons.

Arnie Stewart, Managing Director for the Public Defender Division, mentioned that there are three to five defendants that have been held for more than seven days without counsel. On Friday, July 16, 2021 a hearing has been scheduled to address this issue.

In 2019 the staff office had 1,200 cases. In May of 2020 that decreased to 981 cases. Currently, the staff caseload is 1,469 cases. The main reason for the high caseload in Hampden is due to the backlog of cases as a result of the pandemic. Ms. Stewart, along with the managing attorney in Western Massachusetts met in-person with the presiding justice in Springfield and Regional justice to address the backlog and to come up with solution to address the issue.

Staff have also reached out to retired staff attorneys who have agreed to take on a few cases to help with the backlog.

Roxbury Advisory Board

Mr. Kociubes reported to the Committee that the CPCS enabling statute mandates that a Roxbury Community Advisory Board be created which would consult with the Committee regarding the greater Roxbury area. He and Mr. Benedetti met with several staff members who are working on the creation of a Board and a recommendation for the Committee to consider. He appointed Ms. Alvarado as the liaison to the group working on this endeavor.

Committee Meeting Schedule

Mr. Kociubes proposed meeting in person on a quarterly basis starting with the October meeting with all other meetings held via zoom. Also discussed was which day of the week the meetings should be held. He welcomed input from other members.

Discussion ensued.

He requested Denise Simonini, Executive Assistant, to survey the members to determine what day works best for all.

Before adjourning, Mr. Benedetti thanked Elsie Alvarenga-Rosa for filling in for Ms. Simonini while she was on vacation.

There being no further business to come before the Committee, the Committee adjourned at approximately 6:51 p.m.

Respectfully submitted

/s/ *Mia Alvarado*

Mia Alvarado, Secretary