COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

JUNE 17, 2021

The monthly meeting of the Committee for Public Counsel Services was held by videoconference on Wednesday, May 19, 2021, beginning at 5:35 p.m. Joseph L. Kociubes, Chair, presiding.

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

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

The minutes of the May 15, 2021 meeting were approved as presented.

2. **Amicus Request(s)**

Rebecca Kiley, Attorney-in-Charge of the public defender division appeals unit, sought Committee approval to file an amicus brief in the following two cases:

a. Commonwealth v. Curran, SJC-13093

The Supreme Judicial Court issued the following amicus solicitation for this case which is a direct appeal from a Zoom bench trial resulting in the defendant's conviction for assault and battery.

> Whether, in order for a criminal defendant validly to agree to a jury-waived trial that is to be conducted in whole or in part via "Zoom," he or she must first be advised of specific constitutional rights that may be implicated – e.g., to be present in the courtroom, to a public trail, to confront witnesses face to face, etc. – and have a colloquy with the judge as to his or her understanding of and willingness to forego those rights and sign a written waiver of the same.

The Charles Hamilton Houston Institute and the Boston Bar Association have expressed interest in potentially collaborating on an amicus brief.

MOTION: Mr. Miller. That the Committee approve the request to file an amicus brief in the case of Commonwealth v. Curran, SJC-13093.

SECOND: **Ms. Chester.**

VOTE: **Unanimous.**

b. Commonwealth v. Huang, SJC-11575

This is an appeal from a first-degree murder conviction in Suffolk Superior Court. There has not yet been an SJC amicus solicitation, but the defendant's attorney reached out for amicus help on the following issue: whether the imposition of a mandatory or discretionary sentence of life without the possibility of parole on an intellectually disabled person violates the Eighth and Fourteenth Amendments and/or Article 26.

An amicus brief from CPCS could be helpful in expanding on the reasons that this punishment is unconstitutional as applied to a person who is intellectually disabled.

MOTION: **Mr. White. That the Committee approve the request to file an Amicus brief in the case of Commonwealth v. Huang, SJC-11575.**

SECOND: **Ms. Chester.**

VOTE: **Unanimous.**

3. Contracts

a. FY 2022 Bar Advocate Program Contracts

Rose King, Director of Criminal Trial Support, sought Committee approval for the FY 2022 Bar Advocate Program contracts for twelve county programs, which provide critical services in helping to administer and oversee the private bar. They are responsible for assigning private attorneys to 80% of the criminal cases assigned in the trial courts, and staff work closely with its programs' Board of Directors to select qualified panel attorneys to ensure that attorneys remain current with liability insurance and continuing legal education, and to provide training to the panel. The staff also works with CPCS staff to investigate and conclude complaints. Finally, the programs provide monthly reports to CPCS staff related to diversity goals and outreach, and assuring representation for all indigent defendants. The terms of the contract are similar to the previous year except changes in terms relating to the attorney complaint procedure.

The total estimated FY 2022 amount for the twelve Bar Advocate Program contracts is a maximum of $1,311,430.

MOTION: **Mr. White. That the Committee approve the FY 2021 Bar Advocate Program contracts for a maximum amount of $1,311,430 as presented.**

SECOND: Mr. Healy.

VOTE: Unanimous.

b. FY 2022 Provision of Legal Services to Dukes and Nantucket Counties

Ms. King sought Committee approval for the FY 2022 contract with Attorney Robert Moriarty for the provision of legal services in Dukes and Nantucket counties. Attorney Moriarty provides oversight of private attorneys handling CPCS assignments. The oversight includes evaluating attorneys' compliance with CPCS Performance Standards; investigating complaints, mentoring attorneys and participating in the periodic recertification of private counsel. The contract is similar to last year's contract except for a change regarding client complaints. The total cost of the contract is a maximum amount of $45,000, which includes an additional $4.2k in the event that the Private Bar rates are increased to $75/hour.

MOTION: Mr. Cinquegrana. That the Committee approve the FY 2022 contract with Attorney Robert Moriarty for the provision of legal services in Dukes and Nantucket counties for the maximum amount of $45,000.

SECOND: Mr. Healy.

VOTE: Unanimous.

c. FY 2022 Bar Advocate Program Supervising Attorney Contracts

Ms. King sought Committee approval for the FY 2022 Supervising Attorney Contracts. The contracts are identical to the FY 2021 contracts, except for the change relating to the complaint procedures. The Supervising Attorneys provide oversight of private attorneys handling assignments through the bar advocate programs, including evaluations of compliance with CPCS Performance Standards, complaint investigations, mentoring, and input into the periodic recertification of private counsel. The total cost of the contracts is a maximum amount of $1,318,200, which includes an additional $13k in the event that the Private Bar Superior Court rate is raised to $75/hour.

MOTION: Ms. Petropoulos. That the Committee approve the FY 2022 contracts Bar Advocate Program Supervising Attorney contracts for a maximum amount of $1,318,200.

SECOND: Ms. Chester.

Vote: Unanimous.

d. CAFL Resource Attorney Contracts

Andrew Don, Trial Panel Director for the Children and Family Law Division (CAFL) sought Committee approval for a two year contract (July 1, 2021 – June 30, 2023) for four CAFL Resource Attorneys in the following regions: Essex/Middlesex North, Bristol, Barnstable/Plymouth Town, and Plymouth. The Resource Attorneys provide legal and technical assistance to trial panel members in their designated regions and courts. They are also responsible for coordinating or presenting relevant legal education trainings and serve as liaisons with the courts and the CAFL Trial Support Unit. The total maximum amount for the two year contract is $89,610.

MOTION: Mr. White. That the Committee approve the two year contract (July 1, 2021 – June 30, 2023) for the four CAFL Resource Attorneys as presented,

SECOND: Mr. Miller.

VOE: Unanimous.

e. IT Security Research and Advisory Services

Daniel Saroff, Chief Informational Officer, sought Committee approval to enter into a contract with IANS for IT security research and advisory services for FY 2022. The agency seeks to improve its secure profile by subscribing to IT Security Research and Advisory Services. Mr. Saroff would use it to expand his and his team's knowledge of the security landscape, including new and emerging threats, threat-actors, responses, remediation, technologies, vendors, best practices and networking with similar professionals.

The estimated annual cost for FY 2022 is $36,500.

MOTION: Mr. White. That the Committee approve the contract with IANS For IT security research and advisory services for an estimated annual cost for FY 2022 of $36,500.

SECOND: Ms. Petropoulos.

VOTE: Unanimous.

Anthony Benedetti, Chief Counsel, informed the Committee that the IT staff has been conducting regular trainings for staff on IT security and has also held trainings for members of the private bar as well, giving them an opportunity to learn about the different ways that people use to try to gain access to your computer and personal information.

4. **Monthly Financial Overview Report**

Mr. Lucchetti presented the monthly financial overview report to the Committee for review. The fiscal year ends on June 30, 2021 with the accounts payable period ending August 30, 2021.

At this point in the fiscal year, the agency has spent approximately $193M out of available funds in all line items. He estimates a combined surplus in all three accounts of approximately $31.2M and expects that will increase.

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

Mr. Lucchetti provided the commitments of $10,000 and over report for review. He highlighted nine items that deviated more than 10% from the pre-approved amount. The total amount of these nine items is approximately $4.1M.

- Tallan, Inc. (IT consulting services) $1,077,531;
- Office Resources (furniture/space planning) $924,668;
- Winslow Technology (IT equipment) $856,465;
- Donnegan Systems, Inc. (document imaging/records management) $578,911;
- TBNG, Inc. (IT network and security consulting) $281,084;
- SHI International Corp., (IT hardware/software) $254,050;
- Comcast Cable (IT internet connections) $67,464;
- Verizon Wireless (telephone) $56,594; and
- Crown Castle (phone/data connections/VOIP) $48,800.

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

MOTION: **Mr. Apfel. That the Committee approve the current spending estimates for the nine vendors for a total amount of approximately $4,1M as presented.**

SECOND: **Ms. Ball.**

VOTE: **Unanimous.**

6. **FY 2022 Obligations over $25,000 for Preapproval**

Mr. Lucchetti sought Committee approval on anticipated expenditures expected to exceed $25,000 for FY 2022 as required by the agency procurement policy. The policy allows the Chief Financial Officer to seek pre-approval from the Committee on an annual basis for obligations over $25,000 during the course of the fiscal year. The majority of the vendors presented are for the continuation of routine services. The expenditures were broken down by 1) category; 2) vendor; 3) 2019 final cost; 4) 2020 final cost; 5) 2021 estimated cost; 6) 2022 estimated cost and 6) notes/purpose. The total estimated spending for FY 2022 is approximately $7.3M.

An affirmative vote of the Committee approves use of the vendors to exceed $25,000 for FY 2022 without the need for further approval. Once approved, expenditures exceeding $10,000 are reported to the Committee on the Monthly Commitments Report. Any individual contract that

deviates more than 10% from the estimate will be brought back before the Committee for approval.

MOTION: Mr. Miller. That the Committee approve the list of all anticipated expenditures over $25,000 for FY 2022 as presented and if a contract deviates more than 10% from the estimate, staff will return to the Committee for approval.

SECOND: Ms. Chester.

VOTE: Unanimous.

7. **FY 2022 Budget Update**

Lisa Hewitt, General Counsel, provided a recap of the FY 2022 budget process.

As reported previously, the House recommended an increase in the hourly rates for the private bar, recommending an increase in all practice areas with rates at fifty percent of what CPCS requested. The rate increase is authorization for a one year period only with sunset language. The Senate recommended funding for the full first year rates with sufficient funding and no sunset clause. This recommendation is likely due, in part, to additional information available to the Senate regarding the amount of the CPCS anticipated surplus.

The budget process in now in Conference Committee and CPCS is requesting the Senate recommended appropriation and the Senate line-item language, as well as outside section language that amended Chapter 211D to increase all the rates based on the first year of the three year plan that was submitted. In addition, CPCS is requesting language the House included which called for CPCS to report back to the legislators regarding the impact of COVID and the need for additional private bar rate increases to address existing challenges.

Ms. Hewitt and Mr. Lucchetti have met with House Ways and Means staff to discuss the CPCS request and continue to advocate with the House and Senate.

Ms. Hewitt expressed appreciation to Senator Boncore, Judiciary Chairs Michael Day and Jamie Eldridge, Ways and Means Chairs Rodrigues and Michlewitz, and all legislators who were supportive of the initiative.

Mr. Benedetti commended Ms. Hewitt and Mr. Lucchetti and their teams for their hard work and effort in advocating for the private bar rates and CPCS funding. He and Ms. Hewitt also expressed appreciation to the Massachusetts Bar Association and the Massachusetts Association of Criminal Defense Lawyers for their support and advocacy efforts.

Discussion ensued.

8. **Chief Counsel Report**

Mr. Benedetti provided an update to members on the following items:

Vacation Buyout/One-Time Payment

There were 84 people eligible for the vacation buyout. Of the 84 eligible, 80 responded, 77 accepted the buyout and three declined. This resulted in a buyout of approximately $104,000.

The amount of the one-time payment, unanimously approved by the Committee at last month's meeting was $2,000. Mr. Lucchetti provided a memo to the Committee addressing where the agency currently is in the fiscal year, and providing an overview of the furlough reimbursement provided in January and the FY 2022 budget request.

Mr. Benedetti informed the members that he misspoke when he said staff had provided the Committee all the information they requested. Information that had not previously been provided, that Mr. Kennedy requested, was a list of other State agencies that have provided bonuses/one-time payments to their employees. That information was included in this month's Committee materials.

Personnel Issues

The search for a Human Resources Director continues; in the meantime, Mark Conlon has been hired to serve as the Interim HR Director, until a permanent replacement is found. Mr. Conlon is the former Trial Court HR Director and has years of experience in HR for the Commonwealth.

The job posting for the Youth Advocacy Director has been published for several weeks and interviews are expected to begin shortly.

The posting for the Deputy Chief Counsel for the Public Defender Division was published earlier in the week and has a deadline of six weeks.

All three job postings have a soft closing date to allow review of applications as they come in for qualified candidates.

Vaccination Survey

As part of the process of reopening the offices, a confidential survey of the staff on vaccinations was conducted. Ninety-seven percent of the staff responded, and 91% reported being vaccinated with the percentage increasing to 94% when including those who say they plan on being vaccinated by the end of the summer. The majority of those who indicated they were not getting vaccinated said it was due to medical issues.

Joint Committee on Racial Equity Civil Rights Inclusion

This Legislative Committee held their first hearing on Monday, June 14, 2021 to hear testimony on what the Committee should focus on in the upcoming legislative session. The newly created Committee was established to examine issues related to racial equity and civil rights.

Mr. Benedetti appeared before the Committee and provided testimony on what CPCS believes the Committee should focus on, both issues related to the work of the agency, and issues that lead to our clients becoming court-involved in the first place. A quote from his testimony was included in a Commonwealth Magazine article.

Staff will continue to engage this Committee throughout the legislative session.

Court Openings

CPCS continues to work on engaging with Trial Court leadership around issues related to courts reopening and the plan going forward, as well as challenges that attorneys are currently seeing and experiencing or anticipate once the courts fully open. One of the biggest issues will be the backlog of cases.

Some of the major issues right now are:

- Assigning counsel to the cases – cases are arriving in court at a pre-pandemic rate.
- Both staff and private counsel are at or approaching caseload limits.
- Inconsistency across the courts and institutions in terms of ability to handle matters remotely.
- Clients and families do not have the necessary equipment for remote hearings.

In addition to the above issues, there was a decision by the court to conduct most long term civil commitment matters virtually while doing the Section 12 and Section 35 commitments in person.

Mark Larsen, Director of the Mental Health Division, is concerned that many of the panel members will not be returning, resulting in an additional backlog of cases.

The hope is that a meaningful hourly rate increase for the private bar will help to alleviate many of the capacity issues; however it will not solve the caseload capacity issue. CPCS continues to do everything possible to continue to timely assign counsel to every client.

There being no further business to come before the Committee, at approximately 6:40 p.m. the Committee adjourned into Executive Session to discussion a litigation matter.

At approximately 7:23 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 7:25 p.m.

Respectfully submitted
/s/ *Mia Alvarado*
Mia Alvarado, Secretary