

COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

JUNE 18, 2020

The monthly meeting of the Committee for Public Counsel Services was held by video conference on Thursday, June 18, 2020 beginning at 5:35 p.m. R.J. Cinquegrana, Chairman, presiding.

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

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

Ms. Shah announced to the members that she is resigning from the Committee as she is taking a sabbatical from Suffolk Law School to write a book. She told the Committee that she had learned a lot from her time on the board and she values the work the board and the agency does. She thanked everyone for all the work the board has done.

Chief Counsel Anthony Benedetti and numerous members of the board thanked her for her service to the agency and for bringing her particular expertise and experience to the Committee discussions. All expressed that she would be missed and wished her luck on her sabbatical.

1. Minutes of May 20, 2020 Meeting

The minutes of the May 20, 2020 meeting were approved as presented.

2. Amicus Request(s)

Due to the timeframe on this month's amicus requests, , staff previously sought and received approval from the Executive Committee to file an amicus letter in *Commonwealth v. Daniel Nash*, 2019-P-0703 and to join an amicus brief in *Gonzalez v. Immigration & Customs Enf't*, 416 F. Supp. 3d 995 (C.D. Cal. 2019). They were presented for informational purpose only.

a. *Commonwealth v. Daniel Nash*, 2019-P-0703

David Rangaviz, Appeals Attorney, presented the case to the Committee. The Commonwealth has filed a request to vacate a stay that was granted in the Superior Court. Mr. Nash was ordered released by Judge Gordon on May 19th, and is currently at home in a 14-day period of self-

quarantine. The Commonwealth has filed a motion to vacate the stay with a Single Justice of the Appeals Court (Wolohojian, J.), and return Mr. Nash to custody. The request to vacate the stay is now pending decision, and the case will have a hearing before Justice Wolohojian. The brief will focus on 1) the fact that incarceration itself dramatically increases the risk of exposure to COVID-19 so as to justify the stay and 2) the letter will briefly address the fact that Mr. Nash has already been released, and how that impacts the stay factors.

b. *Gonzalez v. Immigration & Customs Enf't*, 416 F. Supp. 3d 995 (C.D. Cal. 2019)

Wendy Wayne, Director, Immigration Impact Unit (IIU), presented the case to the Committee. The IIU will join an amicus brief pending in the Ninth Circuit Court of Appeals. The amicus brief will be drafted by Kirkland & Ellis and Professor Kate Evans from Duke University School of Law on behalf of public defender and legal aid offices across the county. The main issue in *Gonzalez* is the legality of the nationwide practice of detaining individuals solely on the basis of immigration detainers issued by Immigration Customs and Enforcement (ICE). The class action is important because it extends arguments that the IIU advanced in litigating *Lunn v. Commonwealth*, a case in which the Supreme Judicial Court concluded that there is no authority under Massachusetts law for an arrest for civil immigration purposes, and state officer do not have inherent or implicit authority to detain individuals based on civil immigration detainers.

3. Contracts

The Committee was informed that in the event that FY 2021 funding does not support the following contract levels, appropriate contract adjustments would be made.

a. FY 2021 Bar Advocate Program Contracts

Rose King, Director of Criminal Trial Support sought Committee approval for the FY 2021 Bar Advocate Program contract. The terms of the contract are identical to those of the prior fiscal year.

The cost for FY 2021 includes the following:

1. Annualization of the bar advocate program staff raises which the Committee approved at the May 20, 2020 meeting (\$27,927).
2. Anticipated increases in staff health insurance during FY 2021 (estimated \$4,000).
3. Anticipated increase in rent, other program costs, and cost related to the Massachusetts Paid Family Medical Leave (PFML).

The total amount for the FY 2021 contracts is \$1,222,599.

MOTION: Ms. Ball. That the Committee approve the FY 2021 Bar Advocate Program contracts in the amount of \$1,222,599 as presented.

SECOND: Mr. Apfel.

VOTE: Unanimous.

b. FY 2021 Provision of Legal Services to Dukes and Nantucket Counties

Ms. King sought Committee approval for the FY 2021 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 identical to last year's contract. The total cost of the contract is \$40,800.

MOTION: Ms. Ball. That the Committee approve the FY 2021 contract with Attorney Robert Moriarty for the provision of legal services in Dukes and Nantucket counties for the amount of \$40,800.

SECOND: Mr. Kociubes.

VOTE: Unanimous.

c. FY 2021 Bar Advocate Program Supervising Attorney Contracts

Ms. King sought Committee approval for the FY 2021 Supervising Attorney Contracts. The contracts are identical to the FY 2020 contracts. 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 \$1,218,288.

MOTION: Mr. White. That the Committee approve the FY 2021 contracts Bar Advocate program Supervising Attorney contracts for the amount of \$1,218,288.

SECOND: Mr. Kociubes.

Vote: Unanimous.

d. FY 2021-FY 2022 CAFL Resource Attorney Contracts

Michael Dsida, Deputy Chief Counsel for the Children and Family Law Division (CAFL) sought Committee approval for a two year contract (July 1, 2020 – June 30, 2022) for seven CAFL Resource Attorneys in the following regions: Southern Essex, Berkshire, Hampden, Middlesex, Worcester, Franklin and Hampshire, and Suffolk. 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 FY 2021 portion of the seven contracts combined with the previously approved two year contracts in June 2019 totals \$153,360.

MOTION: Mr. Kociubes. That the Committee approve the two year contract (July 1, 2020 – June 30, 2022) for the seven CAFL Resource Attorneys as presented,

SECOND: Ms. Ball.

VOE: Unanimous.

e. FY 2021-FY2022 MH Regional Coordinator Contracts

Joseph Robinson, Trial Panel Director for the Mental Health Litigation Division (MHL), sought Committee approval for the following regions: Barnstable & Plymouth, Bristol, Berkshire & Hampden, Hampshire & Franklin, Essex, Middlesex, Norfolk, Suffolk, and Worcester. The Regional Coordinators assist in supporting and overseeing the work of MHL private panel attorneys in mental health cases. Their work includes conducting trainings, providing advice and technical support to attorneys practicing in the region, acting as a liaison with the courts, assistance with attorney recertification, assistance in conducting performance reviews of attorneys and case specific support as requested by panel attorneys. The Regional Coordinators are paid \$68/hour for their work. The expected maximum annual cost for these contracts is \$150,000.

MOTION: Mr. White. That the Committee approve the MHL Regional Coordinator Contracts as presented for a maximum annual cost of \$150,000.

SECOND: Mr. Kociubes.

VOTE: Unanimous.

4. Lease Agreement

Kevin Lucchetti, Chief Financial Officer, sought Committee approval for a ten-year lease with Rockhill Management for office space for the CPCS Administrative office, 75 Federal Street, Boston. The terms of the lease are for 27,746 /sq. ft. at \$81.45/sq. ft. for the first year with a 3% increase year/year. The average annual rate is \$2,565,812. The lease term is from December 1, 2020 through November 30, 2030.

Discussion ensued.

MOTION: Ms. Ball. That the Committee approve the ten-year lease with

Rockhill Management at 75 Federal Street, Boston for the Boston Administrative office for \$27,746/sq. ft. with an average annual rate of \$2,565,812 with the lease running from December 1, 2020 through November 30, 2030.

SECOND: Mr. Kociubes.

VOTE: 10 approve; 1 abstaining. MOTION CARRIED.

5. Committee Rules and Regulations

Mr. Kociubes presented the proposed revised Rules and Regulations for approval. A Rules Subcommittee was appointed comprising of Mr. Kociubes, Mr. White, Ms. Alvarado, Mr. Demissie, Mr. Kennedy, and Mr. Miller. General Counsel Lisa Hewitt assisted the Subcommittee with their work in producing the proposed changes. Mr. Kociubes indicated that there are two motions that needed approval from the Committee. 1) to approve the amended rules and 2) to refer the deleted sections that address employee behavior to both Human Resources Department and the Personnel Subcommittee for consideration whether changes should be recommended to the Personnel Handbook.

Mr. Kociubes informed the committee that the provision regarding remote participation is intended to be experimental and should be revisited if in-person participation drops off once the current pandemic ends.

MOTION: Mr. White. That the Committee approve 1) the revised Rules and Regulations of the Committee as presented and 2) sending the deleted sections on employee behavior to both the Human Resources Department and the Personnel Subcommittee for consideration as to whether changes should be recommended to the Personnel Handbook.

SECOND: Ms. Ball.

VOTE: Unanimous.

6. Monthly Financial Overview Report

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

Based upon data available just prior to tonight's meeting, he was able to report that there is an overall surplus in line-items 0321-1510 and 0321-1520 of approximately \$5.5M. As a result there will not be a need for supplemental funding for these accounts; in fact it is anticipated that the surplus will grow.

7. Commitments \$10,000 and Over Report

Mr. Lucchetti presented the Commitments of \$10,000 and over to the Committee for review. There was one new commitment to report for Benjamin Vivante for information technology consulting.

8. FY 2021 Obligations over \$25,000 for Preapproval

Mr. Lucchetti sought Committee approval on anticipated expenditures expected to exceed \$25,000 for FY 2021 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 routine and for continuation of existing services. The expenditures presented were broken down by 1) category; 2) vendor; 3) 2020 estimated cost; 4) 2021 estimated cost; and 5) notes/purpose.

An affirmative vote of the Committee approves use of the attached vendors to exceed \$25,000 for FY 2021 without further separate approval. Once approved, expenditures exceeding \$10,000 are reported to the Committee on the Monthly Commitments Report.

Discussion ensued.

After discussion, it was decided if any individual contract deviates more than 10% from the estimate, staff is to return to the Committee for approval.

MOTION: Mr. Kociubes. That the Committee approve the list of all anticipated expenditures over \$25,000 for FY 2021 as presented and if a contract deviates more than 10% from the estimate, staff is to return to the Committee for approval (see list attached).

SECOND: Ms. Ball.

VOTE: Unanimous.

9. Discussion of Criminal Justice System Inequities and Police Brutality

Mr. Demissie mentioned that the Massachusetts Association of Criminals Defense Attorneys (MACDL) wrote a letter in response to the letter released by Justices of the Supreme Judicial Court regarding the issue of racial injustice in the legal system. The letter raised a number of areas which, if changed, would have an immediate affect in reducing disparities including establishing a presumption for summonses for most crimes, amending the standard when there is evidence of a pretextual stop, and expanding discovery to include police internal affairs records. He indicated he would provide a copy of the letter to the members.

Mr. Demissie expressed a desire to have the Committee and CPCS staff think about how the agency could tackle racial bias and that the Committee should explore what is being done in this area and discuss how it could do more and do it better.

Mr. Benedetti informed the members that staff has been involved in tackling race in the legal system for years in a number of ways, including legislation, Court rules and policy, and with other stakeholder agencies. Currently each division of the agency is working on proposals that CPCS can advocate for that would make an immediate difference in reducing racial and ethnic disparities. Staff will present at the next Committee meeting what the agency has been doing in this area.

Lisa Hewitt, General Counsel, indicated that the agency has often been asked its opinion on numerous legislative proposals having to do with race in the legal system and how it affects our clients. She will brief the Committee at future meetings to keep them informed on the various ways the agency is being active in this area.

Mr. Cinquegrana requested at the next meeting staff provide a presentation on procedural and other reforms that staff recommends.

10. Chief Counsel Report

Racial Justice Issues

Chief Counsel Benedetti informed the Committee that the agency held a Zoom Town Hall meeting with all staff in response to the killing of George Floyd and the treatment of people of color in the system generally. The meeting provided an opportunity to staff of color to have a forum to discuss how they were feeling and for people to listen and learn. People who spoke discussed their own experiences throughout their life in addition to their experiences at CPCS. The Town Hall was organized by John Lozada, Equity and Inclusion Director, along with two Public Defender Division Managing Directors, Nan Whitfield and Arnie Stewart. Mr. Benedetti reported that the program was powerful and impactful and that feedback he had heard directly and indirectly echoed his own experience. Over 600 employees participated and three hours later, there were still more than 400 on the call.

In addition, the following Monday, there were numerous public defender rallies around the country and on their own time, staff planned and attended marches in Boston, Springfield, Worcester, and Northampton. All of these were well attended and extremely positive events.

Mr. Lozada reported to the Committee that at the next meeting, he will provide an update on his work as EID for the agency and mentioned several highlights:

- He has visited 18 offices across the state to hear directly from staff what issues they are concerned with, both internal and external to the offices.
- He has organized working groups to develop training for racial bias.

- He has been working with Human Resources and others on recruitment and retention issues within the agency.

COVID 19 Issues

Criminal

- Currently 1,864 inmates have been released since April 3, 2020 from the department of corrections and house of corrections as a result of the CPCS litigation.
- There has been some success getting pretrial detainees released as well as representing individuals on numerous parole matters and getting them released
- Many inmates are in solitary confinement to which is being used by prisons to aid in stopping the spread of the virus throughout the facilities. This means that incarcerated individuals are spending most of the time in their cells with little to no activity and no programming. .

Children and Family Law Litigation

Michael Dsida, Deputy Chief Counsel for the Children and Family Law Division, updated the Committee on the CAFL Litigation challenging the ban on in-person visits for children who are in custody of the Department of Children and Families (DCF).

- A hearing was held on June 15, 2019 with closing arguments on the preliminary injunction to be heard on June 18, 2019.
- The initial hearing focused on two issues – jurisdiction and whether going from in person visits to videoconference contact is within DCF’s purview to determine how visitation is handled.
- Expert testimony was presented that children under five cannot have meaningful visits virtually and that this will result in long-term trauma.

Mr. Dsida commended Attorney Lauren Russell of the Strategic Litigation Unit for her work in the case.

11. Other Business

Mr. Cinquegrana informed the members that an election of officers has not occurred for several years and that an election will occur at the next meeting. He stated that he has asked Mr. White to serve as a one person nominating committee and that any member who wishes to serve as an officer should contact him.

Mr. Cinquegrana indicated that it has been an honor to serve as Chair for the past eight years, but felt that it was important that the offices be rotated. As a result he will be stepping down as Chair once the new officers have been selected. It is his hope that new officers will be selected at the July Committee meeting and the new Chair can then repopulate the various subcommittees.

There being no further business to come before the Committee, the Committee adjourned into Executive Session at approximately 8:27 p.m.

Respectfully submitted,

/s/ *Joseph L. Kociubes*

Joseph L. Kociubes, Vice-Chair