

COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

JUNE 20, 2018

The monthly meeting of the Committee for Public Counsel Services was held in the Committee's conference room at 40B Bromfield Street, 1<sup>st</sup> Floor, Boston, MA on Wednesday, June 20, 2018, beginning at 5:38 p.m. R.J. Cinquegrana, Chairman, presiding.

MEMBERS PRESENT: Ms. Ball, Messrs. Healy, Kennedy, Miller, Rosenfeld, Stern, and White

TELECONFERENCING: Messrs. Hernando and Kociubes, and Ms. Tewksbury

Mr. Cinquegrana appointed Mr. Miller as Secretary pro tem for tonight's meeting.

1. **Minutes of May 16, 2018 Meeting**

The minutes of the May 16, 2018 meeting were approved with the amendment on page 9 to read appendices instead of appendixes.

2. **Contract – CAFL Resource Attorneys**

Michael Dsida, Deputy Chief Counsel, Children and Family Law Division (CAFL), sought Committee approval to enter into a two year contract for five CAFL Resource Attorneys in the following regions: Berkshire, Essex South, Middlesex South, Suffolk, and Worcester. The Resource Attorneys provide legal and technical assistance to trial panel members in their designated regions. They also serve as liaisons with the courts and the CAFL Trial Support Unit. The total maximum amount of the two year contract is \$116,000.

**MOTION: Mr. Rosenfeld. That the Committee approve the two-year CAFL Resource Attorney contracts for the five regions as presented, with a total two year maximum amount of \$116,000.**

**SECOND: Mr. Healy.**

**VOTE: Unanimous.**

### 3. Lease Extension

Kevin Lucchetti, Chief Financial Officer, sought Committee approval of a five-year lease expansion and extension with the Hampshire Property Management Group, Inc. for current office space located at 109 Main Street, Northampton, MA, in order to consolidate Hadley staff into the Northampton location. The terms of the lease are for 7,540/sq. ft. at \$25.46/sq. ft. with an annual rate of \$191,985.

**MOTION: Ms. Ball. That the Committee approve the five-year lease expansion and extension with the Hampshire Property Management Group, Inc. located at 109 Main Street, Northampton, MA for 7,540/sq. ft. at \$25.46/sq. ft. with an annual rate of \$191,985.**

**SECOND: Mr. White.**

**VOTE: Unanimous.**

### 4. Monthly Financial Overview Report

Mr. Lucchetti presented the monthly financial overview report to the Committee for review. There was no change in the forecast from the previous month. The agency has continued to receive funding from the Administration and Finance (ANF) reserve account (1599-1690 caseload and deficiency reserve) with a disbursement on Monday, June 18, 2018 and a final disbursement expected in July. If the forecast for the 0321-150 and 0321-1520 line items (private counsel and vendor payment accounts) do not change, the disbursements from the reserve account will be adequate to cover any expected FY2018 expenditures without a need for supplemental funding.

### 5. Commitments \$10,000 and Over Report

Mr. Lucchetti presented the commitments of \$10,000 and over report to the Committee for review. The report was modified to reflect the changes requested by members at last month's meeting. There were no new commitments that had not been previously discussed.

### 6. Update on Sex Offender Bill

Lisa Hewitt, General Counsel, provided an update on legislation filed by the Governor – S.2544 – Act Relative to Child Predators. The legislation was prompted by the scheduled release of an individual, after a lengthy sentence for child rape followed by a civil commitment of approximately 10-15 years. Following the present law's protocol, the individual was evaluated and found to no longer be sexually dangerous and was set to be released. The victims' families had not been notified of the impending release and sought counsel. Attorney Wendy Murphy was hired by the victim's family and petitioned the SJC under Chapter 211, §3. The Single

Justice of the Supreme Judicial Court (SJC) hearing the case denied the motion to overturn the proposed release of the client. Ms. Murphy filed an appeal to the full bench.

Some highlights of the bill are the following:

- Creates the possibility of a mandatory life without parole sentence for multiple convictions.
- Changes to the SDP statute will increase the costs of these cases exponentially by requiring layers of review and forcing every case to proceed to trial with at least seven and potentially up to 14 experts testifying at every trial.
- Changes the current burden of proof. Presently the burden is on the Commonwealth to prove beyond a reasonable doubt that the individual is sexually dangerous before an individual may be forcibly detained. Section 15 of the proposed Act states that the “opinion of a single qualified examiner...shall be deemed sufficient for the commonwealth to meet its burden.” This section violates the Massachusetts constitution as it provides for a standard of proof that would not even meet the preponderance standard.
- Eliminates the Community Access Board and Community Access Program. This program is specifically designed to help individuals who have succeeded in treatment and are rehabilitated to reintegrate into the community.

The bill has been referred to the Joint Committee on the Judiciary and a hearing has not yet been scheduled. In the interim, the individual has been charged with additional offenses while still incarcerated. The Attorney General has expressed support for the Governor’s bill.

## **7. Chief Counsel Report**

Anthony Benedetti, Chief Counsel, updated the members on the following items:

- FY 2019 budget – The Legislature is in the middle of conference committee negotiations with a final budget expected on or near July 1<sup>st</sup>.
- Litigation on the Immigration and Customs Enforcement (ICE) Petition - The Single Justice hearing was held on May 18, 2018. A decision has not yet been issued.
- CPCS joined with the Massachusetts Bar Association in releasing a statement on judicial independence in opposition to calls for the removal of Superior Court Judge Timothy Feeley.
- The SJC has appointed a new Committee member - Derege Demissie was appointed to fill the seat formerly held by Tim Watkins. Mr. Demissie practices criminal and immigration law in state and federal courts. He is the current president of the Massachusetts Association of Criminal Defense Lawyers and sits on the Board of the Suffolk Lawyers for Justice, Inc. He previously served on the CPCS Committee for two terms in the early 2000s.

## **8. Other Matters**

Lisa Bacon, Human Resources Director, provided an update on the hiring process for the Deputy Chief Counsel position.

- An email was distributed to the personnel subcommittee updating them on the process.
- The posting deadline was extended to July 10, 2018.
- The position was reposted with various national affiliations.
- There are currently twenty-five applicants, an additional eight incomplete applications with five of the applicants being internal.
- There is racial and ethnic diversity in the candidates, as well as geographical diversity.

Ms. Bacon will provide the posting link to members. If members distribute the posting, she asks that they inform her who they are sending it to. This will enable staff to keep track of where applicants are seeing the posting and will enable them to evaluate their recruitment efforts.

Mr. Dsida provided an update on the CAFL counsel crisis in western Massachusetts. Currently, the \$75/hr. emergency rate continues to make a difference in attorney capacity in assigning cases. The increase in the annual billing cap has also provided relief. Some highlights:

- No reports of attorney shortages in Hampden County.
- Spot shortages in assigning counsel in Worcester County.
- Spot shortages in Dudley, Leominster, and Fitchburg.
- Franklin/Hampshire and Berkshire juvenile court are having difficulty assigning counsel.
- Concerns are developing that after July 1<sup>st</sup>, when the hourly rate reverts back to \$55/hr. there will be a dramatic increase in the number of cases without counsel.
- Currently there are approximately 800 panel members eligible to receive CAFL care and protection cases, with approximately 725 taking cases in FY18
- Staff will be presenting a report to the Legislature by October informing them of the impact the emergency rate had on the ability of CPCS to assign counsel.

Discussion ensued regarding possible incentives.

There being no further business to come before the meeting, the meeting adjourned into Executive Session at approximately 7:07 p.m.

Respectfully submitted,

/s/ *Bruce K. Miller*

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Bruce K. Miller, Secretary Pro Tem