COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

June 21, 2023

The monthly meeting of the Committee for Public Counsel Services was held by video conference on June 21, 2023, beginning at 5:31 p.m. Joseph L. Kociubes, Chairman, presiding.

MEMBERS PARTICIPATING: Messes. Alvarado, Ball, Chester, Conrad, Petropoulos

Messrs. Apfel, Kociubes, Miller, Stern, White

1. **Minutes of May 17, 2023 Meeting**

The minutes of the May 17, 2023 meeting were approved as presented.

2. **Legal – Request for Committee action**

   a. Amicus recommendation for Conrad Murphy v. Carol Mici, Commissioner of Correction, et al. SJC-13437

Director of ACRSU Ms. Pasqua Scibelli presented an amicus recommendation for Conrad Murphy v. Carol Mici, Commissioner of Correction, et al. SJC-13437. The SJC solicited amicus briefs on the issue of whether the provisions of the medical statute apply to an individual who was civilly committed as a Sexually Dangerous Person (SDP). The issue is that civil commitment is different than a criminal sentence.

The case background is the plaintiff petitioned the DOC for medical parole and the DOC denied his petition and would not consider it at all noting that SDPs are excluded from medical parole consideration in the DOC regulations. Mr. Murphy's attorney filed an appeal. Superior Court Judge Ham issued a favorable decision noting that the interests of due process require the DOC to at least consider Mr. Murphy's petition for medical parole. The DOC filed an emergency motion to stay the Superior Court order and the order was stayed. An appeal was filed in the Appeals Court. The SJC took the case sua sponte on May 22nd.

The issue has broad implications for SDP clients. Whether the statute applies to SDPs is an issue of statutory construction and the actual medical parole statue is silent on the issue. The Commonwealth's position is that the SJC has already interpreted the statue and found that medical parole does not apply to pre-trial detainees and that they are prisoners. However, civil commitment as a SPD is very different than pretrial detention. The amicus will make constitutional arguments that will bolster the statutory interpretation argument by pointing out that any other interpretation will render the statute unconstitutional. The Parole Board has not argued that they do not have jurisdiction over civilly confined people. Their argument is regarding statutory construction, SDPs medical parole consideration exclusion, and SDP statute as a mechanism in place for people to be

released. However, there is no mechanism for a SDP to request release because of a medical condition or physical incapacitation.

MOTION: Mr. Stern. That the Committee approve the amicus recommendation for Conrad Murphy v. Carol Mici, Commissioner of Correction, et al. SJC-13437

SECOND: Ms. Conrad.

VOTE: Unanimous.

b. Commonwealth v. William F. McDermott, SJC-13394

Parole Advocacy Director Ms. Mara Voukydis presented an amicus recommendation for Commonwealth v. William F. McDermott, SJC-13394. The case background is that in October 2020 Mr. McDermott filed a motion for new trial and/or motion for resentencing. In 2022 his motion was denied, and he appealed. The SJC accepted his case on direct appellate review.

Mr. McDermott is a juvenile lifer, who at 17-years-old killed his country club supervisor many years ago. For many years, Mr. McDermott asserted that the man sexually assaulted and threatened him. At a recent parole hearing, Mr. McDermott said he was not sexually assaulted. The Commonwealth then wanted to introduce his recent Parole Board statements as incriminating statements.

The Parole Advocacy Unit's amicus brief would address that statements made at the Parole Board are not sufficiently reliable and therefore should not be utilized. The amicus brief seeks to educate the court regarding how easy it might be for someone to say something that's not accurate before the Board, whether for reasons of disability, language access, and other personal cultural traits, as well as the environment of the parole hearing. The goal of the amicus is also to paint a picture of non-life parole release hearings and the complete lack of transparency, where most times the person is not accompanied by counsel. The court has also solicited comment on issues related to homophobia, and whether homophobia tainted the trial. The MACDL and the New England Innocence Project (NEIP) are expected to address those questions. Discussion ensued regarding the Parole Board's expectation of people taking responsibility for absolutely everything even if they are innocent.

MOTION: Ms. Petropoulos. That the Committee approve the amicus recommendation for Commonwealth v. William F. McDermott, SJC-13394

SECOND: Mr. White.

VOTE: Unanimous.

3. **Vacation Buyout Proposal**

CFO Mr. Kevin Lucchetti presented the proposed Vacation Buyout Proposal. Mr. Lucchetti stated that vacation balances are growing post-pandemic. As our workforce ages and pay increases, there is a significate increase in the total liabilities for vacation time. CPCS has spent approximately $750,000 on vacation buyouts in FY 23 when a person retires or leaves. Comparatively, in FY 21, CPCS spent just under $500,000 on vacation buyouts. The total current vacation time liabilities is $6M or more. In 2019 and 2020, vacation liabilities were approximately $4.5M and $4.8M. Mr. Lucchetti requested that the Committee allow employees to buyout up to 70 hours of their vacation time prior to June 30, 2023. In response to a Committee member's question, Mr. Lucchetti explained that liability data was calculated beginning with the balance of vacation hours multiplied at the employee's current hourly rate. The last vacation buyout occurred in FY 21. Upon Committee approval, a message notifying staff of the opportunity will be sent first thing in the morning.

MOTION: Mr. Miller. That the Committee approve the Vacation Buyout Proposal allowing staff to buyout up to 70 hours of their current vacation time prior to June 30, 2023.

SECOND: Mr. Stern.

VOTE: Unanimous.

4. Monthly Financial Overview

Mr. Lucchetti presented the Monthly Financials Overview Report. Mr. Lucchetti reviewed fiscal year end dates: FY 23 close/soft close on June 30, 2023 and FY 23 hard stop at the end of August 2023. CPCS has spent approximately $260M of the $336M that is available across all line-item accounts. CPCS anticipates FY 23 spending to be approximately $314M and projects an FY 23 surplus in the amount of approximately $22M across all accounts.

- The surplus in the Administration/Operations 1500 account is approximately $2.5M.
- The surplus in the Private Counsel 1510 account is approximately $4.2M, and is projected to increase slightly.
- The surplus in the Court Costs/Experts 1520 account is approximately $15.5M.

Through the American Rescue Plan Act, CPCS has $4.5M of state appropriated federal money. CPCS was able to shift some expenses such as the CAFL conflict office, the PDD Holyoke Response Office, and vendor and billing modernization project to the Administration/Operations 0321-1500 account so that the life of the ARPA funding is extended into the next fiscal year.

5. Commitments $10,000 and Over Report

Mr. Lucchetti stated that in the interest of consistency, the previous procurement policy was applied for this month and in July the new procurement thresholds and rules will be used.
Mr. Lucchetti seeks the approval of five contracts for a total commitment of approximately $1.5M where estimated spending exceeds the original June 2022 preapprovals by more than 10%.

- Creative Office Pavilion LLC – furniture vendor
- Donnegan Systems Inc – document imaging and records management
- West Publishing Corporation – Westlaw and library materials

- Verizon Wireless – telephone
- TIC Business Consulting – training assistance and servers setup for the East Bridgewater move

Mr. Lucchetti seeks approval of one vendor, South Shore Generator for approximately $73,000, where spending exceeds $25,000 and has not been previously approved by the Committee. CPCS received three bids and decided to move forward with South Shore Generator who is a state vendor. Also being reported is National Criminal Defense College with estimated spending of $13,500 which does not require a Committee vote.

MOTION: **Ms. Ball. That the Committee approve five contracts totaling $1,471,708 where spending exceeds the original approval by more than 10% – Creative Office Pavilion LLC, Donnegan Systems Inc, West Publishing Corporation, Cellco Partnership DBA Verizon Wireless, and TIC Business Consulting and that the Committee approve one contract for South Shore Generator at $72,977, where spending exceeds $25,000 and has not been previously approved.**

SECOND: **Ms. Conrad.**

VOTE: **Unanimous.**

6. Personnel Subcommittee Report – Attrition and Agency DEI Efforts

Personnel Subcommittee members Mr. Bruce Miller, Ms. Mia Alvarado, Ms. Lael Chester, and Ms. Georgia Petropoulos reported on CPCS attrition and agency DEI efforts. Subcommittee members met with Chief Counsel Anthony Benedetti, Chief Human Resources Officer Mr. Ted Waterman, and Equity and Inclusion Director Mr. John Lozada in May and early June. Mr. Miller reported on the extraordinarily well-done attrition study which included almost two decades of data. CPCS' overall attrition rate is relatively low and stable at approximately 10%.

Included in the attrition report was a comprehensive study of an array of statistics and exit interviews consisting of thoughtful questions. Exit interview questions include quality of supervision, communication within the agency, primary reasons for leaving, and positive and negative aspects during an employee's time with CPCS. Reasons for leaving that appeared with some frequency were explored with exceptional commitment to reflection and effort for improvement. Reasons for leaving varied and included personal reasons, burnout related to the character of work and dealing with difficult judges and court personnel, and sometimes internal communication issues with management and supervisors. The majority of exit interview comments and people's CPCS work experience was very positive.

DEI efforts include educational trainings and nudging CPCS culture to a more explicit recognition and awareness of racism. The Personnel Subcommittee was provided with a full briefing on DEI efforts and were highly complementary of the work. The Personnel Subcommittee was also provided with videos that reflect Mr. Lozada's programmatic efforts. Mr. Lozada shared that he visited the Roxbury Defenders office this afternoon and spoke with an Administrative Assistant

who suggested going out into the community and letting people know what the agency does. Mr. Lozada fully supported the suggestion, and welcomes the voice and participation of staff which contributes to a positive culture.

The Personnel Subcommittee applauded CPCS for supporting staff in many ways, proactively having conversations with staff to increase retention, and to generally be self-reflective in examining where problems exist and to work to address them. The subcommittee also commented positively on the solid teamwork between CPCS leaders and incredibly inclusive, bottom-up process regarding this work.

7. **Chief Counsel Report**

Chief Counsel Mr. Anthony Benedetti reported that both the House and the Senate FY 24 budgets have been released and that there are some key differences. CPCS sent a letter to the Conference Committee asking for the favorable numbers in each budget version which would provide higher funding for the agency. We expect the Conference Committee decision around July 1st. Mr. Benedetti also noted that the Governor filed a 1/12 budget which essentially keeps the government running if the final budget is delayed.

Mr. Benedetti provided updates on state-wide counsel capacity issues and improvements. The Mental Health Litigation Division incentive program has worked extremely well and approximately 35 clients who were waiting for counsel now have representation and are able to move forward without delay. The CAFL Division incentive program has also helped to dramatically improve the counsel shortage, from approximately 200 clients without representation to 16. Mr. Benedetti also noted a complete turnaround in assigning counsel in Hampden County in adult criminal cases with most clients now being assigned timely counsel. Kudos to Staff Counsel II Mr. Adam Narris and the entire Private Counsel Division and the Bar Advocate program leadership for their work revamping the scheduling protocol to address the coverage issue. Suffolk County counsel capacity challenges continue.

Two recruitment positions have been created and filled, one for staff and one for private bar. These complementary positions will strategize to market CPCS with local law schools and bar advocate programs and more in all practice areas. Both recruitment employees are attorneys and persons of color.

Mr. Benedetti shared data related to FY 22 private attorney billing.

- 2,680 attorneys billed CPCS
- 2.6M total hours were billed
- The average number of hours billed is 959
- The mean number of hours billed is 940
- 161 attorneys were paid for 2,000 hours

In conclusion, a very small number of attorneys are reaching the top of the annual billing cap. With regards to the counsel shortage, CPCS efforts include trying to get attorneys to take more cases.

Mr. Benedetti shared that the Classification Study work is underway, and The Segal Group is onsite this week to conduct initial meetings and explain the process they will undertake. CPCS aims for a final Classification Study report in time for next year's budget process.

Mr. Benedetti reported positively regarding Strategic Planning off-site on May 31st and June 1st. Staff and private counsel were very happy to participate and offer thoughts on the agency's future goals. Ideas and feedback are being sorted into three categories:

1. Misinformation – information will be provided so that staff and private bar know CPCS is already doing work on the suggestions made
2. Work that can be completed easily or at low cost and does not require a full strategic plan
3. Substantive work with full strategic plan

Mr. Benedetti also shared that the Supreme Court upheld the constitutionality of the Federal Indian Child Welfare Act in Haaland *v.* Brackeen. An individual Texas plaintiff alleged that the Indian Child Welfare Act which is a federal law that governs the removal and out-of-home placement of American Indian children, is unconstitutional. The Act is considered to be "the gold standard" of child welfare policy by experts and national leading child advocacy organizations. CPCS joined with dozens of other organizations in an amicus brief arguing for Native American tribal nations continued recognition.

Mr. Benedetti also spoke of the SJC Dew decision which was released on June 15th. Mr. Anthony Dew was represented by an attorney who made racist and other hateful offensive comments on his public social media page. The court found that Mr. Dew's right to effective assistance of counsel was violated and ordered a new trial. The court's decision includes wonderful language about the right to counsel. Mr. Benedetti also reported that CPCS independently sent notices to all the attorney's clients we could locate, and more than 2,500 letters were delivered. CPCS received requests for counsel from 70 people and 69 attorneys were assigned. One person did not want representation. There are at least three active motions for new trials that CPCS is aware of so far, with more likely in the future. The court was silent regarding other cases in which the attorney provided representation in its decision.

Lastly, Mr. Benedetti shared information on plans for continuing efforts to increase both staff salaries and the private bar hourly rate in the months ahead.

There being no further business to come before the Committee, the Committee adjourned at approximately 6:52 p.m.

Respectfully submitted

/s/ Mia Alvarado

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Mia Alvarado, Secretary