

COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

March 16, 2022

The monthly meeting of the Committee for Public Counsel Services was held by videoconference on Wednesday, March 16, 2022 beginning at 5:37 p.m. Joseph Kociubes, Chair, presiding.

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

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

1. **Minutes of February 22, 2022 Meeting**

The minutes of the February 22, 2022 meeting were approved as presented.

2. **Amicus Request(s)**

Commonwealth v. Rambert, Appeals Court No. 2021-P-0649; SJC No. DAR-28716.

The following amicus recommendation was presented for informational purposes only. Due to the timeframe of the case, the Executive Committee approved the request on March 10, 2022. Sarah LoPresti, Staff Attorney Juvenile Appeals, briefed the committee.

The Youth Advocacy Division (YAD) sought permission to file an amicus letter in support of the juvenile's application for direct appellate review and if granted, to file an amicus brief. The juvenile was sentenced to eleven life sentences, two thirty-to-forty-year sentences for a crime spree in 1981. He served approximately eighteen years before parole eligibility, and approximately forty in total. The juvenile filed a Rule 30 motion arguing that his sentence was presumptively disproportionate. The motion was denied and in 2019, the Appeals Court affirmed the denial. Upon reconsideration, it vacated the denial and remanded for resentencing.

On remand, the Superior Court did not conduct a Miller hearing before resentencing the juvenile to multiple thirty-two to thirty-two-years and a day sentence. He was also sentenced to ten year terms of probation for four counts of armed robbery.

YAD's amicus letter in support of the DAR would point out the absence of any law addressing an unconstitutional sentence imposed in these circumstances. If the DAR is granted, the amicus brief would argue 1) judges resentencing juvenile non-homicide offences are bound by Perez I regardless of whether the sentence has been deemed served and 2) the amicus brief would argue that where this juvenile, a non-homicide offender, has already served over forty years, being exposed to additional life sentences for probation violations.

3. CAFL Counsel Crisis – Incentive Program

Andrew Don, CAFL Trial Panel Director, provided information to the Committee on an incentive program designed to address the CAFL counsel crisis in Hampden, Berkshire, Franklin/Hampshire and Worcester Counties.

As of March 10, 2022, the number of individuals without counsel was approximately 155, the majority of those due to the serious illness of two attorneys necessitating their withdrawal from their cases. The incentive proposal will provide a bonus incentive payment of \$450 for attorneys to take three cases either as successor counsel or for any new appointments that come in for a period of one month or until the backlog list has been cleared. This is a one month program with a cost of approximately \$30,000.

This proposal is part of the ongoing effort to address the attorney shortages in these counties.

4. Lease Approval

Kevin Lucchetti, Chief Financial Officer, sought Committee approval to enter into a lease agreements for the following offices.

Fall River – 753 Davol Street – ten year term – June 1, 2022-May 31, 2027

Landlord: Jefferson Realty, LLC
New Annual Rent: \$283,601
Annual Rent Increase: \$46,692

New Bedford – 174 Union Street – ten year term – September 7, 2022–September 6, 2027

Landlord: Bank Plaza, LLC
New Annual Rent: \$154,963 (increasing 2.5% each year 2-5)
Annual Rent Decrease: \$-18,606 (in year 1)

Roxbury – 10 Malcolm X. Blvd. – one year extension – June 1, 2022–May 31, 2023

Landlord: Fairfield Center, LLC/The Canton Corporation
New Annual Rent: \$275,831
Annual Rent Increase: \$0

Roxbury – 7 Palmer Street, 3rd Floor – one year extension – June 1, 2022 – May 31, 2023

Landlord: New Palmer St. Limited Partnership
New Annual Rent: \$207,492
Annual Rent Increase: \$19,004

MOTION: Mr. White. That the Committee approve the lease agreements

for the Fall River, New Bedford and two Roxbury offices as presented.

SECOND: Ms. Ball.

VOTE: Unanimous.

Mr. Lucchetti indicated there will be additional leases due for renewal that he anticipates bringing before the Committee at either the April or May meeting.

5. Monthly Financial Overview Report

Chief Financial Officer Kevin Lucchetti presented the monthly financial overview report to the Committee for review, informing them that current estimated spending for all line items is approximately \$285M.

Currently there is a surplus in line item 0321-1500 (administrative line) of approximately \$975K and in item 0321-1520 (court costs/experts) of approximately \$7.8M.

Mr. Lucchetti will continue to monitor and report back next month as to whether the surplus grows or remains the same.

6. Commitments \$10,00 and Over Report

Mr. Lucchetti provided the commitments of \$10,000 and over report for review. He highlighted one item that deviated more than 10% from the pre-approved amount - Iron Mountain (records retention) - \$57,455.

He also highlighted one vendor, Airthings America, Inc. (air quality monitoring), totaling approximately \$18,054 that was not reviewed during the preapproval process.

Finally, he highlighted a contract with CAFL Resource Attorney Jay Clark, which requires Committee approval. The contract is for an extension through the end of the fiscal year for continued work needed to assist the Hampden Juvenile Court Clerk's office in assigning counsel on both older and new cases. The additional contract is for a period of four months at the standard CAFL billing rate of \$75.00 for five hours per week, totaling \$9,975. The purpose of the work is to assist in ensuring timely assignment of counsel in an area where there have been challenges with capacity.

Mr. Lucchetti requested approval for the new vendor, the adjusted amount for Iron Mountain, and the contract with the CAFL Resource Attorney.

MOTION: Mr. Healy. That the Committee approve the current spending estimates for the vendors and the CAFL Resource Attorney contract as presented.

SECOND. Mr. Miller.

VOTE: Unanimous.

7. Chief Counsel Report

Anthony Benedetti, Chief Counsel, provided the following updates:

Personnel Matters

Mr. Benedetti informed everyone that Communications Director Robert McGovern and his wife welcomed a new baby boy into the family.

He then introduced new Chief Information Officer, Jon Bartelson who began on March 14th.

Counsel Capacity

All practice areas are dealing with backlogs to some degree depending on the county and in some instances particular courts. Some of the issues are delays in getting jury trials, challenges in getting duty day coverage in every court, and attorneys reaching caseload capacity.

Adult Criminal – Some examples include a backlog of approximately 150 murder cases waiting to be tried in Suffolk County; in Attleboro District Court there is a backlog of 182 pending jury trials; and in Orleans District Court there are 40 pending jury trials.

Mental Health – cases are being assigned, but the process is taking longer. The panel is small and many attorneys are reaching the annual billing capacity.

Springfield Court House – The ongoing issues with mold in the courthouse has been slowing the progress of cases being assigned. There is currently litigation going on as a result of the mold problem. The plaintiff in a lawsuit filed by a courthouse employees hired an expert who released a report that essentially said it was a sick building. As a result, many attorneys do not want to go into the court.

CPCS is contracting with an independent expert to review the report and to advise on next steps and provide a better sense of the risk of going into the court.

Carrasquillo Litigation -the Special Master, former Appellate Court Judge Carhart, is close to filing his report with recommendations to the SJC.

CAFL Conflict Office – staff hiring is ongoing and the office is in the process of looking for temporary space. The biggest challenge of opening this office compared to the Holyoke PDD office is setting it up in a way that does not create any ethical problems.

Litigation Issue – Attorney Richard Doyle – Vanessa Velez, Deputy Chief Counsel for the Private Counsel Division, provided an update to members on a recent Chapter 211, §3 petition that was recently denied and the ongoing review.

FY 2023 Budget Update - the FY 2023 budget advocacy continues with meetings with various legislators scheduled. The House budget will be released in one month.

Lisa Hewitt, General Counsel, reported that the Governor's recommendation included \$19M for rate increases for the private bar in every practice area as well as a proposal to eliminate all probation and parole supervision fees.

Mr. Benedetti will keep the members informed as the budget process progresses.

8. **Other Matter(s)**

Mr. Kociubes informed everyone that the May 18th meeting would be held in-person at the main Boston office. He encouraged all members to attend, but instructed staff to provide a virtual connection for those who cannot attend in-person. This will be an experiment to determine the availability of the members attending in-person.

There being no further business to come before the Committee, the Committee adjourned at approximately 6:38 p.m.

Respectfully submitted

/s/ *Mia Alvarado*

Mia Alvarado, Secretary