COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

May 15, 2019

The monthly meeting of the Committee for Public Counsel Services was held in the Committee's conference room at 40B Bromfield Street, 1st Floor, Boston, MA on Wednesday**,** May 15, 2019, beginning at 5:39, p.m. R.J. Cinquegrana, Chairman, presiding.

MEMBERS PRESENT:	Messes. Alvarado and Ball Messrs. Hernando, Kociubes, and Miller Ms. Petropoulos, Messrs. Rosenfeld and Stern
TELECONFERENCING:	Mr. Demissie

1. **Minutes of April 17, 2019 Meeting**

The minutes of the April 17, 2019 meeting were approved as presented.

2. **Amicus Request(s)**

Laura Chrismer Edmonds, Staff Counsel, Juvenile Appeals, sought Committee approval for the following cases:

a. Commonwealth v. A Juvenile, SJC-12706

This case involves a juvenile who was placed on pretrial probation and then violated the terms of probation. The judge revoked the juvenile's pretrial probation and restored his case to the trial list. The trial court judge had three specific questions he reported to the Appeals Court and the Supreme Judicial Court (SJC) took the case sua sponte and issued the following amicus:

1. Where a juvenile has been placed on pretrial probation under G. L. c. 276, § 87, and Commonwealth v. Tim T., 437 Mass. 592 (2002), in contemplation of the Commonwealth's dismissal of the case upon the juvenile's successful completion, whether G. L. c. 276, § 58B, governs the revocation of pretrial probation.

2. Where the Commonwealth seeks revocation of pretrial probation in contemplation of dismissal, pursuant to G. L. c. 276, § 87, and Commonwealth v. Tim T., 437 Mass. 592 (2002), whether a violation of any condition must be proved by a preponderance of the evidence.

3. Whether the evidentiary principles in Commonwealth v. Durling, 407 Mass. 108, 111 (1990), apply to such a hearing.

Attorney Michelle Menken has agreed to write the amicus brief.

MOTION: Mr. Kociubes. That the Committee approve the amicus brief in the matter of Commonwealth v. A Juvenile, SJC-12706.

SECOND: Mr. Hernando.

VOTE: Unanimous.

b. Commonwealth v. Dylan D., SJC-12723

The case has been accepted by the SJC on Direct Appellate Review. The case presents the question of whether the section in the 2018 Criminal Justice Reform Act decriminalizing disturbing a school assembly applies retroactively to cases pending when the law went into effect.

The Youth Advocacy Division is in the process of locating an attorney to author the brief.

MOTION: Mr. Miller. That the Committee approve the amicus brief in the matter of Commonwealth v. Dylan D., SJC-12723.

SECOND: Mr. Hernando.

VOTE: Unanimous.

c. Commonwealth v. Quinones, FAR-26798

The request is to file an amicus letter in support of the juvenile's application for further appellate review and if the SJC takes the case, to file an amicus brief. The letter and brief will ask the SJC to apply a "reasonable juvenile" standard when analyzing police conduct and/or statements alleged to be the "functional equivalent" of interrogation in the context of *Miranda*.

MOTION: Mr. Rosenfeld. That the Committee approve the amicus letter and if the SJC accepts the case, to file an amicus brief in the matter of Commonwealth v. Quinones, FAR-26798.

SECOND: Mr. Hernando.

VOTE: Unanimous.

3. **Contracts**

a. Juvenile Supervising Attorney Contracts and Hours for FY 2020

Erica Cushna, Youth Advocacy Division Trial Panel Director, sought Committee approval of the Juvenile Supervising Attorney contracts for FY 2020. The contracts are identical in substance to the contracts in FY 2019. There are 17 Juvenile Supervising Attorneys statewide. They provide training, evaluations, mentoring, complaint referral and investigations, and other oversight of private attorneys handling delinquency and youthful offender assignments. The contract rate is $68/hour ranging from 2.5 to 10 hours per week. The total cost of the contract is $362,440.

MOTION: Ms. Ball. That the Committee approve the Juvenile Supervising Attorney contracts for FY 2020 at $68/hour for a total cost of $262,440.

SECOND: Mr. Hernando.

VOTE: Unanimous.

b. Bar Advocate Program Contracts for FY 2020

Carol Beck, Director of Criminal Trial Support sought Committee approval of the Bar Advocate Program contract for FY 2020. The contracts are the same as FY 2019 except for the following new language:

> If the CONTRACTOR manages another program, bar association, or similar entity which has a separate income stream, CONTRACTOR shall maintain a separate bank account for any funds received from the COMMITTEE and will make all payments under this contract from that account.

This change will only affect the Franklin County Bar Advocate Program, which also oversees the Franklin County Bar Association, and maintains one bank account for the two programs.

The cost for FY 2020 includes the following:

1. Annualization of the bar advocate program staff raises which the Committee approved in November, 2018 ($110,921).
2. Anticipated increases in staff health insurance during FY20 (estimated $4,000).
3. Addition of a half-time secretary to the Worcester Bar Advocate Program (total of $21,550 [$20,018 salary plus $1,531 FICA]). Worcester is the only program of comparable size that does not have the assistance of a half-time secretary, and with the counsel shortage that this county is facing, the additional assistance is needed.

The total amount for the FY 2020 contracts is $1,138,304.

MOTION: Mr. Hernando. That the Committee approve the FY 2020 Bar Advocate Program contracts in the amount of $1,138,304 as presented.

SECOND: Mr. Miller.

VOTE: Unanimous.

c. Provision of Legal Services to Dukes and Nantucket Counties for FY 2020

Ms. Beck sought Committee approval for the FY 2020 contract with Attorney Robert Moriarty for the provision of legal services in Dukes and Nantucket counties. 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 contract the FY 2020 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.

d. Supervising Attorney Contracts for FY 2020

Ms. Beck sought Committee approval for the FY 2020 Supervising Attorney Contracts. The contracts are identical to the FY 2019 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 $1,289,008.

MOTION: Mr. Hernando. That the Committee approve the FY 2020 Supervising Attorney contracts for the amount of $1,289,008.

SECOND: Mr. Rosenfeld.

VOTE: Unanimous.

e. The Ripples Group

Debra Krupp, Director of Administration and Operations, sought Committee approval to expand the Ripples Group contract to add ten additional days of services. The Ripples Group is providing project management services by assisting in the unification of the public defender division (PDD) and designing and conducting an agency wide employee engagement survey.

The additional time will be used to provide additional support with respect to the PDD unification; to assist in evaluating and revising the organization structure for the Children and Family Law Division (CAFL), and the Human Resources Department (HR); and, to plan and facilitate a two day senior management team off-site meeting.

The Ripples Group is on a state master agreement which dictates the contract rate of $3,000/day. The total amount of this contract for ten additional days of consulting will be no more than $30,000.

MOTION: **Mr. Hernando. That the Committee approve to expand the Contract with the Ripples Group for ten additional days of services for an amount up to $30,000.**

SECOND: **Mr. Rosenfeld.**

VOTE: **Unanimous.**

4. **Lease Approval**

Kevin Lucchetti, Chief Financial Officer, sought Committee approval for a ten-year lease with Grid Management, LLC for office space for the Quincy PDD and YAD offices at 1515 Hancock Street, Quincy. The terms of the lease are for 7,478/sq. ft. at $31.00/sq. ft. with a first year annual rent rate of $231,818. Staff are currently at temporary space at Eastern Nazarene College. The lease term is from November 1, 2019 through October 31, 2029.

MOTION: **Mr. Hernando. That the Committee approve the ten-year lease with Grid Management, LLC for office space for the Quincy PDD and YAD offices at 1515 Hancock Street, Quincy for 7,478/sq. ft. at $31.00/sq. ft. with an annual rate of $231,818 with the lease running from November 1, 2019 through October 31, 2029.**

SECOND: **Mr. Kociubes.**

VOTE: **Unanimous.**

5. **Monthly Financial Overview Report**

Mr. Lucchetti presented the monthly financial overview report to the Committee for review. The fiscal year ends June 30, 2019 with an accounts payable period though the end of August, 2019. At this point, he is forecasting a deficiency of approximately $7M in line item 0321-1510 (private attorney appropriation). There is pending supplemental funding of $5M that is waiting for approval. He is expected to make payments through June, 2019 and is estimating that the run out date for line item 0321-1510 will not be before the end of the fiscal year.

Both versions of the FY 2020 budget, as in previous years, include language that allows for the use of $2M of current year funds to pay for previous year bills.

6. **Commitments $10,000 and Over Report**

Mr. Lucchetti presented the commitments of $10,000 and over report for review. There was one new commitment for Northeastern Mechanical, Inc. for HVAC improvements to the IT server room located in the Brockton office.

7. **FY 2020 Obligations over $25,000**

Mr. Lucchetti sought Committee approval on anticipated expenditures expected to exceed $25,000 for FY 2020 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) 2019 estimated cost; 4) 2020 estimated cost; and 5) notes/purpose.

An affirmative vote of the Committee approves use of the attached vendors to exceed $25,000 for FY 2020 without further separate approval. Once approved, expenditures exceeding $10,000 are reported to the Committee on the Monthly Commitments Report.

MOTION: **Ms. Ball. That the Committee approve the list of all anticipated expenditures over $25,000 for FY 2020 as presented (see list attached).**

SECOND: **Mr. Kociubes.**

VOTE: **Unanimous.**

8. **FY 2020 Budget Update**

Mr. Lucchetti and General Counsel Lisa Hewitt provided an update on the FY 2020 budget process.

The Senate Ways and Means (SWM) budget was released on May 8, 2019. Line item 0321-1500 is approximately $320,000 higher than the House recommendation. Line item 0321-1510 is approximately $15M less than the House recommendation.

Ms. Hewitt informed the members that the new Senate Judiciary Chairman, James B. Eldridge has filed an amendment 0321-1510 that would increase the appropriation in line item 0321-1510 to the same level as the House appropriation.

The SWM budget also included an Outside Section with language that would allow the Chief Counsel to waive the annual billable hour limitations on the private bar if there is a limited

availability of qualified counsel in a practice area. The limit could not be waived beyond 2,000 billable hours.

Ms. Hewitt reported that hundreds of amendments have been filed that need to be reviewed, including one which was filed on behalf of Executive Office of Health and Human Services Secretary Marylou Sudders to roll back the prohibition of parents with criminal records from taking custody of children. There are many amendments that CPCS will be providing input on.

9. **Chief Counsel Report**

Anthony Benedetti, Chief Counsel, provided updates on the following matters:

Dymon/Walsh Litigation
Judge Kenton-Walker is still reviewing the materials and working on findings.

Private Counsel Update
There is a continuing struggle in assigning counsel in the mental health and in the adult criminal areas in Hampden and Worcester Counties. The private bar are working with staff offices to assign counsel to clients as soon as possible.

Immigration Litigation
The Government filed their response on May 14, 2019 to the CPCS litigation. The hearing will be held in Federal Court on May 23, 2019.

Dangerousness Hearing Legislation
A public hearing was held on May 14, 2019 on the Governor's bill that would amend the bail dangerousness statute. Ms. Hewitt informed the members that Deputy Chief Counsel Randy Gioia testified against the bill and stated generally that last year's criminal justice reform legislation was designed to change the way we look at criminal justice and this bill would be a huge step in the opposite direction. The Chairman of the Committee allowed CPCS to testify immediately after the Governor. On the panel with Mr. Gioia were representatives from the American Civil Liberty Union (ACLU) and the Citizens for Juvenile Justice. Several press articles have been published on the matter.

Discussion ensued.

CAFL Update
Michael Dsida, Deputy Chief Counsel for the Children and Family Law Division (CAFL), thanked the Committee for approving the emergency declaration at the April 17, 2019 meeting. He provided the following update:

- Currently there is no longer an attorney shortage in Care & Protection (C&P) cases in Hampden County.
- On April 18, 2019, approximately twelve attorneys were picking up assignments.

- Fifty-two individual assignments were made on April 19, 2019. The assignments were distributed broadly so that no one attorney would take the majority of the backlogged cases.
- By April 22, 2019 there was no backlog of assignments.
- The $75/hour rate is resulting in the assignment of attorneys by the Court for C&P assignments without any difficulty.
- All attorneys accepting the assignments are from Hampden County.
- The rate returns to $55/hour for new assignments on July 1, 2019.
- Earlier in the fiscal year, a statutory provision allowed the Chief Counsel to waive the 1,650 hourly cap for C&P attorneys to 1,800. The Legislation that was enacted in March 2019 provided the Chief Counsel, upon a declaration of an emergency, to authorize 2,000 hours. It was decided that the additional increase was not necessary at this point.
- The attorney capacity situation in Berkshire County continues to be monitored.
- A certification training was held in in Springfield in March and resulted in an additional twelve attorneys to the panel.

Mr. Benedetti explained that Outside Section 49 in the FY 2020 budget which proposes adding language that would allow the Chief Counsel to waive the billable hour limitations would assist in alleviating the attorney shortage in certain practice areas and counties.

Discussion ensued regarding the concern that the emergency declaration will force the Committee to continue the emergency rate of $75/hour through FY 2020.

10. **Other Matter**

Mr. Cinquegrana welcomed Rachel Scotch, trial attorney in the Malden office, to address the Committee. Four other staff members joined her: John Sadek (Worcester PD), Rebecca Amdemariam (Boston CAFL), Chris Gonsalves (Worcester PD), and Cara O'Donnell (Worcester PD).

Ms. Scotch thanked the Committee for granting her request to address the members. She presented the Committee with a letter and read from it during her presentation. She stated that the group present represented staff members consisting of administrative staff, computer technicians, defense investigators, social service advocates, staff and trial attorneys from all the different practice areas. The group is working with the Service Employees International Union (SEIU) local 888 to achieve passage of legislation that would amend M.G.L. c.150E to explicitly name CPCS as their public employer for the purposes of collective bargaining. Since 2013, the group in conjunction with SEIU Local 888 have filed a bill every legislative session to amend c.150E.

Ms. Scotch stated that the group wishes to organize so as to better provide a means of addressing a variety of issues and to present ideas and insight gleaned from their work with clients and community partners. She requested that the Committee set aside time each month during its meeting for public comment by the group and others.

Mr. Cinquegrana responded by explaining the reason the Committee wrote to the Legislature regarding the pending bill amending M.G.L. c.150E was because the Committee's enabling statute, Ch. 211D, enumerates specific duties of the Committee which are not addressed by the proposed legislation, and there are certain areas that the Committee cannot control, such as pensions and health plans, which are administered separately statewide. The purpose of the letter was to alert the Legislature that if a change is contemplated, a careful analysis should be done.

He thanked Ms. Scotch and informed her that the members would review the request and respond.

There being no further business to come before the meeting, the Committee adjourned into Executive Session at approximately 6:55 p.m.

Respectfully submitted,

/s/ Julio R. Hernando

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Julio R. Hernando, Secretary