COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

May 18, 2022

The monthly meeting of the Committee for Public Counsel Services was held by videoconference on Wednesday, May 18, 2022, beginning at 5:41 p.m. Joseph Kociubes, Chairman, presiding.

MEMBERS PARTICIPATING: Messes. Alvarado, Ball, and Chester
Messrs. Apfel, Demissie, Kennedy, Miller, and Stern

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

1. **Minutes of April 13, 2022 Meeting**

The minutes of the April 13, 2022 meeting were approved as presented.

2. **Contracts**

a) FY 2023 Post-Conviction Resource Attorney Contracts

Elizabeth Dembitzer, Director of Criminal Appeals, sought Committee approval for the FY 2023 Post-Conviction Resource Attorneys contracts. The Resource Attorneys provide support and oversight of private attorneys handling CPCS Post-Conviction assignments to ensure panel members' compliance with the CPCS Performance Standards and provide opportunities for panel members to develop and enhance their appellate practice. There are approximately 500 active post-conviction panel members, and they are overseen by 12 Resource Attorneys who contract with CPCS for up to 30 hours a month at the rate of $75/hr. The total estimated annual cost of the proposed contracts is $324,000 at the current rate of $75/hr. If the private bar superior court rate is raised to $85/hr. the maximum obligation of these contracts is expected to be $367,200.

MOTION: Ms. Ball. That the Committee approve the FY 2023 Post-Conviction Resource Attorney contracts for a maximum amount of $367,200 as presented.

SECOND: Mr. Stern.

VOTE: Unanimous.

b) FY 2023 CAFL Resource Attorney Contracts

Andrew Don, Trial Panel Director for the Children and Family Law Division (CAFL) sought Committee approval for a two-year contract (July 1, 2022 – June 30, 2024) for eight CAFL Resource Attorneys in the following regions: Southern Essex, Berkshire, Hampden, Middlesex, Worcester, Franklin and Hampshire, Suffolk, and Norfolk. 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 total cost of the proposed contracts is a maximum of $226,500 at the current rate of $75/hr. If the private bar superior court rate is raised to $85/hr., the maximum obligation is expected to be $256,700.

MOTION: **Mr. Miller. That the Committee approve the two-year contract (July 1, 2022 – June 30, 2024) for the eight CAFL Resource Attorneys as presented,**

SECOND: **Ms. Alvarado.**

VOE: **Unanimous.**

3. **<u>Amicus Requests</u>**

Sarah LoPresti, Staff Counsel for the Youth Advocacy Division (YAD) sought Committee approval to file amicus briefs in the following two cases.

a) *Commonwealth* v. *Dones,* SJC-13271

The Supreme Judicial Court took the case sua sponte and issued the following amicus solicitation:

> Where a defendant has been adjudicated a youthful offender for violating G.L. c. 269, §10 (a), whether a judge imposing a sentence pursuant to G. L. c. 119, §58 (c), has the authority, pursuant to G. L. c. 279, §2, to commit the defendant to the Department of Youth Services and then to suspend the commitment with conditions of probation.

The amicus brief would address the following: 1) that the judge properly exercised his discretion to conclude that the youth's rehabilitation would be better accomplished in the community, surrounded by his supportive family and friends, than in DYS; 2) that recent data is a reminder of the systemic racism evident in charging decisions for firearms offenses as well as assumptions about youth and firearm violence; and 3) that the well-recognized dangers of detention for youth further weigh in favor of the Juvenile Court's discretion to suspend a DYS commitment with probation.

MOTIOIN: **Ms. Ball. That the Committee approve the filing of an amicus brief in the case of *Commonwealth* v. *Dones*, SJC-13271.**

SECOND: **Ms. Chester.**

VOTE: **Unanimous.**

b) *Commonwealth* v. *B.P., A Juvenile*, Appeals Court No. 2022-P-0147

The Youth Advocacy Division sought permission to file an amicus letter in support of the defendant's application for direct appellate review (DAR) in the above case and if granted, to file an amicus brief addressing the substantive legal issues. The juvenile is asking the SJC to decide two issues: 1) whether attempted arson requires that a juvenile act with specific intent to burn the building, unlike arson of a dwelling, and 2) whether the attempted arson statute is unconstitutionally overbroad, where the statute sweeps in expressive conduct far removed from the commission of arson.

The amicus letter in support of DAR would point out that social media "challenges" have resulted and will continue to result in Massachusetts teenagers being charged with attempted arson. The letter would further argue that the Commonwealth has recognized the intersection of social media and delinquent behavior. Finally, the letter would argue that the juvenile's culpability rests entirely on the trial judge's interpretation of the mens rea required in G. L. c. 266, § 5A.

If DAR is granted, the amicus brief would refute the trial judge's conclusion and argue that specific intent requires that the juvenile consciously intended certain consequences. Finally, the amicus brief would argue the unconstitutional overbreadth of the attempted arson statute, which is applicable to the "placing or distributing" of "any device", not only those that are flammable, explosive, or combustible.

Discussion ensued.

MOTION: **Mr. Apfel. That the Committee approve filing a letter in support of the defendant's application for Direct Appellate Review in the case of *Commonwealth v. B.P., A Juvenile, Appeals Court No. 2022-P-0147*, and if accepted, to file an amicus brief.**

SECOND: **Mr. Miller.**

VOTE: **Unanimous**

4. Temporary Change to Sick Leave Bank Policy

Mark Conlon, Acting Human Resources Director, sought Committee approval for a temporary emergency change to the Sick Leave Bank Policy. The temporary change in the policy is designed to ensure operations continue for CPCS and clients during the COVID-19 crisis. The changes consist of:

- Expanding eligibility beyond employees who have a "prolonged illness" to include employees who have a COVID related illness. Such employees would be eligible for up to 5 days of Sick Bank time provided they have exhausted all forms of paid leave.
- Further expanding eligibility to employees caring for a close family member or a household member who has a COVID related illness. Such employees would be eligible for up to 5 days of Sick Bank time provided they have exhausted all forms of paid leave.

- Removing the criteria that an employee “be continuously employed by the Committee for no less than six (6) months.”

MOTION: **Mr. Miller. That the Committee approve the temporary emergency change to the Sick Leave Bank Policy as presented.**

SECOND: **Ms. Chester.**

VOTE: **Unanimous.**

5. **Monthly Financial Overview Report**

Mr. Lucchetti presented the monthly financial overview report to the Committee for review. The fiscal year ends on June 30, 2022 with the accounts payable period ending August 30, 2022.

At this point in the fiscal year, the agency has spent approximately $195M out of available funds in all line items. He estimates a combined surplus in all three accounts of approximately $13M and expects that amount will increase.

6. **Commitments $10,00 and Over Report**

Mr. Lucchetti provided the commitments of $10,000 and over report for review, highlighting four items that deviated more than 10% from the pre-approved amount. The total obligation for the four vendors is $1,833,399.

- Winslow Technology Group, LLC (IT hardware/software) - $1,173,303
- SHI International Corp. (IT hardware/software) - $556,318
- Cellco Partnership (telephone - wireless) - $67,665
- Zendesk, Inc. (Finance – customer service tool) - $36,113

He also highlighted two vendors where spending currently exceeds $10,000 – Continental Datalogix, LLC ($13,302) and New Horizon Communications ($10,760). These are being reported to the Committee as required by the procurement policy.

Mr. Lucchetti requested approval for the adjusted amounts for the four vendors.

MOTION: **Ms. Chester. That the Committee approve the current spending estimates for the four vendors as presented.**

SECOND: **Ms. Alvarado.**

VOTE: **Unanimous.**

7. **Mileage Reimbursement Rate**

Anthony Benedetti, Chief Counsel, sought Committee approval to increase the current mileage reimbursement rate from .45 per mile to .585 per mile for both staff and the private bar. The new rate matches the Federal reimbursement rate as well as the Executive and Judicial Branch rates, which were recently increased. This change would take effect July 1, 2022 at the beginning of Fiscal Year 2023. The annual cost is approximately $228,000 for staff and $477,000 for the private bar.

MOTION: **Mr. Demissie. That the Committee approve increasing the current mileage reimbursement rate from .45 per mile to .585 per mile for both staff and the private bar, effective July 1, 2022.**

SECOND: **Ms. Chester.**

VOTE: **Unanimous.**

8. **<u>FY 2023 Budget Update</u>**

Mr. Lucchetti informed the members that the Senate Ways and Means (SWM) budget was recently released. Both the House Budget and the SWM budget are very similar. The SWM total appropriation for the Operation Line (0321-1500) was funded at a level of $79,011,013 and includes language to carry funds over from the current fiscal year. In the private bar line item (0321-1510), the recommendation included increased rates for the private bar and funding in the amount of $107,565,150. Finally, in the indigent court cost line item (0321-1520), the funding provided $30,167,014.

Lisa Hewitt, General Counsel, thanked the support received from the Senate President's office, the Judiciary Committee Chair, and SWM Chair and the full Committee.

She informed the members that the SWM budget included Outside Sections that propose eliminating all probation and parole supervision fees. The Outside Section also creates a Title IV-E trust fund. This is a reimbursement process through the Federal Government to pay states for representation of children who are either in foster care or are eligible for foster care. The money goes into the Department of Children and Families for further disbursement. She and Mr. Lucchetti have been meeting with the comptroller's office and the House and Senate Ways and Means to discuss how reimbursement from the fund to CPCS would work.

Mr. Benedetti indicated that the next step in the process is for the Senate to debate the full budget followed by the Conference Committee during June.

9. **<u>Chief Counsel Report</u>**

Mr. Benedetti provided the following updates:

Personnel Matter

He informed the members that Ted Waterman, the new Human Resources Director, will be starting on May 23, 2022. He thanked interim director Mark Conlon for all his work keeping the human resources department running smoothly and advancing several critical measures.

Springfield Courthouse

The Springfield Courthouse issue has been mentioned over the last few months and deals with the issue of serious mold and health concerns in the building. The plaintiffs in the lawsuit recently reached a settlement, one which promises extensive ongoing testing in several problem areas. The agreement also requires a monthly report, among other provisions.

He informed the Committee that he raised concerns with the Chief Justice of the Trial Court regarding the Springfield Juvenile Court. The Chief Justice informed him that they will be conducting a top to bottom cleanse of the building over the July 4th weekend.

Leases

There are several leases that are currently being worked on:

- Temporary space for the CAFL conflict office as well as a permanent space for the conflict office and the new PDD office in Holyoke.
- Leases for offices in both Springfield and Brockton are being finalized
- A one-year extension for the Hyannis office

There will be several lease agreements brought before the Committee in the next few months.

Audit

The audit is proceeding and with several Areas identified as a focus that have been raised; specifically, the Internal Control Plan, Risk Assessment and Business Continuity Plan, all of which were sidelined during the last two years because of the pandemic.

Another focus of the audit is IT security with respect to the policies in place to see how secure our system is.

Counsel Shortage

There continues to be challenges in most practice areas and geographic areas.

Mr. Benedetti discussed ongoing issues in Western Massachusetts with a number of CAFL C&P clients currently without counsel. The public defender division and CAFL are both looking at additional alternatives to incentivize attorneys to take cases.

There has not been a lot of positive change recently, but it is the hope that the hourly rate increase will make a difference and get more people to join the panels.

OCA Report

The Office of the Child Advocate (OCA) investigated the disappearance of Harmony Montgomery and the work done on the case by all involved stakeholder agencies. The report was recently released.

Staff is now engaging with Legislators about CPCS response to the Report. Mr. Benedetti informed the members of our take that there were a number of inaccuracies in the report and the OCA did not show an appreciation for the system and the roles of the different parties involved. Chief Justice Locke is putting together a working group composed of several different stakeholders to discuss possible improvements in the system.

Michael Dsida, Deputy Chief Counsel for the Children and Family Law Division indicated that a lot of time was spent with the Child Advocate in her preparation of this Report. There were some minor changes that the Child Advocate made based on these discussions.

Mr. Benedetti indicated that the agency would continue to cooperate as things move forward.

10. **Other Matters**

Ms. Chester informed everyone that Ms. Alvarado and Roxbury Youthworks is being honored by the Youth Advocacy Foundation at their annual event for the Community Justice Award.

There being no further business to come before the Committee, the Committee adjourned into Executive Session to discuss personnel matters at approximately 6:56 p.m.

At approximately 7:11 p.m. the Committee returned to open session and reaffirmed the following motion made during Executive Session.

MOTION: **Ms. Ball. That the Committee approve a one-time payment to staff in an amount equal to 2.0% of salary with a minimum payment of $1,000 for a total estimated cost of $1.686M.**

SECOND: **Mr. Stern.**

VOTE: **Unanimous.**

There being no further business to come before the Committee, the Committee adjourned at approximately 7:12 p.m.

Respectfully submitted

/s/ Mia Alvarado

Mia Alvarado, Secretary