

COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

MAY 20, 2020

The monthly meeting of the Committee for Public Counsel Services was held by video conference on Wednesday, May 20, 2020 beginning at 5:40 p.m. R.J. Cinquegrana, Chairman, presiding.

TELECONFERENCING: Messes. Alvarado, Ball, Chester, Craven, Petropoulos and Shah;
Messrs. Apfel, Healy, Kennedy, Kociubes, Miller,
Stern and White

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

1. **Minutes of April 16, 2020 Meeting**

The minutes of the April 16, 2020 meeting were approved as presented.

2. **Amicus Request(s)**

a. **William Dinkens and Eugene Ivey v. Mass. Parole Board**, SJC-12882

Mara Voukydis, Acting Director of Parole Advocacy, sought Committee approval to file an amicus brief in the matter of William Dinkens and Eugene Ivey v. Mass. Parole Board, SJC-12882. The Supreme Judicial Court (SJC) issued the following amicus announcement:

Whether 120 Code Mass. Regs. § 200.08 (3) (c), which concerns parole eligibility for inmates sentenced to a prison term that runs consecutive to a life sentence, conflicts with the statutory framework governing parole, violates due process or separation of powers principles, or, as applied to prisoners serving life sentences for offenses committed as juvenile, violates the Eighth Amendment to the United States Constitution or art. 26 of the Massachusetts Declaration of Rights.

The defendant is challenging the legality of a parole board regulation establishing parole eligibility for certain consecutive sentences. The amicus brief would argue that the practical application of the regulation makes no sense and is unworkable.

MOTION: Mr. Apfel. That the Committee approve the filing of an amicus brief in the matter of William Dinkens and Eugene Ivey v. Mass. Parole Board, SJC-12882.

SECOND: Ms. Ball.

VOTE: Unanimous.

b. Commonwealth v. J.C., A Juvenile, Appeals Court No. 2020-P-0070; SJC-DAR-27424

Afton M. Templin, Director of Juvenile Appeals sought Committee approval to file an amicus letter in support of an application for direct appellate review in the matter of Commonwealth v. J.C., A Juvenile, SJC-DAR-27424. If the application is accepted, the Youth Advocacy Division (YAD) also seeks permission to file an amicus brief to the full court.

In December 2019, the Juvenile Court judge reported the following three questions of law to the Appeals Court:

- Where the juvenile does not move for a pre-arraignment Wallace W. hearing, can the issue be waived?
- Do the rules of evidence apply when the court conducts a pre-arraignment Wallace W. hearing? Specifically, is hearsay permitted?
- Should there be an exchange of discovery prior to the court hearing a pre-arraignment evidentiary hearing pursuant to Wallace W.?

The letter in support of DAR would argue that these questions are being raised in numerous cases, in juvenile courts across the Commonwealth. The letter would urge the court to clarify the process around these hearings, which would benefit juvenile court judges, clerks, prosecutors and defense counsel. A decision from the SJC clarifying a few of the numerous questions that have arisen as Wallace W. is implemented would also alleviate piecemeal appeals on the same systemic issues.

If direct appellate review is granted, the amicus brief would argue: 1) the question is one of jurisdiction which cannot be waived; 2) the rules of evidence that apply at trial apply at these Wallace W hearings, and hearsay is not admissible; and 3) the discovery rules applicable to pre-trial proceedings must be followed albeit on a reduced scale and condensed timeframe.

MOTION: Ms. Ball. That the Committee approval the filing of an amicus letter in the matter of Commonwealth v. J.C., A Juvenile, Appeals Court No 2020-P-0070, Supreme Judicial Court No. DAR-27424 and if allowed to file an amicus brief to the full court.

SECOND: Ms. Petropoulos.

VOTE: Unanimous.

3. Salary Increase for Bar Advocate Program Staff

Vanessa Velez, Deputy Chief Counsel for the Private Counsel Division, sought Committee approval for an annualized salary adjustment for the Bar Advocate Program support staff effective December 23, 2019. This salary adjustment has been provided each time staff has

received a salary increase and is critical to maintain equity with staff who do essentially the same job.

The total cost for the period of December 23, 2019 to June 30, 2020 would be \$13,963.28. The annualized cost is approximately \$27,926.56.

Discussion ensued.

MOTION: Ms. Ball. That the Committee approve the salary adjustment for the Bar Advocate Program support staff retroactive to December 23, 2019 for a cost of \$13,963.28 and for an annualized cost of approximately \$27,926.56.

SECOND: Ms. Petropoulos.

VOTE: 12 approved; 1 present. MOTION CARRIED.

4. Juvenile Supervising Attorney Contracts for FY 2021

Erica Cushna, Youth Advocacy Division (YAD) Trial Panel Director, sought Committee approval of the Juvenile Supervising Attorney contracts for FY 2021. The contracts are identical in substance to the contracts in FY 2020. There are 17 Juvenile Supervising Attorneys statewide who 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.

The record will reflect the memo submitted to the Committee incorrectly stated FY 2020 and will be corrected to reflect the contract is for FY 2021.

MOTION: Mr. Kociubes. That the Committee approve the Juvenile Supervising Attorney Contracts for FY 2021 for a rate of \$68/hour for a total of \$362,440.

SECOND: Mr. Miller.

VOTE: Unanimous.

5. Monthly Financial Overview Report

Kevin Lucchetti, Chief Financial Officer, presented the monthly financial overview report to the Committee for review. There is a deficit of approximately \$5M in line item 0321-1510 (private attorney line), a reduction of almost \$5.0M from the previous forecast. It is expected that the

deficit will continue to decrease. Currently, there is a surplus in line item 0321-1520 (court costs/experts) of approximately \$750,000. The overall agency deficit is approximately \$4.2M.

There has been a decline in staff reimbursements, particularly in travel; however there have been unexpected expenses related to the pandemic that have offset this savings, such as personal protection equipment (PPE) and hand sanitizer.

There is a potential that funds allocated to the agency from the office of Administration and Finance may be reverted back to the General Fund depending on the needs of the State's economy. They are:

- a. Funding for the paid leave act – approximately \$175,000
- b. Funding to offset payments made related to the drug lab crisis – approximately \$175,000

Anthony Benedetti, Chief Counsel, stressed that the Finance staff are examining all areas where costs can be reduced and efficiencies can be achieved.

6. Commitments \$10,000 and Over Report

Mr. Lucchetti presented the monthly commitments of \$10,000 and over report to the Committee for review. There were no new commitments that have not been previously approved

7. COVID-19 Update

Mr. Benedetti provided the following update:

- A committee has been formed to examine Operational issues and specifically to determine when the offices can open up and what that will look like. A survey has been sent to staff asking what their concerns are.
- Staff have serious concerns about returning to work and the safety of visiting offices, courts, homes of clients and correctional facilities.
- CPCS management will be looking for guidance from the Governor, the Courts, public health officials, and other state agencies to see how they are opening and determining best practices.
- An agency wide working group on legal issues has also been established and is tasked with determining what the specific legal issues are that will need to be addressed and potentially litigated. The group is examining potential solutions to offer in our advocacy for clients.

With respect to the COVID-19 litigation that was filed, Mr. Benedetti provided the following:

- Staff is continuing to fight to obtain accurate information from the House of Corrections and Department of Corrections.

- Staff continues to work with the Special Master to accomplish attorney access to clients and information from the parole board with respect to releases in order to provide counsel.
- Staff is attempting to obtain a list of individuals in wheelchairs who the Superior Court has ruled are eligible for medical parole/compassionate release.
- The litigation portion is nearly completed and CPCS is now proceeding with individual cases and dealing with representation of individuals eligible for parole as defined by the SJC in their decision and the response to the CPCS Rule 27 motion.
- Hundreds of individuals have been released due to the litigation.
- CPCS and other advocacy groups continue to advocate for more testing to be done in the correctional facilities.

Mr. Benedetti invited the Deputies of the various divisions to provide information on the major obstacles they have been dealing with in their areas.

Randy Gioia, Deputy Chief Counsel for the Public Defender Division and Vanessa Velez, Deputy Chief Counsel for the Private Counsel Division, reported the following:

- The courts are now starting to transition to new cases entering the court system that are not COVID-19 related.
- Trying to determine how to handle the cases – in-person vs. virtual hearing and ensuring a client's rights are being protected.
- There are issues with regard to confidential communication with clients in custody. Staff is working with the sheriffs to ensure they comply with the SJC Order.
- There have been technology issues with the audio not working properly.
- Issues arising with hearings being held with the prosecutor and the judge both in court, the defense attorney on the phone and the client on video. This is exactly the opposite of what the Court Standing Order says must happen. The Chief Justice of the Trial Court is working to rectify this.

Discussion ensued.

Mark Larsen, Director of the Mental Health Unit reported the following:

- There have been difficulties due to trying cases by video and telephone, and hearings are taking much longer than usual.
- There have been difficulties gaining access to clients held at hospitals because the hospitals are not allowing anyone in.
- Staff is expecting an increase in cases due to more people suffering from depression and anxiety. This happened post 9/11 and more importantly after the flu pandemic of 1918-1919.
- Petitions are being filed on clients confined in hospital and nursing homes by the hospital to secure Do Not Resuscitate orders.
- We have not been receiving information on the Department of Public Health's COVID-19 dashboard with respect to the Department of Mental Health operated hospitals or

psychiatric hospitals that are privately operated regarding the number of COVID-19 cases.

Michael Dsida, Deputy Chief Counsel for the Children and Family Law Division, reported the following:

- The Juvenile court had the strictest interpretation of what was permitted to be done by the court under the SJC Standing Order and had only been allowing initial temporary custody hearings.
- Communication issues -- all matters were being held by phone only. The courts have limited capacity to hear matters due to the fact that each courtroom only has one zoom license.
- Problems with advocacy with the Department of Children and Family with respect to reporting on the number of COVID-19 cases.

Joshua Dohan, Director of Youth Advocacy reported the following:

- Efforts during March and April went into reducing the number of DYS pre-trial detentions. On March 16, 2020 there were 114 juveniles held pretrial. Since then there have been 53 new arrests. As of today there are only 76 juveniles held pretrial.
- Cases are not moving due to the courts not being open. Lawyers and Social Workers are reaching out to children and families to keep them engaged while waiting for courts to reopen.
- Juveniles are not receiving jail credit for pre-trial detention.

8. Executive Session

At this point in the meeting, Mr. Cinquegrana informed the members that they would be adjourning into Executive Session to discuss a litigation matter.

The meeting adjourned into Executive Session at approximately 7:07 p.m.

The meeting returned to Open Session at approximately 7:28 p.m. and the following motion was made.

MOTION: Mr. Kociubes. That the Committee approve the filing a complaint and motion for a temporary restraining order/preliminary injunction in the Superior Court to address the Department of Children and Families (DCF) ban on in-person visits for children who are in the custody of DCF.

SECOND: Mr. Apfel.

VOTE: Unanimous.

There being no further business to come before the Committee, the meeting adjourned at approximately 7:30 p.m.

Respectfully submitted,

/s/ *Joseph L. Kociubes*

Joseph L. Kociubes, Vice-Chair