COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

NOVEMBER 14, 2018

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**,** November 14, 2018**,** beginning at 5:30 p.m. R.J. Cinquegrana, Chairman, presiding.

MEMBERS PRESENT: Messrs. Demissie, Hernando, and Kociubes, Ms. Petropoulos and Mr. Rosenfeld

TELECONFERENCING: Mr. White

1. **Minutes of Meeting**

The minutes of the October 17, 2018 meeting were approved as presented.

2. **Amicus Request(s)**

Benjamin Keehn, Appellate Counsel to the Trial Unit sought Committee approval on the following cases:

a. Doe, Sex Offender Registry Board No. 496501 v. Sex Offender Registry Board, SJC-12594

The Supreme Judicial Court (SJC) solicited amicus briefs addressing the following issue:

> Whether a hearing examiner can classify an offender as a level two offender, thereby making his registration information publicly available on the Internet, see G.L. c.6, §§178D and 178K, as amended by St. 2013, c.38, §§7 and 9, based solely on a finding that the offender poses a moderate risk of re-offense, without also making a finding that the degree of dangerousness posed to the public by this offender is such that a public safety interest is served by having his registration information be publicly available.

This case has significant ramifications for any CPCS client who may be classified as a level two offender. An amicus brief would emphasize why the requirement that the Sex Offender Registry Board (SORB) find *both* that the offender presents a moderate risk of re-offending *and* that this risk poses a danger to public safety warranting Internet publication is not just compelled by the language of the statute but is necessary in order for a classification scheme that calls for such publication to satisfy due process under article 12 of the Declaration of Rights.

Amicus briefs are due on December 24, 2018 and the SJC has scheduled argument for the week of January 7, 2019.

MOTION: **Mr. Rosenfeld: That the Committee approve the filing of an amicus brief in the case of Doe, Sex Offender Registry Board No. 496501 v. Sex Offender Registry Board, SJC-12594.**

SECOND: **Mr. Kociubes.**

VOTE: **Unanimous.**

b. Commonwealth v. Adams, SJC-12620

The SJC solicited amicus briefs to address whether it "should recognize the common-law crime of interfering with a police officer in the lawful performance of his or her duties," and if so, "whether the jury instructions on the elements of that crime [provided by the trial judge] were correct."

The issues that will be addressed by an amicus brief are ones of first impression that has the potential of affecting the rights of any CPCS client who comes into contact with the police.

If approved, the amicus brief will be authored by Attorney Molly Ryan Strehorn and Professor Oren Nimni.

MOTION: **Mr. Kociubes. That the Committee approve the filing of an amicus brief in the case of Commonwealth v. Adams, SJC-12620.**

SECOND: **Mr. Hernando.**

VOTE: **Unanimous.**

c. Commonwealth v. Rivera, SJC-12605

The SJC transferred Mr. Rivera's case sua sponte from the Appeals Court and issued the following amicus solicitation:

> Where the defendant was present and briefly participated in an altercation between a codefendant and the victim, during which the codefendant fatally stabbed the victim, whether the defendant's false statement to the police—saying that he was not present during the altercation—and his refusal to provide the police with information identifying the codefendant, were sufficient to support the defendant's conviction of accessory after the fact to murder.

This case raises an important question of first impression of whether a mere lie may be deemed sufficient to constitute aid or assistance as an accessory after the fact.

If approved, Attorney Eva Jellison of Wood & Nathanson, LLP will author the brief.

MOTION: Mr. Kociubes. That the Committee approve the filing of an amicus brief in the case of Commonwealth v. Rivera, SJC-12605.

SECOND: Mr. Demissie.

VOTE: Unanimous.

d. Commonwealth v. Carrillo, SJC-12617

The SJC granted the defendant's application for direct appellate review and solicited amicus briefs in this case on the following question: "[w]hether the evidence warranted a finding that the defendant's distribution of heroin to the victim was wanton or reckless in the circumstances of this case, thus justifying the defendant's conviction of involuntary manslaughter."

This case is a tragic example of how drug-induced manslaughter prosecutions can ensnare friends, partners, or other individuals whose role does not fit the label of "dealer."

The SJC has moved back the scheduled oral argument in this case to February, 2019 "to accommodate the anticipated participation of various amici."

If approved, Attorney Lisa Newman Polk will write the brief with Professors Leo Beletsky and Jeremiah Goulka of Northeastern University School of Law's Health in Justice Action Lab.

MOTION: Mr. Kociubes. That the Committee approve the filing of an amicus brief in the case of Commonwealth v. Carrillo, SJC-12617.

SECOND: Mr. White.

VOTE: Unanimous.

e. Commonwealth v. Williams, SJC-12560 and
Commonwealth v. Putman, SJC-12596

Lisa Kavanaugh, Director of the Innocence Program sought Committee approval in the paired cases of Commonwealth v. Williams, SJC-12560 and Commonwealth v. Putman, SJC-12596. The SJC solicited amicus briefs on the following issues:

> Whether a defendant who claims to have been convicted based on a false accusation ─ e.g., a false claim of sexual assault ─ has asserted a claim of "factual innocence" within the meaning of G.L. c.278A, for purposes of obtaining postconviction DNA

> testing; whether the requested testing in such a situation ["]could be material to . . . [the defendant's] identification as the perpetrator of the crime["] within the meaning of the statute.

The cases raise the question of whether a defendant who asserts his factual innocence based on a theory that no crime happened can avail himself of the "essentially nonadversarial" process created by Chapter 278A, in order to expedite access to post-conviction forensic analysis.

If approved, CPCS would join the New England Innocence Project and the Boston College Innocence Program as signatories on the brief.

MOTION: Mr. Rosenfeld. That the Committee approve the filing of an amicus brief in the joined cases of Commonwealth v. Williams, SJC-12560 and Commonwealth v. Putman, SJC-12596.

SECOND. Ms. Petropoulos.

VOTE: Unanimous.

3. **Contract – The Ripples Group Consulting**

Anthony J. Benedetti, Chief Counsel, sought Committee approval to enter into a contract with The Ripples Group to provide project management services to the Chief Counsel and the Director of Administration and Operations by assisting in the creation and execution of a long term staffing plan, which includes the consolidation of offices within the Public Defender Division.

CPCS proposes engaging the Ripples Group for up to 30 days of services at $3,000/day for the remaining seven months of fiscal year 2019.

MOTION: Mr. White. That the Committee approve the contract with The Ripples Group at $3,000/day and up to 30 days of services for the remaining seven months of FY 2019.

SECOND: Mr. Hernando.

VOTE: Unanimous.

4. **Monthly Financial Overview Report**

Kevin Lucchetti, Chief Financial Officer presented the monthly financial overview report to the Committee for review. There were no changes in the forecast from the previous month.

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

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

6. **Chief Counsel Report**

Mr. Benedetti provided an update on the following items:

- CY 2019 Meeting Dates - A list of Committee meeting dates for calendar year 2019 were provided to the members.

- Feedback on Salary Proposal - Mr. Benedetti thanked the Committee for the salary proposal that was approved at the November 14, 2018 meeting. Feedback from staff has been positive. Staff recently attended a hiring fair and responses to the increased CPCS attorney starting salary has been very encouraging.

- Counsel Crisis Update - The counsel crisis continues and an update will be provided to the Committee regarding steps taken in all practice areas to alleviate the problem. A number of steps have been taken in criminal practice area similar to those that were undertaken for CAFL problem; too soon to determine if these solutions will succeed.

- Western Massachusetts – The adult criminal counsel crisis problem is still on-going in Springfield. There is a continuing struggle in obtaining counsel for district court duty days. In superior court, in Worcester County, the increase in the hourly rate from $60/hr. to $68/hr. has not made enough of a difference. As of today, there are a total of approximately seven 58A cases without counsel. Several meetings with both branches – the House and the Senate – to inform them of the situation have occurred. Two additional meetings are scheduled with the Chief Justice of the District Court and the Chief Justice of the Superior Court. Contact with Chief Justice Carey will be made to keep her apprised of the situation.

- Equitable Resources - A notification will be sent shortly to the private bar regarding the equitable resources incentives that the Committee approved at the November 14, 2018 meeting. Staff will be returning to the Committee at either the December or January meeting to request additional incentives for the private bar.

- CAFL Update – Currently, CAFL is in a better situation than it was last year at the same time. Cases are down but the main reason the situation is better is the $75/hr. rate. There were no backlog of cases to start the new fiscal year because attorneys took all the cases in the final days of last fiscal year..

There being no further business to come before the meeting, the Committee adjourned into Executive Session at approximately 6:07 p.m.

7. **Executive Session**

While in Executive Session, Mr. Kennedy joined the meeting and was present during the vote.

Upon return to open session at approximately 7:35 p.m., the Committee voted on the following motions:

MOTION: **Mr. Hernando. That the Committee approve the FY 2020 maintenance budget in the amount of $256,201,109 as presented.**

SECOND: **Mr. White.**

VOTE: **Unanimous.**

MOTION: **Mr. Hernando. That the Committee approve the FY 2020 initiatives budget request in the amount of $17,966,953 as presented.**

SECOND: **Mr. Kennedy.**

VOTE: **Unanimous.**

MOTION: **Mr. Rosenfeld. That the Committee approve the amended bar advocate contracts as presented.**

SECOND: **Mr. Hernando.**

VOTE: **Unanimous.**

There being no further business to come before the meeting, the Committee adjourned at approximately 7:36 p.m.

Respectfully submitted,

/s/ Julio R. Hernando

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Julio R. Hernando, Secretary