

COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

October 17, 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 Thursday, October 17, 2019, beginning at 5:33, p.m. R.J. Cinquegrana, Chairman, presiding.

MEMBERS PRESENT: Ms. Alvarado, Mr. Kennedy, Ms. Petropoulos, and Mr. Rosenfeld

TELECONFERENCING: Messrs. Demissie, Healy, and Hernando, Ms. Shah and Mr. White

Mr. Cinquegrana opened the meeting by reminding everyone present that no third party recordings of the proceedings are allowed.

1. Minutes of September 18, 2019 Meeting

The minutes of the September 18, 2019 meeting were approved as presented.

2. Amicus Request(s)

a. Doe No. 234076 v. Sex Offender Registry Board, SJC-12762

Larni Levy, Director of the Alternative Commitment and Registration Support Unit, sought Committee approval to file an amicus brief in the above case. Plaintiff's counsel requested CPCS support on the following issue:

Whether the video conferencing of an administrative hearing before the Sex Offender Registry Board violates due process where the hearing examiner and board attorney are in a room together and the petitioner and his counsel are in a room at a correctional facility miles away, the petitioner presents witnesses who can only be heard and viewed by the hearing examiner through video, and the video equipment malfunctions.

The case is scheduled for oral argument in January, 2020.

MOTION: Mr. Rosenfeld. That the Committee approve the amicus request in the matter of Doe No. 234076 v. Sex Offender Registry Board, SJC-12762.

SECOND: Ms. Petropoulos.

VOTE: Unanimous.

b. Healey v. Cruz, SJC-12722

Joshua Dohan, Director of the Youth Advocacy Division, sought Committee approval to file an amicus brief in the above case. The case presents important issues concerning public records requests which have the potential to impact many clients. The amicus brief would not take any position on whether the requested records are Criminal Offender Record Information (CORI) but would highlight the necessity of such information to criminal defendants seeking to prove selective enforcement and selective prosecution claims in violations of their rights.

MOTION: Mr. Rosenfeld: That the Committee approve the amicus request in the matter of Healey v. Cruz, SJC-12722.

SECOND: Ms. Petropoulos.

VOTE: Unanimous.

c. Commonwealth v. A.F., A Juvenile, SJ-2019-0362

Mr. Dohan sought Committee approval to file an amicus letter asking the full bench of the Supreme Judicial Court to take the case. If the Single Justice reserves and reports the petition, permission is sought to file an amicus brief in the full court addressing the substantive legal issues raised in the case. The issue is when a case is transferred from juvenile court to adult court. If the case is reported to the full bench, the brief would argue that the transfer to adult court cannot go forward while the individual is incompetent.

MOTION: Mr. Rosenfeld: That the Committee approve the filing of an amicus letter in the matter of Commonwealth v. A.F., A Juvenile, SJ-2019-0362 and the filing of an amicus brief if the Single Justice reserves and reports the petition.

SECOND: Ms. Petropoulos.

VOTE: Unanimous.

d. Timothy Deal v. Massachusetts Parole Board, SJC-12746

Mr. Dohan sought Committee approval to sign on to an amicus brief filed by Massachusetts Association of Criminal Defense Lawyers (MACDL) in the above case. The case addresses important issues relative to parole for juvenile homicide offenders. MACDL's brief argues the following: 1) because juveniles are different from adults, the Parole Board must treat them

differently; the Board must shift its traditional focus from the nature and severity of the offense to the individual's demonstration of maturity and rehabilitation; 2) in order to ensure that shift has in fact occurred, judicial review must have teeth, so that the Board is held to this standard; and 3) the Parole Board should be put clearly on notice that merely "checking the box" and copying and pasting the same conclusory language in all juvenile homicide offenders' parole decisions does not satisfy constitutional mandates in these cases.

MOTION: Mr. Rosenfeld. That the Committee approve the amicus request in the matter of Timothy Deal v. Massachusetts Parole Board, SJC-12746.

SECOND: M. Alvarado.

VOTE: Unanimous.

e. Commonwealth v. Steven Velasquez, SJC-12788

Patrick Levin, Appeals Attorney, sought Committee approval to file an amicus brief in the above case. This case is an appeal from a probation revocation. The question CPCS is interested in is the application of the exclusionary rule in probation surrender hearings. The brief will urge the Supreme Judicial Court to hold that art. 14 requires evidence to be excluded from probation revocation hearings if it was unlawfully obtained by an officer who knew or had reason to know of the suspect's probationary status.

MOTION: Mr. Rosenfeld. That the Committee approve the amicus request in the matter of Commonwealth v. Steven Velasquez, SJC-12788.

SECOND: Mr. Petropoulos.

VOTE: Unanimous.

f. Commonwealth v. Zaky Shaban, FAR-27090

Due to the timeframe on the case, Mr. Levin previously sought and received approval from the Executive Committee to file an amicus letter in support of the defendant's application for further appellate review on the above case. It is listed for informational purpose only.

This is an eyewitness identification case as to the question of whether the failure to do a double blind photo array with a victim of a crime is admissible.

The amicus letter was filed with the court on October 11, 2019.

3. Monthly Financial Overview Report

Kevin Lucchetti, Chief Financial Officer, presented the fiscal year 2020 overview report to the Committee for review. The forecast has not changed at this point. There is a projected deficiency of approximately \$20M in the 0321-1510 line item (private counsel payment).

There is approximately \$2M in FY 2019 supplemental funding available to offset FY 2020 funds that was used to pay prior year bills.

4. 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 that had not been previously discussed or previously approved.

5. Chief Counsel Report

Anthony Benedetti, Chief Counsel, reported on the following:

- The Supreme Judicial Court Steering Committee on Lawyer Well-Being. Mr. Benedetti highlighted a subsection specific to CPCS staff and private lawyers. He informed the Committee that CPCS has taken a number of steps to address these issues and to respond to the report. Included was a subsection of the subcommittee report, specifically regarding CPCS, both staff and private lawyers.
- The House Ways and Means House Supplemental Budget. Language was included regarding a Commission to perform an expansive study of CPCS and all of its operations, in addition to examining the unionization issue. The proposal also included \$1.9M to pay the outstanding balance in the 0321-1510 for FY 2019. There was no proposed increase in the hourly rates for the private bar. The proposal now goes to the Senate Ways and Means Committee for its consideration, then to the full Senate for debate. A conference committee is likely to work out the differences between the two versions. Staff will track the progress.
- Introduction of the new Equity and Inclusion Director, John Lozada. He will address a number of issues related to diversity and inclusion, hiring and retention.
- Introduction of Robert McGovern, Communications Director. He will focus on a number of areas related to communications to staff, and work to improve the CPCS Intranet and Internet.

Vanessa Velez, Deputy Chief Counsel for the Private Counsel Division, and Michael Dsida, Deputy Chief Counsel for the Children and Family Law Division provided updates on the counsel shortage in their areas.

Ms. Velez provided the following information with respect to the private criminal division:

- In Hampden County there are no clients in district court without counsel and two without counsel in superior court.

- Emergency Duty Day Rate – there are 33 out of county attorneys who have taken 60 duty days in Hampden County. Hampden County attorneys have taken 139 duty days. These totals are from July 15, 2019 to October 17, 2019.
- Currently there are open duty days in December and January.

Mr. Dsida provided the following update on the CAFL shortage:

- Problems are occurring in three counties, Berkshire, Worcester, and Hampden counties have a total of 60 individuals without counsel. Berkshire County has 20 individuals without counsel.
- There are only 15 active attorneys in Berkshire County.
- Hampden County changes on a regular basis. At one point there were over 30 individuals without counsel but the number has now dropped to 20 without counsel. The likelihood of this number increasing is significant as the year progresses.
- Worcester County has approximately 24 individuals without counsel. The number of cases being filed has increased this year over last year.
- Staff has been seeking counsel from neighboring counties for assistance to assist with coverage in in Berkshire, Hampden and Worcester counties.
- An increase in the hourly rate would definitely make a difference in increasing the availability of counsel.

Mr. Benedetti mentioned that staff was waiting to see what happened with the supplemental budget and our request for an hourly rate increase before turning to the Committee to request an emergency rate increase to address the CAFL counsel shortage.

6. **Other Matters**

Executive Session

Prior to adjourning into Executive Session, a discussion ensued as to whether the Committee should postpone the Executive Session to allow the members a chance to review the House Commission language and to discuss in person given the difficulty of hearing the five members who were on the phone.

MOTION: Mr. Rosenfeld. That the Committee table any Executive Session to discuss the proposed House language establishing a Commission to perform an expansive study of CPCS and all of its operations until a later date when members have had an opportunity to review the language.

SECOND: Ms. Petropoulos.

VOTE: Seven in favor; two opposed. Motion carries.

Discussion then ensued to arrange a meeting for the following week, prior to Thursday, October 31, 2019 to discuss the matter.

Salary Proposals

Prior to the November meeting, additional information on the salary proposal which was requested by a Committee member will be provided; the salary proposal will be on the agenda for the November 20, 2019 meeting.

There being no further business to come before the meeting, the Committee adjourned at approximately 6:19 p.m.

Respectfully Submitted,

/s/ *R. J. Cinquegrana*

R.J. Cinquegrana, Chairman