

COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

October 21, 2021

The monthly meeting of the Committee for Public Counsel Services was held by videoconference on Thursday, October 21, 2021 beginning at 5:38 p.m. Joseph Kociubes, Chairman, presiding.

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

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

1. **Minutes of September 14, 2021 Meeting**

The minutes of the September 14, 2021 meeting were approved as presented.

2. **Amicus Request(s)**

a. Commonwealth v. Christopher DeJesus, SJC-13171

Patrick Levin, Appeals Unit Staff Attorney, sought Committee approval to submit an amicus brief in the case of Commonwealth v. Christopher DeJesus, SJC-13171. The brief will urge the SJC to overrule the Commonwealth v. Thomas, 358 Mass. 771 (1971) line of cases and will emphasize the disparate impact of giving comprehensive privacy protections only to those who can afford a single-family house. It would further advocate a holding that common areas of a multifamily dwelling that are not open to the general public are within the curtilage of all residents of the building.

MOTION: Mr. White. That the Committee approve the filing of an amicus brief in the case of Commonwealth v. DeJesus, SJC-13171.

SECOND: Mr. Healy.

VOTE: Unanimous.

b. Commonwealth v. Jerron Perry, SJC-13144

Matthew Spurlock, Appeals Unit Staff Attorney, sought Committee approval to submit an amicus brief in the case of Commonwealth v. Jerron Perry, SJC-13144. The Supreme Judicial Court solicited amicus briefs addressing the following question:

Whether evidence obtained pursuant to cell tower dump or geofence warrants must be suppressed where historical telephone cell site location information for every individual at a specific place and time was sought, and the applications supporting the warrant applications did not identify a suspect by name or indicate that a perpetrator or perpetrators of a crime used a cellular phone during the relevant time; whether affidavits from law enforcement officers attesting that most individuals use cellular telephones and keep them turned on, support probable cause to issue the warrants.

A CPCS amicus brief in this case could help shape the law in “tower dump” and “geofence” warrant cases. The brief would focus on the following issues: 1) tower dumps are searches; 2) to be constitutionally valid, a warrant must identify its target with more particularity; and 3) the amicus brief could suggest factors that courts should consider when determining whether to issue “tower dump” warrants, and/or assess the validity of such warrants that have been issued.

MOTION: Mr. Miller: That the Committee approve the filing of an amicus brief in the case of Commonwealth v. Jerron Perry, SJC-13144.

SECOND: Mr. White.

VOTE: Unanimous.

c. Commonwealth v. T.G.-A., A Juvenile, Appeals Court No. 2021-P-0380

Sarah LoPresti, Staff Counsel for juvenile appeals, sought Committee approval to file an amicus brief in the case of Commonwealth v. T.G.-A., A Juvenile, Appeals Court No. 2021-P-0380, if the defendant’s application for Direct Appellate Review is granted. The juvenile is asking the SJC to require a private consultation between a juvenile of any age and an interested adult before the juvenile can validly waive his or her Miranda rights, in a return to the original “interested adult” rule set forth in Commonwealth v. A Juvenile(No.1), 389 Mass. 128, 134 (1983). The Youth Advocacy Division amicus brief would encourage the SJC to remove the artificial line at age fourteen and require police to provide all juveniles a private consultation with an interested adult.

MOTION: Ms. Chester. That the Committee approve the filing of an amicus brief in the case of Commonwealth v. T.G.-A., A Juvenile, Appeals Court No. 2021-P-0380, if defendant’s application for Direct Appellate Review is granted.

SECOND: Mr. Miller.

VOTE: Unanimous.

3. Psychologist and Psychiatrist Expert Rate Increase

Mark Larsen, Director of Mental Health Litigation Unit, sought Committee approval to increase the hourly rates paid to psychologists to \$200/hour and psychiatrists to \$250/hour. These are the rates that were paid in 2008, and reduced during a major state fiscal crisis. The estimate cost for the increase in rates for all forensic mental health experts in all divisions is approximately \$781,963 annually.

MOTION: Ms. Ball. That the Committee approve to reinstate the Rate paid to psychologists to \$200/hour and psychiatrists to \$250/hour.

SECOND: Mr. Apfel.

VOTE: Unanimous.

4. Monthly Financial Overview Report

Mr. Lucchetti, Chief Financial Officer, presented the monthly financial overview report to the Committee for review, informing them that current estimated spending is approximately \$286M and that a deficiency or surplus is not expected.

The legislature appropriated leftover funds from last fiscal year (PAC) that will be available for our use and added to our FY 2022 appropriation in line items 0321-1500 (\$650,842) and 0321-1520 (\$6.8M).

Chief Counsel Anthony Benedetti thanked General Counsel Lisa Hewitt and Mr. Lucchetti for their advocacy and work with the legislature in getting this additional PAC funding.

5. Commitments \$10,00 and Over Report

Mr. Lucchetti provided the commitments of \$10,000 and over report for review. He highlighted two items that deviated more than 10% from the pre-approved amount. The total amount of the two items is approximately \$569,697 and break out as follows:

- Tallan, Inc. (IT consulting services) - \$1,562,997
- Crown Castle Fiber LLC (phone/data connections) - \$97,200

He highlighted one vendor, Carahsoft/Arbola (expert vendor application) totaling approximately \$105,000 that was not reviewed during the preapproval process.

Finally, he highlighted a contract with CAFL Resource Attorney Jay Clark, which requires Committee approval. The contract is for additional work needed to assist the Hampden Juvenile Court Clerk's office in assigning counsel on both older and new cases. The additional contract is for a period of four months at the standard CAFL billing rate of \$75.00 for five hours per week, totaling \$6,750. The purpose of the work is to assist in ensuring timely assignment of counsel in an area where there have been challenges with capacity.

Mr. Lucchetti requested approval for the new vendors, the adjusted amounts for the two vendors and the contract with the CAFL Resource Attorney.

MOTION: Mr. Demissie. That the Committee approve the current spending estimates for the vendors and the CAFL Resource Attorney contract as presented.

SECOND. Ms. Ball.

VOTE: Unanimous.

6. Meeting Dates for Calendar Year 2022

A list of the meeting dates for calendar year 2022 were provided to the members. All meetings will be held on the third Wednesday of the month except where noted.

7. Chief Counsel Report

Personnel Issues:

Mr. Benedetti reminded the members that Josh Dohan, Director of the Youth Advocacy Division (YAD), is retiring at the beginning of November. He informed the committee that Mr. Dohan has been with the agency since 1988, first as a trial attorney working to represent adult and juvenile clients in Suffolk County before becoming YAD Director in 1999. He further touched upon how Mr. Dohan is incredibly well respected for his achievements in the state and nationally, he personally having been recognized and YAD for its work in juvenile defense. Members extended their thanks and congratulations to Mr. Dohan and wishing him well on his retirement.

He then welcomed Dulcinea (“Duci”) Goncalves as the new YAD Director. Mr. Benedetti informed the members of Ms. Goncalves’ background - after she graduated from Northeastern University School of Law she joined the YAD Roxbury Office representing juveniles until her selection as the YAD Quincy office Attorney-in-Charge in 2011. In 2008 she was selected as one of fifteen lawyers by the Boston Bar Association to participate in its 2008-2009 public Interest Leadership Program. Also, while on a leave of absence in 2010-2011, she worked as a staff attorney at Suffolk University School of Law’s Juvenile Justice Center where she supervised law students in the Boston Juvenile Court, assisted in the teaching of the Juvenile Defender Clinical Class, and maintained her own caseload of juvenile delinquency and youthful offender cases.

In addition to being a skilled litigator, Duci is known for her mastery of the science of adolescent development, Positive Youth Development and education advocacy. She is a frequent presenter at continuing legal education workshops.

Mr. Benedetti stated that Ms. Goncalves is well prepared to assume leadership of YAD and to help the entire juvenile justice community tackle the pressing challenges.

Mr. Dohan thanked Mr. Benedetti for his kind words and that he was lucky to stand with people like Jay Blitzman who is the person that brought the vision of zealous and developmentally appropriate representation for kids to Massachusetts and much of the country.

He recognized Mr. Benedetti for his leadership during his ten years as Chief Counsel and believes that Ms. Goncalves is a great selection to lead YAD into the future.

Ms. Goncalves expressed her excitement on being selected as the new YAD Deputy, on joining the senior management team and to lead the juvenile bar.

Civil Rights Pilgrimage

A number of people from CPCS, along with family and friends, journeyed to Alabama for a civil rights pilgrimage. It was the vision of former Deputy Chief Counsel Randy Gioia, and planned by Managing Directors Arnie Stewart, Nan Whitfield, Sue Crocker, and Jay Dixon.

Mr. Benedetti reported that the trip was a powerful and humbling experience and encouraged other people to visit and have the same experience.

Mass & Cass

There is an ongoing public health crisis at the area known as Mass and Cass (Massachusetts Avenue and Melena Cass Boulevard). Mr. Benedetti and General Counsel Lisa Hewitt, as well as other members of the staff, have attended numerous meetings with various stakeholders, including the Governor, the State Secretary of Health and Human Services, the Executive Office of Public Safety, the Suffolk County District Attorney, the Suffolk County Sheriff, the state Attorney General, the Mayor of Boston and the City of Boston Department of Public Health, to engage in discussions about a special court session to take place at the Suffolk County HOC. Sheriff Topkins has proposed turning vacant space adjacent to the South Bay House of Correction into a “stabilization” court.

CPCS was brought into the process late, has expressed its opposition to the plan while also preparing to represent clients who would be brought to this special court session.

Mr. Benedetti and other members of the staff took a tour of the facility to learn more details about what was being proposed.

It has been made clear by CPCS that its role is not a partner in the creation of this stabilization court, but will be there to represent people to ensure they receive the services they need.

Discussion ensued.

Counsel Shortage Update

The counsel shortage continues with adult criminal and CAFL, primarily in the Western counties, but there are challenges in other parts of the state as well. Challenges persist with assigning cases in care & protection in Hampden County despite the \$20 private bar hourly rate

increase. Cases continue to move slowly and attorney caseloads remain very high, exacerbating the capacity problem.

As mentioned last month, the staff criminal division is moving forward with opening an office in Holyoke. Litigation in the Cassaquillo case continues with former appellate court Judge Judd Carhart appointed as Special Master to gather facts via affidavits and work on possible solutions. Judge Carhart indicated he does not plan on holding a hearing unless absolutely necessary.

Michael Dsida, Deputy Chief Counsel, reported that some of the counsel shortage is also due to the aging bar with 18 attorneys who practice in the Boston Juvenile Court having recently left the practice. Staff continues to examine ways to increase attorney capacity.

Vanessa Velez, Deputy Chief Counsel for the Private Counsel Division, indicated that during the past year, twenty-five private bar criminal defense attorneys have left the practice in Suffolk County.

Mr. Benedetti mentioned that in addition to the attorney shortage, the temporary closing of the Springfield Roderick Ireland Courthouse due to environmental concerns exacerbated the shortage.

Discussion ensued.

There being no further business to come before the Committee, the Committee adjourned into Executive Session to discuss personnel matters at approximately 6:58 p.m.

At approximately 8:02 p.m. the Committee returned to open session and reaffirmed the following motions made during Executive Session.

FY 2022 Salary Proposal

MOTION: Ms. Ball. That the Committee approve the FY 2022 salary proposal for attorney managers and non-attorney managers of a two-step increase where appropriate and a maximum 4% cost of living adjustment, as presented.

SECOND: Ms. Petropoulos.

VOTE: Unanimous.

MOTION: Mr. White. That the Committee approve the FY 2022 salary proposal for the senior management team managers as presented.

SECOND: Mr. Healy.

VOTE: Unanimous.

MOTION: Ms. Alvarado. That the Committee approve the recommendation of the personnel subcommittee of Arnie Lucinda Stewart for Deputy Chief Counsel for the Public Defender Division.

SECOND: Ms. Chester.

VOTE: Unanimous.

There being no further business to come before the Committee, The Committee adjourned at approximately 8:02 p.m.

Respectfully submitted

/s/ *Mia Alvarado*

Mia Alvarado, Secretary