

COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

SEPTEMBER 18, 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 Wednesday, September 18, 2019, beginning at 5:42, p.m. Joseph L. Kociubes, Vice-Chairman, presiding.

MEMBERS PRESENT: Messes. Alvarado and Ball
 Messrs. Kennedy and Miller, and Ms. Petropoulos
 Mr. Rosenfeld, Ms. Shah and Mr. White

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

1. **Minutes of the July 17, 2019 Meeting**

The minutes of the July 17, 2019 meeting were approved as presented.

2. **Amicus Request(s)**

Joshua Dohan, Director of the Youth Advocacy Division, sought Committee approval on the following two amicus recommendations.

A.F.-C., A Juvenile v. Commonwealth, SJC-12790

The Youth Advocacy Division (YAD) and the Alternative Commitment and Registration Support Unit jointly sought permission to file an amicus brief in the above case, in which the Single Justice reserved and reported the issue of whether any juvenile should be required to register as a sex offender with the Sex Offender Registry Board (SORB). The Supreme Judicial Court issued the following amicus solicitation:

As applied to a juvenile who has been adjudicated delinquent by reason of a sex offense in the Juvenile Court, whether the obligation to register as a sex offender under G.L. c. 6, § 178E (f), violates due process considerations or constitutes cruel and unusual punishment.

MOTION: Mr. Rosenfeld. That the Committee approve the amicus request in the matter of A.F.-C., A Juvenile, v. Commonwealth, SJC-12790.

SECOND: Ms. Alvarado

VOTE: Unanimous.

Commonwealth v. L.J., a juvenile, SJC-12752

The Youth Advocacy Division sought permission to file an amicus brief in the above case. The case addresses procedural issues of transferring the case from juvenile court to adult court under G.L. c. 119, § 72A. Section 72A applies when a person is alleged to have committed an offense before their eighteenth birthday but is not apprehended until after their nineteenth birthday. It provides a process by which a Juvenile Court judge determines whether the individual should be prosecuted in adult court or not at all.

The amicus brief would argue the following: 1) that a Juvenile Court judge has the discretion to decide a motion to dismiss in the context of a 72A proceeding before arraignment and 2) a juvenile must be afforded interlocutory review under G.L. c.211, §3 from the denial of a motion to dismiss based on prosecutorial delay.

MOTION: Mr. White. That the Committee approve the amicus request in The matter of Commonwealth v. L.J., a juvenile, SJC-12752.

SECOND: Mr. Miller.

VOTE: Unanimous.

3. Monthly Financial Overview Report

Kevin Lucchetti, Chief Financial Officer, presented the monthly financial overview report to the Committee for review. The FY 2019 year is officially closed. The year ended with small reversions in line item 0321-1500 (approximately \$0,000) and in line item 0321-1520 (just under \$1M). There was a deficiency in line item 0321-1510 of approximately \$2.5M. Payment of \$2M from the FY 2020 budget using the prior year bill authorization language was made leaving a current shortfall of approximately \$500k.

The FY 2020 budget appears to have a deficiency of approximately \$20M in line item 0321-1510.

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

Chief Counsel Anthony Benedetti invited Vanessa Velez, Deputy Chief Counsel for the Private Counsel Division to provide an update on the counsel shortage crisis in Hampden County.

Ms. Velez updated the members on the following:

- Currently, there is one superior court client in custody without counsel and three district court non-custody clients without counsel.
- The emergency duty day rate of \$424/day was implemented beginning July 12, 2019 and going through September 30, 2019. During this timeframe, 200 attorneys were provided the emergency duty day rate. The attorneys were from Springfield, Holyoke, Palmer and Chicopee, with the majority from Springfield.
- The emergency duty day rate was recently extended to November due to a severe shortage of duty day coverage in October and November.
- Franklin County is experiencing issues because of a shortage of attorneys. Discussions are being held to consider options if the attorney shortage continues.
- Worcester County is not currently having an attorney shortage at the moment, but there is a concern that it could happen due to attorneys from that county going to Hampden County to assist in the shortage.
- There are 11 new attorneys from the Hampden County area taking the zealous advocacy training.
- Another zealous advocacy training is scheduled for January, 2020.

Mr. Benedetti mentioned the new lawyer training is currently being held and that the class includes five attorneys going to Springfield, one each in Northampton, Pittsfield, and Worcester.

On a final note, Mr. Benedetti indicated that litigation surrounding the attorney shortage is on-going and the argument is scheduled before the Supreme Judicial Court for November 11, 2019. The CPCS brief was filed on Friday, September 13, 2019.

There being no further business to come before the meeting, The Committee adjourned at approximately 6:16 p.m.

Respectfully submitted,

/s/ *Joseph L. Kociubes*

Joseph L. Kociubes, Vice-Chairman