

COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

September 14, 2021

The monthly meeting of the Committee for Public Counsel Services was held by videoconference on Tuesday, September 14, 2021 beginning at 5:35 p.m. Joseph Kociubes, Chairman, presiding.

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

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

1. Minutes of July 14, 2021 Meeting

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

2. CLE Reimbursement

Pasqua Scibelli, Director of the Alternative Commitment and Registration Support Unit (ACRSU), sought Committee approval to increase Continuing Legal Education (CLE) reimbursement for SORB/SDP panel attorneys from two to four hours. The estimated cost for the increase in hours is approximately \$30,000.

MOTION: Mr. White. That the Committee approve the increase of CLE hours from two to four hours for SORB/SDP panel attorneys with an estimated cost increase of approximately \$30,000.

SECOND: Ms. Chester.

VOTE: Unanimous.

3. Amicus Request(s)

a. Commonwealth v. Erickson Daveiga, SJC-13147

Rebecca Kiley, Attorney-in-Charge of the Public Defender Division Appeals Unit, sought Committee approval to submit an amicus brief in the case of Commonwealth v. Erickson Daveiga, SJC-13147. The Supreme Judicial Court (SJC) issued the following amicus solicitation:

“[w]hether the defendant’s motion to suppress should have been allowed

on the ground that the police lacked a basis to stop the vehicle in which he was a passenger, where the vehicle was initially detained for blocking a street; the police officer permitted the vehicle to leave without issuing a citation; and, shortly thereafter, the police officer stopped the vehicle to issue a citation for the previous violation (i.e., blocking the street).”

Attorney Kiley will be the lead author on the brief but has reached out to American Civil Liberties Union of Massachusetts and other organizations about a possible joint amicus brief.

MOTION: Mr. Apfel. That the Committee approve the filing of an amicus brief in the case of Commonwealth v. Daveiga, SJC-13147.

SECOND: Mr. White.

VOTE: Unanimous.

The next case was presented for informational purpose only. Due to the timeframe of the case, the Executive Committee approved the request on August 11, 2021.

b. Commonwealth v. Dufresne, SJC-13123

Ms. Kiley explained the issue presented as the following:

“Whether, or in what circumstances, a defendant is entitled to the assistance of counsel in connection with G.L. c. 209A proceedings; whether a defendant’s constitutional right to the assistance of counsel or due process is infringed if he or she is criminally charged with violation of a civil abuse prevention order that issued, pursuant to G.L. c. 209A, while the defendant was not represented by counsel.”

Staff discussed whether CPCS should argue for a universal right to counsel for 209A defendants, or in the alternative whether to consider asking for it for certain categories of defendants.

After meeting with members of the Executive Committee and the Amicus Subcommittee, the decision was made that an amicus brief be filed on the following argument:

Statements made during a 209A hearing by a party that was not represented cannot be used in a subsequent criminal prosecution and the restraining order itself can be collaterally attacked in a subsequent criminal hearing.

4. Murder List Emergency Authorization

Randy Gioia, Deputy Chief Counsel, Public Defender Division, sought Committee approval to allow the Chief Counsel the authority to appoint up to ten additional attorneys who currently do not meet the Assigned Counsel Manual minimum requirements to the murder list. Committee

approval for this proposal is needed because an emergency currently exists with a shortage of murder list attorneys available to accept assignments. In order to be eligible for appointment under this proposal, the attorney must have been, at a minimum, lead counsel in five (5) superior court criminal jury trials or federal district court jury trials within six (6) years from the date of the application and have demonstrated other extraordinary qualities that are essential to the delivery of high quality legal defense services to people accused of murder. Attorneys appointed pursuant to the emergency authorization:

- Must be ready to accept a murder assignment promptly after appointment to the murder list;
- May carry no more than one pending murder case, unless a request to accept additional cases is approved by the Deputy Chief Counsel or their designee; and
- Must work with an assigned mentor.

Vanessa Velez, Deputy Chief Counsel of the Private Counsel Division, informed the Committee of other steps being taken to address the shortage of murder certified attorneys.

During the last year and a half, approximately 20 new attorneys have been added to the murder panel with a restriction of being assigned only one case during the first year and also were assigned to a mentor.

A working group of both public and private staff has been created to produce ideas to address the shortage of murder certified attorneys. The working group has proposed creating a pilot project for a new type of certification called “murder list second chair”. The second chair will have limited responsibilities. The main purpose for the second chair pilot program is to allow counsel to participate in a murder case and to use that experience on their application for the murder panel.

MOTION: Mr. Apfel. That the Committee approve the murder list emergency authorization as presented.

SECOND: Mr. Healy.

VOTE: Unanimous.

5. Monthly Financial Overview Report

Mr. Lucchetti, Chief Financial Officer, presented the monthly financial overview report to the Committee for review.

Fiscal year 2021 has closed with an estimated surplus of approximately \$28.6M. Staff is requesting of the Legislature to allow for carrying over the surplus in line items 0321-1500 (administration/operations) and 0321-1520 (court costs/experts) of approximately \$400,000 and \$6.7M respectfully for the current fiscal year.

It is early in Fiscal Year 2022 and current estimated spending is \$286M and a surplus is not expected.

6. 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 these two items is approximately \$569,697 and are as follows:

- Dell Marketing LP (IT software licensing) \$533,697
- Lindenmeyer Munroe (office supplies) - \$36,000

He also highlighted two vendors totaling approximately \$79,287 that were not reviewed during the preapproval process.

- Gale Batchelder/New Leadership Group (HR recruiting firm) - \$44,100
- Zoom Video Communications, Inc. (IT video conferencing) - \$35,187

Finally, he highlighted bar advocate coordinator and supervisory contracts, which require further Committee approval as the original Committee approvals were made at a time when the approved statutory rate was lower. The total increase for these contracts is \$70,550.

- YAD (juvenile supervising contracts) – total increase - \$37,310
- Mental Health (regional coordinators) – total increase - \$13,500
- CAFL (resource attorneys) – total increase - \$19,740

Mr. Lucchetti requested approval for the new vendors and the further approval of the adjusted amounts for the two vendors and bar advocate contracts.

MOTION: Mr. Miller. That the Committee approve the current spending estimates for the four vendors and the bar advocate program contracts as presented.

SECOND. Mr. White.

VOTE: Unanimous.

7. Litigation Updates

Anthony Benedetti, Chief Counsel, updated the members on the following litigation matters.

a. Hampden County - Lavalley

Mr. Benedetti referenced an email he sent to Committee members last week updating them on steps that were being taken to address the counsel crisis in Hampden County in adult criminal

matters. They include implementing an emergency duty day rate; determining additional counsel capacity in staff offices located in counties close to Hampden; creating a new Holyoke staff office; and making suggestions to the court to make changes on how they do business to help alleviate the case backlog. A status report was filed with the SJC Single Justice informing them of these initiatives.

Rebecca Jacobstein, Director of Special Litigation, informed the members that there are currently over 100 individuals without counsel.

Discussion ensued.

b. Inmate Letters

An organization from out of state called Justice Catalyst filed a lawsuit in late July alleging that tests the Department of Correction (DOC) use to examine mail for drugs is not a scientifically based test and result in false positives. CPCS intends to file an affidavit in the case stating how the use of the test negatively affects the ability to provide counsel.

c. Souza Baranowski Litigation

This litigation stems from a shakedown that occurred in the prison where prison officials took prisoner mail and personal items. CPCS won in Superior Court and the ruling directed the DOC to perform certain tasks. Unfortunately, the DOC did not comply, and a contempt complaint was filed. CPCS is likely to withdraw the complaint as an agreement is close that would result in increased phone calls being provided. With respect to individuals getting their property back, staff are still in the discussion phase.

d. DOJ Report on Police in Hampden County

A status report was due today on this matter. The Hampden County District Attorney's office sent to the CPCS Springfield office over 100 pages of redacted discovery that they found from investigating the cases that the DOJ looked at. Also, the city of Springfield is refusing to share information claiming that it is protected work.

8. Chief Counsel Report

Mr. Benedetti provided updates on the following matters:

Personnel Issues:

Randy Gioia is retiring and although he will be around to help with the transition, tonight is his last meeting. He stated that Mr. Gioia has been a tremendous asset to CPCS and the Public Defender Division (PDD). As a private attorney, he helped Attorney John Salsberg establish a new Suffolk County bar advocate program - Suffolk Lawyers for Justice. The program has become a model for all around the state. He joined CPCS as head of Roxbury Defender Unit before becoming PDD Deputy Chief Counsel (DCC). During his tenure as DCC he has tackled a

number of projects to move the agency forward. Mr. Benedetti expressed his heartfelt thanks and stated that Mr. Gioia will be missed.

Mr. Gioia expressed his appreciation to the Committee for being so supportive of CPCS and the mission of the agency and that Committee member dedication to the agency and its mission has been inspiring to him.

Mr. Benedetti reported that Daniel Saroff, Chief Information Officer (CIO), is also leaving the agency with tonight's meeting being his last. Mr. Benedetti praised Mr. Saroff's tenure as the first CIO of CPCS and stated that he and his team have accomplished a tremendous amount during his tenure and has brought the agency forward technology wise. He and his team worked diligently when the agency was attacked by ransom ware and as a result of their efforts, the agency has much stronger security.

Mr. Saroff thanked everyone and let everyone know he enjoyed his time at the agency and stressed that what the agency does and what everyone does on a daily basis is phenomenal. He thanked Anthony and the rest of the senior management team for their support.

Courthouse Closure

The Springfield Roderick Ireland Courthouse has been closed since August 25, 2021 because of unhealthy environmental conditions.

Mr. Gioia informed the members that the Trial Court conducted a large scale cleaning, mold abatement and remediation process and submitted a report. CPCS hired an independent consultant to review the report and the consultant determined the report was incomplete and more work needed to be done.

Mr. Benedetti and Mr. Gioia met with staff from the Springfield office and advised them they did not want any staff attorneys to go into the Roderick Ireland Courthouse until an assessment from the independent expert is received regarding the safety of the court. Notice was also provided to the private bar of this decision.

CAFL Update

Michael Dsida, Deputy Chief Counsel for the Children and Family Law Division (CAFL), reported to the Committee that there are currently attorney shortages in various courts, particularly in Hampden County, due to attorneys taking fewer cases during the summer and to factors related to the pandemic. The issues are most pronounced in Springfield where the court is down to two session clerks instead of the usual five.

Mr. Dsida and staff have met with Chief Justice-Nechtem to discuss the issue and staff have met with local court officials to discuss the problem.

There are currently 71 individuals without counsel with staff in the affected counties currently at capacity. A training session is presently being conducted for attorneys who will practice in Western Massachusetts.

Mr. Dsida stressed that in order for change to happen, there needs to be more collaboration in order to have long term solutions.

Vaccine/Office Opening

A vaccine mandate has been implemented for all staff. In lieu of vaccination, an employee must submit to weekly testing. The cost for testing will be covered for employees who have a valid reason for not getting vaccinated.

Due to the rise of the delta variant of the coronavirus, reopening the offices has been pushed back to mid-October. The offices are currently open to any who do want to go in.

Search Firm

CPCS is the process of selecting a search firm to assist with the Human Resources Director hiring process. Mark Conlon, the Trial Court's former HR Director, is currently serving as Acting until a replacement is found.

Committee Meeting Dates

The Committee had decided to meet in person quarterly starting in October; however, with the rise in cases from the delta variant, Mr. Kociubes has determined it is best to postpone in-person meetings until a later time. The decision to meet in person will be re-evaluated at a later date.

Denise Simonini, Executive Assistant, sent a poll to all members inquiring on the best day to hold Committee meetings in calendar year 2022. She asked that members who had not yet responded to do so as soon as possible.

There being no further business to come before the Committee, the Committee adjourned at approximately 7:25 p.m.

Respectfully submitted

/s/ *Mia Alvarado*

Mia Alvarado, Secretary