COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

July 18, 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, July 18, 2018, beginning at 5:37, p.m. R.J. Cinquegrana, Chairman, presiding.

MEMBERS PRESENT:	Ms. Ball, Messrs. Demissie, Healy, Miller, and Rosenfeld Ms. Shah, Messrs. Stern and White
TELECONFERENCING:	Ms. Craven, Mr. Kociubes and Ms. Tewksbury

Mr. Cinquegrana appointed Mr. Rosenfeld as Secretary pro tem for tonight's meeting.

Chief Counsel Anthony Benedetti welcomed new Committee member Derege Demissie.

1. **Minutes of June 20, 2018 Meeting**

The minutes of the June 20, 2018 meeting were approved as amended by the Secretary pro tem.

2. **Amicus Request(s)**

A. Commonwealth v. Nathan Lugo, SJC-12546

Afton Templin, Director of Appeals for the Youth Advocacy Division (YAD), sought Committee approval to submit an amicus brief in the matter of Commonwealth v. Nathan Lugo, SJC-12546. The Supreme Judicial Court (SJC) took the case on direct appellate review (DAR) and issued the following amicus solicitation:

> *Whether the defendant was convicted of murder in the second degree for a homicide he committed as a juvenile, whether imposing a mandatory sentence of life with the possibility of parole violated the Eighth Amendment of the United States Constitution or article 26 of the Massachusetts Declaration of Rights; whether a juvenile defendant convicted of murder in the second degree is entitled to an individualized sentencing hearing.*

The amicus brief would address two issues: 1) a mandatory sentence of life with parole eligibility for juveniles convicted of second degree murder is unconstitutional and 2) it would

argue the Court to conclude that juvenile homicide offenders are entitled to individualized sentencing hearings.

MOTION: **Mr. Healy. That the Committee approve the amicus request in the matter of Commonwealth v. Nathan Lugo, SJC-12546.**

SECOND: **Mr. Miller.**

VOTE: **Unanimous.**

B. Commonwealth v. Jamie Johnson, II, SJC-12483

Rebecca Kiley, Attorney-in-Charge of the Appeals Unit, sought Committee approval to submit an amicus brief in the matter of Commonwealth v. Jamie Johnson, II, SJC-12483. The SJC allowed the defendant's application for DAR. The amicus brief will argue that probationers have a reasonable expectation of privacy in historical GPS data. The brief may also argue that any time a probationer is going to be subjected to GPS tracking device as part of probation that the judge conduct an individualized hearing to determine it is warranted and reasonable under the circumstances.

MOTION: **Mr. Healy. That the Committee approve the amicus request in the matter of Commonwealth v. Jamie Johnson, II, SJC-12483.**

SECOND: **Mr. Miller.**

VOTE: **Unanimous.**

C. Commonwealth v. Quinton Williams, SJC-12459

Ms. Kiley sought Committee approval to submit an amicus brief in the matter of Commonwealth v. Quinton Williams, SJC-12459. The SJC issued the following amicus solicitation:

> *Whether the trial judge wrongly excused a juror, on the Commonwealth's challenge for cause, after the juror expressed her view that the criminal justice system was unfair to young African-American men.*

The case may likely generate a good deal of amicus interest. Ms. Kiley has spoken with several agencies that are potentially interested in weighing in on the matter. Areas in which amicus support could be helpful are:

- Gathering evidence that the juror was correct in that the justice system is unfair to young black men.
- Gathering out-of-state cases in which courts have held that a juror's belief in racial disparities is not a valid basis for a for-cause challenge to the juror.
- Arguing that for-cause challenges will result in racially skewed juries.
- Peremptory challenges cannot be exercised on this type of basis.

Mr. Cinquegrana informed the members that a partner in his firm received a call from the Innocence Project asking his firm to write a brief on this case. He is hoping to offer his law firm's assistance in supporting the brief.

Discussion ensued.

MOTION: **Ms. Ball. That the Committee approve the amicus request in the matter of Commonwealth v. Quinton Williams, SJC-12459.**

SECOND: **Mr. Demissie.**

VOTE: **Unanimous.**

3. **Contract – Child Welfare Training Consultant**

Michael Dsida, Deputy Chief Counsel for the Children and Family Law Division (CAFL), sought Committee approval to enter into a contract with Attorney Dorothy Storrow for fiscal year FY 2019 in the amount of $24,750. Attorney Storrow will be compensated with funds awarded to CPCS from the Federal Court Improvement Program. Attorney Storrow will take the lead on planning and presenting new curriculum and continued development of training programs on expert witnesses and advanced appellate writing. She will also assist in revising the two-volume training manual, Child Welfare Practice in Massachusetts. This contract is in addition to Attorney Storrow's contract as Resource Attorney for Berkshire County.

MOTION: **Mr. White. That the Committee approve the contract for Attorney Storrow as Child Welfare Training Consultant for FY 2019 in the amount of $24,750.**

SECOND: **Mr. Miller.**

VOTE: **Unanimous.**

4. **Contract – Mental Health Regional Coordinators**

Mark Larsen, Director of the Mental Health Litigation Division (MHLD), sought Committee approval for the MH Regional Coordinators for FY 2019-2020. The Regional Coordinators will assist in supporting and overseeing the work of MHLD private panel attorneys in mental health cases. The work of the Regional Coordinator includes conducting trainings for local attorneys, providing advice and technical support, acting as liaison with the courts, assisting attorneys with recertification, and conducting performance reviews. The Regional Coordinators are paid $60/hour for their work.

MOTION: **Mr. Rosenfeld. That the Committee approve the contract for the**

Mental Health Regional Coordinators for FY 2019-2020 at $60/hour as presented.

SECOND: **Mr. Healy.**

VOTE: **Unanimous.**

5. **Monthly Financial Overview Report**

Kevin Lucchetti, Chief Financial Officer, presented the monthly financial overview report to the Committee for review. The total forecast for FY 2018 anticipates spending to be $234.4M. A final disbursement from the Administration and Finance (ANF) reserve account was received on July 13, 2018. The report also reflects supplemental funding that was received in the amount of $700,000 to help fund the increase in the CAFL hourly rate in Hampden County. The accounts payable period for FY 2018 ends on August 31, 2018.

6. **FY 2019 Budget Update**

Mr. Benedetti, Mr. Lucchetti and General Counsel Lisa Hewitt provided the members with an update on the FY 2019 budget. It was reported that on this date, the Massachusetts House and Senate voted to adopt the FY 2019 Budget Conference Committee Report. It has been sent to the Governor for his approval and he has ten days from the date of the enactment by the Legislature to sign it. The overall funding total is $244,031,412. The total funding broken down by line item account is as follows:

- **0321-1500** – Administration, Operations, and Payroll: $65,493,432
- **0321-1510** – Private Counsel Compensation: $155,353,380
- **0321-1520** – Indigent Court Costs/Experts: $23,184,600

There were two Outside Sections in the Report that directly impact CPCS:

- **Section 49** – this Section amends G.L. c.211D, §11 increasing the hourly rate from $60/hour to $68/hour for attorneys who take Superior Court cases.
- **Section 50** – this Section also amends G.L. c.211D, §11 by increasing hourly rate from $50/hour to $53/hour for attorney who take Mental Health cases.

There were several Outside Sections which were **not** included in the Conference Committee Report:

- **Section 98** – this Section would have allowed the Chief Counsel to waive the annual billable hours cap for private counsel from 1,800 hours to 2,000 hours and would also allow the Chief Counsel to waive the cap prohibiting private counsel from accepting any new appointment after that counsel has billed 1,350 billable hours during any fiscal year. CPCS supported this.

- **Section95** – this Section would have created a minimum mandatory sentence of 10 years for anyone convicted of assault and battery with intent to murder a law enforcement officer. CPCS opposed this
- **Sections 40, 85 and 89** – this Section would have amended various sections of the General Laws and would have prevented police inquiries about immigration status; ensured that immigrants in police custody are informed of their legal rights; prevented agreements between local sheriffs and ICE; and prevented the creation of any discriminatory registry based on race, religion, sex, sexual preference or other protected characteristic. CPCS supported these Sections.

Acknowledgement to Mr. Lucchetti, Ms. Hewitt, and Community Liaison Maryann Calia, for the various meetings with legislators to provide them with the information necessary to secure an appropriate budget for the agency.

7. **Chief Counsel Report**

Mr. Benedetti updated the members on the following items:

- An Act Relative to Child Predators Bill. No hearing date has been scheduled. An Op-Ed co-authored with Laurie Guidry was published in The Boston Globe on July 9, 2019 and was previously presented to the members.
- Counsel Crisis – Hampden and Worcester counties are having challenges obtaining duty day attorneys. The hope is that the increase in the hourly rate will help with the shortage.

There being no further business to come before the board, the meeting adjourned into Executive Session at approximately 6:22 p.m.

8. **Executive Session**

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

Upon return to open session, Chairman Cinquegrana affirmed the following motion made during Executive Session.

MOTION: **Mr. Rosenfeld. That the Committee adopt the senior management team increases as presented, retroactive to July 1, 2018.**

SECOND: **Mr. White.**

VOTE: **Unanimous.**

There being no further business to come before the meeting, the Committee adjourned at approximately 7:09 p.m.

Respectfully Submitted,



Arnold R. Rosenfeld, Secretary Pro Tem