COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

November 16, 2022

The monthly meeting of the Committee for Public Counsel Services was held by video conference on Wednesday, November 16, 2022, beginning at 5:39 p.m. Joseph L. Kociubes, Chairman, presiding.

MEMBERS PARTICIPATING: Messes. Alvarado, Ball
Messrs. Apfel, Cinquegrana, Demissie, Kociubes, White

The record will reflect that due to the Coronavirus pandemic, a Zoom meeting was held with members attending via videoconference. Quorum was not achieved for voting purposes. Non-voting items were reported on.

Anthony Benedetti, Chief Counsel, gave congratulations to BettyAnn Linfield, Administrative Assistant II, who celebrated 45 years of service with CPCS this week.

1. **Minutes of October 19, 2022 Meeting**

The minutes of the October 19, 2022, meeting were deferred until the December meeting due to lack of quorum.

2. **Legal – Request for Committee Action**

A. Amicus report out Commonwealth v. Carlos Guardado, SJC-13315

Patrick Levin, Appellate Attorney, gave an amicus report out on Commonwealth v. Carlos Guardado, SJC-13315 expedited and approved by the Executive Committee on November 3, 2022. This case is scheduled for argument on December 5, 2022. This is the first SJC case which addresses the Supreme Court decision this past term in New York State Rifle & Pistol Ass'n v. Bruen. The Bruen decision held that there is a presumptive constitutional right to carry a handgun in public. This abrogates some of the SJC's post *Heller* case law over the past decade which held that the Second Amendment right only applied inside the home.

In Guardado, the client was convicted of possessing a handgun without any proof that he didn't have a license to carry. To allow a felony conviction to be based only on the fact that a person was carrying a firearm is not consistent with the Second Amendment and constitutionally protected conduct. The brief will argue that the SJC should reinterpret the statute to require the lack of a license to be deemed an essential element that the Commonwealth is required to prove beyond a reasonable doubt in every case.

A short secondary argument will also be briefed regarding whether Mr. Guardado was entitled to instruction that he could not be convicted if he only possessed the gun at his workplace. The judge refused to give that instruction because he thought that the gun being in Mr. Guardado's car and in the parking lot of his Auto Zone workplace did not qualify under the statute. CPCS also argues that whether he possessed the gun at his workplace must also be an element of the crime, and where this is contested in any way, the judge should not remove it from the jury's consideration.

Mr. Demissie recused himself.

3. **Possible settlement in *Larocque* v. *Turco***

Rebecca Jacobstein, Director of Strategic Litigation, presented information on a possible settlement and provided an update on *Larocque* v. *Turco*. CPCS sued Souza-Baranowski Correctional Center (SBCC) in January 2020. For background, there was an incident where four correctional officers were injured and the Correctional Center was locked down so that prisoners could not make phone calls, attorneys could not make in person visits, and prisoner legal property and paperwork was taken and not returned. The facility acted under a secret Disorder Policy which lasted for about 14 days. Prisoners were reorganized into north and south side blocks, and prisoners on the north side were in lockdown for all but two hours and 15 minutes a day.

Two prisoners, Carl Larocque and Robert Silva-Prentice, together with the Massachusetts Association of Criminal Defense Lawyers and CPCS are Plaintiffs. Carl Larocque is represented by Attorney Bridget Zerner and Robert Silva-Prentice is represented by Attorney Patty Dejuneas. Other lawsuits involve prisoners being assaulted and cruel conditions in the Department Disciplinary Unit (DDU).

4. **Monthly Financials Overview Report**

Mr. Kevin Lucchetti, Chief Financial Officer, presented the Monthly Financials Overview Report. Forecast is stable. CPCS has spent about 23% or $75 million of the $330 million that is available across all accounts. Current yearly forecast is approximately $314 million. There is a projected surplus in the court cost line and hourly rates paid to experts are being reviewed for a possible increase. Forecast revision will be provided in the new calendar year. Recent payments for attorneys have been consistent and have leveled out.

Budget Subcommittee meetings are being scheduled and the FY24 budget will be brought to the December Committee meeting.

Commitments requiring approval will be carried over to the December Committee meeting.

5. **Chief Counsel Report**

Mr. Anthony Benedetti, Chief Counsel, welcomed Ms. Holly Smith, Director of Administration and Operations, in her new role. She replaces Ms. Debra Krupp, who retired. Ms. Smith has served CPCS as an Attorney in Charge for the Youth Advocacy Division in Malden, as a Staff Attorney in the YAD training unit in Boston, and as Private Counsel. One of Ms. Smith's first of many projects will be to facilitate the agency Strategic Planning which is about to begin. Recently retired Maryland Chief Counsel has been engaged as the facilitator of the process. He has overseen the National Association for Public Defense Strategic Plan process, Maryland Strategic Plans, and strategic plan of two other public defense agencies.

Mr. Benedetti gave a report on the State Auditor audit response:

1. CPCS has completed a Risk Assessment.
2. CPCS' Internal Control Plan is nearly finalized.
3. CPCS' Business Continuity Plan work should be completed by the end of the calendar year.

Most, if not all, projects will be complete prior to State Audit report being issued. CPCS expects the audit to report a few items need improvement. Going forward, an annual review process will be implemented. In addition to Audit and Oversight, Mr. Kevin Lucchetti, Ms. Debra Krupp, Mr. Jon Bartelson, and Ms. Lisa Hewitt are all involved in assuring a proper response to the State Audit. Previously, audits focused on private attorney payments, but this time, the audit is focused more on internal control processes and IT security. During the first exit interview, State Auditors were extremely complimentary of the entire CPCS team.

Mr. Benedetti gave a report on the Harmony Montgomery recent case press. Since the last Committee meeting, the father has been charged with the murder of Harmony Montgomery. An Editorial in the Boston Globe urged support for the Governor's Child Advocate (OCA) proposal, providing guardians ad litem to work with children in care and protection cases. A second opinion article in the Boston Globe speaks to failed children protection policies in Massachusetts. CPCS continues to participate and engage in a group established by Chief Justice Locke which includes the Juvenile Court, OCA, and the Department of Children and Families (DCF). Initially, Chief Justice Locke wanted to try to identify and respond to issues quickly, but the group is finding many topics to look at within the system for the past couple of months.

Mr. Benedetti gave a report on ongoing counsel shortage issues. There continue to be challenges primarily in Western, MA and especially in Adult Criminal and Children and Family Law. One hundred twenty-five people in five counties west of Worcester do not have an attorney. Effects of COVID-19 and attorneys having high caseloads and currently not being able take on more have impacted attorney shortage issues.

Mr. Benedetti referenced a document prepared by Private Panel Directors which lists all steps taken by all panels to try to address the counsel shortage both in the short-term, as well as the long-term:

1. Expanded recruitment efforts (both staff and private bar).

2. Marketing to private panel members.
3. Raising awareness regarding the hourly rate increase.
4. Annual billing increase (increase in the number of hours that private attorneys can bill each year).
5. Loan forgiveness program efforts for private attorneys (CPCS is working with the Department of Education and Federal Government on clarifying language).

6. **POST Commission update**

Rebecca Jacobstein, Director of Strategic Litigation, presented Massachusetts Peace Officer Standards Training (POST) Commission update, and CPCS' response and independent efforts. Ms. Jacobstein stated that the POST Commission is supposed to certify police officers and publish transparent information on their website about certification, decertification, suspension, and misconduct. POST sent out requests to every Police Department in the Commonwealth, asking for information such as police disciplinary records and status of discipline, how long an officer has worked there, etc. POST received information in Excel spreadsheets and CPCS requested those reports in January of 2022, although we still have not received complete information. POST responded that information will be available when it is on their website, although they did not provide a timeframe for publication. CPCS has continued to file public record requests for specific records such as notices sent to police officers who were not certified or were decertified, records of any Police Chief refusal to certify good moral character, police felony conviction or other adversary background check information, etc. CPCS filed an appeal regarding POST's refusal to provide information, but due to police officer union pending lawsuit, appeal has not been decided by the Secretary of State's office.

CPCS has been working with the National Association of Criminal Defense Lawyers (NACDL) to develop a database of police officers. We have about 23,000 officers uploaded into the database and good progress has been made on this project. The goal is for attorneys to be able to search for information that they can use from the onset of a case. For post-conviction purposes, data will be incorporated with the New England Innocence Project (NEIP).

Next meeting, December 21, 2022, will be virtual.

There being no further business to come before the Committee, the Committee meeting ended at 6:34 p.m.

Respectfully submitted

Mia Alvarado

Mia Alvarado, Secretary