

COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

September 20, 2023

The monthly meeting of the Committee for Public Counsel Services was held in person and by video conference (for Committee members) on September 20, 2023, beginning at 4:05 p.m. Joseph L. Kociubes, Chairman, presiding.

MEMBERS PARTICIPATING: Messes. Alvarado, Ball, Chester, Conrad

Messrs. Apfel, Healy, Kennedy, Kociubes, Miller, White

1. **Minutes of July 19, 2023 Meeting**

The minutes of the July 19, 2023 meeting were approved as presented.

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

a. **In Re Impounded Matter, SJC-13465**

Juvenile Appeals Staff Counsel Sarah LoPresti presented an amicus recommendation for In Re Impounded Matter, SJC-13465. The amicus was approved by the Amicus Subcommittee. The case involves a youth offender's record sealing under G. L. c. 276, § 100A. G. L. c. 276, § 100A relates to sealing adult records and G. L. c. 276, § 100B relates to sealing juvenile records. The Commissioner of Probation denied the petition noting that youthful offender records fell under the adult section of the statute. Mandamus was filed in front of a single justice and the case was reserved and reported. An amicus solicitation asks whether youthful offender convictions fall under the adult record sealing statute G. L. c. 276, § 100A or G. L. c. 276, § 100B. The case is being litigated by the Greater Boston Legal Services Director of the CORI & Re-Entry Project and Lead Attorney for appellate advocacy Pauline Quirion. Director of Juvenile Appeals Afton Templin will author the amicus brief.

Although there is no right to counsel for sealing records or expungement matters, CPCS believes an amicus is appropriate for two reasons 1) it is extremely important to our clients and the collateral consequences of a conviction are extensive 2) YAD and GBLS would continue to collaborate and urge the Court for clarity so that it will be easier for pro se people seeking to get a record sealed or expunged. The amicus brief would make two main points 1) the harm of a juvenile criminal record is extensive and hinders rehabilitation 2) the legislative history and intent of both the sealing statutes and the Juvenile Court statutes are to broaden the scope of protection that sealing allows.

MOTION: Mr. Apfel. That the Committee approve the amicus recommendation In Re Impounded Matter, SJC-13465.

SECOND: Mr. White.

VOTE: Unanimous.

b. Commonwealth v. Z.M., Appeals Court No. 2023-P-1030, Supreme Judicial Court No. DAR-29505

Juvenile Appeals Staff Counsel Sarah LoPresti presented an amicus recommendation for Commonwealth v. Z.M., Appeals Court No. 2023-P-1030, Supreme Judicial Court No. DAR-29505. The amicus was approved by the Amicus Subcommittee. The Youth Advocacy Division (YAD) requests permission to write an amicus letter in support of direct appellate review (DAR). The background of the case is that the juvenile was serving a lengthy sentence and in 2021 he was resentenced pursuant to Perez, meaning that his non-murder sentence was presumptively disproportionate, as it was longer than a sentence for juvenile murder. The Commonwealth agreed to resentencing without a hearing. He was resentenced to time served as well as multiple probationary periods, that, if violated, would put him in prison for life. Unfortunately, in 2022, the client was picked up on new charges and that case is currently pending. CPCS filed a second Rule 30 motion for a new trial in the new case which was denied. The juvenile's appeal is currently pending.

CPCS filed an application for direct appellate review asking the SJC to decide an unresolved sentencing issue in Commonwealth v. Rambert. The issue is whether the non-homicide offense is still presumptively disproportionate if the time in excess of 15 years is imposed, not as part of the initial sentence, but in the event of a violation.

The amicus letter would highlight the tendency of judges to include length in terms of probation and resentencing and urge the court to decide this issue now. If the DAR is granted, the amicus brief would argue the cases underpinning Perez which focus on a meaningful opportunity for rehabilitation and release. Exposure to a life sentence after serving the maximum presumptively constitutional sentence eviscerates that opportunity and is not available.

In response to Committee members' questions, clarification was provided:

- The issue is that if the probationary sentence is revoked, the client could be sentenced to life. The life sentence would be subject to parole eligibility, but the date of parole eligibility is unsettled. In this situation, any sentence more than 15 years would be improper, but a sentence of less than 15 years would not be.

MOTION: Ms. Ball. That the Committee approve the amicus recommendation for

SECOND: Mr. Miller Conrad.

VOTE: Unanimous.

3. Monthly Financial Overview – FY 23 Final Report

CFO Kevin Lucchetti presented the Monthly Financials Overview starting with the final report for FY 23. CPCS spent approximately \$312M of the \$336 that was available in FY 23 across all line-item accounts. CPCS anticipated spending at approximately \$315M; there is a projected surplus of approximately \$24M.

- The final FY 23 surplus in the Administration/Operations 1500 account is approximately \$400,000 higher than projected due to IT contracts underspent.
- The final FY 23 surplus in the Private Counsel 1510 account is approximately \$7.9M. The projected surplus was higher than anticipated due to billing trends being different than in recent years.
- The final FY 23 surplus in the Court Costs/Experts 1520 account is approximately \$15M. The legislature PAC forward FY 23 surplus into FY 24. CPCS is also advocating for the balance of the Administration/Operations 1500 account and Private Counsel 1510 account to PAC forward as well.

4. Monthly Financial Overview

Kevin Lucchetti presented the Monthly Financials Overview Report. Mr. Lucchetti projects that CPCS will spend all the FY 24 funds in the 1500 Administration/Operations account and 1510 Private Counsel account. Mr. Lucchetti projects that CPCS will spend approximately \$32M in the 1520 account. The first forecast change is expected in January unless there are consistent month-to-month trends.

Budget subcommittee meetings to consider the FY 25 budget proposal are being scheduled.

5. Commitments \$10,000 and Over Report

Kevin Lucchetti presented the Commitments \$10,000 and Over Report. He seeks the approval of three contracts where estimated spending is approximately \$1.35M and exceeds the original May 2023 preapprovals by more than 10%.

- Dell Marketing LP – IT Hardware/Software Licensing Incls. Azure, mostly software licensing, such as Office 365 and replacing desk phones to TEAMS phones
- Carahsoft Technology Corp – FIN & IT – Employee Reimbursement System/JusticeText, such as CPCS’ employee reimbursement SAP Concur system
- Officespace Software Inc – FAC – Space Planning/Space Visualization Software

Mr. Lucchetti reported one vendor Citron Hygiene US Corp for sanitation and hand sanitizer services where spending is expected to exceed the original pre-approval amount plus ten percent and the item also exceeds the procurement approval threshold. He also requested Committee approval for this item for approximately \$58,000.

MOTION: Mr. White. That the Committee approve four contracts – Dell Marketing LP for \$940,297, Carahsoft Technology Corp for \$376,235, Officespace Software Inc for \$34,056, and Citron Hygiene US Corp for \$58,805

SECOND: Ms. Ball.

VOTE: Unanimous.

6. Private Bar Recruitment Update

Mr. Benedetti introduced Kateen Kumar and Colleen Brady who have been hired in the role of Private Attorney Outreach Partners to work on recruitment and increasing counsel capacity.

Kateen Kumar shared a PowerPoint presentation titled “Private Attorney Outreach Partner Roadmap” that summarized the goals he and Colleen are aiming to achieve. He discussed solution focused efforts that include: creating a global and unified message and system for recruitment and retention; creative marketing to be implemented, and simplicity and modernity that will be built into user friendly platforms and, among other goals, creation of a database of contacts, relationships, and materials for interactions with CPCS globally.

Strategies will be implemented through a RAMP plan which stands for Recruit, Appreciate, Motivate, and Preserve.

- Recruit – A systemic, organized, and scalable digital rolodex of individual and institutional contacts will be built and be able to grow with CPCS needs. Presentations will be created for target audiences (law schools, bar associations, affinity groups, solo practitioners, and small/medium/large firms, and learning centers).
- Appreciate – Recognize private panel attorneys for their work and share their successes.
- Motivate – Research and create ways for existing attorneys to take more court appointed cases, including by making it easier and more attractive to join a Private Panel and streamline the application and billing process.
- Preserve – Research and create opportunities that allow the 3,000 private attorneys to have access to economies of scale savings and technology discounts.

In response to Committee members questions:

- Kateen and Colleen have met with Hampden, Suffolk, and Middlesex County advocate programs and plan to meet with all county programs and representatives.
- New Project Coordinator Kristen Gondim will support the database work.
- Shared office space lists will be extracted from major companies who compile daily lists.
- A global CPCS message will include consistent and comprehensive presentations and materials for all practice areas.
- Recruitment will include direct outreach and events.
- Work will include assessment and adjustments for successful impact with focus on strengthening private attorneys’ identity as part of the CPCS community.

7. Chief Counsel Report

Chief Counsel Anthony Benedetti provided update on the private bar Public Service Loan Forgiveness (PSLF) through the federal government which is moving forward. CPCS has engaged with consultant Heather Jarvis who has been working with the SJC Wellness Committee to participate in a minimum of two CPCS Town Halls to help provide guidance to the private bar.

CPCS is hopeful that this will support recruitment efforts and lead to attorneys taking more cases. Private Counsel Deputy Chief Counsel Vanessa Velez and Private Counsel Director of Criminal Trials Rose King began this initiative by working with the SJC Committee to reach out to the Biden Administration transition team.

Mr. Benedetti congratulated CPCS staff attorney Ben Keehn and Committee member Martin Healy for being inducted into the Massachusetts Lawyers Hall of Fame on September 12th. He also recognized former Committee member Margaret Burnham and former Roxbury Defender and CPCS Committee Chair Walter Prince for also being inducted. Mr. Benedetti also congratulated Staff Attorney Gabriela Robin and Racial Equity Statewide Training Lead Theresa Coney for being honored as 2023 “Top Women in the Law” by Massachusetts Lawyers Weekly.

Mr. Benedetti provided an update regarding issues related to the POST Commission litigation. A productive meeting with POST occurred in August and CPCS is hopeful that no litigation or limited litigation will be needed.

Mr. Benedetti reported a potential litigation matter related to the Department of Correction attorney mail tracking scheme. The DOC asserts that the new mail process was developed to try to keep contraband from entering the facilities; however, CPCS had very little input, and there are numerous and serious concerns with the process. If CPCS is unable to achieve change through discussions, the intent would be to request permission from the Committee to file an injunction to prevent the DOC from moving forward with their October mail plans.

Mr. Benedetti reported another potential litigation matter related to Mental Health case trials. The standing order essentially gives judges complete discretion as to whether the hearing will take place in court, at a jail or in a hospital, or via zoom. Most trials are happening remotely which is difficult for people who may be suffering from mental health issues.

Mr. Benedetti shared that Children and Family Law Deputy Chief Mike Dsida and team are working on a plan for utilizing Title IV E Federal funding, with counsel capacity issues being the top priority.

Mr. Benedetti stated that there are two different cases before the Supreme Judicial Court related to mental health competency and whether the petitioner must prove the likelihood of serious harm to get a commitment for that person to be evaluated.

Mr. Benedetti reported on state-wide counsel capacity issues. Currently, the CAFL Division has over a hundred clients waiting for representation with over 50% of clients without representation in Worcester County. Mike Dsida and the CAFL team are currently weighing different incentives to help alleviate this shortfall. Counsel capacity improvement continues with regards to adult criminal and especially in Western Massachusetts with implementation of new assignment system. Issues in Suffolk County continue. Vanessa Velez and the Private Counsel team have had conversations with bar leaders about possible changes to Suffolk County scheduling.

A robust class of 21 new bar advocates is pending. A large class of 24 staff attorneys in the Public Defender division and 13 staff attorneys in the CAFL division are undergoing fall training.

Mr. Benedetti thanked Committee member Bruce Miller for his service and for bringing his passion for the issues and the CPCS mission along with his years of experience to the Committee. Members of the committee thanked Mr. Miller for his work and years of service to CPCS.

The next meeting is planned for remote. There being no further business to come before the Committee, the Committee adjourned at approximately 5:27 p.m.

Respectfully submitted

/s/ Mia Alvarado

Mia Alvarado, Secretary