

COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

April 17, 2024

The monthly meeting of the Committee for Public Counsel Services was held in person on April 17th, beginning at 4:32 p.m. Joseph L. Kociubes, Chairman, presiding. Chair Joe Kociubes and Chief Counsel Anthony Benedetti welcomed new Committee members Ms. Toni Hall and Mr. Eric Tennen. They also welcomed Ms. Colby Dillon and Ms. Jennifer McKinnon to their first in-person meeting.

MEMBERS PARTICIPATING: Messes. Alvarado, Ball, Conrad, Dillon, Hall, McKinnon, Petropoulos

Messrs. Apfel, Cinquegrana, Kociubes, Tennen, White

1. **Minutes of March 20, 2024 Meeting**

The minutes of the March 20, 2024 meeting were approved as presented.

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

a. Commonwealth v. K.D., Appeals Court No. 2024-P-0090, Supreme Judicial Court No. DAR-#####

Youth Advocacy Division Deputy Chief Counsel Duci Goncalves presented an amicus recommendation for Commonwealth v. K.D., Appeals Court No. 2024-P-0090, Supreme Judicial Court No. DAR-#####. The amicus letter would support the juvenile's application for direct appellate review. The Amicus Subcommittee unanimously gave approval.

In 2013, K.D. was charged in a two-count delinquency complaint in Juvenile Court for offenses that he allegedly committed when he was eleven years old. One charge was dismissed by the Commonwealth and the other charge was reduced to simple assault and battery. K.D. was placed on pretrial probation, which he successfully completed, and the charge was dismissed. He has had no contact with the juvenile or adult criminal legal system since.

In 2023, at the age of twenty-one years old, K.D. petitioned to expunge the delinquency case pursuant to G. L. c. 276, § 100K (a) (2). He argued that due to the 2018 reforms which decriminalize violations of law by those under twelve years of age, that his record should be expunged and that it was in the best interest of justice to do so. The Juvenile Court judge denied the petition and K.D. appealed.

YAD believes this case merits an amicus by CPCS even though there is no right to counsel for expungement petitions and CPCS does not appoint private counsel to represent former clients seeking to expunge adult or juvenile records. First, expungement issues are important to our

clients, as the collateral consequences of juvenile and adult records negatively impact our clients' lives. Second, if the Supreme Judicial Court were to conclude that offenses committed by children younger than twelve before the effective date of the 2018 reforms are eligible to be expunged, hundreds of records would be impacted. Legal aid organizations would have clear guidance from the Court regarding helping people with expungement petitions and the process would be easier for pro se litigants too.

YAD's amicus letter in support of DAR would urge the Court to decide this important issue. The letter would include the ongoing harms caused to individuals by the existence of Juvenile Court records and urge the Court to provide clear guidance to records created because of an offense which could no longer be prosecuted following the 2018 reforms.

If the DAR is granted, the amicus brief would argue that such a holding would be in furtherance of clear legislative intent to decriminalize conduct by children under twelve. The 2018 reforms recognize that adolescent development impacts childhood behaviors and that the Juvenile Court is not the appropriate setting to address that behavior. Juvenile records can be a barrier to education, employment, housing, and state licensing and can hinder young people's ability to move forward with their lives. Lastly, the amicus would argue that such a holding would mitigate the impact of systemic and institutionalized racism in the Juvenile Court.

MOTION: Ms. Alvarado. That the Committee approve the amicus recommendation for Commonwealth v. K.D., Appeals Court No. 2024-P-0090, Supreme Judicial Court No. DAR-#####.

SECOND: Mr. Cinquegrana.

VOTE: Unanimous.

3. Proposed change to Chapter 2, Section J, of the Assigned Counsel Manual – Attorney Liability Insurance

Director of Audit & Oversight Bill Shay reviewed BL insurance issues and proposed changes to Chapter 2, Section J, of the Assigned Counsel Manual. Mr. Shay provided update regarding BL insurance issues which were previously discussed during the March 20, 2024 Committee meeting. CPCS is aware of 14 attorneys who have had BL insurance issues where premiums were collected but those funds were not remitted to the insurance company. Nine attorneys' insurance issues are resolved and five remain pending. Private bar attorneys have told CPCS that some insurance companies have ensured that coverage is reinstated at no cost if the policy premium was paid, and other attorneys have relayed that they made payment in advance and will seek reimbursement later.

Mr. Shay presented proposed changes to Chapter 2, Section J, of the Assigned Counsel Manual. First, the Committee previously established that private bar attorneys must maintain continuous professional liability (malpractice) insurance with a coverage amount of not less than either \$100,000/\$300,000 or \$250,000/\$250,000 and with a deductible of not more than \$10,000. CPCS requests the maximum deductible change from \$10,000 to \$15,000. The second recommended change relates to a timeframe lookback for professional liability insurance that a private bar

attorney must maintain. CPCS requests that the six-year retroactive lookback be changed to three years. This balanced approach considers the three-year statute of limitations relating to legal malpractice claims and the need to recruit and retain qualified private bar attorneys.

MOTION: Mr. White. That the Committee approve the Proposed Change to Chapter 2, Section J, of the Assigned Counsel Manual.

SECOND: Ms. Ball.

VOTE: Unanimous.

4. Monthly Financial Overview Report

Chief Financial Officer Kevin Lucchetti presented the Monthly Financial Overview Report. CPCS has spent approximately \$210M of the \$355M or 60% of available funds across all accounts. FY 2024 ends June 30th. The in-house payable period continues to occur in July and August. CPCS expects to spend approximately \$341M in FY24. The FY24 budget forecast projects a surplus of approximately \$13M in the Court Costs/Experts 0321-1520 line.

5. Commitments \$10,000 and Over Report

CFO Kevin Lucchetti presented the Commitments \$10,000 and Over Report. Mr. Lucchetti reviewed monthly obligation and contract processes and policies for new Committee members. Mr. Lucchetti also stated that a list of FY 2025 pre-approval contracts will be presented to the Committee in May. There is one commitment that needs further approval where current estimated spending exceeds the original May 2023 approvals by more than 10%.

- Winslow Technology Group - IT hardware and software and laptops for approximately \$1.5M.

Two obligations are expected to exceed \$10,000 and are for information only.

- United Training Comm. Inc. – Training – Excel/Word Training (New Horizons Training) for \$14,925
- Sign Desing Inc – FAC – Office Signage for \$12,592

MOTION: Ms. Ball. That the Committee approve Winslow Technology Group for \$1,489,787.

SECOND: Ms. Petropoulos.

VOTE: Unanimous.

6. Chief Counsel's Report

General Counsel Lisa Hewitt & CFO Kevin Lucchetti presented a status update regarding the FY25 budget and the House Ways & Means budget proposal that was released last week. The Governor's proposed budget would have resulted in less funding than we have available to spend in the current fiscal year, if adopted. The House Ways & Means FY25 budget provided \$2M more

in the Administration/Oversight 0321-1500 line for approximately \$88M, but this continues to be less than our ask of approximately \$95M.

Ms. Hewitt informed the Committee about substantive legal changes in the House Ways & Means proposal. The first would shift the cost of the bill fee from clients to the court. Next, there is an amendment designed to create a commission looking at Care & Protection cases that would mimic the work of the group that already exists under the auspices of the Trial Court.

Chief Counsel Anthony Benedetti gave personnel updates. He welcomed the new Chief Human Resources Officer Ms. Sandra Debow-Huang informing the Committee of her background and experience. Mr. Benedetti thanked Interim CHRO Mark Conlon for stepping in to cover this time and the previous time there was an HRRO posting.

Mr. Benedetti congratulated Private Counsel Deputy Chief Counsel Vanessa Velez on her new role as Associate Justice of the Boston Municipal Court which will begin on May 2nd. Ms. Velez gave powerful testimony to the Governor's Council and spoke of her Puerto Rican heritage and move to the United States. He thanked Ms. Velez for her steady guidance, leadership, and unwavering commitment to our mission. Criminal Trial Support Unit Director Rose King will serve as Acting Private Counsel Deputy Chief. Mr. Benedetti will be working with the Personnel Subcommittee to finalize Private Counsel Deputy Chief job posting.

CAFL Deputy Chief Counsel interviews and selection process are moving forward, and the process is expected to be completed by the end of May.

Youth Advocacy Division Deputy Chief Counsel Duci Goncalves shared that the lawsuit against the Department of Department of Elementary and Secondary Education was filed yesterday in Middlesex Superior Court to challenge their failure to provide special education services to young adults who are confined in County Houses of Corrections. The Committee approved filing the lawsuit in October of 2023.

Ms. Goncalves also provided an update on the VOICES program, a nonprofit foundation launched in January that supports CPCS' mission. Twenty-two members from across the state participate in the voices of impacted ending the school-to-prison pipeline. The group meets monthly in Roxbury and is enthusiastically working together to identify and tackle specific challenges.

Acting CAFL Deputy Chief Counsel Joe Mulhern informed the Committee about decisions that have been made about spending a portion of the Title IV-E money. CPCS is carefully spending money on areas mandated by statute. We are checking procurement rules, and considering how programs will apply for the money and considering the prospective organization's success.

Mr. Mulhern reviewed specific Title IV-E spending:

- CPCS has opened a Family Justice Advocates Office in Worcester which currently has an AIC, 3 Staff Attorneys, a Social Worker, and an Administrative Assistant. Hiring another attorney is underway.
- A temporary space is being procured for the new FJA Worcester Office and is expected to be secured within the next month.

- CPCS has also hired a CAFL specific EdLaw Attorney.
- CPCS is also in the process of hiring two attorneys to support our Trial Panel Support Unit, two Training Unit Attorneys, a Private Bar Appeals Litigation Support Attorney, and a CAFL specific Immigration Impact Unit Attorney.
- Some Title IV-E money will be allocated to fund ten staff and private bar attorneys to attend the NACC Conference.
- CPCS is also in the process of hiring a Managing Director for the FJA Offices.
- CPCS is in the early planning stages for establishing a transitional age youth unit.
- CPCS is also in the initial stages of preparing to recruit a Program Coordinator. This position will involve helping to manage Title IV-E funds, assisting in determining how the funds will be utilized, and exploring possibilities for sharing the funds with other organizations to improve preventive services.

Mr. Mulhern reported that the CAFL Parent Advocate position that supports client parents is a great success. In September, the CAFL Fall River Office hired a Parent Advocate as part of a pilot project. The Parent Advocate has lived experience with the child welfare system and can provide invaluable guidance to clients, assisting them in navigating the path to success. Specifically, the Parent Advocate has been instrumental in connecting a client to treatment and in securing housing and helped to facilitate the successful reunification of the child and parent. In another case, the Parent Advocate supported a client going to treatment and the client has now been sober for 4 months. In this case, DCF had been considering changing the goal to adoption and terminating parental rights. Now, the parent and child have community visits and are making great progress.

Lastly, Mr. Benedetti provided council capacity updates. Challenges continue in Suffolk County with some adults with criminal charges waiting for counsel. Six attorneys completed the Zealous Advocacy Training, which is anticipated to help alleviate private panel challenges. CPCS is aggressively trying to address problems that exist within specific courts and issues with court culture and the treatment of attorneys and clients. The Mental Health Litigation Division is also having some council capacity challenges and CPCS will be looking to implement an incentive. There has been tremendous success with the implementation of CAFL tiered incentives, and only two clients are waiting for an Appellate Attorney as of last week.

The next meeting will be remote. There being no further business to come before the Committee, the Committee adjourned at approximately 5:33 p.m.

Respectfully submitted

/s/ Mía Alvarado

Mia Alvarado, Secretary