

COMMITTEE FOR PUBLIC COUNSEL SERVICES

MINUTES OF MEETING

December 20, 2023

The monthly meeting of the Committee for Public Counsel Services was held by video conference on December 20, 2023, beginning at 4:34 p.m. Joseph L. Kociubes, Chairman, presiding.

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

Messrs. Apfel, Cinquegrana, Kennedy, Kociubes, Stern,
White

1. Minutes of November 15, 2023 Meeting

The minutes of the November 15, 2023 meeting were approved as presented.

2. Legal – Request for Committee action

a. Commonwealth v. Nicholas D., a juvenile, Supreme Judicial Court No. SJ-2023-498

YAD Deputy Chief Dulcinea Goncalves presented an amicus recommendation for Commonwealth v. Nicholas D., a juvenile, Supreme Judicial Court No. SJ-2023-498. The Executive Committee approved filing an amicus letter on an emergency basis requesting that the Single Justice reserve and report regarding G.L. c. 211, § 3 on a juvenile jurisdiction issue. YAD now seeks permission to file an amicus brief in the full court case.

The issue is whether a continuance without a finding of delinquency (CWOFF) entered after an admission to sufficient facts is the equivalent of a prior adjudication of delinquency for purposes of G.L. c. 119, § 52. The 2018 Criminal Justice Reform Act's amendment to § 52. Section 72 of the Act amended § 52 by redefining "delinquent child." The new definition decriminalizes "a first offense of a [minor] misdemeanor." Since that amendment, what qualifies as a "first offense" has been considered by the SJC three times. The three SJC cases have interpreted that language in the Juvenile Court, promulgated rules for Wallace W. hearings which are pre-arraignment, evidentiary hearings at which the Commonwealth bears the burden of proving beyond a reasonable doubt, that the current misdemeanor is not the youth's first offense such that the Juvenile Court has jurisdiction. The 2018 amendments removed from the Court's jurisdiction a youth charged with a first minor misdemeanor offense. A question that was left open in those cases, but answered incorrectly in the rules is where there's a CWOFF entered after an admission to sufficient facts whether a Wallace W. Hearing is required, or if that CWOFF constitutes a prior offense proved beyond a reasonable doubt.

The amicus brief would address two points. First, the amicus brief would urge the court to hold that a CWOFF after an admission to sufficient facts does not meet the Commonwealth's burden

proved beyond a reasonable doubt, and that the Wallace W. Hearing is required. That interpretation would be in furtherance of the legislator's 2018 reform minimizing youth contact with the juvenile legal system in recognition that contact causes more harm than good. Second, the amicus brief would argue that by minimizing court contact the court would also be mitigating racial and ethnic disparities where black and brown youth are overrepresented in the juvenile legal system.

MOTION: Mr. Apfel. That the Committee approve the filing of the amicus brief in Commonwealth v. Nicholas D., a juvenile, Supreme Judicial Court No. SJ-2023-498 before the full court.

SECOND: Ms. Conrad.

VOTE: Unanimous.

3. Monthly Financial Overview Report

CFO Kevin Lucchetti presented the Monthly Financial Overview Report. CPCS has spent approximately 33% of the \$355M available across all accounts. All three accounts 0321-1500, 0321-1510, 0321-1520 are trending on target. The current FY2024 forecast is approximately \$341.5M.

Through the legislative process, CPCS received a PAC of remaining FY2023 0321-1500 funds of \$1.35M, 0321-1510 funds of \$7.86M, and 0321-1520 funds of \$15.06M.

4. Commitments \$10,000 and Over Report

Kevin Lucchetti presented the Commitments \$10,000 and Over Report. He requested that the Committee approve three contracts where current estimated spending exceeds the original May 2023 approval by more than ten percent.

- WB Mason Co Inc - \$100,000 for Supplies & Furniture
- The Ripples Group, LLC - \$91,360 for a Management Training Program and SMT Coaching
- TIC Business Consulting - \$52,350 for IT Consulting (including load balancing review and support)

The total of the three contracts is \$234,710.

MOTION: Mr. White. That the Committee approve 3 vendors where the current estimated spending exceeds the original May 2023 preapprovals by more than 10% – WB Mason for \$100,000, The Ripples Group, LLC for \$91,360, and TIC Business Consulting for \$52,350. The total of the three contracts is \$243,710.

SECOND: Mr. Cinquegrana.

VOTE: Unanimous.

5. Contract Amendment for Bar Advocate Programs

Kevin Lucchetti presented the Contract Amendment for Bar Advocate Programs for \$95,000. When CPCS issues a raise to staff, an equivalent annual increase is made for Bar Advocate Program support staff. The contract amendment includes Bar Advocate Program staff salary adjustments and some smaller unbudgeted FY24 costs such as unexpected health insurance increases, office move expenses, and other BAP administrative and operational cost increases.

MOTION: Ms. Conrad. That the Committee approve the Contract Amendment for Bar Advocate Programs totaling \$95,000.

SECOND: Mr. Cinquegrana.

VOTE: Unanimous.

6. Personnel Policies

a. Community Engagement

Equity and Inclusion Director John Lozada and General Counsel Lisa Hewitt presented the Community Engagement Policy Amendment to the Personnel Policies Manual. The Equity, Inclusion & Diversity working group of approximately 28 employees have been meeting for approximately three years to channel energy and vision. Mr. Lozada thanked YAD Trial Panel Director and Stakeholder & Community Engagement Subcommittee Chair Erica Cushna for leading the Community Engagement Personnel Policy effort. Mr. Lozada also thanked the Human Resources and General Counsel teams for their input on the project. The proposed Community Engagement Personnel Policy seeks to enhance employee volunteering activities and aims to increase CPCS's presence in diverse communities, fostering authentic engagement and empowering public defenders. Ms. Hewitt reviewed how the policy will work, employee eligibility, restricted activities, and program guidelines. Like the existing Mentoring Program for State Employees, the policy allows leaves of absence with pay for community engagement during working hours. Leaves are limited to seven hours per month and are subject to supervisor approval. Employees must submit a request form to their supervisor at least 30 days in advance and submit a Certification of completion within 14 days to HR. Participation or fundraising for political campaigns or activities is not allowed. The proposed policy aligns with CPCS's mission, promoting visibility, respect, and support through stronger community connections and emphasizes client-centered engagement.

b. Juneteenth

Lisa Hewitt presented an Amendment to the Personnel Policies Manual to include Juneteenth as a paid legal holiday. Full-time employees shall receive pay equal to their workday, and not greater

than seven (7) hours. Part-time employees shall be granted a holiday pay allowance equal to the pro-rata proportion that corresponds to their part-time status.

MOTION: Ms. Alvarado. That the Committee approve the Community Engagement and Juneteenth holiday Amendments to the Personnel Policies Manual.

SECOND: Ms. Conrad.

VOTE: Unanimous.

7. Chief Counsel Report

Chief Counsel Anthony Benedetti gave kudos to the IT team for setting up our new East Bridgewater site with a generator so that when power went out with the storm on Monday business continued smoothly without interruption.

Mr. Benedetti stated that the first round of interviews is underway for the HR Director position. Finalists for the position are expected to emerge in early January.

CAFL Deputy Chief job description work continues. The job posting will remain active for roughly four weeks and the interview process is expected to begin in late February.

Mr. Benedetti provided an update regarding attorney hiring for the fall. CPCS continues to streamline the fall class hiring process to enhance our chances of securing the strongest possible candidates while fostering a diverse applicant pool. Success is evident in the Public Defender Division, where offers have been made to 13 attorneys to work in offices across the state, and notably, 9 of them contribute to diversity.

Mr. Benedetti shared the good news that two private attorneys have had their student loans forgiven. Although the process of Student Loan Forgiveness may not be simple, CPCS is optimistic that members of the private bar will find it achievable.

Mr. Benedetti provided an update regarding counsel shortage issues. The incentives have produced positive outcomes, and CPCS is focusing efforts on implementing long-term solutions.

There will be many changes in the courts in 2024. Trial Court Chief Justice Locke is retiring and there will also be a new Chief of the Boston Municipal Court. There is also a relatively new Chief in the District Court.

8. 2024 Committee meetings dates

Committee Chair Kociubes stated that the 2024 Committee meetings dates were sent to Committee members with materials on December 12th. Meetings from January to July are on Wednesdays, and meetings from September to December are on Tuesdays.

9. Executive Session – Personnel matters

Executive Session started at 5:12 p.m. and ended at 6:12 p.m.

Return to Open Session at 6:12 p.m.

MOTION: Mr. White. That the Committee approve personnel salary matters.

SECOND: Ms. Ball.

VOTE: Unanimous.

The next meeting will be in person or remote based on Committee members responses and availability. There being no further business to come before the Committee, the Committee adjourned at approximately 6:15 p.m.

Respectfully submitted

/s/ Mia Alvarado

Mia Alvarado, Secretary