

I. EXECUTIVE SUMMARY

In *Gideon v. Wainwright*, 372 U.S. 335 (1963), and in the cases that followed this seminal case, the United States Supreme Court held that the Sixth and Fourteenth Amendments to the United States Constitution guarantee the provision of counsel to indigent persons accused of a crime who face the possibility of a jail sentence. The Supreme Court has deemed that the state, not the federal government, was the appropriate entity to guarantee this constitutional protection. Since *Gideon*, the Commonwealth of Massachusetts has administered the provision of indigent counsel through various programs, culminating in 1983 with the creation of the Committee for Public Counsel Services (CPCS). The ultimate issue before the Commission is to make recommendations to ensure that the Commonwealth of Massachusetts is meeting its constitutional duty to provide counsel to indigent persons in the most efficient and effective manner.

The Commission was established pursuant to chapter 253 of the Acts of 2004 to study the provision of counsel to indigent persons in Massachusetts. It commenced its work in October 2004 and held eight public hearings over the ensuing six months. The Commission heard testimony from more than forty witnesses during more than twenty-five hours of hearings, and it received and reviewed a substantial amount of written materials from all quarters of the judicial system.

From the oral testimony and written materials received by the Commission, the picture of CPCS that emerges is one of a program that is operationally sound. Nonetheless, the Commission has identified four primary areas of concern that we believe are limiting CPCS from more effectively and efficiently achieving its core mission: to provide fully-qualified legal representation to indigent persons throughout Massachusetts. The areas of concern that must be addressed if CPCS is to carry out its mission are: (i) the imbalance in the ratio between CPCS staff attorneys and private bar advocates; (ii) incredible burden imposed on the judicial system by the number of misdemeanor offenses that currently require the appointment of counsel; (iii) the low hourly compensation rates paid to private attorneys, and; (iv) the need to ensure that funds devoted to providing indigent representation are spent only on those persons who are truly indigent. In addressing these factors the Commission has deliberately avoided ranking any one as more fundamental or important than others because we believe that each has key importance in effectively meeting the constitutional rights of indigents.

The Commission's report sets forth a series of recommended actions, both near-term and long-term, that will address the aforementioned areas of concern:

- Implement two pilot projects in the District Court to have newly hired CPCS staff attorneys represent indigent persons; and authorize CPCS to hire an additional twenty staff attorneys to handle Children and Family Law (CAFL) cases and Juvenile Court cases;
- Reduce the caseload of both CPCS and the District Court by amending the statutes governing certain non-serious misdemeanors so that these offenses are penalized

with harsh civil penalties rather than illusory criminal penalties. Also, establish a permanent body that would be charged with reviewing on a periodic basis all criminal statutes to categorize offenses as either "Class A misdemeanors", which would be subject to potential incarceration, or "Class B misdemeanors", which would always carry no possibility of incarceration.

- Increase the hourly rate of compensation paid to private attorneys over a 3-year period to provide a reasonable financial incentive to retain those qualified and experienced private attorneys currently handling CPCS cases and to attract a greater number of attorneys to this practice area. The Commission would also recommend that the current cap of 1850 hours that a private attorney is able to bill during the calendar year be reduced to 1500 hours per year. Finally, the Commission recommends that - starting in FY09 - the Commonwealth commit to a formula that would ensure that the hourly rates paid to private counsel are maintained at no lower than the 75th percentile of hourly rates paid to private attorneys representing indigent defendants in comparable states.
- Amend the indigency verification statute and procedures to ensure that only truly indigent persons are appointed counsel.

The Commission believes that by implementing these recommended actions the Commonwealth of Massachusetts will demonstrate a renewed commitment to Gideon's promise.