

MINUTES APPROVED BY THE MANDATED REPORTER COMMISSION
Office of the Child Advocate
Mandated Reporter Commission Meeting Minutes
Tuesday October 27, 2020
2:00pm-4:00pm

Meeting held virtually via WebEx pursuant to the Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, s. 20 signed by Governor Baker on March 12, 2020.

Mandated Reporter Commission Members Present:

Maria Mossaides, - Child Advocate - Chair
Lisa Hewitt - Chief Counsel, CPCS
Officer Elizabeth Fleming- Waltham School Resource Officer
Ann Reale-Undersecretary of Education, EOE
Andrew Rome - General Counsel, DCF
Anne Connors - Associate Commissioner for Field Investigations, EEC
Katherine Ginnis- Sr. Director of Child, Youth & Family Policy Program, EOHHS
Angela Brooks- Dir. Child and Youth Protection Unit, AGO
DA Marian Ryan- Middlesex District Attorney, MDAA
Nina Marchese- Director of Approved Special Education Schools, DESE
Spencer Lord – Special Counsel, EOPSS

OCA Staff:

Cristine Goldman
Christine Palladino-Downs
Alix Rivière

Members of the Public who presented at this meeting:

Josh Dohan, Director of the Youth Advocacy Division- CPCS
Mark Larsen, Director of CPCS's Mental Health Division
Claudia Dunne, Director of Social Work Services/Youth Advocacy Division CPCS
Mo Barbosa, Director of Community Engagement at Health Resources in Action
Nancy Baratta, Managing Director of the CPCS Children and Family Law Division
Kristin Dame, CPCS Director of Private Social Work Services
Carrie Burke, Director of Social Services Advocacy CPCS
Allison Scobie-Carroll, Senior Dir. of Social Work and Family Services at Boston Children's Hospital
Sarah Coughlin, Board President for NASW

Members of the public attended the meeting but did not identify themselves via the chat function.

MRC= Mandated Reporter Commission
OCA= Office of the Child Advocate
DCF= Department of Children and Families
CPCS= Committee for Public Counsel Services
NASW= National Association of Social Workers

Meeting Commenced: 2:03pm

Welcome and Introductions:

Maria Mossaides, Chair of the Mandated Reporter Commission, called the meeting to order and reviewed the agenda. She explained that this meeting will be dedicated to the issue of whether persons who work on legal defense teams should be mandated reporters of information they learn in the course of their work on those legal defense teams. The Commission will be hearing from the Committee for Public Counsel Services as well as the National Association of Social Workers, MA Chapter. Cristine Goldman, OCA's Director of Policy and Legal Counsel, explained that members of the public can participate in the meeting only through using the chat function unless the Chair of the Commission approves verbal participation. Members of the Commission participate verbally and can participate via the chat function.

Review of the Minutes

Formal discussion was opened on the October 15, 2020 meeting minutes, no Commission member had any topics for discussion. A roll-call vote was held and the following members approved the minutes: Maria Mossaides, Ann Reale, Ann Conners, Lisa Hewitt, Elizabeth Fleming, Angela Brooks, Andrew Rome, Katherine Ginnis, Nina Marchese, Spencer Lord. The October 15, 2020 meeting minutes were approved.

Presentation of Arguments in Favor of a Possible Exclusion of Persons Working on Legal Defense Teams from Mandated Reporting Responsibilities for Information Learned in the Course of Legal Defense Work by the Committee for Public Counsel Services

Ms. Hewitt, Chief Counsel at CPCS, thanked the Commission for giving CPCS time to discuss their position on this topic. She asked Josh Dohan, Director of the Youth Advocacy Division, to begin the presentation. Mr. Dohan explained that attorneys need to learn as much as possible about their clients to advocate for them effectively and that many people, particularly juveniles, have difficulty relating to their attorneys. CPCS uses a "holistic defense" model informed by current research which is premised on a legal defense team that approaches legal issues from a life-outcomes perspective. It is critical in the CPCS juvenile work that the attorney be able to create an environment that a juvenile feels safe and comfortable in such that they can adequately access their right to counsel. As such, CPCS lawyers need social workers on their teams, as they are best equipped to understand clients' backgrounds and connect them with appropriate services.

Mr. Mark Larsen, Director of CPCS's Mental Health Division, discussed the MA rules of professional conduct and specifically spoke on the client-attorney privilege that is extended to persons who work at a law firm (such as paralegals). Mr. Larsen indicated that persons working on the legal defense team are an extension of this same idea and CPCS believes that such persons are covered under the privilege umbrella by virtue of their work furthering a client's legal defense.

Next, Claudia Dunne, Director of Social Work Services/Youth Advocacy Division CPCS, described her professional experience as a social worker collaborating with CPCS attorneys. She explained that social workers in legal teams act as a type of "translator" for both counsel and clients, so that counsel can gather the necessary information regarding the underlying conditions or motivations impacting the youth's behavior and communicate the complexity and legal jargon to the youth to ensure clients understand the legal implications of their defense. At the end of a case, social workers in legal teams continue to work with clients. She argued that social workers in legal teams should be covered by client-attorney confidentiality, as the filing of a 51A will have a negative

impact their client's trust of the entire legal team. She indicated that the likely result of a social worker filing a 51A based on information learned in the course of a legal defense would be that the social worker immediately resign from that particular legal defense team. Ms. Dunne also indicated that there are often other state entities (such as DCF) which are in place with the client population being discussed, who will likely also have information regarding the circumstances that may rise to the level of a 51A.

Mr. Mo Barbosa, Director of Community Engagement at Health Resources in Action, highlighted the importance of trust between clients and their entire legal team. Having worked with thousands of youth, Mr. Barbosa explained that it is difficult to gain their trust, particularly youth who have been involved with the child welfare system as they have had life experiences that have led them to be skeptical of the state/judicial system. If social workers on legal teams were required to file 51As based on information learned in the course of the legal defense, this would substantiate the skepticism and fear these youth have and shape their understanding of the judicial system for the rest of their lives.

Ms. Nancy Baratta, Managing Director of the CPCS Children and Family Law Division, discussed the different the roles of a DCF social worker and a CPCS social worker. She reiterated previous arguments that having a social worker on a legal team is invaluable, and argued that client must be free to express themselves and seek assistance of the legal team without fear of a 51A report. She highlighted the fact that when families receive fast and appropriate services it can resolve cases quickly and result in children returning to their homes faster.

Ms. Kristin Dame, CPCS Director of Private Social Work Services, described the impact that social worker advocates can have on cases when collaborating with attorneys. She discussed the role of social workers on legal teams and explained that when lawyers are presented with the opportunity to work in collaboration with social workers, they are initially enthusiastic, but can become reluctant if they believe that a social worker will be required to report child abuse and neglect. She added that private lawyers represent 80% of the representation of indigent clients, but that only 1% of cases engage social workers on the legal defense team. She argued that much more could be done for clients if social workers could work in legal teams without the fear of losing their license if they do not report 51As based on information learned in the course of the legal representation.

Ms. Carrie Burke, Director of Social Services Advocacy CPCS, argued that the requirement that a social worker working on a legal defense team file a 51A for information learned in the course of a legal defense disproportionately impacts children and families of color, who, historically, have had negative interactions with social workers and are often hesitant to engage. She added that the "holistic representation" at CPCS tries to counteract some of the discrimination in the legal system and that social workers play an important role in impacting those disparities.

Ms. Hewitt summarized the arguments presented by her colleagues and reiterated her position that confidentiality and privilege, inherent in the right to counsel applies to everyone on the defense team.

The Commission members were given the opportunity to ask CPCS questions regarding their presentation in favor of excluding members of legal defense teams from the proposed statutory definition of mandated reporter. The Commission discussed the difficulty in balancing the needs of children who are being abused or neglected with the importance of a holistic legal defense. Ms. Dunne noted that when concerns about child abuse or neglect arise, the legal team can act to

remedy the situation or to put services in place quickly to address the issue. There were questions from the Commission regarding how the scope of this proposal, that everyone on a legal defense team would be covered by the attorney-client privilege, would play out in various fact scenarios.

Presentation of Arguments Opposed to a Proposal to Exclude Persons Working on Legal Defense Teams from Mandated Reporting Responsibilities for Information Learned in the Course of Legal Defense Work by the National Association of Social Workers, MA Chapter

Allison Scobie-Carroll, Senior Director of Social Work and Family Services at Boston Children's Hospital, presented on the integrity of the social worker profession and indicated that the mandated reporter role is an ethical standard held by social workers. She explained that social work service provision to a child must come second to the health and safety of that child. Social workers have mandated responsibilities in every other setting and operate effectively through an informed consent model which means that social workers disclose the limits of their confidentiality at the beginning of the relationship with the client. She expressed that the right to counsel does not, and should not, supersede the necessity to protect a child. The proposal by CPCS unfairly elevates the attorney's ethics above those of the social worker. She added that NASW was testified against this same proposal by CPCS in a bill in front of the MA legislature and that the legislature did not pass that bill.

Next, Sarah Coughlin, Board President for NASW, licensed clinical social worker, alcohol and drug counselor, and certified recovery coach, explained that she has worked with defense attorneys for many years and has never forgone her mandated reporter responsibilities to do so. She greatly admires the work of CPCS and has herself been a vendor for CPCS in the past. She believes that social workers hired at CPCS are uncomfortable with the indication from CPCS that they are not mandated reporters in connection with their work on legal defense teams and that the social workers fear that they may lose their license if they fail to report. Ms. Coughlin indicated that she believed that holistic defense at CPCS is possible without an exception from mandated reporter responsibilities but that it hinges on the training of CPCS social workers.

Ms. Coughlin indicated that she has not been in a position where her mandated reporter responsibilities conflicted with her ability to work effectively on a legal defense team. She did pose a scenario where a social worker on a legal defense team learns of information about siblings of a juvenile client who are currently being abused and neglected and that in such a scenario it is unethical and a violation of the social worker's license to not file a 51A report. Both Ms. Scobie-Carroll and Ms. Coughlin indicated that they believe social workers can build effective relationships with clients and stay true to their code of ethics and values.

The Commission members were given the opportunity to ask NASW questions regarding their presentation. Commission members queried whether social workers are being held to a different standard of confidentiality than any other expert retained by an attorney. One member noted the possibility of adding in the definition of mandated reporter an exclusion for any licensed individual specifically retained to assist in a client's legal defense.

Next, Commission members discussed the attorney professional rules of conduct further and instances when a lawyer is legally permitted to reveal confidential information relating to the representation of a client. The Commission also noted that DCF is not the only avenue for child protection action to be taken. Members of the public discussed other legal means to protect the child from abuse and neglect.

NASW and CPCS both had the opportunity to summarize their arguments for the Commission.

Closing Comments:

Ms. Goldman thanked members of the public and of the Commission for their testimony and input and noted the Commission's appreciation for the respectful and fruitful conversation. She indicated that the Commission would vote on this proposal at a later date. She encouraged Commission members and members of the public who have participated in this meeting to reach out to the OCA if there is something they would like to discuss. The next meeting will be held virtually on November 10, 2020 from 2:00pm to 4:00pm.

Adjournment: 4.00pm