



**Committee for Public Counsel Services**

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CHIEF COUNSEL

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Honorable Heidi E. Brieger  
Chief Justice of the Trial Court  
Executive Office of the Trial Court  
1 Pemberton Square  
Boston, MA 02114

Dear Chief Justice Brieger:

As you may have heard, some bar advocates plan to stop taking duty days, starting next week. If this occurs—and by all accounts it is probable that it will—it will impact CPCS’s ability to provide counsel at arraignment, and possibly to provide counsel at all. I therefore write to inform the court of CPCS’s plans should this happen and to open up the lines of communication “among the courts, CPCS, and district attorneys . . . [to] mitigat[e] the effects of a shortage of available defense counsel whenever it arises.” *Carrasquillo v. Hampden County District Courts*, 484 Mass. 367, 389 (2020). As the Supreme Judicial Court stated in *Carrasquillo*, we must all work together “to manage the impact of a shortage of defense counsel before it becomes constitutionally intolerable.” *Id.*

The Committee for Public Counsel Services (CPCS) has the statutory responsibility to “plan, oversee, and coordinate the delivery of criminal and certain noncriminal legal services by salaried public counsel, bar advocate and other assigned counsel programs and private attorneys serving on a per case basis.” G. L. c. 211D, § 1. For criminal cases, CPCS provides representation to indigent individuals through its Public Defender Division (PDD) and Private Counsel Division (PCD). The PDD provides staff attorneys to indigent persons in criminal proceedings in the district, superior, and appellate courts, and the Boston Municipal Court. The PCD provides bar advocates to indigent defendants in criminal proceedings who are not represented by the PDD. Additionally, CPCS provides representation to youth through its Youth Advocacy Division (YAD), which provides staff attorneys and bar advocates, through the YAD Trial Panel, in delinquency and youthful offender cases in juvenile courts statewide.

Pursuant to “the clear dictates of G. L. c. 211D and S.J.C. Rule 3:10,” CPCS is vested “with sole and independent authority to assign counsel for indigent defendants” among its divisions. *Deputy Chief Counsel for the Pub. Defender Div. of the Comm. for Pub. Counsel*

*Servs. v. Acting First Justice of the Lowell Div. of the Dist. Court Dep't*, 477 Mass. 178, 187 (2017). Under G. L. c. 211D, § 5, judges must assign cases to CPCS; they cannot assign cases to an individual attorney or group of attorneys. *Carrasquillo*, 484 Mass. at 384, citing *Deputy Chief Counsel*, 477 Mass. at 179. Accordingly, if there is a day where there is no duty day attorney in the arraignment session, the case must be sent to CPCS-PCD or the YAD Trial Panel for assignment, not to the local PDD or YAD staff office. See *Carrasquillo*, 484 Mass. at 384-385. By statute, CPCS is required to “maintain a system in which not less than [twenty percent] of indigent clients,” across all practice areas, “shall be represented by public defenders.” St. 2024, c. 140, § 2, line item 0321-1500. CPCS offices are not staffed to handle more than this. Especially in the district courts, CPCS relies on bar advocates to provide representation in the vast majority of the cases in which it assigns counsel. All of this is to say that the PDD and YAD staff offices are not sufficiently staffed to handle all indigent criminal and juvenile cases.

In the past, judges have asked the PDD and YAD offices to staff arraignment sessions for bail only. While the PDD and YAD are more than willing to step up when this happens occasionally, this is untenable during times of acute counsel shortages. PDD and YAD staff cannot provide the requisite effective assistance of counsel and meet their obligations to their current clients if they are always in court. It is also our understanding that, in some courts, the clerks and court officers ask attorneys who are in court if they are able to take cases. Our staff attorneys do not know the capacity of the office to take cases and, therefore, we respectfully request that judges send the courts to PCD or YAD Trial Panel for assignment, as discussed below.

Instead, CPCS will implement the following system: first, as long as PDD and YAD staff have the capacity to take additional cases, the PDD and YAD will continue to appear for their scheduled duty days and accept the cases assigned to CPCS on those days, except for those cases in which there is a conflict of interest. The PDD and YAD will also continue to accept new cases for its current clients, even if those cases are arraigned on a day that the PDD or YAD is not on duty.

All other cases arraigned without counsel will be assigned to CPCS and sent to the local bar advocate program (BAP), as well as the PCD or YAD Trial Panel, as appropriate. The PCD or YAD Trial Panel, in conjunction with the local BAP, will attempt to find counsel, prioritizing those cases where the individual is held. If counsel is not located within seven days for an incarcerated individual, CPCS will assign that case to the PDD or YAD as long as there is no conflict and the PDD or YAD office has the capacity to accept that case. CPCS will not be assigning all cases to the PDD or YAD in order to ensure that we maintain the ability to comply with the SJC’s mandate in *Carrasquillo* that we prioritize cases “where counsel are most urgently needed.” *Id.* at 389.

The courts play an integral role in ensuring that no indigent person falls through the cracks. In those courts where there are days in which there is no attorney in the arraignment session, we need the court to send us a list of unrepresented indigent defendants and youth so that we can look for counsel. It is helpful if the court sends us not only the name and docket number of

unrepresented indigent individuals, but also the written docket, the police report, the amount of bail (if any), and the next court date.

In *Carrasquillo*, the SJC noted that judges are authorized to release incarcerated defendants who are held in pretrial detention without counsel, and dismiss without prejudice cases where a defendant has been unrepresented, “if constitutionally required in the particular circumstances of an individual case.” *Id.* at 391. In *Lavallee v. Justices in Hampden Superior Court*, 442 Mass. 228 (2004), the SJC held that defendants held in pretrial detention “may not be held for more than seven days without counsel,” and that no defendant “may be required to wait more than forty-five days for counsel to file an appearance.” *Id.* at 246. Based on our experience in Hampden County, we have found that it is helpful if unrepresented incarcerated individuals are brought back to court within seven days and unrepresented released individuals are given a court date within forty-five days to make sure that their constitutional rights are respected and that everyone is accounted for.

Mitigating the damage of a counsel crisis will necessitate significant coordination between the courts, district attorneys, and CPCS. It will also require patience and understanding on all sides as we grapple with the increased administrative efforts needed to deal with the situation. We hope to meet with you, as well as judges and clerks in the impacted courts, to discuss how we can work together to efficiently assign counsel and avoid a constitutional crisis.

Sincerely,



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Anthony J. Benedetti

cc: Hon. Stacey J. Fortes  
Hon. Dana M. Gershengorn  
Hon. Tracey-Lee Lyons  
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