



The Commonwealth of Massachusetts

Committee for Public Counsel Services

Mental Health Litigation Division

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MEMO

To: New/Potential CPCS Vendors for Mental Health Cases

From: Paulette Marie, Staff Attorney, CPCS Mental Health Litigation Division and Karen Talley, Assistant Director CPCS Mental Health Litigation

Re: Becoming a Vendor for CPCS Mental Health Cases

Date: February 2017

Thank you for your interest in becoming an expert vendor for the Committee for Public Counsel Services. This memo will describe the types of mental health cases CPCS handles and the types of evaluations you might be asked to conduct by our attorneys. It will also describe the process for becoming a vendor and for adding your name to the list of vendors available to attorneys through our website. Please note that this list does not include evaluations in connection with a criminal case, such as competency to stand trial or criminal responsibility. However, once you become an approved CPCS vendor and if you are qualified to perform these types of evaluations, you will be eligible to do so.

I. Types of Cases Handled by CPCS Mental Health Attorneys

1. Involuntary Civil Commitments in District or Superior Court – You may be asked to evaluate whether a client meets the standard for involuntary civil commitment under G.L. c. 123, sections 7/8, 16 or 18. This includes determining whether the client has a mental illness as defined by the statute and if so, whether by reason of mental illness, he or she presents a likelihood of serious harm if not hospitalized involuntarily. Under *Commonwealth v. Nassar*, 380 Mass. 980 (1980) this determination must also include consideration of less restrictive alternatives to hospitalization. Most cases are heard in the District Court, however cases arising in connection with a criminal case may be heard in Superior Court.

2. Applications for Discharge from Involuntary Civil Commitment in Superior Court – Pursuant to G.L. c. 123, section 9 (b), a person who has been civilly committed may apply to the Superior Court for discharge prior to the expiration of the commitment. Evaluation is needed to determine whether circumstances have changed such that the individual no longer meets the criteria for continued commitment. A 9(b) proceeding may also be used to assert that an individual has

regained the capacity to provide informed consent such than an existing 8B *Rogers* order should be terminated. (See #3 below.)

3. *Petitions Seeking Authority to Administer Antipsychotic Medication in District Court* – When there is an order for involuntary civil commitment, the hospital may also seek an order authorizing antipsychotic medication under G.L. c. 123, section 8B in the District Court. (Also referred to as a “District Court *Rogers* Order.”) This petition may accompany the civil commitment petition or may be filed subsequently. An evaluation for these purposes would seek to determine whether the client has capacity to make his or her own decisions with regard to antipsychotic medication. The independent expert may also provide consultation and/or testimony as to the proposed treatment plan and any alternatives if the client is determined to lack this capacity.

4. *Guardianship Proceedings in Probate Court* - Under G.L. c. 190, a person against whom a petition for guardianship is filed may request counsel or be appointed counsel *sua sponte* by the Probate Court. Counsel may seek expert assistance in opposing the guardianship. The expert may be asked to determine whether the individual has decision making capacity in various areas. A client may be determined to currently have or lack capacity in some or all decisionmaking domains. If determined to lack capacity in some areas, such as providing informed consent, the expert would be expected to determine whether the client retains capacity in other areas, such that any guardianship decree may be limited and tailored to the person’s decisionmaking abilities.

5. *Petitions for Extraordinary Treatment in Probate Court* - Where a guardian has been previously appointed, the guardian may not consent to medical procedures that are intrusive or risky enough to fall within the definition of “extraordinary treatment.” Only a court may authorize extraordinary treatment for an incapacitated person, pursuant to a “substituted judgment” determination. A non-exhaustive list of treatments requiring substituted judgment includes: antipsychotic medication; electroconvulsive therapy (ECT); psychosurgery; certain aversive methods of behavior modification; do not resuscitate or intubate (DNR/DNI) and sterilization. An evaluation in connection with a petition for substituted judgment may include an updated assessment of capacity to provide informed consent, as well as consultation and/or testimony on the proposed treatment plan and any available alternatives.

6. *Petitions Seeking Admission of an Incapacitated Person to a Nursing Home* - A person who has previously had a guardian appointed may be admitted on a short-term basis to a skilled nursing facility without prior court approval. (A stay of less than 60 days is projected.) However, the individual is to be notified and have counsel appointed when such an admission occurs. The individual and/or counsel may then object to the nursing home admission. Similarly, if longer term admission is sought, a Probate Court must determine that such admission is in the “best interest” of the incapacitated individual. While the term “best interest” has yet to be judicially defined in this context, an evaluation would include a review of less restrictive alternatives to nursing home placement, including what supports may allow the person to reside in a more integrated, community-based setting.

7. *Petition to Terminate or Modify Guardianship in Probate Court* - If an individual or her attorney believes she may have regained some or all of her decisionmaking capacity such that guardianship or full guardianship is no longer necessary, the attorney may seek a current determination of capacity in support of a petition to terminate or limit the existing guardianship.

II. Becoming a CPCS vendor and Getting Paid for Your Work

1. No expert can be paid for a mental health evaluation without the attorney first having obtained a Motion for Funds that has been allowed by the Court in which the proceeding is being heard. The evaluation or assessment must be related to the pending proceeding and may not involve the provision of direct services to the client.

2. An allowed Motion for Funds from the retaining attorney allows the expert to begin work on a case. However, the expert will not be able to bill CPCS and get paid for his or her time until the expert has become a CPCS vendor. Unfortunately even if the expert is a vendor for another state agency, such as DMH, DMR, MBHP, Mass Rehab, the expert must apply to become a vendor for CPCS.

3. The information and forms to apply are found on the CPCS website at the links below:

<http://www.publiccounsel.net/cfo/billing/court-cost-billing/>

<https://www.publiccounsel.net/gc/wp-content/uploads/sites/2/2017/03/Expert-Vendor-Application-Rev.March-2017.pdf>

Here is the link to the current vendor manual with information about the qualifications needed to be a vendor and the rates paid:

<https://www.publiccounsel.net/gc/wp-content/uploads/sites/2/2014/06/Court-Cost-Vendor-Manual-June-8-2016.pdf>

4. **Please submit your completed application, including the following documents to:**

ccvendor-applications@publiccounsel.net

- Vendor Application
- Resume or C.V.
- Copy of your license(s) (if applicable or if not currently licensed, please explain)
- Copy of allowed Motion for Funds (from the attorney who retained you, if retained)

Once your application is approved the vendor payment staff will contact you and will send you the following forms which can also be found on the CPCS website at this link:

<http://www.publiccounsel.net/cfo/billing/court-cost-billing/#vendor>

- Agreement to use the “V-Bill” system of electronic billing and abide by terms of use

- W-9 Request for Taxpayer Identification Number and Certification
The original W-9 form (even if you have previously submitted a W-9 to another state agency) must be submitted by mail with a cover letter on office letterhead to:

**Committee for Public Counsel Services
Attn: Vendor Maintenance Clerk
44 Bromfield Street, 4th Fl
Boston, MA 02108
(P)617-209-5595
(F)617-367-0581**

5. Vendors must also agree to bill CPCS in accordance with the established rates for their discipline. For example, a psychiatrist may bill between \$150.00 and \$225.65 per hour, and a psychologist may bill between \$100.00 and \$180.50 per hour. Travel time is billed separately, at the hourly rate at which the retaining attorney is compensated (currently \$50.00/hour for mental health attorneys.) Please refer to the information in the current court cost vendor manual here:

<https://www.publiccounsel.net/gc/wp-content/uploads/sites/2/2014/06/Court-Cost-Vendor-Manual-June-8-2016.pdf>

III. Listing on the CPCS Mental Health Litigation Division Website

1. Vendors wishing to make their services widely available to court-appointed attorneys may choose to have their contact information listed on the CPCS Mental Health Litigation website. Approved vendors wishing to be listed on the CPCS Mental Health Litigation Website should email this request to Paulette Marie at pmarie@publiccounsel.net or Karen Talley at ktalley@publiccounsel.net. Please include a copy of your C.V., any subspecialties or board certifications and a list of the counties (Suffolk, Middlesex, Norfolk, Bristol, Plymouth, Barnstable, Essex, Worcester, Hampden, Hampshire, Franklin, Berkshire) or regions of the state (Metro Boston, Northeast, Southeast, Central, Western) to which you are willing to travel.

For an example of the current listings, please see:

<http://www.publiccounsel.net/mh/independent-medical-examiners/>

2. Alternatively, vendors may choose not to be listed and to work only on occasional cases at the request of an attorney. A vendor is always free to accept or decline cases even if listed on the website.

If you have any questions about this process, please feel free to contact us at:

pmarie@publiccounsel.net or direct dial 617-910-5844
ktalley@publiccounsel.net or direct dial: 617-910-5784

PLEASE email your application package to: cvendor-applications@publiccounsel.net. If you email Karen Talley or Paulette Marie first, this will delay your application process.