IMPOUNDED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. SUPERIOR COURT DEPT.
Docket No.

IN RE INVESTIGATION BY THE OFFICE OF THE INSPECTOR GENERAL

COMMITTEE FOR PUBLIC COUNSEL SERVICES OPPOSITION TO THE INSPECTOR GENERAL'S MOTION TO COMPEL PRODUCTION OF MATERIAL PURSUANT TO M. G. L. c. 12A, § 9

NOW COMES the Committee for Public Counsel Services ("CPCS") who submits this opposition to the motion to compel filed by the Office of the Inspector General ("OIG"). The OIG seeks to compel CPCS to disclose docket numbers for all criminal and civil cases where CPCS has appointed or assigned counsel since January 1, 2023. As set forth in greater detail below, CPCS opposes this request because it would require CPCS to violate its ethical obligations to thousands of clients, as well as its obligations as a criminal justice agency under G. L. c. 6, § 167.

I. FACTUAL BACKGROUND

A. CPCS

As provided in its authorizing statute, CPCS is responsible for "plan(ning), oversee(ing), and coordinat(ing) 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" on behalf of indigent criminal defendants and other litigants who are entitled to counsel. G. L. c. 211D, § 1. *See* G. L. c. 211D, § 5. The statute also mandates CPCS to establish standards for these legal services, including caseload limitations, and to monitor compliance with these standards. *See* G. L. c. 211D, §§ 9, 10.

CPCS assigns counsel not just in adult criminal proceedings but also other highly sensitive civil matters, including mental health commitment proceedings, involuntary medication proceedings, juvenile delinquency proceedings, *Mary Moe* proceedings (for juveniles seeking abortions without parental consent), and legal proceedings where the Department of Children and Families has interceded.

B. STATUTORY AUTHORITY OF THE OIG

Beginning in late May 2025, some private attorneys who accepted assignments to represent indigent clients in the district courts, (primarily in Suffolk and Middlesex counties), stopped accepting new assignments to protest the statutory rates of compensation for their work. This work stoppage created a constitutional crisis resulting in thousands of people facing criminal charges without counsel.

In response to this crisis, in August of 2025, the Legislature amended G. L. c. 211D to increase the relevant statutory compensation rates by $20 per hour for the assignment of counsel. Additionally, the Legislature included the following language in a supplemental budget package that directed the OIG to take certain actions relevant to the present controversy:

> SECTION 82. Item 0910-0200 of said section 2 of said chapter 9 is hereby amended by inserting the following words:- ;provided, that not later than June 30, 2026, the inspector general shall submit a report to the senate and house clerks, the joint committee on the judiciary and the senate and house committees on ways and means that shall include, but not be limited to: (i) an examination of existing practices, rules and requirements relative to the determination of indigency and the assignment of counsel by the trial court, including an analysis and examination of reimbursement practices and requirements for defendants receiving public representation but who are found not to be indigent; (ii) a review of billing practices and procedures by bar advocates and the oversight thereof; (iii) an examination of the caseload of counsel involved in representation of indigent defendants and the efficacy thereof; (iv) an analysis of the fiscal impact of increasing the proportion of indigent clients represented by public defenders on the total cost of indigent defense; and (v) best practices from other jurisdictions to provide adequate and cost-effective representation of indigent defendants. *See* Section 82 of Chapter 14 of the Acts of 2025 (hereinafter referred to as the "Act").

In all investigations, G. L. c. 12A, § 9 authorizes the OIG to request certain information from state agencies and directs those agencies to comply with such requests. Section 9 states, in relevant part:

> He may request such information, cooperation and assistance from any state, county or local governmental agency as may be necessary for carrying out his duties and responsibilities. Upon receipt of such request each person in charge of, or the governing body of any public body described in section seven, shall furnish to the inspector general or his authorized agent or representative such information, cooperation and assistance, including information relative to the purchase of services or anticipated purchase of services from any contractor by any public body, except records under the provisions of section eighteen of chapter sixty-six as defined in section three of said chapter sixty-six.

C. CPCS' RESPONSES TO THE OIG'S REQUESTS

CPCS has been working collaboratively with the OIG to provide the information it needs to undertake its legislatively required assessment of the provision of indigent defense services in Massachusetts. The OIG requested six categories of documents, (*see* Memo in Support of Motion to Compel, Ex. B. p. 10), including the following information in one such category:

> A spreadsheet listing all cases where counsel was requested and/or assigned, which includes the following information:
>
> a. Docket number assigned to each case by the Massachusetts Court System.
> b. If an attorney was assigned to the case:
> a. The name of the attorney assigned.
> b. Whether said attorney is a bar advocate or CPCS staff attorney.
> c. The date of (sic) the case was assigned to the attorney.
> c. The arraignment date for the case.
> d. The name and location of the court where the case is being heard.
> e. List of the charges associated with the docket number.

CPCS has complied with all of the OIG's requests for information in the other five categories where documents were sought, as well as subparagraphs (b) through (e) above. The only information CPCS has not provided is the docket numbers. Instead, in lieu of providing docket numbers, CPCS provided Notice of Assignment of Counsel ("NAC") numbers for each

case assigned to private bar advocates, and internal case numbers for each case assigned to CPCS staff attorneys. These numbers act as unique case identifiers, but in contrast to docket numbers, do not reveal a client's identity or other confidential client information.

II. ARGUMENT

A. PRODUCING DOCKET NUMBERS TO THE INSPECTOR GENERAL WOULD COMPEL CPCS TO VIOLATE ITS ETHICAL OBLIGATION OF OBTAINING INFORMED CONSENT FROM CLIENTS PRIOR TO THE DISCLOSURE OF A CLIENT'S CONFIDENTIAL INFORMATION.

The OIG seeks the disclosure of confidential client information in the form of docket numbers. CPCS does not have the authority to disclose the information to the OIG (or anyone else) without the informed consent of the individuals whose information would be disclosed. Client confidentiality is both a constitutional and an ethical obligation.

All CPCS clients are entitled to the effective assistance of counsel. As the authorities below make abundantly clear, effective assistance of counsel, as a constitutional right, is inextricably tied to counsel's adherence to the ethical rules of practice and, specifically, a lawyer's duty of confidentiality. "The Sixth Amendment to the United States Constitution and art. 12 of the Declaration of Rights entitle a defendant to the effective assistance of counsel." Commonwealth v. Perkins, 450 Mass. 834, 850 (2008), *quoting* Commonwealth v. Martinez, 425 Mass. 382, 387 (1997). "Integral to the duty of loyalty that a lawyer owes a client is the duty of confidentiality." Commonwealth v. Tate, 490 Mass. 501, 508 (2022).[1] "It is axiomatic that

[1] Other states have similarly concluded that "a defense attorney's disclosure of confidential information ... necessarily implicates the attorney's duty of loyalty as well as the defendant's constitutional right to the effective assistance of counsel." *See* State v. Jones, 278 Mont. 121, 125, 923 P.2d 560 (1996). *See also* State v. Bain, 292 Neb. 398, 406, 872 N.W.2d 777 (2016) ("government interference in the confidential relationship between a defendant and his or her attorney can implicate the ... right to counsel [under the Sixth Amendment to the United States Constitution]").

among the highest duties an attorney owes a client is the duty to maintain the confidentiality of client information." Perkins, 450 Mass. at 851. *See also* Matter of Discipline of Two Attorneys, 421 Mass. 619, 623-624 (1996) (disclosure of a client's secrets is never appropriate except in rare instances explicitly permitted by the rules).

Towards that end, the duty of confidentiality is embodied in Mass. R. Prof. C. Rule 1.6(a) which prohibits a lawyer from revealing "confidential information relating to the representation of a client," except in certain narrowly limited circumstances. *See* Tate, 490 Mass. at 510. Mass. R. Prof. C. Rule 1.6(a) states:

> A lawyer shall not reveal confidential information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b). "Confidential information" consists of information gained during or relating to the representation of a client, whatever its source, that is (i) protected by the attorney-client privilege, (ii) likely to be embarrassing or detrimental to the client if disclosed, or (iii) information that the lawyer has agreed to keep confidential. "Confidential information" does not ordinarily include (A) a lawyer's legal knowledge or legal research or (B) information that is generally known in the local community or in the trade, field, or profession to which the information relates. (Emphasis added).

The comments to Mass. R. Prof. C. Rule 1.6(a) define "confidential information" broadly and explain that such information goes far beyond statements made by the client to the attorney and includes "information gained during or relating to the representation of a client, whatever its source, that is likely to be embarrassing or detrimental to the client if disclosed." Id.

Docket numbers qualify as "confidential information" under Mass. R. Prof. C. Rule 1.6(a). A docket number not only leads to the identity of a person, but it also indicates that a person has sought the services of a lawyer and that the person is involved in the adjudication of that person's fundamental constitutional rights, a fact which might reasonably be embarrassing or detrimental to a person's interests. The OIG cites Matter of Ablitt for the proposition that a

client's identity is not confidential information under Rule 1.6, but the SJC found that disclosure of the subject-matter of a firm's representation was a violation of Rule 1.6, even if the disclosure of the client's name was not. *See* Matter of Ablitt, 486 Mass. 1011, 1015 (2021). The disclosure of a docket number automatically discloses the subject matter of the representation; it is part and parcel of the number itself.

The OIG asserts that "Massachusetts courts have not definitively stated whether client names and docket numbers are 'confidential information' in this context." *See* OIG Memorandum of Law at p. 6, fn. 1. Even if that statement is accurate, it misses the point and fails to acknowledge the significance of a docket number. Given the types of cases that fall within CPCS's purview, the disclosure of docket numbers would be tantamount to the revelation of a person's mental health, medical, delinquency, and/or indigent financial status.

The OIG further asserts that its request does not seek "any additional substantive, private information about the clients or their representation ..." and that "the existence of a criminal case and fact of representation by CPCS is not inherently embarrassing…." *See* OIG Memorandum of Law at p. 6.[2] However, this statement fails to recognize the impact most people experience when they are involved in matters before the courts. In recognition of that point, the Massachusetts Board of Bar Overseers held that a person's involvement in a DCF proceeding is information that would qualify as "confidential information" under Mass. R. Prof. C. Rule 1.6(a) because it is likely to be "embarrassing or detrimental to the client." In the Matter of Frank Arthur Smith, III, 2019 WL 6695552 (Ma.St.Bar.Disp.Bd.) (Nov. 6, 2019).

> Information that a person is involved in a DCF proceeding concerning her grandchild would likely be embarrassing or detrimental to the client, as would be the revelation that DCF opposed her being the guardian. The follow-up

[2] The OIG's request is not limited to adult criminal matters. It seeks all cases in which CPCS assigns counsel in criminal and civil matters. *See* p. 3, *supra*.

> disclosures about the grandson having been previously removed from the home and DCF's concerns that the client could not "control" her daughter (the mother of the ward) were similarly pejorative. While not the only relevant factor here, we note that C&P [Care and Protection] cases are confidential by statute and for solid policy reasons. (Emphasis added).

Several statutes and court rules embody this consideration, recognizing that this information, if disclosed, would be "embarrassing or detrimental to a client's interest." *See e.g.*, G. L. c. 119, § 38, which governs CPCS Child and Family Law ("CAFL") cases (cases are closed to the public and unlawful to publish names of persons before the court); Juvenile Court Standing Order 2-15 (juvenile cases and case records are considered impounded); Juvenile Court Standing Order 1-84 (juvenile case records and reports are confidential); G. L. c. 119, § 65 (general public is excluded from juvenile sessions), G. L. c. 119, § 60A, which governs CPCS Youth Advocacy Division ("YAD") cases (delinquency court records are withheld from public inspection); G. L. c. 123, § 36A, which governs CPCS Mental Health Litigation Division ("MHLD") (civil commitment docket is private).[3]

As cited below, several ABA formal and informal opinions have held that client names are "secret" under the Model Rules of Professional Conduct and therefore subject to an attorney's obligation of seeking informed consent before disclosing information relating to or arising from legal representation. The ABA Committee on Ethics and Professional Ethics has specifically held that the names, addresses, and telephone numbers of clients of a Legal Services Office are secret. *See* ABA Informal Opinion 1287 (1974). The duty to preserve client anonymity

[3] Even if the OIG had docket numbers for these types of cases, the dockets themselves are not publicly available. Nevertheless, CPCS cannot presume how the Trial Court would respond to an OIG request for dockets in these cases, and as such, must take all steps to protect the client's identity and confidential information from disclosure.

extends to inspections of legal service agency files by outside agencies or policy making boards. *See* ABA Informal Opinion 1394 (1977), ABA Formal Opinion 334 (1974).

The OIG also argues that "[o]ther jurisdictions have held that a client's identity is not privileged." *See* OIG Memorandum of Law at p. 7, fn.1. Again, this argument misses the point. In this jurisdiction, the duty of confidentiality as provided in Mass. R. Prof. C. Rule 1.6(a) is broader in scope than the protection provided by the attorney-client privilege. *See* Tate, 490 Mass. at 510. Setting that observation aside, it is also important to note that other jurisdictions have held that the client identity is protected as "confidential information."[4]

In an attempt to sidestep confidentiality requirements, the OIG states that it is required to keep the information provided confidential. However, the focus of Mass. R. Prof. C. Rule 1.6(a) is the protection of a client's right to choose what an attorney does with a client's information, not on what steps an attorney can take to maintain confidentiality of the information with third parties. A client's "confidential information" cannot be disclosed to a third party who wants the information on the condition that the third party agrees not to disclose it, and does not cease to be confidential simply because the lawyer and a third party agree to keep it confidential. The information remains so, and Mass. R. Prof. C. Rule 1.6(a) makes clear that "confidential information" cannot be shared without a client's informed consent. It is a matter of the attorney

[4] *See, e.g.*, Wis. Op. EF-17-02 (2017) ("a client's identity, as well as a former client's identity, is information protected by [Rule 1.6]"); State Bar of Nev. Comm'n on Ethics and Prof'l Responsibility Formal Op. 41, at 2 (2009) ("Even the mere identity of a client is protected by Rule 1.6."); State Bar of Ariz. Comm. on the Rules of Prof'l Conduct Op. 92-04 (1992) (explaining that a firm may not disclose list of client names with receivable amounts to a bank to obtain financing without client consent). *See also* MODEL RULES OF PROF'L CONDUCT R. 7.2 cmt. [2] (2017) & N.Y. Rules of Prof'l Conduct R. 7.1(b)(2) (requiring prior written consent to use a client name in advertising); *see also* In re Advisory Opinion No. 544 of the NJ Supreme Court Advisory Committee on Professional Ethics, 103 N.J. 399, 408, 511 A.2d 609 (1986) (client names of legal services organization were secret).

standing in the place of the client, observing the foundational duty of undivided loyalty to their client. Failing to adhere to the informed consent of the client is to render meaningless not only this foundational principle of our legal system but is also antithetical to CPCS' commitment to client-centered representation.

Because docket numbers are not only confidential in and of themselves under Mass. R. Prof. C. Rule 1.6(a), but also because they lead to additional confidential information such as client names, they cannot be disclosed by CPCS without the informed consent of each client.

B. DOCKET NUMBERS ARE NOT WIDELY KNOWN IN THE COMMUNITY SUCH THAT THEY ARE DISQUALIFIED AS CONFIDENTIAL UNDER MASS. R. PROF. C. RULE 1.6(a).

The OIG states "[w]hen a defendant is charged with a crime, the information at issue in such matter – the defendant's name, the associated docket number, and the identity of the attorney representing them – become a record of the court." *See* OIG Memorandum of Law at p. 7. First, as stated above, this ignores the many cases in which CPCS provides representation that do not include criminal charges and are not publicly available. Furthermore, by making this argument, the OIG seems to imply that because a docket number is a "record of the court," it is no longer "confidential information." This argument is not supported by the law.

Comment 4 to Mass. R. Prof. C. Rule 1.6 warns that the prohibition on revealing confidential information "applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person." (Emphasis added). Docket numbers absolutely fall within this category. Comment 3A to Mass. R. Prof. C. Rule 1.6 provides further context:

> A lawyer may not disclose confidential information except as authorized or required by the Rules of Professional Conduct or other law. *See also* Scope. Information that is "generally known in the local community or in the trade, field or profession to which the information relates" includes information that is widely

> known. Information about a client contained in a public record that has received widespread publicity would fall within this category. On the other hand, a client's disclosure of conviction of a crime in a different state a long time ago or disclosure of a secret marriage would be protected even if a matter of public record because such information was not "generally known in the local community." As another example, a client's disclosure of the fact of infidelity to a spouse is protected information, although it normally would not be after the client publicly discloses such information on television and in newspaper interviews…. (Emphasis added).

In an attorney disciplinary matter before the SJC, commenting on the scope of Comment 3, Justice Lowy wrote for the Court that the mere presence of information in the public record without evidence about what is actually "known in the local community" relating to a client's matter is insufficient to remove information gleaned from representation from the scope of information protected by Mass. R. Prof. C. Rule 1.6(a):

> As this comment makes clear, the rule is concerned with whether information is known, not whether it is knowable. That the information is available in a public record is not dispositive; rather, the focus is on how many people in the relevant community, trade, field, or profession actually have learned the information." (Emphasis added).

In the Matter of Michael J. Kelley, 489 Mass. 300, 304 (2022).

This holding makes clear that just because a matter is a "record of the court" does not, as a matter of law, make the matter "generally known in the local community." Such a determination must be made on a case-by-case basis. It would be nearly impossible for CPCS or anyone else to conduct the required individualized inquiry into "whether the information is known in the community" in these circumstances where the OIG seeks over 400,000 docket numbers. Finally, several jurisdictions have similarly held that the presence of client information in public databases does not absolve an attorney's adherence to this obligation.[5]

[5] *See* In re Anonymous, 932 N.E.2d 671 (Ind. 2010) (neither client's prior disclosure of information relating to her divorce representation to friends nor availability of information in police reports and other public records absolved lawyer of violation of Rule 1.6); Iowa S. Ct.

C. THE APPLICATION OF G. L. c. 12A, § 9 VIOLATES ARTICLE 30 OF THE MASSACHUSETTS CONSTITUTION WHERE IT INTERFERES WITH THE JUDICIARY'S AUTHORITY OVER THE REGULATION OF ATTORNEYS AND THEIR PROFESSIONAL CONDUCT.

As noted above, an attorney is "permitted" to disclose a client's confidential information in narrow circumstances. Mass. R. Prof. C. Rule 1.6(b) states in relevant part:

> A lawyer may reveal confidential information relating to the representation of a client to the extent the lawyer reasonably believes necessary, and to the extent required by Rules 3.3, 4.1(b), 8.1 or 8.3 must reveal, such information:
> …
> (6) to the extent permitted or required under these Rules or to comply with other law or a court order….

Comment 12 to Mass. R. Prof. C. Rule 1.6(b)(6) states:

> Other law may require that a lawyer disclose confidential information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules. When disclosure of confidential information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4.[6] If, however, the other law supersedes this Rule and requires disclosure, paragraph (b)(6) permits the lawyer to make such disclosures as are necessary to comply with the law.

Attorney Disciplinary Bd. v. Marzen, 779 N.W.2d 757 (Iowa 2010) (all lawyer-client communications, even those including publicly available information, are confidential); Lawyer Disciplinary Bd. v. McGraw, 461 S.E.2d 850 (W. Va. 1995) ("[t]he ethical duty of confidentiality is not nullified by the fact that the information is part of a public record or by the fact that someone else is privy to it"); State Bar of Ariz. Op. 2000-11 (2000) (lawyer must "maintain the confidentiality of information relating to representation even if the information is a matter of public record"); State Bar of Nev. Op. 41 (2009) (contrasting broad language of Rule 1.6 with narrower language of Restatement (Third) of the Law Governing Lawyers); Pa. Bar Ass'n Informal Op. 2009-10 (2009) (absent client consent, lawyer may not report opponent's misconduct to disciplinary board even though it is recited in court's opinion); Colo. Formal Op. 130 (2017) ("Nor is there an exception for information otherwise publicly available. For example, without informed consent, a lawyer may not disclose information relating to the representation of a client even if the information has been in the news.").

[6] In order to comply with the directive of Comment 12 and Mass. R. Prof. C. Rule 1.4, CPCS would be required to communicate with each client whose docket number is the subject of the OIG's request. At the time of this filing, CPCS has not determined how many clients would be impacted by the OIG's request. However, the OIG's request encompasses approximately 400,000 docket numbers and so a conservative estimate would put the number of clients impacted at over 100,000.

There are no reported decisions in Massachusetts interpreting Mass. R. Prof. C. Rule 1.6(b)(6). The OIG argues that G.L. c. 12A, § 9 "clearly constitutes" such "other law" with which CPCS must comply. *See* OIG Memorandum of Law at p. 6. However, the OIG's interpretation of Section 9 conflicts with the SJC's regulation of the practice of law by negating the operation of this ethical rule and infringing upon a core judicial function. Therefore, the application of Section 9 in these circumstances violates Article 30 of the Massachusetts Constitution.[7]

While the legislature may enact statutes that assist the judiciary in regulating the legal profession, such statutes cannot preclude the judiciary from imposing higher standards or deprive it of its ultimate power of control. "What Art. 30 forbids—'the essence of what cannot be tolerated'—is legislative interference with the judiciary's core functions." *See* Ellis v. Dept. of Industrial Accidents, 463 Mass. 541, 548 (2012), *citing* First Justice of the Bristol Div. of the Juvenile Court Dep't v. Clerk–Magistrate of the Bristol Div. of the Juvenile Court Dep't, 438 Mass. 387, 396 (2003). As to attorneys admitted to practice before the courts of the Commonwealth, the judiciary retains the ultimate authority to control their conduct in the practice of law. *See* Collins v. Godfrey, 324 Mass. 574, 576 (1949) ("It must now be regarded as settled that in the distribution of powers under art. 30 the ultimate power of general control over the practice of law by its own officers fell to the judicial department. Legislation may be enacted in aid of the judicial department, and doubtless in appropriate instances standards of conduct

[7] Article 30 of the Massachusetts Declaration of Rights provides: "In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men."

may be set up by statutes, but such statutes cannot preclude the judicial department from imposing higher standards or deprive that department of its ultimate power of control.").

In Opinion of the Justices, 279 Mass. 607 (1932), the SJC held that a statute which mandated that only members of the Board of Bar Examiners may "mark" bar admission examinations usurped the function of the judicial branch. Id. at 610. In holding that the statute violated Article 30, the Court stated that "no statute can control the judicial department in the performance of its duty to decide who shall enjoy the privilege of practicing law." Id. at 611. This rationale applies with equal force here. The OIG's interpretation of Section 9 impermissibly interferes with the regulation of the practice of law by eliminating a core requirement of Rule 3:07 of the Rules of Professional Conduct as promulgated by the Supreme Judicial Court ("SJC"). In Ellis, *supra*, the SJC held that the executive branch of government, even where that power is derived from a statute, does not have the power to impose professional discipline on attorneys. *See* Ellis, at 550-551. By eliminating the operation of a judicial rule which is used to discipline attorneys, the OIG impermissibly interferes with the judiciary's authority to regulate the practice of law by eliminating a lawyer's duty under Mass. R. Prof. C. Rule 1.6 to obtain informed consent from a client prior to the disclosure of confidential information.

D. G. L. c. 12A, § 9 CANNOT SUPERSEDE MASS. R. PROF. C. RULE 1.6(a).

As Comment 12 to Mass. R. Prof. C. Rule 1.6 makes clear, whether a law "supersedes" the operation of Mass. R. Prof. C. Rule 1.6, is a "matter of law" not addressed by the rules. Again, there are no reported decisions in Massachusetts that have examined this issue. However, the SJC has held that when the judicial department establishes rules imposing standards for the practice of law that are higher than or in conflict with those imposed by legislation, the judicial rules take precedence.

In Opinion of the Justices, 375 Mass. 795 (1978), the SJC held that when legislation conflicts with the ethical rules, the statute must yield to the operation of the ethical rule. Id. at 814, fn. 15. In that case, the Court was asked to opine on the constitutionality of a proposed law which would require lawyers who would be candidates for public office to disclose "the names, addresses and nature of business of certain clients and the nature of the services rendered to them." Id. While the SJC held that the proposed legislation was not a violation of Article 30, it held that if there were a conflict between the proposed law and "forbidding members of the bar from revealing information which would be embarrassing or would be likely to be detrimental to the client….this canon might conflict with the requirements of [the proposed legislation]; **if so, the rule would prevail**.") (Emphasis added).

Here the OIG invokes G. L. c. 12A, § 9 as "other law" which requires disclosure. However, the operation of that statute must yield where, as here, it conflicts with the SJC's ethical rules. Not only are there sound policy reasons for not permitting the disclosure under this rule, but the legal reasons from the cited SJC decisions support this outcome. For these reasons, G. L. c. 12A, §9 cannot supersede and operate as "other law" compelling CPCS to provide client "confidential information" in violation of Mass. R. Prof. C. Rule 1.6(b).

E. OTHER JURISDICTIONS HAVE HELD THAT LAWS MUST SPECIFICALLY REQUIRE DISCLOSURE OF CLIENT INFORMATION IN ORDER TO QUALIFY AS A LAW THAT SUPERSEDES RULE 1.6.

Cases from other jurisdictions have examined the operation of a cognate version of Rule 1.6. In a case where an indigent organization was faced with a request for client-identifying information from the state's division of mental health, the New Jersey Supreme Court addressed a statute "requiring reporting for all agencies receiving financial assistance through the Division, to aid in monitoring compliance and for program planning and development." *See* In re Advisory

Opinion No. 544 of the New Jersey Supreme Court Advisory Committee on Professional Ethics, 103 N.J. 399, 410 511 A.2d 609 (1986). There the court held that absent "specific language" in the statute requiring "client-identifying information," the statute directing the disclosure was not a law that specifically directed compliance excepting the operation of the duty of confidentiality. Id. at 410. The New Jersey Supreme Court went on to acknowledge that if the identity of clients of a legal services organization were "clearly required" by the regulation then the analysis and result could well be different. Id. Noting the absence of specific language addressing this particular type of information, the Court cautioned that "we may not infer that this client-identifying information is necessary to be disclosed as a matter of law." Id.

Consistent with this approach, the federal District of Columbia Court of Appeals held that under the Legal Services Corporation Act of 1974, 42 U.S.C. §2996e(b)(1)(A), the Legal Services Corporation's Inspector General was authorized to request disclosure of client names because such disclosure was specifically identified in the relevant federal statute. *See* U.S., Acting Inspector General v. Legal Services for New York City, 249 F.3d 1077 (D.C. Cir. 2001); *see also* Bronx Legal Services v. Legal Services Corp., 64 Fed. Appx. 310 (2nd Cir. 2003).

Here, there is nothing contained in the text of Section 9 that specifically identifies the disclosure of docket numbers, or any of the information that is derived from a docket number, such as the nature of the legal matter, the client's financial status, etc., as being required by CPCS in any response to the OIG's request. The relevant text of Section 9 is broad and general—

> Upon receipt of such request each person in charge of, or the governing body of any public body described in section seven, shall furnish to the inspector general or his authorized agent or representative such information, cooperation and assistance, including information relative to the purchase of services or anticipated purchase of services from any contractor by any public body….

Although not binding, these decisions are instructive and where no Massachusetts court has analyzed these issues, they are clearly relevant to the issues presented here.

F. CORI INFORMATION SHARED BY CRIMINAL JUSTICE AGENCIES MAY ONLY BE USED FOR CRIMINAL JUSTICE PURPOSES AS DEFINED IN G.L. c. 6, § 167.

As the OIG states, "disclosure of docket numbers in conjunction with other personally identifying information may be considered CORI under Massachusetts law." *See* OIG Memorandum of Law at p. 8. Under G. L. c. 6, section 167 "criminal offender record information" is defined as "records and data in any communicable form compiled by a Massachusetts criminal justice agency which concern an identifiable individual and relate to the nature or disposition of a criminal charge…." Here, the OIG cites 803 CMR § 7.10(1) as authority for CPCS to provide the sought-after CORI information. That regulation states "CORI may be provided to another criminal justice agency for authorized criminal justice purposes." There are two (2) issues raised by the OIG's argument.

First, the OIG does not fall within the definition of a "criminal justice agency," as its principal functions are focused on investigating and preventing fraud, waste, and abuse in government, rather than activities directly related to criminal justice. *See* OIG Memorandum of Law at p. 4 citing G. L. c. 12A, §§ 2 and 8. The CORI statute, G. L. c. 6, § 167 defines "criminal justice agencies" as "those agencies at all levels of government which perform as their principal function, activities relating to (a) crime prevention, including research or the sponsorship of research; (b) the apprehension, prosecution, adjudication, incarceration, or rehabilitation of criminal offenders; or (c) the collection, storage, dissemination or usage of criminal offender record information." Absent some evidence that the OIG is a "criminal justice agency," CPCS is prohibited from disclosing the docket numbers to the OIG.

Second, even if the OIG can demonstrate that it is a "criminal justice agency," such information can only be disclosed for authorized "criminal justice purposes." *See* Commonwealth v. Cousin, 449 Mass. 809, 816 (2020) ("The only limitation the statute places on criminal justice agencies' access to CORI is that it be 'limited to that [extent] necessary for the actual performance of the criminal justice duties of criminal justice agencies.'") *See* G. L. c. 6, § 172.

The OIG has failed to demonstrate that it meets the definition of a "criminal justice agency" and it has failed to demonstrate that any use of the CORI information would be limited the "actual performance of the criminal justice duties" of the OIG. Absent evidence to the contrary, the motion to compel disclosure of CORI should be denied.

III. CONCLUSION

In essence, the OIG's request for docket numbers requires CPCS to violate its constitutional obligation to provide ethical and, therefore, effective assistance of counsel to its clients. With the docket number, the recipient will be able to identify that a client has faced a potentially embarrassing circumstance or one that is detrimental to a client's interest, and for many represents one of the most traumatic experiences of their lives. It does not require much imagination to appreciate that most people would construe the disclosure that they are being charged with a crime, having their children removed from their custody, being subject to involuntary civil commitment or being forced to take anti-psychotic medication as embarrassing or detrimental to their interests. It strains credulity that this kind of information would not serve as embarrassing or potentially detrimental to a client's interest, and indeed the weight of the authority cited is consistent with this point.

Importantly, despite numerous requests by CPCS, the OIG has provided no explanation as to why a docket number leading to a client's identity is necessary to enable them to conduct their investigation, particularly as CPCS has provided unique case identifiers in the form of NAC numbers for private bar advocate assignments and internal case numbers for CPCS staff attorney assignments. CPCS has asked the OIG on multiple occasions if there are alternative avenues for achieving the OIG's goals without providing docket numbers.

Absent informed consent from each client, CPCS would violate its ethical obligations to its clients by disclosing information that is clearly confidential under the relevant Massachusetts Rules of Professional Conduct. Entering into an agreement not to disclose the "confidential information" is not a remedy for this harm, although acknowledgement by the OIG that this information should be protected buttresses the conclusion that docket numbers qualify as "confidential information" under Mass. R. Prof. C. Rule 1.6(a).

Ultimately, OIG's interpretation of Section 9 is overbroad. As the authorities cited make clear, the ethical rules governing the regulation of the practice of law are the bailiwick of the judicial branch. It cannot be reasonably inferred from the relevant decisions that the OIG can supersede the standard of requiring informed consent by clients of their confidential information. This is a foundational principle rooted firmly in the rules established by the Supreme Judicial Court. This application violates Article 30 of the Massachusetts Constitution as well as violating the supremacy of the Massachusetts Rules of Professional Conduct where that application is in clear conflict.

Finally, CPCS would violate its obligations as a criminal justice agency to disclose CORI to an agency that is not a criminal justice agency and where that information would not be used solely for criminal justice purposes as defined by G. L. c. 6, § 167. There is nothing in the Act or

in Section 9 which suggests that this confidential information, which includes information relating not only to criminal but also civil matters, would have any application to a criminal justice purpose as specified in the CORI statute.

For all the reasons set forth herein, CPCS respectfully requests that OIG's motion to compel be denied and that the OIG's summons be quashed with respect to the request for docket numbers.

Respectfully submitted by,
COMMITTEE FOR PUBLIC COUNSEL SERVICES,

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Dated: December 18, 2025

CERTIFICATE OF SERVICE

I, Samuel A. Aylesworth, Associate General Counsel, hereby certify that I have this day, December 18, 2025, served the foregoing notice upon the plaintiff by emailing a copy to:

Eugenia M. Carris, General Counsel
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*/s/ Samuel A. Aylesworth*_____
Samuel A. Aylesworth
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