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## INSPECTOR GENERAL LITIGATION FAQS AND INFORMATION

### 1. What is the litigation and how does it impact my client?

On April 29, 2026, CPCS sent notice to CPCS staff attorneys and private counsel regarding litigation CPCS has undertaken regarding an ongoing, legislatively-mandated review by the Office of the Inspector General (OIG).

The OIG “is an independent, nonpartisan oversight agency mandated to prevent and detect fraud, waste, and abuse of public resources at the state and municipal levels across the Commonwealth of Massachusetts.” As part of the Supplemental Budget legislation raising the rates last summer, the OIG was directed to investigate and report back on, inter alia, billing, oversight, and caseloads in indigent defense. [St. 2025, c. 14, § 82](#).

As explained in the notice, as part of its investigation, the OIG requested docket numbers, but CPCS refused to provide them. The OIG sought to compel production, and in February, a Superior Court judge ordered CPCS to disclose to the OIG docket numbers for all cases assigned from 1/1/23 through 1/27/26. CPCS is appealing that order. Until the appeal is decided, the order is stayed, so CPCS has not yet disclosed any docket numbers.

The appeal has entered in the Appeals Court. *Inspector General v. CPCS*, 26-P-0566. The appeal is fully public. You and your clients can monitor the status of the appeal online at <https://www.massappellatecourts.org/docket/2026-P-0566>.

CPCS will be filing an application for direct appellate review (DAR) with the Supreme Judicial Court (SJC) shortly. When the DAR application is filed, it will have a distinct docket number, which will be linked in the above online docket. If the SJC grants DAR, the case will enter in the SJC with another distinct docket number, which will also be linked in the above online docket. CPCS will provide periodic updates as the appeal progresses.

While CPCS cannot predict what the SJC will do, due to the unique nature of the case, it is highly likely the SJC will take the case, either on DAR or sua sponte in the coming weeks or months. Once that happens, the OIG and CPCS will file briefs and the SJC will set an argument date, likely in the fall. The argument will be livestreamed on the SJC’s YouTube channel. <https://www.youtube.com/c/massachusettsjudicialcourt>.

The SJC’s practice is to solicit amicus briefs, and it is very likely interested organizations and individuals will file amicus briefs in this case. The SJC reads and considers all amicus briefs in

deciding the case. Decisions typically take a number of months, but there is no way of predicting when a decision will be issued. The SJC will either affirm or reverse the Superior Court judge's decision. A decision from the SJC will be the final appellate decision in the case.

Until the appeal is finally decided, CPCS does not need to and will not disclose any docket numbers, because the Superior Court judge's order is stayed. When the SJC issues its decision, the Superior Court will be notified.

If the SJC affirms the judge's order, CPCS will have to disclose the docket numbers to the OIG. This includes fully impounded cases such as delinquencies and other Juvenile Court matters. However, the terms of the judge's order require that a protective order be in place before the docket numbers are disclosed. Because the order is stayed, the terms of that protective order have not been agreed upon.

If the order is affirmed, there will be additional litigation in the Superior Court regarding that protective order. The Superior Court judge will expect the OIG and CPCS to propose the terms of a protective order, but the judge will make the final determination as to the terms of that protective order. Once the protective order is in place, CPCS must comply with the court order and disclose the docket numbers to the OIG.

If the SJC reverses the judge's order, CPCS will not have to disclose the docket numbers to the OIG and the litigation will be at an end.

## 2. What are my obligations?

As part of its April notice, CPCS advised counsel of their ethical obligation to notify current clients that the docket number in their case, which is confidential client information under Mass. R. Prof. C. 1.6(a), might be disclosed if the appeal is unsuccessful. It also advised counsel that, if their client wished to intervene in the litigation, counsel should file a motion to intervene on their client's behalf.

Your ethical obligation is to provide notice of the judge's order to your current clients who had cases assigned during the designated timeframe 1/1/23 through 1/27/26. Mass. R. Prof. C. 1.4(a). In addition, as part of your client-centered, zealous representation, you should explain the litigation and possible outcomes to your clients to enable them to make an informed decision regarding whether to file a motion to intervene. Mass. R. Prof. C. 1.4(b).

## 3. What do I tell my clients about what happens next?

As part of the April 29, 2026, notice, CPCS provided template letters to notify clients and provided some guidance regarding meeting your client's communication needs.

Your ethical obligation is to notify the client that their confidential information might be disclosed if CPCS's appeal is unsuccessful. However, if, after you provide that notice, the client tells you they

want to be involved in the litigation, you should explain that you will need to get permission from the court for them to intervene, which means joining the case as another party to the appeal.

You should advise your client that the case is now being appealed, which means other judges in a different court are reviewing the decision to see if it was legally correct. To intervene in the litigation, you will need to ask those appellate judges for permission to join the case. The standard for intervention on appeal is very high, and it is very unlikely permission will be granted.

However, even if individual clients aren't allowed to intervene, the appellate court will still be made aware of the concerns individual clients have in their docket numbers not being disclosed to the OIG. The highest appellate court in Massachusetts, the SJC, is most likely going to decide the case. The SJC will allow anyone with an interest in the case to file an amicus, or friend of the court, brief. Those amicus briefs could explain to the court how disclosure impacts clients, for example those with fully impounded matters, the unique concerns juvenile clients, clients in mental health related litigation and others have in keeping their court cases confidential. There is no guarantee that amicus briefs will be filed by organizations or other individuals, but it is likely.

Even if the appeal is unsuccessful and CPCS has to disclose the docket numbers, it is important to remember they would be disclosed only to the OIG under a protective order, which means the OIG would be prohibited by the judge from doing certain things with the docket numbers. Because the judge's order is stayed, we don't know what the protective order would say. However, CPCS will argue that these docket numbers remain confidential. But it is up to the judge to decide what the OIG can do with the docket numbers.

Finally, this litigation will take many months, possibly over a year, to be finally resolved. There is no way of knowing what the final answer will be.

#### 4. What do I tell my clients when they ask me what they should do?

This is a difficult decision and the client does not have to make it right now. While the application for DAR is pending, there is some time to think about it more. Whatever happens with the appeal, it will not have any impact on their pending case in Court.

Second, this is one of those decisions that has to be made by the client, because it is their case and their privacy concerns. But it seems like a motion to intervene will not be allowed. And it is very likely the SJC will be made aware of the concerns clients have about their confidential docket numbers being disclosed to the OIG through amicus briefs.

Finally, while there is no way of knowing for sure at this point, it seems very unlikely the OIG would provide individual docket numbers to anyone after it completes its investigation, or include them in any report. The OIG is statutorily mandated to keep its records confidential and disclosure of individual docket numbers to anyone else seems unnecessary for the OIG to complete its investigation.

5. If my client wants to be involved in the litigation to protect their docket numbers, what must I do as their attorney?

Since the April notice, the case has entered in the Appeals Court, which divested the Superior Court of jurisdiction to decide a motion to intervene. See *M.B. Claff, Inc. v. Massachusetts Bay Transp. Auth.*, 441 Mass. 596, 599 n.4 (2004) (because appeal had not entered in Appeals Court, judge retained authority to rule on Mass. R. Civ. P. 60 motion); *Garland v. Beverly Hosp. Corp.*, 48 Mass. App. Ct. 913, 914 n.5 (1999) (judge could have acted on motion where appeal not yet docketed in the Appeals Court). See also *Commonwealth v. Cronk*, 396 Mass. 194, 197 (1985) (“Once a party enters an appeal ... the court issuing the judgment or order from which an appeal was taken is divested of jurisdiction to act on motions”).

Accordingly, you as trial counsel need to file a motion to intervene into the Appeals Court case, or, if the SJC takes the case, into the SJC case. The standard for intervention on appeal is high. The motion would be referred to a Single Justice, who is very likely going to deny it. However, if your client wants you to file the motion, review the Rules of Appellate Procedure, specifically Rule 13, 15, 20(b), and 21, then take the following steps:

- a. Draft a motion to intervene on appeal to be filed into the case (currently *IG v. CPCS*, 26-P-0566). No rule governs intervention on appeal. However, the appellate court has inherent authority to allow intervention. 41 Mass. Prac. Series 4:32 (4th ed.) Because it is so rare, there are no Massachusetts cases explicitly setting out the standard for intervention on appeal. Intervention in the trial courts is governed by Mass. R. Civ. P. 24, so argue the Rule 24 standards for both intervention as of right and permissive intervention in your motion. See *Commonwealth v. Fremont Inv. & Loan*, 459 Mass. 209, 216-219 (2011); *Reilly v. Town of Hopedale*, 102 Mass. App. Ct. 367, 383-385 (2023). See also *Cameron v. EMW Women’s Surgical Center, P.S.C.*, 595 U.S. 267, 276-277 (2022) (without a statute or rule governing intervention on appeal, court looks to Rule 24).
- b. One key factor in those standards is the timeliness of the motion to intervene. *Galbi v. Cellco Partnership*, 101 Mass. App. Ct. 260, 263 (2022). Timeliness of intervention on appeal looks different than timeliness in the trial courts. *Amalgamated Transit Union Int’l, AFL-CIO v. Donovan*, 771 F.2d 1551, 1553 n.3 (D.C. Cir. 1985) (“courts of appeals have developed their own standards of intervention in order to take account of the unique problems caused by intervention at the appellate stage”). You could argue that until you received the April 29, 2026, notice, you were unaware of the litigation. Indeed, until March 4, 2026, the Superior Court litigation was impounded. In addition, at this point, the appeal has not been briefed by either party or scheduled for oral argument, so it is still early in the appellate process.
- c. In addition, you must explain in your motion why your client should be allowed to intervene and why the party briefs filed by the OIG and CPCS will be insufficient to represent your client’s interest and protect their rights. Five federal courts of appeal have held that motions to intervene on appeal, where intervention was not sought in the trial court, should only be allowed “in an exceptional case for imperative reasons.” *Id.* at 1552-1553 and cases cited. See also *Ruthardt v. United States*, 303 F.3d 375, 386 (1st Cir. 2002) (“Given the magnitude

of the stakes and the helpful advocacy the [applicant intervenors] have provided to us, we choose in these unusual circumstances to exercise our own discretion to allow the [movant] to intervene in the case at this time on a going-forward basis.”) As mentioned above, this is a high standard.

- d. Prepare a certificate of service that complies with Mass. R. A. P. 13(d). Service must be made on all appellate counsel of record. Their names and contact information are available in the appellate docket.
  - e. File and serve the motion and certificate of service into the appellate case. Filing and service in the appellate courts is completely electronic. If you do not yet have an account with eFileMA, create one at <https://massachusetts.tylertech.cloud/OfsWeb/>. You can use that account to efile into any case, in the trial or appellate courts, going forward. There is no cost to set up the account. There are guides available at <https://www.mass.gov/appeals-court-rules/appeals-court-rule-130-electronic-filing>.
  - f. The motion will be referred to a Single Justice, who will most likely decide the motion without any hearing. You will get notified via email of the decision. Please note that the motion and decision will be entered on the appellate docket, which is publicly available online.
6. If my client does not want to intervene, what else can be done?

Now that the case is on appeal, there is no mechanism for similarly situated clients to seek to intervene as a class. Class certification must be pursued in the trial court. Mass. R. Civ. P. 23.

But, as mentioned above, the case is likely to end up in the SJC. The SJC typically solicits amicus briefs in cases it selects from the Appeals Court docket. Amicus solicitations are posted here <https://www.mass.gov/amicus-announcements>. Counsel for individuals and interested organizations can file an amicus brief, which the court will consider as part of the case. Rule 17 of the Massachusetts Rules of Appellate Procedure govern amicus briefs.

7. Who can I contact with questions?

If you have questions on the appeal or appellate practice, please send your inquiry via email to [docketlitigation@publiccounsel.net](mailto:docketlitigation@publiccounsel.net).