

IMPOUNDED

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT DEPARTMENT

Docket No.

IN RE INVESTIGATION BY THE OFFICE OF THE INSPECTOR GENERAL

**REPLY TO OPPOSITION TO THE OFFICE OF THE INSPECTOR GENERAL'S
MOTION TO COMPEL**

The Office of the Inspector General (“OIG”) respectfully submits this Reply to the Opposition of the Committee for Public Counsel Services (“CPCS”) to the OIG’s Motion to Compel production of certain material requested pursuant to M.G.L. c. 12A, § 9 (“12A, § 9”) and Section 82 of Chapter 14 of the Acts of 2025 (“the Act”).

1. Mass. R. Prof. C. Rule 1.6(b) expressly allows for the disclosure of client information where disclosure is required by law.

In this case, disclosure of docket numbers without informed consent is a proper application of Rule 1.6.¹ Rule 1.6(b)(6) explains that informed consent is not required when the disclosure is made in compliance with “other law or a court order.” Indeed, many authorities on which CPCS relies emphasize the importance of the exceptions under the Rule.²

CPCS argues that application of Rule 1.6(b)(6) would negate “the operation of [Rule 1.6] and infring[e] upon a core judicial function.” *See Opp.* at p.12. This interpretation would render

¹ The OIG does not concede that informed consent is required. As both parties recognize, whether docket numbers are confidential information is an open question under Massachusetts law.

² The following hold that a valid exception authorizes disclosure of client information: Wis. Op. EF-17-02 (2017); State Bar of Nev. Comm’n on Ethics and Prof’l Responsibility Formal Op. 41 (2009); In re Advisory Opinion No. 544 of New Jersey Supreme Ct. Advisory Comm. on Pro. Ethics, 103 N.J. 399, 408 (1986); In re Anonymous, 932 N.E.2d 671, 673 (Ind. 2010).

the Supreme Judicial Court’s (“SJC”) own language within Rule 1.6(b)(6) meaningless. Contextually negating the operation of a rule is the purpose of an exception—to permit an action that would otherwise violate the rule. In addition to those highlighted by CPCS, several other jurisdictions recognize the validity and proper application of this exception.³

Further, the pieces of legislation applicable here—the Act and 12A, § 9—do not conflict with the ethical rules. Through operation of the Act and 12A, § 9, the Legislature has triggered the authority provided in Rule 1.6(b) for a lawyer to reveal otherwise confidential information to “comply with other law or a court order.” Here, the OIG’s enabling statute compels CPCS to cooperate with the OIG’s mandate to conduct a comprehensive review of the Commonwealth’s indigent representation system by furnishing information—including the docket numbers at issue.⁴

The claim that applying Rule 1.6(b)(6) here violates Article 30 of the Massachusetts Constitution is also without merit as both the Act and 12A, § 9 fall within the ambit of Rule 1.6(b)(6). The Act requires the OIG to conduct a review of the public defense system, and 12A, § 9 requires public entities such as CPCS to provide information when asked. Together, they trigger Rule 1.6(b)(6), and CPCS’s general duty to withhold client information absent informed consent no longer applies.⁵ The SJC properly exercised its judicial authority in creating both Rule 1.6 and its exception, Rule 1.6(b)(6). The OIG’s request is simply an application of a valid exception and does not create a separation of powers issue.

In addition, the OIG’s request is supported by the body of authority that client

³ A law or court order provides for disclosure. *See* ABA Comm’n on Ethics and Prof’l Responsibility Formal Op. 473 (2016); Wilbur v. City of Mount Vernon, No. C11-1100RSL, 2012 WL 3065283 (W.D. Wash. July 27, 2012); Margules v. Beckstedt, 2019 IL App (1st) 190012, 142 N.E.3d 325, 334.

⁴ Requiring such compliance is also consistent with federal case law, in which other non-profit legal service organizations have been barred from using professional obligations to hinder investigations. *See, e.g., United States v. Legal Servs. for New York City*, 249 F.3d 1077, 1083 (D.C. Cir. 2001).

⁵ *Id.* at 1082 n. 4 (“If the subpoena is within the Inspector General’s power, then disclosure is consistent with appellant’s ethical obligations.”)

confidentiality concerns do not trump valid investigative processes like the grand jury. The OIG's request carries similar weight to a grand jury subpoena. OIG investigations receive many protections designed for grand jury proceedings. M.G.L. c. 12A, § 9 (production pursuant to summons "shall be governed by the same provisions with reference to secrecy which govern proceedings of a grand jury."); 945 CMR § 1.08(1)(j) (witness examination by summons governed same). The Rules of Professional Conduct permit a grand jury to subpoena a lawyer for non-privileged client information. Mass. R. Prof. C. 3.8(e)(1). While such grand jury subpoenas must be reasonable, must not implicate constitutional rights, and must not impinge on attorney-client privilege, they are not restricted by Rule 1.6's limitations on the disclosure of confidential information. *See In re Grand Jury Subpoena*, 533 F. Supp. 2d 602, 605 (W.D.N.C. 2007) (subpoena compliance trumps confidentiality obligations); Rule 1.6, comment 5 (recognizing exception).

2. The OIG is a criminal justice agency.

Many authorities make plain that the OIG is, in fact, a criminal justice agency ("CJA"). and as such, may properly and does receive CORI. Inspectors general are defined as CJAs both on the federal and state level. *See* FBI CJIS Security Policy, § 3.2.4; 803 CMR 7.02 (both defining CJA to include "[s]tate and federal Inspectors General Offices").

3. Compelling production is necessary for the OIG to fulfill its legislative mandate.

CPCS's production of Notice of Assigned Counsel ("NAC") numbers and internal case numbers in lieu of docket numbers is insufficient for the OIG to meet the Legislature's pressing statutory mandate.⁶ Among other requirements, the Act commands the OIG to conduct "an examination of the caseload of counsel involved in the representation of indigent defendants and

⁶ The Legislature passed the Act in the face of an "ongoing crisis gripping the courts." *See* Sean Cotter, *Governor Healey Signs Pay Raise for Bar Advocates*, BOSTON GLOBE (Aug. 5, 2025), available at <https://www.bostonglobe.com/2025/08/05/metro/bar-advocates-courts-pay-raise/>.

the efficacy thereof” and “an analysis of the fiscal impact of increasing the proportion of indigent clients represented by public defenders on the total cost of indigent defense.” To accomplish these tasks, the OIG must connect data held in definitive form by the courts (e.g., arraignment date, disposition, categorization) with data held in definitive form by CPCS (e.g., all cases on which CPCS or a bar advocate has worked, the particular attorneys who have done such work, etc.).⁷ Only by linking the two data sets via a consistent numbering convention—the docket number—is the required analysis possible.^{8,9} As CPCS notes, the OIG’s request encompasses “approximately 400,000 docket numbers.” *See* Opp. at p.11, n.6. This highlights the sheer impracticability of obtaining the information elsewhere. While it is inarguable that the OIG has a right to access this information via the courts,¹⁰ without CPCS’s cooperation, the OIG would have to manually identify the 400,000 or so cases assigned to CPCS attorneys or bar advocates out of all the cases in the Commonwealth, an impossible task given its limited resources and the short timeline involved. By contrast, CPCS could provide this information in short order and with minimal effort. While CPCS provided NAC and internal case numbers, the courts do not keep record of such information; therefore, those numbers cannot be used to accomplish the required review.¹¹

⁷ The OIG offers this detail to aid the Court and does not concede that CPCS is entitled to it.

⁸ Indeed, in Legal Servs. for New York City, the court rejected the subpoenaed legal aid organization’s proposal to provide unique identifier numbers and instead deferred to the inspector general’s determination that “the most reliable way to detect errors and irregularities in grantee case reporting [is] to obtain the actual client names themselves.” 249 F.3d at 1084.

⁹ The OIG has made continuous good faith efforts to accomplish this piece of the investigation and has acquired incomplete case data (including docket numbers) from other sources. However, without a list from CPCS, the OIG has no way of knowing how this data relates to public service cases.

¹⁰ The docket numbers are also court records, obtainable by 12A, § 9. CPCS misunderstands the relevance of confidentiality when they state, “the OIG seems to imply that because a docket number is a “record of the court,” it is no longer ‘confidential information.’” This is a fundamental misstatement of the OIG’s position. Confidential and public court records alike are obtainable by the OIG via 12A, § 9.

¹¹ The OIG’s decision to issue a summons for these docket numbers in accordance with the Act and 12A, § 9 is owed deference. *See* Box Pond Ass’n v. Energy Facilities Siting Bd., 435 Mass. 408, 416 (2001) (“This is particularly so with respect to internal agency matters such as the issuance of subpoenas directed at the gathering of evidence for an agency proceeding.”) (internal quotations omitted).

Without this data, the OIG cannot be assured it has an accurate picture of caseloads handled by CPCS attorneys and bar advocates, how those caseloads correspond to case information outcomes tracked by the courts, and the fiscal impact of altering the proportion of cases handled by either group of attorneys. As such, by refusing to provide information to which the OIG properly has access, CPCS is hindering a legislatively mandated investigation.

4. Conclusion

As previously described, CPCS seeks to deny the OIG access to information necessary for the review required by the Act. This is despite a statute authorizing the OIG to request and receive state agency data (12A, § 9), a specific legislative mandate to conduct an analysis that would use said data (the Act), an exception included in the Rules of Professional Conduct that allows for disclosure of otherwise confidential information (Mass. R. Prof. C. 1.6(b)(6)), significant confidentiality protections for this information (both by statutory requirement in 12A and offered to CPCS by agreement)¹², and federal and state authorization for the OIG to receive CORI.

To support its request, CPCS asserts a constitutional issue where none exists and conjures up both an ethical issue and a conflict between statutes and the Rules of Professional Conduct. Simply put, this seeks an illogical result that denies the OIG access to non-privileged, publicly available information that the OIG has a right to access by law.

The OIG respectfully requests that this Court issue an order requiring CPCS to produce all information and data requested by the OIG, including but not limited to docket and case numbers, within seven days of such order.

¹² Judicial review of an investigative subpoena may consider the confidentiality protections of the investigating agency. *See In re Enft of Subpoena*, 436 Mass. 784, 795 (2002) (noting statutory protections). The OIG will maintain confidentiality, *see* G.L. c. 12A, § 13 (confidential and non-public nature of OIG records), and has stated that it will not use names in its report and would sign a binding agreement to limit access to docket numbers to an internal firewalled data analysis team.

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Respectfully submitted,

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