

# NOTIFY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION  
No. 2584CV3580

IN RE INVESTIGATION BY THE OFFICE OF THE INSPECTOR GENERAL

**MEMORANDUM OF DECISION AND ORDER ON**  
**THE OFFICE OF THE INSPECTOR GENERAL'S MOTION TO COMPEL**  
**PRODUCTION OF MATERIAL PURSUANT TO M.G.L.c.12A, § 9**

On August 5, 2025, Governor Maura Healey signed into law Chapter 14 of the Acts of 2025. Such law provided supplemental appropriations, Section 2A, 0321-1599, for “a reserve to expand the number of public defenders employed by the Committee for Public Counsel Services (“CPCS”),” which would provide an expansion of the number of public defenders available to represent indigent clients. The supplemental reserve was in response to “recent history of private bar advocate work stoppages.” Section 82 of the new law ordered the Office of the Inspector General (“OIG”) to

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.

Such report shall be provided no later than June 30, 2026. Pursuant to M.G.L.c.12A, §9, OIG summonsed CPCS to produce documents from January 1, 2023 to present of the following<sup>1</sup>:

1. 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 is 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 the case was assigned to the attorney.
    - 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 requests except for “(a) Docket number assigned to each case by the Massachusetts Court System.” Despite efforts by both parties to resolve the issue, including OIG’s proposed protection of the docket numbers with an internal firewalled team and an agreement to not specifically disclose the docket numbers in any public report, OIG filed its motion to compel, which CPCS opposes on grounds the Court will discuss.

After hearing and review, and for the reasons stated below, the Motion is **ALLOWED**, subject to an agreed upon protective order to be approved by the Court within 20 days of this order.

### **DISCUSSION**

#### **I. The Authority of OIG to Access Relevant Information**

Pursuant to M.G.L.c.12A, § 9, OIG may request such information from CPCS “as may be necessary for carrying out [OIG’s] duties and responsibilities.” OIG “may require by summons, the production of all records, reports, audits, reviews, papers, books, documents, recommendations, correspondence and any other data and material relevant to any matter under

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<sup>1</sup> Other requests exist but CPCS complied with such requests, and those requests are not subject of this motion to compel.

audit or investigation.” Upon CPCS’s refusal to comply with such summons, any justice of the superior court may issue an order to compel the production of records.

The docket numbers assigned to each cases are relevant and material to OIG’s investigation. When investigating the total number of cases handled by CPCS for the expansion of public defenders, docket numbers are critical to assess an attorney’s caseload. In an example of Attorney A who has only 25 cases compared to Attorney B who has 75 cases, Attorney B’s caseload is not necessarily heavier. Just relying on the number of cases does not justify an attorney’s real time and effort on each case. In reviewing the court proceedings of a docket number, it may reveal lengthy and complicated litigation which may require much more time and effort from an attorney than what one case may represent. In another example, a docket sheet of court proceedings may depict that the case has been stalled for some reason and does not require any time and effort from an attorney for some period of time. Although a docket number is not the only source of billable hours for an attorney (i.e., the court proceedings do not indicate traveling to prisons and visiting a client or prepping a witness), it is a very good tool to cross-reference the actual “caseload” of an attorney, rather than relying on the sheer number of cases an attorney has. In addition, docket numbers show how the courts determine indigency of clients and assignments to CPCS attorneys and bar advocates.

## **II. CPCS’s Objections**

### **a. MA Rules of Professional Conduct Rule 1.6**

CPCS relies on Rule 1.6(a) in opposing the motion to compel, in that “a lawyer shall not reveal confidential information relating to the representation of a client unless the client gives informed consent[...].” “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.

Rule 1.6(a). First, the Court addresses whether a docket number constitutes “confidential information.” Answering such question requires parsing out the types of cases CPCS attorneys and bar advocates represent. In general, the docket number of an adult criminal case is public record that is not protected by the attorney-client privilege and is not likely to be embarrassing or determinantal to the client as charges and dockets are of public record within Massachusetts Courts system. Every day, adult criminal cases are announced with their docket numbers in open court. Even so, the Court finds that a docket number is not “generally known.” Comment 3A of Rule 1.6 defines what is “generally known.”

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.’ [...]

“The rule is concerned with whether information is *known*, not whether it is *knowable*.” *In the Matter of Kelley*, 489 Mass. 300, 304 (2022)(emphasis in original). That the docket number itself can be viewed by the public is not dispositive; “rather, the focus is on how many people in the relevant community, trade, field or profession actually have learned the information.” *Id.*

A different appropriate analysis focuses upon whether the revelation of docket numbers to someone other than the lawyer amounts to the impermissible disclosure of privileged communication or information relating to the relationship. This Court broadly finds that it does. A docket number identifies an individual’s name, his date of birth, and his indigency

necessitating legal services, thus revealing his financial status. See *In re Advisory Opinion No. 544 of N.J. Supreme Court Advisory Comm. on Prof'l Ethics*, 103 N.J. 399 (1986). The Court broadly views a docket number as “Confidential Information” in that such disclosure of an individual’s financial status could be embarrassing or detrimental to the client if disclosed and such information is not “generally known.”

Juvenile, mental health civil commitment, and Child and Family law dockets are not open to the public and kept private. The Court agrees with CPCS that in these types of cases, disclosure is likely to be embarrassing or detrimental to the client. Docket numbers of juvenile, mental health civil commitments and Child and Family law cases are, therefore, “Confidential Information” under Rule 1.6(a).

Although the Court now defines docket numbers as “Confidential Information,” the Court still orders CPSC to disclose the docket numbers under Rule 1.6(b)(6) where “[a] lawyer may reveal confidential information...to the extent permitted or required under these Rules or to comply with other law or a court order.”

**b. Criminal Offender Record Information (“CORI”)**

Providing or being ordered to provide docket numbers is not inconsistent with CORI under M.G.L.c.6, §167 and 803 CMR §7.00. CORI, often used by law enforcement agencies to view the nature and disposition of an individual’s criminal charge, an arrest, a pre-trial proceeding, and other judicial proceedings, is already restricted to information recorded in criminal proceedings that are public record for adult criminal defendants. “CORI may be provided to another criminal justice agency for authorized criminal justice purposes.” 803 CMR §7.10(1). OIG is a criminal justice agency who has been ordered to investigate billing practices and procedures by bar advocates and to examine the caseload of counsel representing indigent

clients. No statute, regulation, policy, or Criminal Justice Information System User Agreement is violated when giving OIG access to CORI records. See *id.* at §7.09(3).

**c. Article 30 of the MA Declaration of Rights**

CPCS argues that the Court's order compelling docket numbers would violate Article 30.

Article 30 states that:

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.

CPCS's argument fails on this issue. The judiciary retains the ultimate authority to control the lawyer's conduct in the practice of law. "Only the court can determine whether any member of the bar is guilty of improper conduct, and only the court can decide what consequences shall be visited upon him." *Collins v. Godfrey*, 324 Mass. 574, 578 (1949). The court compelling CPCS to disclose docket numbers falls clearly under the judiciary power under Rule 1.6 (b)(6)—"to the extent permitted or required under these Rules or to comply with other law or *a court order*." (emphasis added). Where OIG is asking the court to compel production of records pursuant to M.G.L.c.12A, §9 and pursuant to Rule 1.6(b)(6), there is no such legislative interference with the judiciary core functions.

**d. OIG's Authority versus Rule 1.6**

OIG's authority, which is enumerated in M.G.L.c.12A, §9, allows for the Superior Court judge to make a determination to compel or not to compel production of documents. Comment 12 of Rule 1.6 states that where "[o]ther law may require that a lawyer disclose a confidential information about a client, [w]hether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules." In reviewing the totality of the circumstances, there is no such law

that supersedes Rule 1.6. The Court finds that docket numbers are necessary, relevant and material to OIG's investigation, and the Court makes a determination to compel production of such documents. See Rule 1.6(b)(6).

**e. Not for Public Use or General Public**

OIG is not seeking docket numbers to publish to the general public. The distinction is crucial in OIG's proposed protective agreement to preserve anonymity and privacy of parties tied to the docket numbers. First, OIG is not the general public. Second, OIG's authority to summons records from CPCS is consistent with not being able to disclose any records to the general public—"[...]nor shall any documents provided pursuant to this section be made public until such time as it is necessary for the inspector general to do so in the performance of his duties." M.G.L.c.12A, §9. Third, with an agreement and assurance from OIG, to isolate the docket numbers to an internal firewalled team and to refrain from any disclosure in any public report, there are no competing laws, statutes, regulations or rules that are inconsistent with the Court granting this motion to compel.

**ORDER**

For the above stated reasons, OIG's Motion to Compel is **ALLOWED**, subject to an agreed upon protective order to be approved by the Court within 20 days of this order.

Date: 1/27/26

Ham. J.  
Catherine H. Ham  
Justice of the Superior Court