

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

OFFICE OF THE INSPECTOR GENERAL,
Appellee

v.

COMMITTEE FOR PUBLIC COUNSEL SERVICES,
Appellant

On Appeal from a Final Order of the Suffolk County Superior Court
Appeals Court No. 2026-P-0566

APPLICATION FOR DIRECT APPELLATE REVIEW

Samuel A. Aylesworth
BBO #645057
Associate General Counsel
Lisa M. Hewitt
General Counsel
BBO #549463
lhewitt@publiccounsel.net
Committee for Public Counsel Services
75 Federal Street, Sixth Floor
Boston, Massachusetts 02110
(617) 910-5745
saylesworth@publiccounsel.net

July 16, 2026

TABLE OF CONTENTS

REQUEST FOR DIRECT APPELLATE REVIEW	3
STATEMENT OF PRIOR PROCEEDINGS IN THE CASE	4
STATEMENT OF FACTS	5
The OIG's Request	7
STATEMENT OF ISSUES OF LAW	8
ARGUMENT	9
I. THE LOWER COURT'S ORDER ADJUDICATED THE FINAL MERITS OF THE CAUSE OF ACTION PURSUANT TO G.L. CHAPTER 12A, § 9 AND IS THEREFORE APPEALABLE.	9
II. GENERAL LAW CHAPTER 12A, § 9, DOES NOT SUPERSEDE AN ATTORNEY'S OBLIGATION TO PROTECT CONFIDENTIAL CLIENT INFORMATION.....	11
STATEMENT OF REASONS WHY DIRECT APPELLATE REVIEW IS APPROPRIATE.	14
CERTIFICATE OF COMPLIANCE.....	16
CERTIFICATE OF SERVICE.....	16

REQUEST FOR DIRECT APPELLATE REVIEW

Pursuant to Mass. R. A. P. 11, the Committee for Public Counsel Services (CPCS) respectfully requests that this Court allow direct appellate review of the decision of the Suffolk Superior Court granting the Office of the Inspector General's (OIG) motion pursuant to G.L. c. 12A, § 9, to compel CPCS to disclose the docket numbers associated with all CPCS clients, notwithstanding the lower court's holding those docket numbers constituted confidential information arising out of the attorney-client relationship.

This application provides an opportunity for this Court to answer two questions of first impression. First is a novel procedural issue: whether an order granting a motion to compel pursuant to G.L. c. 12A, § 9 (the OIG statute regarding investigations) constitutes a "final judgment" for purposes of G.L. c. 231, § 113, or a separately appealable, final order where the OIG sought and obtained the sole relief available through an action brought under G.L. c. 12A, § 9. Second is a novel substantive issue: whether G.L. c. 12A, § 9, authorizes the OIG to compel the disclosure of confidential information arising out of the attorney-client relationship. Although no appellate decision has directly examined this issue, this Court has ruled in dicta that if there is a conflict between a statute which requires disclosure of confidential attorney-client information and an ethical rule prohibiting such a disclosure, the ethical rule controls and enjoins the disclosure. *Opinion of the Justices*,

375 Mass. 795, 814 (1978). This case presents an opportunity for this Court to squarely apply that logic to protect confidential attorney-client information.

Further, this case provides an opportunity for the Court to expressly state that G.L. c. 12A, § 9, cannot be interpreted to abrogate attorney-client confidentiality, absent a clear statement of legislative intent to that effect. The United States Supreme Court and this Court have invoked a “clear statement” rule to protect other significant judicial interests from subversion by “general” legislation. Moreover, courts in other jurisdictions have specifically required a clear statement in a statute or regulation to abrogate attorney-client confidentiality where the law might operate to compel disclosure.

CPCS therefore requests that this Court grant direct appellate review and reverse the lower court’s decision.

STATEMENT OF PRIOR PROCEEDINGS IN THE CASE

On November 13, 2025, the OIG delivered a formal written request to the CPCS seeking, inter alia, a spreadsheet listing all cases where “counsel was requested and/or assigned” including the docket number for each case. RA34¹. CPCS provided all information requested by the OIG other than the docket numbers, asserting that the docket numbers constituted confidential attorney-client information.

RA149/AD22.

¹ References to the Record Appendix filed in the Appeals Court on July 15, 2026 are designated RA [page]. References to the Addendum are designated as AD [page].

On December 29, 2025, the OIG filed a motion to compel pursuant to G.L. c. 12A, § 9, in the Suffolk Superior Court (Ham, J.). RA9. CPCS filed a written opposition. RA9. After a non-evidentiary hearing on January 21, 2026, the lower court issued a decision on January 27, 2026, finding that all docket numbers were confidential information but ultimately granting the OIG’s motion to compel subject to an agreed-upon protective order. RA149/AD22. The OIG had requested no other relief, and, by allowing the OIG’s motion, the lower court granted the OIG all the relief contemplated by the statute. RA154/AD27. On February 13, 2026, CPCS timely filed its Notice of Appeal as well as an Assented-to Motion to Stay Pending Appeal Pursuant to Mass. R. Civ. P. 62. RA4. The lower court allowed the motion to stay on February 27, 2026. RA4.

On April 23, 2026, this case entered in the Appeals Court. RA5. On May 11, 2026, the Appeals Court ordered CPCS to show cause “demonstrating how the trial court’s allowance of [the OIG’s] motion to compel production of material pursuant to G. L. c. 12A, § 9 is appealable.” RA5. On May 18, 2026, CPCS filed its response to the order to show cause. (See Docket Entry # 8). On May 21, 2026, the Single Justice (Henry, J.) noted CPCS’s response to the show cause order and directed CPCS to address appealability in its brief.

STATEMENT OF FACTS

Beginning in late May 2025, some private attorneys who accepted assignments from CPCS 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. RA47. This work stoppage created a constitutional crisis resulting in thousands of people facing criminal charges without counsel. RA47.

In response to this crisis, in August 2025, the Legislature amended G.L. c. 211D, CPCS's enabling statute, to increase the relevant statutory compensation rates for the assignment of counsel by \$10 per hour on August 1, 2025, and an additional \$10 per hour as of August 1, 2026. RA47. 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.

Section 82 of Chapter 14 of the Acts of 2025.

The OIG's Request

On November 13, 2025, the OIG made the following request to CPCS:

A spreadsheet listing all cases [from January 1, 2023, until January 27, 2026] 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:
- c. The name of the attorney assigned.
- d. Whether said attorney is a bar advocate or CPCS staff attorney.
- e. The date of [sic] the case was assigned to the attorney.
- f. The arraignment date for the case.
- g. The name and location of the court where the case is being heard.
- h. List of the charges associated with the docket number.

RA48.

CPCS does not provide representation only in adult criminal cases. RA47.

CPCS also provides counsel in mental health proceedings, juvenile cases, and care and protection / state intervention cases where the dockets are not public pursuant to statute or court rule. See G.L. c. 119, § 38, (care and protection and other civil cases under c. 119 are impounded and closed to the public and it is unlawful to publish names of persons before the court); Juvenile Court Standing Order 2-15 (juvenile cases and case records are 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, (delinquency court records are withheld from public inspection); G.L. c. 123, § 36A, (civil commitment dockets are private).

Throughout the OIG's investigation, CPCS responded in full, except for the docket numbers, to the OIG's several requests for documentation and information needed to undertake its legislatively-required assessment of the provision of indigent defense services in Massachusetts. RA48. In lieu of providing docket numbers, CPCS provided Notice of Assignment of Counsel ("NAC") numbers for each case assigned to private counsel and internal case numbers, generated by the agency's case management system, for each case assigned to CPCS staff attorneys. RA48. In both instances, 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. RA49.

STATEMENT OF ISSUES OF LAW

This appeal presents two issues of first impression. First, whether an order granting a motion to compel pursuant to G.L. c. 12A, § 9 (the OIG statute regarding investigations) constitutes a "final judgment" for purposes of G.L. c. 231, § 113, or a separately appealable, final order where the OIG sought and obtained the sole relief available through an action brought under G.L. c. 12A, § 9. Second, whether G.L. c. 12A, § 9 supersedes a lawyer's ethical obligation to maintain the confidentiality of information arising from the attorney-client relationship as established in Rule 1.6(a) of the Massachusetts Rules of Professional Conduct.

These issues were raised and properly preserved in the lower court.

ARGUMENT

I. THE LOWER COURT’S ORDER ADJUDICATED THE FINAL MERITS OF THE CAUSE OF ACTION PURSUANT TO G.L. CHAPTER 12A, § 9 AND IS THEREFORE APPEALABLE.

The OIG’s action authorized by G.L. c. 12A, § 9 contemplates only one form of relief: an order granting a motion to compel. If the OIG obtains that order (as opposed to some form of interim relief), the case is over. There is no “trial.” The order constitutes the final action of the trial court. Because such an order finally adjudicates the rights of the parties, it constitutes the final judgment of the Superior Court in the Section 9 action for purposes of G.L. c. 231, § 113. General Laws c. 231, § 113 provides that “[a] party aggrieved by a final judgment of the superior court ...may appeal therefrom to the appeals court[.]” The trial court’s decision granting the OIG’s motion to compel pursuant to G.L. c. 12A, § 9 is the final adjudicating act of the trial court and is thus appealable as a final judgment.

Even if this Court concludes it is not a final judgment, the order is separately appealable as a final order. While the language in G.L. c. 12A, § 9 is not explicit that the order is a final appealable order, as set forth above, there is no more litigation to be had on the OIG’s application. Further, in the absence of plain language on finality, this Court should consider extrinsic sources to resolve the appealability issue.

Commonwealth v. McLeod, 437 Mass. 286, 290 (2002). A somewhat analogous statutory scheme exists in G.L. c. 93A where the Attorney General has statutory authority pursuant to G.L. c. 93A, § 6(1) to issue civil investigative demands (“CID”) on

companies alleged to be engaging in unfair or deceptive trade practices. This is not dissimilar to what G.L. c. 12A, § 9 authorizes the OIG to do.

General Laws c. 93A, § 6(7) provides that the recipient of the CID may move the Superior Court, for good cause shown, to set aside or modify the CID. Courts have held that an order denying a G.L. c. 93A, § 6(7) motion to set aside or modify a CID is an interlocutory order and not an appealable final order. *Harmon Law Offs., P.C. v. Att’y Gen.*, 83 Mass. App. Ct. 830, 831 (2013). This makes sense, as the lower court has not yet finally resolved whether the material requested must be produced. See, generally, *Exxon Mobil Corp. v. Att’y Gen.*, 479 Mass. 312, 324 (2018) (party moving to modify or set aside CID “bears a heavy burden to show good cause why it should not be compelled to respond”).

By contrast, where the CID recipient did not move to set aside or modify a CID, an order denying the Attorney General’s motion to compel testimony pursuant to G.L. c. 93A, § 7 is appealable as a final order. *Att’y Gen. v. Colleton*, 387 Mass. 790, 791-792 (1982). This also makes sense, as the litigation is at an end.

Moreover, G.L. c. 93A, § 7 provides that the Attorney General “may file in the superior court ... a petition for an order ... for ... enforcement.” Similar language exists in G.L. c. 12A, § 9: “Any justice of the superior court ... may, upon application by the inspector general, issue an order to compel.” By the plain language of Section 7, an order issued under that section is a final order: “Any disobedience of any final order entered under this section by any court shall be punished as a contempt

thereof.” (Emphasis added). That final order is appealable. *Harmon Law Offs., P.C.*, 83 Mass. App. Ct. at 831. By analogy, the same result must obtain here.

In sum, the order issued pursuant to G.L. c. 12A, § 9 is appealable as either a final judgment adjudicating the merits of the OIG’s application or a final order.

II. GENERAL LAW CHAPTER 12A, § 9, DOES NOT SUPERSEDE AN ATTORNEY’S OBLIGATION TO PROTECT CONFIDENTIAL CLIENT INFORMATION.

In recognition of the critical importance of protecting client confidences, this Court has concluded that a statute of general application must yield to the operation of the ethical rule protecting client confidentiality. *Opinion of the Justices*, 375 Mass. 795 (1978). However, even if this Court were to deviate from that principle, more is required before an attorney’s obligation to protect confidential client information should be abrogated. The statute at issue must have either express terms or a clear statement of intent to abrogate the ethical rule.

Under the Massachusetts Rules of Professional Conduct an attorney is only permitted to disclose a client’s confidential information in narrow circumstances. As relevant here, “to the extent required by Rules 3.3, 4.1(b), 8.1 or 8.3 [a lawyer] must reveal, such information: ...(6) to the extent permitted or required under these Rules or to comply with other law or a court order....” Mass. R. Prof. C. 1.6(b) (emphasis added).

Comment 12 to Mass. R. Prof. C. 1.6(b)(6) explains what “other law” means in the Rule:

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. 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. (Emphasis added).

No reported decisions in Massachusetts address when “other law” supersedes an attorney’s ethical obligation not to disclose confidential attorney-client information. As Comment 12 to Mass. R. Prof. C. 1.6 makes clear, whether “other law” supersedes the operation of Rule 1.6 is a “matter of law” not addressed by the Rules themselves. Although the lower court’s decision found that no law superseded Mass. R. Prof. C. 1.6, the lower court nonetheless concluded that CPCS must comply with the OIG’s request. This question of law is a novel one, squarely presented here.

In *Opinion of the Justices*, 375 Mass. 795 (1978), the Court ruled in dicta that when legislation conflicts with the Court’s rules governing a lawyer’s professional conduct, the statute must yield to the operation of the ethical rule. *Id.* at 814. The legislation at issue in that case would become G.L. c. 268B, the Financial Disclosure law, and required candidates for public office, including lawyers, to disclose the names and nature of their relationship with clients. The Court was only asked to opine on the constitutionality of that disclosure requirement and concluded it did not violate Article 30 of the Massachusetts Constitution. *Id.* at 812. However, the Court observed that if there were a conflict between the ethical canon protecting attorney-client

confidential information and the legislation requiring disclosure, the canon would “prevail.” *Id.* at 814. That analysis guides the correct outcome of this case.

Moreover, reversal is also supported by the application of the “clear statement” rule, which requires a statute to contain express terms to abrogate critically important legal rights. The United States Supreme Court has invoked a clear statement rule to protect significant judicial interests from subversion by “general” legislation. *Gregory v. Ashcroft*, 501 U.S. 452, 461 (1991) (“[I]n traditionally sensitive areas, ... the requirement of [a] clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision.”). This Court has also applied a clear statement rule in similar circumstances. *Crocker et al. v. Justices of Superior Court*, 208 Mass. 162, 171 (1911) (“An examination of statutes passed since respecting the jurisdiction of courts shows that the Legislature has manifested no intention, either expressly or by fair implication, to limit in this respect the powers of the higher courts as established by the Constitution and the legislation passed immediately thereafter.”); *Building Inspector of Acton v. Board of Appeals of Acton*, 348 Mass. 453, 456 (1965) (absent express language, legislation does not apply retroactively in such a manner as to affect substantive rights); *Brown v. Office of Com’r of Probation*, 475 Mass. 675, 679 (2016) (waiver of sovereign immunity must also be expressed by the terms of a statute or appear by necessary implication).

Attorney-client confidentiality is a substantial interest entitled to application of the clear statement rule because of the central role it plays in Massachusetts

jurisprudence. *Commonwealth v. Martinez*, 425 Mass. 382, 391 (1997) (“The constitutional guarantee to effective assistance of counsel, untroubled by conflicts of interest, is intended not only to prevent the problems that can spring from contemporaneous divided loyalties, but also to prevent prejudice to a defendant arising from an attorney’s treatment of privileged information.”).

Moreover, courts in other jurisdictions have specifically required a clear statement in a statute or regulation to abrogate attorney-client confidentiality where the law might operate to compel disclosure in circumstances similar to those presented here. *U.S., Acting Inspector General v. Legal Services for New York City*, 249 F.3d 1077, 1080 (D.C. Cir. 2001). See also *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) (regulation requiring disclosure of client names would be enforced absent express text).

This Court should follow suit and hold that absent a clear statement by the Legislature, G.L c. 12A, § 9 should not be interpreted to supersede an attorney’s obligation to maintain the confidentiality of information arising out of the attorney-client relationship.

**STATEMENT OF REASONS WHY DIRECT
APPELLATE REVIEW IS APPROPRIATE.**

This appeal presents “questions of first impression or novel questions of law” that are “of such public interest that justice requires a final determination by [this]

Court.” Mass. R. A. P. 11(a). First, no Massachusetts appellate decisions have addressed whether an order granting a motion to compel pursuant to G.L. c. 12A, § 9 is a final judgment for purposes of G.L. c. 231, § 113 or a separately appealable final order. Second, this Court should take this opportunity to clearly hold, for the first time, that G.L. c. 12A, § 9 is not “other law” for purposes of Mass. R. Prof. C. 1.6(b)(6) and does not supersede an attorney’s ethical obligation to protect confidential client information.

This appeal and the underlying request for disclosure of confidential client information impacts tens of thousands of CPCS clients and their expectations that their lawyer will maintain the confidentiality of their information. The opinion in this matter would serve as precedent in other circumstances where Mass. R. Prof. C. 1.6 is at issue. An opinion from this Court in the first instance would further this Court’s “governance of the bar and practice of law.” *Matter of Olchowski*, 485 Mass. 807, 810 (2020).

Respectfully submitted,
Committee for Public Counsel Services
By its attorney,

/s/ Samuel A. Aylesworth
Samuel A. Aylesworth, BBO #645057
Lisa M. Hewitt, BBO#549463
Committee for Public Counsel Services
75 Federal Street, Sixth Floor Boston,
Massachusetts 02110
(617) 910-5745
saylesworth@publiccounsel.net
lhewitt@publiccounsel.net

CERTIFICATE OF COMPLIANCE

Pursuant to Mass. R.A.P. 11(b), I hereby certify that, to the best of my knowledge, the foregoing brief complies with the rules of this Court and the Massachusetts Rules of Appellate Procedure governing the content, form, and format of applications for direct appellate review. The brief is in a proportionally spaced font (Garamond 14 pt.), and the argument section contains less than 2,000 words (1,600 words), as counted using the word count feature of Microsoft Word for Office 365.

/s/ Samuel A. Aylesworth

Samuel A. Aylesworth

CERTIFICATE OF SERVICE

I hereby certify, under the penalties of perjury, that on July 16, 2026, I have made service of this Application for Direct Appellate Review upon the attorney of record for the Office of the Inspector General by the Electronic Filing System on Tasha J. Bahal and Zach Gregroic, counsel for the Office of Inspector General.

/s/ Samuel A. Aylesworth

Samuel A. Aylesworth

ADDENDUM
Table of Contents

Suffolk Superior Court C.A. No. 2584-cv-03580 Docket Entries.....	18
Suffolk Superior Court 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.....	21

2584CV03580 Office of the Inspector General vs. Committee for Public Counsel Services

- Case Type:
- Administrative Civil Actions
- Case Status:
- Open
- File Date
- 12/29/2025
- DCM Track:
- X - Accelerated
- Initiating Action:
- Other Administrative Action
- Status Date:
- 12/29/2025
- Case Judge:
-
- Next Event:
-

All Information Party Event Tickler Docket Disposition

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
12/29/2025	Attorney appearance On this date Zachary E. Gregoric, Esq. added for Plaintiff Office of the Inspector General		
12/29/2025	Attorney appearance On this date Eugenia Mary Carris, Esq. added for Plaintiff Office of the Inspector General		
12/29/2025	Case assigned to: DCM Track X - Accelerated was added on 12/29/2025		
12/29/2025	Original civil complaint filed.	1	
12/29/2025	Civil action cover sheet filed.	2	
12/29/2025	Attorney appearance On this date Samuel A. Aylesworth, Esq. added for Defendant Committee for Public Counsel Services		
12/29/2025	Plaintiff Office of the Inspector General's Motion to Impound	3	
12/29/2025	Plaintiff Office of the Inspector General's Motion to Compel Production of Material pursuant to M.G.L. c. 12A, s. 9	4	
12/29/2025	Office of the Inspector General's Memorandum in support of Motion to Compel Production of Material pursuant to M.G.L. c. 12A, s. 9	5	
12/29/2025	Opposition to Motion to Compel Production of Material pursuant to M.G.L. c. 12A, s. 9 filed by Committee for Public Counsel Services	6	
12/29/2025	Reply/Sur-reply Reply to Opposition to Motion to Compel Applies To: Office of the Inspector General (Plaintiff)	7	
12/29/2025	Plaintiff Office of the Inspector General's Notice of Filing of Rule 9A Motion	8	
12/29/2025	Summons and order of notice issued on a Motion to Compel Production of Material pursuant to M.G.L. c. 12A, s. 9, returnable on 01/13/2026 02:00 PM Motion Hearing to Compel.		
12/30/2025	Endorsement on Motion to Impound (#3.0): ALLOWED Order to issue. (dated 12/29/2025) Notice sent 12/31/25		
12/30/2025	ORDER: Impoundment Order See paper #9 for Full Order.	9	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	(dated 12/29/2025) Notice sent 12/31/25		
01/06/2026	Event Result:: Motion Hearing to Compel scheduled on: 01/13/2026 02:00 PM Has been: Rescheduled For the following reason: Transferred to another session Hon. Jackie Cowin, Presiding Staff: Paul Kenneally, Assistant Clerk		
01/12/2026	Event Result:: Motion Hearing to Compel scheduled on: 01/13/2026 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Michael D Ricciuti, Presiding Staff: Melissa Doris, Assistant Clerk Magistrate		
01/13/2026	Event Result:: Motion Hearing to Compel scheduled on: 01/21/2026 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Catherine Ham, Presiding Staff: Anh T Bungcayao, Assistant Clerk Magistrate		
01/21/2026	Event Result:: Motion Hearing to Compel scheduled on: 01/21/2026 10:00 AM Has been: Held as Scheduled Hon. Catherine Ham, Presiding Staff: Anh T Bungcayao, Assistant Clerk Magistrate		
02/11/2026	MEMORANDUM & ORDER: 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, section 9 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. (dated 1/27/2026) Notice Sent 1/28/2026 Judge: Ham, Hon. Catherine	10	
02/11/2026	Endorsement on Motion to Compel Production of Material pursuant to M.G.L. c. 12A, s. 9 (#4.0): ALLOWED Subject to an agreed upon protective order for court to review + approve within 20 days of this order. See court's written decision.\n(dated 1/27/2026) Notice Sent 1/28/2026		
02/13/2026	Notice of appeal filed. Notice sent 2/19/26 Applies To: Committee for Public Counsel Services (Defendant)	11	
02/13/2026	Defendant Committee for Public Counsel Services's Assented to Motion for Stay Pending Appeal Pursuant to Mass.R.Civ.P. Rule 62	12	
02/13/2026	Committee for Public Counsel Services's Assented to Memorandum in support of its Assented-to Motion for Stay Pending Appeal Pursuant to Mass.R.Civ.P. Rule 62	13	
02/18/2026	Defendant Committee for Public Counsel Services's Assented to Motion to Terminate the Impoundment Order	14	
02/27/2026	Endorsement on Motion for Stay Pending Appeal Pursuant to Mass.R.Civ.P.Rule 62 (#12.0): ALLOWED Entered 2/25/2026 notice sent 2/27/2026 Judge: Ham, Hon. Catherine		
02/27/2026	Notice to Court RE: NO transcript ordered	15	
03/04/2026	Endorsement on Motion to Terminate the Impoundment Order; assented to (#14.0): ALLOWED Dated: 3/3/26 Notice sent 3/9/26 Applies To: Committee for Public Counsel Services (Defendant)		 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
03/12/2026	Plaintiff Office of the Inspector General's Notice of Transcript Order Transcript of 1/21/26 ordered	16	 Image
03/13/2026	Transcript of 1/21/26 received		
04/02/2026	Appeal: Statement of the Case on Appeal (Cover Sheet).		 Image
04/02/2026	Notice of assembly of record sent to Counsel		 Image
04/02/2026	Notice to Clerk of the Appeals Court of Assembly of Record		 Image
04/03/2026	Defendant Committee for Public Counsel Services's Motion to Waive Filing Fee	17	 Image
04/09/2026	Endorsement on Motion to Waive Filing Fee (#17.0): ALLOWED (dated 4/8/2026) Notice sent 04/21/26		 Image
04/23/2026	Notice of Entry of appeal received from the Appeals Court In accordance with Massachusetts Rule of Appellate Procedure 10(a)(3), please note that the above-referenced case (2026-P-0566) was entered in this Court on April 21, 2026.	18	 Image
05/06/2026	Defendant Committee for Public Counsel Services's Motion to Intervene Pursuant to Mass. R. Civil Pro.24	19	 Image
05/12/2026	Notice of docket entry received from Appeals Court Please take note that on May 11, 2026, the following entry was made on the docket of the above-referenced case (2026-P-0566): ORDER: A review of the materials transmitted with the notice of assembly of the record (Suffolk Superior Court 2584CV03580) indicates the defendant filed a notice of appeal on 02/13/2026 from the 02/11/2026 allowance of plaintiff's motion to compel production of material pursuant to G. L. c. 12A, § 9. The trial court docket sheets do not indicate that final judgment pursuant to Mass. R. Civ. P. 54 (b) from which an appeal can be taken entered prior to 02/13/2026, the date the defendant filed the notice of appeal. A response from the defendant is requested and due on or before 05/18/2026. In the response, the defendant is to show cause, in writing, demonstrating how the trial court's allowance of plaintiff's motion to compel production of material pursuant to G. L. c. 12A, § 9 is appealable. See G. L. c. 231, § 113 ("[a] party aggrieved by a final judgment of the superior court, may appeal therefrom to the appeals court" (emphasis added)). Alternatively, the defendant may move for voluntary dismissal of the appeal under Mass R. A. P. 29 (b) (1). The failure to respond to this show cause order on or before 05/18/2026 may lead to the dismissal of this appeal for lack of prosecution. The defendant is to note that if this appeal is dismissed, the defendant may raise any claims regarding the 02/11/2026 order in an appeal from final judgment if the defendant files a timely notice of appeal from final judgment pursuant to Mass. R. A. P. 3 & 4. *Notice/attest.	20	 Image
05/19/2026	Endorsement on Motion to Intervene Pursuant to Mass. R. Civil Pro. 24 (#19.0): DENIED without prejudice, for failure to comply with Rule 9A. Dated: 5/13/26 Notice sent 05/21/26		 Image
06/05/2026	Attorney appearance On this date Eugenia Mary Carris, Esq. dismissed/withdrawn for Plaintiff Office of the Inspector General		 Image

Please be informed that due to planned maintenance, MassCourts.org will be unavailable between Thursday, July 16th from 6:30 PM to 11:30 PM. Case information and ePay will be unavailable during this time. ✖

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 following¹:

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

¹ 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