



January 6, 2021

Governor Charles Baker
Massachusetts State House
24 Beacon Street, Room 280
Boston, MA 02133

Dear Governor Baker,

We, the Chief Counsel of the Committee for Public Counsel Services (CPCS) and the President of the Massachusetts Bar Association, are writing to ask you to extend the designation of Phase 2 workers in your vaccination priority list to the CPCS staff attorneys and private assigned counsel (e.g., bar advocates), and investigators and social workers of CPCS, who work every day to ensure the equal protection of the law for all indigent members of our community. The attorneys and professionals who support them, provide a wide array of essential services including adult and juvenile criminal defense, children and family law, and mental health advocacy. We understand and acknowledge that health care workers, first responders and vulnerable populations need to be given the first priority. We particularly appreciate your recognition of the necessity to include the incarcerated citizens of the Commonwealth, the majority of whom we represent. While CPCS has done everything possible to reduce the risk of transmission, its attorneys, investigators, and social workers daily put themselves in harm's way to provide their clients their constitutional right to zealous representation. We ask they be considered Phase 2 workers for the purpose of COVID-19 vaccination priority.

The Centers for Disease Control recently issued guidance supporting the position to include public defenders and supporting professionals¹ in the priority list for vaccine distribution. The CDC breaks down the first vaccine phase into a three tiered approach. This three tiered approach closely resembles Phase 1 and 2 of the Commonwealth's vaccine distribution plan. However, the CDC recommends including members of the legal industry in their list of "other essential workers" in their third tier along with persons over 65 and others with high risk medical conditions.² This list

¹This includes staff attorneys, private assigned counsel (e.g., bar advocates), investigators and social service advocates working as a team to deliver essential judicial services.

²Dooling, Kathleen MD, et al., The Advisory Committee on Immunization Practices' Updated Interim Recommendation for Allocation of COVID-19 Vaccine – United States, December 2020, Center for Disease Control, Dec. 22, 2020 https://www.cdc.gov/mmwr/volumes/69/wr/mm695152e2.htm?s_cid=mm695152e2

includes many of the same professions as your list of “other workers” in Phase 2, but workers in the legal community were left off of the Commonwealth’s priority list.

The CDC specifically included people who work in the legal field in their definition of “other essential workers” based on an extensive review of the relevant scientific literature including a list of Essential Critical Infrastructure workers promulgated by the Cybersecurity and Infrastructure Security Agency (CISA). Legal workers are defined on that list as, “Workers supporting the operations of the judicial system, including judges, lawyers, and others providing legal assistance.”³ The CDC justifies this recommendation stating “[p]opulations included in Phase 1c [third tier] are either at an increased risk for severe COVID-19 compared with the general population or support ongoing critical infrastructure operations”. Giving vaccination priority to CPCS staff attorneys, private assigned counsel (e.g., bar advocates), investigators and social workers furthers the goal of supporting critical infrastructure, while also helping to keep vulnerable populations with an increased risk to severe COVID-19 complications safe.

CPCS attorneys and supporting professionals both help maintain the critical infrastructure necessary to the ongoing operation of the judicial system to assure public safety. They also work closely with a vulnerable population who are more susceptible to severe complications of COVID-19. The commitment by CPCS attorneys and supporting professionals to their duty has allowed the courts of the Commonwealth to remain open and hold in person hearings throughout the pandemic. The health of CPCS attorneys and supporting professionals is essential to continue to provide this service, and also to prevent the spread of the disease to vulnerable populations. People are continuously cycled between jails, prisons, courthouses, and back to the community. Incarcerated people are extremely susceptible to COVID-19 transmission, because they are forced to live in congregate settings. Many of the other CPCS clients live in high risk communities, almost all live below the poverty line without meaningful access to health care, and many are homeless. CPCS clients are also disproportionately members of racial and ethnic groups who have experienced disproportionate COVID-19 incidence, morbidity, and mortality. These conditions are present in all practice areas: criminal, juvenile, and mental health, along with CPCS’ children and family law units.

While many legal practices allow for working remotely, CPCS cases require appearances in court. Almost every day, courts across the Commonwealth have been forced to close as a result of COVID-19 exposures. The virus has affected clerks, judges, and lawyers alike as they try to continue their vital responsibilities, many of whom have become seriously ill. There are currently COVID-9 outbreaks in each of our jails and prisons. Attorneys, investigators, and social service advocates enter these jails and prisons, as well as other high transmission areas, such as hospitals, DYS facilities, and congregate care facilities to meet with their clients. These dedicated attorneys and supporting professionals must regularly come into contact with groups of people in confined places. They frequently must be within six feet of their clients to effectively communicate with their clients during in person court hearings. Similarly, in courthouse lock-up areas or private

³Cybersecurity and Infrastructure Security Agency. Guidance on essential critical infrastructure workers: version 4.0. Washington, DC: US Department of Homeland Security, Cybersecurity and Infrastructure Security Agency; 2020. <https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforceexternal> icon.

interview rooms, they must communicate confidentially with their clients under circumstances that do not permit effective social distancing. Because of this, they are significantly less able to socially distance while providing representation and are far more likely to be in close quarters with clients for prolonged periods of time. This places both the attorneys and supporting professionals at increased risk of contracting this disease compared to the rest of the legal community and court staff.

The backlog of cases pending in our courts in all CPCS' practice areas is staggering. WBUR recently reported that, the trial court's pending caseload grew by almost twice as many cases compared to last year, reaching 103,469 cases, with criminal cases accounting for half of that backlog.⁴ There have not been any criminal jury trials since March 2020 and the prospect of a return to widespread jury trials before March 2021 is remote. In order to meet this enormous challenge and reduce the backlog of cases, CPCS attorneys and supporting professionals must be fully prepared to enter courthouses and jails and prisons as soon as possible to facilitate the operation of the judicial system. They should be considered essential frontline workers who are key to societal functioning.

Please help us continue this important work for the most vulnerable population of the Commonwealth by designating CPCS staff attorneys, private assigned counsel (e.g., bar advocates), social services advocates and investigators, as Phase 2 workers for the purpose of COVID-19 vaccination priority.

Thank you for your consideration.

Respectfully,

/s/ *Anthony J. Benedetti*

Anthony J. Benedetti, Chief Counsel
Committee for Public Counsel Services

/s/ *Denise I. Murphy*

Denise I. Murphy, President
Massachusetts Bar Association

cc: Marylou Sudders, Secretary of Health and Human Services
Robert Ross, Chief Legal Counsel

⁴WBUR: "Mass Court Caseload Doubles During Pandemic (<https://www.wbur.org/news/2020/12/25/mass-court-case-backlog-covid>)(last updated December 28, 2020)