

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. SJ-2025-0244

COMMITTEE FOR PUBLIC COUNSEL SERVICES

v.

MIDDLESEX AND SUFFOLK COUNTY DISTRICT COURTS and another¹

INTERIM ORDER AND RESERVATION AND REPORT

This matter came before the court, Wendlandt, J., on the petition of the Committee for Public Counsel Services (CPCS), brought on behalf of unrepresented indigent criminal defendants with cases pending in the Middlesex and Suffolk County District Courts and in the Boston Municipal Court (Courts), which petition was filed on June 18, 2025. At the time CPCS filed the petition, it requested that, in light of the shortage of defense counsel, I order an increased rate of attorney compensation until the Legislature could devise a long-term solution. See Emergency Pet., No. SJ-2025-0244, Dkt. 2, at 9-11 (June 18, 2025). The Courts opposed this request. See Resp. to Emergency Pet., No. SJ-2025-0244, Dkt. 13, at 11-15 (June 25, 2025).

On July 3, 2025, following an evidentiary hearing at which each of the parties and the intervenor Suffolk County District

¹ The Boston Municipal Court.

Attorney (SCDA) agreed that the evidence, which was presented by affidavit and by live testimony, warranted the imposition in the Courts of the protocol described in Lavallee v. Justices in the Hampden Superior Court, 442 Mass. 228, 247-249 (2004), I ordered the imposition of the Lavallee protocol in the Courts. See Order, No. SJ-2025-0244, Dkt. 23, at 22 (July 3, 2025). In deference to the Legislature, however, I denied without prejudice CPCS's request to increase attorney compensation rates. See id. at 21.

The Legislature has since responded. On August 5, 2025, the Governor signed a supplemental budget package that provided for increasing the rate of attorney compensation for district court cases by \$20 per hour over the next two years and appropriating funds for the hiring of 320 additional CPCS staff attorneys over that same time period. See c. 14 of the Acts of 2025, §§ 2A, 48-50, 104-105.

Nevertheless, it is not clear from the record before me whether this legislation will cure the current shortage of defense counsel, and if so, on what timetable. The number of unrepresented indigent criminal defendants remains substantial. Consequently, on August 22, 2025, I ordered the parties, including the SCDA, to file briefs and a joint statement of undisputed facts addressing whether I should reserve and report to the full court the issue of the permissibility of judicial

rate setting. See Mem. of Decision & Order, No. SJ-2025-0244, Dkt. 47, at 22-24 (Aug. 22, 2025). I received those filings on September 15, 2025.

Upon review and consideration of those filings, I conclude that this case raises an important question of law, and I hereby reserve and report that question to the full court as follows for its determination: In light of the scope of the present shortage of available defense counsel in the District Courts of Middlesex and Suffolk County and in the Boston Municipal Court, whether and under what circumstances the Supreme Judicial Court, a single justice of the Supreme Judicial Court, or any justice of any trial court department is authorized to order increased compensation rates beyond those provided in G. L. c. 211D, § 11 (a), for attorneys accepting representation of indigent criminal defendants.² See G. L. c. 211, §§ 3, 6. See also Carrasquillo v. Hampden County Dist. Courts, 484 Mass. 367, 394 (2020) (noting "inherent power to ensure the proper operations of the courts").

The record shall consist of the following:

² In its Brief, filed on September 15, 2025, CPCS requested that I additionally reserve and report the question of whether a district court judge erred in declining to order the release of five defendants on the ground that CPCS had not made good faith efforts to obtain counsel for them. See Brief of CPCS, No. SJ-2025-0244, Dkt. 56, at 7 (Sept. 15, 2025). I hereby deny that request and decline to reserve and report that issue.

1. All papers filed before the single justice in this case as of the date of this reservation and report, including the Joint Statement of Undisputed Facts, filed in this case on September 15, 2025;
2. The docket sheet for this case; and
3. This reservation and report.

The matter shall proceed in all respects in conformance with the Massachusetts Rules of Appellate Procedure. CPCS shall be deemed the appellant, and the Courts and the SCDA shall be deemed the appellees.³ CPCS's brief shall be filed no later than October 2, 2025. The Courts' brief and the SCDA's brief shall be filed no later than October 17, 2025. CPCS's reply brief, if any, and any amicus briefs, shall be filed no later than October 24, 2025. Enlargements of time should not be anticipated. Oral argument shall take place in November 2025.

By the court,

/s/ Dalila Arguez Wendlandt

Dalila Arguez Wendlandt
Associate Justice

Dated: September 18, 2025

³ In their Memorandum of Law, filed on September 15, 2025, the Courts renew their earlier request that I invite the relevant bar advocate organizations, Middlesex Defense Attorneys, Inc., and Suffolk Lawyers for Justice, to intervene or otherwise participate in this case. See Courts' Mem. of Law, No SJ-2025-0244, Dkt. 54, at 4-5 n.1 (Sept. 15, 2025). I hereby deny that request.