

HABEAS CORPUS TASK FORCE

MEETING MINUTES

Wednesday, August 21, 2019

2:00PM in Room 2B of the LOB

The meeting was called to order at 2:01PM by Co-Chairs, Merit Lajoie and Kenneth Rosenthal, Esq.

The following committee members were present:

Representative Maria Horn, 064; Merit Lajoie, Kenneth Rosenthal, Nicole Anker; Judge William Bright; Tim Everett; Kevin Lawlor (for Kevin Kane); Charles Ray; Christine Rapillo; Judge Samuel Sferrazza; Judge Carl Schuman

Absent were: Representative Rosa Rebimbas, 070; Senator John Kissel, S07; Judge Thomas Bishop

Introductions of members were made.

A motion to approve the meeting minutes from the July 17th meeting was moved and seconded.

Tom Hennick from the Commission on Freedom of Information gave a presentation on the Freedom of Information Act.

Discussion was had regarding access to information, meetings and records. Mr. Hennick discussed the information necessary for meetings, meeting agendas and types of meetings.

Christine Rapillo, Chief Public Defender, gave presentations on the overview of the Habeas Corpus process from the Public Defender perspective. For the nine years from 2010 thorough end of 2018, there were a 4,388 petitions referred to the PD out of a total of 6,589 petitions filed, or approx. 2/3 (conditions of confinement cases not eligible for PD). The individual year breakdown confirms the temporary spike in filings beginning in 2014 in the face of new impending SOL deadlines under the 2012 amendment. The stats for the succeeding years indicate a decline in those numbers, from 756 referrals in 2014 down to 333 for 2018. CPD Rapillo also discussed other policy changes that have accounted for the backlog in habeas cases associated with 2012 amendments, including the conjunction of the 2014 surge with a time that staffing issues were prevalent for all state agencies making it difficult for screening procedures to be utilized. In addition there were temporary increases in filing due to (1) Miller/Graham decisions on issue of age and lack of mitigation in sentencing of persons under 18 (accounting for several hundred new cases), the CT Supreme Court's decision in Salomon relating to the kidnapping statue and the need for habeas to litigate retroactivity of that decision, the statutory changes in RECC eligibility in 2013 and 2015 resulting in due process and ex post facto claims, and the 2018 elimination of special parole. Ms. Rapillo also referred to the following factors impacting caseload: trial backlog in the habeas court, delays in discovery rendering case assessment difficult, and court orders permitting reassignment/replacement of petitioner's counsel. She noted that the PD assignment numbers for 2019 are skewed due to the terminating of

one of the assigned counsel firms from all cases, requiring approximately 100 reassignments due to that alone. In terms of costs, the overall cost of the OCPD in habeas cases has dropped somewhat, but remains significant in part due to the expense of habeas trial on older cases coming to trial from the 2014 surge. Ms. Rapillo offered the following suggestions for making the system more efficient: (1) use of the “unreasonable delay” provisions of amended section 53-270d; (2) improved discovery process (she suggested open file policy in habeas cases) to enable earlier assessment of the merits of a claim by counsel, (3) more resources available for hearing habeas matters (currently only one full-time judge), and (4) more consistency in court assignments.

Alix Walmsley and Jennifer Borne from the Counsel Committee at the Office of Chief Public Defender also presented on the process overview.

Questions were asked by Judge Bright about data specifics, including in particular the possibility of isolating and identifying successive habeas petitions involving “IAC on IAC” claims – i.e., successive petitions claiming ineffective assistance of prior habeas counsel.

Judge Sferrazza asked about incoming cases. Ms. Rapillo said the Public Defender’s Office has no control over caseload. (See presentation from the Chief Public Defender’s Office, described above and in materials submitted by OCPD).

Chairwoman Lajoie asks if that office handles Conditions Claims, the Chief Public Defender’s Office responds that they do not.

There was further discussion between the Chief Public Defender’s Office and Assistant State Attorney Kevin Lawlor.

The last presentation was made by Damon Kirschbaum. Attorney Kirschbaum noted that habeas cases provide a mechanism for considering information outside the record available on direct appeal, as bearing on the reliability of the underlying judgment, ineffective assistance of counsel and claims of actual innocence. He further noted that habeas cases are factually, legally and procedurally very complex and should be considered in light of what we know about other complex systems. Among the issues of concern that he identified, from years of experience in litigating these cases, listing the following: (a) difficulties in obtaining information from prior counsel; (b) lack of adequate records of what was turned over by the prosecution in discovery; (c) lack of records concerning history of plea offers; and (d) issues concerning the documentation and disclosure of consideration offered to cooperating witnesses (in contrast to the practice followed in the federal courts).

Chairwoman Lajoie discussed and assigned presentations for the next Task Force Meeting on September 18th at 2:00PM in Hearing Room 2B.

A motion was duly made and seconded to adjourn the meeting.

The meeting was adjourned at 4:06 PM.