

**MCILS**

**Commissioner's Meeting  
Packet**

**Rescheduled to  
December 29, 2014**

---

---

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

---

---

**DECEMBER 29, 2014  
RE-SCHEDULED COMMISSION MEETING  
JUDICIARY COMMITTEE ROOM, STATEHOUSE, AUGUSTA  
AGENDA**

---

- 1) Approval of November 18, 2014 Commission Meeting Minutes
- 2) Operations Reports Review
- 3) Budget Update
- 4) Consideration of Proposed Rules in order for Provisional Adoption
- 5) Meeting with Judicial Branch Re: Counsel Fees
- 6) Potential Contract Proposal for Kennebec County
- 7) Public Comment
- 8) Set Date, Time and Location of Next Regular Meeting of the Commission
- 9) Executive Session, if needed (Closed to Public)

**(1.)**  
**November 18, 2014**  
**Commission Meeting**  
**Minutes**

**Maine Commission on Indigent Legal Services – Commissioners Meeting  
November 18, 2014**

**Minutes**

**Commissioners Present:** Steven Carey, Marvin Glazier, William Logan, Susan Roy, Kenneth Spierer

**MCILS Staff Present:** John Pelletier, Ellie Brogan

<b>Agenda Item</b>	<b>Discussion</b>	<b>Outcome/Action Item/Responsible Party</b>
Approval of the October 14, 2014 Commission Meeting Minutes	Copy of minutes received by all Commissioners.	Commissioner Spierer moved for the approval of the minutes. Commissioner Glazier seconded. All voted in favor. Approved.
Operations Reports Review	Director Pelletier presented the <u>October 2014 Operations Reports</u> . The number of new cases opened in DefenderData totaled 2,068 – a 219 case decrease from September. 2,781 vouchers were submitted in October, totaling \$1,281,414. This was a 46 voucher decrease and \$2,000 increase from September. In October, the Commission paid 3,025 vouchers, totaling \$1,440,231, a 535 voucher and \$285,000 increase from September. The average price per voucher in October was \$475.79, an increase of \$11.92 per voucher from September. Appeal and Termination of Parental Rights cases were the highest average vouchers. Seven vouchers exceeding \$5,000 were paid in October. The October transfer of counsel fees, which reflected September’s collections, totaled \$61,901, up \$14,000 from the previous month.	
Budget Discussion	Director Pelletier updated the Commissioners on the status of the budget. Expenses during the month of October ran high for two main reasons: (1) the carry-over from the first quarter exceeded projections by \$100,000; and (2) several attorneys from some of the busiest firms switched firms, resulting in a large number of interim vouchers. While payment on these interim vouchers would have been incurred in any event, for the most part payments on these cases were made on a much earlier date. As a result, there will be a corresponding reduction in future costs due to these early payments. Due to the uncertainty regarding cost trends created by the interim voucher process, Director Pelletier decided against submitting a financial order that would have pulled funds from Q3 into Q2, which would have avoided any delay in payments in the second quarter. He	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>did submit a financial order that raised the allotment in the Revenue Account so that all the collected funds could be utilized this quarter. Following the November 5<sup>th</sup> deadline for financial orders, voucher submissions ran quite high and will cause a shortfall at the end of the quarter, resulting in a delay in payments. Chair Carey requested that Director Pelletier send notice to attorneys in the next day or two explaining the financial situation.</p> <p>Director Pelletier gave the Commissioners an update on the budget meeting he attended with Chair Carey, the Commissioner of DAFS, the State Budget Officer, the Governor's Chief Legal Counsel, and others regarding the Commission's recent supplemental budget and biennial budget submissions. Director Pelletier thought the meeting went well and that the attendees seemed to recognize the constitutional services that the Commission delivers and that there are other actors that affect the Commission's budget that are out of the Commission's control. Chair Carey added that the meeting attendees were concerned about rising costs and the yearly increase in the Commission's budget. The group did not give any feedback on the proposed hourly rate increase. The Commission's enabling statute was discussed and how it contemplates the Commission receiving funds from other sources. It was suggested that the Commission could seek grant money or reach out to large law firms to solicit pro bono attorney time to work on Commission cases.</p> <p>Commissioner Carey suggested a potential change to the lawyer of the day walk-in program that might save money. He explained that he meets with many defendants who do not qualify for court-appointed counsel since there is no risk of jail in their case. If attorneys did not meet with these individuals, it might reduce the amount of hours that they bill the Commission for lawyer of the day appearances. He suggested that the Cumberland Legal Aid Clinic could expand their services to include adult lawyer of the day walk-in sessions. Commissioner Logan thought that this idea would receive some resistance from the courts since the lawyer of the day program is beneficial to the court and serves to avoid larger costs down the road should the case move forward.</p> <p>Commissioner Logan voiced his concerns about utilizing pro bono attorneys. His chief concern was that attorneys who do not practice criminal defense would be handling these cases. He also noted that outside of Portland, Bangor and Lewiston there are very few "large" law firms. As a result, the amount of actual pro bono time would be very limited. Commissioner Glazier had similar concerns and noted that the purpose of the</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>Commission would be diluted and that the Commission is trying to get away from having newly-minted attorneys handling court-appointed cases.</p> <p>Chair Carey indicated that some grants might be available for experts or interpreters and that Commission staff should do some research to see what is available. Director Pelletier said that Commission staff will look into what is out there to see if there is anything worthwhile to pursue.</p>	
Training Update	<p>Deputy Director Brogan updated the Commissioners on the recent advanced criminal training and on several upcoming trainings. Chair Carey attended the advanced criminal training and thought it was a good program. He suggested that future trainings be held in Augusta or points northward since several trainings had been or will be held in Freeport. Commissioner Glazier also attended the advanced criminal training and thought it was excellent; however, he wished that the mental health panel had been longer. Director Pelletier suggested that the Commission have a half-day training on mental health in the future.</p>	
Public Comment	<p>Robert Ruffner, Esq. submitted a public comment:</p> <ul style="list-style-type: none"> <li>▪ Attended the advanced criminal training and the advanced juvenile training and thought that both trainings provided useful nuts and bolts practice information;</li> <li>▪ If the lawyer of the day services were not offered to non-risk of jail defendants it would not really save the Commission much money and that decision could possibly lead to a lawsuit;</li> <li>▪ Believes that the idea of having pro bono attorneys take court-appointed cases to help relieve rising costs would also lead to a lawsuit;</li> <li>▪ Most grants are geared towards non-profits and a non-profit organization that has a state contract could apply for a grant;</li> <li>▪ Attorneys who travel increase the Commission's costs, but any change in the travel policy would be devastating to Cumberland County attorneys since there would not be enough cases for those attorneys to keep busy and maintain a practice.</li> </ul>	
Executive Session	None	

<b>Agenda Item</b>	<b>Discussion</b>	<b>Outcome/Action Item/Responsible Party</b>
Adjournment of meeting	The Commission then voted to adjourn with the next meeting to be on December 9, 2014, at 9:30 am in the Judiciary Committee Room.	Commissioner Spierer made a motion to adjourn. Commissioner Logan seconded. All present voted in favor.

**(2.)**  
**Operations Reports**  
**Review**

---

---

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

---

---

**TO:** MCILS COMMISSIONERS  
**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR  
**SUBJECT:** NOVEMBER 2014 OPERATIONS REPORTS  
**DATE:** DECEMBER 3, 2014

---

Attached you will find the November, 2014 Operations Reports for your review and our discussion at the upcoming Commission meeting on December 9, 2014. A summary of the operations reports follows:

- 1,976 new cases were opened in the DefenderData system in November. This was a 92 case decrease from October.
- The number of vouchers submitted electronically in November was 2,826, an increase of 45 vouchers over October, totaling \$1,377,122.60, an increase of \$96,000 over October. In November, we paid 2,626 electronic vouchers totaling \$1,166,030.09. This was a 399 voucher and \$274,000 increase over October.
- There were no paper vouchers submitted in November.
- The average price per voucher in November was \$444.03, down \$31.76 per voucher over October.
- Appeal and Post-Conviction Review cases had the highest average vouchers in November. There were 3 vouchers exceeding \$5,000 paid in November. These cases involved: 1) an interim voucher in a murder case submitted by an attorney changing firms; 2) a voucher on a murder arising in 1976 that involved DNA and alternative suspect evidence and was resolved by a plea to a lesser version of Murder than originally charged; and 3) a voucher in an Aggravated Assault case that resulted in a Not Guilty verdict after a two-day trial.

In our All Other Account, the total expenses for the month of November were \$1,261,558.01. Of the amount, \$10,440.22 was devoted to the Commission's operating expenses.

In the Personal Services Account, we had \$50,117.291 in expenses for the month of November.

In the Revenue Account, our monthly transfer from the Judicial Branch for counsel fees for the month of November, which reflects October's collections, totaled \$66,316.39, up \$4,400 from the previous month, which continues the strong performance of reimbursement revenue during the current fiscal year.

In our Conference Account, we collected registration fees for the minimum standards video replays and paid small partial expenses for the advanced criminal training presented in October, leaving the account balance at \$32,489.12. We are yet to pay the bulk of the expenses for the advanced criminal training, which will exceed our revenue for the training.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Case Type

11/30/2014

DefenderData Case Type	Nov-14						Fiscal Year 2015			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
Appeal	8	22	\$ 28,580.74	10	\$ 12,888.61	\$ 1,288.86	46	58	\$ 79,297.49	\$ 1,367.20
Child Protection Petition	149	409	\$ 233,522.99	378	\$ 212,247.20	\$ 561.50	832	1,779	\$ 959,331.47	\$ 539.25
Drug Court	0	9	\$ 3,652.00	4	\$ 1,710.50	\$ 427.63	2	29	\$ 13,048.50	\$ 449.95
Emancipation	10	5	\$ 863.50	7	\$ 1,527.00	\$ 218.14	57	43	\$ 13,270.93	\$ 308.63
Felony	521	647	\$ 472,834.80	560	\$ 368,444.02	\$ 657.94	2,621	2,814	\$ 2,082,370.71	\$ 740.00
Involuntary Civil Commitment	65	78	\$ 18,758.80	98	\$ 22,343.21	\$ 227.99	371	364	\$ 78,259.19	\$ 215.00
Juvenile	82	104	\$ 38,273.67	177	\$ 56,287.14	\$ 318.01	485	632	\$ 217,318.61	\$ 343.86
Lawyer of the Day - Custody	199	176	\$ 35,985.52	194	\$ 40,715.41	\$ 209.87	1,069	1,006	\$ 208,945.44	\$ 207.70
Lawyer of the Day - Juvenile	36	46	\$ 10,504.88	45	\$ 9,605.08	\$ 213.45	208	206	\$ 38,534.35	\$ 187.06
Lawyer of the Day - Walk-in	115	114	\$ 24,994.72	101	\$ 22,350.73	\$ 221.29	585	539	\$ 113,190.73	\$ 210.00
Misdemeanor	598	756	\$ 284,286.67	643	\$ 217,898.80	\$ 338.88	3,224	3,212	\$ 1,177,437.27	\$ 366.57
Petition, Modified Release Treatment	0	0		1	\$ 913.50	\$ 913.50	5	31	\$ 9,638.76	\$ 310.93
Petition, Release or Discharge	0	0		0			0	3	\$ 3,867.88	\$ 1,289.29
Petition, Termination of Parental Rights	14	58	\$ 37,443.09	49	\$ 37,195.08	\$ 759.08	85	239	\$ 162,932.41	\$ 681.73
Post Conviction Review	6	17	\$ 16,100.51	10	\$ 12,895.04	\$ 1,289.50	21	26	\$ 29,448.78	\$ 1,132.65
Probation Violation	138	188	\$ 74,390.05	169	\$ 68,018.26	\$ 402.47	798	790	\$ 288,196.51	\$ 364.81
Represent Witness on 5th Amendment	2	3	\$ 766.50	3	\$ 357.50	\$ 119.17	7	6	\$ 821.50	\$ 136.92
Review of Child Protection Order	32	192	\$ 94,760.46	175	\$ 79,689.51	\$ 455.37	160	836	\$ 412,339.64	\$ 493.23
Revocation of Administrative Release	1	2	\$ 1,403.70	2	\$ 943.50	\$ 471.75	12	15	\$ 5,094.00	\$ 339.60
<b>DefenderData Sub-Total</b>	<b>1,976</b>	<b>2,826</b>	<b>\$ 1,377,122.60</b>	<b>2,626</b>	<b>\$ 1,166,030.09</b>	<b>\$ 444.03</b>	<b>10,588</b>	<b>12,628</b>	<b>\$ 5,893,344.17</b>	<b>\$ 466.69</b>
<b>Paper Voucher Sub-Total</b>	<b>0</b>	<b>0</b>	<b>\$ -</b>	<b>0</b>	<b>\$ -</b>	<b>#DIV/0!</b>	<b>3</b>	<b>3</b>	<b>\$ 512.12</b>	<b>\$ 170.71</b>
<b>TOTAL</b>	<b>1,976</b>	<b>2,826</b>	<b>\$ 1,377,122.60</b>	<b>2,626</b>	<b>\$ 1,166,030.09</b>	<b>\$ 444.03</b>	<b>10,591</b>	<b>12,631</b>	<b>\$ 5,893,856.29</b>	<b>\$ 466.62</b>

MAINE COMMISSION ON INDIGENT LEGAL SERVICES  
 FY15 FUND ACCOUNTING  
 AS OF 11/30/2014

Account 010 95F Z112 01 (All Other)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY15 Total
FY15 Professional Services Allotment		\$ 3,668,113.00		\$ 3,314,658.00		\$ 3,737,544.00		\$ 3,228,737.00	
FY15 General Operations Allotment		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustment		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustment		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustment		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustment		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustment		\$ -		\$ -		\$ -		\$ -	
<b>Total Budget Allotments</b>		<b>\$ 3,668,113.00</b>		<b>\$ 3,314,658.00</b>		<b>\$ 3,737,544.00</b>		<b>\$ 3,228,737.00</b>	<b>\$ 13,949,052.00</b>
Total Expenses	1	\$ (1,141,359.56)	4	\$ (1,567,153.86)	7	\$ -	10	\$ -	\$ (2,708,513.42)
	2	\$ (1,199,265.91)	5	\$ (1,261,558.07)	8	\$ -	11	\$ -	\$ (2,460,823.98)
	3	\$ (1,114,175.03)	6	\$ -	9	\$ -	12	\$ -	\$ (1,114,175.03)
Encumbrances		\$ (213,312.50)		\$ 47,500.00		\$ -		\$ -	\$ (165,812.50)
<b>TOTAL REMAINING</b>		<b>\$ -</b>		<b>\$ 533,446.07</b>		<b>\$ 3,737,544.00</b>		<b>\$ 3,228,737.00</b>	<b>\$ 7,499,727.07</b>

**Q2 Month 5 (as of 11/30/14)**

INDIGENT LEGAL SERVICES	
Counsel Payments	\$ (1,166,030.09)
Somerset County	\$ (23,052.50)
Subpoena Witness Fees	\$ -
Private Investigators	\$ (13,568.97)
Mental Health Expert	\$ (13,403.77)
Transcripts	\$ (10,638.42)
Other Expert	\$ (22,637.23)
Expert Witness Lodging	\$ (592.96)
Process Servers	\$ (498.91)
Interpreters	\$ (695.00)
Misc Prof Fees & Serv	\$ -
<b>SUB-TOTAL ILS</b>	<b>\$ (1,251,117.85)</b>
OPERATING EXPENSES	
Service Center	\$ -
DefenderData	\$ (4,605.00)
Risk Management	\$ -
Mileage/Tolls/Parking	\$ (1,446.98)
Mailing/Postage/Freight	\$ (1,065.92)
Legal Ads	\$ (1,051.06)
Maine State Bar Dues	\$ -
Office Supplies/Equip.	\$ (290.04)
Cellular Phones	\$ (182.59)
VDT reimbursements	\$ -
Office Equipment Rental	\$ (146.22)
OIT/TELCO	\$ (1,652.41)
<b>SUB-TOTAL OE</b>	<b>\$ (10,440.22)</b>
<b>TOTAL</b>	<b>\$ (1,261,558.07)</b>

**INDIGENT LEGAL SERVICES**

Q2 Allotment	\$ 3,314,658.00
Q2 Encumbrance Expenditures	\$ 47,500.00
Q2 Expenses as of 11/30/14	\$ (2,828,711.93)
Remaining Q2 Allotment as of 11/30/14	\$ 533,446.07

MAINE COMMISSION ON INDIGENT LEGAL SERVICES  
 FY15 FUND ACCOUNTING  
 As of 11/30/14

Account 014 95F Z112 01 (Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY14 Total
<b>Total Budget Allotments</b>		\$ 149,124.00		\$ 149,124.00		\$ 149,124.00		\$ 149,125.00	\$ 596,497.00
Financial Order Adjustment	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Financial Order Adjustment	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Budget Order Adjustment	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
Financial Order Adjustment		\$ -	4	\$ -		\$ -		\$ -	
<b>Total Budget Allotments</b>		\$ 149,124.00		\$ 149,124.00		\$ 149,124.00		\$ 149,125.00	\$ 596,497.00
Collected Revenue from JB	1	\$ 51,555.85	4	\$ 61,901.40	7	\$ -	10	\$ -	
Promissory Note Payments		\$ 200.00		\$ -		\$ -		\$ -	
Collected Revenue from JB	2	\$ 68,324.36	5	\$ 66,316.39	8	\$ -	11	\$ -	
Promissory Note Payments		\$ 200.00		\$ -		\$ -		\$ -	
Donation		\$ 1,500.00		\$ -		\$ -		\$ -	
Collected Revenue from JB	3	\$ 47,842.05	6	\$ -	9	\$ -	12	\$ -	
Returned Check		\$ 45.00		\$ -		\$ -		\$ -	
<b>TOTAL REVENUE COLLECTED</b>		\$ 169,667.26		\$ 128,217.79		\$ -		\$ -	\$ 297,885.05
Counsel Payments	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
	3	\$ (149,124.00)	6	\$ -	9	\$ -	12	\$ -	
<b>REMAINING ALLOTMENT</b>		\$ -		\$ 149,124.00		\$ 149,124.00		\$ 149,125.00	\$ 447,373.00
Total Expenses	1	\$ -	4	\$ (2,119.11)	7	\$ -	10	\$ -	
	2	\$ (1,344.65)	5	\$ (415.75)	8	\$ -	11	\$ -	
	3	\$ (495.00)	6	\$ -	9	\$ -	12	\$ -	
<b>REMAINING CASH</b>		\$ 18,703.61		\$ 125,682.93		\$ -		\$ -	\$ 144,386.54

Q2 Month 5 (as of 11/30/14)	
<b>DEFENDER DATA COUNSEL PAYMENTS</b>	
	\$ -
<b>SUB-TOTAL ILS</b>	
OVERPAYMENT REIMBURSEMENTS	\$ (415.75)
State Cap Expense Q1	\$ -
Somerset County CDs	\$ -
Private Investigators	\$ -
Mental Health Expert	\$ -
Transcripts	\$ -
Other Expert	\$ -
Process Servers	\$ -
<b>SUB-TOTAL OE</b>	<b>\$ (415.75)</b>
<b>TOTAL</b>	<b>\$ (415.75)</b>

INDIGENT LEGAL SERVICES	
FY15 Allotment	\$ 596,497.00
YTD Collected Revenue	\$ 297,885.05
YTD Expenses	\$ (4,374.51)
YTD Counsel Payments	\$ (149,124.00)
Q1 Remaining Unexpended Cash	\$ 144,386.54

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**  
**FY15 FUND ACCOUNTING**  
As of 11/30/14

Account 014 95F Z112 02 (Conference Account)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY14 Total
FY14 Carry Over		\$ 20,144.41							\$ -
<b>Total Budget Allotments</b>		\$ 4,000.00	\$	20,000.00	\$	4,000.00	\$	4,000.00	\$ 32,000.00
Budget Order Adjustment									
<b>Total Budget Allotments</b>		\$ 4,000.00	\$	20,000.00	\$	4,000.00	\$	4,000.00	\$ 32,000.00
Total Revenue	1	\$ 1,850.00	4	\$ 8,000.00	7	\$ -	10	\$ -	
Billed Earned Revenue	1	\$ (150.00)	5	\$ 2,700.00	8	\$ -	11	\$ -	
	2	\$ 975.00	6	\$ -	9	\$ -	12	\$ -	
	3	\$ 7,575.00	6	\$ -	9	\$ -	12	\$ -	
<b>ACTUAL CASH BALANCE</b>		\$ 30,394.41	\$	10,700.00	\$	-	\$	-	\$ 41,094.41
Total Expenses	1	\$ (76.04)	4	\$ (3,116.49)	7	\$ -	10	\$ -	
	2	\$ (3,293.26)	5	\$ (1,866.51)	8	\$ -	11	\$ -	
	3	\$ (402.99)	6	\$ -	9	\$ -	12	\$ -	
<b>TOTAL REMAINING</b>		\$ 26,772.12	\$	36,417.00	\$	4,000.00	\$	4,000.00	\$ 31,923.96

**Q2 Month 5 (as of 11/30/14)**

Collected Revenue	\$ 2,700.00
State Cap Cost Allocation	\$ (18.95)
Training Manuals Printing	\$ -
Training Refreshments/Meals	\$ (555.92)
Speaker Fees/Mileage	\$ (432.96)
Supplies	\$ (33.68)
Refund for non-attendance	\$ (790.00)
Board of Overseers Trainer Fees	\$ (35.00)
<b>TOTAL EXPENSES</b>	<b>\$ (1,866.51)</b>

FY15 Allotment	\$ 32,000.00
FY14 Carry Over	\$ 20,144.41
FY15 Collected Revenue	\$ 21,050.00
FY15 Expenses	\$ (8,705.29)
<b>Unexpended Cash</b>	<b>\$ 32,489.12</b>

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

FY15 FUND ACCOUNTING

AS OF 11/30/2014

Account 010 95F Z112 01 (Personal Services)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY15 Total
FY15 Allotment		\$ 186,226.00		\$ 181,742.00		\$ 169,447.00		\$ 139,222.00	\$ 676,637.00
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustments				\$ -		\$ -		\$ -	
<b>Total Budget Allotments</b>		<b>\$ 186,226.00</b>		<b>\$ 181,742.00</b>		<b>\$ 169,447.00</b>		<b>\$ 139,222.00</b>	<b>\$ 676,637.00</b>
Total Expenses	1	\$ (66,591.80)	4	\$ (49,740.31)	7	\$ -	10	\$ -	
	2	\$ (49,475.54)	5	\$ (50,117.29)	8	\$ -	11	\$ -	
	3	\$ (50,108.08)	6	\$ -	9	\$ -	12	\$ -	
<b>TOTAL REMAINING</b>		<b>\$ 20,050.58</b>		<b>\$ 81,884.40</b>		<b>\$ 169,447.00</b>		<b>\$ 139,222.00</b>	<b>\$ 410,603.98</b>

Q2 Month 5 (as of 11/30/14)	
Per Diem Payments	\$ (330.00)
Salary	\$ (25,062.33)
Vacation Pay	\$ (403.15)
Holiday Pay	\$ (1,477.92)
Sick Pay	\$ (711.97)
Premium Overtime Pay	\$ (25.04)
Health Insurance	\$ (9,628.70)
Dental Insurance	\$ (249.48)
Employer Retiree Health	\$ (3,781.84)
Employer Retirement	\$ (1,541.78)
Employer Group Life	\$ (201.26)
Employer Medicare	\$ (388.74)
Retiree Unfunded Liability	\$ (4,449.60)
Retro Pymt	\$ -
Perm Part Time Full Ben	\$ (1,865.48)
<b>TOTAL</b>	<b>\$ (50,117.29)</b>

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Court

11/30/2014

Court	Nov-14						Fiscal Year 2014			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
ALFSC	135	256	\$ 165,248.17	208	\$ 124,864.66	\$ 600.31	684	951	\$ 594,497.81	\$ 625.13
AUBSC	72	125	\$ 74,017.22	115	\$ 61,398.44	\$ 533.90	451	545	\$ 336,136.89	\$ 616.76
AUGDC	78	101	\$ 41,097.48	74	\$ 29,069.55	\$ 392.83	386	466	\$ 177,067.42	\$ 379.97
AUGSC	76	82	\$ 84,614.81	93	\$ 87,060.64	\$ 936.14	472	527	\$ 334,856.16	\$ 635.40
BANDC	74	134	\$ 47,924.22	97	\$ 38,868.87	\$ 400.71	351	550	\$ 197,503.83	\$ 359.10
BANSC	2	3	\$ 445.50	2	\$ 621.50	\$ 310.75	14	17	\$ 8,072.00	\$ 474.82
BATSC	5	7	\$ 3,711.33	5	\$ 1,748.59	\$ 349.72	22	30	\$ 18,054.64	\$ 601.82
BELDC	23	40	\$ 23,987.03	33	\$ 15,684.44	\$ 475.29	144	190	\$ 78,918.16	\$ 415.36
BELSC	30	15	\$ 15,061.12	19	\$ 13,720.48	\$ 722.13	100	102	\$ 63,872.81	\$ 626.20
BIDDC	73	106	\$ 43,208.12	180	\$ 65,948.58	\$ 366.38	448	564	\$ 240,102.65	\$ 425.71
BRIDC	6	13	\$ 9,291.86	30	\$ 13,513.52	\$ 450.45	61	126	\$ 56,590.15	\$ 449.13
CALDC	19	24	\$ 8,715.07	29	\$ 10,539.57	\$ 363.43	75	111	\$ 46,277.00	\$ 416.91
CARDC	10	20	\$ 11,463.34	23	\$ 12,886.02	\$ 560.26	79	137	\$ 62,448.00	\$ 455.82
CARSC	32	32	\$ 14,923.40	42	\$ 18,806.34	\$ 447.77	175	165	\$ 83,743.30	\$ 507.54
DOVDC	3	27	\$ 8,013.28	15	\$ 5,036.00	\$ 335.73	40	74	\$ 21,374.97	\$ 288.85
DOVSC	1	2	\$ 404.50	0			3	3	\$ 280.50	\$ 93.50
ELLDC	20	57	\$ 28,252.36	54	\$ 28,143.06	\$ 521.17	90	204	\$ 111,681.24	\$ 547.46
ELLSC	1	10	\$ 2,894.00	2	\$ 764.50	\$ 382.25	13	26	\$ 15,828.00	\$ 608.77
FARDC	5	23	\$ 7,926.88	16	\$ 5,528.58	\$ 345.54	30	74	\$ 36,677.75	\$ 495.65
FARSC	4	5	\$ 721.56	1	\$ 104.50	\$ 104.50	9	21	\$ 9,836.29	\$ 468.39
FORDC	14	10	\$ 2,473.40	9	\$ 1,663.40	\$ 184.82	37	44	\$ 20,626.97	\$ 468.79
HOUDC	21	37	\$ 11,589.37	45	\$ 12,971.46	\$ 288.25	182	238	\$ 75,503.99	\$ 317.24
HOUSC	8	22	\$ 13,888.79	20	\$ 13,024.68	\$ 651.23	65	79	\$ 54,636.78	\$ 691.60
LEWDC	135	162	\$ 69,784.01	160	\$ 62,101.31	\$ 388.13	712	789	\$ 300,111.66	\$ 380.37
LINDC	11	12	\$ 4,160.85	10	\$ 3,477.78	\$ 347.78	77	83	\$ 26,119.29	\$ 314.69
MACDC	17	23	\$ 5,906.76	37	\$ 14,852.84	\$ 401.43	128	158	\$ 58,799.33	\$ 372.15
MACSC	16	17	\$ 7,430.71	19	\$ 5,881.91	\$ 309.57	61	67	\$ 22,995.49	\$ 343.22
MADDC	1	2	\$ 720.86	2	\$ 720.86	\$ 360.43	5	7	\$ 3,584.44	\$ 512.06
MILDC	0	0		1	\$ 241.12	\$ 241.12	8	15	\$ 3,508.40	\$ 233.89
NEWDC	24	26	\$ 8,681.11	27	\$ 7,911.71	\$ 293.03	129	153	\$ 47,654.76	\$ 311.47
PORDC	87	157	\$ 75,376.58	200	\$ 73,474.59	\$ 367.37	439	693	\$ 302,233.86	\$ 436.12
PORSC	2	5	\$ 3,073.00	4	\$ 2,661.15	\$ 665.29	19	22	\$ 22,404.68	\$ 1,018.39
PREDC	34	57	\$ 21,101.49	48	\$ 11,082.37	\$ 230.88	143	206	\$ 69,811.92	\$ 338.89
RODC	54	79	\$ 36,697.92	55	\$ 25,215.51	\$ 458.46	252	268	\$ 100,132.61	\$ 373.63
ROCSC	21	26	\$ 14,701.24	28	\$ 14,875.06	\$ 531.25	133	143	\$ 84,724.15	\$ 592.48
RUMDC	14	27	\$ 12,549.97	10	\$ 6,712.52	\$ 671.25	72	82	\$ 42,341.11	\$ 516.36
SKODC	10	43	\$ 20,389.31	32	\$ 17,477.19	\$ 546.16	61	201	\$ 88,885.92	\$ 442.22
SKOSC	0	1	\$ 988.50	1	\$ 988.50	\$ 988.50	2	6	\$ 2,499.70	\$ 416.62
SOUNC	18	22	\$ 11,602.00	29	\$ 9,794.39	\$ 337.74	136	192	\$ 66,351.73	\$ 345.58
SOUSC	32	76	\$ 35,695.24	37	\$ 18,196.26	\$ 491.79	204	219	\$ 107,152.54	\$ 489.28
SPRDC	43	80	\$ 34,486.64	97	\$ 39,557.59	\$ 407.81	283	350	\$ 151,614.52	\$ 433.18
Law Ct	5	17	\$ 26,086.76	5	\$ 9,641.73	\$ 1,928.35	32	37	\$ 48,491.47	\$ 1,310.58
PENCD	176	168	\$ 66,138.61	170	\$ 69,830.30	\$ 410.77	865	962	\$ 491,079.26	\$ 510.48
SAGCD	29	29	\$ 19,994.49	15	\$ 6,802.49	\$ 453.50	121	112	\$ 62,629.64	\$ 559.19
PISCD	15	18	\$ 4,599.50	11	\$ 1,974.50	\$ 179.50	76	64	\$ 11,411.50	\$ 178.30
HANCD	23	30	\$ 11,419.88	26	\$ 7,051.50	\$ 271.21	155	140	\$ 54,603.53	\$ 390.03
FRACD	56	71	\$ 23,832.19	37	\$ 13,029.08	\$ 352.14	285	210	\$ 73,707.31	\$ 350.99
CUMCD	291	369	\$ 183,879.47	302	\$ 125,636.14	\$ 416.01	1,523	1,435	\$ 727,558.68	\$ 507.01
SOMCD	0	0		0			2	4	\$ 4,908.30	\$ 1,227.08
WATDC	51	50	\$ 16,929.86	53	\$ 15,952.00	\$ 300.98	229	279	\$ 93,937.49	\$ 336.69
WESDC	28	36	\$ 14,774.42	26	\$ 12,637.79	\$ 486.07	153	153	\$ 51,399.75	\$ 335.95
WISDC	21	26	\$ 9,376.42	24	\$ 7,488.11	\$ 312.00	141	139	\$ 39,877.78	\$ 286.89
WISSC	25	20	\$ 9,382.03	20	\$ 9,056.27	\$ 452.81	119	104	\$ 51,768.34	\$ 497.77
YORDC	25	26	\$ 7,489.97	28	\$ 9,740.14	\$ 347.86	92	91	\$ 36,457.70	\$ 400.63
<b>TOTAL</b>	<b>1,976</b>	<b>2,826</b>	<b>\$ 1,377,122.60</b>	<b>2,626</b>	<b>\$ 1,166,030.09</b>	<b>\$ 444.03</b>	<b>10,588</b>	<b>12,628</b>	<b>\$ 5,893,344.17</b>	<b>\$ 466.69</b>

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

**Number of Attorneys Rostered by Court**

**11/30/2014**

<b>Court</b>	<b>Rostered Attorneys</b>
Alfred Superior Court	115
Auburn Superior Court	118
Augusta District Court	95
Augusta Superior Court	92
Bangor District Court	60
Belfast District Court	47
Belfast Superior Court	42
Biddeford District Court	141
Bridgton District Court	106
Calais District Court	13
Caribou District Court	16
Caribou Superior Court	20
Dover-Foxcroft District Court	27
Ellsworth District Court	46
Farmington District Court	29
Fort Kent District Court	8
Houlton District Court	17
Houlton Superior Court	19
Lewiston District Court	147
Lincoln District Court	31
Machias District Court	19
Machias Superior Court	14
Madawaska District Court	9

<b>Court</b>	<b>Rostered Attorneys</b>
Millinocket District Court	24
Newport District Court	41
Portland District Court	158
Presque Isle District Court	14
Rockland District Court	49
Rockland Superior Court	42
Rumford District Court	29
Skowhegan District Court	31
South Paris District Court	71
South Paris Superior Court	67
Springvale District Court	128
Unified Criminal Docket Bangor	62
Unified Criminal Docket Bath	88
Unified Criminal Docket Dover Foxcroft	26
Unified Criminal Docket Ellsworth	40
Unified Criminal Docket Farmington	30
Unified Criminal Docket Portland	151
Unified Criminal Docket Skowhegan	21
Waterville District Court	57
West Bath District Court	114
Wiscasset District Court	76
Wiscasset Superior Court	69
York District Court	118

**(3.)**  
**Budget Discussion**

---

---

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

---

---

**TO:** MCILS COMMISSIONERS  
**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR  
**CC:** ELLIE BROGAN, DEPUTY EXECUTIVE DIRECTOR  
**SUBJECT:** BUDGET MEMO  
**DATE:** December 3, 2014

---

As we discussed at the November meeting, we continue to anticipate a shortfall in the current quarter that will cause a delay in voucher payments in the latter half of December. Attached is a copy of the email that was sent to our attorneys on November 19<sup>th</sup>. As expected, the email resulted in a flood of voucher submissions. Nevertheless, it looks like we will be able to pay all voucher submitted on or before November 30<sup>th</sup>, depending somewhat on the size of the revenue transfer we receive in December. As you can see from the email, we gave the lawyers a projected cutoff date of December 1<sup>st</sup>, but also advised that the date could be sooner if billing activities were accelerated, which they were.

At this point, I am not comfortable making projections regarding the size of any excess carry-over at the end of December, except to say that there will be an excess. Its size depends on the total amount of vouchers submitted in December, and the entire month remains ahead. As we discussed at last month's meeting, numerous attorneys transferring from one firm to another resulted in costs being incurred sooner than would have otherwise been the case. In addition, the rush of vouchers in response to notice of the shortfall similarly brought forward expenses that would otherwise have been incurred later. So it is reasonable to believe that we will see a drop in costs incurred over the coming month. Also, new cases opened in October and November numbered below average.

I think we will just have to wait until the end of December to see where we stand going into the third quarter.

**UPDATE 12/23/2014**

So far in December, vouchers have been submitted at a lower rate than during October and November. I now estimate that our shortfall at the end of the quarter will be around \$400,000, slightly less than last year at the same point. We will, however, need supplemental funding in addition to the supplemental budget request we submitted in September.

## **Pelletier, John**

---

**From:** mcils@maine.gov  
**Sent:** Wednesday, November 19, 2014 12:48 PM  
**To:** Pelletier, John  
**Subject:** Budget Update

Attorneys:

I am writing to let you know that, unfortunately, we will again be looking at a delay in our payment schedule at the end of the year. In the last several weeks, we have experienced an unexpected increase in voucher costs that will cause costs for the second quarter to exceed projections. As a result, we anticipate that we will be unable to pay vouchers on our regular schedule after December 15th. That means that vouchers submitted after December 1, 2014 are unlikely to be paid until after January 1st.

We are providing notice at this time so you can plan your billing accordingly. Be aware, however, that to the extent that voucher submissions accelerate in response to this notice, it is possible that we will exhaust our funds earlier than set forth above. To the extent that any of you are in a position to avoid accelerating or even delay voucher submissions, doing so will allow our payments to other attorneys to continue further into December. Vouchers that we are unable to pay in December will be paid promptly in early January.

We have submitted a supplemental budget request to the Governor's office and as we have in the past, we will be working with the Administration and the Legislature to ensure that we receive the funding we need to remain on track for the rest of the year.

Finally, as some of you are aware, there is a process for moving funds from a future quarter into the current quarter, but that process has a long lead time and the recent influx of voucher costs has taken place too late for us to utilize that process during this quarter.

Feel free to contact me if you have any questions and thank you for your continued hard work on behalf of people needing indigent legal services.

John

**(4.)**  
**Consideration of Proposed**  
**Rules**

## **Maine Commission on Indigent Legal Services**

### **Proposed Rule: Chapter 2: Standards for Qualifications of Assigned Counsel**

#### **Response to Public Comments**

**1.) The Commission should consider adding a maximum deductible to the requirement that attorneys maintain malpractice insurance because without one, attorneys could meet the requirement through a high deductible policy that would provide little protection to clients.**

**2.) Assigned counsel are underpaid and the Commission is under-funded and under-staffed. As a result, 1) attorneys cannot afford, and thus, the Commission cannot require, that attorneys have adequate staff and office facilities; and 2) the Commission cannot adequately evaluate attorney performance across the state.**

Comments made by Robert J. Ruffner, Esq., Maine Indigent Defense Center.

#### **MCILS Response:**

The rule proposes a requirement that attorneys carry malpractice insurance, which is not required now. The Commission believes that requiring attorneys to maintain commercially available malpractice insurance adds appropriate protection for indigent clients without the need to micro-manage the details of such policies.

The points made in comment 2 are not germane to the amendments contained in the proposed rule.

#### **Commentator:**

Robert J. Ruffner, Esq., Maine Indigent Defense Center (orally at public hearing).

**Chapter 2: STANDARDS FOR QUALIFICATIONS OF ASSIGNED COUNSEL**

---

**Summary:** This chapter establishes the standards prescribing minimum experience, training and other qualifications for contract counsel and assigned counsel to be eligible to accept appointments to represent indigent people, who are eligible for a constitutionally-required attorney.

---

**SECTION 1. Application**

All attorneys wishing to accept case assignments by the Commission must complete an application in the manner prescribed by the Commission. The Commission will not act on an application until it is complete. No attorney will be assigned a case until that attorney completes an application and is placed on the roster of attorneys eligible to receive assignments.

**SECTION 2. Minimum Experience, Training And Other Eligibility Requirements**

Any attorney wishing to accept case assignments from the Commission, serve as contract counsel or otherwise be approved by the Commission to accept assignments must satisfy the following conditions.

**1. Licensed To Practice**

a.) The attorney must be licensed to practice law in the State of Maine and ~~the attorney must~~ be in good standing with the Maine Board of Overseers of the Bar.

b.) The attorney ~~and~~ must promptly inform the Commission, in writing, of a ~~any~~ complaint against ~~the attorney~~ ~~him or her~~ filed with ~~before~~ the Maine Board of Overseers of the Bar that has been set for a grievance ~~or panel hearing or hearing before a single justice of the Supreme Judicial Court.~~ Failure to comply with this requirement is grounds for removal from the roster.

c.) The attorney must promptly inform the Commission, in writing, ~~within 30 days of~~ any criminal ~~charge filed against the attorney conviction or any other resolution of a~~ criminal charge in any jurisdiction and promptly inform the Commission of any disposition of such charge. ~~that is not an outright dismissal or acquittal, including but not limited to a deferred disposition pursuant 17-A M.R.S.A. §1348-A or a Maine Rule of Criminal Procedure 11B filing of a criminal charge against the attorney.~~ Failure to comply with this requirement is grounds for removal from the roster.

**2. Attorney Cooperation with Procedures and Monitoring**

The attorney must register with the Commission annually in a manner prescribed by the Commission. The attorney must comply with all applicable Commission rules and procedures. The attorney must comply with Commission monitoring, and performance evaluations. The attorney must also comply with any Commission, ~~and~~ investigations of

any complaints, including billing discrepancies, or other information that, in the view of the Executive Director, concerns the question of whether the attorney is fit to remain on the roster. Except as pertains to indigent cases assigned to the attorney, the Executive Director cannot require an attorney to disclose information that is privileged or made confidential by statute, by court rule or by court order. by the Commission or its designee.

### 3. Malpractice Insurance

The attorney must maintain malpractice insurance.

## SECTION 3. Office, Telephone, and Electronic Mail

The attorney must maintain an office or have the use of space that is reasonably accessible to clients and that permits the private discussion of confidential and other sensitive matters.

The attorney must maintain a telephone number, which shall be staffed by personnel available for answering telephone calls or an answering service, an answering machine or voicemail capability that ensures client confidentiality.

The attorney must maintain a confidential working e-mail account as a means of receiving information from and providing information to the Commission.

The attorney must keep the Commission and the courts in which the attorney represents indigent clients apprised of the attorney's work telephone number and postal and electronic mail addresses. The attorney must ensure that the court has the ability to contact the attorney by mail and by telephone.

## SECTION 4. Experience and Proficiency

The attorney shall demonstrate the necessary and sufficient experience and proficiency required to accept appointments as provided below.

- ~~1. For the first year of the Commission's operation, which is July 2010 to June 30, 2011, if the attorney has been assigned cases by the judicial branch prior to July 1, 2010, the attorney must satisfactorily complete a Commission-approved training course for the area of the law for which the attorney is willing to accept appointments, including but not limited to, criminal defense, juvenile defense, civil commitment or child protective, within 12 months of first assignments from the Commission; or~~
- ~~12. After the first year of the Commission's operation, Any attorney not previously having been accepted to receive assignments appointments from the Commission must satisfactorily complete a Commission-sponsored or Commission-approved training course for the area of the law for which the attorney is willing to accept appointments seeking to receive assignments, including but not limited to, criminal defense, juvenile defense, civil commitment, or child protective, or emancipation prior to accepting assignments being placed on the roster and receiving assignments; or~~

23. An attorney may be accepted for placement on the roster and to receive assignments from the Commission without completing a Commission-sponsored or Commission-approved training course as provided above if the attorney demonstrates to the Commission a commitment to and proficiency in the practice of the area of law for which the Attorney is willing to accept assignments~~appointments~~ over the course of at least the three years prior to receiving assignments~~appointments~~ from the Commission.

#### **SECTION 5. Training**

The attorney shall annually complete 8 hours of continuing legal education (CLE) approved by the Commission.

The attorney shall meet any specific training requirements of any specialized panels,~~which may include but are not limited to homicide, child protective, or involuntary commitment, as is required by those panels.~~

#### **SECTION 6. Removal or Suspension from the Roster**

The Executive Director may remove indefinitely or suspend an attorney from the roster completely or from the roster for certain case types and court locations for any failure to comply with this or any other Commission rule. In addition, the Executive Director may remove indefinitely or suspend an attorney from the roster completely or from the roster for certain case types and court locations if the Executive Director determines that the attorney is no longer qualified to provide quality indigent legal services based on the nature of any criminal charge or on investigation by the Executive Director or the Executive Director's designee of any complaint or other information. The Executive Director's decision to remove or suspend an attorney from the roster shall be in writing and shall reflect the Executive Director's reasoning in a manner sufficient to inform the attorney and the public of the basis for the Executive Director's action.

Attorneys removed indefinitely must re-apply to the Commission if they wish to receive assignments in the future. Attorneys suspended from the roster need not re-apply, but must demonstrate compliance with any conditions made part of a suspension. Removal or suspension may also include a requirement that the attorney immediately identify to the Commission all open assigned cases and file a motion to withdraw in each case.

The Executive Director's decision to remove or suspend an attorney may be appealed to the full Commission pursuant to 4 M.R.S.A. § 1804(3)(J) and Commission Rule 94-649 Chapter 201.

STATUTORY AUTHORITY: 4 M.R.S.A. § 1804(2)(B), (2)(G), and (4)(D) ~~4 M.R.S.A. §§ 1804(2)(B), 1805~~

EFFECTIVE DATE:  
 \_\_\_\_\_ June 25, 2010

# Maine Commission on Indigent Legal Services

## Proposed Rule: Chapter 3. Eligibility Requirements for Specialized Case Types.

### Response to Public Comments

#### 1.) The proposed criteria for Law Court Appeals and Post-Conviction Review specialized panels are flawed in many respects and should be rejected.

- a.) The proposal fails to accurately identify the skills necessary for quality appellate and post-conviction advocacy.
- b.) Any rule should contain a continuing legal education requirement directed at substantive appellate and post-conviction law, including federal habeas law.
- c.) The appellate rule's trial practice requirement could preclude new lawyers seeking to become appellate specialists from breaking-in to the practice of appellate law.
- d.) The Commission, not the Law Court, should assign appellate counsel.
- e.) The Commission should convene a panel of experienced appellate and post-conviction practitioners and work in a collaborative process, that rule-making might not allow, to think creatively about ways to improve appellate practice in Maine. Absent such a process, the proposed rules should be rejected.

Comments made jointly by Justin Andrus, Esq., Shankman & Associates; Jamesa J. Drake, Esq., Drake Law, LLC.; William F. Pagnano, Esq.; David Paris, Esq.; and Jeremy Pratt, Esq., Pratt & Simmons.

#### MCILS Response:

While the proposed Law Court appeals criteria do not specifically identify the skills needed for appellate advocacy, the requirements allow Commission staff to assess those skills when reviewing applications for that panel. Writing samples submitted by applicants will allow Commission staff to assess attorneys' ability to express themselves in the clear and logical manner necessary for effective appellate advocacy. In addition, the requirement of three writing samples will provide insight into an applicant's issue identification and research skills across a number of proceedings.

Regarding post-conviction review, applicants must detail their criminal law experience and describe how that experience prepared them to address issues applicable to post-conviction review cases. This requirement will allow Commission staff to assess

an attorney's insight into the unique issues involved in post-conviction practice and the attorney's ability to express themselves in a clear, logical, and persuasive manner.

A continuing legal education requirement is not practical at this time in light of the dearth of training available in Maine related to appellate and post-conviction practice. Such training is obviously beneficial and is something the Commission could, and likely will, provide within its capacity to do so. A panel requirement for such training, however, would unduly strain the Commission's already extensive and varied training agenda.

The Commission believes that trial-court level experience develops knowledge and insight that are important for effective trial advocacy. Note, however, that the rule does allow the Commission to grant a waiver of certain requirements. Were, for example, a new attorney in a formal mentoring relationship with experienced appellate counsel who would supervise the new attorney's work (not something that is common in Maine), a waiver could be granted to allow the new attorney to develop appellate experience.

This rule does not address whether the Commission or the court will assign counsel. Under the existing rules of criminal procedure, although when a court assigns counsel, it selects the assigned counsel from a Commission roster. The Commission, however, has authority to substitute counsel should it not approve the original assignment. Moreover, with the proposed rule, a roster of qualified appellate attorneys will be created from which the court must select counsel when assigning counsel in appellate cases.

Regarding a collaborative process to identify ways to improve appellate and post-conviction practice, such a process is not foreclosed by the passage to the proposed rule. Note, however, that the Commission's statute specifically identifies attorney eligibility as a matter for rulemaking. Note also that drafts of the proposed appellate rule were included on several Commission meeting agendas earlier this year and those meetings would have allowed suggestions regarding the initial drafts during the public comment portion of the meeting. Recommendations arrived at through group discussions could have been presented at that time.

**2.) An attorney different from trial counsel should always be assigned to handle an appeal.**

- a.) New counsel reviewing the record of a trial could identify issues that trial counsel missed. If trial counsel failed to identify a potential issue during the trial, that attorney is unlikely to do so when preparing the appeal. Valid issues that are not raised on appeal are waived and cannot be raised in subsequent proceedings like post-conviction review.
- b.) The rule should not exempt trial counsel continuing on appeal from meeting the requirements for placement on the appellate panel.

Comments made by Robert J. Ruffner, Esq., Maine Indigent Defense Center.

**MCILS Response:**

Rule 44 of the Maine Rules of Criminal Procedure provides that counsel assigned for trial court proceedings remains assigned counsel for any appeal unless relieved by order of the trial or appellate court. For a system of new counsel on every appeal to be implemented, the Supreme Judicial court would have to amend Rule 44. The Commission cannot do so.

Moreover, the practice of trial counsel continuing on appeal is long-standing in Maine and occurs frequently in retained cases as well as indigent cases. The purpose of the proposed rule is to create a roster of qualified attorneys from which the court must choose in those instances when trial counsel has been relieved and the court is assigning counsel for an appeal.

Given the existing Rule 44's default position that trial counsel continues on appeal, a rule that required all trial counsel to specifically qualify as appellate counsel would not be practical or within the capacity of the Commission's staff to implement.

**3.) Because Post-Conviction Review proceedings often involve submission of written legal arguments, a writing sample should be required of applicants for the Post-Conviction Review Panel.**

Comments made by Robert J. Ruffner, Esq., Maine Indigent Defense Center.

**MCILS Response:**

See response to Comment 1(a) above regarding the ability of the Commission staff to evaluate an applicant's qualification under the requirements of the rule as currently proposed.

**Commentators:**

Justin Andrus, Esq., Shankman & Associates; Jamesa J. Drake, Esq., Drake Law, LLC.; William F. Pagnano, Esq.; David Paris, Esq.; and Jeremy Pratt, Esq., Pratt & Simmons (jointly by letter dated November 26, 2014).

Robert J. Ruffner, Esq., Maine Indigent Defense Center (orally at public hearing).



Jamesa J. Drake  
P.O. Box 56  
Auburn, ME 04212  
(207) 330-5105  
Jamesa\_Drake@hotmail.com  
jamesadrake.com

---

November 26, 2014

John D. Pelletier, Esq.  
MCILS Rule-making liaison  
154 State House Station  
Augusta, ME 04333

Dear Executive Director Pelletier:

The undersigned are attorneys who practice regularly before the Law Court and who specialize in appellate and post-conviction litigation in state and federal court. We write today to comment on the Commission's proposed rule changes regarding specialized panels for appellate and post-conviction practitioners.

We agree with the Commission that appellate and post-conviction litigation is a specialized area of law. We further agree that attorneys who litigate direct and post-conviction appeals should be required to meet minimum qualifications. Finally, we agree that, absent a demonstrated plan for close supervision and mentoring, appellate and post-conviction litigation is best done by experienced criminal lawyers and is not appropriate for new lawyers.

We disagree, however, with the Commission's proposed rule in many respects. We believe that it fails to accurately identify the necessary skills that good appellate and post-conviction lawyers must possess; we regret that the rule does not include a continuing legal education requirement directed at substantive appellate and post-conviction law, including federal habeas law; and we worry that new lawyers who are interested in becoming appellate specialists have no realistic way to break in to the practice.

Most of all, we are concerned about the proposed appointment process. The Law Court does not appoint attorneys to represent the State on appeal. Neither should it appoint defense attorneys. We believe strongly that the Commission should not abdicate this essential function to the Court.

It is our hope that the Commission will convene a panel of experienced appellate and post-conviction practitioners and work together with them – in the type of collaborative process that rulemaking does not allow – to think creatively about ways to improve the practice of appellate law in Maine. In the absence of this type of ongoing conversation, and in light of the flaws in the proposed rules, we respectfully oppose the changes and request that the Commissioners vote to reject them.

Respectfully,

/s/ Jeremy Pratt  
Jeremy Pratt  
Pratt & Simmons, P.A.  
92 Mechanic Street  
Camden, ME 04843  
(207) 236-0020

/s/ Justin Andrus  
Justin Andrus  
Shankman & Associates  
2 Melcher Place  
Topsham, ME 04086  
(207) 729-1181

/s/ David Paris  
David Paris  
72 Front Street  
Bath, ME 04530  
(207) 442-7198

/s/ William F. Pagnano  
William F. Pagnano  
835 Clarry Hill Road  
Union, ME 04862  
(207) 596-5758

/s/ Jamesa J. Drake  
Jamesa J. Drake  
Drake Law, LLC  
P.O. Box 56  
Auburn, ME 04212  
(207) 330-5105

**Chapter 3: ELIGIBILITY REQUIREMENTS FOR SPECIALIZED CASE TYPES**

---

**Summary:** Chapter 2 of the Commission’s Rules sets out the minimum eligibility requirements to be rostered to accept appointments from the Maine Commission on Indigent Legal Services (“MCILS”). The Rules in this Chapter are promulgated to establish the eligibility requirements to be rostered on specialty panels for specific types of cases.

---

**SECTION 1. Definitions.** For purposes of this Chapter, the following terms are defined as follows:

1. **Contested Hearing.** “Contested Hearing” means a hearing at which a contested issue is submitted to the court for resolution after evidence is taken or witnesses are presented.
  
2. **Domestic Violence.** “Domestic Violence” means:
  - A. Offenses denominated as Domestic Violence under 17-A M.R.S.A. §§ 207-A, 209-A, 210-B, 210-C, and 211-A;
  - B. Any class D or E offense alleged to have been committed against a family or household member or dating partner;
  - C. The class D offense of stalking under 17-A M.R.S.A. § 210-A;
  - D. Violation of a protection order under 17-A M.R.S.A. § 506-B.
  - E. “Domestic Violence” includes crimes involving substantially similar conduct in another jurisdiction.
  - F. “Domestic Violence” also includes Criminal Conspiracy under 17-A M.R.S.A. § 151, Criminal Attempt under 17-A M.R.S.A. § 152, and Criminal Solicitation under 17-A M.R.S.A. § 153 to commit any of the offenses listed above.
  
3. **Serious Violent Felony.** “Serious Violent Felony” means:

A. An offense under 17-A M.R.S.A. §§ 152-A (Aggravated Attempted Murder), 208 (Aggravated Assault), 208-B (Elevated Aggravated Assault), 208-C (Elevated Aggravated Assault on a Pregnant Person), 301 (Kidnapping), 401(1)(B)(1), (2), or (3) (Burglary with a Firearm, Burglary with Intent to Inflict Bodily Harm, and Burglary with a Dangerous Weapon), ~~402-A-(1)(A)~~, 651 (Robbery), 802 (Arson), 803-A (Causing a Catastrophe), 1105-A (Aggravated Trafficking of Scheduled Drugs), 1105-B (Aggravated Trafficking of Counterfeit Drugs), and 1105-C (Aggravated Furnishing of Scheduled Drugs).

B. “Serious Violent Felony” includes crimes involving substantially similar conduct in another jurisdiction.

C. “Serious Violent Felony” also includes Criminal Conspiracy under 17-A M.R.S.A. § 151, Criminal Attempt under 17-A M.R.S.A. § 152, and Criminal Solicitation under 17-A M.R.S.A. § 153 to commit any of the offenses listed above.

4. Sex Offense. “Sex Offense” means:

A. ~~An offense under Chapter 11 of the Criminal Code, 17-A M.R.S.A. §§ 251-259-A261 (Sexual Assaults), or under Chapter 12 of the Criminal Code, 17-A M.R.S.A. §§ 281-285 (Sexual Exploitation of Minors), § 556 (Incest), § 511(1)(D) (Violation of Privacy), § 852 (Aggravated Sex Trafficking), and § 855 (Patronizing Prostitution of Minor or Person with Mental Disability).~~

B. “Sex Offense” includes crimes involving substantially similar conduct in another jurisdiction.

C. “Sex Offense” also includes Criminal Conspiracy under 17-A M.R.S.A. § 151, Criminal Attempt under 17-A M.R.S.A. § 152, and Criminal Solicitation under 17-A M.R.S.A. § 153 to commit any of the offenses listed above.

5. Specialized Case Types. “Specialized Case Types” means those cases that are complex in nature due to the allegations against the person as well as the severity of the consequences if a conviction occurs. They include the following case types:

- A. Homicide, including OUI manslaughter
- B. Sex offenses
- C. Serious violent felonies
- D. Operating under the influence
- E. Domestic violence
- F. Juvenile defense

G. Protective custody matters

H. ~~Involuntary commitment~~

## **SECTION 2. Powers and Duties of the Executive Director**

1. The Executive Director, or his or her designee, shall develop an application process for an attorney seeking appointment(s) in Specialized Case Types to demonstrate the minimum qualifications necessary to be placed on Specialized Case Type Rosters. An applicant for a Specialized Case Type Roster must present additional information beyond the minimum requirements of this Chapter if requested by the Executive Director, or his or her designee.
2. The Executive Director, or his or her designee, shall have the sole discretion to make the determination if an attorney is qualified to be placed on a Specialized Case Type Roster. In addition, the Executive Director, or his or her designee, shall have the sole discretion, to grant or deny a waiver pursuant to, and in accordance with, Section 4.
3. The Executive Director, or his or her designee, may, in his or her sole discretion, remove an attorney from a Specialized Case Type Roster at any time if the attorney is not meeting the minimum qualifications and standards as determined by the Executive Director, or his or her designee.
4. This subsection does not exempt an attorney from satisfying the requirements of this Chapter at any time thereafter or limit the authority of the Executive Director, or his or her designee, to remove an attorney from any Specialized Case Type Roster at any time.

## **SECTION 3. Minimum Eligibility Requirements for Specialized Case Types.**

1. **Homicide**. In order to be rostered for homicide cases an attorney must:
  - A. Have at least five years of criminal law practice experience;
  - B. Have tried before a judge or jury as first chair at least five felony cases within the last ten years, at least two of which were serious violent felony, homicide, or Class C or higher sex offense cases, AND at least two of which were jury trials;
  - C. Have tried as first chair a homicide case in the last fifteen years, OR have tried as

second chair at least one homicide case with an experienced homicide defense attorney within the past five years;

- D. Demonstrate a knowledge and familiarity with the evidentiary issues relevant to homicide cases, including but not limited to forensic and scientific issues relating to DNA testing and fingerprint analysis, mental health issues, and eyewitness identification;
- E. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with homicide; and
- F. Have submitted to the Commission three letters of reference from attorneys with whom the applicant does not practice, that assert that the applicant is qualified to represent individuals charged with homicide, including OUI manslaughter. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.

2. **Sex Offenses.** In order to be rostered for sex offense cases an attorney must:

- A. Have at least three years of criminal law practice experience;
- B. Have tried before a judge or jury as first chair at least three felony cases in the last ten years, at least two of which were jury trials;
- C. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a sex offense; and
- D. ~~Have submitted to the Commission~~ If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice, ~~that assert~~ asserting that the applicant is qualified to represent individuals charged with a sex offense. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.
- E. Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.

3. **Serious Violent Felonies.** In order to be rostered for serious violent felony cases an attorney must:

- A. Have at least two years of criminal law practice experience;
- B. Have tried as first chair at least four criminal or civil cases in the last ten years, at least two of which were jury trials and at least two of which were criminal trials;
- C. Provide a letter explaining reasons for interest in and qualifications for

representing individuals charged with a serious violent felony; and

- D. ~~Have submitted to the Commission~~If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice,~~that assert~~ asserting that the applicant is qualified to represent individuals charged with a serious violent felony. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.
- E. Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.

4. **Operating Under the Influence.** In order to be rostered for OUI cases an attorney must:

- A. Have at least one year of criminal law practice experience;
- B. Have tried before a judge or jury as first chair at least two criminal cases, and conducted at least two contested hearings within at least the last ten years;
- C. Have obtained in the last three years at least four hours of CLE credit on topics relevant particularly to OUI defense;
- D. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with an OUI; and
- E. ~~Have submitted to the Commission~~If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice,~~that assert~~ asserting that the applicant is qualified to represent individuals charged with an OUI. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.
- F. Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.

5. **Domestic Violence.** In order to be rostered for domestic violence cases an attorney must:

- A. Have at least one year of criminal law practice experience;
- B. Have tried before a judge or jury as first chair at least two criminal cases and conducted at least two contested hearings within at least the last ten years;
- C. Have obtained in the last three years at least four hours of CLE credit on topics related to domestic violence defense which included training on the collateral consequences of such convictions;

- D. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a domestic violence crime; and
- E. ~~Have submitted to the Commission~~ If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice, ~~that assert~~ asserting that the applicant is qualified to represent individuals charged with a domestic violence crime. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.
- F. Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.

6. **Juvenile Defense.** In order to be rostered for felony, sex offense, and bind-over juvenile defense cases an attorney must:

~~A.~~ For civil offenses and misdemeanor cases:

- ~~1) Have at least 6 months criminal or civil law practice experience or have completed a legal internship at a district attorney's office or have completed a legal internship in a juvenile law clinic;~~
- ~~2) Have attended in the last three years at least two hours of CLE credit on one or more of the following topics related to juvenile defense including training and education regarding: placement options and dispositional alternatives, child development, adolescent mental health diagnosis and treatment, and the —collateral consequences of juvenile adjudications.~~

~~B-A.~~ For felony cases and sex offense cases:

- 1) Have at least one year of juvenile law practice experience;
- 2) Have handled at least 10 juvenile cases to conclusion;
- 3) Have tried at least 5 contested juvenile hearings (including but not limited to: detention hearings, evidentiary hearings, adjudication hearings, and dispositional hearings);
- 4) Have attended in the last three years at least four hours of CLE credit on two or more of the following topics related to juvenile defense including training and education regarding placement options and dispositions, child development, adolescent mental health diagnosis and treatment, and the collateral consequences of juvenile adjudications;
- 5) Provide a letter explaining reasons for interest in and qualifications for representing juveniles in felony and sex offense cases; and

- 6) ~~Have submitted to the Commission~~ If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice, that assert asserting that the applicant is qualified to represent juveniles in felony and sex offenses cases. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.
- 7) Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.
- 8) Upon notice from the State, whether formal or informal, that it may be seeking bind-over in the case, the attorney must immediately notify the Executive Director.

CB. For Competency to Stand Trial Hearings and Bind-over Hearings:

- 1) Have at least two years of juvenile law practice experience;
- 2) Have handled at least 20 juvenile cases to conclusion in the past ten years;
- 3) Have tried at least 10 contested juvenile hearings (including but not limited to: detention hearings, evidentiary hearings, adjudication hearings, and dispositional hearings in the past ten years);
- 4) Have attended in the last three years at least eight hours of CLE credit that cover all of the following topics devoted to juvenile defense including training and education regarding placement options and dispositional alternatives, child development, adolescent mental health diagnosis and treatment, issues and case law related competency, bind-over procedures, and the collateral consequences of juvenile adjudications;
- 5) Provide a letter explaining reasons for interest in and qualifications for representing juveniles in ~~competency and bind-over~~ hearings; and
- 6) ~~Have submitted to the Commission~~ If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice, that assert asserting that the applicant is qualified to represent juveniles in ~~competency and bind-over~~ hearings. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.
- 7) Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.

7. Protective Custody Matters. In order to be rostered to represent parents in

protective custody cases an attorney must:

- ~~A. Have at least one year of criminal or civil law experience;~~
- AB. Have conducted at least four contested hearings in civil or criminal cases within the last five years;
- BC. Have attended in the last three years at least four hours of CLE credit on topics related to the representation of parents in protective custody proceedings;
- CD. Provide a letter explaining reasons for interest in and qualifications for representing parents in protective custody proceedings; and
- DE. If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice, that assert asserting that the applicant is qualified to represent parents in protective custody cases. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.
- E. Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.
- F. If a Petition to Terminate Parental Rights is filed and the attorney of record has not previously tried as a first or second chair a termination of parental rights hearing, or has less than 6 months of child protection experience, then the attorney of record must file a request with the MCILS for a more experienced attorney to serve as a second chair to assist the attorney of record in preparation of and with the termination of parental rights hearing.

~~8. Involuntary Commitment. In order to be rostered for Involuntary Commitment cases an attorney must:~~

- ~~A. Have at least one year of criminal or civil law practice experience;~~
- ~~B. Have conducted at least four contested hearings within the last five years;~~
- ~~C. Have attended in the last three years at least four hours of CLE credit on topics devoted to the representation of individuals with mental health issues, including training and education regarding placement options and dispositions, mental health diagnosis and treatment and the collateral consequences of involuntary commitments;~~
- ~~D. Provide a letter explaining reasons for interest in and qualifications for representing individuals facing involuntary commitment; and~~
- ~~E. Have submitted to the Commission three letters of reference from attorneys with~~

~~whom the applicant does not practice, that assert that the applicant is qualified to represent individuals facing involuntary commitment. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.~~

**8. Law Court Appeals.** In order to be rostered for assignments to Law Court appeals in cases where trial counsel is not continuing on appeal, an attorney must:

A. Have provided representation to the conclusion of six cases. "Conclusion" means:

1) In criminal and juvenile cases, the entry of sentence or disposition either after plea or trial or the entry into a deferred disposition;

2) In child protective cases, the issuance of a jeopardy order or an order terminating parental rights;

B. Applicants who have provided representation in three or more appeals, including appeals to the Law Court and Rule 80B or Rule 80C appeals to the Superior Court, must submit copies of briefs that they have filed in the three appeals most closely pre-dating the date of their application for placement on the appellate roster.

C. Applicants who have not provided representation in three or more appeals must submit copies of any briefs that they have filed in an appeal, together with copies of a sufficient number of memoranda of law submitted to any court so that the submissions total three.

D. Submit a letter explaining the applicant's interest in and qualifications for providing representation on appeals; including a description of the applicant's experience with appeals, representative examples of issues raised on appeal, and a summary of the results of those appeals; and

E. If the applicant seeks for a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice, ~~that assert~~ asserting that the applicant is qualified to provide representation in post-conviction cases. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.

F. Letters of reference shall be submitted upon the request of the Executive Director, or his or her designee.

G. This rule is not applicable to cases where trial counsel continues on appeal.

**9. Post-Conviction Review.** In order to be rostered for post-conviction review cases an

attorney must:

- A. Have at least three years of criminal law experience;
- B. Have previously qualified to be placed on the trial roster for the case type applicable to the conviction being challenged on post-conviction review;
- C. Submit a letter explaining the applicant's interest in and qualifications for providing representation in post-conviction review cases, including a description of the applicant's criminal law experience generally and how that experience prepared the applicant to address the issues applicable to post-conviction review cases; and
- D. If the applicant seeks for a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice, ~~that assert~~ asserting that the applicant is qualified to provide representation in post-conviction cases. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.
- E. Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.

#### **SECTION 4. Waiver of Certain Eligibility Requirements**

1. An attorney who wishes to receive assignments for one or more of the specialized case types listed above but who does not meet both requirements of: (1) years of practice experience; and (2) trial or litigation experience, may seek a waiver of either, but not both, requirements. An attorney seeking a waiver must provide the Executive Director, or his or her designee, with written information explaining the need for a waiver and the attorney's experience and qualifications to provide representation to the indigent people whose charges or litigation matters are covered by this rule.
2. An attorney may apply for a conditional waiver if additional time is needed to meet CLE requirements.
3. The Executive Director, or his or her designee, may consider other litigation experience, total years of practice, and regional conditions and needs in granting or denying a waiver to any particular attorney.

**AUTHORITY:** 4 M.R.S.A. §§ 1804(2)(B), (2)(G), (3)(E) and (4)(D)

**(5.)**  
**Meeting with Judicial**  
**Branch**

**Re: Counsel Fees**

---

---

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

---

---

**TO:** MCILS COMMISSIONERS  
**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR  
**CC:** ELLIE BROGAN, DEPUTY EXECUTIVE DIRECTOR  
**SUBJECT:** Meeting with Judicial Branch re: Counsel fees  
**DATE:** December 23, 2014

---

**Enforcement of Orders to pay Counsel Fees**

On December 18, I met with the Judicial Branch Trial Chiefs and Court Administrator Ted Glessner. I had requested the meeting to address the process for enforcing orders to pay counsel fees. Questions had arisen from our financial screeners and some judges regarding the appropriate process for enforcing such orders, centered primarily on the proper form of notice sent to people to appear for a hearing regarding delinquent counsel fees and what authority judges have to penalize the failure to pay counsel fees.

After discussion of the relevant statutes and the differing practices observed in different courts, the Chiefs offered to set up a task force to recommend a uniform set of forms and procedures for enforcement hearings. The group will likely consist of judges and clerks from courts in different parts of the state and I will be actively involved.

My hope is that the group will recommend a uniform process that can be adopted by the Trial Chiefs. That process will guide the courts that are now actively pursuing enforcement. I also hope that the formal adoption of a uniform process will lead other courts to implement regular enforcement proceedings.

**Set-off of Bail to pay Counsel Fees**

In many courts, bail belonging to a defendant represented by assigned counsel is not returned immediately at the end of a case, but is held pending a determination of the amount of the attorney fee so that bail can be applied to those fees. Currently, lawyers have 90 days from the date of disposition to submit a voucher so that the amount of bail to be applied can be determined. The Trial Chiefs expressed some concern about holding bail for such a substantial period of time. They requested that the Commission consider shortening the time for submitting vouchers to 45 days after the date of disposition. I agreed to bring this request to your attention at the December 29<sup>th</sup> meeting.