

MCILS

**October 13, 2015
Commissioner's Meeting
Packet**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

**OCTOBER 13, 2015
COMMISSION MEETING
JUDICIARY COMMITTEE ROOM, STATEHOUSE, AUGUSTA
AGENDA**

- 1) Approval of September 16, 2015 Commission Meeting Minutes
- 2) Operations Reports Review
- 3) DHHS/TANF MOU
- 4) Regulatory Agenda
- 5) Discussion of LD 1433
- 6) Public Comment
- 7) Set Date, Time and Location of Next Regular Meeting of the Commission
- 8) Executive Session, if needed (Closed to Public)

(1.)
September 16, 2015
Commission Meeting
Minutes

**Maine Commission on Indigent Legal Services – Commissioners Meeting
September 16, 2015**

Minutes

Commissioners Present: Steven Carey, Marvin Glazier, William Logan, Kenneth Spierer, Susan Roy
MCILS Staff Present: John Pelletier, Ellie Maciag

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Approval of the August 11, 2015 Commission Meeting Minutes	No discussion of meeting minutes.	Approved. Commissioner Logan moved for approval, Commissioner Glazier seconded. All in favor.
Operations Reports Review	Executive Director Pelletier presented the August 2015 Operations Reports. 2,296 new cases were opened in the DefenderData system in August. This was a 210 case increase from July. The number of submitted vouchers in August was 2,429, a 33 voucher decrease from July, totaling \$1,254,443, an increase of \$28,000 from July. In August, the Commission paid 2,479 vouchers totaling \$1,268,550, an increase of 622 vouchers and \$326,000 from July. Director Pelletier noted that voucher totals seem to be moderating to slightly below budgeted amounts, most likely due to the recent drop in the crime rate. Director Pelletier indicated that vouchers were paid ahead of schedule at the end of FY'15 and that we will know more at the end of the quarter about the budget situation. The average price per voucher in August was \$511.59, up \$4.02 per voucher from July. This exceeds last year's average voucher total by about 7%. Appeal and Post-Conviction Review cases had the highest average vouchers in July. There were 6 vouchers exceeding \$5,000 paid in August. The monthly transfer from the Judicial Branch for counsel fees for August, which reflects July's collections, totaled \$44,316, down approximately \$10,000 from the previous month. Director Pelletier noted that collection totals for the first two months of the fiscal year are running slightly below last year's amounts.	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Consideration of Provisional Adoption on Amended Fee Schedule	The Commissioners voted unanimously to provisionally adopt Chapter 301, which set the hourly rate at \$60/hr.	Commissioner Logan made a motion to adopt the rule and draft comment. Commissioner Roy seconded. All in favor.
Discussion of LD 1433	<p>Director Pelletier reviewed the status of LD 1433 and was invited to share his thoughts on the proposed bill. He reminded the Commissioners that the Clifford Commission, which was responsible for the creation of the current system, adopted the 10 ABA Principles as the guiding standard for setting up Maine's indigent defense system. The first principle is independence. He noted that one feature of the bill is that the Governor has the power to appoint and ultimately remove the chief public defender, leaving the Commissioners with only the ability to take a vote of no confidence, which cannot serve to remove a person from the position. Director Pelletier explained that this feature of the bill interferes with the independence currently enjoyed by the Commissioners and would act to weaken the Commissioners' authority.</p> <p>The Commissioners focused their discussion on the first ABA principle of independence. Commission Spierer asked the Commission staff to obtain a copy of the legislative history for the Clifford Commission. Commissioner Glazier thought it would be dangerous for a Governor to be in charge of the hiring and firing of the chief public defender and that the Commission must have independence from the judiciary, legislature, and the Governor. Moreover, he contended that under the proposed bill there would be a need for an office in every location where there is a district court in order to implement the proposed application fee. Commissioner Logan noted that independence is almost impossible to achieve due to the current appointment process where the court is responsible for assigning cases as well as deciding on an applicant's financial eligibility. He also noted that the Commissioners are appointees of the Governor, the judicial branch, and the legislative branch. He thought that the proposed bill would be a change from the</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>current system including current Commission staff's positions, but that it did contain some of the ABA principles. While the bill would reduce the Commission's independence, Commission Logan believes it would enhance an equal partnership with the Governor. Commissioner Roy believes the bill presents a radical shift based on fiscal concerns for a problem that does not appear to exist and fears that indigent legal services is heading back to where it was prior to the Commission's creation. Chair Carey indicated that the initial goal for pursuing the bill was based on fiscal concerns about the Commission's rising costs. He does not believe there is much discussion of the ABA Principles, but rather on fiscal concerns and attorney evaluation. Commissioner Logan agreed that fiscal concerns were a major reason for the proposed bill as well as a desire to change the hierarchy structure from a board to a single person. Chair Carey expressed some concerns about what competitive bidding would mean for the quality of representation, but thought that there might be some areas where contracts would work. He noted that nothing in the current system would prevent the Commission from pursuing contracts.</p> <p>The discussion briefly turned to a provision in the bill that would give the chief public defender authority regarding the disposition of cases. Commission Logan acknowledged that this would be a very broad grant of power. Chair Carey cautioned that dealing with problem attorneys would be difficult under a contract model.</p> <p>Director Pelletier added that while a chief public defender would be a centralized advocate, under the current system Commission staff is able to weigh in on budget and statutory issues through fiscal notes. Chair Carey commended Director Pelletier for his regular submission of fiscal notes. Chair Carey believes that there are certain issues where the Commission should educate the legislature and advocate for an issue.</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>Director Pelletier pointed out some shortcomings of an all contract model, with caseload pressures being a big factor. Under the current system, attorneys can be taken off the rosters if they feel they are too busy. Attorneys can also exercise their professional judgment and spend the appropriate amount of time on any given case. The current system pays an attorney's actual cost for their work on a case as opposed to a set amount under a contract system.</p> <p>Chair Carey asked the Commissioners to provide Commission staff with some guidance about its position on the bill so a position piece could be drafted for the Commissioners to review. Commissioner Logan was uncertain about his position and suggested that Commission staff solicit feedback from rostered attorneys about whether they support the bill.</p>	
Contracts Discussion	<p>Director Pelletier provided a draft sample RFP for a potential appellate contract for the Commissioners to review and discuss. Chair Carey indicated that appeals is one area to consider for a contract, especially since the Law Court had expressed some concerns about the quality of the work of some rostered attorneys. He noted that appeal cases are often over the fee cap and usually have the highest voucher averages. He also thought that low bidding for a contract would not be an issue and that there would most likely be two separate pools of attorneys doing criminal and child protective appeals. Commissioner Logan agreed that there would not be many attorneys that would handle both types of cases. He also noted two reasons to pursue an appellate contract: on the cost side, it would be less or a fixed cost, and on the quality side, it would control the standards and quality of work by having only qualified attorneys handling those cases. Commissioner Glazier noted his objection to contracts in urban areas since good attorneys and potentially good attorneys will be frozen out of the process.</p> <p>Director Pelletier indicated that before an appellate contract could be pursued, Commission staff would have to work out several issues with the judiciary, including a rule change to the Rules of Criminal Procedure that would require</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	representation to cease at the trial court level. Director Pelletier will reach out to the judicial branch to start the discussion on these issues and suggested that the appellate contract idea be placed on next month's agenda for further discussion.	
Public Comment	<p>Rob Ruffner, Esq. submitted a public comment:</p> <ul style="list-style-type: none"> • Believes that each rostered attorney already has a contract with the Commission. Asked that the Commission survey the attorneys and educate them about the proposed bill and the current statute; • There are some examples of bad contracts and some bad parts of the bill, including application fees, but there are also some aspirational goals in the bill that the Commission should embrace, including weighted caseload standards and best practices. Believes that the Governor appointment of the chief is a problem and should be changed. Term appointment for the chief is a good thing, as well as removal for good cause. A centralized authority to take on criminal justice issues and be part of the discussion would be a great benefit, something that is currently lacking; • Contracts can take many different forms and an example of a good contract is the New Hampshire Public Defender; • Would like to see in the first round of RFPs a focus on quality representation that would be cost neutral; • There are winners and losers now under the current system with the unequal distribution of cases; • The bill recognizes the need for more staff; the office would still, however, be under staffed. 	
Executive Session	None	
Adjournment of meeting	The Commission voted to adjourn with the next meeting to be on October 13, 2015 at 9:30 a.m.	Chair Carey moved to adjourn. Commissioner Logan seconded. All in favor.

(2.)
Operations Reports
Review

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
SUBJECT: SEPTEMBER 2015 OPERATIONS REPORTS
DATE: OCTOBER 5, 2015

Attached you will find the September, 2015 Operations Reports for your review and our discussion at the upcoming Commission meeting on October 13, 2015. A summary of the operations reports follows:

- 2,097 new cases were opened in the DefenderData system in September. This was a 199 case decrease from August.
- The number of vouchers submitted electronically in September was 2,446, an increase of 17 vouchers over August, totaling \$1,280,884.71, an increase of \$26,000 over August. In September, we paid 3,381 electronic vouchers totaling \$1,669,545.73, representing an increase of 902 vouchers and \$401,000 from August.
- There were no paper vouchers submitted and paid in September.
- The average price per voucher in September was \$493.80, down \$17.79 per voucher from August.
- Appeal and Post-Conviction Review cases had the highest average vouchers in September. There were 8 vouchers exceeding \$5,000 paid in September. Two cases involved trials on Elevated Aggravated Assault, with not guilty verdicts on that Class A charge, but convictions on Class B Aggravated Assault. Two cases involved post-verdict murder convictions with complicated litigation on motions for new trial. One case involved a plea to manslaughter in a hunting case with complicated issues requiring extensive expert consultations. Another case resulted in a deferred disposition on a felony Sexual Abuse of a Minor charge when the authenticity of the victim's African birth record was challenged. Finally, two vouchers involved litigious and complicated child protection cases.

In our All Other Account, the total expenses for the month of September were \$1,609,871.30. Of the amount, just over \$8,000 was devoted to the Commission's operating expenses. Because voucher costs came in lower than projected in the first quarter, an unspent balance of \$221,681.45 remained in the All Other Account at the end of the quarter

In the Personal Services Account, we had \$48,847.23 in expenses for the month of September.

In the Revenue Account, our monthly transfer from the Judicial Branch for counsel fees for the month of September, which reflects August's collections, totaled \$43,704.16, down approximately \$300 from the previous month. Collections ran lower than expected for the quarter, but we were able to access revenue funds carried over from last year to pay vouchers totaling \$178,086.96 through the DefenderData system. This expenditure utilized nearly all of our quarterly allotment and a carry forward cash balance of \$16,050.61 remains in this account.

In our Conference Account, the only activity was payment of an \$11.28 state charge for maintenance of the account, leaving the balance at \$11,962.77.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Case Type

9/30/2015

DefenderData Case Type	Sep-15						Fiscal Year 2016			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
Appeal	6	9	\$ 11,147.46	19	\$ 21,401.38	\$ 1,126.39	30	58	\$ 69,170.69	\$ 1,192.60
Child Protection Petition	129	374	\$ 243,871.43	500	\$ 303,576.26	\$ 607.15	398	1,131	\$ 692,582.94	\$ 612.36
Drug Court	0	7	\$ 4,383.50	9	\$ 5,991.50	\$ 665.72	2	22	\$ 11,976.50	\$ 544.39
Emancipation	8	11	\$ 3,501.00	11	\$ 3,570.50	\$ 324.59	22	32	\$ 9,832.04	\$ 307.25
Felony	537	538	\$ 430,339.66	715	\$ 535,763.67	\$ 749.32	1,684	1,690	\$ 1,344,065.38	\$ 795.30
Involuntary Civil Commitment	78	67	\$ 16,368.74	96	\$ 21,501.94	\$ 223.98	203	216	\$ 49,884.82	\$ 230.95
Juvenile	85	106	\$ 45,816.73	141	\$ 57,910.19	\$ 410.71	269	303	\$ 126,238.76	\$ 416.63
Lawyer of the Day - Custody	217	199	\$ 47,190.10	296	\$ 71,329.88	\$ 240.98	677	630	\$ 146,915.05	\$ 233.20
Lawyer of the Day - Juvenile	47	40	\$ 8,500.16	49	\$ 10,390.16	\$ 212.04	131	127	\$ 26,414.18	\$ 207.99
Lawyer of the Day - Walk-in	93	106	\$ 27,458.10	165	\$ 42,297.36	\$ 256.35	346	346	\$ 83,479.54	\$ 241.27
Misdemeanor	672	646	\$ 267,763.83	883	\$ 351,702.96	\$ 398.30	2,023	1,965	\$ 756,515.71	\$ 385.00
Petition, Modified Release Treatment	1	8	\$ 2,379.40	8	\$ 2,379.40	\$ 297.43	3	19	\$ 6,999.43	\$ 368.39
Petition, Release or Discharge	0	1	\$ 308.00	1	\$ 308.00	\$ 308.00	1	2	\$ 466.75	\$ 233.38
Petition, Termination of Parental Rights	10	33	\$ 27,149.43	53	\$ 42,188.98	\$ 796.02	41	125	\$ 89,867.01	\$ 718.94
Post Conviction Review	10	6	\$ 8,157.86	10	\$ 16,466.80	\$ 1,646.68	29	17	\$ 24,666.75	\$ 1,450.99
Probation Violation	182	151	\$ 66,184.02	217	\$ 86,346.60	\$ 397.91	525	522	\$ 198,805.84	\$ 380.85
Represent Witness on 5th Amendment	3	3	\$ 777.76	3	\$ 705.76	\$ 235.25	8	6	\$ 1,294.42	\$ 215.74
Review of Child Protection Order	16	138	\$ 68,984.53	202	\$ 95,111.39	\$ 470.85	67	502	\$ 241,094.61	\$ 480.27
Revocation of Administrative Release	3	3	\$ 603.00	3	\$ 603.00	\$ 201.00	8	4	\$ 669.50	\$ 167.38
DefenderData Sub-Total	2,097	2,446	\$ 1,280,884.71	3,381	\$ 1,669,545.73	\$ 493.80	6,467	7,717	\$ 3,880,939.92	\$ 502.91
Paper Voucher Sub-Total	0	0	\$ -	0	\$ -	#DIV/0!	2	2	\$ 400.50	\$ 200.25
TOTAL	2,097	2,446	\$ 1,280,884.71	3,381	\$ 1,669,545.73	\$ 493.80	6,469	7,719	\$ 3,881,340.42	\$ 502.83

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY16 FUND ACCOUNTING
AS OF 09/30/2015

Account 010 95F Z112 01 (All Other)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY16 Total
FY15 Professional Services Allotment		\$ 4,428,945.00		\$ 4,364,292.00		\$ 4,515,272.00		\$ 4,873,093.00	
FY15 General Operations Allotment		\$ 34,560.00		\$ 34,560.00		\$ 34,560.00		\$ 34,560.00	
Financial Order Adjustment		\$ -		\$ 8,633.00		\$ 8,633.00		\$ 8,634.00	
Financial Order Adjustment		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustment		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustment		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustment		\$ -		\$ -		\$ -		\$ -	
Total Budget Allotments		\$ 4,463,505.00		\$ 4,407,485.00		\$ 4,558,465.00		\$ 4,916,287.00	\$ 18,345,742.00
Total Expenses	1	\$ (1,034,674.33)	4	\$ -	7	\$ -	10	\$ -	\$ (1,034,674.33)
	2	\$ (1,384,090.42)	5	\$ -	8	\$ -	11	\$ -	\$ (1,384,090.42)
	3	\$ (1,609,871.30)	6	\$ -	9	\$ -	12	\$ -	\$ (1,609,871.30)
Encumbrances		\$ (213,187.50)		\$ -		\$ -		\$ -	\$ (213,187.50)
TOTAL REMAINING		\$ 221,681.45		\$ 4,407,485.00		\$ 4,558,465.00		\$ 4,916,287.00	\$ 14,103,918.45

Q1 Month 3 (as of 09/30/15)	
INDIGENT LEGAL SERVICES	
Counsel Payments	\$ (1,491,458.77)
Somerset County	\$ (23,202.50)
Subpoena Witness Fees	\$ (46.52)
Private Investigators	\$ (21,575.97)
Mental Health Expert	\$ (12,712.50)
Transcripts	\$ (26,699.42)
Other Expert	\$ (22,573.08)
Air fare-out of state witness	\$ (1,615.90)
Process Servers	\$ (1,653.42)
Interpreters	\$ (236.00)
Misc Prof Fees & Serv	\$ (19.23)
SUB-TOTAL ILS	\$ (1,601,793.31)
OPERATING EXPENSES	
Service Center	\$ (794.50)
DefenderData	\$ (4,970.75)
Risk Management	\$ (34.20)
Mileage/Tolls/Parking	\$ (1,259.89)
Mailing/Postage/Freight	\$ (661.20)
Registration Fees-John & Ellie	\$ -
Legal Ad	\$ -
Office Supplies/Equip.	\$ (131.96)
Cellular Phones	\$ (94.20)
Subscriptions	\$ -
Office Equipment Rental	\$ (131.29)
OIT/TELCO	\$ -
SUB-TOTAL OE	\$ (8,077.99)
TOTAL	\$ (1,609,871.30)

INDIGENT LEGAL SERVICES	
Q1 Allotment	\$ 4,463,505.00
Q1 Encumbrances for Somerset cty PDP & Justice Works contracts	\$ (213,187.50)
Q1 Expenses as of 09/30/15	\$ (4,028,636.05)
Remaining Q1 Allotment as of 09/30/15	\$ 221,681.45

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY16 FUND ACCOUNTING
As of 09/30/15

Account 014 95F Z112 01 (Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY14 Total
Total Budget Allotments		\$ 180,124.00		\$ 180,124.00		\$ 180,124.00		\$ 180,125.00	\$ 720,497.00
Financial Order Adjustment	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Financial Order Adjustment	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Budget Order Adjustment	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
Financial Order Adjustment	3	\$ 14,106.00	4	\$ 15,000.00	9	\$ 15,000.00	12	\$ 15,000.00	\$ 59,106.00
Total Budget Allotments		\$ 194,230.00		\$ 195,124.00		\$ 195,124.00		\$ 195,125.00	\$ 779,603.00
Collected Revenue from JB	1	\$ 54,101.64	4	\$ -	7	\$ -	10	\$ -	
Promissory Note Payments		\$ 50.00		\$ -		\$ -		\$ -	
Collected Revenue from JB	2	\$ 44,316.49	5	\$ -	8	\$ -	11	\$ -	
Promissory Note Payments		\$ 50.00		\$ -		\$ -		\$ -	
Discovery sanction payment		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB	3	\$ 43,704.16	6	\$ -	9	\$ -	12	\$ -	
Promissory Note Payments		\$ 50.00		\$ -		\$ -		\$ -	
TOTAL REVENUE COLLECTED		\$ 142,272.29		\$ -		\$ -		\$ -	\$ 142,272.29
Counsel Payments	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
	3	\$ (178,086.96)	6	\$ -	9	\$ -	12	\$ -	
REMAINING ALLOTMENT		\$ 16,143.04		\$ 195,124.00		\$ 195,124.00		\$ 195,125.00	\$ 601,516.04
Total Expenses	1	\$ (90.50)	4	\$ -	7	\$ -	10	\$ -	
	2	\$ (1.93)	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
REMAINING CASH		\$ 16,050.61		\$ -		\$ -		\$ -	\$ 16,050.61

Q1 Month 3 (as of 09/30/15)

DEFENDER DATA COUNSEL PAYMENTS	
	\$ (178,086.96)
SUB-TOTAL ILS	
OVERPAYMENT REIMBURSEMENTS	\$ -
Paper Voucher	\$ -
Somerset County CDs	\$ -
Private Investigators	\$ -
Mental Health Expert	\$ -
Transcripts	\$ -
Other Expert	\$ -
State Cap Expense	\$ -
SUB-TOTAL OE	\$ -
TOTAL	\$ -

INDIGENT LEGAL SERVICES

FY16 Q1 Allotment	\$ 194,230.00
FY15 Carry Forward	\$ 59,106.00
YTD Collected Revenue	\$ 142,272.29
YTD Expenses	\$ (92.43)
YTD Overpayment Reimbursements	\$ (2,638.19)
YTD Counsel Payments	\$ (178,086.96)
Q1 Remaining Unexpended Cash	\$ 16,050.61

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY16 FUND ACCOUNTING
As of 09/30/15

Account 014 95F Z112 02 (Conference)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY16 Total
Total Budget Allotments		\$ 10,385.00		\$ 15,000.00		\$ 15,000.00		\$ 20,000.00	\$ 60,385.00
Financial Order Adjustment	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Financial Order Adjustment	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Financial Order Adjustment	3	\$ 1,196.00	6	\$ 3,000.00	9	\$ 3,000.00	12	\$ 2,000.00	\$ 9,196.00
Total Budget Allotments		\$ 11,581.00		\$ 18,000.00		\$ 18,000.00		\$ 22,000.00	\$ 69,581.00
Collected Revenue	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Collected Revenue	2	\$ 22.50	5	\$ -	8	\$ -	11	\$ -	
Collected Revenue	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
TOTAL REVENUE COLLECTED		\$ 22.50		\$ -		\$ -		\$ -	\$ 22.50
Total Expenses	1	\$ (99.00)	4	\$ -	7	\$ -	10	\$ -	
	2	\$ (530.29)	5	\$ -	8	\$ -	11	\$ -	
	3	\$ (11.28)	6	\$ -	9	\$ -	12	\$ -	
REMAINING ALLOTMENT		\$ 10,940.43		\$ 18,000.00		\$ 18,000.00		\$ 22,000.00	\$ 68,940.43
REMAINING CASH (CARRY OVER)		\$ 11,962.77		\$ -		\$ -		\$ -	\$ 11,962.77

Q1 Month 3 (as of 09/30/15)	
Training Manuals Printing	\$ -
Training Refreshments/Meals	\$ -
Speaker Hotel Room & Lodging	\$ -
Refund(s) for non-attendance	\$ -
Office Supplies	\$ -
CLE App to the Bar	\$ -
State Cap Expense	\$ (11.28)
SUB-TOTAL OE	\$ (11.28)
TOTAL	\$ (11.28)

INDIGENT LEGAL SERVICES	
FY16 Q1 Allotment	\$ 11,581.00
FY15 Carry Forward	\$ 12,580.84
YTD Collected Revenue	\$ 22.50
YTD Expenses	\$ (640.57)
	\$ -
Q1 Remaining Unexpended Cash	\$ 11,962.77

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY16 FUND ACCOUNTING
AS OF 09/30/2015

Account 010 95F Z112 01 (Personal Services)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY16 Total
FY16 Allotment		\$ 197,643.00		\$ 197,641.00		\$ 174,658.00		\$ 181,575.00	\$ -
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustments				\$ -		\$ -		\$ -	
Total Budget Allotments		\$ 197,643.00		\$ 197,641.00		\$ 174,658.00		\$ 181,575.00	\$ 751,517.00
Total Expenses	1	\$ (73,500.45)	4	\$ -	7	\$ -	10	\$ -	
	2	\$ (49,758.60)	5	\$ -	8	\$ -	11	\$ -	
	3	\$ (48,847.23)	6	\$ -	9	\$ -	12	\$ -	
TOTAL REMAINING		\$ 25,536.72		\$ 197,641.00		\$ 174,658.00		\$ 181,575.00	\$ 579,410.72

Q1 Month 3 (as of 09/30/15)	
Per Diem Payments	\$ (275.00)
Salary	\$ (21,004.05)
Vacation Pay	\$ (3,114.57)
Holiday Pay	\$ (1,516.48)
Sick Pay	\$ (694.26)
Employee Hlth Svs/Workers Comp	\$ (74.00)
Health Insurance	\$ (9,993.46)
Dental Insurance	\$ (249.48)
Employer Retiree Health	\$ (2,810.41)
Employer Retirement	\$ (1,927.57)
Employer Group Life	\$ (218.24)
Employer Medicare	\$ (367.46)
Retiree Unfunded Liability	\$ (4,799.37)
Retro Pymt	\$ -
Perm Part Time Full Ben	\$ (1,802.88)
TOTAL	\$ (48,847.23)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Court

9/30/2015

Court	Sep-15						Fiscal Year 2016			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
ALFSC	103	168	\$ 140,110.78	204	\$ 133,939.16	\$ 656.56	301	527	\$ 391,993.60	\$ 743.82
AUBSC	32	75	\$ 77,855.34	118	\$ 101,172.24	\$ 857.39	128	269	\$ 185,884.85	\$ 691.02
AUGDC	40	61	\$ 32,236.70	88	\$ 42,810.06	\$ 486.48	131	224	\$ 105,091.63	\$ 469.16
AUGSC	54	68	\$ 44,395.42	111	\$ 69,797.59	\$ 628.81	155	255	\$ 163,314.19	\$ 640.45
BANDC	57	87	\$ 33,616.37	134	\$ 49,864.95	\$ 372.13	173	286	\$ 103,126.65	\$ 360.58
BANSC	1	1	\$ 256.00	2	\$ 318.50	\$ 159.25	6	9	\$ 2,256.15	\$ 250.68
BATSC	4	2	\$ 784.25	4	\$ 2,033.75	\$ 508.44	4	6	\$ 2,452.00	\$ 408.67
BELDC	9	18	\$ 8,318.23	22	\$ 11,660.91	\$ 530.04	20	88	\$ 36,394.20	\$ 413.57
BELSC	5	3	\$ 480.00	6	\$ 2,743.51	\$ 457.25	11	42	\$ 20,805.76	\$ 495.38
BIDDC	48	116	\$ 69,443.66	152	\$ 85,872.55	\$ 564.95	212	330	\$ 171,509.99	\$ 519.73
BRIDC	10	22	\$ 14,880.29	25	\$ 16,305.97	\$ 652.24	32	65	\$ 37,069.25	\$ 570.30
CALDC	4	11	\$ 5,655.44	14	\$ 6,573.99	\$ 469.57	15	46	\$ 29,229.57	\$ 635.43
CARDC	9	25	\$ 8,997.22	38	\$ 15,232.12	\$ 400.85	44	84	\$ 39,805.83	\$ 473.88
CARSC	20	42	\$ 20,456.23	56	\$ 24,870.71	\$ 444.12	66	125	\$ 66,894.08	\$ 535.15
DOVDC	2	21	\$ 6,824.58	32	\$ 8,331.14	\$ 260.35	6	51	\$ 14,416.36	\$ 282.67
DOVSC	0	0		0			1	0		
ELLDC	11	28	\$ 13,011.00	35	\$ 17,872.36	\$ 510.64	43	149	\$ 70,470.36	\$ 472.96
ELLSC	1	5	\$ 1,062.00	6	\$ 1,347.00	\$ 224.50	4	19	\$ 4,567.68	\$ 240.40
FARDC	7	14	\$ 13,960.02	15	\$ 14,408.52	\$ 960.57	23	36	\$ 28,855.63	\$ 801.55
FARSC	3	1	\$ 482.38	2	\$ 2,080.32	\$ 1,040.16	4	4	\$ 2,260.72	\$ 565.18
FORDC	7	14	\$ 5,893.55	25	\$ 8,822.05	\$ 352.88	22	40	\$ 15,453.33	\$ 386.33
HOUDC	41	46	\$ 19,276.14	56	\$ 21,748.42	\$ 388.36	122	150	\$ 58,677.55	\$ 391.18
HOUSC	12	18	\$ 13,925.01	22	\$ 10,735.70	\$ 487.99	32	46	\$ 25,022.50	\$ 543.97
LEWDC	64	112	\$ 55,615.42	181	\$ 85,465.29	\$ 472.18	295	431	\$ 192,566.05	\$ 446.79
LINDC	8	14	\$ 11,409.86	23	\$ 18,058.39	\$ 785.15	29	42	\$ 25,246.22	\$ 601.10
MACDC	8	24	\$ 10,280.62	32	\$ 12,449.62	\$ 389.05	42	82	\$ 28,286.66	\$ 344.96
MACSC	5	10	\$ 4,908.80	16	\$ 7,954.40	\$ 497.15	17	29	\$ 12,673.30	\$ 437.01
MADDC	3	2	\$ 665.36	3	\$ 771.36	\$ 257.12	11	9	\$ 2,399.58	\$ 266.62
MILDC	1	1	\$ 316.50	2	\$ 526.50	\$ 263.25	9	4	\$ 1,022.14	\$ 255.54
NWDC	11	14	\$ 7,311.10	26	\$ 11,358.40	\$ 436.86	47	77	\$ 28,999.08	\$ 376.61
PORDC	93	145	\$ 68,308.34	183	\$ 86,075.61	\$ 470.36	244	393	\$ 190,780.61	\$ 485.45
PORSC	0	1	\$ 1,464.80	3	\$ 2,956.80	\$ 985.60	10	6	\$ 6,829.55	\$ 1,138.26
PREDC	35	53	\$ 19,870.45	74	\$ 22,959.55	\$ 310.26	75	163	\$ 55,052.88	\$ 337.75
ROCD	21	31	\$ 10,447.99	41	\$ 13,510.10	\$ 329.51	51	101	\$ 36,931.33	\$ 365.66
ROSC	8	13	\$ 9,909.96	20	\$ 26,059.49	\$ 1,302.97	23	50	\$ 44,021.69	\$ 880.43
RUMDC	13	15	\$ 7,332.48	21	\$ 9,370.38	\$ 446.21	50	53	\$ 21,405.12	\$ 403.87
SKODC	8	40	\$ 29,293.20	56	\$ 35,299.94	\$ 630.36	26	135	\$ 68,978.49	\$ 510.95
SKOSC	1	0		1	\$ 370.00	\$ 370.00	2	2	\$ 734.00	\$ 367.00
SOUDC	13	8	\$ 2,926.90	20	\$ 7,203.90	\$ 360.20	52	74	\$ 23,835.55	\$ 322.10
SOUSC	9	26	\$ 14,468.26	41	\$ 25,934.55	\$ 632.55	60	103	\$ 58,409.29	\$ 567.08
SPRDC	54	74	\$ 34,292.60	114	\$ 51,934.86	\$ 455.57	177	225	\$ 112,720.97	\$ 500.98
Law Ct	3	4	\$ 3,181.41	11	\$ 10,246.66	\$ 931.51	22	38	\$ 46,274.74	\$ 1,217.76
YORCD	123	28	\$ 11,076.82	28	\$ 11,293.32	\$ 403.33	302	39	\$ 14,805.58	\$ 379.63
ARCD	25	16	\$ 5,851.35	17	\$ 6,013.35	\$ 353.73	60	19	\$ 6,433.35	\$ 338.60
ANDCD	85	21	\$ 6,560.50	22	\$ 6,674.50	\$ 303.39	252	30	\$ 8,563.90	\$ 285.46
KENCD	94	67	\$ 20,788.53	103	\$ 33,082.36	\$ 321.19	324	191	\$ 56,558.75	\$ 296.12
PENCD	191	228	\$ 97,985.47	283	\$ 116,852.38	\$ 412.91	571	650	\$ 308,472.56	\$ 474.57
SAGCD	35	27	\$ 15,356.81	38	\$ 23,834.12	\$ 627.21	83	76	\$ 44,408.97	\$ 584.33
WALCD	40	13	\$ 4,471.90	16	\$ 4,698.30	\$ 293.64	94	45	\$ 13,324.48	\$ 296.10
PISCD	17	9	\$ 2,464.00	12	\$ 2,376.00	\$ 198.00	43	44	\$ 18,464.80	\$ 419.65
HANCD	61	69	\$ 29,250.84	81	\$ 33,136.34	\$ 409.09	177	164	\$ 66,243.73	\$ 403.93
FRACD	47	46	\$ 15,291.74	59	\$ 17,793.19	\$ 301.58	175	133	\$ 47,657.83	\$ 358.33
WASCD	50	23	\$ 5,151.60	26	\$ 5,601.60	\$ 215.45	88	28	\$ 5,979.60	\$ 213.56
CUMCD	283	300	\$ 169,020.13	419	\$ 221,349.20	\$ 528.28	916	889	\$ 498,950.39	\$ 561.25
KNODC	48	30	\$ 13,981.38	45	\$ 20,407.28	\$ 453.50	148	95	\$ 35,962.95	\$ 378.56
SOMCD	1	1	\$ 42.00	1	\$ 42.00	\$ 42.00	3	4	\$ 2,921.30	\$ 730.33
OXFCD	46	14	\$ 3,442.00	19	\$ 4,146.00	\$ 218.21	115	26	\$ 5,736.00	\$ 220.62
LINCD	41	19	\$ 7,599.82	22	\$ 11,131.41	\$ 505.97	101	48	\$ 22,743.12	\$ 473.82
WATDC	21	49	\$ 24,127.27	59	\$ 26,531.09	\$ 449.68	59	119	\$ 57,439.83	\$ 482.69
WESDC	27	27	\$ 11,127.28	50	\$ 23,412.68	\$ 468.25	75	112	\$ 52,719.07	\$ 470.71
WISDC	5	11	\$ 6,640.82	18	\$ 8,654.83	\$ 480.82	26	50	\$ 22,935.32	\$ 458.71
WISSC	4	2	\$ 1,797.32	8	\$ 7,814.98	\$ 976.87	15	41	\$ 37,265.68	\$ 908.92
YORDC	15	13	\$ 4,932.47	20	\$ 7,653.48	\$ 382.67	43	46	\$ 20,633.58	\$ 448.56
TOTAL	2,097	2,446	\$ 1,280,884.71	3,381	\$ 1,669,545.73	\$ 493.80	6,467	7,717	\$3,880,939.92	\$ 502.91

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Number of Attorneys Rostered by Court

09/30/2015

Court	Rostered Attorneys	Court	Rostered Attorneys
Augusta District Court	100	South Paris District Court	66
Bangor District Court	57	Springvale District Court	122
Belfast District Court	52	Unified Criminal Docket Alfred	109
Biddeford District Court	136	Unified Criminal Docket Aroostook	22
Bridgton District Court	103	Unified Criminal Docket Auburn	111
Calais District Court	13	Unified Criminal Docket Augusta	94
Caribou District Court	18	Unified Criminal Docket Bangor	59
Dover-Foxcroft District Court	27	Unified Criminal Docket Bath	94
Ellsworth District Court	45	Unified Criminal Docket Belfast	45
Farmington District Court	27	Unified Criminal Docket Dover-Foxcroft	23
Fort Kent District Court	10	Unified Criminal Docket Ellsworth	39
Houlton District Court	16	Unified Criminal Docket Farmington	28
Lewiston District Court	136	Unified Criminal Docket Machias	18
Lincoln District Court	30	Unified Criminal Docket Portland	146
Machias District Court	20	Unified Criminal Docket Rockland	44
Madawaska District Court	11	Unified Criminal Docket Skowhegan	20
Millinocket District Court	21	Unified Criminal docket Soputh Paris	107
Newport District Court	40	Unified Criminal Docket Wiscasset	73
Portland District Court	160	Waterville District Court	58
Presque Isle District Court	14	West Bath District Court	110
Rockland District Court	51	Wiscasset District Court	82
Rumford District Court	27	York District Court	110
Skowhegan District Court	31		

(3.)
DHHS/TANF MOU

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: DHHS/TANF
DATE: October 6, 2015

The Department of Health and Human Services has contacted the Commission to explore whether Commission expenditures on assigned counsel could be counted toward the State's maintenance of effort (MOE) requirement with respect to the award of federal TANF funds. The MOE must be met with state expenditures that, among other things, "provide assistance to needy families so that children may be cared for in their own home or in the homes of relatives."

Expenditures for counsel in Child Protective cases appear to satisfy this goal, and I have attached a summary of the applicable expenditures. Also attached is a Memorandum of Understanding form that the Commission would be required to complete and execute for its expenditures to count toward the State's MOE requirement. At the meeting, I will provide further details and will be seeking a Commission decision whether or not to authorize the Executive Director to enter into the Memorandum of Understanding, which would need to be completed prior to the Commission's November meeting.

File Type	Voucher	Time	Enl	Expense
Child Protection Petition	121230	5.4		
Review of Child Protection Order	121846	19.1		
Child Protection Petition	121881	5.8	38.76	
Child Protection Petition	121921	4.4		
Child Protection Petition	121924	21.6	28	
Child Protection Petition	121963	4.2	11	
Child Protection Petition	121964	4.6		
Review of Child Protection Order	121967	13.3		
Review of Child Protection Order	121990	53.4		
Child Protection Petition	122114	1.2		
Child Protection Petition	122286	5.2	64	
Review of Child Protection Order	122363	10		
Review of Child Protection Order	122419	11		
Review of Child Protection Order	122441	7.1		
Child Protection Petition	122450	11.25		
Review of Child Protection Order	122474	12.2		
Child Protection Petition	122477	7.8	75.4	
Child Protection Petition	122482	6.2		
Review of Child Protection Order	122492	34.8		
Review of Child Protection Order	122495	34.8		
Child Protection Petition	122520	1		
Child Protection Petition	122594	12.4	44	
Review of Child Protection Order	122629	11.4		
Child Protection Petition	122670	12.7	56	
Child Protection Petition	122775	9.7	16	

File Type	Time Entry Hr	Expense Amount
Child Protection Petition	12915.64	33456.36
Petition for Termination of Parent	390.55	108
Review of Child Protection Order	9374.56	11250.3
Grand Total	22680.75	44814.66

Hours	22680.75	X \$55/hr. = \$1,227,441
Expenses		\$44,814.66
Total		\$1,272,255.91

Agreement #: _____

Rev. Date: _____

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE MAINE DEPARTMENT OF HEALTH AND HUMAN SERVICES
And
[Third Party]

Purpose

This agreement is made between the **Maine Department of Health and Human Services**, (hereafter referred to as the "DHHS") and **[third party]** (hereafter referred to as "[abbrev]," and collectively the "Parties.") The purpose of this agreement is to allow DHHS to count certain specified cash or in-kind expenditures by Third Party toward the State's Maintenance of Effort (MOE) requirement under the Temporary Assistance for Needy Families (TANF) grant funded through Titles IV-A of the Social Security Act. It is understood and agreed by the Parties that the funds reported as expended by Third Party pursuant to this agreement are to be counted toward the State's MOE and match requirements under the TANF federal block grant, and the same funds may not be used to meet MOE or match requirements of any other Federal grant program.

Period of Agreement

This Memorandum of Understanding between the Parties is effective for the Federal fiscal year 2015 (October 1, 2014 to September 31, 2015).

Certifications

Under this agreement, Third Party certifies that:

1. Third Party has made certain cash or in-kind expenditures, specified in Exhibit A, to be counted by DHHS towards the State's TANF MOE requirement for Federal fiscal year 2015 (October 1, 2014 to September 31, 2015).
2. The cash or in-kind expenditures have been spent on TANF eligible families.
3. All costs covered by the expenditures are supported by verifiable records.
4. The cash or in-kind expenditures have been made for one or more of the benefits or services set forth in 45 CFR 263.2.
5. The cash or in-kind expenditures were not derived from Federal funds and were not used to satisfy the cost-sharing or matching requirement of any other Federal program.

Contact Information for Each Party

The designated Third Party Project Manager is:

Name
Title
Address
Phone
Email

The designated DHHS Project Manager is:

Michael Frey
Maine Department of Health and Human Services
Office for Family Independence
19 Union Street
August ME 04333
207-624-4102
Michael.Frey@maine.gov

Termination & Amendments

This agreement may be terminated or amended only upon mutual written agreement of the Parties. Both Parties understand their obligations under this agreement remain in effect beyond the Period of Agreement.

This Agreement contains all the terms and conditions agreed upon by the Parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed or exist to bind any of the Parties.

Department of Health and Human Services

By: _____

Date: _____

Third Party

By: _____

Date: _____

(4.)
Regulatory Agenda

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: Regulatory Agenda
DATE: October 6, 2015

Each year, the commission must file a Regulatory Agenda that includes rulemaking anticipated to be conducted during the following year. The 2015-2016 agenda is due on October 23rd.

I have attached a copy of the regulatory agenda submitted for 2014-2015. I will be seeking guidance on what items, if any, to include on the Regulatory Agenda for the upcoming year.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES 2014-2015 REGULATORY AGENDA

AGENCY UMBRELLA-UNIT NUMBER: 94-649

AGENCY NAME: Maine Commission on Indigent Legal Services

Contact Person: John D. Pelletier, Esq., Executive Director, 154 State House Station, Augusta, Maine 04333-0154. Telephone: (207) 287-3254; john.pelletier@maine.gov

EMERGENCY RULES ADOPTED SINCE THE LAST REGULATORY AGENDA:

NONE.

EXPECTED 2014-2015 RULE-MAKING ACTIVITY:

AMENDMENT - CHAPTER 301: Fee Schedule for Rostered Attorneys

STATUTORY AUTHORITY: 4 M.R.S.A. §§ 1804(2)(F), (3)(B), (3)(F) and (4)(D)

PURPOSE: To establish rates of compensation and standards for the reimbursement of expenses for rostered attorneys.

ANTICIPATED SCHEDULE: Prior to June 1, 2015 for final adoption of this major substantive rule.

AFFECTED PARTIES: Attorneys rostered by the Commission to receive assignments in indigent cases.

AMENDMENT - CHAPTER 2: Standards for Qualifications of Assigned Counsel

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

PURPOSE: To provide the Commission with a basis for determining which attorneys are qualified to be assigned to represent indigent people.

ANTICIPATED SCHEDULE: Prior to June 1, 2015 for final adoption of this major substantive rule.

AFFECTED PARTIES: Attorneys rostered by the Commission to receive assignments in indigent cases and licensed attorneys who apply to become eligible to receive assignments in indigent cases.

AMENDMENT - CHAPTER 3: Eligibility Requirements for Specialized Case Types

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

PURPOSE: To provide the Commission with a basis for determining which attorneys are qualified to be assigned to represent indigent people in specialized case types.

ANTICIPATED SCHEDULE: Prior to June 1, 2015 for final adoption of this major substantive rule.

AFFECTED PARTIES: Attorneys rostered by the Commission to receive assignments in indigent cases and licensed attorneys who apply to become eligible to receive assignments in specialized case types.

(5.)

Discussion of LD 1433

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: LD 1433
DATE: October 6, 2015

Attached is a copy of LD 1433 with comments pointing out differences between the bill and current law and highlighting issues raised by the provisions of the proposed legislation, together with copies of comments received in response to the Commission's request for input sent to all rostered attorneys. In addition, attached is legislative history regarding the enactment of the Commission's enabling statute. Finally, attached is an article relating to a constitutional amendment adopted in New Mexico in 2012 to remove the authority of the Governor to appoint the chief public defender.

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PLEASE NOTE: Legislative Information *cannot* perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Create the Office of the Public Defender and Amend the Duties of the Commission on Indigent Legal Services

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 2 MRSA §6, sub-§12, as enacted by PL 2009, c. 419, §1, is repealed.

Sec. 2. 4 MRSA §1801, as enacted by PL 2009, c. 419, §2, is amended to read:

§ 1801. Maine Commission on Indigent Legal Services; established

The Maine Commission on Indigent Legal Services, established by Title 5, section 12004-G, subsection 25-A, is an independent commission whose purpose is to provide oversight of the Office of the Public Defender, ensuring efficient, high-quality representation to indigent criminal defendants, juvenile defendants and children and parents in child protective cases, consistent with federal and state constitutional and statutory obligations. The commission shall work to ensure ~~oversee~~ the delivery of indigent legal services by qualified and competent counsel in a manner that is fair and consistent throughout the State and to ensure ~~while working with the Chief Public Defender to provide~~ adequate funding for a statewide system of indigent legal services, which must be provided and managed in a fiscally responsible manner, free from undue political interference and conflicts of interest.

Comment [PJ1]: Changes Commission's role from providing Indigent Legal Services (ILS) to overseeing Office of Public Defender (OPD).

Comment [PJ2]: Changes Commission role from ensuring adequate funding to working with Chief Public Defender (CPD) to "provide" adequate funding.

Sec. 3. 4 MRSA §1802, as amended by PL 2013, c. 159, §10, is further amended to read:

§ 1802. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

~~1. Assigned counsel. "Assigned counsel" means a private attorney designated by the commission to provide indigent legal services at public expense.~~

Comment [PJ3]: Eliminates assigned counsel generally.

~~1-A. Appellate counsel. "Appellate counsel" means an attorney who is entitled to payment under Title 15, section 2115-A, subsection 8 or 9.~~

Comment [PJ4]: Without this, the new structure may not meet statutory requirements in appeals by the State in criminal cases.

~~1-B. Civil party. "Civil party" means a party to a civil case described in subsection 4, paragraph B.~~

Comment [PJ5]: Not sure why this is needed.

2. Commission. "Commission" means the Maine Commission on Indigent Legal Services under section 1801.

Comment [EM6]: Civil party is referenced below in 1804-A(1)(A)

~~2-A. Conflict case. "Conflict case" means a case in which counsel in the Office of the Public Defender or contract counsel has a conflict of interest under rules adopted by the Supreme Judicial Court.~~

Comment [PJ7]: Definition to determine when contract counsel would have a conflict.

3. Contract counsel. "Contract counsel" means a private attorney under contract with the

~~commission to provide indigent legal services~~ Office of the Public Defender to provide indigent legal services

Comment [PJ8]: Makes OPD, not Commission the contracting party.

3-A. Contracted professional services. "Contracted professional services" means nonattorney services under contract with the Office of the Public Defender that are necessary for an adequate defense.

- 4. Indigent legal services.** "Indigent legal services" means legal representation provided to:
- A. An indigent defendant in a criminal case in which the United States Constitution or the Constitution of Maine or federal or state law requires that the State provide representation;
 - B. An indigent party in a civil case in which the United States Constitution or the Constitution of Maine or federal or state law requires that the State provide representation; and
 - C. Juvenile defendants.

"Indigent legal services" does not include the services of a guardian ad litem appointed pursuant to Title 22, section 4105, subsection 1.

5. Office of the Public Defender. "Office of the Public Defender" means the office established under section 1807, which is responsible for administering indigent legal services.

6. Retained counsel. "Retained counsel" means a private attorney under contract with the Office of the Public Defender to handle conflict cases and cases that are outside the scope of contract counsel.

Comment [PJ9]: Substitutes "retained" for "assigned" regarding individual attorneys handling conflict cases.

7. Staff counsel. "Staff counsel" means an attorney in the Office of the Public Defender who provides indigent legal services under this chapter and is an employee of the State.

Sec. 4. 4 MRSA §1803, as enacted by PL 2009, c. 419, §2, is amended to read:

§ 1803. Maine Commission on Indigent Legal Services structure

1. Members; appointment; chair. The commission consists of 5 members appointed by the Governor and subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary matters and confirmation by the Legislature. The Governor shall designate one member to serve as chair of the commission. One of the members must be appointed from a list of qualified potential appointees provided by the President of the Senate. One of the members must be appointed from a list of qualified appointees provided by the Speaker of the House of Representatives. One of the members must be appointed from a list of qualified potential appointees provided by the Chief Justice of the Supreme Judicial Court.

In determining the appointments and recommendations under this subsection, the Governor, the President of the Senate, the Speaker of the House of Representatives and the Chief Justice of the Supreme Judicial Court shall consider input from persons and organizations with an interest in the delivery of indigent legal services.

The Chief Public Defender, or the Chief Public Defender's designee, is an ex officio, nonvoting member of the commission and may participate in all meetings of the commission.

Comment [PJ10]: Makes CPD a member, though non-voting, of the Commission.

2. Qualifications. ~~Individuals~~ Of the individuals appointed to the commission who are not attorneys, one must have a background in accounting or finance. All other individuals appointed who are not attorneys must have demonstrated a commitment to ~~quality~~ competent representation for persons who are indigent and must have the skills and knowledge required to ensure that ~~quality of competent~~ representation is provided in each area of relevant law. ~~No more than 3 members may be attorneys engaged in the active practice of law.~~

Comment [PJ11]: Requires financial background for at least one Commissioner and that person cannot be a lawyer.

Comment [PJ12]: Changes "quality" to "competent" regarding level of representation, but note that this applies to Commissioner qualifications, whereas §1801 maintains reference to "high-quality" representation.

An attorney appointed to the commission must have expertise in providing legal defense and the skills and knowledge required to ensure that competent representation is provided in each area of relevant law. No more than 3 members may be attorneys engaged in the active practice of law.

Comment [PJ13]: Creates requirement that attorney Commission members have defense experience.

3. Terms. Members of the commission are appointed for terms of 3 years each, except that of those first appointed the Governor shall designate 2 whose terms are only one year, 2 whose terms are only 2 years and one whose term is 3 years. A member may not serve more than 2 consecutive 3-year terms plus any initial term of less than 3 years.

A member of the commission appointed to fill a vacancy occurring otherwise than by expiration of term is appointed only for the unexpired term of the member succeeded.

4. Quorum. Three members of the commission constitutes a quorum. A vacancy in the commission does not impair the power of the remaining members to exercise all the powers of the commission.

5. Compensation. Each member of the commission is eligible to be compensated as provided in Title 5, chapter 379.

6. Assistance. The Chief Public Defender or the Chief Public Defender's designee shall provide staff assistance to the commission in carrying out its functions.

Comment [PJ14]: Doesn't seem appropriate to this section.

Sec. 5. 4 MRSA §1804, as amended by PL 2013, c. 159, §§11 to 13 and c. 368, Pt. RRR, §1 and affected by §4, is repealed.

Comment [PJ15]: Repeals current duties and responsibilities section.

Sec. 6. 4 MRSA §1804-A is enacted to read:

§ 1804-A. Maine Commission on Indigent Legal Services duties and responsibilities

1. Maine Commission on Indigent Legal Services standards. The commission shall develop standards governing the delivery of indigent legal services, including:

A. Standards governing eligibility for indigent legal services. The eligibility standards must take into account the possibility of a defendant's or civil party's paying counsel in periodic installments.

Comment [PJ16]: Puts partial indigency concept into the statute whereas now it is in the Rules of Criminal Procedure and Commission's Indigency guidelines

B. Standards prescribing minimum experience, training and other qualifications for attorneys providing public defender services, which must include standards to ensure that attorneys are capable of providing competent representation in the case types to which they are assigned, recognizing that competent representation in each type of case requires experience and specialized training in that field;

Comment [PJ17]: Similar to existing statute, but as a drafting note – uses phrase “public defender services” even though term “indigent legal services” remains in the definition section.

C. Standards for weighted caseloads based on recommendations from the Chief Public Defender and reviewed every 5 years or upon the recommendation of the Chief Public Defender;

Comment [PJ18]: This is new and presumably applies to workload under contracts.

D. Standards for the evaluation of contract counsel to be reviewed every 5 years or upon the recommendation of the Chief Public Defender;

Comment [PJ19]: Mandatory periodic review and evaluation standards.

E. Standards for independent, competent and efficient representation of clients whose cases present conflicts of interest;

F. Standards for the reimbursement of expenses incurred by retained counsel;

Comment [PJ20]: Note there is no reference to reimbursing contract counsel for expenses incurred.

G. Standards regarding the determination of payments to the Office of the Public Defender that may be required of a defendant or civil party under section 1808. In developing the payment standards under this paragraph, the commission shall consider among other things the rates of private counsel and the type of case; and

Comment [PJ21]: Not sure why going rate for private counsel is relevant to the obligation to re-pay. In any event, these standards would not be binding on the court, which maintains the determination of eligibility under this proposal.

H. Standards considered necessary and appropriate to ensure the delivery of adequate indigent legal services.

2. Maine Commission on Indigent Legal Services duties. The commission shall:

A. Oversee the Office of the Public Defender to ensure competent and efficient indigent legal services are provided;

Comment [PJ22]: “oversee” OPD – ensure “competent” services.

B. Establish processes and procedures to ensure the Office of the Public Defender uses information technology and case management systems to accurately collect, record and report detailed expenditure and case load data;

Comment [PJ23]: Similar to existing law

C. Establish rates of compensation for retained counsel;

D. Establish contract guidelines as well as processes and procedures to review contracts entered into between the Office of the Public Defender and contract counsel using best practices for contracts providing indigent legal services. Both the contract guidelines and contract review process must be evaluated every 3 years or at the discretion of the commission;

Comment [PJ24]: New requirement for contract procedures and review of those procedures. Does require use of “best practices?”

E. Establish an application fee of no less than \$5, which may be graduated as provided under section 1808, subsection 4 based on a defendant's or civil party's ability to pay and which is administered by the Office of the Public Defender;

Comment [PJ25]: Requires application fee. Unclear if this is paid to MCILS – administrative issues – or the court, which would have its own issues.

F. Submit to the Legislature, the Chief Justice of the Supreme Judicial Court and the Governor an annual report on the operation, needs and costs of the indigent legal services system, including an evaluation of contracts, services provided by contract counsel, retained counsel, any contracted professional services and cost containment measures;

G. Monitor and at the commission's discretion testify on legislative proposals that effect the quality and cost of the indigent legal services system. The commission may name a designee to perform this duty.

Comment [PJ26]: Does this refer to laws changing the Commission's statutes or substantive laws that might create more cases?

H. Prepare at the end of each legislative session a report on the relevant law changes to the indigent legal services system and the effect on the quality and cost of those changes.

Comment [PJ27]: Ditto comment 26.

I. Review the biennial budget request and any supplemental budget requests of the Chief Public Defender prior to their submission to the Department of Administrative and Financial Services, Bureau of the Budget.

Comment [EM28]: Right now does the Commission have more authority over the budget process? Under this proposal it will just have to "review" before submission.

J. Establish the minimum amount of malpractice insurance contract counsel and retained counsel must hold to be eligible to handle indigent defense cases.

Comment [PJ29]: New malpractice insurance requirement.

K. Develop a program, with the assistance of the Chief Public Defender, to allow law students opportunities within the indigent legal services system consistent with those available within the District Attorney's Offices.

Comment [PJ30]: DA interns actually try cases. Could this apply to constitutionally required representation.

L. Designate a member of the commission as a liaison to the Chief Public Defender's cost containment unit under section 1807, subsection 3, paragraph P.

Comment [PJ31]: Wouldn't the Commission oversee this unit? If so, why the need for a liaison?

M. Establish a process for a vote of no confidence in the Chief Public Defender.

Comment [PJ32]: In lieu of being able to fire the CPD.

N. Compile a list of grievances against the Chief Public Defender, to be provided to the Governor, if the commission takes a vote of no confidence in the Chief Public Defender under paragraph M, and

Comment [PJ33]: Ditto comment 32.

O. Perform all duties necessary and incidental to the performance of any duty set out in this chapter.

3. **Maine Commission on Indigent Legal Services powers.** The commission may

Comment [PJ34]: Removes power to establish and maintain offices as necessary

A. Meet and conduct business at any place within the State;

B. Use voluntary and uncompensated services of private individuals and organizations as may from time to time be offered and needed;

C. Adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that rules adopted to establish standards under subsection 1, paragraph B and rates of compensation for retained counsel under subsection 2, paragraph C are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A;

D. Appear in court and before other administrative bodies represented by the commission's own attorneys; and

E. Take a vote of no confidence in the Chief Public Defender and provide a list of grievances to the Governor. A vote of no confidence under this paragraph is cause for dismissal of the Chief Public Defender by the Governor in accordance with section 1807, subsection 2, paragraph A.

Comment [PJ35]: Only added power.

4. Maine Commission on Indigent Legal Services restrictions. The commission may not make decisions regarding the handling of a case.

Comment [PJ36]: Prevents Commission from interfering authority of CPD to make decisions about the course of representation in individual cases.

Sec. 7. 4 MRSA §1805, as enacted by PL 2009, c. 419, §2, is repealed.

Sec. 8. 4 MRSA §1806, sub-§2, ¶E, as enacted by PL 2011, c. 260, §1, is amended to read:

E. A request for funds for expert or investigative assistance that is submitted by an indigent party or by an attorney on behalf of an indigent client is confidential. The decision of the ~~executive director of the commission hired pursuant to section 1804, subsection 1, or the executive director's~~ Chief Public Defender or the Chief Public Defender's designee, to grant or deny such a request is not confidential after a case has been completed. A case is completed when the judgment is affirmed on appeal or the period for appeal has expired.

Sec. 9. 4 MRSA §§1807 and 1808 are enacted to read:

§ 1807. Office of the Public Defender established; appointment and duties

1. Establishment. The Office of the Public Defender is established. The office consists of the Chief Public Defender, who is the head of the office, 2 Deputy Public Defenders, appointed in accordance with subsection 2, and counsel selected by the Chief Public Defender in accordance with the eligibility standards set forth under section 1804-A, subsection 1, paragraph B. The responsibilities of the Office of the Public Defender are exclusively concerned with the rights of persons described in section 1802, subsection 4.

Comment [PJ37]: The reference is to standards for counsel providing indigent legal services, which don't seem tailored to the selection of internal staff counsel.

2. Chief Public Defender. The provisions of this subsection apply to the Chief Public Defender.

Comment [PJ38]: Not sure what this means, but could be argued to undercut authority to pursue collections "against" indigent clients.

A. The Chief Public Defender is appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary matters and confirmation by the Legislature. The Chief Public Defender may be removed from office for cause by the Governor, and Title 5, section 931, subsection 2 does not apply. The Chief Public Defender must be an attorney or judge who has spent at least 5 years in the practice of criminal law or presiding over the adjudication of criminal cases. The term of office for the Chief Public Defender is 5 years. If a vacancy occurs during the term, the replacement is appointed to fill out the remaining part of the term.

Comment [PJ39]: Definite term. Appointment and removal be the Governor.

B. The Chief Public Defender, with the approval of the Governor, shall appoint 2 Deputy Public Defenders. The Deputy Public Defenders report to the Chief Public Defender and serve at the pleasure of the Chief Public Defender. One Deputy Public Defender must be an attorney or judge who has spent a substantial part of the last 5 years in the practice of criminal law or presiding over the adjudication of criminal cases. If a vacancy occurs in the Chief Public Defender position or if the Chief Public Defender is temporarily unavailable to perform the duties of the office, this Deputy Public Defender shall assume the duties of the Chief Public Defender until the vacancy is filled or the Chief Public Defender returns to work. The 2nd Deputy Public Defender must be an attorney or judge who has spent a substantial part of the last 5 years in the practice of civil law or presiding over civil cases.

Comment [PJ40]: Governor must approve in-house staff counsel.

Comment [PJ41]: Current staff attorney has civil service protections.

Comment [PJ42]: 5 years in defense practice requirement may exclude good candidates.

C. The salary of the Chief Public Defender is consistent with the salary of district attorneys within salary range 90 with the step within that salary range determined by the Maine Commission on Indigent Legal Services subject to the approval of the Governor.

Comment [P343]: Current statute places the Executive Director salary in Range 52, which was determined to be consistent with the Chief of the AG's criminal Division.

The salary of the Deputy Public Defenders is within salary range 36.

Comment [P344]: Current deputy is in range 31.

D. The Chief Public Defender shall contract for or hire staff, including counsel who serve at the pleasure of the Chief Public Defender, necessary to perform the functions of the Office of the Public Defender and to implement the provisions of this chapter.

Comment [P345]: Office staff currently are civil servants who do not work at the pleasure of the executive director.

(1) The compensation of staff of the Office of the Public Defender is fixed by the Chief Public Defender with the approval of the Governor, but such compensation may not in the aggregate exceed the amount appropriated for those positions and may not result in an increased request to future Legislatures.

Comment [P346]: This bill is ambiguous about what number and type of staff the OPD should consist of.

(2) Staff counsel is an employee of this State as defined in Title 5, section 20, subsection 1.

(3) Professional staff of the Chief Public Defender are not subject to the Civil Service Law.

Comment [P347]: What is the "professional staff," and why shouldn't they have the protections of the civil service law.

E. The Office of the Public Defender may not represent more than one person when a conflict of interest exists under the code of professional conduct laid out by the Board of Overseers of the Bar.

Comment [EM48]: Does this mean that if two solo attorneys who have a contract represent co-defendants that one would have to be conflicted out to retained counsel even though contract counsel are at different firms?

F. The Chief Public Defender, Deputy Public Defenders and staff, contract counsel and retained counsel must be members in good standing of the bar of the State. A "member in good standing of the bar of the State":

(1) Is admitted to the practice of law in this State;

(2) Is presently registered with the Board of Overseers of the Bar as an active practitioner; and

(3) Has not been and is not currently disbarred or suspended from practice pursuant to chapter 17, subchapter 2 or Maine Bar Rule 7.2 or its successor.

Comment [P349]: This simply says that lawyers providing indigent legal services must have a license to practice.

G. The Chief Public Defender, the Deputy Public Defenders and staff counsel are designated as full-time officers of the State and may not:

(1) Appear as counsel in any civil or criminal case or controversy before the Supreme Judicial Court, Superior Courts or District Courts of the State or comparable courts in any other state or before the federal District Court or at any administrative hearing held by any state or federal agency other than in the capacity as a public defender attorney; or

(2) Engage in the private practice of law nor be a partner or associate of any person engaged

in the private practice of law nor be a member or employee of a professional association engaged in the private practice of law.

Comment [PJ50]: Already applies to attorneys working for the state.

3. Chief Public Defender duties and responsibilities. The Chief Public Defender shall:

A. Provide legal representation to eligible persons consistent with federal and state constitutional and statutory obligations.

Comment [PJ51]: CPD, not Commission has obligation to provide representation.

B. To the maximum extent possible use contracts in providing indigent legal services as required in this section.

Comment [PJ52]: Mandate to maximize contract use = Legislative determination of the best delivery system.

C. Supervise the operation, activities, policies and procedures of the Office of the Public Defender and may expend such sums for expenses as may be necessary in the performance of the Chief Public Defender's duties, to be paid out of money appropriated by the Legislature for those purposes.

Comment [PJ53]: Gives CPD, not Commission authority over expenditures.

D. Be the chief legal officer of the Office of the Public Defender with the ultimate authority regarding the disposition of cases handled by the office.

Comment [PJ54]: Authorizes intervention in individual cases and authority to dictate to all counsel how cases are handled. Contravenes independent judgment of individual lawyer representing an individual client.

E. In accordance with standards established under section 1804-A, subsection 1, paragraph A, verify or reassess indigency of a defendant or civil party the court has determined to be indigent. If the Chief Public Defender determines the defendant or civil party is not indigent in full or in part, the Chief Public Defender shall petition the court for whole or partial payment or repayment of all legal services under section 1808, subsection 2.

Comment [PJ55]: Well beyond capacity of current staff to do in every case. We can now approach the court with new information affecting the eligibility determination when such comes to light.

F. Determine when and where it is necessary to establish district offices for the Office of the Public Defender consistent with the policies and procedures of the Department of Administrative and Financial Services.

Comment [PJ56]: CPD, not Commission, determines when and where to open offices.

G. Coordinate the development and implementation of rules, policies, procedures, regulations and standards adopted by the commission to carry out the provisions of this chapter and comply with all applicable laws and standards;

H. Establish a trial and appellate case management system. The system must require the attorneys to record time spent on each case and to classify or describe the type of work done.

Comment [PJ57]: In place now. Does this mean that lawyers must keep a full record of their hours even if working on a flat fee contract?

I. Work jointly with other departments and agencies, including the Department of Health and Human Services, that hold data pertinent to determining indigency and establish information sharing agreements as necessary.

Comment [PJ58]: When are able to do this now and have begun the process.

J. Work jointly with other departments and agencies, including the Department of Health and Human Services, to identify opportunities to improve eligibility screening across State Government, including the use of private firms that use established, effective income and asset verification systems.

Comment [PJ59]: Possibility of using private entities to verify financial information.

K. Prepare and submit to the commission:

(1) A proposed biennial budget for the provision of indigent legal services, including

supplemental budget requests as necessary;

(2) An annual report containing pertinent data on the operation, needs and costs of the indigent legal services system and the status of information sharing as required under paragraph I, including issues preventing the agreements from being implemented;

(3) A monthly report on case loads and the gross monthly total of bills approved for payment, including payments to contract counsel and retained counsel, and for contracted professional services, a summary of professional service requests denied and granted by the office, in accordance with section 1806, subsection 2, paragraph E and information on complaints made against counsel providing indigent legal services; and

Comment [PJ60]: ED does not now report to Commission on responses to requests for funds or attorney complaints. Amounts expended on experts and investigators are contained in monthly financial reports.

(4) Any other information as the commission may require;

L. Develop and conduct regular training programs in compliance with the rules adopted by the commission as required by section 1804-A, subsection 1, paragraph B;

M. Assist the commission in developing standards for the delivery of adequate indigent legal services;

Comment [PJ61]: Not quality legal services

N. Maintain proper records of all financial transactions related to the operation of the commission and the notification of eligibility and assignment of counsel and subsequent related orders as submitted by the courts of this State;

Comment [PJ62]: Huge task if CPD must maintain records of all eligibility determinations and assignments of counsel.

O. Serve as an ex officio, nonvoting member of the commission and attend all commission meetings. The Chief Public Defender may delegate this responsibility;

P. Establish a cost containment unit within the Office of the Public Defender to include a member of the commission designated by the commission. The cost containment unit is responsible for monitoring efforts to recoup costs under section 1808, subsection 3, identifying ways to improve cost recoupment and issuing a quarterly summary of the expenses recouped over the period and the year to date to be provided to the commission. This function may be contracted out;

Comment [PJ63]: Would require new staff or expenditure on contract with private vendor.

Q. Establish policies and procedures for managing case loads to implement the standards established by the commission under section 1804-A, subsection 1, paragraph C, including a method for accurately tracking and monitoring case loads;

R. Establish procedures to handle complaints about the performance of counsel providing indigent legal services;

Comment [PJ64]: No actual procedures currently established.

S. Establish a process to provide services for conflict cases first through existing contract counsel, and only at last through the use of retained counsel; and

Comment [PJ65]: Private assigned counsel a last resort

T. Perform duties as the commission may assign or are necessary and incidental to the performance of any duty set out in this chapter.

Comment [EM66]: Does this conflict with 1807(2)(E)?

4. Chief Public Defender powers. The Chief Public Defender may:

A. As the Chief Public Defender determines necessary, contract for the services of private attorneys in the delivery of indigent legal services, including establishment of a lawyer of the day, as provided in section 1804-A and in accordance with standards established by the commission and the contract policies established by the Department of Administrative and Financial Services. Any contract must require contract counsel and retained counsel to record time spent on each case and to classify or describe the type of work that was done;

Comment [PJ67]: Mandates time keeping on contract cases.

B. Require contract counsel and retained counsel to have at least the minimum level of malpractice insurance as established in section 1804-A, subsection 2, paragraph J;

Comment [PJ68]: Not currently required.

C. Delegate the legal representation of any person to any member of the Maine State Bar Association eligible under section 1804-A in accordance with standards established and maintained by the commission;

Comment [PJ69]: Allows representation to be "delegated" to counsel not otherwise engaged in indigent legal services. Not sure why MSBA membership is relevant.

D. Contract for and supervise personnel necessary to perform a function of the Office of the Public Defender and to implement the provisions of this chapter;

Comment [PJ70]: Does this mean office staff is contracted rather than hired?

E. Establish processes and procedures to acquire investigative or expert services that may be necessary for a case;

F. Enter into agreements with the Maine State Bar Association, local bar associations, law firms and private counsel for legal representation without compensation as a service to the State;

Comment [PJ71]: Does this raise quality of representation issues.

G. Apply for and accept on behalf of the Office of the Public Defender funds that may become available from any source, including government, nonprofit or private grants, gifts or bequests. These funds do not lapse at the end of any fiscal year but are carried forward to be used for the purpose originally intended; and

Comment [EM72]: Doesn't include law school

H. Sponsor training activities and charge tuition to recoup the cost of the activities;

Comment [EM73]: Will each training have to pay for itself with registration fees?

5. Legal counsel. The Attorney General, at the request of the Chief Public Defender, shall furnish legal assistance, counsel or advice the Office of the Public Defender requires in the discharge of its duties.

A. The Attorney General may represent staff members of the Office of the Public Defender in litigation as appropriate.

B. In cases in which staff members of the Office of the Public Defender could be represented by either the Attorney General or counsel retained through malpractice insurance, the Attorney General shall determine who represents the staff members.

§ 1808. Indigency determinations; redeterminations; verification; collection

1. Duties. The Chief Public Defender shall establish a system to:

A. Verify the information used to determine indigency under the standards established by the commission pursuant to section 1804-A;

Comment [PJ74]: Commission is currently working on this.

B. Reassess indigency during the course of representation.

Comment [PJ75]: Beyond current staff capacity.

C. Record the amount of time spent on each case by the attorney appointed to that case, and

Comment [PJ76]: Exists.

D. Receive from the court collections for the costs of representation from defendants or civil parties who are partially indigent or who have been otherwise determined to be able to reimburse the Office of the Public Defender for the cost of providing counsel.

2. Determination of a defendant's or civil party's eligibility. The Chief Public Defender shall provide to the court having jurisdiction over a proceeding information used to determine indigency under the standards established by the commission pursuant to section 1804-A for guidance to the court in determining a defendant's or civil party's financial ability to obtain counsel.

If the court does not order full payment for representation by the Office of the Public Defender, the Chief Public Defender shall investigate to determine the defendant's or civil party's financial condition and ability to make repayment and petition the court for a new repayment order at any time within 7 years of the original order.

Comment [PJ77]: Reassessment of ability to pay due to change of circumstances up to seven years after representation is beyond capacity of current staff.

3. Partial indigency and repayment. The provisions of this subsection apply to partial indigency and repayment.

A. If the court determines, in accordance with subsection 2, that a defendant or civil party is able to pay some, but not all, of the expenses of obtaining private counsel, the court shall order the defendant or civil party to pay a fixed contribution. The defendant's or civil party's full payment must be made to the court prior to the conclusion of the proceedings, unless otherwise ordered by the court. The clerk of court shall remit such payments to the Office of the Public Defender.

Comment [PJ78]: Court to collect all payment owed under a partial indigency order prior to disposition of the case or make a specific alternative order.

B. A defendant or civil party may not be required to repay for legal services an amount greater than the rate established pursuant to section 1804-A, subsection 2, paragraph C.

C. If a defendant is incarcerated in the State Prison, an order for repayment pursuant to this subsection may be suspended until the time of the defendant's release.

D. The Chief Public Defender may enter into contracts to secure the repayment of fees and expenses paid by the State as provided for in this section.

Comment [PJ79]: Can contract to pursue collection of partial indigency payments.

4. Application fee. An applicant seeking indigent legal services shall pay an application fee as set forth by the commission in section 1804-A, subsection 2, paragraph E. In a case involving a juvenile the application fee is the responsibility of the parent or legal guardian except that, when a juvenile is accused of a crime against the juvenile's parent or legal guardian or when legal guardianship rests with the State, the fee is waived.

Comment [PJ80]: Application fee.

The application fee may be waived by the court. A defendant or civil party may pay the fee in a lump sum or in installments. Full payment must be made to the court prior to the conclusion of the proceedings, unless otherwise ordered by the court.

Sec. 10. 5 MRSA §931, sub-§1, ¶L-3, as amended by PL 2003, c. 646, §1, is further amended to read:

L-3. The Executive Analyst of the Board of Environmental Protection; and

Sec. 11. 5 MRSA §931, sub-§1, ¶M, as amended by PL 1987, c. 9, §2, is further amended to read:

M. Other positions in the Executive Branch made unclassified by law; and

Sec. 12. 5 MRSA §931, sub-§1, ¶N is enacted to read:

N. The Deputy Public Defenders, staff counsel and other professional staff of the Office of the Public Defender.

Sec. 13. 5 MRSA §959, as enacted by PL 2009, c. 419, §3, is repealed.

Sec. 14. 36 MRSA §191, sub-§2, ¶ZZ is enacted to read:

ZZ. The disclosure by employees of the bureau to an authorized representative of the Office of the Public Defender for the administration of Title 4, section 1804-A, subsection 1, paragraph A for determining eligibility for indigent legal services under Title 4, chapter 37.

Comment [PJ81]: Commission access to Maine Revenue Service Information. This could be helpful.

Sec. 15. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 4, chapter 37, in the chapter headnote, the words "Maine commission on indigent legal services" are amended to read "office of the public defender and Maine commission on indigent legal services" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

SUMMARY

This bill establishes a statewide public defender system. The purposes of this bill are to:

1. Provide effective assistance of counsel to indigent criminal defendants, juvenile defendants and children and parents in child protective cases in courts of this State;
2. Ensure that the system is free from undue political interference and conflicts of interest;
3. Provide for the delivery of public defender services by qualified and competent counsel in a manner that is fair and consistent throughout the State;
4. Establish a system that uses state employees, contracted services and other methods of providing services in a manner that is responsive to and respectful of regional and community needs and interests;
5. Ensure that adequate public funding of the statewide public defender system is provided and the system is managed in a fiscally responsible manner; and
6. Ensure that a person using the services of a statewide public defender system pay reasonable costs for services provided by the system based on the person's financial ability to pay.

Comment [EM82]: Will GAL still be the responsibility of the court?

Comment [EM83]: Are civil commitment cases left out intentionally?

JAMES P. HOWANIEC
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145 Lisbon Street
P.O. Box 655
Lewiston, Maine 04243-0655
Telephone: 207-777-3900

July 16, 2015

John Pelletier, Esquire
Maine Commission on Indigent Legal Services
154 State House Station
Augusta ME 04333

Dear John:

I have been so busy this past year that I have not really had a chance to review the proposed changes to funding for indigent legal services in Maine. As I understand it, the governor has presented a bill for consideration by the next legislature that would create some sort of contracting system for such services.

This does not sound like a good idea to me. The existing system has served the state very well for decades, and it has really thrived since you and the commission came on-board. When I hear stories from friends and old law school classmates practicing in other states I realize how lucky we are here in Maine to have such an active, vital criminal defense bar so devoted to representation of the poor. Quality indigent legal defense is especially important in metropolitan areas like Lewiston, with its significant levels of poverty and other unique challenges.

It has been many years since I was involved in politics but if you are in need of any lobbying, letter-writing, testimony, etc., in the session ahead, I am more than happy to get involved. I feel I have good relationships with Peggy Rotundo and Roger Katz, as well as members of the Lewiston-Auburn delegation, including Nate Libby, Heidi Brooks, and others.

Please do not hesitate to contact me if you need any assistance in the upcoming legislative session.

Very truly yours,



James P. Howaniec

Maciag, Eleanor

From: Randy Robinson <jurdoc35@hotmail.com>
Sent: Tuesday, September 29, 2015 4:01 PM
To: MCILS
Subject: RE: Proposed Legislation Re: Indigent Legal Services

I strongly oppose any change to the current system. We do not need another government body, and unless I am reading things incorrectly, this would eliminate, or largely eliminate, court-appointed criminal cases. That is an important source of income. The current system of rosters makes sure that only attorneys who are willing and able to handle certain types of cases get them. I prefer the way things are now to a change to a public defender system.

Randy L. Robinson, Esq.

> From: mcils@maine.gov
> To: jurdoc35@hotmail.com
> Subject: Proposed Legislation Re: Indigent Legal Services
> Date: Tue, 29 Sep 2015 15:45:57 -0400
>
> Attorneys:
>
> As you may know, the Governor has submitted legislation proposing to change the way MCILS is organized and the way indigent legal services are delivered. The bill, L.D. 1433, will be considered by the Legislature in the upcoming session, with hearings before the Judiciary Committee likely in January.
>
> MCILS Commissioners are in the process of analyzing the proposed legislation and formulating the Commission's position, and they are interested in your input. You are invited to send comments on the proposed legislation to MCILS@maine.gov or 154 State House Station, Augusta, Maine 04333. The bill can be found at the following link:
>
> <http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0540&item=1&snum=127>
>
> Thanks. John
>

Maciag, Eleanor

From: John Steed <jsteed@ellenbestlaw.com>
Sent: Tuesday, September 29, 2015 4:16 PM
To: MCILS
Subject: RE: Proposed Legislation Re: Indigent Legal Services

IT seems like the proposal will create a smaller cadre of defense attorneys who will tend to handle a larger percentage of the indigent legal cases.

I think in smaller counties it's a bad idea. A handful of contracted Defenders in an area working with handful of DAs is going to create too cozy a working relationship. Looking at the Defender as a check on state power and/or as a regulator of the State, you'd run into pretty classic problems of regulatory capture.

In a bigger county or municipality the office handling defense will likely create its own culture and it would be more us (the defenders) vs then (the state) in which case the adversarial dialectic will do what it is supposed to do.

It's pretty absurd the have the governor appoint the defender for obvious reasons.

-----Original Message-----

From: mcils@maine.gov [<mailto:mcils@maine.gov>]
Sent: Tuesday, September 29, 2015 3:45 PM
To: John Steed
Subject: Proposed Legislation Re: Indigent Legal Services

Attorneys:

As you may know, the Governor has submitted legislation proposing to change the way MCILS is organized and the way indigent legal services are delivered. The bill, L.D. 1433, will be considered by the Legislature in the upcoming session, with hearings before the Judiciary Committee likely in January.

MCILS Commissioners are in the process of analyzing the proposed legislation and formulating the Commission's position, and they are interested in your input. You are invited to send comments on the proposed legislation to MCILS@maine.gov or 154 State House Station, Augusta, Maine 04333. The bill can be found at the following link:

<http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0540&item=1&snum=127>

Thanks. John

No virus found in this message.
Checked by AVG - www.avg.com
Version: 2015.0.6140 / Virus Database: 4419/10723 - Release Date: 09/29/15

Maciag, Eleanor

From: info@naleandnalelaw.com
Sent: Tuesday, September 29, 2015 4:17 PM
To: MCILS
Subject: Proposed Legislation

John

The way MCILS is currently organized may not be the most financially efficient way to do it. Having a project-type system, as is currently used in Somerset County may be the more cost-effective way to do it. However, both the current system and the project system allow for a number of lawyers to be involved, which ultimately benefits the indigent legal population. Instead of burdening a small number of lawyers in a public defender's office with a tremendous number of cases, you have anywhere from 15-30 different lawyers handling a more manageable number of cases. The result is that each case is more likely to be handled with the type of attention, care, and preparation that the Constitution envisioned when it provided indigent people a defense. With a public defender's office, you may well find that the lawyers there are over-burdened and understaffed. This would require them to prioritize cases in a way that leaves many people, likely those charged with less serious felonies or misdemeanors on the outside looking in. Sure, they would have counsel, but they likely wouldn't be a priority because the consequences for a misdemeanor case are not as serious as a Class A Trafficking or Class B Burglary. I don't think that anyone in the legal community wants to see that happen.

Anyway, I apologize for the lengthy email and if you would like to discuss this further, please do not hesitate to contact me at your convenience.

Tom Nale

Maciag, Eleanor

From: Steve Smith <ssmith@lipmankatz.com>
Sent: Wednesday, September 30, 2015 8:06 AM
To: MCILS
Cc: Roger Katz
Subject: Proposed Legislation

I have been practicing criminal and child protective for 17 years next month. Although less so now, I have spent a substantial amount of time doing court appointed work.

The current MCILS system is great and a vast improvement over what was. I have carefully reviewed the proposed bill and see it as a solution in search of a problem. Worse, I see it as decreasing the overall effectiveness of the Maine bar and imposing burdens which are unwarranted.

A. INSURANCE

Although I have always carried insurance, it is unnecessary that your typical CA lawyer who does not do a lot of civil work would now be required to carry insurance. This provision has been pushed for years by counsel who sit on these boards who are used to dealing with practices with higher margins. I remember one well-meaning lawyer who worked in financial services and who had never done a CA case in her life being shocked that your typical CA lawyer didn't carry insurance. I am sure her hourly rate was considerably higher than the then 50/hr. This is a significant expense born by especially newer counsel and at the current or former rate simply serves to cut already razor thin profit margins. In my experience the high deductibles and cost of most insurance policies are really designed for civil work and bear no relation to the true (lower) risks of a typical CA practice.

Why not include an immunity provision? It doesn't have to be total but perhaps a gross negligence standard?

B. UNPAID BURDENS

It is hard when we take on a high conflict type of client and then wait for the inevitable bar complaint or post-conviction. Lawyers should get compensated for having to deal with those issues (perhaps assuming a successful outcome). I have had recent experiences with bar complaints and a post-conviction that required me to appear for testimony in Caribou uncompensated. One bar complaint cost me almost 2 days of unbilled time. This for a case I knew from even before I met the client that it was going to result in a bar complaint and which I took out of my usual jurisdictions as a favor to the court.

C. LACK OF TRAINING

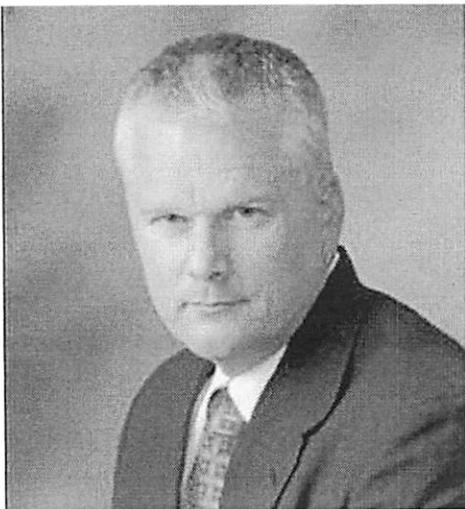
I assume the proposed bill is meant not just to save money but to supposedly inject a bit of professionalism into the defense bar. I believe the proposal will have the opposite effect. When I joined the bar I was encouraged by many respected deans of the bar to call anytime-and they meant it. Being assigned a wide variety of cases and clients right from the outset meant a great exposure to the practice and experienced members of the bar and the broadest possible set of trial skills. I never felt that I didn't have support I needed and there are appropriate safeguards in place to guide

inexperienced lawyers away from more serious matters. By confining the bulk of indigent defense to a professional core, newer members of the Maine bar will simply not receive the same breadth or depth of experience as they do under the current system. This experience benefits not just the CA system itself but echoes throughout a lawyer's career into later phases of civil practice. By confining the bulk of this early practical experience to a professional core, trial experience will not be as diffused through the Maine Bar as it currently is and the broad spectrum of Maine clients will suffer for it.

D. SAVINGS ARE UNLIKELY

I cannot imagine that paying lawyers a rate even half of the current CA rate and then adding office overhead and supervision is going to save anything of any significance. Instead of private lawyers spreading the overhead around private clients the public system will now absorb the full burden. Instead of the office-less low overhead lawyer who does CA from his car and spare bedroom you will have office rent, mileage and supervision costs. I do not believe any savings will be realized from this scheme.

I am at a point in my career where I no longer rely on CA work. I take it because I enjoy it and it keeps me in trial practice. I believe this bill will be detrimental to the health of the bar as a whole.



Stephen C. Smith, Esq.

Attorney at Law

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Maciag, Eleanor

From: Henry Griffin <Henry@hwgriffinlaw.com>
Sent: Wednesday, September 30, 2015 10:53 AM
To: MCILS
Subject: Re: Proposed Legislation Re: Indigent Legal Services

I will simply state the obvious: This proposal for a Public Defender system is only about cost and not at all about quality. We court appointed attorneys are already working at a fairly low (by national standards) hourly rate and the state wants to pay lawyers even less. I'm a sole practitioner whose practice consists of low income defense work. It is all I've done and all I've wanted to do since I graduated law school, over 23 years ago. Unfortunately, because of the new system's design and intent, I won't be providing indigent legal services any longer if this bill passes. This new system will exclude me and other highly experienced, dedicated attorneys from helping those most in need of our help. There will be groups of attorneys who will accept the State's proposed system and they will submit low bids for contract services and they will make the system work. The quality of the representation is going to suffer terribly, though. It has to. These attorneys will have too many cases and not enough income - but no one will care. I realize, as a taxpayer, that cost must be considered. The system we have now provides excellent representation to our poorest citizens. Contain costs by evaluating those costs and questioning their efficacy. Your new system is simply going to drive many dozens of lawyers out of business and guarantee that our most vulnerable citizens will receive significantly less zealous representation. And, of course, there is no guarantee that, after you do this, the State will save any money. Please feel free to contact me with any questions or comments

Henry W. Griffin, Esq.
Lewiston, Maine
207-233-1876

Maciag, Eleanor

From: James Howaniec <jameshowaniec@gmail.com>
Sent: Wednesday, September 30, 2015 11:44 PM
To: MCILS
Subject: Proposed legislation

John: There may be one lawyer in Androscoggin County who is taking a wait and see attitude on the new proposal. For the 20+ other lawyers who do regular court appointed work, though, there appears to be unanimous opposition to the bill. We are hard pressed to see how requiring the defense bar to bid against each other, and cutting funds from a system that already pays less than half of what federal defenders get, benefits anyone. The end result will be lawyers fighting less hard for clients. Contract work may or may not make sense in Skowhegan but it will be disastrous in a place like Lewiston Auburn. We are already at a serious disadvantage against the state's lawyers, who have secretaries, and paralegals, and benefits, and state and local police on 24 hour call, and crime labs and forensic experts, etc. We have already begun to lobby our Androscoggin delegation and have received commitments against the law. We have over 20 lawyers who are prepared to write letters, attend hearings, call legislators, etc. We look forward to the commission's analysis of the law.

Sincerely,
Jim Howaniec

Sent from my iPhone

Maciag, Eleanor

From: maurice <bestdefense@mac.com>
Sent: Thursday, October 01, 2015 5:25 PM
To: MCILS
Subject: LD

- 1) There are valid arguments for a *true* Public Defender's Office (though that is not what is actually being proposed). But, anyone claiming it will cost less than what we have now should prove it— salaries, health ins., retirement, disability ins., offices space, heat, elec., desks, tables, computer systems and software and upkeep, and office management and facility upkeep, support staff on par with what the State spends on the Prosecution side. It might it be a better system, maybe, maybe not. Will it be less costly? No way, no way.
- 2) What Maine has now has been a financial bargain for Maine taxpayers for 40 years when compared to what other states spend on indigent defense. Unless BAR complaints or successful appeals of cases based on ineffective assistance of counsel are a rising issue (one which I have NEVER heard voiced from ANY branch of the state gov't), then quality of representation is not a factor in seeking change.
- 3) The flat-fee/contract by county being proposed is nearly identical to Idaho's former system, for which they were repeatedly sued in federal court, successfully, on a number of fronts; primarily there was an abhorrence by the ruling courts to the "flat-fee" aspect of the county contracts, as they encouraged over-burdensome caseloads and under- performing-representation. These "flat-fee" contracts have been prohibited since the successful appeals. In 2014, Idaho established a system nearly identical to what we now have in Maine.

Here is a link to a helpful article: <http://sixthamendment.org/idaho-governor-signs-public-defense-commission-bill-into-law/>

Please demand that the proponents of LD 1433 first show the need for change, and then demand proof that their plan will improve our current system and guarantee financial savings.

Then we can take a look at how it will meet constitutional requirements and whether is it worth changing what we utilize today.

Maurice Porter
bestdefense@mac.com
207-671-3755

Maciag, Eleanor

From: Christopher Guillory <crg@guillorylaw.com>
Sent: Friday, October 02, 2015 3:54 PM
To: MCILS
Subject: RE: Proposed Legislation Re: Indigent Legal Services
Attachments: Anti PD Study.pdf

John,

As per your email here are my comments on LD 1433. I think it is very very bad. At its core it is an attempt to politicize how indigent legal services are provided to Maine's citizens. It has been stated by certain individuals in the press lately that Maine, as the only state without a formal public defender system, needs to catch up with the rest of the country. I think the opposite is true, our system is more stable, more cost effective, and delivers higher quality representation than a formal public defender program would, and much moreso than a contract model would. Across the country over the last few decades we have seen what I believe to be the beginning of the collapse of the "public defender" model for indigent legal services, with states continually proving less and less willing to expand budgets for PD programs to handle ever increasing workloads and levels of case complexity brought on by the new advents of technology and its role in law enforcement.

Maine's program suffers from none of the major flaws of the public defender model and has only one drawback in comparison, while a public defenders office may pay someone a meager salary and then saddled with untenable caseloads our system lets people do their work effectively and those people are then paid for the work they have done. Attached is a copy of my first draft of a white paper I have been working on in relation to the economics and per capita costs of Maine's current model and the models used by some other states. I hope to be updating it soon, if you are interested I can forward the finalized version once I have enough free time to finish it.

Chris Guillory

Christopher Guillory Esq.
Guillory Law Office,
P.O. Box 57, 241 Main Street, Saco, ME, 04072
T:207-470-0230 F:207-470-0234

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-----Original Message-----

From: mcils@maine.gov [<mailto:mcils@maine.gov>]
Sent: Tuesday, September 29, 2015 3:44 PM
To: crg@guillorylaw.com
Subject: Proposed Legislation Re: Indigent Legal Services

Attorneys:

A study on Indigent legal services in the United States in response to proposed
Legislation LD1433

Earlier this year Governor Paul LePage introduced LD 1433, "An Act To Create the Office of the Public Defender and Amend the Duties of the Commission on Indigent Legal Services", sponsored by senator David Burns and drafted by The Office of Policy and Management. Governor LePage hopes this bill will create a new type of public defender system in Maine that he believes would do a better job and save taxpayer money.

Currently Maine is the only state in the country without a formal "public defender's office" used to provide indigent legal services to its populace. Currently Maine's Commission on Indigent Legal Services provides these same services to Maine's people through a system where private attorneys are appointed by the courts and paid for their service at an hourly wage set by the state.

With LD 1433 containing no information as to what the infrastructure of the system it is purported to create would look like, and public statements by the bill's sponsors at best being inconsistent as to the form Maine's Office of the Public Defender will take, it remains unclear whether LD1433 is truly an attempt to save Maine's taxpayers money or merely an attempt to "catch up" with the rest of the country. To attempt and clarify this issue this study was started to try to compare the economic costs and efficiency of the system currently in place in Maine with the Public Defender programs already in existence in other states.

In 2009 a report was prepared by the Spangenberg Project, located at The Center for Justice, Law, and Society at George Mason University, for the American Bar Association Standing Committee on Legal Aid and Indigent Defendants Bar Information Program. This report studied the delivery methods with which the States (and the District of Columbia) provide indigent legal services to their populations and the costs associated with providing those services in the fiscal year for 2008.

Analysis of the results of that study revealed that Maine ranked 47th in gross amount spent on indigent legal services, spending more than only South and North Dakota, Wyoming, and Hawaii. Maine was also ranked 48th in per capita spending, spending more per capita than only Texas, Missouri, and Mississippi.

A survey of recent budgetary data published directly by the states and/or their public defender programs reveals that at \$12,274/personⁱ Maine spent less per capita on providing indigent legal services than any of its neighboring states in New England.ⁱⁱ Notable among these states are Delawareⁱⁱⁱ and Vermont^{iv} who spend nearly twice as much as Maine per capita on indigent legal services while having appreciably lower populations.^v Additionally despite having smaller populations both Delaware and New Hampshire's^{vi} Public defender programs require total budgets of \$21.9 and \$23.9 million/year respectively to run their public defender programs, substantially more than Maine's \$16.3 million/year.

Additionally Maine's expenditures were weighed against other non New-England states with comparative populations. The results were that with the exception of Hawaii^{vii} Maine spent less per capita than any other state with new data available.^{viii}

As a quick aside, in 2009-2010 the Hawaii Public Defender's office was in a self-described crisis, with some public defenders handling close to 1000 cases per year with an average of 96 minutes to devote to each client.^{ix} In 2010 the Maui public Defender's office was short close to 1/3 of its attorneys leading Wendy Hudson a supervising deputy public defender of the Maui office to declare "We are in total triage mode."^x This resulted in the Maui Public

Defender's office ceasing to appear in two district court courtrooms simply to cut 450 cases a month from their caseload.

The Spangenberg study listed Hawaii's Public defender budget for 2008 as \$9,626,208 or \$7.47 per capita in 2008. Six years later Hawaii's budget for its Public Defender's office had only risen to \$9,779,693 or \$6.88 per capita in 2014.

In addition to their public defender program Hawaii does have a system allowing the courts to appoint lawyers to indigent clients "If conflicting interests exist, or if the interests of justice require" at the rate of \$90/hour.^{xi}

Of the 15 states closest to Maine in order of population contemporary data could not be obtained from four. Nevada, Nebraska, Idaho and South Dakota have public defender systems which derive less than 50% of their funding from the state. Since these states use a different funding model for the public defender programs than Maine would direct comparison is not terribly illuminating. It can be noted however that Nevada and Nebraska were already spending more per capita than Maine does today in 2008 spending \$29.52 and \$13.37 respectively. South Dakota in 2008 was spending only \$11.00 per capita on indigent legal services though it should be noted that in 2008 out of 66 counties only 3 had established full time public defender offices^{xii}. Idaho while spending 11.91 per capita in 2008 has a patchwork system where each county decides how it wants to run its public defender system. Indications are that this system has not met the 6th amendment rights of Idaho's citizens and the legislature is currently looking into creating a statewide system to address these issues.

CONCLUSIONS

Examining the data surveyed Maine appears to consistently deliver indigent legal services at a lower cost per capita than both its neighbors and states with comparable populations. To put it bluntly, Maine's current system is cheaper than the Public Defender programs instituted by the rest of New England and other states of similar population. It would seem that the conventional wisdom of "If it ain't broke don't fix it" would apply to the lack of any necessity for the changes proposed by LD 1433.

ⁱ Based off budget figure of \$16,325,689 for Fiscal Year 2015 provided by Maine Commission on Indigent Legal Services (MCILS)

ⁱⁱ See figure 1

ⁱⁱⁱ House Bill 225, 148th General Assembly of the Delaware State Legislature

^{iv} Vermont Office of the Defender General Fiscal Year 2015 Budget

^v All population data based off U.S. Census Bureau Projections for 2014

^{vi} 22nd biennial report of State of New Hampshire Judicial Council FY2012-2013

^{vii} Hawaii Executive Biennium Budget, Fiscal Budget 2015-2017, Department of Budget and Finance (dept. where PD office's funding is located)

^{viii} See figure 1

^{ix} Greg Mebel, Why the Maui Public Defender's Office is Hurting and Why It's Bad For Us All, December 3, 2009, MauiTime.com

^x Lila Fujimoto, Staffing Crisis forces Maui public defender's office into 'triage mode', January 10, 2010, The Maui News

^{xi} HI Rev Stat § 802-5 (2013)

^{xii} State, County and Local Expenditures for Indigent Defense Services Fiscal Year 2008, The Spangenberg Project, Center for Justice, Law, and Society at George Mason University.

State	year data	budget	population	cost per capita
Maine	2015	16,325,689	1,330,089	12.274
New Jersey	2015	121,206,000	8,938,175	13.56
Rhode Island	2014	14,716,365 *	1,055,173	14.16
Connecticut	2015	63,023,379	3,596,677	17.522
New Hampshire	2013	23,930,223	1,326,813	18.03
Vermont	2014	14,397,366	626,562	22.97
Delaware	2016	21,942,000	935,614	23.451
Massachusetts	2015	191,431,395	6,745,408	28.3795
Hawaii	2014	9,779,693	1,419,561	6.889
South Dakota	2008	8,846,289	804,914	10.99
Idaho	2008	18,163,730	1,523,816	11.91
Maine	2015	16,325,689	1,330,089	12.274
Nebraska	2008	23,852,662	1,783,432	13.374
North Dakota	2015	10,433,427 *	739,482	14.109
West Virginia	2013	31,622,000	1,850,326	17.089
New Mexico	2014	42,024,600	2,085,572	20.15
Wyoming	2015	12,527,904	584,153	21.446
Montana	2014	27,535,242	1,023,579	26.9
Nevada	2008	76,747,360	2,600,167	29.516
Alaska	2016	33,817,000 *	736,732	45.901

* Rhode Island Office of the Public Defender has a revised yearly budget of \$11,154,125 for 2014 and the court system maintains an additional budget of \$3,562,240 for Defense of Indigent Persons in the state Supreme Court's budget for cases where there is a conflict with the PD office.

* Alaska's Public Defender Agency receives 18,198,600 per year while an additional 15,618,400 is allocated to the Office of Public Advocacy.

*North Dakota budget is the 2015-2017 Biennium appropriation(\$20,866,854) halved.

*Population data taken from US Census projected populations for 2014

*All budget data taken from budget reports publicized by state agencies.

Sources:

- Figure Maine of \$16,325,689 for Fiscal Year 2015 provided by John Pelletier of the Maine Commission on Indigent Legal Services (MCILS)
- House Bill 225, 148th General Assembly of the Delaware State Legislature
- Vermont Office of the Defender General Fiscal Year 2015 Budget
- 22nd biennial report of State of New Hampshire Judicial Council FY2012-2013
- Hawaii Executive Biennium Budget, Fiscal Budget 2015-2017, Department of Budget and Finance (dept. where PD office's funding is located)
- Greg Mebel, Why the Maui Public Defender's Office is Hurting and Why It's Bad For Us All, December 3, 2009, MauiTime.com
- Lila Fujimoto, Staffing Crisis forces Maui public defender's office into 'triage mode', January 10, 2010, The Maui News
- HI Rev Stat § 802-5 (2013)
- State, County and Local Expenditures for Indigent Defense Services Fiscal Year 2008, The Spangenberg Project, Center for Justice, Law, and Society at George Mason University.
- Laws of Alaska, 2015 Special Second Session, HB2001
- Connecticut State Budget, FY14& FY15 budget, Connecticut General Assembly Office of Fiscal Analysis
- State of Rhode Island and Providence Plantations, Budget as Enacted, Fiscal Year 2015, State of Rhode Island Budget Office
- 2015 Massachusetts Governors Budget http://www.mass.gov/bb/h1/fy15h1/brec_15/dpt_15/hlcpc.htm
- Montana Public Defender Commission Report to the Governor, Supreme Court and Legislature FY 2014
- State of North Dakota Legislative Appropriations, 2015-2017 Biennium
- State of New Mexico, Executive Budget Recommendation, Fiscal year 2015 (July 1, 2014- June 30, 2015)
- State of West Virginia, Executive Budget General and Lottery Funds, Fiscal Year 2014
- Wyoming, Office of the State Public Defender, annual report FY 2014, <http://wyodefender.wyo.gov/annual-report>

Maciag, Eleanor

From: Robert Marks Law Office <markslaw@fairpoint.net>
Sent: Monday, October 05, 2015 11:29 AM
To: MCILS
Subject: Re: Proposed Legislation Re: Indigent Legal Services

John: From discussions with attorneys in other states which have public defender offices, I have concluded that the Maine system of court appointed counsel works better, since the work is spread out to many attorneys and caseloads are usually more manageable. Judges and their clerks usually made good appointments, having observed attorneys in their courts.

MCILS has continued this process to an extent and has made CLEs and certifications a more important part of the process.

As always the process of weeding out less than adequate counsel is a formidable task.

i'm not clear from this legislation as to the circumstances that would the Public Defender to seek private retained counsel and wonder if cost cutting that outrageous fee of \$55/hr will result on enormous workloads being placed on too few defenders.

In closing, I am against the concept of a Public Defenders Office. In theory it is a noble idea. In practice, i believe that our current system functions better for the client in need of services.

Robert Marks, Esq.
Maine Bar Registration #: 825

On Tue, 29 Sep 2015 15:46:03 -0400

<mcils@maine.gov> wrote:

> Attorneys:

>

> As you may know, the Governor has submitted legislation proposing to
>change the way MCILS is organized and the way indigent legal services
>are delivered. The bill, L.D. 1433, will be considered by the
>Legislature in the upcoming session, with hearings before the Judiciary
>Committee likely in January.

>

> MCILS Commissioners are in the process of analyzing the proposed
>legislation and formulating the Commission's position, and they are
>interested in your input. You are invited to send comments on the
>proposed legislation to MCILS@maine.gov or 154 State House Station,
>Augusta, Maine 04333. The bill can be found at the following link:

>

> [http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0540&it](http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0540&item=1&snum=127)
>em=1&snum=127

>

>

> Thanks. John

>

>

Maciag, Eleanor

From: tomconnolly@rcn.com
Sent: Monday, October 05, 2015 3:16 PM
To: MCILS
Subject: re LD 1433 comment
Attachments: LD 1433 GOVERNOR's Plan to Deny Access to justice by the Poor.docx

Dear MCILS, Please find a submission relating to LD1433. Thank you-tom

LD 1433 GOVERNOR'S PLAN TO DENY ACCESS TO JUSTICE BY THE POOR

The poor in Maine are again under attack. Governor LePage has moved to severely limit and cut the poor's access to justice. This is a hurt beyond cuts to medical care, education, food stamps and care to the seniors; it is an affront to the system of justice and the system of checks and balances that have kept us a free people.

Governor LePage has proposed to eliminate the current system of court appointed lawyers in all criminal and child protective cases. The current system of individually appointed lawyers will be replaced by contract bid lawyers whose incentive is largely driven by expediency and cost. The appointed system, which has persevered for generations, and consists of hundreds of attorneys appointed by the Court, will be replaced by a WalMart style big box system. Factory trawler law firms are to bid on all the cases in a given county for a fixed price and be responsible for any and all cases for a two year period. This is a law that all Mainers should oppose.

First, it is bad for justice.

The current system of independent, caseload assigned, Court Appointed attorneys works tremendously well despite years of cuts and limited funding. The Governor's bill would cut further. Currently Maine ranks 47th or 48th for such expenditures. The Governor's plan would put us dead last in the United States, below the level of Texas. The Bill would have large institutional firms take over all the cases in a County for one price, irrespective of the number of cases or the unusual circumstances that may arise. The bid process will be a race to the bottom and the system to emerge will be driven primarily by fast turnover and minimal cost. The genius of the current system is that it is individualized for protecting the rights of those accused not for the profits of a corporation.

Second, it is bad economics.

The immediate effect of the Governor's plan will be to put out of business between 300-500 small businesses. They will be replaced by big box firms. In every county in Maine there will be a direct loss.

Further, the costs of corrections and probation will spiral up. For every dollar spent on public defenders a multiplier of savings up to fourteen times in corrections costs occurs. Given the need for the WalMart firms to lump and dump and given the nature of prosecutorial power to feed and keep on feeding, the check of a fierce opposition will be gone. The jails and prisons, already in crisis, will burst at the seams.

Third, it is a dangerous limit on checks of executive power.

The current system of Court appointed, independent attorney's is to be replaced by an office cynically called a Public Defenders Office. It is no such thing. The current Court appointed system, administered by an independent agency that performs spectacularly under severe restraints, will be replaced by a single Justice contract Czar. Appointed by the Governor, the Czar's sole task is to administer the bidding process and award bids. It rests tremendous power in the Executive Department where , till now, it resided in the Courts and the people. The WalMart contractors will be selected based on the discretion of the Governor's Appointee. Given the direct interference by this Governor with the Eves appointment at Goodwill-Hinckley and the bullyish attack on Land for Maines Future, such political control is dangerous to justice and freedom. Since De Tocqueville, the small town, independent lawyer, has acted as a check on the encroachment of governmental power. This occurs directly, as history shows, because it is the apparatus of the State through its punitive powers that represents the greatest danger to individual freedom. It is as real as a jail door swinging shut. In the end the only rights we have are those some lawyer is willing to fight to obtain and protect in a given case.

Every person who ever had a court appointed lawyer do something to assist you or your family in a time of crisis, should go to the internet and send an email to your State Representatives and Senators opposing the bill. These men and woman stood by you in your hour of need; you should stand by them in this time of a threat to justice: So too all Mainers who love freedom and believe in an independent defender system.

Who will be there to defend you when they come for you?

TOM CONNOLLY

SCARBOROUGH, MAINE

[Tom Connolly
PO 7563
Portland, Maine 04112
(207)773-6460
Maine Bar 2612
tomconnolly@RCN.com
--have been a practicing Court Appointed Maine Attorney 34 years]

Maciag, Eleanor

From: Pelletier, John
Sent: Tuesday, October 06, 2015 8:16 AM
To: Maciag, Eleanor
Subject: FW: LD1433

From: Scott Houde [<mailto:gradmanmaine@yahoo.com>]
Sent: Monday, October 05, 2015 8:20 PM
To: Pelletier, John
Subject: LD1433

John,

You asked for feedback on LD 1433. I am against the bill. I am still in the process of drafting a letter with my complete thoughts but here are some of my thoughts:

1. LD 1433 does not address a quality of services issues because there are no quality of services issues. The number of bar complaints versus cases handled by MCILS rostered clearly bares that out
2. If LD 1433 is passed the State will probably be going to a contract system. By doing this, the State would lose the ability to have each voucher individually analyzed like it is now. Many of the vouchers submitted are below the cap, a saving that would be lost with a contract system. The State would also lose the ability to now what is being done on each case.
3. The money spent on indigent legal services treats poorly the symptom of a much larger problem. At the root of the need for indigent legal services is not addressing the root issues of poverty, substance abuse, and mental health. Address those and the cost of indigent legal services will go down. It is about the State making the right non-legal services available for folks.
4. Based on per capita, the cost of how Maine delivers indigent legal services is excellent. It is one of the lowest in the country.

In short, LD 1433 is trying to cure a non-problem.

Scott Houde, Esq.

Maciag, Eleanor

From: Jeffrey Pickering <jeffreypickering62@yahoo.com>
Sent: Thursday, October 01, 2015 10:34 AM
To: MCILS
Subject: Re: Proposed Legislation Re: Indigent Legal Services

John:

Do you know if the sponsors have made any effort to determine what the reasonable cost would be to set up a Public Defender office in Aroostook County. Assigned counsel currently absorb office and clerical costs.

I suspect your cost for Aroostook County is currently below the District Attorney's costs. I think this figure would be instructive.

Jeff

From: "mcils@maine.gov" <mcils@maine.gov>
To: jeffreypickering62@yahoo.com
Sent: Tuesday, September 29, 2015 3:43 PM
Subject: Proposed Legislation Re: Indigent Legal Services

Attorneys:

As you may know, the Governor has submitted legislation proposing to change the way MCILS is organized and the way indigent legal services are delivered. The bill, L.D. 1433, will be considered by the Legislature in the upcoming session, with hearings before the Judiciary Committee likely in January.

MCILS Commissioners are in the process of analyzing the proposed legislation and formulating the Commission's position, and they are interested in your input. You are invited to send comments on the proposed legislation to MCILS@maine.gov or 154 State House Station, Augusta, Maine 04333. The bill can be found at the following link:

<http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0540&item=1&snum=127>

Thanks. John

Maciag, Eleanor

From: Slye, Pamela E
Sent: Wednesday, September 30, 2015 12:19 PM
To: Pelletier, John; Maciag, Eleanor
Cc: Slye, Pamela E
Subject: LD1433

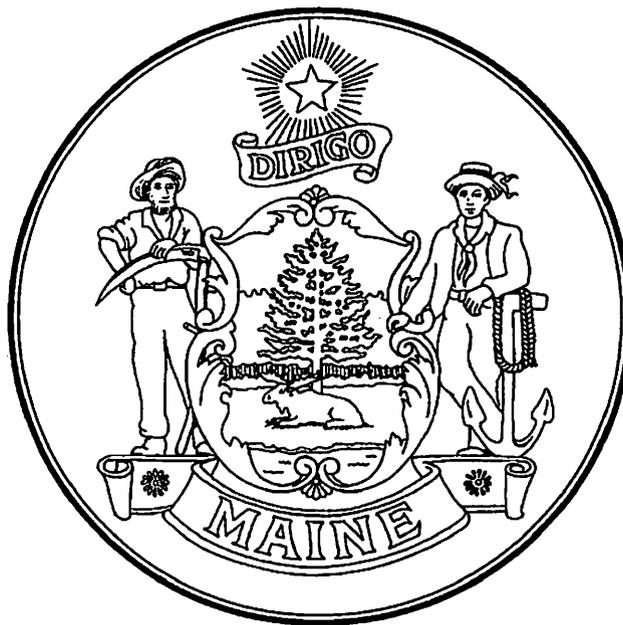
John and Ellie,
I did not know if we could comment, if so then let me know

Currently we use indigent services to render legal services to folks who want to be defended in court. This is a cost to the state in that we pay a certain amount per hour. With LD 1433 we would instead create a public defender system. I am Leary of expanding government in this way and haven't heard a public outcry about the indigent legal services working badly. It would morph you're the commission into a new state government department. I don't think we should be expanding government. It will probably have a hefty price tag and would increase future budgets.

Pamela E. Slye
Financial Screening Officer
Maine Commission on Indigent Legal Services
154 State House Station
Augusta, ME 04333-0154
Tel: 207.215.1826

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1132

S.P. 423

In Senate, March 25, 2009

An Act To Establish the Maine Commission on Indigent Legal Services

(EMERGENCY)

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator HOBBS of York.
Cosponsored by Representative PRIEST of Brunswick and
Senators: ALFOND of Cumberland, BLISS of Cumberland, HASTINGS of Oxford,
MARRACHÉ of Kennebec, President MITCHELL of Kennebec, Representatives: BEAULIEU
of Auburn, BERRY of Bowdoinham, BRYANT of Windham, CAIN of Orono, CLEARY of
Houlton, CROCKETT of Bethel, DILL of Cape Elizabeth, HILL of York, KRUGER of
Thomaston, MITCHELL of the Penobscot Nation, NASS of Acton, Speaker PINGREE of
North Haven, PIOTTI of Unity, ROTUNDO of Lewiston, RUSSELL of Portland, STEVENS
of Bangor.

1 **Emergency preamble. Whereas,** acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** under the United States Constitution and the Constitution of Maine, an
4 indigent person charged with a crime, facing loss of parental rights, or the risk of
5 institutional commitment is entitled to counsel, and

6 **Whereas,** the State is obligated to ensure that such representation is provided and
7 currently spends in excess of \$10,000,000 per year; and

8 **Whereas,** the demand for such services has increased because the number of child
9 protective hearings requiring counsel has doubled, the number of cases with mandatory
10 jail time has increased and an increasing number of criminal defendants are indigent and
11 entitled to such services; and

12 **Whereas,** a central agency to coordinate such services has never been established,
13 despite the increase in services; and

14 **Whereas,** such representation is currently funded by an appropriation to the judicial
15 branch; and

16 **Whereas,** such representation is managed by approximately 60 judges located in 40
17 court locations throughout the State, who approve vouchers to private attorneys acting as
18 indigent legal counsel and who are located throughout the State; and

19 **Whereas,** the current method of paying for indigent legal services creates the
20 appearance of a conflict of interest by placing judges in the position of ruling on
21 compensation and reasonable effort and expenses for only one side in criminal, protective
22 custody and involuntary commitment matters; and

23 **Whereas,** there is at least the appearance of further conflict because judges are
24 authorizing payment of indigent legal fees out of appropriations intended to fund judicial
25 branch operations; and

26 **Whereas,** the current system lacks a central authority to provide coordinated
27 planning, oversight and management in order to ensure the delivery of quality legal
28 representation in the most cost-effective manner; and

29 **Whereas,** it is necessary to provide independent oversight for the delivery of
30 indigent counsel services, improve the quality of representation, ensure the independence
31 of counsel, establish uniform policies and procedures for the delivery of such services and
32 develop the statistics necessary to evaluate the quality and the cost-effectiveness of such
33 services; and

34 **Whereas,** the current method of funding indigent legal services through the judicial
35 branch budget creates the appearance of a conflict of interest and is contrary to accepted
36 practices; and

1 11. Meetings of commission. Attend all commission meetings, except those
2 meetings or portions of the meetings that address the question of appointment or removal
3 of the executive director; and

4 12. Other assigned duties. Perform other duties as the commission may assign.

5 Sec. 2. 5 MRSA §12004-G, sub-§25-A is enacted to read:

6 25-A.

7 <u>Legal Services</u>	<u>Maine Commission</u>	<u>Expenses Only</u>	<u>4 MRSA §1801</u>
8	<u>on Indigent Legal</u>		
9	<u>Services</u>		

10 **Sec. 3. Transfer of personnel and funds.** Funds necessary to staff the Maine
11 Commission on Indigent Legal Services and carry this Act must be transferred from the
12 judicial branch's General Fund Personal Services and All Other accounts to the Maine
13 Commission on Indigent and Legal Services. Positions necessary to carry out the
14 provisions of this Act must be transferred from the judicial branch to the Maine
15 Commission on Indigent Legal Services.

16 **Sec. 4. Transition.** The Maine Commission on Indigent Legal Services and the
17 judicial branch shall develop a process to provide for the transition from the existing
18 voucher payment system to the payment system developed by the commission.

19 **Emergency clause.** In view of the emergency cited in the preamble, this
20 legislation takes effect when approved.

21 **SUMMARY**

22 This bill establishes the Maine Commission on Indigent Legal Services, an
23 independent and permanent statutory entity, to provide efficient high-quality
24 representation to indigent criminal defendants, juvenile defendants and children and
25 parents in child protective cases, consistent with federal and state constitutional and
26 statutory obligations. The commission will not oversee the provision of guardian ad litem
27 services.

28 The commission consists of 5 members appointed by the Governor and confirmed by
29 the Legislature. One must be appointed from suggestions made by the President of the
30 Senate, one must be appointed from suggestions made by the Speaker of the House and
31 one must be appointed from suggestions made by the Chief Justice of the Supreme
32 Judicial Court. The Governor shall select the chair. After the initial staggered terms,
33 members serve for 3-year terms. Individuals appointed to the commission must have a
34 strong commitment to high-quality representation of persons who are indigent.
35 Compensation is limited to the legislative per diem and expenses.

36 The commission will develop standards for the delivery of indigent legal services
37 and will establish and maintain a system that uses appointed private attorneys, contracts
38 with individual attorneys or groups of attorneys and any other program necessary to

1 provide high-quality and efficient indigent legal services. The commission shall appoint
2 an executive director to carry out the day-to-day activities of the commission. All
3 attorneys providing indigent legal services will be paid through the commission.

4 This bill also authorizes a one-time transfer of all necessary funds and positions from
5 the judicial branch to the Maine Commission on Indigent Legal Services in order to
6 create the commission at no additional cost to the General Fund.

JUDICIARY COMMITTEE VOTING SHEET

L.D. or Confirmation 1132 Indigent Defense
 Date 29 April
 Motion Reconsidered
 Motion by Rep. Bryant
 Seconded by Rep. Dill

	Those Voting in Favor of the Motion	Recommendation of those opposed to the Motion					Absent	Abstain
Rep. Kruger	✓							
Rep. Beaulieu	✓							
Rep. Dill	✓							
Rep. Bryant	✓							
Senator Hastings	✓							
Senator Hobbins	✓							
Senator Bliss	✓							
Rep. Priest	✓							
Rep. Cleary	✓							
Rep. Hill	✓							
Rep. Nass	✓							
Rep. Crockett	✓							
Rep. Stevens	✓							
Rep. Mitchell	✓							
TOTALS	(14)							

REMARKS OF ROBERT W. CLIFFORD
BEFORE JOINT STANDING COMMITTEE
ON THE JUDICIARY

April 16, 2009

My name is Robert Clifford and I am grateful for the opportunity to appear before you today. I am honored to have served on the Indigent Legal Services Commission, and as its chair. This thirty-two member Commission is comprised of representatives from all three branches of State Government, several of whom now serve or have served on this very Committee; from the private practice of law, including those who represent poor defendants in criminal cases and poor parents in child protection cases; from the business community; and from other public interest groups. We are pleased to present our Report to you, and to appear before you in support of L.D. 1132, the legislation the Commission recommends.

The Indigent Legal Services Commission operated without funding and with no full-time staff. We did have very competent part-time staffing from John Pelletier, an attorney with substantial experience in representing indigent defendants in criminal cases, who now serves as the Criminal Process Manager in the Judicial Branch. We were also fortunate to benefit from the services of the American Bar Association affiliated Spangenberg Group, the country's leading authority on the provision of indigent defense services. The Spangenberg Group

thoroughly reviewed our system and made recommendations that were important to our final report.

The Commission was charged with addressing a significant and very difficult issue: How the State of Maine should meet its constitutional and statutory obligation to provide legal services to its poorest citizens in criminal cases when the defendant is at risk of loss of freedom, and in child protection cases when the State is asserting that parents are placing their children in jeopardy. The State's obligation to provide those legal services is mandatory and cannot be ignored.

The Commission found that the State's current system of providing legal services to the indigent is subject to a serious conflict of interest: the Judiciary is charged with appointing and paying attorneys to represent indigent defendants in criminal cases and indigent parents in child protection cases, cases which that very Judiciary is called upon to decide. This conflict is at the very heart of our current system.

More specifically, that conflict leads to an inequity. We have an adversarial system of justice in which disputes are resolved by a neutral, unbiased court. That supposedly neutral court, however, is also the body that authorizes payment for indigent legal representation, and thus determines the amount and extent of resources on which an indigent party can draw. Conversely, the court has no role in determining the resources used by the prosecution in criminal cases, or by the

Department of Health and Human Services in child protection cases. Thus, the court determines and limits the resources available to only one side of these types of disputes—the side representing poor people. If the parties are not indigent, the court has no authority to determine or limit what a criminal defendant or a parent can spend. The current system is not equal, and it is therefore not fair.¹

After reviewing the current indigent defense system, and prior studies of that system, it is obvious to the Commission that our current system is contrary to what a fair indigent defense system should look like, and “directly at odds” with the American Bar Association principles of a Public Defense Delivery System. The first and most important of those principles is that the “public defense function, including the selection, funding and payment of defense counsel [and counsel representing indigent parents in child protection cases] [should be] independent.”

In Maine, not only is the indigent defense function not independent, it is completely tied to and dependent upon the Judiciary. Individual judges select and determine the appropriate compensation for court appointed counsel in individual cases, and the Judicial Branch is responsible for allocating overall funding for

¹ Another serious detriment inherent in the current system, as relates to the Judicial Department’s responsibility for the provision of indigent legal services, is that it is seriously eroding the capacity of the Judiciary to carry out its basic responsibilities. When faced with shortfalls in the funds needed to fund indigent legal services the Legislature has had to take that money from the judicial budget. This has led to substantial vacancies in clerk and security positions, and to delays in the delivery of judicial services.

indigent legal services. This system differs from what exists in at least forty-three other states, in which the indigent defense function is independent of the Judiciary.

Our Commission's primary conclusion is that, in order to eliminate the inherent inequity and the appearance of the conflict of interest present within the current system, the function of the provision of legal services for the indigent should be independent of the Judiciary. This conclusion is consistent with the recommendation of the Spangenberg Group, and with the provision of indigent defense in the vast majority of other states. To that end, the Commission recommends that the Legislature create a permanent commission entirely independent of the Judiciary, which would both eliminate this conflict and create the added benefit of providing the training and oversight necessary to ensure quality legal representation to Maine's citizens. The vehicle for creation of that commission is L.D. 1132.

The independent commission established by L.D. 1132 would consist of five members appointed by the Governor and confirmed by the Legislature. The bill provides that all three branches of government would participate in the selection of the commission members. One member would be selected from a list of potential appointees recommended by the President of the Senate, one from a list recommended by the Speaker of the House, and one from a list recommended by the Chief Justice of the Supreme Judicial Court. The commissioners would be men

and women with a strong commitment to providing the highest quality indigent legal services in the most efficient manner as possible. The bill in its current form also provides that no more than three members should be practicing attorneys.

The independent commission would hire an executive director, who would be an attorney with experience in the provision of indigent legal services. Together with the executive director, the commission would establish standards for the selection, training, and performance of lawyers who provide indigent legal services. The commission would also establish procedures and systems to gather accurate data regarding the system's operation in order to manage caseloads and identify efficiencies. With this data, the independent commission would provide an annual report to the Legislature, the Executive Branch, and the Judiciary. The independent commission would submit biennial budget requests through the Governor's office to the Legislature to fund its operations.

Our Commission is convinced that the new recommended system can and should operate within the existing resources expended on constitutionally required counsel. Accordingly, we recommend that the financial and personnel resources currently utilized by the Judicial Branch to provide constitutionally required counsel services be transferred from the Judicial Branch to the newly established independent commission, whose centralized oversight and management should allow the new system to operate within these existing resources. The Judiciary has

taken steps to ensure that the new commission will have sufficient resources, money for contracts, and personnel to perform its function. At the outset, the new system should retain the current rate of fifty dollars per hour for court-appointed counsel, and should continue to follow the case payment guidelines promulgated by the Supreme Judicial Court. The Commission believes that this transfer of resources and payment constraints will allow a transition to the new independent system that can be accomplished with no new or increased resources, an additional benefit in these difficult financial times.

Despite the difficult budget constraints that Maine currently faces, our Commission is convinced that a timely reorganization of legal defense services is necessary and should not be delayed. Such services should no longer be provided within a system that is subject to such an inherent conflict. Neutral judges should no longer decide the payment and resources available to only one side of criminal cases and child protection cases.

As our Report concludes, the Indigent Legal Services Commission has identified a national consensus that the provision of indigent legal services should be independent from the judiciary and subject to standards for the selection, training, and performance of the lawyers representing indigent clients. Establishment of a permanent Maine Commission on Indigent Legal Services will create a more efficient system for providing indigent legal services, will bring

Maine into line with this national consensus, and will better ensure the constitutional right of Maine citizens to high-quality indigent legal services.

Lastly, I want to emphasize that this is not a “lawyer’s bill.” This bill seeks to establish the best way to provide the poorest of our citizens with a constitutionally mandated service when they are faced with the loss of freedom or parental rights. When we provide health care for the poor, we never think of that as legislation for doctors, or as “a doctor’s bill.” This bill represents an important step to help ensure that Maine’s poorest citizens receive the services to which they are constitutionally entitled, free from the compromised system that currently provides those services.

Thank you for your service and your attention. I am happy to answer any questions you may have.

Maine Association of Criminal Defense Lawyers

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April 9, 2009

Senator Lawrence Bliss and
Representative Charles Priest, Chairs
Joint Standing Committee on Judiciary
ATTN: Fern Neilsen
100 State House Station Room 436
Augusta, ME 04330

RE: LD 1132 – An Act to Establish the Maine Commission on Indigent Legal Services

Dear Senator Bliss, Representative Priest and Members of the Joint Standing Committee on Judiciary:

Please consider this as MACDL's support of LD 1132, an Act to Establish the Maine Commission on Indigent Legal Services.

MACDL members represent the vast majority of persons in the State of Maine who are accused of crimes and who are indigent. For the past many years, the number of cases each year has increased, but the funding for representation has not risen at the same pace. Problems have also developed in the present system and how vouchers for payment are approved.

The current way in which payment is made for constitutionally required counsel was studied by a commission this past year which came to the conclusion that the only appropriate way of addressing the funding issues was to establish a central authority to provide coordinated planning, oversight and management of indigent defense services through a commission.

MACDL has reviewed the commission report, as well as this bill, and has determined that this bill appropriately addresses many of the current problems facing the indigent defense system in Maine. As such, MACDL supports the passage of LD 1132.

Charter Members

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Patrick S. Bedard
David R. Beneman
Richard S. Berne
Henry N. Berry, III
J. Hillary Billings
James P. Boone
Paul M. Boots
James G. Boulos

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Amy L. Faircloth
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Wayne R. Foote

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Marshall A. Stern
(deceased)
Vilean Taggersell
Thomas G. Van Houten
Joel C. Vincent
Neil L. Weinstein
Hal S. Weisberger

MACDL's support, though, is conditioned on an amendment to the bill that will allow one of the members of the commission to be appointed from a list of qualified potential appointees provided by MACDL. This is necessary because MACDL is a unique stakeholder in this process and has the skill and qualifications to select a highly-qualified appointee that will understand and appreciate the nature of criminal defense work in the State of Maine. As it stands now, the commission consists of five members. MACDL does not seek to change the number of members but does seek the amendment of the bill such that one of the five members would be appointed from the list provided by MACDL.

I will not be able to attend what I understand is the April 16, 2009, public hearing, as I will be out of the country. Another member of MACDL's Board may be present for the public hearing. I will endeavor to attend the work session to address the bill and specifically the proposed amendment.

Thank you for the opportunity to address this important issue.

Sincerely,

Walter F. McKee
Chair, Legislative Committee
MACDL

WFM/cam

c: Jennifer Lechner, Esquire (via e-mail lechner@mainemacdl.org)
Peter Rodway, Esquire (via e-mail rodlaw@maine.rr.com)
Tim Zerillo, Esquire (via e-mail timzerillo@midmaine.com)



Senator Barry J. Hobbins
Utilities and Energy Committee, Chair
Judiciary Committee, Member

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Senator Barry Hobbins
TESTIMONY ON LD 1132

Senator Bliss, Representative Priest, honorable members of the Committee on the Judiciary, I am Senator Barry Hobbins, and I appear before you today to present LD 1132, "An Act to Establish the Maine Commission of Indigent Legal Services.

I am proud to sponsor LD 1132, which is legislation recommended by the Indigent Legal Services Commission. The Commission was established in May by Chief Justice Leigh I. Saufley, chaired by Associate Supreme Court Justice Robert W. Clifford, and made up of representatives from all three branches of government, as well as representatives from the bar, the business community, and the public. I was privileged to serve on the Commission, along with fellow legislators Senators David Hastings, Stan Gerzofsky, and William Diamond, Representative Dawn Hill, and then-Representative Bonnie Gould.

The Commission met on four occasions to review the current state of indigent legal services in Maine and to explore methods to improve how Maine serves its indigent citizens who have a constitutional right to counsel in criminal, child protective and involuntary commitment cases.

The Commission determined early on that the way Maine currently provides these services is at odds with the prevailing national consensus that indigent legal services should be independent of the judiciary. Currently, Maine judges who appoint lawyers to represent indigent litigants determine how much the lawyer gets paid and what resources are available to defend the case. As you will hear from Justice Clifford, this creates a conflict of interest whereby the court, which is supposed to be neutral, must involve itself in the allocation of resources to only one side of the dispute.

In addition, the Commission recognized that the current system of funding indigent defense services from the judicial budget has a negative impact on the judicial system as a whole. As the cost of indigent legal services has risen, the Judicial Branch has been required to take resources from other areas of the justice system to fund these constitutionally required services. As a result, the Judicial Branch is now less able to provide timely access to justice in areas such as small claims and landlord tenant disputes, among others. Accordingly, the current funding mechanism can have the effect of impairing needed access to the courts for all of Maine's citizens.

Finally, the Commission recognized the need to provide support, training and oversight to lawyers providing indigent legal services. The court simply has not had the resources to implement such a system, and because, as I stated earlier, the court is supposed to be neutral in disputes between the state and indigent citizens, such support and oversight is not a proper function for the court.

To remedy these problems, the Commission recommended the creation of an independent commission to oversee the provision of indigent legal services in Maine. I have sponsored LD 1132 to implement that recommendation. The goal of this legislation is to create, at no additional cost, an independent body to administer indigent legal services, to implement standards for the training, performance, and supervision of lawyers providing indigent legal services, and thereby to improve the quality of indigent legal services and the efficiency with which such services are delivered.

One closing note: I learned that just this Tuesday in Washington D.C., a group named The Constitution Project released the results of a five-year study of indigent legal services throughout the country. Their principal recommendation was that each state should establish a statewide, independent commission responsible for all aspects of indigent legal services. For states without such a Commission, the report recommended the establishment of a task force made up of all three branches of government, as well as stakeholders, to study the creation of such an independent commission. This is exactly what Chief Justice Saufley did last May, and LD 1132 reflects the work of that task force. Once again, Maine is one step ahead of the curve. I strongly urge you to give favorable consideration to LD 1132.

<<lock.in.mny >>

Portland Press Herald Maine Sunday Telegram

Indigent defense should move from judges' budget

Having judges control defense costs, but not prosecutors', creates a conflict of interest.

March 16, 2009

It's a poorly kept secret that Maine's indigent defense system is a lawsuit waiting to happen.

People who face jail time or are at risk of losing their parental rights are guaranteed free legal counsel if they don't have the means to pay for it.

But Maine's system for assigning lawyers to cases and paying their fees contains a built-in conflict of interest: The judge who presides over the case has to approve every cent spent by the defense, while the prosecution controls its own budget.

A proposal coming before the Legislature this spring would replace this system with an independent commission that would manage indigent defense spending.

The Legislature should take this step to end this legally questionable situation.

Maine does not have a public defenders office through which public employees represent low-income people. Here, judges assign cases to private attorneys at a flat \$50 per hour rate. Depending on the nature of the case, their hours are capped.

For instance, a domestic violence case that goes all the way to a jury trial is capped at 12 hours. An aggravated assault case that could result in a 10-year prison sentence is capped at 37 hours.

The problem arises when a case calls for a lawyer to exceed the cap, either by putting in more hours or by hiring an investigator or an expert witness. The judge in the case has to sign off on the expense, and budget cuts have put pressure on them to give the indigent defense vouchers extra scrutiny.

As proposed, the new system would create a commission that would be in charge of dispersing the same pool of money that is now in the judicial budget for indigent defense. The commission would also be in position to monitor court appointments to ensure that lawyers' caseloads are manageable while providing oversight and training to avoid errors.

Even with the commission, the question remains whether there is enough money in the system to meet the increasing demands for indigent services.

But there is no question that this obligation should be moved out of the judicial budget, where it creates a conflict of interest.

The Legislature should support this move, if only because it could head off a lawsuit in which the state's judicial system ends up as the defendant.

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AARON FETHKE, ESQ.

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April 16, 2009

Joint Committee on Judiciary

RE: Support of LD 1132: Public Hearing

Sen. Lawrence Bliss, Rep. Charles R. Priest and members of the Joint Committee on Judiciary:

My name is Aaron Fethke and I live in and have a solo law practice in Searsport. Approximately 75% of my clients are court appointed, so I am very familiar with the state of indigent legal services in Maine and the issues we have been facing over the past years.

I want to express my support for LD 1132, "An Act To Establish the Maine Commission on Indigent Legal Services," and am here today to ask that the Committee recommend LD 1132 for approval as an emergency measure.

The court appointed bar can no longer operate effectively without oversight by an independent commission. Besides the numerous conflicts of interest that do arise with judges reviewing and approving vouchers, funding and oversight through the judicial branch has negatively impacted the quality and effectiveness of the constitutional rights of the people of this State. In short, the system is broken and we need reform.

Like many of my colleagues, I have seen my vouchers (at the rate of \$50.00 per hour for several years now) cut with rarely an explanation. I have seen my out of pocket expenses go uncompensated without cause. I have gone months without payment when the constitutionally required court appointed fund, within the judicial branch, is forced to compete with other judiciary expenditures such as judges' and clerks' pay. And, yet again, I am preparing for the same thing to happen this year. We cannot fool ourselves into thinking that the representation of indigent individuals does not suffer when these things happen. It must stop.

These issues as well as the lack of oversight and quality assurance from an independent commission have led to a constitutional crisis when it comes to indigent legal services in Maine. When we realize that the vast majority of those who have cases that entitle them to court appointed counsel are indigent, the scope of this crisis cannot be overstated.

The establishment of an independent commission will not solve all these problems overnight. It is, however, a huge step in the right direction and, if passed as an emergency measure, will immediately resolve the issues of conflict of interest, proper independence and separation from the judicial branch.

The next major step will be to make sure that the right people are appointed to the Commission. This Commission should not be used as tool to appoint people for political reasons. We need to appoint individuals who are passionate about indigent legal services, individuals who have experience in this area and know what issues attorney and clients face on a daily basis. If the Commission cannot understand and define the problems we have in Maine, then it is doomed to fail at solving any of them.

In the meantime, I applaud those who have brought this badly needed reform to the Legislature and I humbly ask this Committee to vote to recommend LD 1132 for passage by the House and Senate.

Sincerely,



Aaron Fethke, Esq.

AF/



MAINE CIVIL LIBERTIES UNION FOUNDATION

TESTIMONY OF ZACHARY L. HEIDEN, ESQ.

LD 1132 – Ought to Pass

**An Act To Establish the Maine Commission
on Indigent Legal Services**

Submitted to the

JOINT STANDING COMMITTEE ON THE JUDICIARY

April 16, 2009

Senator Bliss, Representative Priest and members of the Judiciary Committee, my name is Zachary Heiden and I am the Legal Director for the Maine Civil Liberties Union, a state-wide organization committed to advancing and preserving civil liberties in Maine through advocacy, education, and litigation. On behalf of our over 3300 members, I urge you to pass LD 1132, which will ensure that Maine fulfills its constitutional obligation to provide adequate counsel to those charged with crimes.

As this Committee is aware, there is no independent system in place in Maine to ensure that counsel for indigent defendants is appointed on a timely basis. Currently, there is no one responsible for ensuring that poor people charged with crimes are assigned a lawyer who is up to the task—someone who has the time, the training, and the resources, to make sure that the innocent are not wrongly convicted and that everyone in the justice system is provided with the fair process they are due. If you cannot afford an attorney, when you are charged with a crime, one will be provided to you, but right now it is complete luck whether Maine provides you one of the best lawyers in the state or someone fresh out of law school looking for some on-the-job training. A system of justice which subjects poor people to such arbitrary treatment is not worthy of the title “justice”. This bill is an important step in remedying that inequality.

As you can tell by the range of people who devoted time and energy to help develop this proposal, shortcomings in our indigent defense programs are of concern not only to the MCLU, but also to all Mainers who expect their criminal justice systems to produce fair and accurate results in the most cost-

effective manner. Studies have shown that between 80 and 90% of those accused of criminal wrongdoing by state prosecutors must rely upon state indigent defense programs for representation, and Maine is at the high end of that range. Maine's lack of independent oversight of indigent defense contaminates the entire criminal justice system. Current shortcomings compromise the ability of our criminal defense system to produce just results, to protect public confidence, to ensure public safety, and to safeguard taxpayer dollars.

The Sixth Amendment to the United States Constitution guarantees that in all criminal prosecutions, the accused shall have "the Assistance of Counsel for his defense."¹ In the landmark case *Gideon v. Wainwright*, the United States Supreme Court ruled that this constitutional guarantee requires states to provide counsel to those persons accused by the state of criminal wrongdoing and unable to afford private counsel.² The Supreme Court observed in *Gideon* the fact that "[g]overnments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime makes it an obvious truth that lawyers in criminal courts are necessities, not luxuries."

And, as the Supreme Court made clear in numerous subsequent cases, the right to counsel is not simply the right to have a person with a pinstripe suit and a pulse stand next to you at trial. States are responsible for ensuring that those accused of crimes receive the "effective assistance of competent counsel."³ In *Cronic*, the Supreme Court defined effective assistance of competent counsel as representation that subjects the prosecution's case to "the crucible of meaningful adversarial testing." In a later case, the Court observed that the "very premise" of our system of criminal justice "is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free."⁴ But, if defense counsel is not up to the task—if they are incapable, because of training or

¹ United States Constitution, Amendment VI. See also Maine Constitution, Article One, Section 6.

² *Gideon v. Wainwright*, 372 US 335 (1963). *Gideon* established the right to counsel for felony trials. Subsequent cases extend that right to direct appeals, *Douglas v. California*, 372 U.S. 353 (1963); custodial interrogation, *Miranda v. Arizona*, 384 U.S. 436 (1966); juvenile proceedings resulting in confinement, *In Re Gault*, 387 U.S. 1 (1967); critical stages of preliminary hearings, *Coleman v. Alabama*, 399 U.S. 1 (1970); misdemeanors involving possible imprisonment, *Argersinger v. Hamlin*, 407 U.S. 25 (1972); and misdemeanors involving a suspended sentence, *Alabama v. Shelton*, 535 U.S. 654 (2002).

³ *United States v. Cronic*, 466 U.S. 648, 656 (1984). See also *Jones v. Barnes*, 463 U.S. 745, 758 (1983) (Brennan, J., dissenting); *Ferri v. Ackerman*, 444 U.S. 193, 204 (1979).

⁴ *Herring v. New York*, 422 U.S. 853, 862 (1975). See *Nix v. Williams*, 467 U.S. 431, 453 (1984) (a criminal conviction is to be the product of an adversarial process, rather than the ex parte investigation and determination of the prosecution); *Wheat v.*

experience or resources - of adequately challenging the state's evidence, "a serious risk of injustice infects the entire criminal justice process."⁵

Though it should be enough that this is a problem of constitutional dimensions, there is even more to say. Inadequate indigent defense programs are also a problem because they undermine public confidence in the criminal justice system. The legitimacy of our criminal justice system is based on its ability to adequately investigate crime, accurately identify offenders and appropriately sanction the convicted. When defense counsel does not have the tools and training and resources to engage in adversarial advocacy, their clients are wrongfully convicted; they are incarcerated prior to trial for unnecessarily long periods of time; they plead guilty to inappropriate charges; and they receive harsher sentences than the facts of their cases warrant.

To the extent inadequate and inefficient programs lead to wrongful convictions, unnecessary or prolonged pre-trial incarceration, sentences that are not commensurate with the crimes committed and legal errors, taxpayers pay the consequences. There is almost nothing we as a society do that is as expensive as paying for someone to be in jail; only with an independent and adequate indigent defense system can we make sure that the right people are going to jail for the right amount of time.

Poorly performing indigent defense programs also jeopardize public safety. There is almost nothing we do as a society that is as dangerous as convicting the wrong person for a crime, because when the wrong person gets convicted, the real perpetrator goes free. In 132 of the 234 exonerations obtained by the Innocence Project with the use of DNA evidence, the actual criminal was never found, and presumably they remain at large to commit more crimes.⁶

Public safety also suffers when public defenders do not have the resources to advocate for the diversion of non-violent offenders away from jails and prisons into social service programs. Studies have shown consistently that diversion programs that address these issues reduce recidivism. A New York City diversion program for convicted felons with serious mental illness decreased the arrests of program

United States, 486 U.S. 153, 158 (1988) (the right to counsel "was designed to assure fairness in the adversary criminal process").

⁵ See *Cuyler v. Sullivan*, 446 U.S. 335, 343 (1980). See *United States v. Cronin*, 466 U.S. at 656-57.

⁶ Facts on Post-Conviction DNA Exonerations (The Innocence Project, NY, NY), available at <http://www.innocenceproject.org/Content/351.php> (last viewed on Mar. 20, 2009).

participants by approximately 90%.⁷ A similar program in Maricopa County, Arizona, reduced the rate of new offenses committed by seriously mentally ill offenders to 5%, nearly one-half the 9% recidivism rate of general population offenders.⁸

Lastly, public safety suffers when public defenders are unable to ensure that their clients receive sentences commensurate with their crimes. Researchers have found that high rates of incarceration actually increase crime by destroying the social and family bonds that guide individuals away from crime, removing adults who would otherwise nurture children, depriving communities of income, reducing future income potential, and engendering a deep resentment toward the legal system. When communities are less capable of maintaining social order through families or social groups, crime rates go up.⁹ The system only works when it is fully staffed, and defense counsel are a key part of the system.

Public opinion polls show that voters support a criminal justice system that delivers fair results and that they are willing to commit the tax dollars necessary to accomplish this goal. A 2000 nation-wide public opinion poll showed that 64% of those polled supported the use of taxpayer dollars to provide indigent persons with lawyers. A majority supported reforms to ensure those accused of crime received competent counsel, including proposals that would provide public defenders and prosecutors with the same resources per case (88%); create local oversight commissions to ensure that indigent defense counsel is competent and has adequate resources (78%); establish standards on qualifications for public defenders and court-appointed lawyers (78%); establish public defender offices with full-time professional staff (71%); and ensure that judges and local governments do not appoint attorneys based solely on who charges the least (50%).¹⁰

⁷ The Nathaniel Project: An Alternative to Incarceration Program for People with Serious Mental Illness Who Have Committed Felony Offenses, The National GAINS Center for People with Co-Occurring Disorders in the Justice System (Policy Research Associates, Delmar, NY), Fall 2002/Revised Summer 2005, available at http://gainscenter.samhsa.gov/pdfs/jail_diversion/nathaniel_project.pdf (last viewed on Mar. 20, 2009).

⁸ Court Advocacy and Jail Diversion Programs Improve Outcomes and Reduce Crime, BUSINESSWIRE, at 1, available at <http://www.allbusiness.com/crime-law/crime-statistics-crime-rate/5463671-1.html> (last viewed on Mar. 20, 2009).

⁹ Brian C. Renauer, William Scott Cunningham, Bill Feyerherm, Tom O'Connor and Paul Bellatty, Tipping the Scales of Justice: The Effect of Overincarceration on Neighborhood Violence, CRIMINAL JUSTICE POLICY REVIEW, Vol. 17, No. 3, Sept. 2006, at 372-4, available at <http://cjp.safepub.com/cgi/content/abstract/17/3/362> (last viewed on Mar. 22, 2009).

¹⁰ Belden, Rossonello & Stewart, Americans Consider Indigent Defense: Analysis of a National Study of Public Opinion, Jan. 2002, available at <http://www.nlada.org/DMS/Documents/1075394127.32/Belden%20Rossonello%20Polling%20short%20report.pdf> (last viewed on Mar. 20, 2009).

LD 1132 is the product of many hours of study and discussion among stakeholders from every conceivable perspective. What we all shared was the recognition that poor people in Maine have just as much of a right as anyone else to fair treatment under the law, especially when the state is threatening to deprive them of their liberty or their family. I urge you to uphold your obligation to the Constitution and vote "ought to pass" on LD 1132.

Senator Bliss, Representative Priest, members of the Judiciary Committee. My name is Steven Prince. I live in Augusta and I am the Executive Director of the Maine Trial Lawyers Association. One of my past-presidents, Don Briggs of Rockport, served on the Indigent Legal Services Commission. He had a conflict today and regrets not being able to be here to show his support for the Commission, its report, and L.D. 1132.

You have had a number of eloquent speakers on behalf of this legislation, so I will be brief. On behalf of the Maine Trial Lawyers Association, I am pleased to support LD 1132. The legislation establishes an independent authority for the funding of indigent criminal defense, eliminates an unwholesome conflict of interest with Maine's Judicial System, and eliminates the false budget choices for public administrators between funding the constitutional duty of indigent defense and funding the core operational capacity of the court system that provides a forum for such defense.

The recommendations of the committee and LD 1132 are pragmatic and realistic. Both operate within the budget realities and constraints of the State of Maine. While LD 1132 does not fix all of the problems associated with access to the justice system or even indigent criminal defense, it is a practical and needed first step that will pay dividends to our State in the long run. Our association is proud to endorse its passage.

Thank you and I am available for any questions.



JOHN ELIAS BALDACCI
GOVERNOR

STATE OF MAINE
JUVENILE JUSTICE ADVISORY GROUP
111 STATE HOUSE STATION
AUGUSTA, MAINE 04333

"The mission of the Maine Juvenile Justice Advisory Group is to advise and make recommendations to state policy makers and to promote effective system level response that further the goals of the Juvenile Justice and Delinquency Prevention Act."

PAUL VESTAL
CHAIR

April 27, 2009

Senator Lawrence Bliss, Chair
Committee on Judiciary
100 State House Station
Augusta, ME 04333-0100

Representative Charles R. Priest, Chair
Committee on Judiciary
100 State House Station
Augusta, ME 04333-0100

Dear Senator Bliss, Representative Priest, and Members of the Committee:

The Juvenile Justice Advisory Group has voted to support LD 1132. We would recommend, however, that it be amended to ensure that counsel provided through that legislation are competent in the field in which they are asked to practice.

The bill aims to provide legal services to a number of classes of litigants. Our primary concern is to ensure that juvenile defendants are represented by counsel who understand the complex issues inherent in the representation of children who come in contact with the juvenile justice system. We are concerned that the financial considerations may impact the decision-making process in providing services, based on the false premise that the defense of juveniles is simply an adjunct to the defense of adults, and requires no special training or expertise.

The first purpose of the Juveniel Code is "[t]o secure for each juvenile subject to these provisions such care and guidance, preferably in the juvenile's own home, as will best serve the juvenile's welfare and the interests of society." Thus, in order to provide competent representation for a juvenile defendant, counsel must understand not only the legal issues presented by the case, but must also be able to access social services in the community. That requires that counsel understand the basic tenets of adolescent psychology and family dynamics, and the efficacy of various types of treatment and programs. Counsel must also be conversant with the range and quality of other professionals and programs that serve adolescents, and must understand the funding mechanisms necessary to access those

Senator Lawrence Bliss
Representative Charles R. Priest
April 27, 2009
Page 2

services. Accessing those services often has a dramatic effect on the outcome of a juvenile case. Developing a competency in these matters requires years of experience and specialized training.

In particular, we urge the Judiciary Committee to amend § 1804(3)(E) of LD 1322 as follows:

- E. Establish minimum qualifications to ensure that attorneys are qualified and capable of providing adequate competent representation in the case types to which they are assigned, recognizing that competent representation in each of these areas requires counsel with extensive experience and specialized training in that field.

Thank you for your consideration. We are available to respond to questions or concerns, at your request.

Very Truly Yours,



Edwin P. Chester
Vice-Chair

OFFICE OF POLICY AND LEGAL ANALYSIS
Public Hearing Summary

To: Joint Standing Committee on Judiciary

From: Peggy Reinsch, Legislative Analyst

LD 1132 An Act to Establish the Maine Commission on Indigent Legal Services

Public Hearing Date: April 16, 2009

SUMMARY

This bill establishes the Maine Commission on Indigent Legal Services, an independent and permanent statutory entity, to provide efficient high-quality representation to indigent criminal defendants, juvenile defendants and children and parents in child protective cases, consistent with federal and state constitutional and statutory obligations. The commission will not oversee the provision of guardian ad litem services.

The commission consists of 5 members appointed by the Governor and confirmed by the Legislature. One must be appointed from suggestions made by the President of the Senate, one must be appointed from suggestions made by the Speaker of the House and one must be appointed from suggestions made by the Chief Justice of the Supreme Judicial Court. The Governor shall select the chair. After the initial staggered terms, members serve for 3-year terms. Individuals appointed to the commission must have a strong commitment to high-quality representation of persons who are indigent. Compensation is limited to the legislative per diem and expenses.

The commission will develop standards for the delivery of indigent legal services and will establish and maintain a system that uses appointed private attorneys, contracts with individual attorneys or groups of attorneys and any other program necessary to provide high-quality and efficient indigent legal services. The commission shall appoint an executive director to carry out the day-to-day activities of the commission. All attorneys providing indigent legal services will be paid through the commission.

This bill also authorizes a one-time transfer of all necessary funds and positions from the judicial branch to the Maine Commission on Indigent Legal Services in order to create the commission at no additional cost to the General Fund.

TESTIMONY

Proponents

Sen. Hobbins (sponsor) (written testimony) – recommended by the Indigent Legal Services Commission: commission established in May by Chief Justice Saufley, chaired by Associate Justice Robert Clifford and made up of representatives from all three branches of government, as well as representatives from the bar, the business community and the public

- I was privileged to serve along with fellow legislators Senators David Hastings, Stan Gerzofsky, William Diamond, and Representative Dawn Hill and then-Representative

Bonnie Gould

- Commission met on four occasions to review the current state of indigent legal services in Maine and to explore methods to improve how Maine serves its indigent citizens who have a constitutional right to counsel in criminal, child protective and involuntary commitment cases
- The way Maine currently provides these services is at odds with the prevailing national consensus that indigent legal services should be independent of the judiciary
- Currently, Maine judges who appoint lawyers to represent indigent defendants determine how much the lawyer gets paid and what resources are available to defend the case – this creates a conflict of interest whereby the court, which is supposed to be neutral, must involve itself in the allocation of resources to only one side of the dispute
- Commission recognized that the current system of funding indigent defense services from the judicial budget has a negative impact on the judicial system as a whole – as the cost of legal services has risen, the Judicial Branch has been required to take resources from other areas such as small claims and landlord tenant disputes, among others
- Accordingly, the current funding mechanism can have the effect of impairing needed access to the courts for all of Maine's citizens
- Commission recognized the need to provide support, training and oversight to lawyers providing indigent legal services – the court simply has not had the resources to implement such a system and because the court is supposed to be neutral in disputes between the State and indigent citizens, such support and oversight is not a proper function of the court
- To remedy these problems, the Commission recommended creation of an independent commission to oversee the provision of indigent legal services: goal is to create, at no additional cost, an independent body to administer indigent legal services, to implement standards for the training, performance and supervision of lawyers providing indigent legal services, and thereby to improve the quality of indigent legal services and the efficiency with which such services are delivered
- On Tuesday a group named The Constitution Project released the results of a five-year study of indigent legal services throughout the country. Principal recommendation was that each state should establish a statewide, independent commission responsible for all aspects of indigent legal services

Associate Justice Clifford, Chair, Indigent Legal Services Commission (ILSC) – 32 members from all three branches, private practice of law, business community, other public interest groups. Pleased to present our Report

- ILSC operated without funding and with no full-time staff – very competent part-time staffing from John Pelletier
- Benefited from the services of the American Bar Association affiliated Spagenberg Group, the country's leading authority on the provision of indigent defense services – thoroughly reviewed our system and made recommendations that were important to our final report
- Commission charged with addressing a significant and very difficult issue: How the State of Maine should meet its constitutional and statutory obligation to provide legal services to its poorest citizens in criminal cases when the defendant is at risk of loss of freedom, and in child protection cases when the State is asserting that parents are placing their children in jeopardy – the State's obligation to provide these services is mandatory and cannot be ignored
- Current system subject to a serious conflict of interest: the Judiciary is charged with appointing and paying attorneys to represent indigent defendants in criminal cases and indigent parents in child protection cases, cases which that very Judiciary is called upon to decide; this conflict is at the very heart of our system

- That conflict leads to an inequity – the neutral court is also the body that authorizes payment for legal representation, and thus determines the amount and extent of resources on which an indigent party can draw
- Conversely, the court has no role in determining the resources used by the prosecution in criminal cases, or by the Department of Health and Human Services in child protection cases
- Our current system is contrary to what a fair indigent defense system should look like and is directly at odds with the ABA’s principles of a Public Defense Delivery System – independence
- Not only is the indigent defense function not independent, it is completely tied to and dependent upon the Judiciary – individual judges select and determine appropriate compensation, and the Judicial Branch is responsible for overall funding of indigent legal services
- Differs from what exists in at least 43 other states
- In order to eliminate inherent inequity and the appearance of conflict of interest, the provision of legal services for the indigent should be independent of the Judiciary: create a permanent commission entirely independent of the Judiciary, which would both eliminate this conflict and create the added benefit of providing the training and oversight necessary to ensure quality representation to Maine’s citizens
- The independent commission would consist of five members appointed by the Governor and confirmed by the Legislature; all three branches would participate in the selection
- Would have a strong commitment to providing the highest quality indigent legal services in the most efficient manner as possible; no more than three members may be practicing attorneys
- The independent commission would hire an executive director, who would be an attorney with experience in the provision of indigent legal services
- Establish standards for the selection, training and performance of lawyers who provide indigent legal services
- Establish procedures and systems to gather accurate data regarding the system’s operation in order to manage caseloads and identify efficiencies
- Provide an annual report to the Legislature, the Executive Branch and the Judiciary
- Submit biennial budget requests through the Governor’s office to the Legislature to fund its operations
- We are convinced that the new recommended system can and should operate within the existing resources expended on constitutionally required counsel – financial and personnel resources currently utilized by the Judicial Branch be transferred to the newly established independent commission, whose centralized oversight and management should allow the new system to operate within these existing resources
- At the outset, the new system should retain the current rate of fifty dollars per hour for court-appointed counsel, and should continue to follow the case payment guidelines promulgated by the Supreme Judicial Court
- This transfer of resources and payment constraints will allow transition with no new or increased resources
- We are convinced that a timely reorganization of legal defense services is necessary and should not be delayed
- This is not a “lawyer’s bill” – the bill seeks to establish the best way to provide the poorest of our citizens with a constitutionally mandated service when they are faced with the loss of freedom or parental rights; when we provide health care for the poor, we never think of that as legislation for doctors, or as a “doctor’s bill”
- This bill represents an important step to help ensure that Maine’s poorest citizens receive the services to which they are constitutionally entitled, free from the compromised system that

currently provides those services

Maine Indigent Defense Center - first recommendation of the report of The Constitution Project is to follow the Constitution

- Currently, indigent defense fund is part of Judicial Branch budget
- State fails to meet 9 of the 10 ABA principles
- 2003 study: no training to represent juveniles
- Some attorneys must travel 8 to 10 hours to participate in required continuing legal education
- The Constitution Project: DA Robert Johnson (Minnesota) – need person standing with the defendant
- Need well trained attorneys with reasonable caseloads or won't get justice
- Only a handful of states don't have independent commission
- Maine is the only state with indigent legal services funding as part of the court budget
- Work with Attorney General Mills on full revision of Criminal Code – this Commission could serve as an important partner

Solo practitioner, Searsport (written testimony) – the court-appointed bar can no longer operate effectively without oversight by an independent commission

- Besides the numerous conflicts of interest that arise with judges reviewing and approving vouchers, funding and oversight through the judicial branch has negatively impacted the quality and effectiveness of the constitutional rights of the people of the state – in short, the system is broken and we need reform
- Like many of my colleagues, I have seen my vouchers (at the rate of \$50 per hour for several years now) cut with rarely an explanation
- I have seen my out of pocket expenses go uncompensated without cause
- I have gone months without payment when the constitutionally required court appointed fund, within the judicial branch, is forced to compete with other judiciary expenses such as judges' and clerks' pay
- I am preparing for the same thing to happen this year
- We cannot fool ourselves into thinking that the representation of indigent individuals does not suffer when these things happen
- These issues as well as the lack of oversight and quality assurance from an independent commission have led to a constitutional crisis when it comes to indigent legal services in Maine
- Establishment of independent commission will not solve all these problems overnight, but a huge step in the right direction – if passed as an emergency, will immediately resolve the issues of conflict of interest, proper independence and separation from the judicial branch
- The next major step will be to make sure the right people are appointed to the Commission – not for political purposes, but people who are passionate about indigent legal services, individuals who have experience in this area and know what issues attorneys and clients face on a daily basis

Maine Civil Liberties Union (written testimony) – bill will ensure that Maine fulfills its constitutional obligation to provide adequate counsel to those charged with crimes

- No independent system is in place to ensure that counsel for indigent defendants is appointed on a timely basis
- No one is responsible for ensuring that poor people charged with crimes are assigned a lawyer who is up to the task – someone who has the time, the training and the resources to

make sure the innocent are not wrongly convicted and that everyone in the justice system is provided with the fair process they are due

- Right now it is complete luck whether Maine provides one of the best lawyers in the state or someone fresh out of law school looking for some on-the-job training
- A system of justice which subjects poor people to such arbitrary treatment is not worthy of the title “justice”
- This bill is an important step in remedying that inequality
- Shortcomings in our indigent defense programs are of concern to all Mainers who expect their criminal justice systems to produce fair and accurate results in the most cost-effective manner
- Studies have shown that between 80 and 90% of those accused of criminal wrongdoing must rely upon state indigent defense program
- Maine’s lack of independent oversight contaminates the entire criminal justice system
- The Sixth Amendment to the US Constitution guarantees that in all criminal prosecutions, the accused shall have “the assistance of counsel for his defense” – Gideon v. Wainwright rules that this constitutional guarantee requires states to provide counsel
- The right to counsel is not simply the right to have a person with a pinstripe suit and a pulse stand next to you at trial – effective assistance of counsel
- “partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free”
- Inadequate indigent defense programs are also a problem because they undermine public confidence in the criminal justice system
- To the extent inadequate and inefficient programs lead to wrongful convictions, unnecessary or prolonged pre-trial incarceration, sentences that are not commensurate with the crimes committed and legal errors, taxpayers pay the consequences
- Poorly performing indigent defense programs also jeopardize public safety – when the wrong person gets convicted, the real perpetrator goes free – in 132 of the 234 exonerations obtained by the Innocence Project with the use of DNA evidence, the actual criminal was never found and presumably they remain at large to commit more crimes
- Public safety also suffers when public defenders do not have the resources to advocate for the diversion of non-violent offenders away from jails and prisons into social service programs
- Public safety suffers when public defenders are unable to ensure that their clients receive sentences commensurate with their crimes – high rates of incarceration destroy social and family bonds that guide individuals away from crime
- Public opinion polls show that voters support a criminal justice system that delivers fair results and that they are willing to commit tax dollars necessary to accomplish this goal
- Poor people have just as much of a right as anyone else to fair treatment under the law, especially when the state is threatening to deprive them of their liberty or their family

Maine State Bar Association – support; also recognize that additional funding will be needed

- We want constitutionally required funding to not come out of the Judicial Branch budget
- We want attorneys to be paid timely, appropriate qualifications
- PROPOSED AMENDMENTS – will work on:
 - Establish an advisory board
 - Ability to appeal amount
 - Qualifications of executive director
 - No law enforcement or prosecutors on commission
 - Apparent disconnect between assigned lawyers and the commission – inherent

favoritism to court appointed attorneys

Maine Association of Criminal Defense Lawyers (written testimony) – support; MACDL members represent the vast majority of persons in the State who are accused of crimes and who are indigent

- Number of cases each year has increased, but the funding for representation has not risen at the same pace
- Problems have also developed in the present system and how vouchers for payment are approved
- Only way to address the funding issues is to establish a central authority to provide coordinated planning, oversight and management of indigent defense services through a commission
- Support conditioned on an amendment; PROPOSED AMENMDENT: allow one of the members of the commission to be appointed from a list of qualified potential appointees provided by MACDL – MACDL is a unique stakeholder in this process and has the skill and qualifications to select a highly-qualified appointee that will understand and appreciate the nature of criminal defense work in Maine
- People think indigent legal services is a gift to the poor – it is not, it is constitutionally required

Maine Trail lawyers Association (written testimony) – one of past presidents of MTLA served on the Commission

- The legislation establishes an independent authority for the funding of indigent criminal defense, eliminates an unwholesome conflict of interest with Maine’s Judicial System and eliminates the false budget choices for public administrators between funding the constitutional duty of indigent defense and funding the core operational capacity of the court system that provides a forum for such defense
- Recommendations are pragmatic and realistic

Opponents

None

Neither for nor against

None

FISCAL IMPACT:

Not determined as of 4/28/09

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1	MAINE COMMISSION ON INDIGENT LEGAL		
2	SERVICES		
3	DEPARTMENT TOTALS	2009-10	2010-11
4			
5	GENERAL FUND	\$262,784	\$10,462,841
6	OTHER SPECIAL REVENUE FUNDS	\$0	\$363,897
7			
8	DEPARTMENT TOTAL - ALL FUNDS	\$262,784	\$10,826,738

9	SECTION TOTALS	2009-10	2010-11
10			
11	GENERAL FUND	\$0	\$0
12	OTHER SPECIAL REVENUE FUNDS	\$0	\$0
13			
14	SECTION TOTAL - ALL FUNDS	\$0	\$0
15			

16 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
 17 section number to read consecutively.

18 **SUMMARY**

19 This amendment clarifies language in the emergency preamble and elsewhere in the
 20 bill to correctly describe when the State is obligated to provide indigent legal services.

21 This amendment revises language to maintain consistency throughout the bill with
 22 regard to quality indigent legal services.

23 This amendment clarifies that the Maine Commission on Indigent Legal Services
 24 designates assigned counsel.

25 This amendment requires the Governor, the Chief Justice of the Supreme Judicial
 26 Court, the President of the Senate and the Speaker of the House of Representatives, when
 27 making recommendations and appointments to the commission, to consider input from
 28 persons and organizations with an interest in the delivery of indigent legal services.

29 This amendment requires that the individuals appointed to the commission must
 30 have, in addition to the qualifications listed in the bill, the skills and knowledge required
 31 to ensure that quality representation is provided in each area of law.

32 This amendment revises the qualifications for the executive director of the Maine
 33 Commission on Indigent Legal Services to provide that the executive director must have
 34 experience in the legal field, including, but not limited to, the provision of indigent legal
 35 services, but need not be an attorney licensed in this State.

36 This amendment requires the commission to consider other programs necessary to
 37 provide quality and efficient indigent legal services and to recognize, when establishing
 38 minimum attorney qualifications, that quality representation in each of these types of
 39 cases requires counsel with experience and specialized training in that field.

COMMITTEE AMENDMENT

1 This amendment requires the commission to develop an administrative and review
2 process for attorneys who are aggrieved by a decision of the executive director.

3 This amendment provides that the commission's rules concerning standards
4 governing experience, training and other qualifications for contract counsel and assigned
5 counsel are major substantive rules and must be submitted to and reviewed by the joint
6 standing committee of the Legislature having jurisdiction over judiciary matters before
7 they take effect.

8 This amendment establishes the executive director as a major policy-influencing
9 position and sets the salary at range 52. This amendment authorizes payment of the
10 legislative per diem to 5 commission members, in addition to expenses.

11 This amendment also adds an appropriations and allocations section.

FISCAL NOTE REQUIRED

(See attached)

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Gideon Alert: New Mexico Voters Approve Independence of Public Defender

BY on Thursday, November 15, 2012 at 3:57 PM

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Public Defense Reform

Standards

State Public Defender

Among the recent election results, the passage of a Constitutional Amendment in New Mexico stands as a significant milestone in public defense reform. The state is now in compliance with Principle #1 of the ABA Ten Principles of a Public Defense Delivery System – that the “public defense function, including the selection, funding, and payment of defense counsel, is independent.”



Public defense in New Mexico has been administered through a state-funded system that delivers representation through a mixture of public defender offices and contract attorneys. However, until now, the chief Public Defender was appointed by the Governor, thus subject to partisan dismissal unrelated to quality or merit. The lack of independence of the defense function prevents assurances that quality of representation and allegiance to the constitution – rather than political motivation – drive the representation of accused citizens.

For example, as NLADA discussed in a previous post, Chief Public Defender Hugh Dangler was dismissed from his post in February 2011; the month after Governor Susana Martinez took office. Dismissals upon election of a new Governor were not new to the State and were their own cause for concern in ensuring the quality of a defender office. However, further raising concern among public defense advocates was that Mr. Dangler’s dismissal came one week after testimony before the state legislature. In his testimony, the Chief Defender was candid about inadequate funding and excessive caseloads, stating that if the 20% public defender vacancy rate was not addressed, a system breakdown could result. Regardless of whether this testimony was a causal factor in the Mr. Dangler’s departure, the potential for such reactive dismissals is inherent in a system that is not independent. Such removals cause disruption to the administration of the right to counsel, and serve as a looming threat against the honest and independent advocacy that is required to ensure consistent levels of quality, training, and funding.

Now – with the passage of constitutional amendment #5 by over 60% of the voters -- these concerns will no longer plague the public defenders or the individuals they represent. The amendment establishes the Public Defender Department as an independent state agency, and creates a Public Defender Commission to “exercise independent oversight of the department.” While work still lies ahead, including the drafting of legislation to comply with the amendment and direct its implementation, New Mexico stands in a far better position to advocate for the highest quality representation as the 50th anniversary of *Gideon v. Wainwright* approaches. A state coalition, “New Mexicans for Equal Justice,” led the campaign in support of the initiative.

The fact that the public strongly supported the amendment should serve as a welcome reminder that many citizens understand the vitally important role a well-functioning public defense system plays in ensuring fairness, public safety, and protection of the fundamental right to liberty.

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