

**MCILS**

**September 16, 2015  
Commissioner's Meeting  
Packet**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**SEPTEMBER 16, 2015  
COMMISSION MEETING  
JUDICIARY COMMITTEE ROOM, STATEHOUSE, AUGUSTA  
AGENDA**

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- 1) Approval of August 11, 2015 Commission Meeting Minutes
- 2) Operations Reports Review
- 3) Consideration of Provisional Adoption on amended Fee Schedule
- 4) Discussion of LD 1433
- 5) Contracts Discussion
- 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.)**  
**August 11, 2015**  
**Commission Meeting**  
**Minutes**

**Maine Commission on Indigent Legal Services – Commissioners Meeting  
August 11th, 2015**

**Minutes**

**Commissioners Present:** Steven Carey, Marvin Glazier, William Logan, Kenneth Spirer, Susan Roy  
**MCILS Staff Present:** John Pelletier, Lynne Nash, Katherine MacRae

<b>Agenda Item</b>	<b>Discussion</b>	<b>Outcome/Action Item/Responsible Party</b>
Approval of the July 14, 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 July 2015 Operations Reports. 2,085 new cases were opened in the DefenderData system in July. This was a 103 case decrease from June. The number of electronically submitted vouchers in July was 2,462, a decrease from 247 vouchers from June, totaling \$1,226,795.29, a decrease of \$223,000 from June. Director Pelletier noted that the number of vouchers submitted was almost right on the target submission number. In July, the Commission paid 1,857 electronic vouchers totaling \$942,844.10, representing a decrease of 1300 vouchers and \$738,000 from June. There was one paper voucher submitted and paid in July totaling \$213.50. The average price per voucher in July was \$507.57, down \$22.70 per voucher from June. As compared to the FY'15 year-end average of \$475.78, the average price per voucher was up 6.7%, reflecting the impact of the 9.1% increase in the hourly wage for work done on or after July 1, 2015. Director Pelletier also noted that the months of July through October have typically been the lowest months for costs. Appeal and Post-Conviction Review cases had the highest average vouchers in July. There were 5 vouchers exceeding \$5,000 paid in July. In the All Other Account, the total expenses for July were \$1,034,674.33. Of the amount, just over \$11,000 was devoted to the Commission's operating expenses. In the Personal Services Account, we had \$73,500.45 in	Executive Director John Pelletier

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>expenses for the month of July, including three two-week paychecks issued in July. In the Revenue Account, the monthly transfer from the Judicial Branch for counsel fees for July, which reflects June's collections, totaled \$54,101.64, down approximately \$15,000 from the previous month. Director Pelletier noted that this amount is slightly higher than last year's July collection total. In the Conference Account, the Commission paid a charge related to the April 1<sup>st</sup> criminal training, leaving a cash balance of \$12,481.84. There was no discussion of the Operations Reports.</p>	
<p>Report on Attorney Performance Evaluations</p>	<p>Katherine MacRae, legal intern for the Commission, presented a report to provide recommendations to the Commission for how to implement an attorney performance evaluation system that is currently lacking in Maine due to limited resources. She conducted a nationwide survey, resulting in thirteen states and two national organizations (NLADA and the Sixth Amendment Center) to produce two recommendations for the Commission: a comprehensive hybrid model and a minimum surveys and standards of practice model. Ms. MacRae recommends the Commission use a hybrid system of annual online surveys, robust Standards of Practice (including establishing documents for appellate and civil commitment case types), a formal mentoring program, a brief and motion bank, client complaint forms, the creation of a contracted and paid Supervising Attorney position in each county, and a system for data collection. This system will allow for objective and subjective monitoring of attorney performance, increase local involvement, allow for county-specific adaptation, and allows the system to remain independent from undue political interference. One downside to the recommended hybrid system, according to Ms. MacRae, is the increase in personnel and financial costs to implement this as a whole, but she strongly suggests that this will provide the most robust form of accountability and performance evaluations for assigned counsel. The minimum recommended system of surveys and Standards of Practice will provide a narrow, subjective review of attorney performance but could be implemented rather quickly and is not likely to require an increase in costs. Commissioner Carey noted that the Standards of Practice and brief and motion bank are two models that could be implemented rather quickly and without a lot of</p>	<p>Katherine MacRae, Legal Intern</p>

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>difficulty. He also stated that potentially working with DefenderData to collect information is a good idea. Director Pelletier noted concern regarding the reliability of the data if it is entered manually by the lawyers rather than collected electronically from the courts. Director Pelletier also noted that the creation of a paid Supervising Attorney position is a potential resource that the Commission should keep in mind as it considers other options. Commissioner Roy stated that there are a lot of benefits to the hybrid system and that conducting surveys and other methods using technology would allow for monitoring of attorneys without too much of an increase in costs (e.g. travel). Ms. MacRae drew the Commissioners attention to the Appendix where she noted that she created sample documents that could be used to create surveys and an in-person court observation form. Commissioner Carey encouraged all Commissioners to review the entire Report and thanked Ms. MacRae for her hard work.</p>	
Contracts Discussion	<p>Executive Director Pelletier suggested that the Commission think about more nuanced contracts rather than focusing on the Somerset County model. Director Pelletier recommends a good place to start thinking about implementing contracts are with specialized case types (e.g. Appeals) and in rural counties. Director Pelletier noted that the Court floated the idea in Aroostook but no one was interested. Director Pelletier stated that the materials available in the packet, including sample contracts provided by the NLADA and Wisconsin, and recommends continuing the discussion at the next meeting. Commissioner Glazier asked about the situation in Nevada regarding contracts. Director Pelletier stated that the problems in Nevada developed after the independent contracting body was changed by the legislature. Director Pelletier also noted that based on a conversation with the Director of the Sixth Amendment Center, contracts in general are not disfavored, but contracts done the wrong way (e.g. not controlling case loads, payments, providing for the funding of experts and investigators, etc.) do raise concern. Commissioner Carey asked the other Commissioners to look more thoroughly at the packet materials and requested that Director Pelletier look at what case types and practice areas would be appropriate for contracts. Commissioner Carey also noted that the Judicial Branch sent out an email about</p>	Executive Director John Pelletier

<b>Agenda Item</b>	<b>Discussion</b>	<b>Outcome/Action Item/Responsible Party</b>
	GALs hourly rate, considering increasing the rate of payment versus potential contract possibilities. Commissioner Glazier asked Director Pelletier if the Commission has received any questions or information about contracts. Director Pelletier stated that not by email but has had a few conversations by phone, although very rare.	
Public Comment	Rob Ruffner thanked Ms. MacRae for her work on the Performance Report and requested that the Commission take some time to review the report and consider the recommendations. Attorney Ruffner indicated that there is a need for more staff at the Commission and should ask the Legislature for more, stating that there are a number of things the Commission cannot accomplish because of staffing inadequacies. Attorney Ruffner gave an example of the changed collect-call system with jails and prisons that occurred without attorneys' knowledge. He also indicated that there are people interested in the idea of contracting with the Commission to provide indigent legal services and that there are some areas/counties where the Commission may be successful in creating a defense agency.	Robert Ruffner, Esq.
Set Date, Time, and Location of Next Meeting of the Commission	The next Commissioners Meeting is set for September 16, 2015 at 9:30 a.m.	
Executive Session	None	
Adjournment of meeting	The Commission voted to adjourn with the next meeting to be on September 16, 2015 at 9:30 a.m. with the location to be announced at a later date.	Commissioner Glazier moved to adjourn. Commissioner Logan seconded. All in favor.

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

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**TO:** MCILS COMMISSIONERS  
**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR  
**SUBJECT:** AUGUST 2015 OPERATIONS REPORTS  
**DATE:** SEPTEMBER 3, 2015

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Attached you will find the August, 2015 Operations Reports for your review and our discussion at the upcoming Commission meeting on September 16, 2015. A summary of the operations reports follows:

- 2,296 new cases were opened in the DefenderData system in August. This was a 210 case increase over July and represents the 2<sup>nd</sup> highest monthly total in the last twelve months.
- The number of vouchers submitted electronically in August was 2,429, a decrease of 33 vouchers from July, totaling \$1,254,443.86, an increase of \$28,000 from July. In August, we paid 2,479 electronic vouchers totaling \$1,268,550.09, representing an increase of 622 vouchers and \$326,000 from July.
- There was one paper vouchers submitted and paid in August totaling \$187.00.
- The average price per voucher in August was \$511.59, up \$4.02 per voucher over July.
- Appeal and Post-Conviction Review cases had the highest average vouchers in August. There were 6 vouchers exceeding \$5,000 paid in August. One voucher involved a month long triple Murder trial. The other five vouchers involved sex offense cases. Three of these cases involved trials, with a not guilty verdict in one. In one other case, the sex offense charges were dismissed in return for pleas to assault, and the final case involved serious mental illness and spanned three years in duration.

In our All Other Account, the total expenses for the month of August were \$1,384,090.42. Of the amount, just over \$10,000 was devoted to the Commission's operating expenses.

In the Personal Services Account, we had \$49,758.60 in expenses for the month of August.

In the Revenue Account, our monthly transfer from the Judicial Branch for counsel fees for the month of August, which reflects July's collections, totaled \$44,316.49, down approximately \$10,000 from the previous month.

In our Conference Account, we paid for training materials related to the June video replays, leaving a cash balance of \$11,974.05.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Case Type

8/31/2015

DefenderData Case Type	Aug-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	12	22	\$19,429.08	18	\$ 15,351.09	\$852.84	24	39	\$ 47,769.31	\$1,224.85
Child Protection Petition	122	345	\$205,582.81	381	\$ 239,565.97	\$628.78	269	641	\$ 393,907.40	\$614.52
Drug Court	1	5	\$3,240.50	5	\$ 3,909.00	\$781.80	2	13	\$ 5,985.00	\$460.38
Emancipation	8	5	\$1,534.75	7	\$ 2,924.43	\$417.78	14	21	\$ 6,261.54	\$298.17
Felony	629	554	\$462,585.84	560	\$ 459,819.27	\$821.11	1,148	975	\$ 808,301.71	\$829.03
Involuntary Civil Commitment	64	50	\$11,761.00	64	\$ 14,387.37	\$224.80	125	120	\$ 28,382.88	\$236.52
Juvenile	96	100	\$40,748.17	106	\$ 42,089.25	\$397.07	184	162	\$ 68,328.57	\$421.78
Lawyer of the Day - Custody	233	209	\$49,644.50	197	\$ 43,490.28	\$220.76	460	341	\$ 77,385.17	\$226.94
Lawyer of the Day - Juvenile	41	39	\$8,083.60	45	\$ 9,164.92	\$203.66	84	78	\$ 16,024.02	\$205.44
Lawyer of the Day - Walk-in	124	114	\$28,015.08	104	\$ 24,047.92	\$231.23	253	174	\$ 39,382.18	\$226.33
Misdemeanor	724	608	\$246,636.81	594	\$ 229,048.80	\$385.60	1,352	1,082	\$ 404,812.75	\$374.13
Petition, Modified Release Treatment	1	4	\$975.63	4	\$ 975.63	\$243.91	2	11	\$ 4,620.03	\$420.00
Petition, Release or Discharge	1	0		1	\$ 158.75	\$158.75	1	1	\$ 158.75	\$158.75
Petition, Termination of Parental Rights	22	45	\$36,287.39	42	\$ 30,598.12	\$728.53	31	71	\$ 48,589.36	\$684.36
Post Conviction Review	8	6	\$9,740.64	5	\$ 5,458.50	\$1,091.70	19	7	\$ 8,199.95	\$1,171.42
Probation Violation	175	151	\$55,865.56	168	\$ 63,927.37	\$380.52	343	305	\$ 112,459.24	\$368.72
Represent Witness on 5th Amendment	5	2	\$156.00	1	\$ 60.00	\$60.00	5	3	\$ 588.66	\$196.22
Review of Child Protection Order	28	170	\$74,146.50	177	\$ 83,573.42	\$472.17	51	291	\$ 140,171.17	\$481.69
Revocation of Administrative Release	1	0		0			5	1	\$ 66.50	\$66.50
<b>DefenderData Sub-Total</b>	<b>2,295</b>	<b>2,429</b>	<b>\$1,254,433.86</b>	<b>2,479</b>	<b>\$ 1,268,550.09</b>	<b>\$511.72</b>	<b>4,372</b>	<b>4,336</b>	<b>\$2,211,394.19</b>	<b>\$510.01</b>
<b>Paper Voucher Sub-Total</b>	<b>1</b>	<b>1</b>	<b>\$ 187.00</b>	<b>1</b>	<b>\$ 187.00</b>	<b>\$ 187.00</b>	<b>2</b>	<b>2</b>	<b>\$ 400.50</b>	<b>\$ 200.25</b>
<b>TOTAL</b>	<b>2,296</b>	<b>2,430</b>	<b>\$1,254,620.86</b>	<b>2,480</b>	<b>\$1,268,737.09</b>	<b>\$ 511.59</b>	<b>4,374</b>	<b>4,338</b>	<b>\$ 2,211,794.69</b>	<b>\$ 509.87</b>

MAINE COMMISSION ON INDIGENT LEGAL SERVICES  
 FY16 FUND ACCOUNTING  
 AS OF 08/31/2015

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		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustment		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustment		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustment		\$ -		\$ -		\$ -		\$ -	
<b>Total Budget Allotments</b>		<b>\$ 4,463,505.00</b>		<b>\$ 4,398,852.00</b>		<b>\$ 4,549,832.00</b>		<b>\$ 4,907,653.00</b>	<b>\$ 18,319,842.00</b>
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	\$ -	6	\$ -	9	\$ -	12	\$ -	\$ -
Encumbrances		\$ (236,875.00)		\$ -		\$ -		\$ -	\$ (236,875.00)
<b>TOTAL REMAINING</b>		<b>\$ 1,807,865.25</b>		<b>\$ 4,398,852.00</b>		<b>\$ 4,549,832.00</b>		<b>\$ 4,907,653.00</b>	<b>\$ 15,664,202.25</b>

Q1 Month 2 (as of 08/31/15)	
<b>INDIGENT LEGAL SERVICES</b>	
Counsel Payments	\$ (1,268,737.09)
Somerset County	\$ (22,687.50)
Subpoena Witness Fees	\$ (71.70)
Private Investigators	\$ (18,855.50)
Mental Health Expert	\$ (37,442.35)
Transcripts	\$ (8,026.00)
Other Expert	\$ (15,606.50)
Air fare-out of state witness	
Process Servers	\$ (1,827.12)
Interpreters	\$ (550.34)
Misc Prof Fees & Serv	\$ -
<b>SUB-TOTAL ILS</b>	<b>\$ (1,373,804.10)</b>
<b>OPERATING EXPENSES</b>	
Service Center	\$ -
DefenderData	\$ (4,633.00)
Risk Management	\$ -
Mileage/Tolls/Parking	\$ (1,664.65)
Mailing/Postage/Freight	\$ (521.56)
Registration Fees-John & Ellie	\$ -
Legal Ad	\$ (608.44)
Office Supplies/Equip.	\$ (176.73)
Cellular Phones	\$ (229.19)
Subscriptions	\$ -
Office Equipment Rental	\$ (280.88)
OIT/TELCO	\$ (2,171.87)
<b>SUB-TOTAL OE</b>	<b>\$ (10,286.32)</b>
<b>TOTAL</b>	<b>\$ (1,384,090.42)</b>

INDIGENT LEGAL SERVICES	
Q1 Allotment	\$ 4,463,505.00
Q1 Encumbrances for Somerset city PDP & Justice Works contracts	\$ (236,875.00)
Q1 Expenses as of 08/31/15	\$ (2,418,764.75)
Remaining Q1 Allotment as of 08/31/15	\$ 1,807,865.25

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**  
**FY16 FUND ACCOUNTING**  
As of 08/31/15

Account 014 95F Z112 01 (Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY14 Total
<b>Total Budget Allotments</b>		\$ 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		\$ -	4	\$ -		\$ -		\$ -	
<b>Total Budget Allotments</b>		\$ 180,124.00		\$ 180,124.00		\$ 180,124.00		\$ 180,125.00	\$ 720,497.00
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	\$ -	6	\$ -	9	\$ -	12	\$ -	
Promissory Note Payments		\$ -		\$ -		\$ -		\$ -	
<b>TOTAL REVENUE COLLECTED</b>		\$ 98,518.13		\$ -		\$ -		\$ -	\$ 98,518.13
Counsel Payments	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
<b>REMAINING ALLOTMENT</b>		\$ 180,124.00		\$ 180,124.00		\$ 180,124.00		\$ 180,125.00	\$ 720,497.00
Total Expenses	1	\$ (90.50)	4	\$ -	7	\$ -	10	\$ -	
	2	\$ (1.93)	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
<b>REMAINING CASH</b>		\$ 98,427.63		\$ -		\$ -		\$ -	\$ 98,427.63

Q1 Month 2 (as of 08/31/15)	
<b>DEFENDER DATA COUNSEL PAYMENTS</b>	
	\$ -
<b>SUB-TOTAL ILS</b>	
<b>OVERPAYMENT REIMBURSEMENTS</b>	\$ (244.00)
Paper Voucher	\$ -
Somerset County CDs	\$ -
Private Investigators	\$ -
Mental Health Expert	\$ -
Transcripts	\$ -
Other Expert	\$ -
State Cap Expense	\$ (1.93)
<b>SUB-TOTAL OE</b>	\$ (245.93)
<b>TOTAL</b>	\$ (245.93)

INDIGENT LEGAL SERVICES	
FY16 Q1 Allotment	\$ 720,497.00
FY15 Carry Forward	\$ 59,106.00
YTD Collected Revenue	\$ 98,518.13
YTD Expenses	\$ (92.43)
YTD Overpayment Reimbursements	\$ (2,638.19)
YTD Counsel Payments	\$ -
Q1 Remaining Unexpended Cash	\$ 154,893.51

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**  
**FY16 FUND ACCOUNTING**  
As of 08/31/15

Account 014 95F Z112 02 (Conference)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY16 Total
<b>Total Budget Allotments</b>		\$ 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	\$ -	
Budget Order Adjustment	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
<b>Total Budget Allotments</b>		\$ 10,385.00		\$ 15,000.00		\$ 15,000.00		\$ 20,000.00	\$ (60,385.00)
Collected Revenue	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Collected Revenue	2	\$ 22.50	5	\$ -	8	\$ -	11	\$ -	
Collected Revenue	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
<b>TOTAL REVENUE COLLECTED</b>		\$ 22.50		\$ -		\$ -		\$ -	\$ 22.50
Total Expenses	1	\$ (99.00)	4	\$ -	7	\$ -	10	\$ -	
	2	\$ (530.29)	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
<b>REMAINING ALLOTMENT</b>		\$ 10,286.00		\$ 15,000.00		\$ 15,000.00		\$ 20,000.00	\$ 60,286.00
<b>REMAINING CASH (CARRY OVER)</b>		\$ 11,974.05		\$ -		\$ -		\$ -	\$ 11,974.05

Q1 Month 2 (as of 08/31/15)	
Training Manuals Printing	\$ (528.18)
Training Refreshments/Meals	\$ -
Speaker Hotel Room & Lodging	\$ -
Refund(s) for non-attendance	\$ -
Office Supplies	\$ -
CLE App to the Bar	\$ -
State Cap Expense	\$ (2.11)
<b>SUB-TOTAL OE</b>	\$ (530.29)
<b>TOTAL</b>	\$ (530.29)

INDIGENT LEGAL SERVICES	
FY16 Q1 Allotment	\$ 60,385.00
FY15 Carry Forward	\$ 12,580.84
YTD Collected Revenue	\$ 22.50
YTD Expenses	\$ (629.29)
	\$ -
<b>Q1 Remaining Unexpended Cash</b>	\$ 11,974.05

MAINE COMMISSION ON INDIGENT LEGAL SERVICES  
 FY16 FUND ACCOUNTING  
 AS OF 08/31/2015

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				\$ -		\$ -		\$ -	
<b>Total Budget Allotments</b>		<b>\$ 197,643.00</b>		<b>\$ 197,641.00</b>		<b>\$ 174,658.00</b>		<b>\$ 181,575.00</b>	<b>\$ 751,517.00</b>
Total Expenses	1	\$ (73,500.45)	4	\$ -	7	\$ -	10	\$ -	
	2	\$ (49,758.60)	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
<b>TOTAL REMAINING</b>		<b>\$ 74,383.95</b>		<b>\$ 197,641.00</b>		<b>\$ 174,658.00</b>		<b>\$ 181,575.00</b>	<b>\$ 628,257.95</b>

Q1 Month 2 (as of 08/31/15)	
Per Diem Payments	\$ (275.00)
Salary	\$ (21,338.64)
Vacation Pay	\$ (1,177.43)
Holiday Pay	\$ -
Sick Pay	\$ (775.52)
Employee Hlth Svs/Workers Comp	\$ (74.00)
Health Insurance	\$ (12,530.21)
Dental Insurance	\$ (229.79)
Employer Retiree Health	\$ (2,697.59)
Employer Retirement	\$ (1,795.85)
Employer Group Life	\$ (185.38)
Employer Medicare	\$ (361.21)
Retiree Unfunded Liability	\$ (4,606.70)
Retro Pymt	\$ (1,407.60)
Perm Part Time Full Ben	\$ (2,303.68)
<b>TOTAL</b>	<b>\$ (49,758.60)</b>

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Court

8/31/2015

Court	Aug-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	119	151	\$112,201.27	176	\$ 134,478.95	\$764.08	197	323	\$ 258,054.44	\$798.93
AUBSC	37	83	\$52,259.49	91	\$ 47,348.29	\$520.31	94	151	\$ 84,712.61	\$561.01
AUGDC	33	78	\$36,529.32	75	\$ 37,183.64	\$495.78	91	136	\$ 62,281.57	\$457.95
AUGSC	58	85	\$59,641.08	66	\$ 50,052.86	\$758.38	101	144	\$ 93,516.60	\$649.42
BANDC	68	102	\$40,481.60	88	\$ 33,809.46	\$384.20	116	152	\$ 53,261.70	\$350.41
BANSC	1	1	\$62.50	3	\$ 1,132.40	\$377.47	5	7	\$ 1,937.65	\$276.81
BATSC	0	2	\$1,249.50	1	\$ 328.50	\$328.50	0	2	\$ 418.25	\$209.13
BELDC	6	29	\$18,142.60	37	\$ 17,629.04	\$476.46	11	66	\$ 24,733.29	\$374.75
BELSC	2	14	\$6,471.71	20	\$ 6,819.50	\$340.98	6	36	\$ 18,062.25	\$501.73
BIDDC	76	89	\$40,341.50	96	\$ 44,083.95	\$459.21	166	177	\$ 85,307.44	\$481.96
BRIDC	9	16	\$7,738.10	26	\$ 11,841.05	\$455.43	22	40	\$ 20,763.28	\$519.08
CALDC	4	13	\$8,168.65	25	\$ 21,202.23	\$848.09	12	32	\$ 22,655.58	\$707.99
CARDC	18	24	\$13,074.12	18	\$ 9,444.69	\$524.71	35	46	\$ 24,573.71	\$534.21
CARSC	13	38	\$24,989.20	43	\$ 27,454.45	\$638.48	48	69	\$ 42,023.37	\$609.03
DOVDC	2	20	\$4,025.00	10	\$ 3,365.80	\$336.58	4	19	\$ 6,085.22	\$320.27
DOVSC	0	0		0			1	0		
ELLDC	16	45	\$24,229.86	72	\$ 31,490.00	\$437.36	32	114	\$ 52,598.00	\$461.39
ELLSC	1	4	\$921.50	4	\$ 894.50	\$223.63	3	13	\$ 3,220.68	\$247.74
FARDC	7	9	\$5,506.09	9	\$ 4,956.96	\$550.77	16	21	\$ 14,447.11	\$687.96
FARSC	0	1	\$1,597.94	0			1	2	\$ 180.40	\$90.20
FORDC	4	14	\$4,510.50	5	\$ 1,573.50	\$314.70	14	15	\$ 6,631.28	\$442.09
HOUDC	40	46	\$17,998.54	66	\$ 26,847.70	\$406.78	81	94	\$ 36,929.13	\$392.86
HOUSC	4	10	\$4,143.59	9	\$ 5,489.35	\$609.93	20	24	\$ 14,286.80	\$595.28
LEWDC	118	128	\$55,651.63	142	\$ 63,068.91	\$444.15	234	250	\$ 107,100.76	\$428.40
LINDC	10	15	\$8,853.34	12	\$ 4,939.35	\$411.61	21	19	\$ 7,187.83	\$378.31
MACDC	12	20	\$5,871.00	22	\$ 6,282.00	\$285.55	34	50	\$ 15,837.04	\$316.74
MACSC	4	12	\$4,728.10	7	\$ 2,865.30	\$409.33	13	13	\$ 4,718.90	\$362.99
MADDC	1	2	\$405.36	3	\$ 585.36	\$195.12	8	6	\$ 1,628.22	\$271.37
MILDC	5	2	\$465.64	2	\$ 495.64	\$247.82	8	2	\$ 495.64	\$247.82
NEWDC	11	18	\$6,314.50	24	\$ 8,093.94	\$337.25	36	51	\$ 17,640.68	\$345.90
PORDC	81	130	\$63,693.20	132	\$ 60,530.89	\$458.57	151	210	\$ 104,705.00	\$498.60
PORSC	5	4	\$3,263.75	3	\$ 3,872.75	\$1,290.92	11	3	\$ 3,872.75	\$1,290.92
PREDC	28	42	\$14,410.48	32	\$ 13,250.49	\$414.08	40	89	\$ 32,093.33	\$360.60
RODC	13	31	\$16,078.49	35	\$ 16,903.74	\$482.96	30	60	\$ 23,421.23	\$390.35
ROCSC	5	12	\$22,848.52	17	\$ 10,652.70	\$626.63	15	30	\$ 17,962.20	\$598.74
RUMDC	20	13	\$3,873.90	19	\$ 6,757.56	\$355.66	37	32	\$ 12,034.74	\$376.09
SKODC	5	43	\$19,221.43	47	\$ 21,213.13	\$451.34	18	79	\$ 33,678.55	\$426.31
SKOSC	0	1	\$370.00	0			1	1	\$ 364.00	\$364.00
SOUDC	16	22	\$10,703.60	37	\$ 11,146.40	\$301.25	39	54	\$ 16,631.65	\$307.99
SOUSC	24	37	\$25,548.17	41	\$ 25,185.33	\$614.28	51	62	\$ 32,474.74	\$523.79
SPRDC	64	79	\$38,326.46	71	\$ 37,685.31	\$530.78	124	112	\$ 61,116.11	\$545.68
Law Ct	9	14	\$13,249.59	13	\$ 11,937.51	\$918.27	19	27	\$ 36,028.08	\$1,334.37
YORCD	147	13	\$3,962.60	10	\$ 2,882.60	\$288.26	177	11	\$ 3,512.26	\$319.30
AROCD	29	3	\$582.00	2	\$ 420.00	\$210.00	34	2	\$ 420.00	\$210.00
ANDCD	99	9	\$2,051.40	7	\$ 1,637.40	\$233.91	165	8	\$ 1,889.40	\$236.18
KENCD	111	62	\$20,419.23	42	\$ 11,488.22	\$273.53	231	88	\$ 23,476.39	\$266.78
PENCD	202	207	\$107,547.65	228	\$ 124,908.61	\$547.84	380	361	\$ 190,150.18	\$526.73
SAGCD	24	26	\$15,926.14	22	\$ 11,001.85	\$500.08	48	38	\$ 20,574.85	\$541.44
WALCD	32	16	\$5,349.18	14	\$ 4,372.18	\$312.30	54	29	\$ 8,626.18	\$297.45
PISCD	16	12	\$3,448.00	19	\$ 10,746.76	\$565.62	26	32	\$ 16,088.80	\$502.78
HANCD	47	47	\$17,287.29	58	\$ 22,364.50	\$385.59	116	89	\$ 34,577.39	\$388.51
FRACD	79	30	\$10,453.63	33	\$ 12,617.50	\$382.35	128	74	\$ 29,864.64	\$403.58
WASCD	30	4	\$678.00	2	\$ 378.00	\$189.00	37	2	\$ 378.00	\$189.00
CUMCD	344	312	\$172,887.74	261	\$ 154,136.91	\$590.56	632	470	\$ 277,601.19	\$590.64
KN OCD	42	36	\$14,617.94	36	\$ 11,946.41	\$331.84	100	50	\$ 15,555.67	\$311.11
SOMCD	2	1	\$2,370.80	2	\$ 2,627.80	\$1,313.90	2	3	\$ 2,879.30	\$959.77
OXFCD	45	12	\$2,610.00	6	\$ 1,260.00	\$210.00	69	7	\$ 1,590.00	\$227.14
LINCD	38	20	\$11,254.46	14	\$ 7,267.95	\$519.14	60	26	\$ 11,611.71	\$446.60
WATDC	8	36	\$18,883.27	40	\$ 21,603.51	\$540.09	38	60	\$ 30,908.74	\$515.15
WESDC	27	37	\$19,689.40	31	\$ 15,014.33	\$484.33	48	62	\$ 29,306.39	\$472.68
WISDC	8	17	\$8,661.33	22	\$ 11,082.26	\$503.74	21	32	\$ 14,280.49	\$446.27
WISSC	4	12	\$9,027.38	15	\$ 9,766.82	\$651.12	11	33	\$ 29,450.70	\$892.45
YORDC	12	18	\$8,565.60	16	\$ 8,133.35	\$508.33	29	26	\$ 12,980.10	\$499.23
<b>TOTAL</b>	<b>2,295</b>	<b>2,429</b>	<b>\$1,254,433.86</b>	<b>2,479</b>	<b>\$ 1,268,550.09</b>	<b>\$511.72</b>	<b>4,372</b>	<b>4,336</b>	<b>\$2,211,394.19</b>	<b>\$510.01</b>

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

**Number of Attorneys Rostered by Court**

**08/31/2015**

<b>Court</b>	<b>Rostered Attorneys</b>	<b>Court</b>	<b>Rostered Attorneys</b>
Augusta District Court	101	South Paris District Court	68
Bangor District Court	58	Springvale District Court	126
Belfast District Court	51	Unified Criminal Docket Alfred	113
Biddeford District Court	140	Unified Criminal Docket Aroostook	23
Bridgton District Court	108	Unified Criminal Docket Auburn	117
Calais District Court	13	Unified Criminal Docket Augusta	95
Caribou District Court	19	Unified Criminal Docket Bangor	60
Dover-Foxcroft District Court	27	Unified Criminal Docket Bath	96
Ellsworth District Court	44	Unified Criminal Docket Belfast	45
Farmington District Court	26	Unified Criminal Docket Dover-Foxcroft	23
Fort Kent District Court	11	Unified Criminal Docket Ellsworth	38
Houlton District Court	17	Unified Criminal Docket Farmington	28
Lewiston District Court	142	Unified Criminal Docket Machias	17
Lincoln District Court	31	Unified Criminal Docket Portland	152
Machias District Court	19	Unified Criminal Docket Rockland	44
Madawaska District Court	12	Unified Criminal Docket Skowhegan	20
Millinocket District Court	21	Unified Criminal docket Soputh Paris	112
Newport District Court	38	Unified Criminal Docket Wiscasset	74
Portland District Court	163	Waterville District Court	58
Presque Isle District Court	15	West Bath District Court	114
Rockland District Court	51	Wiscasset District Court	83
Rumford District Court	27	York District Court	114
Skowhegan District Court	31		

**(3.)**  
**Consideration of**  
**Provisional Adoption on**  
**amended Fee Schedule**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**TO:** MCILS COMMISSIONERS  
**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR  
**CC:** ELLIE BROGAN, DEPUTY EXECUTIVE DIRECTOR  
**SUBJECT:** PROVISIONAL ADOPTION OF FEE SCHEDULE AMENDMENT  
**DATE:** SEPTEMBER 3, 2015

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In August, the Commission held a public hearing on a proposed amendment to Chapter 301, the fee schedule, setting the hourly rate at \$60/hr. This amendment is necessary as a follow-on to the emergency amendment to the fee schedule that is currently in effect.

As Chapter 301 is a major-substantive rule, the proposal is now in order for provisional adoption. For your consideration, attached is the proposed amendment showing track changes. Also attached is a summary of public comments received on this amendment and a draft Commission response to those comments.

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

### **Proposed Rule – Amendment to Chapter 301: Fee Schedule and Administrative Procedures for Payment of Commission Assigned Counsel**

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

- 1.) Although the Commission should adopt the proposed rule, the proposed rate remains too low. When paid benefits and staff support are considered, achieving parity with the compensation and support available to prosecuting attorneys would require an hourly rate exceeding \$100/hr. A rate of \$60.00 continues to be insufficient for attorneys to adequately staff their offices and pay benefits to themselves and their staff. The Commission needs to continue working to convince the Legislature to further increase the rate paid to assigned counsel. Robert J. Ruffner, Esq., Director, MIDC.**

#### **MCILS Response:**

The Commission shares the commentators' concern that \$60.00/hr. does not constitute truly adequate compensation for the work performed by assigned counsel. Nevertheless, the proposed rule is based on Legislative approval of a second \$5/hr. increase to the hourly rate in as many years, after that rate had remained unchanged for 15 years. Progress is being made, and the Commission remains committed to working with the Legislature to secure further increases to the hourly rate to achieve parity with compensation provided to attorneys for the state.

Commentators:<sup>1</sup>

Robert J. Ruffner, Esq., Director, Maine Indigent Defense Center.

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<sup>1</sup> Comments were submitted orally at the public hearing held on August 11, 2015.

**94-649 MAINE COMMISSION ON INDIGENT LEGAL SERVICES****Chapter 301: FEE SCHEDULE AND ADMINISTRATIVE PROCEDURES FOR PAYMENT OF COMMISSION ASSIGNED COUNSEL**

**Summary:** This Chapter establishes a fee schedule and administrative procedures for payment of Commission assigned counsel. The Chapter sets a standard hourly rate and maximum fee amounts for specific case types. The Chapter also establishes rules for the payment of mileage and other expenses that are eligible for reimbursement by the Commission. Finally, this Chapter requires that, unless an attorney has received prior authorization to do otherwise, all vouchers must be submitted using the MCILS electronic case management system.

**SECTION 1. DEFINITIONS**

1. **Attorney.** "Attorney" means an attorney licensed to practice law in the State of Maine.
2. **MCILS or Commission.** "MCILS" or "Commission" means the Commissioners of the Maine Commission on Indigent Legal Services.
3. **Executive Director.** "Executive Director" means the Executive Director of MCILS or the Executive Director's decision making designee.

**SECTION 2. HOURLY RATE OF PAYMENT**

Effective July 1, 2013:

~~A rate of Fifty Dollars (\$50.00) per hour is authorized for time spent on an assigned case.~~

Effective July 1, 2014:

~~A rate of Fifty Five Dollars (\$55.00) per hour is authorized for time spent on an assigned case.~~

Effective July 1, 2015:

A rate of Sixty Dollars (\$60.00) per hour is authorized for time spent on an assigned case.

**SECTION 3. EXPENSES**

1. **Routine Office Expenses.** Routine Office expenses are considered to be included in the hourly rate. Routine office expenses, including but not limited to postage, express postage, regular telephone, cell telephone, fax, office overhead, utilities, secretarial services, routine copying (under 100 pages), local phone calls, parking (except as stated below), and office supplies, etc., will not be reimbursed.
2. **Itemized Non-Routine Expenses.** Itemized non-routine expenses, such as discovery from the State or other agency, long distance calls (only if billed for long distance calls

by your phone carrier), collect phone calls, extensive copying (over 100 pages), printing/copying/ binding of legal appeal brief(s), relevant in-state mileage (as outlined below), tolls (as outlined below), and fees paid to third parties. Necessary parking fees associated with multi-day trials and hearings will be reimbursed, but must be approved in advance by the Executive Director.

3. **Travel Reimbursement.** Mileage reimbursement shall not exceed the applicable State rate. Mileage reimbursement will be paid for travel to and from courts other than an attorney's home district and superior court. Mileage reimbursement will not be paid for travel to and from an attorney's home district and superior courts. Tolls will be reimbursed, except that tolls will not be reimbursed for travel to and from attorney's home district and superior court. All out-of-state travel or any overnight travel must be approved by the MCILS in writing prior to incurring the expense. Use of the telephone, video equipment, and email in lieu of travel is encouraged as appropriate.
4. **Itemization of Claims.** Claims for all expenses must be itemized.
5. **Discovery Materials.** The MCILS will reimburse only for one set of discovery materials. If counsel is permitted to withdraw, appropriate copies of discovery materials must be forwarded to new counsel forthwith.
6. **Expert and Investigator Expenses.** Other non-routine expenses for payment to third parties, which historically required preapproval by the Court before July 1, 2010 (e.g., investigators, interpreters, medical and psychological experts, testing, depositions, etc.) are required to be approved in advance by MCILS. Funds for third-party services will be provided by the MCILS only upon written request and a sufficient demonstration of reasonableness, relevancy, and need in accordance with the MCILS rules and procedures governing requests for funds for experts and investigators. See Chapter 302 Procedures Regarding Funds for Experts and Investigators.
7. **Witness, Subpoena, and Service Fees.** In criminal and juvenile cases, witness, subpoena, and service fees will be reimbursed only pursuant to M.R. Crim. P. 17(b). It is unnecessary for counsel to advance these costs, and they shall not be included as a voucher expense. Fees for service of process by persons other than the sheriff shall not exceed those allowed by 30-A M.R.S. § 421. The same procedure shall be followed in civil cases.

#### SECTION 4. MAXIMUM FEES

Vouchers submitted for amounts greater than the applicable maximum fees outlined in this section will not be approved for payment, except as approved by the Executive Director:

1. **Trial Court Criminal Fees**
  - A. Maximum fees, excluding any itemized expenses, are set in accordance with this subsection. Counsel must provide MCILS with written justification for any voucher that exceeds the maximum fee limit.

Effective July 1, 2013:

- 1) ~~Murder. Fee to be set by the Executive Director on a case by case basis.~~
- 2) ~~Class A. \$2,500~~
- 3) ~~Class B and C (against person). \$1,875~~
- 4) ~~Class B and C (against property). \$1,250~~
- 5) ~~Class D and E (Superior or Unified Criminal Court). \$625~~
- 6) ~~Class D and E (District Court). \$450~~
- 7) ~~Post-Conviction Review. \$1,000~~
- 8) ~~Probation Revocation. \$450~~
- 9) ~~Miscellaneous (i.e. witness representation on 5<sup>th</sup> Amendment grounds, etc.) \$450~~
- 10) ~~Juvenile. \$450~~

Effective July 1, 2014:

- 1) ~~Murder. Fee to be set by the Executive Director on a case by case basis.~~
- 2) ~~Class A. \$2,750~~
- 3) ~~Class B and C (against person). \$2,062.50~~
- 4) ~~Class B and C (against property). \$1,375~~
- 5) ~~Class D and E (Superior or Unified Criminal Court). \$687.50~~
- 6) ~~Class D and E (District Court). \$495~~
- 7) ~~Post-Conviction Review. \$1,100~~
- 8) ~~Probation Revocation. \$495~~
- 9) ~~Miscellaneous (i.e. witness representation on 5<sup>th</sup> Amendment grounds, etc.) \$495~~
- 10) ~~Juvenile. \$495~~

Effective July 1, 2015:

- 1) Murder. Fee to be set by the Executive Director on a case by case basis.

- 2) Class A. \$3,000
- 3) Class B and C (against person). \$2,250
- 4) Class B and C (against property). \$1,500
- 5) Class D and E (Superior or Unified Criminal Court). \$750
- 6) Class D and E (District Court). \$540
- 7) Post-Conviction Review. \$1,200
- 8) Probation Revocation. \$540
- 9) Miscellaneous (i.e. witness representation on 5<sup>th</sup> Amendment grounds, etc.) \$540
- 10) Juvenile. \$540

- B. In cases involving multiple counts against a single defendant, the maximum fee shall be that which applies to the most serious count. In cases where a defendant is charged with a number of unrelated offenses, Counsel is expected to coordinate and consolidate services as much as possible.
- C. Criminal and juvenile cases will include all proceedings through disposition as defined in Section 5.1.A below. Any subsequent proceedings, such as probation revocation, will require new application and appointment.
- D. When doing so will not adversely affect the attorney-client relationship, Commission-assigned counsel are urged to limit travel and waiting time by cooperating with each other to stand in at routine, non-dispositive matters by having one attorney appear at such things as arraignments and routine non-testimonial motions, instead of having all Commission-assigned counsel in an area appear.
- E. Upon written request to MCILS, assistant counsel may be appointed in a murder case or other complicated cases:
  - 1) the duties of each attorney must be clearly and specifically defined and counsel must avoid unnecessary duplication of effort;
  - 2) each attorney must submit a voucher to MCILS. Counsel should coordinate the submission of voucher so that they can be reviewed together. Co-counsel who practice in the same firm may submit a single voucher that reflects the work done by each attorney.

## 2. District Court Child Protection

- A. Maximum fees, excluding any itemized expenses, for Commission-assigned counsel in child protective cases are set in accordance with the following schedule:

Effective July 1, 2013:

- ~~1) Child protective cases (each stage). \$750~~  
~~2) Termination of Parental Rights (with a hearing). \$1,050~~

Effective July 1, 2014:

- ~~1) Child protective cases (each stage). \$825~~  
~~2) Termination of Parental Rights (with a hearing). \$1,155~~

- ~~B. Counsel must provide MCILS with written justification for any voucher that exceeds the maximum fee limit. Each child protective stage ends when a proceeding results in a court order as defined in Section 5.1.B below. Each distinct stage in on-going child protective cases shall be considered a new appointment for purposes of the maximum fee. A separate voucher must be submitted at the end of each stage.~~

Effective July 1, 2015:

- 1) Child protective cases (each stage). \$900  
2) Termination of Parental Rights (with a hearing). \$ 1,260

- B. Counsel must provide MCILS with written justification for any voucher that exceeds the maximum fee limit. Each child protective stage ends when a proceeding results in a court order as defined in Section 5.1.B below. Each distinct stage in on-going child protective cases shall be considered a new appointment for purposes of the maximum fee. A separate voucher must be submitted at the end of each stage.

### 3. Other District Court Civil

- A. Maximum fees, excluding any itemized expenses, are set in accordance with this subsection. Counsel must provide MCILS with written justification for any voucher that exceeds the maximum fee limit.

Effective July 1, 2013:

- ~~1) Application for Involuntary Commitment. \$350~~  
~~2) Petition for Emancipation. \$350~~

~~3) Petition for Modified Release Treatment. \$350~~

~~4) Petition for Release or Discharge. \$350~~

~~Effective July 1, 2014:~~

~~1) Application for Involuntary Commitment. \$385~~

~~2) Petition for Emancipation. \$385~~

~~3) Petition for Modified Release Treatment. \$385~~

~~4) Petition for Release or Discharge. \$385~~

~~Effective July 1, 2015:~~

~~1) Application for Involuntary Commitment. \$420~~

~~2) Petition for Emancipation. \$420~~

~~3) Petition for Modified Release Treatment. \$420~~

~~4) Petition for Release or Discharge. \$420~~

#### 4. Law Court

- A. Maximum fees, excluding any itemized expenses, for Commission-assigned counsel are set in accordance with the following schedule:

~~Effective July 1, 2013:~~

~~1) Appellate work following the grant of petition for certificate of probable cause. \$1,000~~

~~Effective July 1, 2014:~~

~~1) Appellate work following the grant of petition for certificate of probable cause. \$1,100~~

- ~~B. Expenses shall be reimbursed for printing costs and mileage to oral argument at the applicable state rate. Vouchers for payment of counsel fees and expenses must be submitted, including an itemization of time spent.~~

~~Effective July 1, 2015:~~

1) Appellate work following the grant of petition for certificate of probable cause. \$1,200

- B. Expenses shall be reimbursed for printing costs and mileage to oral argument at the applicable state rate. Vouchers for payment of counsel fees and expenses must be submitted, including an itemization of time spent.

## SECTION 5: MINIMUM FEES

Effective July 1, 2013:

1. ~~Attorneys may charge a minimum fee of \$125 for appearance as Lawyer of the Day. Vouchers seeking the minimum fee shall show the actual time expended and the size of the minimum fee adjustment rather than simply stating that the minimum fee is claimed. In addition to previously scheduled representation at initial appearance sessions, Lawyer of the Day representation includes representation of otherwise unrepresented parties at the specific request of the court on a matter that concludes the same day. Only a single minimum fee may be charged regardless of the number of clients consulted at the request of the court.~~

Effective July 1, 2014:

1. ~~Attorneys may charge a minimum fee of \$137.50 for appearance as Lawyer of the Day. Vouchers seeking the minimum fee shall show the actual time expended and the size of the minimum fee adjustment rather than simply stating that the minimum fee is claimed. In addition to previously scheduled representation at initial appearance sessions, Lawyer of the Day representation includes representation of otherwise unrepresented parties at the specific request of the court on a matter that concludes the same day. Only a single minimum fee may be charged regardless of the number of clients consulted at the request of the court.~~

Effective July 1, 2015:

1. Attorneys may charge a minimum fee of \$150.00 for appearance as Lawyer of the Day. Vouchers seeking the minimum fee shall show the actual time expended and the size of the minimum fee adjustment rather than simply stating that the minimum fee is claimed. In addition to previously scheduled representation at initial appearance sessions, Lawyer of the Day representation includes representation of otherwise unrepresented parties at the specific request of the court on a matter that concludes the same day. Only a single minimum fee may be charged regardless of the number of clients consulted at the request of the court.

## SECTION 6: ADMINISTRATION

1. Vouchers for payment of counsel fees and expenses shall be submitted within ninety days after the date of disposition of a criminal, juvenile or appeals case, or completion of a stage of a child protection case resulting in an order. Vouchers submitted more than ninety days after final disposition, or completion of a stage of a child protection case, shall not be paid.
  - A. For purposes of this rule, "disposition" of a criminal or juvenile case shall be at the following times:
    - 1) entry of judgment (sentencing, acquittal, dismissal, or filing);
    - 2) upon entry of a deferred disposition;
    - 3) upon issuance of a warrant of arrest for failure to appear;
    - 4) upon granting of leave to withdraw;
    - 5) upon decision of any post-trial motions;
    - 6) upon completion of the services the attorney was assigned to provide (e.g., mental health hearings, "lawyer of the day," bail hearings, etc.); or
    - 7) specific authorization of the Executive Director to submit an interim voucher.
  - B. For purposes of this rule, "each stage" of a child protection case shall be:
    - 1) Order after Summary Preliminary hearing or Agreement
    - 2) Order after Jeopardy Hearing
    - 3) Order after each Judicial Review
    - 4) Order after a Cease Reunification Hearing
    - 5) Order after Permanency Hearing
    - 6) Order after Termination of Parental Rights Hearing
    - 7) Law Court Appeal
2. Unless otherwise authorized in advance, all vouchers must be submitted using the MCILS electronic case management program and comply with all instructions for use of the system.
3. All time on vouchers shall be detailed and accounted for in .10 of an hour increments. The purpose for each time entry must be self-evident or specifically stated. Use of the comment section is recommended.

4. All expenses claimed for reimbursement must be fully itemized on the voucher. Copies of receipts for payments to third parties shall be retained and supplied upon request.
  5. Legal services provided in the district court for cases subsequently transferred to the superior court shall be included in the voucher submitted to the MCILS at disposition of the case.
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STATUTORY AUTHORITY: 4 M.R.S. §§ 1804(2)(F), (3)(B), (3)(F) and (4)(D)

EFFECTIVE DATE:

August 21, 2011 – filing 2011-283

AMENDED:

March 19, 2013 – filing 2013-062

July 1, 2013 – filing 2013-150 (EMERGENCY)

October 5, 2013 – filing 2013-228

EFFECTIVE DATE:

**(4.)**  
**Discussion of LD 1433**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**TO:** MCILS COMMISSIONERS  
**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR  
**CC:** ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR  
**SUBJECT:** LD 1433  
**DATE:** July 9, 2015

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Attached is a memo prepared by Katherine MacRae, Legal Intern, that provides a side by side comparison of the provisions of current law and the provisions contained in LD 1433, together with a copy of LD 1433 and a copy of the 10 Principles of Indigent Defense promulgated by the American Bar Association.

**COMPARISON:**

**CURRENT LAW**

**PROPOSED LAW**

	<p><b>Current Legislation: 4 M.R.S.A. c. 37, MCILS Established</b></p>	<p><b>Proposed Legislation, LD 1433: To Create the Public Defender Office and Amend the Duties of the Commission on Indigent Legal Services</b></p>
<p><b>Purposes</b></p>	<p>§1801—MCILS is an independent commission with the purpose of providing high-quality representation by qualified and competent counsel, managed in a fiscally responsible manner that is free from undue political interference (e.g. conflict with the Judicial branch for payment of counsel)</p>	<ul style="list-style-type: none"> <li>• Provide effective assistance of counsel that is free from undue political interference and conflict</li> <li>• Provide quality and competent indigent representation</li> <li>• Establish a system of state employees, contract counsel and others that is responsive to and respectful of regional and community needs</li> <li>• Ensure that the system is managed in a fiscally responsible manner</li> <li>• Ensure a Public Defender system pay reasonable costs for services provided based on a person’s financial ability to pay</li> </ul>
<p><b>MCILS Duties</b></p>	<p>To provide oversight of qualified and competent representation of indigent persons</p>	<p>§1801: Provide oversight of the Office of the Public Defender to ensure efficient, high-quality representation to indigent persons while working with the Chief Public Defender to provide adequate funding</p> <p>§1804-A (2): Oversee the Office of the Public Defender to ensure competent and efficient indigent legal services are provided</p> <p>Establish:</p> <ul style="list-style-type: none"> <li>• Procedures to ensure data collection from the OPD</li> <li>• Rates of compensation for retained counsel</li> <li>• Contract guidelines and procedures to review</li> </ul>

		<p>contracts entered into between the OPD and contract counsel; must be evaluated every 3 years</p> <ul style="list-style-type: none"> <li>• An application fee of no less than \$5 which may be graduated and administered by the OPD</li> <li>• Process for a vote of no confidence in the CPD</li> </ul> <ul style="list-style-type: none"> <li>• Submit to the Legislature, Chief Justice of the Supreme Judicial Court and Governor an annual operations report</li> <li>• Monitor and testify on legislative proposals that affect the quality and cost of indigent legal services</li> <li>• Prepare a report at the end of the legislative session on the relevant law changes and the effect on cost and quality</li> <li>• Review biennial budget request and any supplemental budget request of the CPD</li> <li>• Ensure minimum amount of malpractice insurance retained and contract counsel must hold to be eligible</li> <li>• Develop program to allow law students opportunities within the system consistent with those available at the District Attorney's Offices</li> <li>• Designate a member of the Commission to serve as a liaison to the CPD cost containment unit</li> <li>• Compile list of grievances against CPD to be provided to Governor if Commission takes vote of no confidence in CPD</li> <li>• Perform all duties necessary and incidental to the performance of any duty set forth</li> </ul>
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<b>Office of the Public Defender Duties</b>	N/A	<ul style="list-style-type: none"> <li>• Responsible for administering indigent legal services</li> </ul> <p><b>§1807:</b></p> <ul style="list-style-type: none"> <li>• CPD is the head of the office with 2 Deputy Public Defenders appointed and counsel selected by the Chief</li> </ul>
<b>Commission Structure</b>	<ul style="list-style-type: none"> <li>• 5 members appointed by the Governor and subject to review by joint standing committee; one member to serve as Chair</li> <li>• No more than 3 members may be attorneys</li> <li>• Terms: 3 years except that the Governor shall designate 2 whose terms are only one year, 2 whose terms are 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</li> <li>• Quorum: 3 members</li> </ul>	<ul style="list-style-type: none"> <li>• No changes to the Structure</li> <li>• Qualifications: One must have a background in accounting or finance, all other members who are not attorneys must have a demonstrated commitment to competent representation and must have skills and knowledge to ensure competent representation is provided in each area of relevant law; no more than 3 attorneys may be members and must have the expertise, skills, and knowledge to ensure competent representation</li> <li>• Chief Public Defender or designee shall provide staff assistance to the Commission to carry out purposes</li> </ul>
<b>Commission Duties</b>	<ul style="list-style-type: none"> <li>• Hire the Executive Director</li> <li>• Develop standards to ensure quality and efficient representation, determining eligibility for appointment, minimum training standards, and payment of counsel</li> <li>• Develop system for appointed private attorneys and contract counsel necessary to provide quality and efficient representation</li> <li>• Review voucher and payment system</li> <li>• Establish rates of compensation</li> <li>• Track and monitor case loads</li> <li>• Approve and submit a biennial budget</li> </ul>	<p><b>§1804-A(1):</b></p> <ul style="list-style-type: none"> <li>• Standards for determining eligibility of defendant's payment of counsel</li> <li>• Determining minimum experience and training standards for public defender services to ensure competent representation</li> <li>• Develop standards for: <ul style="list-style-type: none"> <li>• Ensuring the delivery of adequate indigent legal services that is considered necessary and appropriate</li> <li>• Caseloads based on Chief PD recommendations to be reviewed every 5 years</li> <li>• Evaluation of contract counsel to be reviewed every</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>• Develop an administrative review and appeal process for attorneys</li> <li>• Adopt rules to carry out the purposes and appear in court and before other administrative bodies represented by MCILS attorneys</li> </ul>	<p>5 years</p> <ul style="list-style-type: none"> <li>• Conflict cases to ensure independent, competent, and efficient representation of clients</li> <li>• Reimbursement of expenses incurred by retained counsel</li> <li>• Payments to the Office of the Public Defender</li> </ul> <ul style="list-style-type: none"> <li>• <b>§1804-A(3):</b> Take a vote of no confidence in CPD and provide a list of grievances to Governor; a vote of no confidence is cause for dismissal of the CPD by the Governor</li> <li>• <b>§1804-A (4):</b> Restrictions: Commission may not make decisions regarding handling of a case</li> </ul>
<p><b>Executive Director Duties</b></p>	<ul style="list-style-type: none"> <li>• Ensure MCILS complies with all constitutional, statutory, and ethical standards</li> <li>• Ensure delivery of “adequate” indigent legal services and administer delivery in compliance with the Commission adopted standards</li> <li>• Recommend to the Commission the most effective method of delivery of indigent legal services</li> <li>• Conduct regular training sessions for appointed counsel</li> <li>• Hire personnel considered “reasonably necessary” for the efficient delivery of indigent legal services</li> <li>• Prepare and submit to the Commission: biennial budget, annual report of operation</li> </ul>	<p>N/A</p>

	<p>costs and needs, any other additional information</p> <ul style="list-style-type: none"> <li>• Maintain proper financial records</li> <li>• Apply for funds on behalf of the Commission</li> <li>• Attend all Commission meetings</li> </ul>	
<b>Chief Public Defender Powers</b>	N/A	<p><b>§1807(4):</b></p> <ul style="list-style-type: none"> <li>• Contract for services of private attorneys including establishment of LOD; any contract must require counsel to record time spent on each case and to clarify or describe the type of work done</li> <li>• Require contract counsel to have at least the minimum level of malpractice insurance</li> <li>• Delegate the legal representation of any person to any member of the Maine State Bar Association</li> <li>• Contract for and supervise personnel necessary to perform a function of the OPD and to implement the provisions</li> <li>• Establish processes and procedures to acquire investigative or expert services necessary</li> <li>• Enter into agreements with the MSBA, local bar associations, law firms, and private counsel</li> <li>• Apply for and accept on behalf of the OPD funds that may become available</li> <li>• Sponsor training activities</li> <li>• The Attorney General at the requires of the Chief PD shall furnish legal assistance, counsel, or advise the OPD requires in the discharge of duties and may represent staff members of the OPD in litigation as appropriate</li> </ul>

<p><b>Chief Public Defender Duties</b></p>	<p>N/A</p>	<p><b>§1807(2):</b></p> <ul style="list-style-type: none"> <li>• Appointed by the Governor subject to review by the Joint Standing Committee and may be removed for cause by the Governor</li> <li>• Must be an attorney or judge who has spent at least 5 years involved in criminal law cases</li> <li>• Term of 5 years; may have a replacement appointed to fill out the remaining term</li> <li>• Chief PD shall appoint 2 Deputy PDs who at the pleasure of the CPD <ul style="list-style-type: none"> <li>• One Deputy must be an attorney or judge who has spent a substantial part of the last 5 years in criminal law practice <ul style="list-style-type: none"> <li>• If there is a vacancy in the Chief PD position, this Deputy shall assume the duties of the Chief until the vacancy can be filled or the Chief returns to work</li> <li>• The 2nd Deputy must be an attorney or judge who has spent a substantial part of the last 5 years in practice of civil law</li> </ul> </li> </ul> </li> <li>• Shall contract for or hire staff, including counsel, who serve at the pleasure of the Chief</li> <li>• Office may not represent more than one person when there is a conflict of interest under the code of Professional conduct</li> <li>• Must be members in good standing of the Bar and admitted to practice law in this State and has not been and is not currently disbarred or suspended from practice</li> <li>• The Chief PD, Deputy PDs, and staff counsel are full-time</li> </ul>
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		<p>officers of the State and may not appear as counsel or engaged in the private practice of law other than in the capacity as a public defender attorney</p> <p><b>§1807 (3):</b></p> <ul style="list-style-type: none"> <li>• Provide legal representation to eligible persons constituent with federal and state constitutional and statutory obligations</li> <li>• Use contracts to the maximum extent possible to provide indigent legal services</li> <li>• Supervise operation, activities, policies, and procedures of the OPD</li> <li>• Is the Chief Legal Officer with the ultimate authority regarding the disposition of cases handled by the OPD</li> <li>• Verifies or reassess the indigency of a defendant the court has found to be indigent and shall petition the court for whole or partial payment of all legal services</li> <li>• Determines when and where it is necessary to establish district offices for the OPD</li> <li>• Coordinate the development and implementation of rules, policies, standards, procedures, and regulations adopted by the Commission</li> <li>• Establish a trial and appellate case management system</li> <li>• Work jointly with other departments, including DHHS, and agencies that hold data pertinent to determine indigency</li> <li>• Prepare and submit to the Commission: a biennial budget,; an annual report containing pertinent data on operations, costs, and needs; a monthly report on case</li> </ul>
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		<p>loads and gross monthly approved bill totals; any other information the Commission may require</p> <ul style="list-style-type: none"> <li>• Develop and conduct regular training sessions</li> <li>• Assist the Commission in developing standards for the delivery of adequate indigent legal services</li> <li>• Maintain proper financial records</li> <li>• Serve as an ex officio, nonvoting member of the Commission and attend all MCILS meetings</li> <li>• Establish a cost containment unit within the OPD to include a member of the Commission designated by the Commission. The unit is responsible for monitoring efforts to recoup costs, identify ways to improve costs, and issue a quarterly summary of expenses recouped over the period and year to date—may be contracted out</li> <li>• Establish policies and procedures for managing case loads</li> <li>• Establish procedures to handle complaints about counsel performance</li> <li>• Establish process to provide services for conflict cases first through existing contract counsel and only at last through the use of retained counsel</li> <li>• Perform duties as the Commission may assign or are necessary and incidental to the performance of any duty</li> </ul> <p><b>§1808:</b></p> <ul style="list-style-type: none"> <li>• The Chief PD shall establish a system to verify the information used to determine indigency, reassess indigency during the course of representation, record</li> </ul>
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		<p>the amount of time spent on each case, receive from the court collections for the costs of representation to reimburse the OPD</p> <ul style="list-style-type: none"><li>• The Chief PD may enter into contracts to secure repayment to fees and expenses paid by the State</li><li>• Application fee may be waived by the court, full payment must be made to the court prior to the conclusion of the proceedings unless otherwise ordered by the court; when a juvenile is accused of a crime against their parent or legal guardian or when guardianship rests with the State, the fee is waived; otherwise, the juvenile's application fee is the responsibility of the parent or guardian</li></ul>
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# 127th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2015

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Legislative Document

No. 1433

S.P. 540

In Senate, May 26, 2015

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

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Secretary of the Senate

Presented by Senator BURNS of Washington. (GOVERNOR'S BILL)

Cosponsored by Representative HOBBS of Saco and

Senators: HILL of York, KATZ of Kennebec, Representatives: DION of Portland, FREDETTE  
of Newport, GUERIN of Glenburn, WINSOR of Norway.

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

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

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

4 §1801. Maine Commission on Indigent Legal Services; established

5 The Maine Commission on Indigent Legal Services, established by Title 5, section  
6 12004-G, subsection 25-A, is an independent commission whose purpose is to provide  
7 oversight of the Office of the Public Defender, ensuring efficient, high-quality  
8 representation to indigent criminal defendants, juvenile defendants and children and  
9 parents in child protective cases, consistent with federal and state constitutional and  
10 statutory obligations. The commission shall ~~work to ensure~~ oversee the delivery of  
11 indigent legal services by qualified and competent counsel in a manner that is fair and  
12 consistent throughout the State ~~and to ensure~~ while working with the Chief Public  
13 Defender to provide adequate funding ~~of~~ for a statewide system of indigent legal services,  
14 which must be provided and managed in a fiscally responsible manner, free from undue  
15 political interference and conflicts of interest.

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

18 §1802. Definitions

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

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

23 ~~1-A. Appellate counsel. "Appellate counsel" means an attorney who is entitled to~~  
24 ~~payment under Title 15, section 2115-A, subsection 8 or 9.~~

25 1-B. Civil party. "Civil party" means a party to a civil case described in subsection  
26 4, paragraph B.

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

29 2-A. Conflict case. "Conflict case" means a case in which counsel in the Office of  
30 the Public Defender or contract counsel has a conflict of interest under rules adopted by  
31 the Supreme Judicial Court.

32 3. Contract counsel. "Contract counsel" means a private attorney under contract  
33 with the ~~commission to provide indigent legal services~~ Office of the Public Defender to  
34 provide indigent legal services.

1           3-A. Contracted professional services. "Contracted professional services" means  
2 nonattorney services under contract with the Office of the Public Defender that are  
3 necessary for an adequate defense.

4           4. Indigent legal services. "Indigent legal services" means legal representation  
5 provided to:

6           A. An indigent defendant in a criminal case in which the United States Constitution  
7 or the Constitution of Maine or federal or state law requires that the State provide  
8 representation;

9           B. An indigent party in a civil case in which the United States Constitution or the  
10 Constitution of Maine or federal or state law requires that the State provide  
11 representation; and

12           C. Juvenile defendants.

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

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

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

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

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

25           §1803. Maine Commission on Indigent Legal Services structure

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

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

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

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

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

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

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

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

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

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

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

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

31 §1804-A. Maine Commission on Indigent Legal Services duties and responsibilities

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

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

37 B. Standards prescribing minimum experience, training and other qualifications for  
38 attorneys providing public defender services, which must include standards to ensure

- 1 that attorneys are capable of providing competent representation in the case types to  
2 which they are assigned, recognizing that competent representation in each type of  
3 case requires experience and specialized training in that field;
- 4 C. Standards for weighted caseloads based on recommendations from the Chief  
5 Public Defender and reviewed every 5 years or upon the recommendation of the  
6 Chief Public Defender;
- 7 D. Standards for the evaluation of contract counsel to be reviewed every 5 years or  
8 upon the recommendation of the Chief Public Defender;
- 9 E. Standards for independent, competent and efficient representation of clients  
10 whose cases present conflicts of interest;
- 11 F. Standards for the reimbursement of expenses incurred by retained counsel;
- 12 G. Standards regarding the determination of payments to the Office of the Public  
13 Defender that may be required of a defendant or civil party under section 1808. In  
14 developing the payment standards under this paragraph, the commission shall  
15 consider among other things the rates of private counsel and the type of case; and
- 16 H. Standards considered necessary and appropriate to ensure the delivery of adequate  
17 indigent legal services.
- 18 2. Maine Commission on Indigent Legal Services duties. The commission shall:
- 19 A. Oversee the Office of the Public Defender to ensure competent and efficient  
20 indigent legal services are provided;
- 21 B. Establish processes and procedures to ensure the Office of the Public Defender  
22 uses information technology and case management systems to accurately collect,  
23 record and report detailed expenditure and case load data;
- 24 C. Establish rates of compensation for retained counsel;
- 25 D. Establish contract guidelines as well as processes and procedures to review  
26 contracts entered into between the Office of the Public Defender and contract counsel  
27 using best practices for contracts providing indigent legal services. Both the contract  
28 guidelines and contract review process must be evaluated every 3 years or at the  
29 discretion of the commission;
- 30 E. Establish an application fee of no less than \$5, which may be graduated as  
31 provided under section 1808, subsection 4 based on a defendant's or civil party's  
32 ability to pay and which is administered by the Office of the Public Defender;
- 33 F. Submit to the Legislature, the Chief Justice of the Supreme Judicial Court and the  
34 Governor an annual report on the operation, needs and costs of the indigent legal  
35 services system, including an evaluation of contracts, services provided by contract  
36 counsel, retained counsel, any contracted professional services and cost containment  
37 measures;
- 38 G. Monitor and at the commission's discretion testify on legislative proposals that  
39 affect the quality and cost of the indigent legal services system. The commission  
40 may name a designee to perform this duty;

- 1 H. Prepare at the end of each legislative session a report on the relevant law changes  
2 to the indigent legal services system and the effect on the quality and cost of those  
3 changes;
- 4 I. Review the biennial budget request and any supplemental budget requests of the  
5 Chief Public Defender prior to their submission to the Department of Administrative  
6 and Financial Services, Bureau of the Budget;
- 7 J. Establish the minimum amount of malpractice insurance contract counsel and  
8 retained counsel must hold to be eligible to handle indigent defense cases;
- 9 K. Develop a program, with the assistance of the Chief Public Defender, to allow  
10 law students opportunities within the indigent legal services system consistent with  
11 those available within the District Attorney's Offices;
- 12 L. Designate a member of the commission as a liaison to the Chief Public Defender's  
13 cost containment unit under section 1807, subsection 3, paragraph P;
- 14 M. Establish a process for a vote of no confidence in the Chief Public Defender;
- 15 N. Compile a list of grievances against the Chief Public Defender, to be provided to  
16 the Governor, if the commission takes a vote of no confidence in the Chief Public  
17 Defender under paragraph M; and
- 18 O. Perform all duties necessary and incidental to the performance of any duty set out  
19 in this chapter.
- 20 3. Maine Commission on Indigent Legal Services powers. The commission may:
- 21 A. Meet and conduct business at any place within the State;
- 22 B. Use voluntary and uncompensated services of private individuals and  
23 organizations as may from time to time be offered and needed;
- 24 C. Adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to  
25 this paragraph are routine technical rules as defined in Title 5, chapter 375,  
26 subchapter 2-A, except that rules adopted to establish standards under subsection 1,  
27 paragraph B and rates of compensation for retained counsel under subsection 2,  
28 paragraph C are major substantive rules as defined in Title 5, chapter 375, subchapter  
29 2-A;
- 30 D. Appear in court and before other administrative bodies represented by the  
31 commission's own attorneys; and
- 32 E. Take a vote of no confidence in the Chief Public Defender and provide a list of  
33 grievances to the Governor. A vote of no confidence under this paragraph is cause  
34 for dismissal of the Chief Public Defender by the Governor in accordance with  
35 section 1807, subsection 2, paragraph A.
- 36 4. Maine Commission on Indigent Legal Services restrictions. The commission  
37 may not make decisions regarding the handling of a case.
- 38 Sec. 7. 4 MRSA §1805, as enacted by PL 2009, c. 419, §2, is repealed.

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

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

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

11 §1807. Office of the Public Defender established; appointment and duties

12          1. Establishment. The Office of the Public Defender is established. The office  
13 consists of the Chief Public Defender, who is the head of the office, 2 Deputy Public  
14 Defenders, appointed in accordance with subsection 2, and counsel selected by the Chief  
15 Public Defender in accordance with the eligibility standards set forth under section  
16 1804-A, subsection 1, paragraph B. The responsibilities of the Office of the Public  
17 Defender are exclusively concerned with the rights of persons described in section 1802,  
18 subsection 4.

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

21          A. The Chief Public Defender is appointed by the Governor, subject to review by the  
22 joint standing committee of the Legislature having jurisdiction over judiciary matters  
23 and confirmation by the Legislature. The Chief Public Defender may be removed  
24 from office for cause by the Governor, and Title 5, section 931, subsection 2 does not  
25 apply. The Chief Public Defender must be an attorney or judge who has spent at least  
26 5 years in the practice of criminal law or presiding over the adjudication of criminal  
27 cases. The term of office for the Chief Public Defender is 5 years. If a vacancy  
28 occurs during the term, the replacement is appointed to fill out the remaining part of  
29 the term.

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

41          C. The salary of the Chief Public Defender is consistent with the salary of district  
42 attorneys within salary range 90 with the step within that salary range determined by

1 the Maine Commission on Indigent Legal Services subject to the approval of the  
2 Governor.

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

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

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

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

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

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

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

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

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

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

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

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

33 (2) Engage in the private practice of law nor be a partner or associate of any  
34 person engaged in the private practice of law nor be a member or employee of a  
35 professional association engaged in the private practice of law.

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

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

- 1 B. To the maximum extent possible use contracts in providing indigent legal services  
2 as required in this section;
- 3 C. Supervise the operation, activities, policies and procedures of the Office of the  
4 Public Defender and may expend such sums for expenses as may be necessary in the  
5 performance of the Chief Public Defender's duties, to be paid out of money  
6 appropriated by the Legislature for those purposes;
- 7 D. Be the chief legal officer of the Office of the Public Defender with the ultimate  
8 authority regarding the disposition of cases handled by the office;
- 9 E. In accordance with standards established under section 1804-A, subsection 1,  
10 paragraph A, verify or reassess indigency of a defendant or civil party the court has  
11 determined to be indigent. If the Chief Public Defender determines the defendant or  
12 civil party is not indigent in full or in part, the Chief Public Defender shall petition  
13 the court for whole or partial payment or repayment of all legal services under section  
14 1808, subsection 2;
- 15 F. Determine when and where it is necessary to establish district offices for the  
16 Office of the Public Defender consistent with the policies and procedures of the  
17 Department of Administrative and Financial Services;
- 18 G. Coordinate the development and implementation of rules, policies, procedures,  
19 regulations and standards adopted by the commission to carry out the provisions of  
20 this chapter and comply with all applicable laws and standards;
- 21 H. Establish a trial and appellate case management system. The system must require  
22 the attorneys to record time spent on each case and to classify or describe the type of  
23 work done;
- 24 I. Work jointly with other departments and agencies, including the Department of  
25 Health and Human Services, that hold data pertinent to determining indigency and  
26 establish information sharing agreements as necessary;
- 27 J. Work jointly with other departments and agencies, including the Department of  
28 Health and Human Services, to identify opportunities to improve eligibility screening  
29 across State Government, including the use of private firms that use established,  
30 effective income and asset verification systems;
- 31 K. Prepare and submit to the commission:
- 32 (1) A proposed biennial budget for the provision of indigent legal services,  
33 including supplemental budget requests as necessary;
- 34 (2) An annual report containing pertinent data on the operation, needs and costs  
35 of the indigent legal services system and the status of information sharing as  
36 required under paragraph I, including issues preventing the agreements from  
37 being implemented;
- 38 (3) A monthly report on case loads and the gross monthly total of bills approved  
39 for payment, including payments to contract counsel and retained counsel, and  
40 for contracted professional services, a summary of professional service requests  
41 denied and granted by the office, in accordance with section 1806, subsection 2,

- 1           paragraph E and information on complaints made against counsel providing
- 2           indigent legal services; and
- 3           (4) Any other information as the commission may require;
- 4           L. Develop and conduct regular training programs in compliance with the rules
- 5           adopted by the commission as required by section 1804-A, subsection 1, paragraph
- 6           B;
- 7           M. Assist the commission in developing standards for the delivery of adequate
- 8           indigent legal services;
- 9           N. Maintain proper records of all financial transactions related to the operation of the
- 10           commission and the notification of eligibility and assignment of counsel and
- 11           subsequent related orders as submitted by the courts of this State;
- 12           O. Serve as an ex officio, nonvoting member of the commission and attend all
- 13           commission meetings. The Chief Public Defender may delegate this responsibility;
- 14           P. Establish a cost containment unit within the Office of the Public Defender to
- 15           include a member of the commission designated by the commission. The cost
- 16           containment unit is responsible for monitoring efforts to recoup costs under section
- 17           1808, subsection 3, identifying ways to improve cost recoupment and issuing a
- 18           quarterly summary of the expenses recouped over the period and the year to date to
- 19           be provided to the commission. This function may be contracted out;
- 20           Q. Establish policies and procedures for managing case loads to implement the
- 21           standards established by the commission under section 1804-A, subsection 1,
- 22           paragraph C, including a method for accurately tracking and monitoring case loads;
- 23           R. Establish procedures to handle complaints about the performance of counsel
- 24           providing indigent legal services;
- 25           S. Establish a process to provide services for conflict cases first through existing
- 26           contract counsel, and only at last through the use of retained counsel; and
- 27           T. Perform duties as the commission may assign or are necessary and incidental to
- 28           the performance of any duty set out in this chapter.
- 29           4. Chief Public Defender powers. The Chief Public Defender may:
- 30           A. As the Chief Public Defender determines necessary, contract for the services of
- 31           private attorneys in the delivery of indigent legal services, including establishment of
- 32           a lawyer of the day, as provided in section 1804-A and in accordance with standards
- 33           established by the commission and the contract policies established by the
- 34           Department of Administrative and Financial Services. Any contract must require
- 35           contract counsel and retained counsel to record time spent on each case and to
- 36           classify or describe the type of work that was done;
- 37           B. Require contract counsel and retained counsel to have at least the minimum level
- 38           of malpractice insurance as established in section 1804-A, subsection 2, paragraph J;
- 39           C. Delegate the legal representation of any person to any member of the Maine State
- 40           Bar Association eligible under section 1804-A in accordance with standards
- 41           established and maintained by the commission;

- 1 D. Contract for and supervise personnel necessary to perform a function of the  
2 Office of the Public Defender and to implement the provisions of this chapter;
- 3 E. Establish processes and procedures to acquire investigative or expert services that  
4 may be necessary for a case;
- 5 F. Enter into agreements with the Maine State Bar Association, local bar  
6 associations, law firms and private counsel for legal representation without  
7 compensation as a service to the State;
- 8 G. Apply for and accept on behalf of the Office of the Public Defender funds that  
9 may become available from any source, including government, nonprofit or private  
10 grants, gifts or bequests. These funds do not lapse at the end of any fiscal year but  
11 are carried forward to be used for the purpose originally intended; and
- 12 H. Sponsor training activities and charge tuition to recoup the cost of the activities.

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

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

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

21 §1808. Indigency determinations; redeterminations; verification; collection

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

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

25 B. Reassess indigency during the course of representation;

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

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

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

37 If the court does not order full payment for representation by the Office of the Public  
38 Defender, the Chief Public Defender shall investigate to determine the defendant's or civil

1 party's financial condition and ability to make repayment and petition the court for a new  
2 repayment order at any time within 7 years of the original order.

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

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

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

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

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

18 4. Application fee. An applicant seeking indigent legal services shall pay an  
19 application fee as set forth by the commission in section 1804-A, subsection 2, paragraph

20 E. In a case involving a juvenile the application fee is the responsibility of the parent or  
21 legal guardian except that, when a juvenile is accused of a crime against the juvenile's  
22 parent or legal guardian or when legal guardianship rests with the State, the fee is waived.

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

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

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

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

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

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

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

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

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



**(5.)**  
**Contracts Discussion**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**TO:** MCILS COMMISSIONERS  
**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR  
**CC:** ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR  
**SUBJECT:** CONTINUING CONTRACTS DISCUSSION  
**DATE:** SEPTEMBER 1, 2015

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Attached you will find a draft sample RFP seeking bids to perform appellate work. I suggest that the draft form be the basis of a discussion of what the Commission would be looking for in an RFP. The following sections give rise to issues regarding how to define what the Commission is looking for and how any resulting contract would be structured:

- Purpose and Background
- Eligibility to Submit Bids
- Number of Awards
- Scope of Services to be Provided
- Proposal Submission Requirements

Also, the State of Maine form does not seem to have a place to address how payment is calculated. Obviously, there could be a flat fee for the entire contract, but some states pay a flat fee per case, and others, an hourly rate per case. It may be worthwhile to discuss which, if any, of these is preferable and whether any such preference should be expressed in the RFP.

**STATE OF MAINE** [LM1]  
**Commission on Indigent Legal Services**

**RFP#** (this number will be assigned by the Division of Purchases) [LM2]

**(Insert RFP Title)**

**RFP Coordinator:** (Insert name and title)  
(Insert office address of RFP Coordinator)

Tel: (Insert phone #)    E-mail: (Insert e-mail address)

**From the time this RFP is issued until award notification is made, all contact with the State regarding this RFP must be made through the aforementioned RFP Coordinator. No other person / State employee is empowered to make binding statements regarding this RFP. Violation of this provision may lead to disqualification from the bidding process, at the State's discretion.**

**Bidders' Conference:** (Insert date, time & location, or "not applicable")  
(Note: Bidders' conferences are optional, and not required to be held for every RFP process.)

**Deadline for Submitted Questions:** (Insert date), 5:00 p.m. local time

**Proposals Due:** (Insert date), not later than 2:00 p.m. local time

Submit to:

**Division of Purchases  
Burton M. Cross Building, 111 Sewall Street, 4<sup>th</sup> Floor  
9 State House Station, Augusta ME 04333-0009**

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**Public Notice**

(This is a template for your Department’s public notice / advertisement regarding the RFP.)

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**State of Maine  
Commission on Indigent Legal Services  
Public Notice for RFP# (Insert RFP# once provided)  
(Insert RFP title)**

The State of Maine, Commission on Indigent Legal Services (Department), is seeking to contract with licensed Maine attorneys to furnish indigent legal services on behalf of indigent clients. In accordance with State procurement practices, the Department is hereby announcing the publication of a Request for Proposals (RFP) #(insert RFP# once provided) for the purchase of the aforementioned (Insert the word “services” or “goods and services”, as applicable).

A copy of the RFP can be obtained by contacting the Department’s RFP Coordinator for this project: (Insert RFP Coordinator name and title). The RFP Coordinator can be reached at the following email address: (Insert RFP Coordinator email address) or mailing address: (Insert RFP Coordinator mailing address). The Department encourages all interested vendors to obtain a copy of the RFP and submit a competitive proposal.

(If your Department intends to hold a Bidders’ Conference, please insert a paragraph here providing the date, time, and location of the event.)

Proposals must be submitted to the State of Maine Division of Purchases, located at the Burton M. Cross Office Building, 111 Sewall Street, 4<sup>th</sup> Floor, 9 State House Station, Augusta, Maine, 04333-0009. Proposals must be submitted by 2:00 pm, local time, on (Insert date), when they will be opened at the Division of Purchases’ aforementioned address. Proposals not received at the Division of Purchases’ aforementioned address by the aforementioned deadline will not be considered for contract award.

\*\*\*\*\*

**State of Maine – Commission on Indigent Legal Services**  
**RFP# (Insert RFP# once provided)**  
**(Insert RFP title)**

**PART I INTRODUCTION**

**A. Purpose and Background**

The Commission on Indigent Legal Services (“Department”) is seeking contract proposals for licensed Maine attorneys to represent indigent clients in criminal appeals and child protection appeals to the Law Court as defined in this Request for Proposals (RFP) document. This document provides instructions for submitting proposals, the procedure and criteria by which the Provider(s) will be selected, and the contractual terms which will govern the relationship between the State of Maine (“State”) and the awarded Bidder(s).

Pursuant to 4 M.R.S. § 1804 (3) (A), the Commission has a duty to “develop and maintain a system that uses contracts with individual attorneys or groups of attorneys [...] to provide quality and efficient indigent legal services.”

MCILS requests proposals from private individual attorneys, groups of attorneys or law firms, or groups of attorneys organized as a non-profit entity to represent indigent clients in criminal appeals and child protection appeals matters. A successful bid will provide legal services to a qualified indigent client for either criminal appeals or child protection appeals to the Law Court in a highly-qualified manner in accordance with the Sixth Amendment of the United States Constitution; Art. I, § 6 of the Maine Constitution; Chapter 2 and Chapter 3 of the Commission’s Rules for minimum and specialized case types eligibility requirements; the Maine Rules of Professional Conduct, applicable national standards (including the NLADA Standards and Guidelines and ABA relevant guidelines), case law, and the terms of the contract.

(Insert a brief summary which describes the need for the service(s). You should also describe how the service ties into the Department/Office’s mission and goals. Also include some background information as to how and why this service came about -- for example, if it was mandated by statute -- the history of the service being provided in the State, etc. Think in terms of what introductory information would be beneficial for potential Bidders to provide their best, most well-informed response to your Department. Also remember that this is just an introduction – the full Scope of Services is provided in Part II of the RFP.)

**B. General Provisions**

1. Issuance of this RFP does not commit the Department to issue an award or to pay expenses incurred by a Bidder in the preparation of a response to this RFP. This includes attendance at personal interviews or other meetings and software or system demonstrations, where applicable.
2. All proposals should adhere to the instructions and format requirements outlined in this RFP and all written supplements and amendments (such as the Summary of Questions and Answers), issued by the Department. Proposals are to follow the format and respond to all questions and instructions specified below in the “Proposal Submission Requirements and Evaluation” section of this RFP.
3. Bidders shall take careful note that in evaluating a proposal submitted in response to this RFP, the Department will consider materials provided in the proposal, information obtained through interviews/presentations (if any), and internal Departmental information of previous contract history with the Bidder (if any). The Department also reserves the right to consider other reliable references and publicly available information in evaluating a Bidder’s experience and capabilities. The proposal shall be signed by a person authorized to legally bind the Bidder and shall contain a statement that the proposal and the pricing contained therein will remain valid and binding for a period of 180 days from the date and time of the bid opening.

4. The RFP and the selected Bidder's proposal, including all appendices or attachments, shall be the basis for the final contract, as determined by the Department.
5. Following announcement of an award decision, all submissions in response to this RFP will be considered public records available for public inspection pursuant to the State of Maine Freedom of Access Act (FOAA) (1 M.R.S. §§ 401 et seq.).
6. The Department, at its sole discretion, reserves the right to recognize and waive minor informalities and irregularities found in proposals received in response to this RFP.
7. The State of Maine Division of Purchases reserves the right to authorize other Departments to use the contract(s) resulting from this RFP, if it is deemed to be beneficial for the State to do so.
8. All applicable laws, whether or not herein contained, shall be included by this reference. It shall be Proposer's/Vendor's responsibility to determine the applicability and requirements of any such laws and to abide by them.

**C. Eligibility to Submit Bids**

Individual attorneys, groups of attorneys, groups of law firms, or groups of attorneys organized as a non-profit entity are invited to submit bids in response to this Request for Proposals provided that applicant attorneys are qualified and eligible to contract for appellate criminal and appellate child protection cases and are in good standing with the Maine Bar of Board Overseers.

(Modify the sentence above as needed. If there are specific requirements, such as licensure/certification, needed to perform the service(s) in question, please state those requirements here.)

**D. Contract Term**

The Department is seeking a cost-efficient proposal to provide services, as defined in this RFP, for the anticipated contract period defined in the table below. Please note that the dates below are estimated and may be adjusted as necessary in order to comply with all procedural requirements associated with this RFP and the contracting process. The actual contract start date will be established by a completed and approved contract.

Contract Renewal: Following the initial term of the contract, the Department may opt to renew the contract for (Insert number of renewals; the State's standard is three) renewal periods of one year each, subject to continued availability of funding and satisfactory performance.

The term of the anticipated contract, resulting from this RFP, is defined as follows:

<b>Period</b>	<b>Start Date</b>	<b>End Date</b>
Initial Period of Performance	(Insert date)	(Insert date)
Renewal Period #1	(Insert date)	(Insert date)
Renewal Period #2	(Insert date)	(Insert date)
Renewal Period #3	(Insert date)	(Insert date)

(The standard term for a State of Maine service contracts is one initial year of performance, followed by a maximum of three optional, renewal years – for a grand total of four years of performance. Alternatively, a two-year agreement may be established, with one 2-year renewal – again, for a grand total of four years of performance. If you believe that your requested services require or should have additional years of performance beyond a grand total of four years, please contact the Division of Purchases to discuss further. A Department may choose to use fewer than four years at its discretion.)

**E. Number of Awards**

The Department anticipates making (Insert “one” or “multiple”) award(s) as a result of this RFP process.

The Department reserves the right to make one or multiple awards for criminal appeals and child protection appeals matters, whichever is in the best interests of the State, as a result of this RFP process.

The Commission has compiled statistics on the average number of appeals for criminal and child protection matters based on data from the Law Court for the past three (3) years. In sum, there have been an average of 97 full criminal appeals and 55 child protection appeals per year from 2011 - 2014. In 2015, the pace of appeals to date, if continued for the balance of the year, would result in 125 criminal appeals and 85 child protection appeals. During the 2011 – 2014 period, memoranda in approximately 38 discretionary appeals were filed, with an average of 3 per year requiring full briefing. In 2015, the Law Court is on track to receive about 27 memoranda in discretionary appeals this year, with approximately four requiring full briefs.

(If there will be a particular structure to the way in which awards are made, please explain that in this section. If there are to be multiple awards, include a breakdown to show how the awards will be made. For example, by county, district, region, etc. If you are not sure if you want to make one or multiple awards, change the sentence above to read that “The Department reserves the right to make one or multiple awards, whichever is in the best interests of the State, as a result of this RFP process.”)

## **PART II SCOPE OF SERVICES TO BE PROVIDED**

Representation of indigent clients on:

- 1) Criminal appeals to the Law Court
- 2) Child Protective appeals to the Law Court
- 3) Discretionary appeals to the Law Court (e.g. Post-Conviction Review, Probation Violation)

With respect to each case assigned under the contract, the applicant will perform the tasks necessary to provide high-quality appellate representation in accordance with the standards described in Part I, Section A.

Proposals should be for a period of one (1) year. Applicants may propose to provide representation in criminal appeals, child protective appeals or both. Applicants may propose to provide representation in all appeals for a single year, a proportion of appeals for one year (e.g. one-half) or for a specified number of appeals.

(Insert a summary of the specific tasks and objectives. State the desired outcomes very clearly, and if there are certain expectations or performance measures that must be met by the Bidders, define them. As much as possible, however, leave this section open for Bidders to demonstrate how they can/will deliver the services and meet your expectations. This will allow Bidders a better opportunity to demonstrate their understanding of the requested services as well as give reviewers more substantive material with which to score the proposals received. This section should also include a brief description of the location where the work will be performed. If the work can be performed at the Bidder's own facility, say so. If the work must be performed at a State facility, say so and give the address of the facility.)

(Note: If your requirements are primarily for information technology related goods and/or services, you may be required to obtain approval from the Office of Information Technology (OIT) prior to releasing this RFP. Also, you may be required to set up the contract which results from this RFP on a State of Maine BP54-IT contract template. This point is further addressed later in the RFP, in Part VI, under the "Contract Document" section.)

(Note: If your requirements involve the construction of public works, then it will have an effect on how your RFP should be written and processed. RFPs involving the construction of public works are not handled by the Division of Purchases, but instead should be processed through the Bureau of General Services' Planning, Design, and Construction Division. RFPs involving construction of "public works," defined at 26 M.R.S. § 1304(8), must comply with the prevailing wage and benefit statute, 26 M.R.S. § 1303. Before issuing such an RFP, the Department must obtain a determination of the fair minimum rate of wages and benefits from the Bureau of Labor Standards and attach that determination to the RFP. Also, as required by 26 M.R.S. § 1309, the contract resulting from the RFP must require the successful Bidder and any subcontractors to pay the fair minimum wages and benefits. Before writing an RFP with requirements involving the construction of public works, please contact the Bureau of General Services' Planning, Design, and Construction Division for guidance.)

## PART III KEY RFP EVENTS

### A. Timeline of Key RFP Events

Event Name	Event Date and Time
Bidders' Conference	(Insert date and start time)
Due Date for Receipt of Written Questions	(Insert date) at 5:00pm, local time
Due Date for Receipt of Proposals	(Insert date) at 2:00pm, local time
Estimated Contract Start Date (subject to change)	(Insert date)

### B. Bidders Conference

(Note: Bidders' conferences are optional and are not required to be held for every RFP process. If you do not intend to hold a Bidders' conference, then please delete everything below and write in this section that "The Department does not intend to hold a Bidders' Conference as part of this RFP process." Also, state "N/A" in the Event Date and Time section on the chart above.)

The Department will sponsor a Bidders' Conference concerning this RFP beginning at the date and time shown in the timeline above. The Bidders' Conference will be held at (Insert place, including a complete address)

The purpose of the Bidders' Conference is to answer and/or field questions, clarify for potential Bidders any aspect of the RFP requirements that may be necessary and provide supplemental information to assist potential Bidders in submitting responses to the RFP. Although attendance at the Bidders' Conference is not mandatory, it is *strongly encouraged* that interested Bidders attend.

(Note: If your Department intends to hold a Bidders' conference, and you believe that it should be mandatory for Bidders to attend in order for their proposals to be evaluated, please contact the Division of Purchases for further discussion. Mandatory participation is not recommended, as it shows the interested Bidders the level of competition that they face and may, therefore, affect the proposal response that they provide.)

### C. Questions

#### 1. General Instructions

- It is the responsibility of each Bidder to examine the entire RFP and to seek clarification in writing if the Bidder does not understand any information or instructions.
- Questions regarding the RFP must be submitted in writing and received by the RFP Coordinator listed on the cover page of this RFP document as soon as possible but no later than the date and time specified in the timeline above.
- Questions may be submitted by e-mail, and include the RFP Number and Title in the subject line. The Department assumes no liability for assuring accurate/complete/on time e-mail transmission and receipt.
- Include a heading with the RFP Number and Title. Be sure to refer to the page number and paragraph within this RFP relevant to the question presented for clarification, if applicable.

- Summary of Questions and Answers:** Responses to all substantive and relevant questions will be compiled in writing and distributed to all registered, interested persons by e-mail no later than seven (7) calendar days prior to the proposal due date. Only those answers issued in writing by the RFP Coordinator will be considered binding. The Department reserves the right to answer or not answer any question received.

## D. Submitting the Proposal

1. **Proposals Due:** Proposals must be received no later than 2:00 p.m. local time, on the date listed in the timeline above, at which point they will be opened. Proposals received after the 2:00 p.m. deadline will be rejected without exception.
2. **Mailing/Delivery Instructions:** PLEASE NOTE: The proposals are not to be submitted to the RFP Coordinator at the requesting Department. The official delivery site is the State of Maine Division of Purchases (address shown below).
  - a. Only proposals received at the official delivery site prior to the stated deadline will be considered. Bidders submitting proposals are responsible for allowing adequate time for delivery. Proposals received after the 2:00 p.m. deadline will be rejected without exception. Postmarks do not count and fax or electronic mail transmissions of proposals are not permitted unless expressly stated in this RFP. Any method of hardcopy delivery is acceptable, such as US Mail, in-person delivery by Bidder, or use of private courier services.
  - b. The Bidder must send its proposal in a sealed package including one **original and** (Insert number of copies, usually one for each evaluation team member) **copies** of the complete proposal. Please clearly label the original. One electronic copy of the proposal must also be provided on CD or flash drive with the complete narrative and attachments in MS Word format. Any attachments that cannot be submitted in MS Word format may be submitted as Adobe (.pdf) files.
  - c. Address each package as follows (and be sure to include the Bidder's full business name and address as well as the RFP number and title):

Bidder Name/Return Address

Division of Purchases  
Burton M. Cross Building, 4<sup>th</sup> Floor  
111 Sewall Street  
9 State House Station  
Augusta ME 04333-0009

Re: RFP# (Insert RFP # assigned by the Division of Purchases)

## **PART IV PROPOSAL SUBMISSION REQUIREMENTS**

Proposal submissions must:

- 1) Identify the type and number of appellate cases for which the proposal is submitted (e.g. criminal appeals, child protective appeals or both);
- 2) Identify the number of attorneys available to prosecute the appeals and describe the attorneys' workload under the proposal in the context of other legal work performed by the attorneys sufficiently to assure the Commission that the proposal will not result in an excessive workload;
- 3) Identify the attorneys' experience and qualifications to prosecute appeals as proposed;
- 4) Identify the office space, technology, support staff and other resources available to support the provision of quality appellate representation;
- 5) Include at least three (3) references for review by MCILS;
- 6) Include one original motion or brief that was submitted to a court within the last six months from each attorney who will prosecute appeals under the proposal;
- 7) Include a current list of MCILS approved CLE credits to meet the minimum required 8 hours;
- 8) Document good standing with the Board of Overseers of the Bar;
- 9) Document applicable malpractice insurance in force.
- 10) Agree to monitoring and evaluation by MCILS to ensure private attorneys provide high-quality representation to indigent clients and are in compliance with attorney performance evaluation procedures as established by the Commission, including but not limited to audits of contracted counsels' finances for discrepancies.

**(IMPORTANT:** Please consider all of Part IV to be **completely customizable** to meet your Department's needs. Any text in black font within Part IV is provided only as an example, and should be tailored to the requirements of the Department for this specific RFP.)

This section contains instructions for Bidders to use in preparing their proposals. The Bidder's proposal must follow the outline used below, including the numbering and section and sub-section headings as they appear here. Failure to use the outline specified in this section or to respond to all questions and instructions throughout this document may result in the proposal being disqualified as non-responsive or receiving a reduced score. The Department and its evaluation team for this RFP have sole discretion to determine whether a variance from the RFP specifications should result in either disqualification or reduction in scoring of a proposal. Rephrasing of the content provided in this RFP will, at best, be considered minimally responsive. The Department seeks detailed yet succinct responses that demonstrate the Bidder's experience and ability to perform the requirements specified throughout this document.

### **A. Proposal Format**

(This list can and should be customized to the Department's preferences for proposal formatting. When considering proposal formatting needs/preferences, consider the nature of the services being requested in the RFP, and whether or not the Bidders interested in providing the requested services would have the administrative capacity to easily meet to all formatting preferences. If the requested services are relatively straightforward, then it is suggested that you keep the formatting preferences straightforward.)

1. For clarity, the proposal should be typed or printed. Proposals should be single-spaced with 1" margins on white 8 ½" x 11" paper using a font no smaller than 12 point Times New Roman or similar.
2. All pages should be numbered consecutively beginning with number 1 on the first page of the narrative (this does not include the cover page or table of contents pages) through to the end, including all forms and attachments. For clarity, the Bidder's name should appear on every page, including Attachments. Each Attachment must reference the section or subsection number to which it corresponds.



# TEN PRINCIPLES

OF A PUBLIC DEFENSE DELIVERY SYSTEM

*February 2002*

Approved by American Bar Association House of Delegates, February 2002. The American Bar Association recommends that jurisdictions use these Principles to assess promptly the needs of public defense delivery systems and clearly communicate those needs to policy makers.

# ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM

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## *Black Letter*

- 1 The public defense function, including the selection, funding, and payment of defense counsel, is independent.
- 2 Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.
- 3 Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.
- 4 Defense counsel is provided sufficient time and a confidential space within which to meet with the client.
- 5 Defense counsel's workload is controlled to permit the rendering of quality representation.
- 6 Defense counsel's ability, training, and experience match the complexity of the case.
- 7 The same attorney continuously represents the client until completion of the case.
- 8 There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.
- 9 Defense counsel is provided with and required to attend continuing legal education.
- 10 Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

