

MCILS

**January 8, 2013
Commissioner's Meeting
Packet**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

**JANUARY 8, 2013
COMMISSION MEETING
AGENDA**

- 1) Approval of December 11, 2012 Commission Meeting Minutes
- 2) Operations Reports Review
- 3) Consideration of Amended Chapter 301
- 4) Consideration of Rate of Pay for Private Investigators
- 5) Set Date and Time of next Regular Meeting of the Commission
- 6) Executive Session, if needed (Closed to Public)

(1.)
December 11, 2012
Commission Meeting
Minutes

**Maine Commission on Indigent Legal Services – Commissioners Meeting
December 11, 2012**

Minutes

Commissioners Present: Steven Carey, David Mitchell, Kenneth Spirer, Susan Roy
MCILS Staff Present: John Pelletier, Ellie Brogan

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Approval of November 13, 2012 Commission Meeting Minutes	Copy of minutes received by all Commissioners. Commissioner Carey pointed out an error in the November 13, 2012 meeting minutes. In the Executive Branch Meetings Update portion of the minutes, the first sentence of the second paragraph should instead read: "Commissioner Carey informed the Commission that after Chair Mitchell and Director Pelletier's meeting with Commission Millet, but before their meeting with Governor LePage, Commissioner Carey was contacted by Michael Cianchette, the Governor's Chief Legal Counsel, about the proposed rate increase and how the Commission arrived at its numbers."	Commissioner Carey moved for the approval of the amended minutes. Commissioner Roy seconded. All present voted in favor. Approved.
Operations Reports Review	<p>Director Pelletier presented the <u>November 2012 Operations Reports</u> to the Commissioners. The number of new cases opened this month, 1,906, is on the low end of average, while last month the number was on the high end of average, 2,200. The amount paid in vouchers was high, totaling over \$967,000, which was more than what was allotted for the month. November collections are still below projections. Director Pelletier noted that the financial screeners were compiling information regarding unpaid counsel fees to be submitted to the Maine Revenue Service for tax offset purposes. He pointed out that the tax offset program generated significant collections in the second half of FY'12. The cost of the trainings (lunch and materials) will be reported in December.</p> <p>Director Pelletier reported that the remaining allotment in All Other for Q2 was \$477,000, after spending approximately \$1 million in each of the previous two months. He indicated that in the third month of the quarter, the Commission will spend the funds in the Revenue account, which totals \$140,000. That amount, combined with the remaining All Other funds, brings the total of available funds to spend in December to approximately \$610,000. Director Pelletier cautioned that based on the amount remaining in Revenue and All Other and the fact that voucher amounts are running higher than projected there</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>will be a shortfall this quarter in paying vouchers. The normal target for paying vouchers would have been December 14th, but he estimated that with the revenue shortfall only vouchers submitted before December 6th will be able to be paid. The exact shortfall amount will not be known until the balance is paid off in January. Once the figure is known, Director Pelletier suggested that the Governor's office be alerted so it is aware of the shortfall for the upcoming supplemental budget calculations.</p> <p>The discussion then turned to the curtailment target proposed by Acting Budget Officer Shirrin Blaisdell. The Commission's target is \$140,810. Director Pelletier recommended that the Commission offer up the amount that would fund the open position, \$67,956 (salary and benefits), and explain that the remaining money would come out of the All Other account which is used to pay vouchers. Commissioner Spirer asked whether this would put that position at risk of being taken away. Director Pelletier believed that by offering up the open position now it would make it more likely that the Commission could keep that position.</p> <p>Commission Carey suggested that periods of vacancy in the deputy director and screener positions could also be a source of funds to offer up to reach the curtailment target. Commissioner Carey noted that he did not want the Commission to offer up any money from the All Other account. Chair Mitchell pointed out that even if the Commission offered up \$67,000, it would still have a shortfall; he also pointed out that Commissioner Carey made a good point about not offering up any funds in the All Other account.</p> <p>Commissioner Spirer's recommendation is to not fight the order and to come up with a proposal. Chair Mitchell inquired about what would happen if the Commission failed to submit a proposal. Commissioner Carey explained that the Governor's office was not happy the last time the Commission did that with streamlining. Commissioner Carey did some rough math and came up with \$90,000 in total personnel services savings. He suggested that the Commission offer up that amount and indicate that it cannot spare any additional money. Commissioner Roy expressed that \$90,000 would be a good faith effort. Commissioner Spirer agreed that it seemed reasonable, but questioned whether it was the best approach.</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>Director Pelletier thought the best approach would be to inform the Governor’s office that the Commission has identified a certain amount in personnel services savings and that the additional money needed to reach the target amount would have come out of the All Other account, with an explanation that the State has an obligation to pay attorneys and vendors for their services and will have to be paid one way or the other. Commissioner Carey responded that streamlining did not go well when the Commission said nothing could be taken. Chair Mitchell thought the bigger issue that loomed large, especially in light of the proposed rule-making, was that funding will run out. He believed that that principled position has to be stated and taken – the Commission could either do it now or at the end of March when the money runs out. Director Pelletier cautioned that the Commission should do what makes getting the right result the highest likelihood. Commissioner Carey stated that the Commission needs to be clear with the Governor’s office going into the supplemental budget process about what will happen. Commissioner Spierer believed that extending some good will to the office that will be reviewing our supplemental request would be a good thing.</p> <p>After the discussion, two proposals were made: (1) offer up the savings in the personnel services account and explain that the Commission will be unable to reach the target amount since we already do not have enough to pay what we are constitutionally required to pay and that we will have to ask the Legislature for X amount in a couple of month’s time; or (2) offer up the savings in the personnel services account and the balance from our All Other account to reach the target amount.</p> <p>Commissioner Spierer moved to respond to the request with proposal #2; Commissioner Roy seconded the motion. All voted in favor. Chair Mitchell indicated that Director Pelletier will put together the Commission’s response to the curtailment proposal.</p>	
Discovery Costs	<p>Director Pelletier informed the Commissioners that there are some district attorney offices (Hancock and Washington Counties) that are charging for the first set of discovery and high amounts for the second set. He indicated that he and Chair Mitchell are trying to meet with the district attorneys in those areas to discuss reasonable costs for discovery. Chair Mitchell believes that MACDL is in a better position for this fight than the Commission.</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
<p>Comment on Proposed Rule 11C</p>	<p>Director Pelletier was granted an extension for the deadline on public comment on the proposed Rule 11C. This proposed rule would establish a duty on defense counsel to relay the terms of a plea offer extended by the state and memorialize it in the client file.</p> <p>Director Pelletier indicated that this proposed rule might impact the Commission's expenses because attorneys who are not currently following this practice will have to spend additional time to meet the rule's requirements. Commissioner Carey countered that most good attorneys already meet the rule's requirements and that the proposed rule might in fact breach the attorney-client privilege.</p> <p>Commissioner Spierer questioned whether the Commission should be supplying a written comment at all since the Commission's only concern is money. Director Pelletier countered that the core of the written comment will be focused on the potential for increased cost. Commissioner Carey suggested that the written comment should focus on the vagueness of the rule and that the Commission has concerns about the rule as it relates to a potential increase in client correspondence and a corresponding increase in voucher costs.</p> <p>Director Pelletier suggested that the written response focus on the rule being ambiguous and burdensome and that it will create additional costs for client correspondence since some attorneys will take the memorialization requirement to an extreme. Commissioner Carey indicated that he thought the Commission should write a letter and should also explore whether the criminal and juvenile trainings need to be adjusted should the proposed rule be adopted. Chair Mitchell agreed that it was important to send some written comment. It was decided that Director Pelletier would draft and send the Commission's response.</p>	
<p>Designation of Commission Legislative Liaison</p>	<p>Director Pelletier informed the Commissioners that he will register as the legislative designee for the Commission for the upcoming legislative session. Commissioner Carey recalled that both the director and deputy director were registered in the past. Director Pelletier responded that he will register both positions.</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Training Update	Deputy Director Brogan updated the Commissioners about the upcoming minimum standards trainings being held in December.	
Public Comment	<p>Robert Ruffner, Esq., submitted a public comment:</p> <ul style="list-style-type: none"> ○ Suggested that the curtailment order gives the Commission the opportunity to start advancing the Commission's broader purpose of indigent defense to the Governor, Legislators, and some judges. Argued that giving up anything other than monies in the personnel services account would be a fiction so the Budget Office's math would add up. ○ Discovery costs: believes that challenging the discovery costs should be a part of the Commission's duty of improving justice for indigent defendants. ○ Rule 11C comments; believes that the proposed rule should be limited to Rule 11C(c). 	
Adjournment of meeting	The Commission then voted to adjourn with the next meeting to be on January 8, 2013 at 9:30 a.m.	Commissioner Carey made a motion to adjourn. Commissioner Spierer seconded. All present voted in favor.

**(2.)
Operations Reports
Review**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
SUBJECT: DECEMBER 2012 OPERATIONS REPORTS
DATE: JANUARY 3, 2013

Attached you will find the December, 2012 Operations Reports for your review and our discussion at the upcoming Commission meeting on January 8, 2013. A summary of the operations reports follows:

- 1,864 new cases were opened in the DefenderData system in December.
- The number of vouchers submitted electronically in December was 2,247 totaling \$932,150.52. We paid 1,441 electronic vouchers totaling \$611,345.62.
- There were no paper vouchers submitted in December.
- The average price per voucher in December was \$424.25, a substantial increase over the average cost per voucher that we have seen this year to date. For Fiscal Year 2013 the average price per voucher is \$401.27.
- Appeals and Petitions for Termination of Parental Rights cases were the highest average vouchers in December.

In our All Other Account, the total expenses for the month of December were \$539,256.04. Of that amount, only \$9,919.83 was devoted to the Commission's operating expenses.

In the Personal Services Account, we had \$36,847.72 in expenses for the month of December.

In the Revenue Account, our monthly transfer from the Judicial Branch for counsel fees for the month of December, which reflects November's collections, totaled \$42,960.39, a return to the trend of below projection collections that we saw prior to November.

In December, we collected \$4,775.00 in registration fees for the December trainings, bringing our Conference Account total balance to \$11,817.97, but most expenses associated with the trainings have not yet been paid.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Case Type

12/31/2012

DefenderData Case Type	Dec-12						Fiscal Year 2013			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
Appeal	13	14	\$ 20,252.96	5	\$ 8,404.68	\$ 1,680.94	52	64	\$ 72,903.98	\$ 1,139.12
Child Protection Petition	149	257	\$ 141,702.21	202	\$ 108,286.82	\$ 536.07	947	1,589	\$ 793,953.82	\$ 499.66
Drug Court	4	10	\$ 3,730.00	4	\$ 2,240.00	\$ 560.00	17	69	\$ 24,540.00	\$ 355.65
Emancipation	7	7	\$ 2,120.00	6	\$ 857.50	\$ 142.92	65	56	\$ 11,130.53	\$ 198.76
Felony	423	490	\$ 338,585.93	318	\$ 227,830.59	\$ 716.45	2,864	2,802	\$ 1,771,226.82	\$ 632.13
Involuntary Civil Commitment	76	56	\$ 10,401.13	23	\$ 3,090.34	\$ 134.36	444	379	\$ 62,078.82	\$ 163.80
Juvenile	108	128	\$ 38,883.77	79	\$ 25,854.67	\$ 327.27	830	761	\$ 252,028.24	\$ 331.18
Lawyer of the Day - Custody	183	195	\$ 36,564.20	125	\$ 23,172.08	\$ 185.38	1,272	1,124	\$ 206,763.90	\$ 183.95
Lawyer of the Day - Juvenile	38	44	\$ 8,110.60	25	\$ 4,571.38	\$ 182.86	274	249	\$ 46,744.73	\$ 187.73
Lawyer of the Day - Walk-in	100	123	\$ 23,913.82	67	\$ 13,561.04	\$ 202.40	660	605	\$ 114,516.32	\$ 189.28
Misdemeanor	589	630	\$ 191,329.40	410	\$ 119,963.74	\$ 292.59	3,851	3,721	\$ 1,179,793.80	\$ 317.06
Petition, Modified Release Treatment	2	11	\$ 3,011.38	0			7	17	\$ 3,962.81	\$ 233.11
Petition, Release or Discharge	0	1	\$ 410.00	0			0	3	\$ 760.00	\$ 253.33
Petition, Termination of Parental Rights	10	20	\$ 16,927.00	8	\$ 8,122.32	\$ 1,015.29	70	130	\$ 94,289.78	\$ 725.31
Post Conviction Review	6	3	\$ 2,118.80	6	\$ 4,959.84	\$ 826.64	54	42	\$ 38,136.13	\$ 908.00
Probation Violation	107	121	\$ 36,893.01	92	\$ 27,617.06	\$ 300.19	775	760	\$ 242,457.22	\$ 319.02
Represent Witness on 5th Amendment	1	2	\$ 3,022.68	0			6	4	\$ 795.00	\$ 198.75
Review of Child Protection Order	45	131	\$ 52,790.15	64	\$ 31,070.91	\$ 485.48	274	762	\$ 330,110.98	\$ 433.22
Revocation of Administrative Release	3	4	\$ 1,383.48	7	\$ 1,742.65	\$ 248.95	28	26	\$ 8,220.88	\$ 316.19
DefenderData Sub-Total	1,864	2,247	\$ 932,150.52	1,441	\$ 611,345.62	\$ 424.25	12,490	13,163	\$ 5,254,413.76	\$ 399.18
Paper Voucher Sub-Total	0	0	\$ -	0	\$ -	#DIV/0!	8	8	\$ 30,729.89	\$ 3,841.24
TOTAL	1,864	2,247	\$932,150.52	1,441	\$611,345.62	\$ 424.25	12,498	13,171	\$ 5,285,143.65	\$ 401.27

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
 FY13 FUND ACCOUNTING
 AS OF 12/31/2012

Account 010 95F Z112 01 (All Other)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY13 Total
FY13 Professional Services Allotment		\$ 2,884,397.00		\$ 2,687,500.00		\$ 2,965,472.00		\$ 926,391.00	
FY13 General Operations Allotment		\$ 26,980.00		\$ 26,979.00		\$ 26,979.00		\$ 26,979.00	
Financial Order Adjustment								\$ 450,000.00	
Total Budget Allotments		\$ 2,911,377.00		\$ 2,714,479.00		\$ 2,992,451.00		\$ 1,403,370.00	\$ 10,021,677.00
Total Expenses	1	\$ (953,054.83)		\$ (1,196,839.34)					
	2	\$ (1,091,744.87)		\$ (1,040,258.62)					
	3	\$ (680,952.30)		\$ (539,256.04)					
TOTAL REMAINING		\$ 123,750.00		\$ (0.00)		\$ 2,992,451.00		\$ 1,403,370.00	\$ 4,519,571.00

Q2 Month 6 (as of 12/31/12)	
INDIGENT LEGAL SERVICES	
Counsel Payments	\$ (469,690.98)
Somerset County	\$ (20,700.00)
Subpoena Witness Fees	\$ (140.32)
Private Investigators	\$ (5,127.40)
Mental Health Expert	\$ (6,643.29)
Misc Prof Fees & Srvc	\$ (13,176.00)
Transcripts	\$ (8,265.75)
Other Expert	\$ (4,800.00)
Process Servers	\$ (278.07)
Interpreters	\$ (514.40)
SUB-TOTAL ILS	\$ (529,336.21)
OPERATING EXPENSES	
Cell Phones	\$ (95.81)
DefenderData	\$ (3,838.00)
Dues	\$ (255.00)
Mileage/Tolls/Parking	\$ (1,897.58)
Mailing/Postage/Freight	\$ (865.10)
Printing & Binding	\$ -
Eye Exam & Glasses	\$ (140.00)
Office Supplies/Equip.	\$ (23.65)
Periodicals	\$ -
Office Equipment Rental	\$ (132.48)
OIT/TELCO	\$ (2,672.21)
SUB-TOTAL OE	\$ (9,919.83)
TOTAL	\$ (539,256.04)

INDIGENT LEGAL SERVICES	
Q2 Allotment	\$ 2,714,479.00
Q2 Expenditure for Somerset cty PDP contract from Q1 Allotment	\$ 61,875.00
Q2 Expenses as of 12/31/12	\$ (2,776,354.00)
Remaining FY13 Allotment as of 12/31/12	\$ 4,519,571.00

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY13 FUND ACCOUNTING
AS OF 12/31/2012

Account 010 95F Z112 01 (Personal Services)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY13 Total
FY13 Allotment		\$ 165,613.00		\$ 146,660.00		\$ 153,265.00		\$ 112,316.00	\$ 577,854.00
Financial Order Adjustments									
Total Budget Allotments		\$ 165,613.00		\$ 146,660.00		\$ 153,265.00		\$ 112,316.00	\$ 577,854.00
Total Expenses	1	\$ (48,341.22)	4	\$ (39,386.82)	7		10		
	2	\$ (29,487.98)	5	\$ (40,076.59)	8		11		
	3	\$ (36,316.33)	6	\$ (36,847.72)	9		12		
TOTAL REMAINING		\$ 51,467.47		\$ 30,348.87		\$ 153,265.00		\$ 112,316.00	\$ 347,397.34

Q2 Month 6 (as of 12/31/12)	
Per Diem Payments	\$ (220.00)
Salary	\$ (17,059.58)
Vacation Pay	\$ (364.22)
Holiday Pay	\$ (3,477.60)
Sick Pay	\$ (2,282.60)
Overtime Pay	\$ -
Health Insurance	\$ (7,015.56)
Dental Insurance	\$ (219.04)
Employer Retiree Health	\$ (1,894.12)
Employer Retirement	\$ (1,308.60)
Employer Group Life	\$ (184.08)
Employer Medicare	\$ (309.20)
Retiree Unfunded Liability	\$ (2,513.12)
TOTAL	\$ (36,847.72)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY13 FUND ACCOUNTING
As of 12/31/12

Account 014 95F Z112 01 (Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY13 Total
Total Budget Allotments		\$ 149,124.00		\$ 149,124.00		\$ 149,124.00		\$ 149,125.00	\$ 596,497.00
Financial Order Adjustment	1		4		7		10		
Financial Order Adjustment	2		5		8		11		
Financial Order Adjustment	3		6		9		12		
Total Budget Allotments		\$ 149,124.00		\$ 149,124.00		\$ 149,124.00		\$ 149,125.00	\$ 596,497.00
Collected Revenue from JB	1		4	\$ 41,696.86	7		10		
Collected Revenue									
Transfer from conference account									
Collected Revenue from JB	2	\$ 77,964.58	5	\$ 59,172.43	8		11		
Collected Revenue from JB	3	\$ 45,020.66	6	\$ 42,960.39	9		12		
TOTAL REVENUE COLLECTED		\$ 122,985.24		\$ 143,829.68		\$ -		\$ -	\$ 266,814.92
Total Expenses	1		4		7		10		
	2	\$ (542.39)	5		8		11		
	3	\$ (121,688.85)	6	\$ (141,654.64)	9		12		
TOTAL REMAINING		\$ 26,892.76		\$ 7,469.36		\$ 149,124.00		\$ 149,125.00	\$ 332,611.12

Q2 Month 6 (as of 12/31/12)	
DEFENDER DATA COUNSEL PAYMENTS	
	\$ (141,654.64)
SUB-TOTAL ILS	
OVERPAYMENT REIMBURSEMENTS	\$ (272.75)
TRAINING MATERIAL REPRINTS	\$ -
SUB-TOTAL OE	\$ (272.75)
TOTAL	\$ (272.75)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY13 FUND ACCOUNTING
As of 12/31/12

Account 014 95F Z112 02 (Conference Account)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY13 Total
FY12 Carry Over		\$ 7,404.87							\$ -
Total Budget Allotments			\$ 6,000.00	\$ 20,000.00	\$ 6,000.00				\$ 32,000.00
Actual Collected Earned Revenue	1	\$ 134.06	4	\$ 525.00	7		10		
	2		5	\$ 1,900.00	8		11		
	3		6	\$ 2,350.00	9		12		
ACTUAL CASH BALANCE		\$ 7,538.93	\$ 4,775.00						\$ 12,313.93
Total Expenses	1		4		7		10		
	2		5		8		11		
	3		6	\$ (495.96)	9		12		
TOTAL REMAINING		\$ -	\$ (495.96)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 11,817.97

Q2 Month 6 (as of 12/31/12)	
Collected Revenue	\$ 2,350.00
Training Expenses	\$ (495.96)
TOTAL EXPENSES	\$ (495.96)