

MCILS

**November 29, 2021
Commissioner's Meeting
Packet**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

**NOVEMBER 29, 2021
COMMISSION MEETING
AGENDA**

- 1) Public Hearing on Chapter 301 Rulemaking
- 2) Approval of October 29, 2021 Commission Meeting Minutes
- 3) Report of the Executive Director
- 4) Forum Update
- 5) Collections Concerns
- 6) Set Date, Time and Location of Next Regular Meeting of the Commission
- 7) Public Comment
- 8) Executive Session

94-649 MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Chapter 301: FEE SCHEDULE AND ADMINISTRATIVE PROCEDURES FOR PAYMENT OF COURT OR COMMISSION ASSIGNED COUNSEL

Summary: ~~This Chapter establishes a fee schedule and administrative procedures for payment of Court Assigned and Commission Assigned counsel. The Chapter sets a standard hourly rate and maximum fee amounts that trigger presumptive review 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 Counsel has received prior authorization to do otherwise, all that all~~ vouchers must be submitted using ~~the MCILS~~ the MCILS electronic case management system.

SECTION 1. DEFINITIONS

1. ~~1.~~ Court Assigned Attorney Counsel Counsel. "Court Assigned Attorney Counsel Counsel" means ~~an attorney Counsel~~ licensed to practice law in the State of Maine, designated eligible to receive an assignment to a particular case, and initially assigned by a Court to represent a particular client in a particular matter.
2. ~~2.~~ Commission Assigned Counsel. "Commission Assigned Counsel" means counsel licensed to practice in Maine, designated eligible to be assigned to provide a particular service or to represent a particular client in a particular matter, and assigned by MCILS to provide that service or represent a client.
3. Counsel. As used in this Chapter "Counsel" means a Court Assigned Counsel or Commission Assigned Counsel, or both.
- 2.4. MCILS or Commission. "MCILS" or "Commission" means the Commissioners of the Maine Commission on Indigent Legal Services.
3. ~~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, 2021:

A rate of Eighty Dollars (\$80.00) per hour is authorized for time spent by Counsel, and billed using MCILS electronic case management system, on an assigned case on or after July 1, 2021. A rate of Sixty Dollars (\$60.00) per hour remains authorized for time spent on an assigned case between July 1, 2015 and June 30, 2021. A rate of Fifty-five Dollars (\$55.00) per hour remains authorized for time spent on an assigned case between July 1, 2014 and June 30, 2015. A rate of Fifty Dollars (\$50.00) per hour remains authorized for time spent on an assigned case between the inception of the Commission and June 30, 2014.

SECTION 3. EXPENSES

1. _____

1. **Routine Office Expenses.** ~~Routine Office expenses are considered to be included in the hourly rate will not be paid by MCILS. Routine office expenses, include, ing, but are not limited to, postage, express postage, regular telephone, cell telephone, fax, office overhead, utilities, secretarial services, routine copying (under 100 pages) the first 100 pages of any one print or copy job, local phone calls, parking (except as stated below), and office supplies, etc., will not be reimbursed. Paralegal time may be billed to MCILS only through the non-counsel cost procedures.~~

2. _____

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), copy costs for print or copy jobs in excess of 100 pages, beginning with the 101st page, 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, may be paid by MCILS after review. Necessary parking fees associated with multi-day trials and hearings will be reimbursed, but must be approved in advance by the Executive Director.~~

3. _____

3. **Travel Reimbursement.** ~~Mileage reimbursement shall not exceed the made at the applicable State rate applicable to confidential state employees on the date of the travel. Mileage reimbursement will be paid for travel to and from courts other than an attorney Counsel's home district and superior court. Mileage reimbursement will not be paid for travel to and from an attorney Counsel's home district and superior courts. Tolls will be reimbursed, except that tolls will not be reimbursed for travel to and from attorney Counsel's home district and superior court. All out-of-state travel or any overnight travel must be approved by the MCILS. 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. _____

4. **Itemization of Claims.** ~~Claims for all expenses must be itemized and include documentation. Claims for mileage shall be itemized and include the start and end points for the travel in question.~~

5. ~~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~~ within one week of notice of new counsel's assignment. Counsel may retain a copy of a file transferred to new counsel, or to a client. Counsel shall perform any scanning or make any copies necessary to retain a copy of the file at counsel's expense. The client owns the file. The original file shall be tendered to new counsel, or to the client, as directed.
6. ~~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~~ shall 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. ~~7.~~ **Witness, Subpoena, and Service Fees.** ~~In criminal and juvenile cases, witness~~ Witness, subpoena, and service fees will be reimbursed only pursuant to M.R. Crim. P. 17(b). the Maine Rules of Court. It is unnecessary for counsel to advance these costs, and they shall not be included as a voucher expense without prior consent from the Executive Director or designee. 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 PRESUMPTIVE REVIEW

Vouchers submitted for amounts ~~greater than~~ in excess of the applicable ~~maximum fees outlined in this section~~ trigger for presumptive review will not be ~~approved~~ considered for payment, ~~except as approved after review by the Executive Director or designee.~~ Vouchers submitted in excess of the trigger for presumptive review must be accompanied by an explanation of the time spent on the matter. The explanation shall be set forth in the notes section of a voucher or invoice.

1. Trial Court Criminal Fees

- A. ~~A.~~ Maximum fees Triggers for presumptive review, 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~~ trigger limit.

Effective July 1, 2015:

- 1) ~~1) Murder. Fee to be set by the Executive Director on a case by case basis.~~
- 1) ~~2) Murder. All murder cases shall trigger presumptive review.~~
- 2) ~~Class A. \$35,000,000~~
- 3) ~~3) Class B and C (against person). \$2,250,000~~
- 4) ~~4) Class B and C (against property). \$1,250~~
- 5) ~~5) Class D and E (Superior or Unified Criminal Court) E. \$750,500~~
- 6) ~~6) Class D and E (District Court). \$540,000~~
- 7) ~~7) Post-Conviction Review. \$1,200,000~~
- 8) ~~8) Probation Revocation. \$540,500~~
- 9) ~~9) Miscellaneous (i.e. witness representation on 5th Amendment grounds, etc.). \$540,000~~
- 10) ~~10) Juvenile. \$540,500~~
- 11) Bindover: applicable criminal class trigger

B. ~~B.~~ In cases involving multiple counts against a single defendant, the ~~maximum triggering~~ 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~~ shall coordinate and consolidate services as much as possible.

~~C.~~ C.—Criminal and juvenile cases will include all proceedings through a terminal case event/disposition as defined in Section 65.1.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/Counsel 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/Counsel appear at such things as arraignments and routine non-testimonial motions, instead of having all Commission assigned counsel in an area appearRepealed.

~~D.~~ E.—Upon written request to MCILS, assistant-a second Counsel counsel, may be appointed/assigned in a murder case or other complicated cases; to provide for mentorship, or for other good cause at the discretion of the Executive Director:

1) 1)—the duties of each attorney/Counsel must be clearly and specifically defined, and counsel must avoid unnecessary duplication of effort;

2) 2)—each attorney/Counsel 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/Counsel.

~~2.~~ 2.—**District Court Child Protection**

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

Effective July 1, 2015:

1) 1)—**Child protective cases** (each stage). \$9001,500

2) 2)—**Termination of Parental Rights stage** (with a hearing). \$1,2602,500

~~B. B.~~ Counsel must provide MCILS with written justification for any voucher that exceeds the ~~maximum fee~~ triggering limit. Each child protective stage ends when a proceeding results in a ~~court order as defined in Section 5.1.B below~~ Preliminary Protective Order, Judicial Review Order, Jeopardy Order, Order on Petition for Termination of Parental Rights, or entry of a Family Matter or other dispositional order. Each distinct stage in on-going child protective cases shall be considered a new appointment for purposes of the ~~maximum triggering fee for that case.~~ A separate voucher must be submitted at the end of each stage.

~~3. 3.~~ **Other District Court Civil**

~~A. A.~~ Maximum fees Triggering fees in District Court civil actions, 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 triggering fee limit.~~

Effective July 1, 2015:

~~1) 1)~~ **Application for Involuntary Commitment. \$4201,000**

~~2) 2)~~ **Petition for Emancipation. \$4201,500**

~~3) 3)~~ **Petition for Modified Release Treatment. \$4201,000**

~~4) 4)~~ **Petition for Release or Discharge. \$4201,000**

~~4. 4.~~ **Law Court**

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

Effective July 1, 2015:

~~1) 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. Repealed~~

C. Appellate: \$2,000

SECTION 5: MINIMUM FEES

Effective July:

1, 2015:

1. ~~Attorney~~Counsels may ~~charge~~bill a minimum fee of ~~\$150.00~~3 hours for ~~appearance~~appearances as Lawyer of the Day, or in specialty or diversionary courts or programs. A single minimum fee may be charged for each appearance at which the Counsel serves. If ~~Ce~~Counsel serves as Lawyer of the Day for a morning session that continues into the afternoon, that will be one appearance. If ~~e~~Counsel serves as Lawyer for the Day for a morning session and then a subsequent afternoon session with a second appearance time and list, that will be two appearances. Vouchers seeking the minimum fee ~~shall~~must 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 per appearance 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 appeal of a terminal case, or completion of a stage of a child protection case resulting in an order. event. Lawyer of the Day and specialty courts shall be billed within 90 days of the service provided. Vouchers not 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 within 90-days of a terminal case event cannot be paid, except on a showing by counsel that a voucher could not have been timely submitted for reasons outside the actual or constructive control of counsel. Counsel are encouraged to submit interim vouchers not more often than once every 90 days per case. Counsel may request~~

reconsideration of a voucher rejected between April 1, 2021 and the effective date of this rule, "disposition" of a criminal or juvenile case shall be at the following times: if that voucher would be payable under this rule.

1) ~~entry of judgment (sentencing, acquittal, dismissal, or filing);~~

Terminal case events are:

1) The withdrawal of counsel

2) ~~upon~~ The entry of a deferred disposition;

3) ~~upon issuance~~dismissal of a warrant of arrest for failure to appear; all charges or petitions

4) ~~upon granting of leave to withdraw;~~

5) ~~upon decision of any post-trial motions;~~

6) ~~upon completion of the services the attorney Counsel was assigned to provide (e.g., mental health hearings, "lawyer of the~~3) Judgment in a case, or

4) Final resolution of post-judgment proceedings for which counsel is responsible

The 90 day," bail hearings, etc.); or

7) ~~specific authorization of the Executive Director to submit an interim period for submitting a voucher.~~

~~B. For purposes of this rule, "each stage" of a child protection case shall be:~~

1) ~~run from the date that an Order after Summary Preliminary hearing, Judgment, or Agreement Dismissal is docketed.~~

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~~

1. ~~2. Unless otherwise authorized in advance, all~~ All vouchers must be submitted using the ~~MCILS~~ MCILS electronic case management program and comply with all instructions for use of the system.

2. ~~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.~~

3. ~~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.~~ appended to the voucher.

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~~ MCILS at disposition of the case.

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
- July 1, 2015 – filing 2015-121 (EMERGENCY ~~major substantive~~)
- June 10, 2016 – filing 2016-092 (~~Final adoption, major substantive~~)
- July 21, 2021 – filing 2021-149 (EMERGENCY ~~major substantive~~)

**Maine Commission on Indigent Legal Services – Commissioners Meeting
October 29, 2021**

Minutes

Commissioners Present: Donald Alexander, Meegan Burbank, Michael Carey, Robert Cummins, Roger Katz, Matthew Morgan, Ronald Schneider, Joshua Tardy

MCILS Staff Present: Justin Andrus, Ellie Maciag

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Public Hearing on Chapter 301 Rulemaking	No public comment.	
Approval of the September 22, 2021 Commission meeting minutes	No discussion.	Commissioner Cummins moved to approve. Commissioner Katz seconded. All voted in favor. Approved.
Child Protective	Director Andrus relayed that following the Judicial Branch’s parents’ attorney training held earlier this week, several attendees contacted him about troubling comments made by a district court judge during one panel session. Attorneys reported that this judge told parents attorneys to not pursue contested hearings, judicial reviews or termination hearings. Director Andrus has requested the recording of this session to review. Director Andrus alerted the Commission about issues with DHHS regarding the lack of parent visitation. Commissioner Carey requested the documentation of the DHHS contract with the visitation provider and extended an invitation to MEPRA, the newly created parents attorney organization, for its members to speak at a future Commission meeting to brief the Commission on issues the group is seeing.	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Commissioner Mary Zmigrodski	Chair Tardy announced Commissioner Mary Zmigrodski has stepped down as a Commission member. Chair Tardy thanked her for service on the Commission.	
Report of the Executive Director	Commissioner Katz expressed concern about the low voucher amounts for several case categories, including mental health, felony, and misdemeanor cases, and that not enough time was being devoted to these cases. Commissioner Burbank clarified that for many mental health cases, many are dismissed before a hearing which might cause the average voucher amount to be low. Director Andrus indicated that the Audit Division will be looking at low voucher values as well to identify areas of concern. Director Andrus added that the RFP for a new case management system is forthcoming and a new system will help with the issue of companion vouchers that artificially reduce the voucher average. Director Andrus provided the security agreement that all Commission staff will agreeing to as well as the form to be used for Commission assigned counsel. Director Andrus reported that there is still no agreement with the Judicial Branch about sharing quality of service issues about rostered counsel with the Commission. Director Andrus also alerted the Commission on the serious problem in several jails where people reporting for sentences are being turned away and their sentences being stayed indefinitely.	
Staffing Update	Director Andrus reported that three of the new Commission staff had started work with the fourth set to begin in the coming weeks.	
Forum Update	Director Andrus announced that the Commission’s Attorney Forum has be scheduled for November 23 and various stakeholders will be invited to attend, including the Court, Judiciary Committee members, GOC, AFA, MACDL, MEPR, District Attorneys and Attorneys Generals.	
AOC Discussion Update	Director Andrus reported that he is trying hard to engage with the Administrative Office of the Courts on the Odyssey-Justice Works integration.	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Legislative Update	Director Andrus reported that Representative Harnett’s bill addressing the recording of attorney-client telephone calls at the jail has been voted down by the Legislative Council. Director Andrus stated that Rep. Harnett intends to appeal that decision.	
Commissioner Alexander’s Proposal	Commissioner Alexander gave an overview of his proposal and it was well received by the rest of the Commission. Commissioner Schneider suggested to workshop the proposal.	
Barbara Taylor Contract Renewal Update	Director Andrus reported that Attorney Barbara Taylor’s contract with the Commission to provide immigration consultations with attorneys in appointed cases has been renewed.	
New Attorney Training Proposal	Director Andrus suggested postponing the planned expanded new attorney training until it can be held safely in person. The Commissioners all agreed.	
Chapter 301 Rulemaking Discussion	Commissioner Alexander proposed several changes to the amended Chapter 301, including changing the presumptive maximums for several criminal and juvenile categories and increase the minimum fee for LOD appearances. Commission Carey moved to approve Chapter 301 as amended by Commissioner Alexander. Commissioner Cummins seconded. A discussion ensued about whether the term “attorney” or “counsel” should be used, with Commissioner Schneider suggesting the use of the term counsel since it better reflects what Rule 44 says and is in the title of Chapter 301. The Commissioners agreed to change attorney to counsel throughout the rule. The vote on the motion was unanimous.	
Public Comment	<u>Robert Ruffner, Esq.</u> Attorney Ruffner relayed a recent LOD experience where a York County judge refused a provisional appointment of counsel for an in-custody defendant who could not afford to make bail set at \$500. Attorney	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>Ruffner stated that this highlighted the need for LOD training about how to make the appropriate objections. Attorney Ruffner urged the Commission to adopt a policy that co-counsel is allowed in every case. Addressing Commissioner Alexander’s proposal, Attorney Ruffner suggested that a contract based on \$80 per hour will not attract a lot of interest and just changing the timing of payment does not really help. Attorney Ruffner urged the Commission to have a discussion about solving the information gap that exists and suggested having a person in each judicial district authorized by the Commission to address the information gap.</p>	
<p>Executive Session</p>	<p>Commissioner Carey moved to go into executive session pursuant to 1 MRS section 405(6)(e) to discuss the Commission’s legal rights and duties with counsel. Commissioner Alexander seconded. No votes taken.</p>	
<p>Adjournment of meeting</p>	<p>The next meeting will be held on a date to be determined.</p>	

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JUSTIN ANDRUS, EXECUTIVE DIRECTOR
SUBJECT: OPERATIONS REPORTS
DATE: November 24, 2021

Attached you will find the October 2021, Operations Reports for your review and our discussion at the Commission meeting on November 29, 2021. A summary of the operations reports follows:

- 2,260 new cases were opened in the DefenderData system in October. This was a 155 case decrease from September. Year to date, new cases are down 2.9% from 10,415 at this time last year to 10,108 this year.
- The number of vouchers submitted electronically in October was 2,932, an increase of 397 vouchers from September, totaling \$1,636,505, an increase of \$204,727 from September. Year to date, the number of submitted vouchers is up by approximately 14.9%, from 9,572 at this time last year to 11,000 this year, with the total amount for submitted vouchers up approximately 35%, from \$4,338,647 at this time last year to \$5,871,184 this year.
- In October, we paid 2,675 electronic vouchers totaling \$1,440,923, representing a decrease of 327 vouchers and a decrease of \$213,990 compared to September. Year to date, the number of paid vouchers is up approximately 20.8%, from 8,744 at this time last year 10,564 this year, and the total amount paid is up approximately 39.2%, from \$4,002,273 this time last year to \$5,571,252 this year.
- We paid no paper vouchers in October.
- The average price per voucher in October was \$538.66 down \$12.61 per voucher from September. Year to date, the average price per voucher is up approximately 15.2%, from \$457.72 at this time last year to \$527.38 this year.
- Appeal and Drug Court cases had the highest average voucher in October. There were 9 vouchers exceeding \$5,000 paid in October. See attached addendum for details.
- In October, we issued 74 authorizations to expend funds: 39 for private investigators, 24 for experts, and 11 for miscellaneous services such as interpreters and transcriptionists. In October, we paid \$78,018 for experts and investigators, etc. No requests for funds were denied.
- In October, we opened no attorney investigations.

- In October, we approved 3 requests for co-counsel.

In our All Other Account, the total expenses for the month of October were \$1,531,646. During October, approximately \$12,703 was devoted to the Commission's operating expenses.

In the Personal Services Accounts, we had \$55,619 in expenses for the month of October.

In the Revenue Account, the transfer from the Judicial Branch for October, reflecting September's collections, totaled \$106,420.

During October, we had no financial activity related to training.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY22 FUND ACCOUNTING
AS OF 10/31/2021

Account 010 95F Z112 01 (All Other)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY22 Total
FY22 Professional Services Allotment		\$ 5,153,983.00		\$ 4,940,737.00		\$ 4,940,737.00		\$ 423,013.00	
FY22 General Operations Allotment		\$ 48,000.00		\$ 48,000.00		\$ 48,000.00		\$ 48,000.00	
FY21 Encumbered Balance Forward		\$ 128,745.00		\$ -		\$ -		\$ -	
Budget Order Adjustment		\$ (398,351.00)		\$ 398,351.00		\$ -		\$ -	
Supplemental Budget Allotment		\$ -		\$ -		\$ -		\$ -	
Financial Order Unencumbered Balance Fwd		\$ -		\$ -		\$ -		\$ -	
FY21 Unobligated Carry Forward		\$ 495,733.30		\$ -		\$ -		\$ -	\$ 495,733.30
Total Budget Allotments		\$ 4,803,632.00		\$ 5,387,088.00		\$ 4,988,737.00		\$ 471,013.00	\$ 16,146,203.30
Total Expenses	1	\$ (1,188,459.32)	4	\$ (1,531,646.43)	7	\$ -	10	\$ -	
	2	\$ (1,479,685.13)	5	\$ -	8	\$ -	11	\$ -	
	3	\$ (1,282,898.64)	6	\$ -	9	\$ -	12	\$ -	
Encumbrances (Justice Works)		\$ (70,052.50)		\$ 6,010.00		\$ -		\$ -	\$ (64,042.50)
Encumbrances (B Taylor)		\$ (13,260.00)		\$ 4,420.00		\$ -		\$ -	\$ (8,840.00)
Encumbrances (CTB for non attorney expenses)		\$ (676,875.82)		\$ 78,018.80		\$ -		\$ -	\$ (598,857.02)
Encumbrance (Jamesa Drake training contract)		\$ (92,400.00)		\$ -		\$ -		\$ -	\$ (92,400.00)
TOTAL REMAINING		\$ 0.59		\$ 3,943,890.37		\$ 4,988,737.00		\$ 471,013.00	\$ 9,899,374.26

Q2 Month 4	
INDIGENT LEGAL SERVICES	
Counsel Payments	\$ (1,440,923.92)
Interpreters	\$ (8,002.33)
Private Investigators	\$ (17,810.04)
Mental Health Expert	\$ (15,150.00)
Misc Prof Fees & Serv	\$ (243.40)
Transcripts	\$ (12,861.08)
Other Expert	\$ (23,692.65)
Process Servers	\$ (259.30)
Subpoena Witness Fees	\$ -
Out of State Witness Travel	\$ -
SUB-TOTAL ILS	\$ (1,518,942.72)
OPERATING EXPENSES	
Service Center	
DefenderData	\$ (6,010.00)
Parking Permit Annual Fee	\$ -
Mileage/Tolls/Parking	\$ (843.50)
Mailing/Postage/Freight	\$ (218.62)
West Publishing Corp	\$ (226.80)
Risk Management Insurances	\$ -
Office Supplies/Equip.	\$ (187.11)
Cellular Phones	\$ (482.94)
OIT/TELCO	\$ -
Office Equipment Rental	\$ (104.74)
Barbara Taylor monthly fees	\$ (4,420.00)
Tuition for Justin's CLEs	\$ -
Dues	\$ (210.00)
AAG Legal Srvcs Quarterly Paym	\$ -
SUB-TOTAL OE	\$ (12,703.71)
TOTAL	\$ (1,531,646.43)

INDIGENT LEGAL SERVICES	
Q2 Allotment	\$ 5,387,088.00
Q2 Encumbrances for Justice Works contract	\$ 6,010.00
Barbara Taylor Contract	\$ 4,420.00
CTB Encumbrance for non attorney expenses	\$ 78,018.80
Q2 Jamesa Drake training contract	\$ -
Q2 Expenses to date	\$ (1,531,646.43)
Remaining Q1 Allotment	\$ 3,943,890.37

Non-Counsel Indigent Legal Services	
Monthly Total	\$ (78,018.80)
Total Q1	\$ 223,124.18
Total Q2	\$ 78,018.80
Total Q3	\$ -
Total Q4	\$ -
Fiscal Year Total	\$ 301,142.98

Conference Account Transactions	
NSF Charges	\$ -
Training Facilities & Meals	\$ -
Printing/Binding	\$ -
Overseers of the Bar CLE fee	\$ -
Collected Registration Fees	\$ -
Current Month Total	\$ -

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

FY22 FUND ACCOUNTING

As of 10/31/2021

Account 014 95F Z112 02 (Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY22 Total
Original Total Budget Allotments		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00	\$ 1,100,000.00
Financial Order Adjustment		\$ 5,294,080.00		\$ 3,276,305.00		\$ 7,324.00		\$ 7,324.00	\$ 8,585,033.00
Funds for new positions, etc		\$ -		\$ -		\$ -		\$ -	\$ 708,658.00
Financial Order Adjustment	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Financial Order Adjustment	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Budget Order Adjustment		\$ -	6	\$ -	9	\$ -	12	\$ -	
Budget Order Adjustment	3	\$ -		\$ -		\$ -		\$ -	
Total Budget Allotments		\$ 5,569,080.00		\$ 3,551,305.00		\$ 282,324.00		\$ 282,324.00	\$ 10,393,691.00
Cash Carryover from Prior Quarter		\$ 884,522.69		\$ -		\$ -		\$ -	
Collected Revenue from JB	1	\$ 100,206.73	4	\$ 106,420.57	7	\$ -	10	\$ -	
Collected from McIntosh Law		\$ 6,000.00		\$ -		\$ -		\$ -	
Collected for reimbursement of counsel fees		\$ 2,167.00		\$ 195.00	8	\$ -		\$ -	
Asset Forfeiture		\$ 3,334.00		\$ -		\$ -		\$ -	
Victim Services Restitution		\$ 1,020.00		\$ -		\$ -		\$ -	
Collected Revenue from JB	2	\$ -	5	\$ -		\$ -	11	\$ -	
Collected from McIntosh Law		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB	3	\$ 149,539.64	6	\$ -	9	\$ -	12	\$ -	
Collected from McIntosh Law		\$ 2,142.00		\$ -		\$ -		\$ -	
Collected for reimbursement of counsel fees		\$ 286.00		\$ -		\$ -		\$ -	
Collected from ME Ctr Public Int Reporting		\$ -		\$ -		\$ -		\$ -	
Returned Checks-stopped payments		\$ -		\$ -		\$ -		\$ -	
TOTAL CASH PLUS REVENUE COLLECTED		\$ 1,149,218.06		\$ 106,615.57		\$ -		\$ -	\$ 1,255,833.63
Counsel Payments	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Other Expenses		\$ -		\$ -		\$ -	***	\$ -	
Counsel Payments	2	\$ (457,655.45)	5	\$ -	8	\$ -	11	\$ -	
Other Expenses		\$ -		\$ -		\$ -		\$ -	
Counsel Payments	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
State Cap for period 2 expenses	*	\$ (4,471.29)	**	\$ -	***	\$ -		\$ -	
REMAINING ALLOTMENT		\$ 5,106,953.26		\$ 3,551,305.00		\$ 282,324.00		\$ 282,324.00	\$ 9,222,906.26
Overpayment Reimbursements	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
REMAINING CASH Year to Date		\$ 687,091.32		\$ 106,615.57		\$ -		\$ -	\$ 793,706.89

** NO COLLECTED REVENUE IN AUGUST

Collections versus Allotment	
Monthly Total	\$ 151,967.64
Total Q1	\$ 264,695.37
Total Q2	\$ 106,615.57
Total Q3	\$ -
Total Q4	\$ -
Expenses to Date	\$ (462,126.74)
Cash Carryover from Prior Year	\$ 884,522.69
Fiscal Year Total	\$ 793,706.89

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY22 FUND ACCOUNTING
AS OF 10/31/2021

Account 010 95F Z112 01 (Personal Services)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY20 Total
FY22 Allotment		\$ 285,846.00		\$ 223,990.00		\$ 254,914.00		\$ 162,917.00	\$ 927,667.00
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustments		\$ (52,078.00)		\$ 52,078.00		\$ -		\$ -	
Total Budget Allotments		\$ 233,768.00		\$ 276,068.00		\$ 254,914.00		\$ 162,917.00	\$ 927,667.00
Total Expenses	1	\$ (74,728.63)	4	\$ (55,619.74)	7	\$ -	10	\$ -	
	2	\$ (103,991.70)	5	\$ -	8	\$ -	11	\$ -	
	3	\$ (55,046.83)	6	\$ -	9	\$ -	12	\$ -	
TOTAL REMAINING		\$ 0.84		\$ 220,448.26		\$ 254,914.00		\$ 162,917.00	\$ 638,280.10

Q2 Month 4	
Per Diem	\$ (165.00)
Salary	\$ (29,684.04)
Vacation Pay	\$ (1,809.09)
Holiday Pay	\$ (2,035.11)
Sick Pay	\$ (2,976.84)
Empl Hlth SVS/Worker Comp	\$ -
Health Insurance	\$ -
Dental Insurance	\$ (262.80)
Employer Retiree Health	\$ (3,702.61)
Employer Retirement	\$ (2,433.38)
Employer Group Life	\$ (344.40)
Employer Medicare	\$ (581.61)
Retiree Unfunded Liability	\$ (7,352.22)
Longevity Pay	\$ (160.00)
Perm Part Time Full Ben	\$ (4,112.64)
Premium & Standard OT	\$ -
Retro Lump Sum Pymt	\$ -
TOTAL	\$ (55,619.74)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY22 FUND ACCOUNTING
AS OF 10/31/2021

Account 014 95F Z112 01 (OSR Personal Services Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY20 Total
FY22 Allotment		\$ 127,406.00		\$ 209,674.00		\$ 211,155.00		\$ 160,423.00	\$ 708,658.00
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Total Budget Allotments		\$ 127,406.00		\$ 209,674.00		\$ 211,155.00		\$ 160,423.00	\$ 708,658.00
Total Expenses	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
TOTAL REMAINING		\$ 127,406.00		\$ 209,674.00		\$ 211,155.00		\$ 160,423.00	\$ 708,658.00

Q2 Month 4	
Per Diem	\$ -
Salary	\$ -
Vacation Pay	\$ -
Holiday Pay	\$ -
Sick Pay	\$ -
Empl Hlth SVS/Worker Comp	\$ -
Health Insurance	\$ -
Dental Insurance	\$ -
Employer Retiree Health	\$ -
Employer Retirement	\$ -
Employer Group Life	\$ -
Employer Medicare	\$ -
Retiree Unfunded Liability	\$ -
Longevity Pay	\$ -
Perm Part Time Full Ben	\$ -
Premium & Standard OT	\$ -
Retro Lump Sum Pymt	\$ -
TOTAL	\$ -

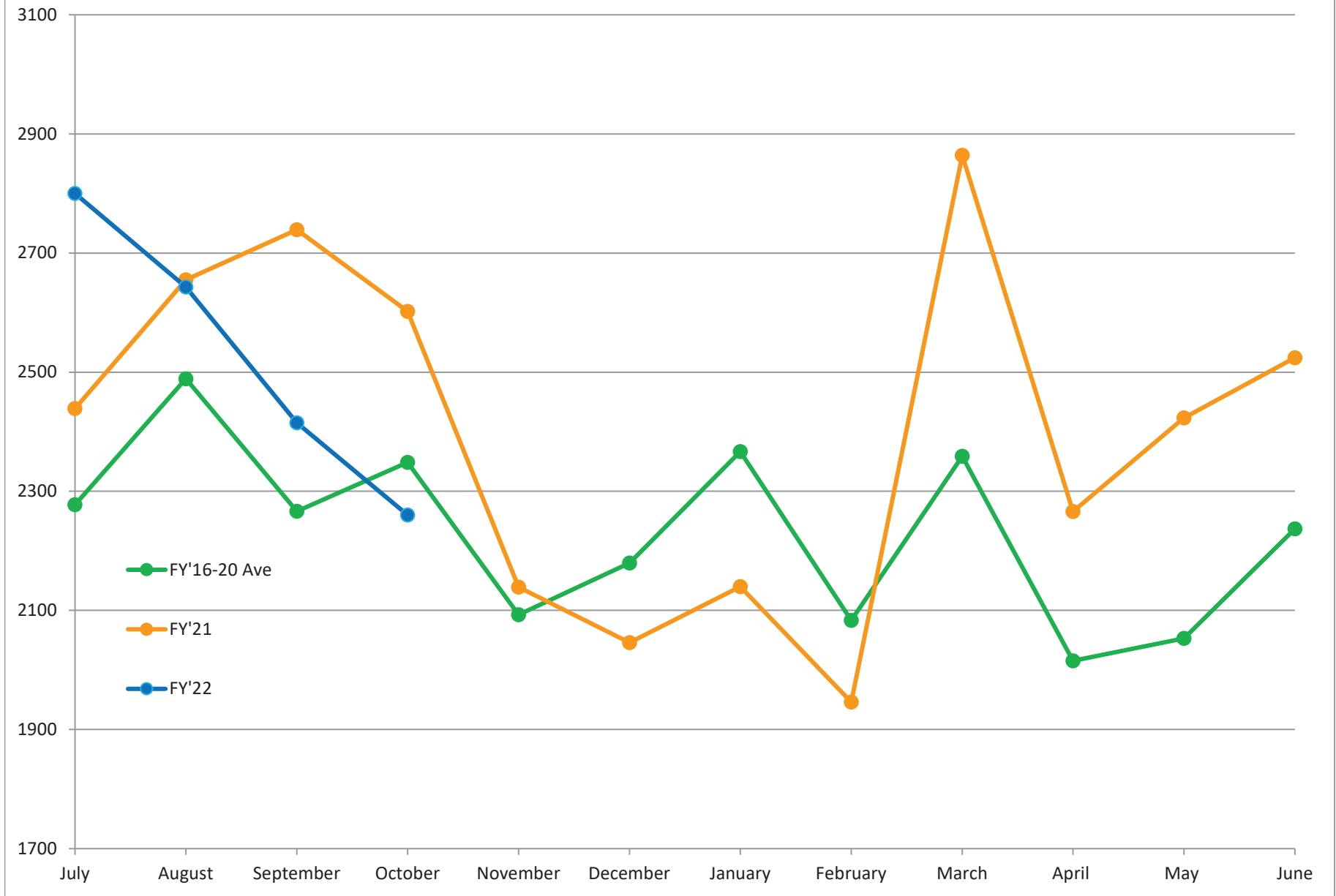
MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Case Type

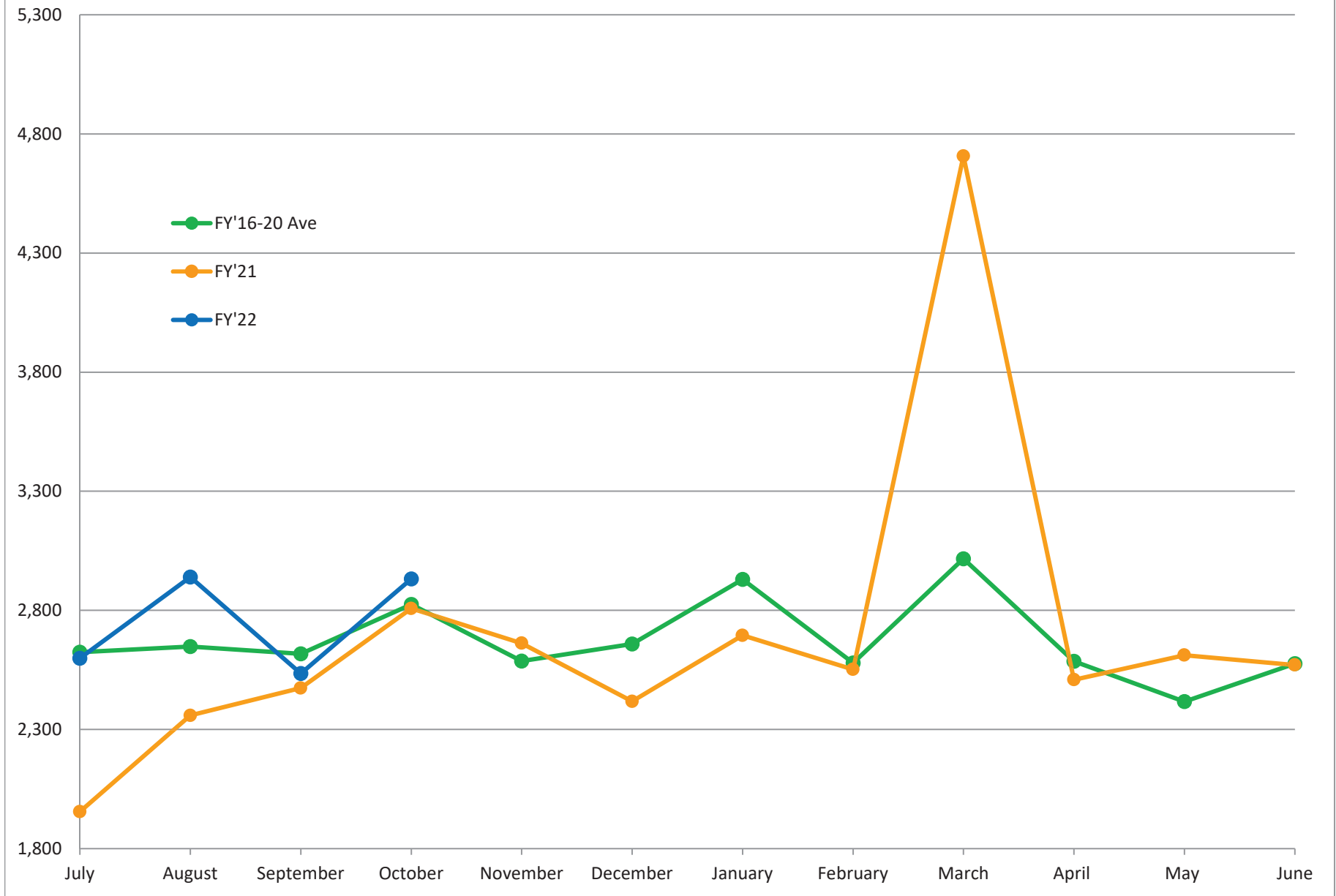
10/31/2021

DefenderData Case Type	Oct-21						Fiscal Year 2022			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
Appeal	20	17	\$ 34,506.54	16	\$ 33,259.70	\$ 2,078.73	58	55	\$ 88,912.64	\$ 1,616.59
Child Protection Petition	202	378	\$ 262,086.91	371	\$ 249,495.07	\$ 672.49	846	1,532	\$ 1,012,788.49	\$ 661.09
Drug Court	2	11	\$ 23,886.00	13	\$ 26,966.00	\$ 2,074.31	5	36	\$ 65,830.00	\$ 1,828.61
Emancipation	6	11	\$ 2,526.00	9	\$ 1,836.00	\$ 204.00	27	17	\$ 4,870.00	\$ 286.47
Felony	548	700	\$ 528,833.06	632	\$ 449,272.92	\$ 710.87	2,454	2,286	\$ 1,772,462.43	\$ 775.36
Involuntary Civil Commitment	77	73	\$ 25,123.99	50	\$ 15,210.41	\$ 304.21	339	339	\$ 81,027.79	\$ 239.02
Juvenile	56	63	\$ 39,940.09	62	\$ 40,504.40	\$ 653.30	207	194	\$ 106,395.12	\$ 548.43
Lawyer of the Day - Custody	220	223	\$ 65,718.80	202	\$ 58,890.40	\$ 291.54	947	882	\$ 264,836.08	\$ 300.27
Lawyer of the Day - Juvenile	31	30	\$ 7,831.96	24	\$ 5,561.56	\$ 231.73	103	89	\$ 22,258.52	\$ 250.10
Lawyer of the Day - Walk-in	139	143	\$ 46,154.79	133	\$ 42,582.29	\$ 320.17	610	586	\$ 182,194.56	\$ 310.91
Misdemeanor	777	904	\$ 355,610.01	818	\$ 306,763.55	\$ 375.02	3,704	3,134	\$ 1,171,973.31	\$ 373.95
Petition, Modified Release Treatment	0	8	\$ 5,109.55	7	\$ 5,197.55	\$ 742.51	0	14	\$ 7,871.17	\$ 562.23
Petition, Release or Discharge	0	2	\$ 798.00	3	\$ 1,284.25	\$ 428.08	1	4	\$ 1,830.30	\$ 457.58
Petition, Termination of Parental Rights	35	58	\$ 47,241.76	50	\$ 36,562.54	\$ 731.25	108	221	\$ 162,901.66	\$ 737.11
Post Conviction Review	7	3	\$ 2,846.80	3	\$ 2,846.80	\$ 948.93	28	22	\$ 28,671.87	\$ 1,303.27
Probate	4	2	\$ 2,058.00	2	\$ 2,058.00	\$ 1,029.00	10	6	\$ 7,430.00	\$ 1,238.33
Probation Violation	94	122	\$ 67,962.48	118	\$ 60,588.96	\$ 513.47	482	465	\$ 196,801.22	\$ 423.23
Represent Witness on 5th Amendment	2	4	\$ 1,928.76	4	\$ 1,928.76	\$ 482.19	8	9	\$ 4,002.12	\$ 444.68
Resource Counsel Criminal	0	3	\$ 504.00	2	\$ 272.00	\$ 136.00	0	8	\$ 1,632.00	\$ 204.00
Resource Counsel Juvenile	0	0		0			0	2	\$ 106.00	\$ 53.00
Resource Counsel Protective Custody	0	0		0			0	1	\$ 110.00	\$ 110.00
Review of Child Protection Order	40	177	\$ 115,837.94	156	\$ 99,842.76	\$ 640.02	166	660	\$ 386,036.77	\$ 584.90
Revocation of Administrative Release	0	0		0			5	2	\$ 310.56	\$ 155.28
DefenderData Sub-Total	2,260	2,932	\$ 1,636,505.44	2,675	\$ 1,440,923.92	\$ 538.66	10,108	10,564	\$ 5,571,252.61	\$ 527.38
Paper Voucher Sub-Total										
TOTAL	2,260	2,932	\$1,636,505.44	2,675	\$1,440,923.92	\$ 538.66	10,108	10,564	\$ 5,571,252.61	\$ 527.38

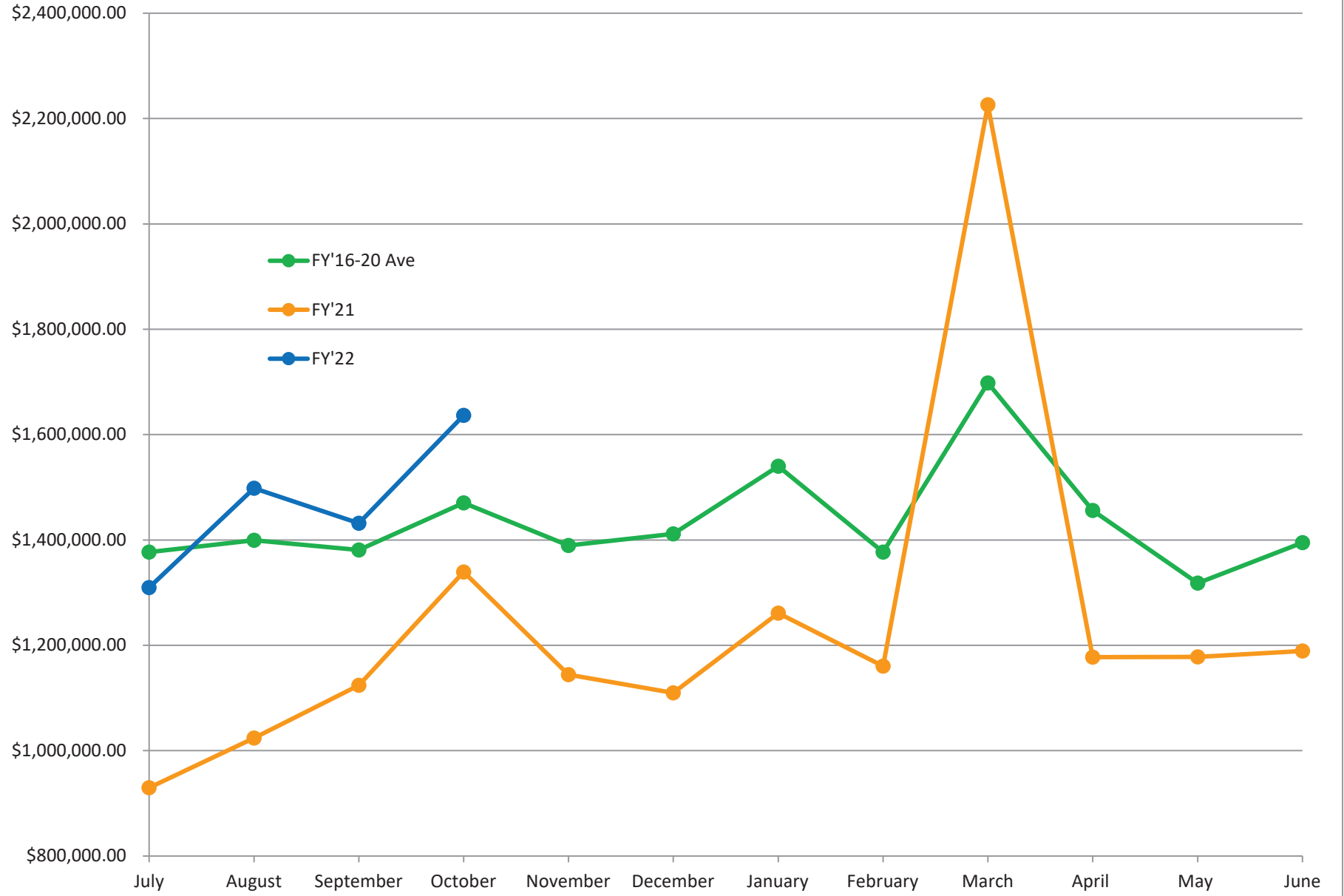
NEW CASES



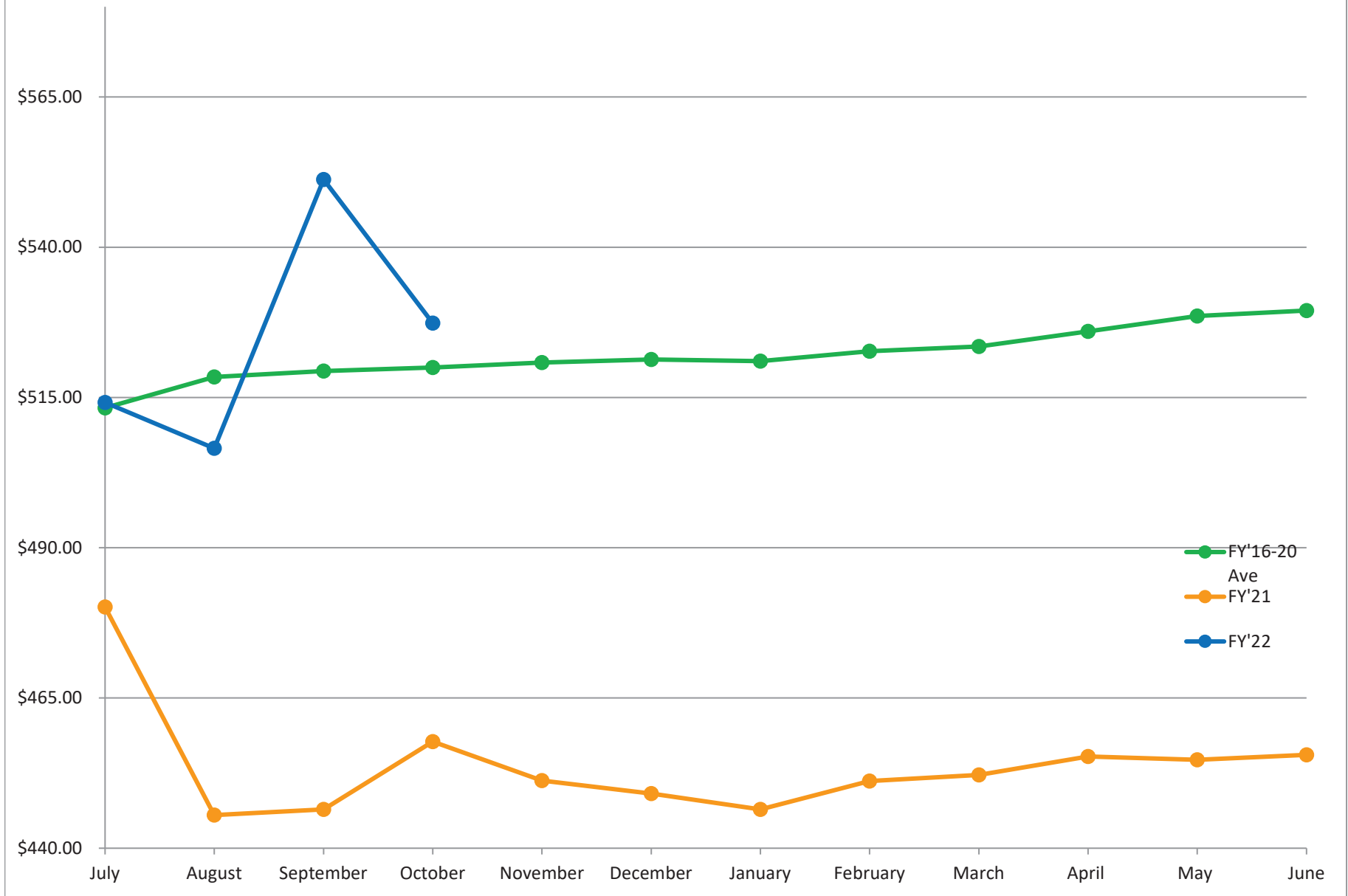
Submitted Vouchers



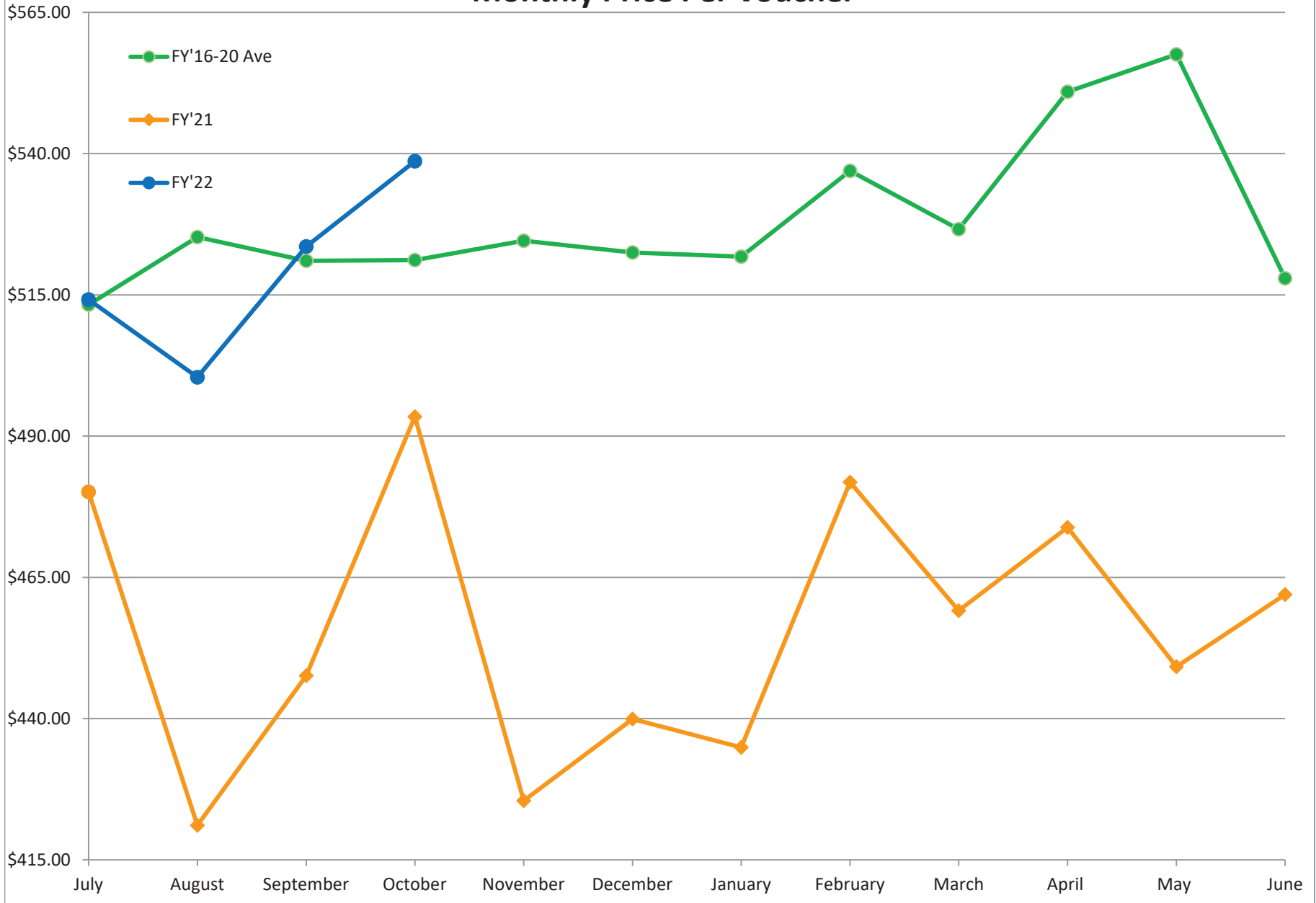
Submitted Voucher Amount



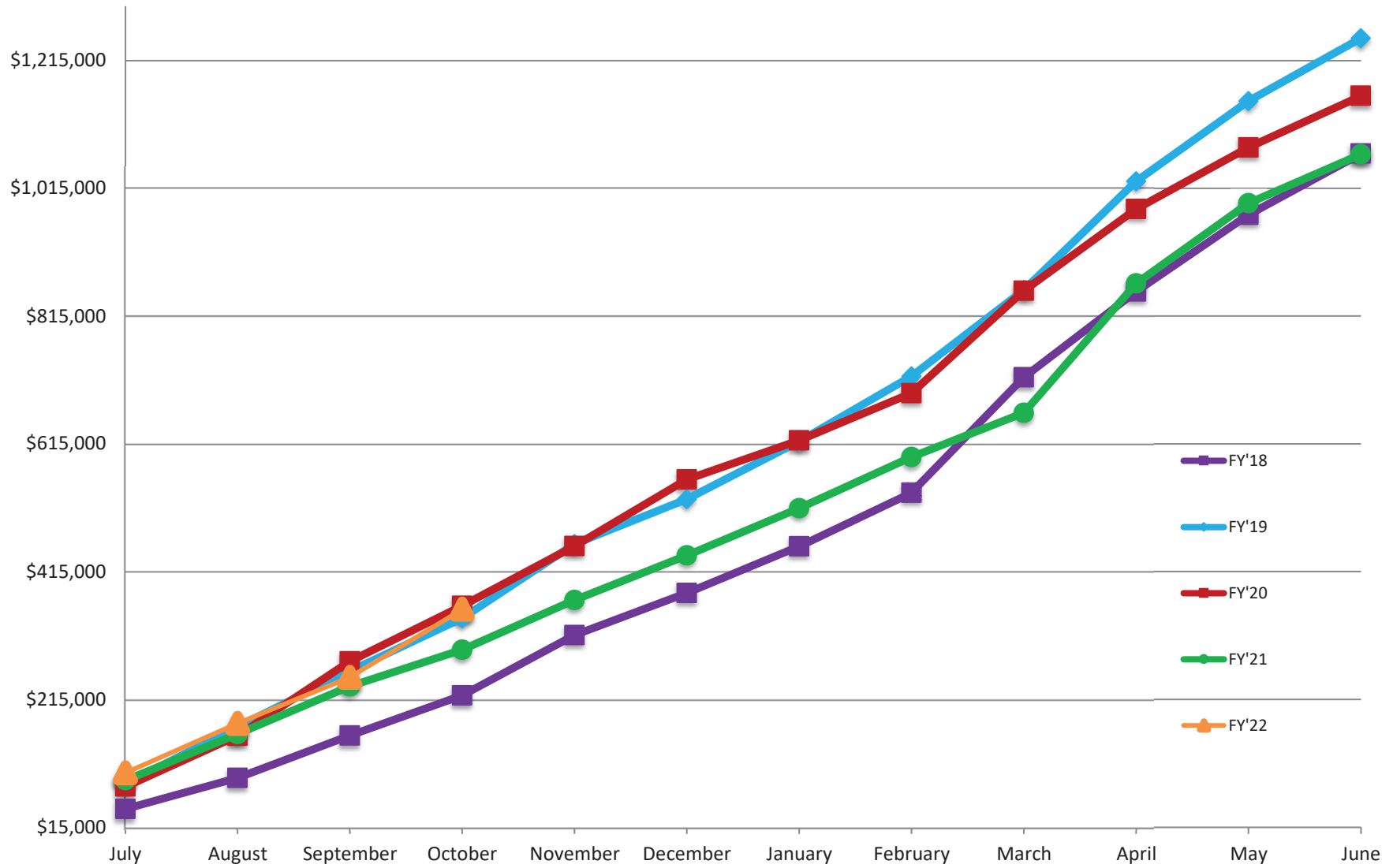
Average Voucher Price Fiscal Year to Date



Monthly Price Per Voucher



COLLECTION TOTALS FY'18 to FY'22



Vouchers over \$5,000

Comment	Voucher Total	Case Total
Elevated Aggravated Assault	\$18,761.70	\$18,761.70
Murder	\$15,591.69	\$15,591.69
Aggravated Assault	\$10,660.03	\$10,918.83
Child Protection	\$7,023.27	\$8,337.27
JV Aggravated Assault	\$6,891.68	\$6,891.68
Gross Sexual Assault	\$6,497.44	\$6,497.44
Termination of Parental Rights Appeal	\$5,447.77	\$5,447.77
Termination of Parental Rights	\$5,094.03	\$7,791.07
Termination of Parental Rights	\$5,038.00	\$5,038.00

CONTINUOUS REPRESENTATION

TO: MCILS ELIGIBLE COUNSEL

FROM: JUSTIN W. ANDRUS, EXECUTIVE DIRECTOR

SUBJECT: CONTINUOUS REPRESENTATION

DATE: 11/5/2021

CC: COMMISSION

I. Basis

MCILS approves and administers the assignment of individual attorneys to represent indigent clients, and, where appropriate, assigns counsel to represent clients directly. In criminal cases, assignments made by the Court are made under Rule 44. Rule 44 contemplates the assignment of counsel as individuals. For civil cases, Rule 88 adopts the provisions of criminal Rule 44. The individual attorney assigned by the Court or by MCILS to represent an indigent client is responsible to MCILS for all services rendered to that client and for all billing claimed for those services during the period of the assignment.

Except as qualified below, the attorney assigned to represent an indigent client shall personally provide direct representation to the client at all substantive appearances. Notwithstanding the exceptions set forth below, the attorney assigned to represent an indigent client shall personally ensure the adequacy of all phases of representation and the accuracy of billing submitted to MCILS for that representation.

Continuous representation is a fundamental principle of an effective public defense delivery system:

ABA Ten Principles of A Public Defense Delivery System – Principle 7:

The same attorney continuously represents the client until completion of the case. Often referred to as “vertical representation,” the same attorney should continuously represent the client from initial assignment through the trial and sentencing. The attorney assigned for the direct appeal should represent the client throughout the direct appeal.

“Continuous representation from appointment through disposition,” ABA Principle 7, requires that the same attorney initially appointed to a case continuously represent the

defendant through disposition of the case. Commonly referred to as “vertical representation,” the continuous representation by the same attorney is contrasted with “horizontal representation” – a representational scheme whereby one attorney represents the client during one court proceeding before handing off the client’s case to another attorney to cover the next stage.

As the American Bar Association explains, “horizontal representation” is uniformly implemented as a cost-saving measure in the face of excessive workloads and to the detriment of clients. In fact, the ABA rejects the use of horizontal representation in any form, stating specifically that: “[c]ounsel initially provided should continue to represent the defendant throughout the trial court proceedings and should preserve the defendant’s right to appeal, if necessary.”

In explaining why horizontal representation is so harmful to clients, the ABA states:

Defendants are forced to rely on a series of lawyers and, instead of believing they have received fair treatment, may simply feel that they have been “processed by the system.” This form of representation may be inefficient as well because each new attorney must begin by familiarizing himself or herself with the case and the client must be re-interviewed. Moreover, when a single attorney is not responsible for the case, the risk of substandard representation is probably increased. Appellate courts confronted with claims of ineffective assistance of counsel have commented critically on stage[d] representation practices.

The nexus between the requirement that trial counsel be appointed as early as possible and the requirement that the attorney who is appointed initially to represent the client remains with that client’s case through to completion is to ensure that the minimum level of advocacy necessary to mount a meaningful defense commences as soon as possible. In defender systems relying on horizontal representation schemes, the delay in appointing the actual trial lawyer has negative consequences for the client, as exculpatory evidence like video tapes are routinely destroyed within days, physical evidence like bruises fade away quickly, and witnesses can become harder and harder to track down. (*The Right to Counsel in Maine – Evaluation of Services Provided by the Maine Commission on Indigent Legal Services*, pp. 53-54)

II. Policy

- A. An attorney may delegate tasks related to the representation of an assigned client to another attorney only to the extent consistent with the assigned attorney’s duties to the client under the Constitutions of the United States and the State of Maine, the Maine Rules of Professional Responsibility, applicable MCILS practice standards, and to the extent consistent with this policy. The assigned attorney is nevertheless responsible to MCILS and to the client individually for all services provided by any attorney during the period of the assignment, and for all billing claimed for those services.

- B. Except as set out below, an assigned attorney may not delegate substantive appearances to another attorney. Substantive appearances include, without limitation: bail hearings; motions hearings; dispositional conferences; adjudicatory hearings; jury selection; trial; sentencing; commitment hearings; appellate oral argument; hearings on preliminary protective orders; jeopardy hearings; judicial reviews; and hearings on petitions for termination of parental rights. The assigned attorney shall personally ensure that clients and all witnesses have notice of and are prepared for each proceeding.
- C. Delegation of those substantive appearances in which delegation may be appropriate shall occur only as follows:
1. Questions related to the delegation of substantive appearances will be resolved from a client-centric perspective.
 2. Delegation of substantive appearances shall be an exception to the expectation that assigned counsel will personally provide continuous representation of assigned clients.
 3. Delegation of substantive appearances may be made only to counsel who have been designated eligible to receive assignments of the applicable case type.
 4. Delegation of substantive appearances shall be made only with informed client consent.
 - a. “Informed consent” means a person’s agreement to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. Whether a client has given informed consent to representation shall be determined in light of the mental capacity of the client to give consent, the explanation of the advantages and risks involved provided by the lawyer seeking consent, the circumstances under which the explanation was provided and the consent obtained, the experience of the client in legal matters generally, and any other circumstances bearing on whether the client has made a reasoned and deliberate choice.
 5. In the context of delegation of an appearance for an assigned client, informed client consent shall include informed consent from the client to reveal those confidences and secrets as are necessary to the delegated representation.
 - a. “Confidence” refers to information protected by the attorney-client privilege under applicable law, and “secret” refers to other information relating to the representation if there is a reasonable prospect that revealing the information will adversely affect a material interest of the client or if the client has instructed the lawyer not to reveal such information.
 6. Assigned counsel shall document the client’s informed consent prior to delegating an appearance. Where possible that informed consent shall be in a writing signed

by the client. Counsel shall maintain documentation of consent and shall provide it to MCILS on request.

- D. Assigned counsel shall not delegate hearings on dispositive motions, jury selection, trials, sentencing hearings, summary preliminary hearings, jeopardy hearings, contested judicial reviews, hearings on petitions for termination of parental rights, or appellate oral arguments.

If an attorney cannot appear to represent a client at an appearance for which delegation is prohibited, counsel may, with informed client consent, seek the assignment of co-counsel in the matter. Where appropriate and permitted by rule, the appearance of co-counsel may be limited.

Andrus, Justin

From: Andrus, Justin
Sent: Monday, November 8, 2021 1:56 PM
To: MCILS
Subject: Amended Delegated Representation Policy
Attachments: Informed Client Consent to Stand in.pdf; Amended Payment and DD policy.11052021.pdf; Delegation Policy.11052021.pdf

Good afternoon, counsel.

I have received feedback from some of you explaining that the MCILS policy I promulgated to ensure that clients receive the benefit of vertical representation was unworkable as drafted. I have done my best to amend that policy to something that is both workable and consistent with the rights of indigent clients. To that end, I have attached an amended policy regarding payment and Defender Data, eliminating the section on vertical representation, and a new policy regarding delegation, and how and when a case may be delegated. I have also attached a sample informed client consent document that you may use if you choose. You may also create your own documents.

It is the policy of MCILS that assignments are to a particular lawyer, and that the assigned lawyer must serve the client in all but unusual circumstances. We recognize that there are instances where delegation may be required, however. In this policy we have differentiated between those matters that may be delegated, and those that may not. We have confirmed that instances of delegation must begin with documented informed client consent. You must maintain documentation of that consent in your file.

JWA

Justin W. Andrus
Executive Director
Maine Commission on Indigent Legal Services
(207) 287-3254
Justin.andrus@maine.gov

Informed Client Consent for Stand-in Counsel

Client Last
Client First:
Caption:
Docket Number:

On date _____, I advised _____ that it would be necessary for me to delegate representation in this matter. I have advised my client that:

1. I am unable to participate in the (appearance type _____) now scheduled for (date) _____. I have asked my client whether it is their preference that I try to continue the matter. My client's preference is that I do ___ /do not ___ do so.
2. If it was my client's preference that I attempt to continue the case I did so on _____.
3. As of the date of this document, the matter has not been continued.
4. I have advised my client that _____ will appear with them. Client has consented to be so represented.
5. I have advised my client that _____ will have access to information protected by the client-attorney relationship. Client has consented to that release of information for the purpose of this appearance.
6. On _____, I conferred with covering counsel and fully prepared them to represent client at this proceeding.
7. Based on the foregoing my client consented ___ / did not consent ___ to being represented by coverage counsel at this proceeding.

Date:

Signed: _____
Maine Bar ID: _____

I, the undersigned _____, after asking any questions I may have had, consent to stand-in representation at the proceeding specified above.

Date:

Signed: _____

**AMENDED MCILS POLICY AS TO ASSIGNMENTS,
BILLING SYSTEMS, AND PAYMENT**

TO: MCILS ELIGIBLE COUNSEL

FROM: JUSTIN W. ANDRUS

SUBJECT: MCILS POLICY AS TO ASSIGNMENTS, BILLING SYSTEMS, AND
PAYMENT

DATE: AMENDED 11/5/2021

CC: COMMISSION

The Maine Commission on Indigent Legal Services (MCILS) adopts the following policy as to assignments, its billing system, and payments, effective October 1, 2021, except to the extent that a later date is specified for specific provisions.

Summary: Through this policy, MCILS restates that indigent clients are assigned to specific assigned counsel, and that those counsel bear individual responsibility for those clients from both a professional responsibility perspective, and from a fiscal perspective from the point of first contact with the client through the final resolution of the matter, or until relieved by the Court or the appearance of successor counsel. MCILS restates its financial relationships to the attorneys who are assigned to represent indigent defendants and to any law office or firm for whom any attorney works. MCILS clarifies the permissible use of its billing system.

I. The financial relationship between MCILS and assigned counsel

MCILS shall be responsible for ensuring that payment for services rendered to an assigned client are made to the assigned attorney, or to the person or entity designated by the assigned attorney, consistent with its then current rules. It shall be the responsibility of the assigned attorney to account for and allocate payment made for services rendered to an assigned client during the period of the assignment to any other person or entity to whom the assigned attorney may have any responsibility. Effective November 1, 2021, MCILS shall not be responsible to any attorney or firm, other than the designated person or entity, for the allocation of fees, except to the extent set out in this document.

The person or entity designated to receive payment from MCILS may be either the individual attorney or that attorney's single member entity; or, may be a firm or individual by whom the attorney is employed or in which the attorney is a member, partner, or shareholder. If an attorney designates an individual or entity other than that attorney to receive payment, and subsequently designates another individual or entity to receive payment, MCILS will direct payment to the designated individual or entity immediately on receipt and acknowledgment of the change. Issues of allocation of those payments, and any recourse related thereto, shall be strictly the responsibility of the attorneys and/or entities involved.

Beginning November 1, 2021, MCILS shall pay all fees claimed for any services provided to any assigned client to the most recent person or entity designated by the individual attorney assigned to represent that client. MCILS will presume that each individual attorney has designated that attorney as the person to be paid, except that for those attorneys who have designated another person or entity to receive payment prior to the publication date of this memorandum, that designated vendor will continue to receive payments on behalf of the individual attorney until the individual attorney designates a new vendor to receive payment.

MCILS will direct payment when a voucher is submitted based on the identity of the attorney assigned to represent the client in the matter in question at that time, and the designation made by that attorney. It is the responsibility of assigned counsel to ensure that a voucher is submitted in each case prior to any substitution of counsel.

Attorneys shall designate the person or entity to receive payment for services provided to any assigned client during the period of the assignment by completing the form appended to this memorandum and then filing the form with MCILS. Any change in designation shall become effective on the date MCILS receives the form and acknowledges the change. MCILS counsel are advised that mail and faxes reach MCILS late and sometimes infrequently. Counsel are advised to use email to ensure timely application of any change. MCILS will not be responsible for payments made to the last designated person or entity prior to receipt and acknowledgment of a change. Counsel are further advised that MCILS anticipates a change to require filings through email only. If a policy requiring email filings is adopted, this paragraph shall not be construed to permit alternative means of filing.

Any attorney or firm that has relied on any previous policy, protocol, or practice of MCILS with respect to the allocation of fees shall take such steps as are necessary to realize the benefit of that reliance before 11:59:59 p.m. on October 31, 2021. These steps may include submitting an interim voucher. No attorney or firm shall rely on any previous policy, protocol, or practice of MCILS with respect to attorney payments on or after November 1, 2021.

II. Access to Defender Data / Subsequent billing and case management systems

Each attorney who is or becomes eligible to receive assignments from the Court, and to be approved to represent an assigned client through MCILS, will be provided with the use of an account through Defender Data, or through a subsequent MCILS billing and case management system. The attorney will not develop a property interest in that account.

Each attorney shall be personally and exclusively responsible for the account assigned to that attorney. Each attorney shall personally maintain access to the that account. No attorney may permit any other person to use the account, nor may any attorney provide any other person with that attorney's login credentials.

Each person who is subject to the rules of MCILS shall access the MCILS billing and case management system only through an account in the name of that person. This provision applies to both attorneys and staff.

A staff person may be assigned an account in the name of that staff person at the direction of an MCILS eligible attorney. Each staff person shall be personally and exclusively responsible for the account assigned to that staff person. Each staff person shall personally maintain access to the that account. No staff person may permit any other person to use the account, nor may any staff person provide any other person with that staff person's login credentials.

III. Responsibility for information related to assigned cases

Beginning November 1, 2021, the attorney assigned to represent a client is responsible to MCILS for all information recorded in, or submitted through, the MCILS billing and case management system related to that assigned matter. It is the responsibility of the assigned attorney to confirm the accuracy of the information submitted to MCILS for each case, irrespective of who performs a specific task for the client, enters time information, or submits a voucher.

Beginning November 1, 2021, each attorney assigned to represent a client is responsible for ensuring the creation, maintenance, and production of information related to that matter, irrespective of who performs a specific task for the client, enters time information, or submits a voucher.

Beginning November 1, 2021, both the attorney assigned to represent a client, and the individual or entity who receives payment for services rendered to an assigned client, shall be jointly and severally liable to MCILS for any overpayment in any assigned case. Issues of allocation, contribution, and subrogation shall lie strictly between the attorney assigned to represent the client and the individual or entity who received payment.

IV. Transition

Mooted November 1, 2021.

~~During the period beginning on the publication date of this memorandum, and ending at 11:59:59 p.m. on October 31, 2021, MCILS will protect the expectation of payment to an individual or entity who has been designated by an MCILS attorney to receive that payment where an attorney has designated a new individual or entity to receive payment on the following limited basis:~~

- ~~1. The protection provided in this Section V, "Transition," is limited as set forth herein.~~
- ~~2. This protection extends to the expectation of payment for services rendered to an assigned client by an attorney designated as eligible to participate in that case type, or otherwise specially approved by MCILS to participate in the specific case, on or before the date on which the attorney to whom the client was assigned advises MCILS that the attorney is no longer employed, partnered, or otherwise associated with individual or entity holding the expectation.~~
- ~~3. During the transition period, MCILS will not change the designation of the person or entity to whom payment should be directed with respect to time entered into the MCILS billing and case management system for billing events that occurred prior to the date on which the attorney to whom the client was assigned advises MCILS that the attorney is no longer~~

~~employed, partnered, or otherwise associated with individual or entity holding the expectation.~~

- ~~4. MCILS may, however, create a mechanism, including, but not limited to, creating a second account in the MCILS billing and case management system to permit an attorney to designate an individual or entity to receive payment for billing events that occurred on or after the date on which the attorney to whom the client was assigned advises MCILS that the attorney is no longer employed, partnered, or otherwise associated with individual or entity holding the expectation.~~
5. Any expectation any individual or entity may hold terminates at 11:59:59 p.m. on October 31, 2021. Any individual or entity who wishes to perfect payment of any expectancy related to an attorney who is no longer employed, partnered, or otherwise associated with the individual or entity holding the expectation shall perfect that payment by submitting an interim voucher prior to that deadline.

Updated: November 15, 2021

FOCUS ON LAW

Country lawyer: Rural practices have rewards, but many areas of Maine need attorneys



PHOTO / FRED FIELD

Ben Everett, right, and his mentor, **Adam Swanson**, say **Maine Law’s Rural Law Fellowship Program** is a good start for attracting rural attorneys. Everett now works for Swanson’s Presque Isle firm, **Swanson Law**.

By Laurie Schreiber

As a newly minted lawyer who grew up in Aroostook County, Ben Everett’s greatest dream was to return home to pursue his practice.

A Maine Law ’21 graduate, his dream got a boost when he signed up for the Portland school’s Rural Law Fellowship Program, which pairs students with rural lawyers who serve as mentors.

“For me that was a no-brainer,” says Everett. “I said, ‘I know exactly what I want to do when I graduate from law school.’”

Originally from Fort Fairfield, Everett was a non-traditional student who did a stint in the military, then worked in Presque Isle as paramedic for a decade.

Intrigued by the law, he enrolled at Maine Law and signed up for the fellowship program, serving two summers under the mentorship of Adam Swanson, who owns Swanson Law in Presque Isle.

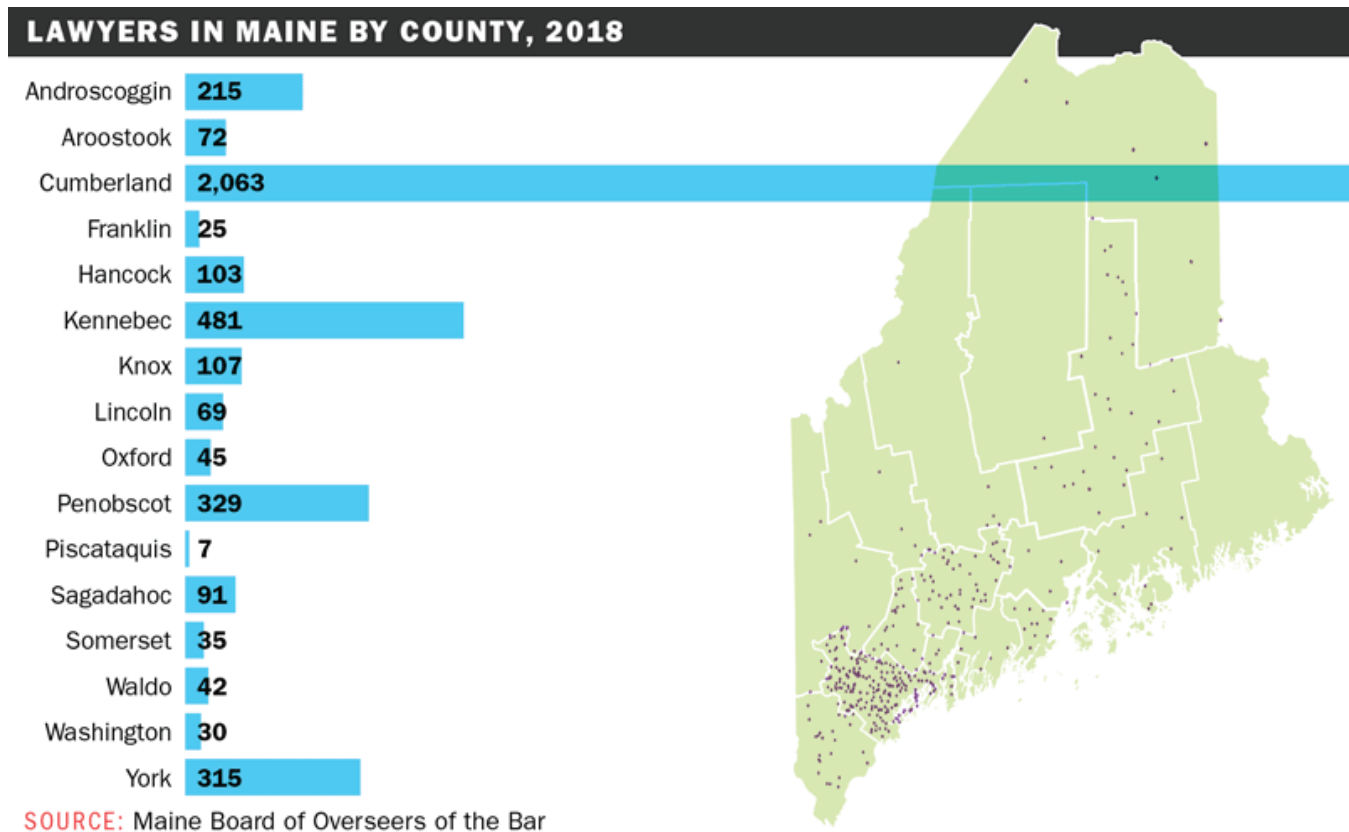
Upon graduation in May, Everett was hired by Swanson as an associate attorney. The program was mutually beneficial.

“When he was participating in the fellowship, I set up a desk for him in my office. If a call came in, provided the caller consented, Ben would listen along and could ask me questions afterward,” says Swanson. “He reviewed and memo’d files, and assisted in the drafting of pleadings. He’d also go to court with me.”

Swanson offered Everett a position before he even graduated.

“All we had to do was give him office space and he was ready to roll,” says Swanson.

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A crisis

“Ready to roll” just about sums up a rural Maine attorney’s practice. Rural lawyers typically have more generalized practices than those at large urban law firms. New attorneys can jump into the workings of the legal system more quickly.

“I have friends in larger firms who might not step into a courtroom for the first five years of their practice,” says Everett. “But I know I’m going to participate in jury trial selection to do trials, which is a phenomenal opportunity for a young professional.”

Despite the opportunities, rural Maine is experiencing a shortage of attorneys, partly due to new lawyers choosing city over small-town life and partly because of the “graying of the bar.”

“Not only do we have fewer attorneys, they’re older attorneys as well,” says Angela Armstrong, executive director of the Maine State Bar Association. “We’re losing them at a faster rate now because they are retiring, and there aren’t people who are backfilling.”

According to the most recent data from the Maine Board of Overseers of the Bar, nearly 80% of Maine’s practicing lawyers are located in just four counties: Cumberland, Kennebec, Penobscot and York, with more than half located in Cumberland County alone.

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The fellowship — a collaboration between Maine Law, Maine Justice Foundation, Maine State Bar Association, and Maine Board of Overseers of the Bar — launched in 2017 to address changing bar demographics by pairing students with rural lawyers who act as mentors.

For many students, limited exposure to rural communities makes it difficult to envision what life and practice in a small Maine town would be like, which is a significant barrier to recruitment. Reflecting growing interest, the number of student and mentor applications has greatly exceeded available funding.

Through summer 2021, the program enrolled 14 students and 14 mentors throughout Maine. Several students went into practice in rural Maine upon graduation.

The choice to practice in a rural area is largely a matter of personal preference.

“No. 1 is probably that they’re from a rural area, and they want to return to a rural area to practice law,” says Rachel Reeves, the fellowship program’s director.

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Reasons for not choosing a rural practice include lack of professional opportunities for a spouse or partner, lack of urban amenities and social circles, concern about the earning potential working in a smaller practice, and start-up costs for new practices in rural areas.

Supply and demand

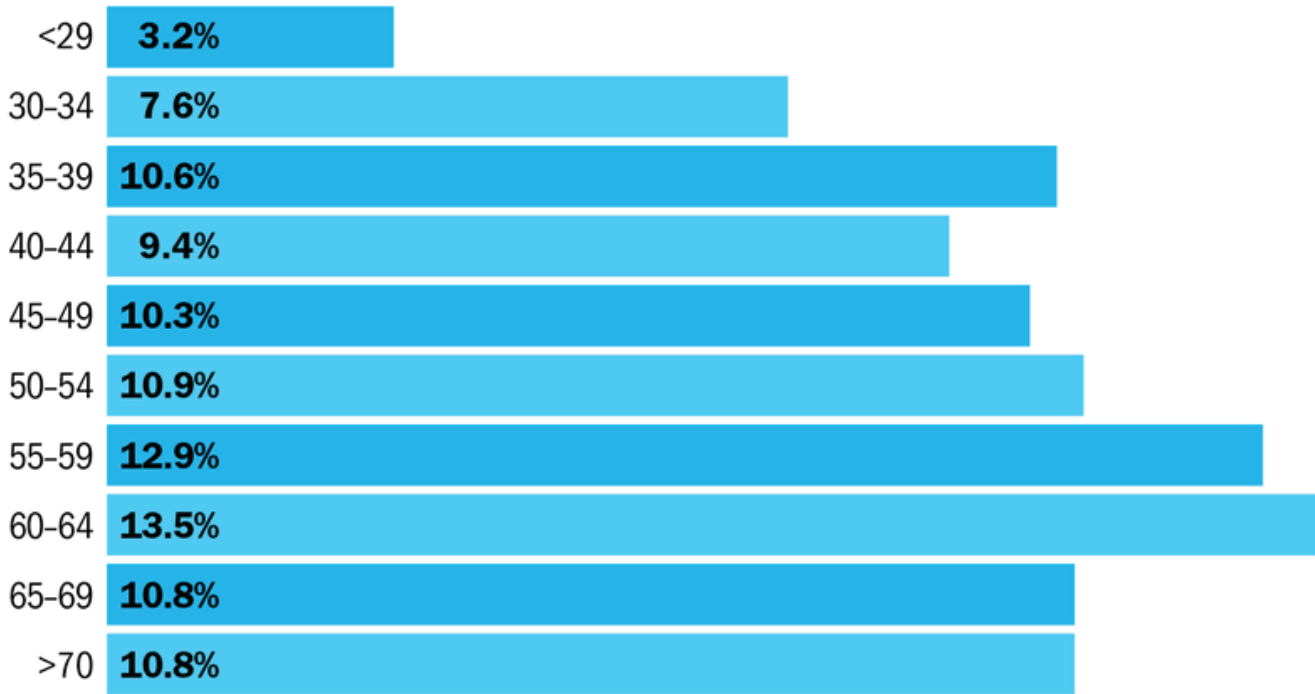
Everett’s mentor, Adam Swanson, is originally from Presque Isle and is also a Maine Law graduate. At one time, he thought he’d practice in Portland.

“I really enjoyed Portland,” Swanson says. “I made good friends there and was pretty well settled in.”

But it was 2012 and the job market was tough. Swanson was clerking for a district court judge, who advised him to return to Aroostook County.

“He said, ‘You should go back home and hang a shingle,’” Swanson recalls.

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SOURCE: Maine Board of Overseers of the Bar

There were plenty of attorneys in urban Maine; not so much in rural Maine. Swanson started his firm as a general practice in 2013 and had plenty of work, eventually bringing in two more attorneys, which allowed him to focus on specialty areas.

“There are many attorneys here who developed a full case load in no time at all,” says Swanson. “That speaks to supply and demand. There are plenty of people here who need attorneys and only so many attorneys to help.”

He adds, “There’s plenty of room for more.”

Finding new hires

Tonya Johnson agrees. An attorney at C.W. & H.M. Hayes PA in Dover-Foxcroft, she ran into the shortage when trying to hire.

Originally from the “no streetlight town” of Clinton, as she puts it, Johnson knew she wanted a rural practice. A 1994 graduate of Boston’s Suffolk University Law School, she joined Hayes that year. The firm, which dates to 1889, has had as many as five attorneys on staff. During Johnson’s tenure, it averaged three until 2017, when the departure of two left Johnson as the lone attorney.

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“I put out an ad to hire a new lawyer and got zero applicants,” she says.

Stretched thin

The shortage means available lawyers are as busy as they want to be.

“They’re working hard,” says Armstrong. “They have that mindset of wanting to help everyone they can, but they are stretched thin because there are only so many of them in their area.”

Clients might have to look outside their communities to hire a lawyer, or might represent themselves, pro se.

“One of the impacts for clients, and the judicial system itself, is that, if clients don’t want to wait for an attorney or there isn’t one nearby, they might choose to advocate on their own behalf, and be a pro se litigant,” says Armstrong. “Clients are not necessarily getting the representation they really need by going pro se because they don’t have the legal knowledge and expertise that lawyers possess, and it taxes the court system as well.”

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Another challenge is covering all sides of a conflict.

“The fewer attorneys in a small town, the more conflicts of interest you’ll run into overtime,” says Ryan Rutledge. “If there are only two attorneys in the town, usually at least one of them has a conflict on any given case. When people call my office and say, ‘I need help with this issue,’ the first thing we do is a conflict check. It is not uncommon for me to have to turn away clients because of the conflicts that exist within our smaller community.”

Rutledge is a 2019 Maine Law grad who was an inaugural Rural Practice Fellow through Maine Law’s Rural Lawyer Pilot Project. He served first with Bemis & Rossignol in Presque Isle and then with Mills, Shay, Lexier & Talbot in Skowhegan, where he accepted an associate attorney position after graduation.

Originally from Savannah, Ga., and later working with a creative branding agency in Charleston, S.C., he and his wife fell in love with Maine when they visited in 2015. Law school beckoned, and he liked the idea of a rural practice.

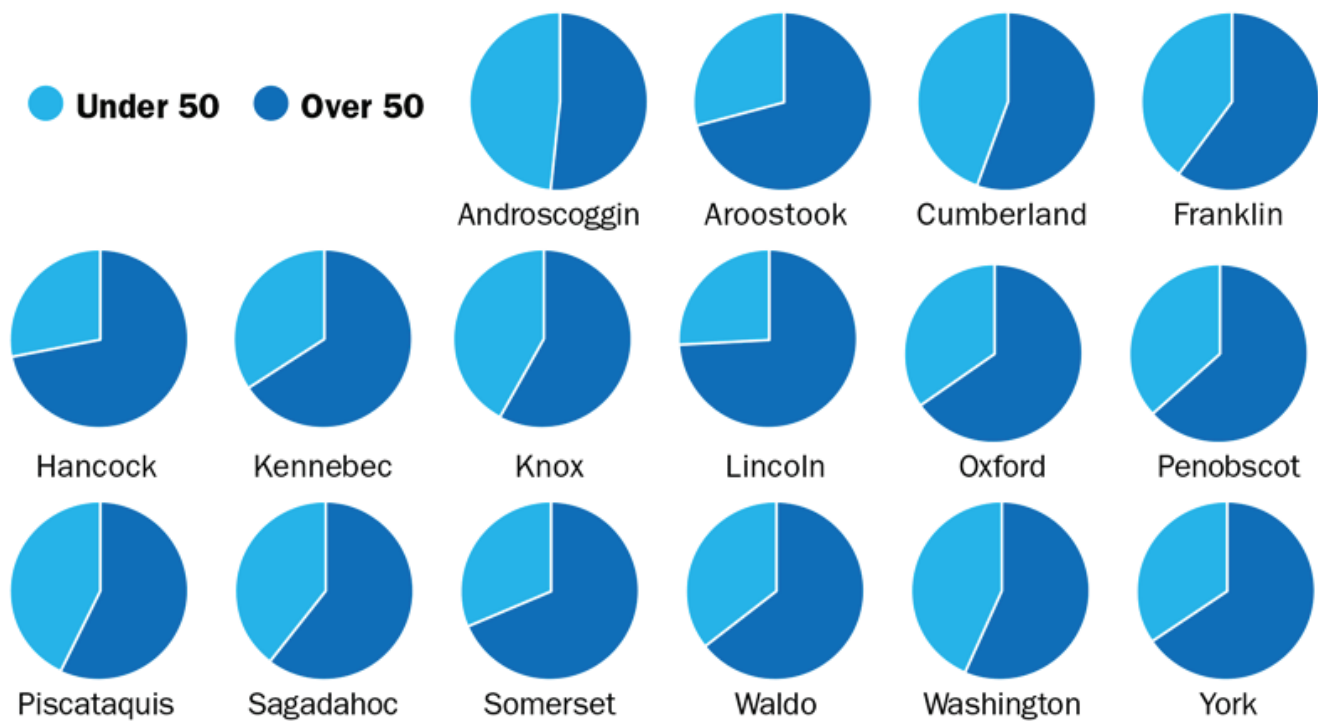
“I had no desire to go to law school and then cut my teeth in some 80-to-100-hour-per-week firm,” says Rutledge. “I have great quality of life. I do work quite a bit, but I have a lot of flexibility.”

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Like Everett, he enjoys the ability to see cases through.

“After speaking with several colleagues from my graduating class, my understanding is that a lot of folks who went to work at bigger firms are working on big files and collaborating with other departments within the bigger firms,” says Rutledge. “How many of those attorneys end up getting to see the courtroom as the case progresses? Usually only one or two. I’m averaging three times a week in court. And that was within the first year and a half of practice.”

AGE DISTRIBUTION OF MAINE'S LAWYERS, BY COUNTY



SOURCE: Maine Board of Overseers of the Bar

He adds, “It’s much more enjoyable when you get to see the fruits of your labor. You get a lot more exposure to every part of the process, and a lot more often.”

Solutions

In addition to the Rural Law Fellowship Program, Everett says he’d like to see more focus on training rural residents for the law.

“How can we eliminate barriers and open roads to people from these counties who might have significant barrier to picking up their lives and moving to Portland — people who want to come back to the area to stay, as opposed to trying to attract people who don’t stay?” he says.

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Other initiatives are in the works. In 2020, the Maine State Bar Association created a rural practice initiative committee. Working with Maine Law, the committee is looking at ways to attract students to rural careers. Before the pandemic stymied the committee’s first career fair this year, intended to match students with rural firms, plenty of employers had signed on.

“It told us there are plenty of rural jobs,” says Johnson, a member of the committee.

The committee meets regularly to develop resources to help new lawyers connect with retiring rural lawyers. That includes an online community message board to facilitate conversations between retiring and incoming lawyers.

In July, the Maine Legislature enacted a bill to provide an income tax credit up to \$6,000 for five years for attorneys who agree to practice for at least five years in an underserved area.

In her testimony to the Legislature, Reeves called the shortage a crisis and said it not only limits access to justice but may also limit economic activity such as business expansions, real estate transfers, and municipalities and nonprofits navigating complex regulatory requirements.

Says Rutledge, “It’s a war of attrition. We need to make sure access to justice doesn’t depend on your ZIP code.”

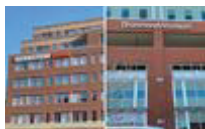


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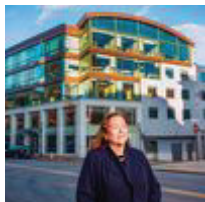
Most Popular



American Airlines grounds Maine-New York flights for good



Law firms jockey for top spots in latest ranking of the state's largest



Future-proofing Maine Law: Leigh Saufley reflects on school's move, diversity and more



REPORTING IN THE PUBLIC INTEREST



CRIME AND JUSTICE

COVID-19 forces York County Jail to turn would-be inmates away

Courts routinely order people convicted of lesser crimes to report to jail on a certain date. When they show up in York County, they're being told the sentence has been delayed.

BY **ANDREW HOWARD** | NOVEMBER 7, 2021



Andrus, Justin

From: Andrus, Justin
Sent: Wednesday, November 10, 2021 5:31 PM
To: MCILS
Cc: Guillory, Christopher; Fisher, Darcy; Brochu, Stephen; Washer, Arthur
Subject: FW: FW: York County Jail

Good afternoon, everyone. I am copying here the people I know who might best be able to address what I perceive to be a serious and developing issue here. D.A. Maloney, I have included you because I believe you are the current president of the prosecutor's association. If there is another person to whom I should send this email as a representative of the prosecution bar, please let me know. I'm happy to do that. Commissioners, you are blind copied for notice. Please engage with me if you would like to do so, but communication among you needs to be public.

As some of you are aware, Maine faces a serious issue with jails closed and/or overcrowded, and people being delayed in serving their sentences. This presents a serious violation of the rights of defendants. These are people who have bargained with the State for a determinate period of subjugation to the state's coercive power, but are facing extended and indeterminate periods of conditions of release and the inability to plan for housing, employment, education, services, or child care. I had been aware that some people had been turned away from the York County Jail and the Aroostook County Jail, but learned Monday night that it had become a practice to permit people to appear at the York County Jail without notice that they could not serve their sentences. This was a hypothetical problem until today.

This afternoon we received an email from a Commission attorney relating the story of his client. That client returned to Maine to serve a sentence, and was turned away. As a result, the client lost his job. The email is attached in-line below, as is my email of yesterday to all Commission attorneys.

If any of you can provide input or ideas about how to address this issue quickly, I would love to hear from you. My best idea is to convert these sentences to administrative release, but that will take time if its even possible.

Thank you for reading.

Justin W. Andrus
Executive Director
Maine Commission on Indigent Legal Services
(207) 287-3254
Justin.andrus@maine.gov

From:
Sent: Wednesday, November 10, 2021 3:56 PM
To: Andrus, Justin <Justin.Andrus@maine.gov>
Cc: MCILS <MCILS@maine.gov>; Guillory, Christopher <Christopher.Guillory@maine.gov>; Fisher, Darcy <Darcy.Fisher@maine.gov>; Brochu, Stephen <Stephen.Brochu@maine.gov>; Washer, Arthur <Arthur.Washer@maine.gov>
Subject: Re: FW: York County Jail

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi All, I have a client who lost a job due to having to appear and then being turned away. He had moved out of state and returned specifically to serve his time. He had no advance notice of the situation (and neither did I) and had to wait about two weeks to get a determination from the Court with a new date, and before the second date, I filed a motion to postpone the reporting date again based on the first experience. It seems to me that for all sentenced individuals that notice should be provided well in advance of the reporting date as to whether they will be accepted or not. For these unusual times, a conversion to Admin. Release would seem to be a good way to clear some of the backlog and relieve the Courts and jails of a significant burden.

On Tue, Nov 9, 2021 at 12:29 PM Andrus, Justin <Justin.Andrus@maine.gov> wrote:

Good afternoon, counsel.

As you may be aware, the Maine Monitor published an article on Sunday concerning the York County jail issue we've discussed in the past. I learned for the first time from that article that the Court was not sending the stand-by order to Defendants, but rather Defendants were appearing at the jail prepared to serve their sentences, and being turned away. In addition to imposing what I continue to see as an unconstitutional burden on people who have already been sentenced, this practice endangers indigent defendants directly. Many indigent defendants struggle to maintain housing and employment, and to provide or obtain child care. A person who has secured leave from employment, or has terminated employment, and who has potentially given up housing to report to jail faces unfair challenges in simply living to the next appearance date.

We need a solution to this issue that allows indigent defendants to predict and plan for their incarceration after they have made their bargains with the state. I propose converting the sentences to administrative release so that these defendants are not subject to coercive power for longer than they have bargained for. I don't know of another solution at this point. If there is any way I can be useful on this point, I am available and willing to work toward a solution. I encourage you to engage with your clients to determine how they are impacted by this situation, and to take affirmative steps to put the issue before the Court for resolution in appropriate cases.

JWA

Justin W. Andrus

Executive Director

Maine Commission on Indigent Legal Services

(207) 287-3254

Justin.andrus@maine.gov

|

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Andrus, Justin

From: Andrus, Justin
Sent: Tuesday, November 9, 2021 12:26 PM
To: Stanfill, Valerie; Mullen, Robert E; French, Jed; Lawrence, Rick E.
Subject: York County Jail

Good afternoon.

As you may be aware, the Maine Monitor published an article on Sunday concerning the York County jail issue we've discussed in the past. I learned for the first time from that article that the Court was not sending the stand-by order to Defendants, but rather Defendants were appearing at the jail prepared to serve their sentences, and being turned away. In addition to imposing what I continue to see as an unconstitutional burden on people who have already been sentenced, this practice endangers indigent defendants directly. Many indigent defendants struggle to maintain housing and employment, and to provide or obtain child care. A person who has secured leave from employment, or has terminated employment, and who has potentially given up housing to report to jail faces unfair challenges in simply living to the next appearance date.

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JWA

Justin W. Andrus
Executive Director
Maine Commission on Indigent Legal Services
(207) 287-3254
Justin.andrus@maine.gov

Andrus, Justin

From: Andrus, Justin
Sent: Monday, November 8, 2021 10:56 AM
To: MCILS
Cc: Guillory, Christopher; Fisher, Darcy; Washer, Arthur
Subject: Forum for attorneys and stakeholders in the indigent legal services constellation

Good morning.

The Maine Commission on Indigent Legal Services will host a forum for attorneys practicing in criminal, child protective, mental health, and juvenile matters to share their experiences and needs in practice with other stakeholders. This forum is open to defense counsel, parents' counsel, other counsel representing indigent clients, together with prosecutors and attorneys general. The forum will be held on Thursday, December 9, 2021 beginning at 9:00 a.m. The forum will be available to those able to attend in person in Room 228 in the State House, and will be open to participation by Zoom as well. We invite all of the attorneys working in any part of the system that impacts indigent clients to participate, irrespective of their roles and inclusive of their many perspectives.

We also invite, the Court, through its chiefs and trial jurists; the administrative offices of the court, and the clerks; legislators; law enforcement officers; corrections officials, and anyone else interested in this area of law to attend in person, or remotely, to listen.

We also welcome written submissions. We will share written material we receive by noon December 7th publicly, and with those interested in learning about the attorney experience.

We hope to see you there. We invite you to share this invitation with anyone you deem appropriate.

MCILS is dedicated to supporting a practice environment that in turn supports the needs of the many lawyers working to achieve justice. We hope you will join us in the promoting that mission.

JWA

Justin W. Andrus
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Justin.andrus@maine.gov