

MCILS

**October 11, 2022
Commissioner's Meeting
Packet**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

**OCTOBER 11, 2022
COMMISSION MEETING
AGENDA**

- 1) Approval of the September 28, 2022 Commission Meeting Minutes
- 2) Update on *Robbins v MCILS*
- 3) Executive Session – 1 MRSA §405(6)(E) to discuss pending or contemplated litigation
- 4) Report of the Executive Director
 - a. Operations report
 - b. Letter request for Special Session
 - c. Case staffing status report
 - d. Legislative committee updates
 - e.
 - i. Committee to Ensure Constitutionally Adequate Contact with Counsel
 - ii. Commission To Develop a Pilot Program To Provide Legal Representation to Families in the Child Protection System
 - f. Law school collaboration
 - g. Recruiting
 - h. RDU interviews
- 5) Rulemaking discussion
 - a. Chapter 303 – legal research
 - b. Caseload Standards
- 6) Commissioner Alexander’s proposals
- 7) Collections discussion
- 8) Set Date, Time and Location of Next Regular Meeting of the Commission
- 9) Public Comment

**Maine Commission on Indigent Legal Services – Commissioners Meeting
September 28, 2022**

Minutes

Commissioners Present: Donald Alexander, Meegan Burbank, Michael Carey, Michael Cantara, , Roger Katz, Matthew Morgan , Ronald Schneider, David Soucy, Joshua Tardy.

MCILS Staff Present: Justin Andrus, Ellie Maciag

Agenda Item	Discussion/Outcome
Review of proposed decision, <i>In re Patrick Gordon</i>	<p>Attorney Patrick Gordon was represented by Attorney Verne Paradie; Executive Director Justin Andrus was represented by Assistant Attorney General James Bowie. Chair Tardy and Commissioners Katz and Soucy did not participate in the proceeding. The Commission gave each side 10 minutes to present statements and then deliberated.</p> <p>The Commission made the following changes to the Proposed Recommended Decision: With regards to Paragraphs 11(b)(a) and 11(b)(b) of the Recommended Decision, the Commission found that Attorney Gordon did offer some explanation regarding both points but did not satisfactorily answer the inquiry. The Commission amended to include language that the suspension could be reconsidered if the initial request from Executive Director Andrus is complied with. All voted in favor of the modified proposed order.</p>
Public Hearing of proposed rule Chapter 303, Procedures Regarding Legal Research Access and Materials	<p>Roll was called to establish a quorum. Chair Tardy, and Commissioner Burbank were not present at the time and arrived later in the meeting.</p> <p>Commissioner Carey explained that notice was posted to the MCILS website on September 6, 2022, with instructions on how to access the hearing online and was sent by email to interested parties, which included commission rostered attorneys, Maine Association of Criminal Defense Lawyers, the Maine Parents Rights Attorneys Association, and the Maine Criminal Law and Child Protection and Juvenile Justice sections of the Maine State Bar Association. On September 7, 2022, notice of the meeting was placed in the Bangor Daily News, Lewiston Sun Journal, Kennebec Journal, and the Portland Press Herald.</p> <p>Director Andrus gave a brief overview of the proposed rule, explaining that the purpose of the rule is to provide resources to assigned counsel to better serve indigent clients.</p>

Agenda Item	Discussion/Outcome
	<p>Public comment:</p> <p>Tina Nadeau: Attorney Nadeau expressed her support of the proposed rule, pointing out that the monthly cost of Westlaw was upwards of \$175 when she was doing appellate work, as opposed to prosecutors not paying out of pocket for the same product. Attorney Nadeau requested additional information regarding whether DAs are required to input each client name when accessing Westlaw, as well as expanding on the definition of research materials that can be reimbursed. Attorney Nadeau also expressed concern over the ambiguity of the phrase ‘extraordinary circumstances’ used in the rule.</p> <p>Robert Ruffner: Attorney Ruffner had a question regarding the use of West Law solely for indigent clients. He questioned whether the use of information previously gathered from the program for an indigent client and then saved as reference material outside of the program would be considered improperly used.</p> <p>No additional public comment was made. The deadline for written public comment is 5:00 PM on October 9, 2022.</p>
Approval of the August 22, 2022 Commission Meeting Minutes	No discussion. Commissioner Alexander moved to approve. Commissioner Schneider seconded. All voted in favor, with Commissioners Carey, Cantara, and Soucy abstaining. Approved.
Report of the Executive Director	<p>Operations report. Director Andrus indicated that after running the numbers before the Oversight Committee meeting, the case count annualized was close to 35,000 versus prior to the Commission Meeting being around 31,000 annualized. It was suggested that discussion regarding the tax offsets take place at the next commission meeting, especially as the new Commissioners would benefit from the discussion.</p> <p>GOC update. The Government Oversight Committee has closed their investigation into MCILS. Director Andrus expressed his appreciation for all the MCILS staff who helped in working towards</p>

Agenda Item	Discussion/Outcome
	<p>that end. The Commission members echoed their appreciation on the matter and for all the work staff have accomplished.</p> <p>A question was brought up regarding the five questions of the OPEGA report, of which only two were brought forward by the GOC for review. Director Andrus explained that he is not certain of the status of the report findings or the remaining questions, but that it was clear that the GOC said to each other that there would be no further work done there. Director Andrus further explained that the GOC requested additional information, which will be sent to them over the coming weeks, as well as made a recommendation to conduct exit polling of attorneys who have left the program to better understand the reasonings behind removing themselves from the roster. The GOC also resolved and voted to pen two letters: one to the Congressional delegation, urging them to support ongoing rule making at the Department of Education regarding loan forgiveness; the second letter being to the rest of the Legislature, urging them to support the MCILS budget initiatives, in whole or in part, recognizing that MCILS will be unable to continue to do the work without increased funding.</p> <p>Case staffing status report. Director Andrus indicated that case staffing is still an ongoing issue, noting that there are currently 204 attorneys in the program: 24 doing lawyer of the day only and 164 attorneys indicating a willingness to accept cases. Director Andrus noted that there are 8 attorneys on the active roster who do not appear to be accepting cases, which he is troubleshooting, meaning the numbers show 172 attorneys, but 8 are not taking cases, leading to the 164 available attorneys.</p> <p>Legislative committee updates. Director Andrus gave an update on the two legislative committees he is on. One relates to early assignment of counsel for child protective matters, and one relates to the access to counsel issue. Regarding child protective issues, it is discussing improvements and outcomes when people have counsel much earlier in the process. Director Andrus indicated that there is a renewed interest in pursuing Title IV-E funds to help support MCILS.</p> <p>Regarding the access to counsel committee, they are working on the jail recording call issues. Director Andrus explained that, in addition to ensuring there is space at the jails for attorneys to meet with their clients without supervision, the jail call issue is a large part of the conversation. Director Andrus noted that the committee has met twice and will meet two more times in October before drafting a report.</p> <p>Director Andrus explained that some of the jail call issues stem from attorneys calling in with phone numbers that have not been registered with the jails, but also that there have been times when the jail</p>

Agenda Item	Discussion/Outcome
	<p>staff listening in on the calls do not realize who the client is speaking with. Director Andrus indicated that there is a lack of trust between the attorneys and jail staff with regards to proper reporting of such incidents. Director Andrus further explained that data has been requested from the jails to better assess the situation, and that when former Director Pelletier made a FOAA request of the jails, most of them declined, but that Director Andrus has not renewed those requests.</p> <p>Westlaw award. Director Andrus gave an update regarding awarding Westlaw a contract. Director Andrus indicated that the program would be ready to be turned on and available to rostered attorneys as soon as the proposed rule Chapter 303 was adopted.</p> <p>Director Andrus gave updates on the questions that were brought forward during the public hearing of the proposed rule. He indicated that the requirement of including the client’s name when doing research in Westlaw is a requirement directly from the vendor, due to being offered the government rate pricing in the contract. Director Andrus also explained that he plans to interpret the term ‘legal research material’ as broadly as reasonable.</p> <p>Clearbrief proposal. Director Andrus gave a brief overview of the product and stated that further discussion on the product would happen at a later date.</p>
Update on Rural Defender Unit positions	<p>Director Andrus explained that the Office of the Attorney General agreed that the Legislature specified that MCILS defenders were to be paid at the same rates as the prosecutors. The Bureau of Human Resources has now specified that the MCILS defenders use the prosecutors pay scale. Director Andrus pointed out that, to the best of his knowledge, Maine is the first in the country to do so. Director Andrus indicated that a lot of interest has been coming in for the positions. Applicants have until October 24th to apply.</p> <p>Director Andrus noted that the next question to the Commission is where to deploy these new rural defenders and how. The new rural defenders will not be available on the rosters for courts to appoint. They will have hard caseload limits in place. Director Andrus indicated that he anticipates the process being that MCILS is alerted to a hard to place case, looking at if it can be assigned appropriate assigned counsel, and if not, it gets considered for assignment to the Rural Defender Unit. Discussion ensued regarding the definition of a difficult case, to which Director Andrus defined it as two possibilities: the sophistication of the case itself; or a case that has already gone through several rostered attorneys.</p>

Agenda Item	Discussion/Outcome
Supplemental budget discussion	<p>Director Andrus gave an overview of the state of the number of current rostered attorneys. He pointed out that the number of rostered attorneys has reduced from 280 attorneys in January 2022, down to 164 at the time of the meeting. Director Andrus requested an emergency appropriation to set the compensation rate for assigned counsel to \$150/per hour. Director Andrus indicated that this is also the rate that will be requested in the biennial budget.</p> <p>Director Andrus pointed out that, even if the MCILS budget of \$62 million was approved and available today, the problems MCILS faces cannot be solved immediately. He cautioned that the Commission is past an event horizon where things will get worse before they can get better. The more time that passes before action happens to reinforce the program, the longer the period of disruption is going to be.</p> <p>Director Andrus requested the Commission to authorize MCILS to submit a \$13.3 million supplemental budget request.</p> <p>Discussion ensued regarding the need for the Legislature to come into special session. Director Andrus indicated that the staff position of MCILS is that in order to arrest the fall, the Legislature must come into special session, must include the appropriation and the authority, through emergency rule making, followed by formal rule making, to allow the rate increase.</p> <p>Commissioner Schneider moved to approve a formal supplemental budget request of \$13.3 million, Commissioner Carey seconded. All voted in favor.</p> <p>Commissioner Katz moved and Commissioner Schneider seconded to make a formal request to the Legislature to enter into special session with the purpose of approving the supplemental budget request. Commissioners Cantara, Katz, Schneider, Soucy, and Tardy voted in favor. Commissioners Alexander and Carey voted to oppose. The motion passed 5-2.</p>
Approval of amicus oral argument in <i>Winchester v. State of Maine</i>	<p>Director Andrus explained that the Law Court received the MCILS brief and has specified that it would like argument from amicus. Director Andrus requested approval from the Commission to allow Counsel to argue. Commissioner Schneider moved to approve the request for amicus to participate in oral argument and Commissioner Carey seconded. Discussion ensued regarding specifics.</p> <p>Commissioner Alexander abstained from the vote. All others voted in favor and the motion passed.</p>
Rulemaking discussion, Caseload Standards	<p>Director Andrus requested discussion to determine the route for moving forward with approving and implementing caseload standards. Director Andrus agreed to schedule a workshop with rostered attorneys to get their opinions on the proposed standard. Request was made for a draft of the proposed</p>

Agenda Item	Discussion/Outcome
	standards for the Commissioners to redline with comment. There was discussion regarding how existing cases come into play with regards to the proposed rule, as well as how attorneys can request to be able to take on more cases if they have reached their caseload limit.
Public Comment	<p>Robert Ruffner: Attorney Ruffner expressed concern with the courts successfully assigning counsel in a timely manner. He noted multiple examples that he was made aware of where indigent clients were waiting for counsel to be assigned to them for up to multiple weeks. He also expressed concern with the rural defender unit being pulled in to staff these cases and getting overloaded with assignments. He also noted that changing the number of rosters that attorneys can be on has the potential to drastically reduce the number of rostered attorneys because many attorneys do not wish to take on certain case types and reducing the specificity of the roster types may cause attorneys to remove themselves from rosters completely. He also expressed concern over the need to put specific language in place so that the pay scale of the public defenders remains the same as the prosecutors and is not up for debate and interpretation under future legislative bodies.</p> <p>Robert Cummins: Attorney Cummins expressed the need for the Legislative and Executive branches to work with the Commission to hold a special session, because something needs to be done to fully get Maine in compliance with Constitutional requirements of indigent legal services.</p> <p>Jeremy Pratt: Attorney Pratt expressed his viewpoint with regards to one of Commissioner Alexander's suggestions, concerning a graduated pay scale for case types. He spoke of a conversation he had with another attorney who primarily does misdemeanors, while Attorney Pratt does more serious cases, leading to the other attorney to question why Attorney Pratt does the more stressful cases that take more time when the pay rate is the same. Attorney Pratt also commented on the fact that when post-conviction reviews take place, the time the former attorney takes to prep and testify on the former client is not paid for, ultimately reducing the hourly rate that those serious cases are paid. Attorney Pratt's specifically pointed out that he believes the base rate of pay should be no less than \$150/per hour, but that higher level cases should be at a higher rate of pay, which may in turn entice attorneys to be more likely to take more difficult cases.</p>

Agenda Item	Discussion/Outcome
Adjournment of meeting	The next meeting will be held on Tuesday, October 11, 2022, at 1 pm.

STATE OF MAINE
KENNEBEC, SS

SUPERIOR COURT
AUGSC-CV-22-54

ANDREW ROBBINS, et al,
Plaintiffs,

**ORDER FOR JUDICIAL
SETTLEMENT CONFERENCE**

v.

MAINE COMMISSION ON INDIGENT LEGAL
SERVICES, et al,
Defendants.

On July 25, 2022, the Court conducted a Scheduling Conference with Counsel for the parties at which it encouraged them to consider engaging in a Judicial Settlement Conference. On September 19, 2022, Counsel requested that such a conference be set. The Court further discussed at a phone conference the time frame for such a process, and its potential impact on the litigation process. Based on that discussion, the Court ORDERS as follows:

- 1.) The parties shall engage in a good faith effort to resolve this litigation through a Judicial Settlement Conference. The parties have informed the Court that this process is likely to require multiple sessions.
- 2.) Active Retired Justice Thomas Warren has agreed to conduct this Judicial Settlement Conference process.
- 3.) The parties have agreed that the conferences will be conducted at the Cumberland County Courthouse in Portland.
- 4.) The conferences will be conducted in-person in Portland, unless otherwise ordered by Justice Warren.
- 5.) Unless Justice Warren approves a different process for a particular conference, Counsel must bring with them to the conferences persons they believe in good faith to have authority to bind all parties to any potential agreement.
- 6.) Given the dates for which Counsel have requested protection, as well as the resources available to the Court and Justice Warren's other commitments, Counsel are ordered to make themselves available on the following dates: Wednesday October 12, 2022; Friday, October 21, 2022; Monday October 31, 2022; and Monday November 7, 2022.

- 7.) Justice Warren may change or add additional conference dates at his discretion.
- 8.) For the initial conference on October 12, 2022, all participants shall report to Courtroom 12 at the Cumberland County Superior Court at 10:00 am.

The parties have further agreed, and the Court orders, that these conferences will not result in alteration of, or extension of, the deadlines established by the Court in the Scheduling Order issued on August 4, 2022. Those deadlines may only be extended upon motion, and only for good cause shown.

The Clerk shall note this docket on the record pursuant to Rule 79(a) of the Maine Rules of Civil Procedure.

10/4/22

DATE

Michael J.

SUPERIOR COURT JUSTICE

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JUSTIN ANDRUS, EXECUTIVE DIRECTOR
SUBJECT: OPERATIONS REPORTS
DATE: October 6, 2022

Attached you will find the September 2022, Operations Reports for your review and our discussion at the Commission meeting on October 11, 2022. A summary of the operations reports follows:

- 2,593 new cases were opened in the DefenderData system in September. This was a 41 case increase from August. Year to date, new cases are down by approximately 2.1% from 7,848 at this time last year to 7,676 this year.
- The number of vouchers submitted electronically in September was 3,089, an increase of 57 vouchers from August, totaling \$1,734,006, a decrease of \$32,228 from August. Year to date, the number of submitted vouchers is up by approximately 10%, from 8,070 at this time last year to 8,878 this year, with the total amount for submitted vouchers up approximately 20.1%, from \$4,235,682 at this time last year to \$5,087,332 this year.
- In September, we paid 2,871 electronic vouchers totaling \$1,710,394, representing an increase of 339 vouchers and an increase of \$280,972 compared to August. Year to date, the number of paid vouchers is up approximately 10%, from 7,889 at this time last year to 8,680 this year, and the total amount paid is up approximately 21.9%, from \$4,130,328 this time last year to \$5,036,069 this year.
- We paid no paper vouchers in September.
- The average price per voucher in September was \$595.75, up \$31.21 per voucher from August. Year to date, the average price per voucher is up approximately 10.8%, from \$523.56 at this time last year to \$580.19 this year.
- Post-Conviction Review and Petition for Modified Release and Treatment cases had the highest average voucher in September. There were 17 vouchers exceeding \$5,000 paid in September. See attached addendum for details.
- In September, we issued 84 authorizations to expend funds: 36 for private investigators, 37 for experts, and 11 for miscellaneous services such as interpreters and transcriptionists. In September, we paid \$72,000 for experts and investigators, etc. No requests for funds were denied.

- MCILS investigative activity in September focused on assessing the overall state of attorney workload, rather than on specific instances of attorney performance.
- In our All Other Account, the total expenses for the month of September were \$1,207,951. During August, approximately \$20,899 was devoted to the Commission's operating expenses.
- In the Personal Services Accounts, we had \$107,877 in expenses for the month of September.
- In the Revenue Account, the transfer from the Judicial Branch for September, reflecting August's collections, totaled \$36,135, an increase of approximately \$3,223 from the previous month. The total expenses for counsel fees for the month of September was \$595,342.
- Exceptional results – see attached addendum.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY23 FUND ACCOUNTING
AS OF 09/30/2022

Account 010 95F Z112 01 Other)	(All Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY23 Total
FY23 Professional Services Allotment		\$ 6,173,605.54		\$ 3,080,749.00		\$ 3,080,749.00		\$ 3,080,747.00	\$ 15,415,850.54
FY23 General Operations Allotment		\$ 48,000.00		\$ 48,000.00		\$ 48,000.00		\$ 48,000.00	\$ 192,000.00
FY22 Encumbered Balance Carry Forward		\$ 506,889.06		\$ -		\$ -		\$ -	\$ 506,889.06
Budget Order Adjustment		\$ -		\$ 179,034.00		\$ 178,980.00		\$ 178,981.00	\$ 536,995.00
Budget Order Adjustment		\$ -		\$ -		\$ -		\$ -	
Financial Order Unencumbered Balance Fwd		\$ -		\$ -		\$ -		\$ -	
Total Budget Allotments		\$ 6,221,605.54		\$ 3,307,783.00		\$ 3,307,729.00		\$ 3,307,728.00	\$ 16,651,734.60
Total Expenses	1	\$ (1,935,083.89)	4	\$ -	7	\$ -	10	\$ -	
	2	\$ (1,607,416.71)	5	\$ -	8	\$ -	11	\$ -	
	3	\$ (1,207,951.78)	6	\$ -	9	\$ -	12	\$ -	
Encumbrances (Justice Works)		\$ -		\$ -		\$ -		\$ -	\$ -
Encumbrances (B Taylor)		\$ (13,260.00)		\$ -		\$ -		\$ -	\$ (13,260.00)
Encumbrances (CTB for non attorney expenses)		\$ (1,150,139.32)		\$ -		\$ -		\$ -	\$ (1,150,139.32)
Encumbrances (business cards,batteries & address stamps)		\$ (17.14)		\$ -		\$ -		\$ -	\$ (17.14)
FY22 CTB Balance Carry Forward		\$ (86,108.40)		\$ -		\$ -		\$ -	\$ -
TOTAL REMAINING		\$ 221,628.30		\$ 3,307,783.00		\$ 3,307,729.00		\$ 3,307,728.00	\$ 10,651,757.36

Q1 Month 3	
INDIGENT LEGAL SERVICES	
Counsel Payments	\$ (1,115,051.45)
Interpreters	\$ (445.73)
Private Investigators	\$ (21,345.93)
Mental Health Expert	\$ (7,468.75)
Misc Prof Fees & Serv	\$ (2,250.00)
Transcripts	\$ (20,411.59)
Other Expert	\$ (18,801.55)
Process Servers	\$ (1,172.75)
Subpoena Witness Fees	\$ -
Lodging for jury consultant	\$ (104.60)
SUB-TOTAL ILS	\$ (1,187,052.35)
OPERATING EXPENSES	
Employee Tuition & Dues	\$ (1,725.00)
Employee Registration non-state	\$ (30.00)
Mileage/Tolls/Parking	\$ (570.15)
Mailing/Postage/Freight	\$ (476.12)
West Publishing Corp	\$ (226.80)
Office Equipment Rental	\$ (100.74)
Office Supplies/Equip.	\$ (469.81)
Cellular Phones	\$ (212.14)
OIT/TELCO	\$ (5,171.51)
Parking Fees	\$ (128.12)
Barbara Taylor monthly fees	\$ (4,420.00)
Repairs to buildings(wrong obj code)	\$ 38.07
General operating exp(wrong obj code)	\$ 444.73
AAG Legal Srvcs Quarterly Payment	\$ (7,851.84)
SUB-TOTAL OE	\$ (20,899.43)
TOTAL	\$ (1,207,951.78)

INDIGENT LEGAL SERVICES	
Q1 Allotment	\$ 6,221,605.54
Q1 Encumbrances for Justice Works contract	\$ -
Barbara Taylor Contract	\$ (13,260.00)
CTB Encumbrance for non attorney expenses	\$ (1,150,139.32)
Q1 Encumbrances for business cards. rubber stamps, ink, batteries	\$ (17.14)
Q1 Expenses to date	\$ (4,750,452.38)
FY22 CTB Balance Carry Forward	\$ (86,108.40)
Remaining Q1 Allotment	\$ 221,628.30

Non-Counsel Indigent Legal Services	
Monthly Total	\$ (72,000.90)
Total Q1	\$ 249,860.68
Total Q2	\$ -
Total Q3	\$ -
Total Q4	\$ -
Fiscal Year Total	\$ 249,860.68

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY23 FUND ACCOUNTING
AS OF 09/30/2022

Account 010 95F Z112 01 (Personal Services)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY23 Total
FY23 Allotment		\$ 285,269.00		\$ 263,599.00		\$ 285,269.00		\$ 115,478.00	\$ 949,615.00
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustments		\$ 71,107.00		\$ 213,321.00		\$ 213,321.00		\$ 206,733.00	\$ 704,482.00
Budget Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Total Budget Allotments		\$ 356,376.00		\$ 476,920.00		\$ 498,590.00		\$ 322,211.00	\$ 1,654,097.00
Total Expenses	1	\$ (65,524.90)	4	\$ -	7	\$ -	10	\$ -	
	2	\$ (96,169.15)	5	\$ -	8	\$ -	11	\$ -	
	3	\$ (66,680.15)	6	\$ -	9	\$ -	12	\$ -	
TOTAL REMAINING		\$ 128,001.80		\$ 476,920.00		\$ 498,590.00		\$ 322,211.00	\$ 1,425,722.80

Q1 Month 3	
Per Diem	\$ -
Salary	\$ (33,320.52)
Vacation Pay	\$ (6,811.69)
Holiday Pay	\$ (2,447.84)
Sick Pay	\$ (2,100.75)
Empl Hlth SVS/Worker Comp	\$ -
Health Insurance	\$ -
Dental Insurance	\$ (262.80)
Employer Retiree Health	\$ (4,376.95)
Employer Retirement	\$ (2,949.47)
Employer Group Life	\$ (405.72)
Employer Medicare	\$ (705.48)
Retiree Unfunded Liability	\$ (8,910.92)
Longevity Pay	\$ (112.00)
Perm Part Time Full Ben	\$ (4,276.01)
Retro Lump Sum Pymt Contract	\$ -
Standard Overtime	\$ -
TOTAL	\$ (66,680.15)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

FY23

FUND ACCOUNTING

AS OF 09/30/2022

Account 014 95F Z112 01 (OSR Personal Services Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY23 Total
FY23 Allotment		\$ 211,632.00		\$ 194,116.00		\$ 211,632.00		\$ 105,856.00	\$ 723,236.00
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Total Budget Allotments		\$ 211,632.00		\$ 194,116.00		\$ 211,632.00		\$ 105,856.00	\$ 723,236.00
Total Expenses	1	\$ (49,018.85)	4	\$ -	7	\$ -	10	\$ -	
	2	\$ (61,002.05)	5	\$ -	8	\$ -	11	\$ -	
	3	\$ (41,197.00)	6	\$ -	9	\$ -	12	\$ -	
TOTAL REMAINING		\$ 60,414.10		\$ 194,116.00		\$ 211,632.00		\$ 105,856.00	\$ 572,018.10

Q1 Month 3 PERMANENT	
Per Diem	\$ -
Salary	\$ (18,751.06)
Vacation Pay	\$ (3,287.10)
Holiday Pay	\$ (1,235.84)
Sick Pay	\$ -
Limited Period Regular	\$ -
Health Insurance	\$ -
Dental Insurance	\$ (131.40)
Employer Retiree Health	\$ (2,667.77)
Employer Retirement	\$ (2,337.36)
Employer Group Life	\$ (293.16)
Employer Medicare	\$ (428.47)
Retiree Unfunded Liability	\$ (5,431.24)
Longevity Pay	\$ -
Perm Part Time Full Ben	\$ -
Retro Pay Contract	\$ -
Retro Lump Sum Pymt	\$ -
TOTAL	\$ (34,563.40)

Q1 Month 3 LIMITED PERIOD	
Limited Period Regular	\$ (5,389.80)
Limit Per Holiday Pay	\$ (331.68)
Limit Per Vacation Pay	\$ (663.36)
Limit Per Sick Pay	\$ (248.76)
TOTAL	\$ (6,633.60)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

FY23 FUND ACCOUNTING

As of 09/30/2022

Account 014 95F Z112 01 (Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY22 Total
Original Total Budget Allotments		\$ 3,221,844.00		\$ 2,147,897.00		\$ 2,147,896.00		\$ 2,147,896.00	\$ 9,665,533.00
Financial Order Adjustment		\$ -		\$ -		\$ -		\$ -	\$ -
Financial Order Adjustment	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Budget Order Adjustment	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Budget Order Adjustment		\$ -	6	\$ -	9	\$ -	12	\$ -	
Budget Order Adjustment	3	\$ -		\$ -		\$ -		\$ -	
Total Budget Allotments		\$ 3,221,844.00		\$ 2,147,897.00		\$ 2,147,896.00		\$ 2,147,896.00	\$ 9,665,533.00
Cash Carryover from Prior Quarter		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Collected Revenue from JB	2	\$ 33,135.69	5	\$ -	8	\$ -	11	\$ -	
Collected Revenue from JB	3	\$ 36,358.81	6	\$ -	9	\$ -	12	\$ -	
Collected for reimbursement of counsel fees		\$ -		\$ -		\$ -		\$ -	
Asset Forfeiture		\$ -		\$ -		\$ -		\$ -	
Victim Services Restitution		\$ -		\$ -		\$ -		\$ -	
Collected for reimbursement of counsel fees		\$ -		\$ -		\$ -		\$ -	
Refund to KENCDC for bail to be applied to fines		\$ -		\$ -		\$ -		\$ -	
TOTAL CASH PLUS REVENUE COLLECTED		\$ 69,494.50		\$ -		\$ -		\$ -	\$ 69,494.50
Counsel Payments	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Other Expenses		\$ -		\$ -		\$ -	***	\$ -	
Counsel Payments	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Other Expenses		\$ -		\$ -		\$ -		\$ -	
Counsel Payments	3	\$ (595,342.94)	6	\$ -	9	\$ -	12	\$ -	
State Cap for period 1	*	\$ (377.35)	**	\$ -	***	\$ -		\$ -	
State Cap for period 3	*	\$ -	**	\$ -	***	\$ -		\$ -	
State Cap for period 4	*	\$ -	**	\$ -	***	\$ -		\$ -	
REMAINING ALLOTMENT		\$ 2,626,123.71		\$ 2,147,897.00		\$ 2,147,896.00		\$ 2,147,896.00	\$ 9,069,812.71
Overpayment Reimbursements	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
REMAINING CASH Year to Date		\$ 69,117.15		\$ -		\$ -		\$ -	\$ 69,117.15

Collections versus Allotment	
Monthly Total	\$ 36,358.81
Total Q1	\$ 69,494.50
Total Q2	\$ -
Total Q3	\$ -
Total Q4	\$ -
Expenses to Date	\$ (377.35)
Cash Carryover from Prior Year	\$ -
Fiscal Year Total	\$ 69,117.15

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

FY23

FUND ACCOUNTING

AS OF 09/30/2022

Account 014 95F Z112 02 (Conference Account)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY23 Total
FY23 Allotment		\$ -		\$ 57,000.00		\$ -		\$ -	\$ 57,000.00
Carry Forward		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Total Budget Allotments		\$ -		\$ 57,000.00		\$ -		\$ -	\$ 57,000.00
Total Expenses	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
TOTAL REMAINING		\$ -		\$ 57,000.00		\$ -		\$ -	\$ 57,000.00

Q1 Month 3	
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
TOTAL	\$ -

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Case Type

9/30/2022

DefenderData Case Type	Sep-22						Fiscal Year 2023			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
Appeal	11	18	\$22,697.55	13	\$ 15,938.34	\$1,226.03	35	39	\$ 69,202.58	\$1,774.43
Child Protection Petition	194	340	\$268,526.29	354	\$ 288,747.48	\$815.67	525	1,036	\$ 828,486.76	\$799.70
Drug Court	1	11	\$18,473.02	11	\$ 18,026.12	\$1,638.74	9	35	\$ 48,708.92	\$1,391.68
Emancipation	3	6	\$2,010.66	4	\$ 1,832.66	\$458.17	11	10	\$ 5,384.76	\$538.48
Felony	611	721	\$550,048.35	613	\$ 540,207.06	\$881.25	1,854	1,873	\$ 1,568,562.62	\$837.46
Involuntary Civil Commitment	101	100	\$30,944.25	88	\$ 29,580.25	\$336.14	290	274	\$ 88,000.22	\$321.17
Juvenile	86	84	\$79,135.41	96	\$ 78,272.56	\$815.34	219	232	\$ 190,995.88	\$823.26
Lawyer of the Day - Custody	252	226	\$70,686.40	241	\$ 76,126.00	\$315.88	738	778	\$ 259,501.93	\$333.55
Lawyer of the Day - Juvenile	30	27	\$8,050.81	27	\$ 7,424.58	\$274.98	73	69	\$ 21,413.62	\$310.34
Lawyer of the Day - Walk-in	184	146	\$51,260.26	148	\$ 51,161.47	\$345.69	497	475	\$ 163,734.18	\$344.70
Misdemeanor	963	1,070	\$389,243.20	961	\$ 372,243.73	\$387.35	2,880	2,844	\$ 1,079,571.63	\$379.60
Petition, Modified Release Treatment	0	2	\$2,579.30	1	\$ 1,673.45	\$1,673.45	2	10	\$ 14,705.34	\$1,470.53
Petition, Release or Discharge	0	0		0			2	2	\$ 1,179.80	\$589.90
Petition, Termination of Parental Rights	17	39	\$57,227.33	49	\$ 59,649.38	\$1,217.33	75	170	\$ 194,005.73	\$1,141.21
Post Conviction Review	4	7	\$13,526.00	4	\$ 9,430.00	\$2,357.50	11	13	\$ 22,802.80	\$1,754.06
Probate	1	0		0			8	7	\$ 8,626.35	\$1,232.34
Probation Violation	82	141	\$75,068.82	110	\$ 54,353.10	\$494.12	288	328	\$ 175,085.83	\$533.80
Represent Witness on 5th Amendment	2	0		0			3	2	\$ 940.80	\$470.40
Resource Counsel Criminal	1	2	\$552.00	1	\$ 328.00	\$328.00	1	6	\$ 1,172.00	\$195.33
Resource Counsel Juvenile	0	0		0			0	1	\$ 32.00	\$32.00
Resource Counsel Protective Custody	0	0		0			0	1	\$ 328.00	\$328.00
Review of Child Protection Order	50	149	\$93,977.20	150	\$ 105,400.21	\$702.67	151	468	\$ 291,847.27	\$623.61
Revocation of Administrative Release	0	0		0			4	7	\$ 1,780.75	\$254.39
DefenderData Sub-Total	2,593	3,089	\$1,734,006.85	2,871	\$1,710,394.39	\$595.75	7,676	8,680	\$5,036,069.77	\$580.19
Paper Voucher Sub-Total										
TOTAL	2,593	3,089	\$1,734,006.85	2,871	\$1,710,394.39	\$ 595.75	7,676	8,680	\$ 5,036,069.77	\$ 580.19

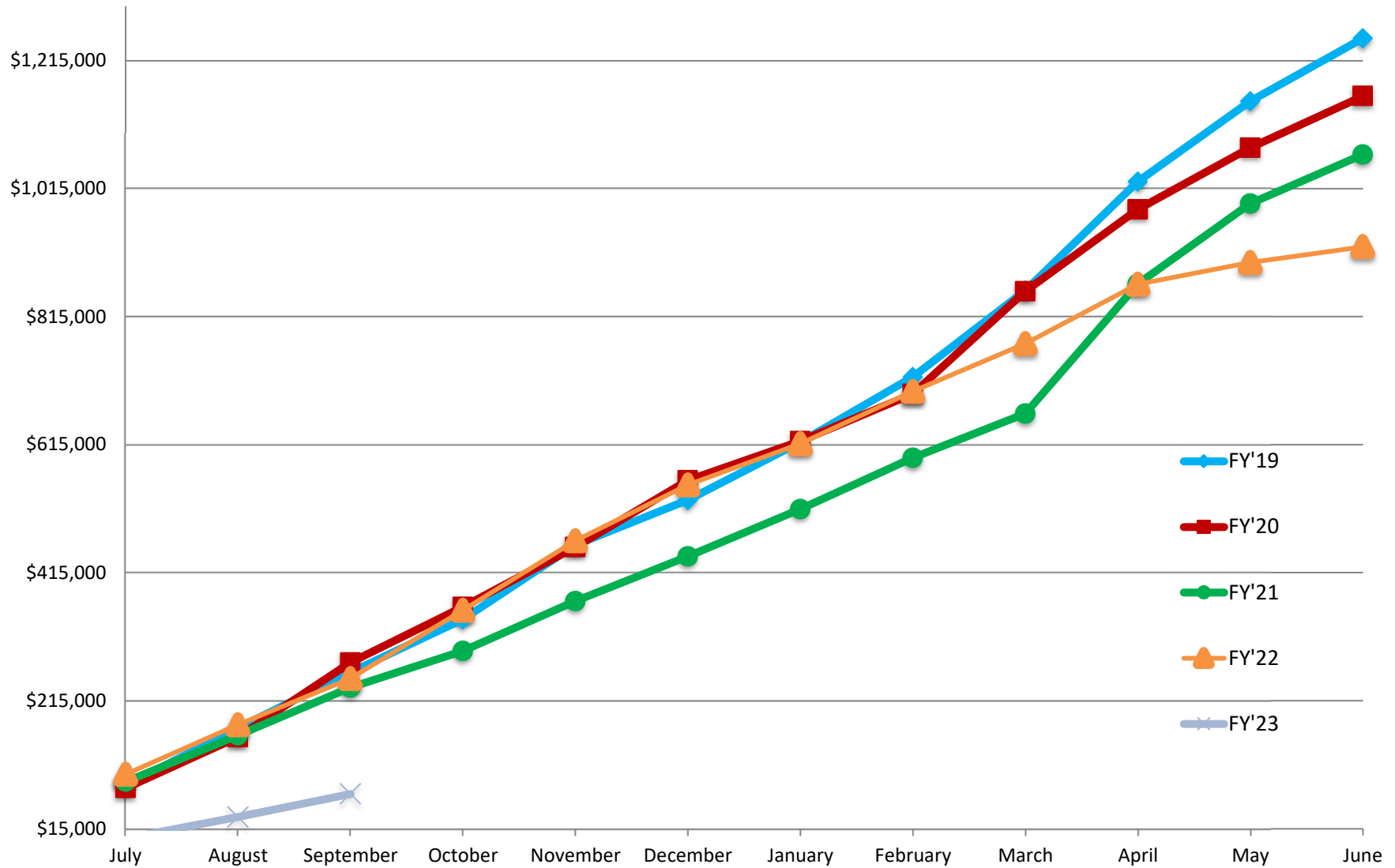
MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Court

9/30/2022

Court	Sep-22						Fiscal Year 2023			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
ALFSC	1	1	\$ 344.00	0			3	2	\$ 1,886.00	\$943.00
AUBSC	0	0		0			0	2	\$ 1,120.00	\$560.00
AUGDC	39	52	\$ 44,927.91	50	\$ 49,183.48	\$ 983.67	117	155	\$ 138,244.70	\$891.90
AUGSC	1	2	\$ 2,579.30	1	\$ 1,673.45	\$ 1,673.45	6	11	\$ 15,461.14	\$1,405.56
BANDC	61	73	\$ 39,446.49	62	\$ 38,722.02	\$ 624.55	142	237	\$ 116,993.12	\$493.64
BANSC	1	1	\$ 304.00	0			1	1	\$ 616.00	\$616.00
BATSC	0	0		0			2	0		
BELDC	11	17	\$ 14,926.11	16	\$ 13,025.66	\$ 814.10	42	48	\$ 33,544.66	\$698.85
BELSC	1	0		0			2	0		
BIDDC	61	76	\$ 41,782.58	61	\$ 37,212.05	\$ 610.03	121	149	\$ 104,393.41	\$700.63
BRIDC	12	16	\$ 7,746.40	13	\$ 5,366.30	\$ 412.79	22	33	\$ 14,774.19	\$447.70
CALDC	4	4	\$ 3,135.60	3	\$ 2,104.00	\$ 701.33	7	9	\$ 5,656.00	\$628.44
CARDC	1	18	\$ 18,611.90	21	\$ 20,595.90	\$ 980.76	9	51	\$ 40,246.20	\$789.14
CARSC	0	0		0			2	0		
DOVDC	1	7	\$ 3,489.75	6	\$ 4,366.50	\$ 727.75	7	25	\$ 13,558.30	\$542.33
DOVSC	0	0		0			0	0		
ELLDC	14	32	\$ 23,365.70	37	\$ 26,549.70	\$ 717.56	45	96	\$ 76,478.15	\$796.65
ELLSC	0	3	\$ 2,223.00	1	\$ 1,008.00	\$ 1,008.00	0	1	\$ 1,008.00	\$1,008.00
FARDC	21	19	\$ 9,268.80	20	\$ 10,956.80	\$ 547.84	41	43	\$ 30,062.68	\$699.13
FARSC	0	0		0			0	1	\$ 800.00	\$800.00
FORDC	5	7	\$ 7,713.60	9	\$ 10,865.80	\$ 1,207.31	11	34	\$ 27,921.90	\$821.23
HOUDC	5	22	\$ 18,050.25	20	\$ 14,688.60	\$ 734.43	25	61	\$ 42,359.66	\$694.42
HOUSC	0	0		0			1	0		
LEWDC	59	104	\$ 80,312.17	114	\$ 86,308.53	\$ 757.09	147	323	\$ 215,391.48	\$666.85
LINDC	5	15	\$ 9,131.35	13	\$ 8,138.40	\$ 626.03	18	46	\$ 28,920.85	\$628.71
MACDC	1	2	\$ 1,266.00	2	\$ 4,742.85	\$ 2,371.43	2	8	\$ 9,317.35	\$1,164.67
MACSC	0	0		0			0	0		
MADDC	1	1	\$ 400.00	3	\$ 1,428.50	\$ 476.17	3	3	\$ 1,428.50	\$476.17
MILDC	7	2	\$ 1,230.75	4	\$ 1,982.75	\$ 495.69	13	13	\$ 6,023.30	\$463.33
NEWDC	4	11	\$ 5,989.40	17	\$ 8,312.20	\$ 488.95	29	46	\$ 24,382.90	\$530.06
PORDC	68	80	\$ 66,245.38	88	\$ 66,694.44	\$ 757.89	204	271	\$ 206,862.86	\$763.33
PORSC	2	1	\$ 480.00	1	\$ 364.00	\$ 364.00	3	4	\$ 1,308.00	\$327.00
PREDC	17	16	\$ 12,524.00	14	\$ 13,144.00	\$ 938.86	29	50	\$ 29,559.50	\$591.19
RODC	6	10	\$ 6,415.51	13	\$ 7,395.31	\$ 568.87	27	40	\$ 23,567.13	\$589.18
ROSC	1	1	\$ 272.00	3	\$ 760.00	\$ 253.33	9	8	\$ 2,392.00	\$299.00
RUMDC	11	19	\$ 13,967.00	15	\$ 9,895.00	\$ 659.67	48	69	\$ 61,264.85	\$887.90
SKODC	30	50	\$ 28,604.30	69	\$ 50,910.30	\$ 737.83	108	161	\$ 128,083.30	\$795.55
SKOSC	0	1	\$ 3,574.00	1	\$ 3,574.00	\$ 3,574.00	0	1	\$ 3,574.00	\$3,574.00
SOUDC	12	15	\$ 9,763.73	16	\$ 10,792.53	\$ 674.53	33	56	\$ 39,383.13	\$703.27
SOUSC	0	0		0			0	0		
SPRDC	13	23	\$ 18,633.50	20	\$ 17,170.00	\$ 858.50	39	79	\$ 64,189.16	\$812.52
Law Ct	6	15	\$ 20,425.55	9	\$ 11,718.98	\$ 1,302.11	29	27	\$ 47,997.26	\$1,777.68
YORCD	317	313	\$ 211,862.26	288	\$ 184,897.50	\$ 642.01	976	995	\$ 529,919.97	\$532.58
AROCD	204	169	\$ 73,482.47	167	\$ 105,863.57	\$ 633.91	556	529	\$ 283,102.71	\$535.17
ANDCD	177	148	\$ 107,655.43	123	\$ 87,296.48	\$ 709.73	548	517	\$ 315,412.20	\$610.08
KENCD	210	192	\$ 92,858.37	176	\$ 77,896.56	\$ 442.59	572	499	\$ 252,449.73	\$505.91
PENCD	283	421	\$ 154,056.75	352	\$ 143,220.52	\$ 406.88	894	964	\$ 453,310.85	\$470.24
SAGCD	40	33	\$ 9,653.00	24	\$ 8,284.00	\$ 345.17	127	103	\$ 42,471.75	\$412.35
WALCD	37	81	\$ 44,711.05	74	\$ 35,482.97	\$ 479.50	182	185	\$ 101,376.51	\$547.98
PISCD	23	27	\$ 14,032.83	20	\$ 8,992.85	\$ 449.64	65	55	\$ 22,132.23	\$402.40
HANCD	60	87	\$ 30,880.00	66	\$ 25,884.00	\$ 392.18	207	174	\$ 97,609.14	\$560.97
FRACD	42	27	\$ 15,777.46	30	\$ 12,331.01	\$ 411.03	119	78	\$ 37,355.69	\$478.92
WASCD	25	70	\$ 38,185.00	66	\$ 76,021.74	\$ 1,151.84	87	155	\$ 123,674.59	\$797.90
CUMCD	360	442	\$ 232,496.67	345	\$ 192,638.62	\$ 558.37	996	1,122	\$ 615,840.89	\$548.88
KNOCD	55	59	\$ 29,710.07	48	\$ 32,126.80	\$ 669.31	188	180	\$ 99,938.97	\$555.22
SOMCD	76	78	\$ 32,909.20	121	\$ 48,955.85	\$ 404.59	252	304	\$ 129,552.72	\$426.16
OXFCD	111	105	\$ 41,526.52	135	\$ 47,676.02	\$ 353.16	302	287	\$ 124,814.34	\$434.89
LINCD	41	34	\$ 17,189.53	22	\$ 14,466.25	\$ 657.56	116	115	\$ 58,363.59	\$507.51
WATDC	26	44	\$ 30,404.79	43	\$ 29,784.28	\$ 692.66	73	120	\$ 74,827.79	\$623.56
WESDC	12	29	\$ 26,277.86	31	\$ 21,375.86	\$ 689.54	43	85	\$ 57,963.36	\$681.92
WISDC	6	8	\$ 9,315.56	12	\$ 12,925.46	\$ 1,077.12	16	25	\$ 30,015.86	\$1,200.63
WISSC	0	0		1	\$ 680.00	\$ 680.00	0	2	\$ 1,616.00	\$808.00
YORDC	6	6	\$ 3,872.00	5	\$ 3,944.00	\$ 788.80	9	22	\$ 25,551.20	\$1,161.42
TOTAL	2,593	3,089	\$ 1,734,006.85	2,871	\$ 1,710,394.39	\$ 595.75	7,676	8,680	\$5,036,069.77	\$580.19

COLLECTION TOTALS FY'19 to FY'23



Vouchers over \$5,000

Comment	Voucher Total	Case Total
Homicide	\$ 38,029.49	\$ 38,029.49
Homicide	\$ 30,240.80	\$ 35,480.80
Domestic Violence Assault	\$ 9,340.00	\$ 9,340.00
Attempted Murder	\$ 8,768.14	\$ 15,334.14
Felony Murder - Juvenile	\$ 8,508.76	\$ 8,508.76
Gross Sexual Assault	\$ 8,130.00	\$ 8,130.00
Domestic Violence Assault	\$ 7,359.32	\$ 7,359.32
Aggravated Assault	\$ 6,942.40	\$ 6,942.40
Termination of Parental Rights	\$ 6,942.40	\$ 6,942.40
Gross Sexual Assault	\$ 6,814.00	\$ 17,620.64
Aggravated Trafficking	\$ 6,742.29	\$ 7,822.29
Review Child Protection Petition	\$ 5,878.55	\$ 7,856.70
Termination of Parental Rights	\$ 5,696.00	\$ 5,696.00
Aggravated Trafficking	\$ 5,316.51	\$ 5,316.51
Review Child Protection Petition	\$ 5,248.00	\$ 11,580.00
Homicide	\$ 5,240.00	\$ 35,480.80
Homicide	\$ 5,000.00	\$ 25,523.65

Good Outcomes

Review Date	Attorney	Charge	Disposition
9/1/2022	Harrow, Seth	1 ct. Criminal Threatening w/ Dangerous Weapon, 1 ct. Threatening Display of Weapon	Dismissal
9/8/2022	Capponi, Randa	Child Protection Petition	Dismissal
9/8/2022	Rutledge, Ryan	Theft by Unauthorized Taking	Dismissal
9/8/2022	Davidson, Jeffrey	Aggravated Trafficking of Scheduled Drugs	Dismissal
9/15/2022	Leonard, Sean	Assault	Dismissal
9/15/2022	Peters, Chelsea	Child Protection Petition	TPR Denied after Hearing
9/16/2022	Duffett, Neale	Probation Violation	Dismissed after Hearing
9/16/2022	O'Donnell, John	Theft by Unauthorized Taking	Dismissal
9/16/2022	Langworthy, James	Theft by Unauthorized Taking	Dismissal
9/16/2022	Peterson, Kurt	Violating Protection from Abuse Order	Deferred GO = Dismissal
9/16/2022	Lieberman, Jonathan	1cr. Unlawful Possession of Scheduled Drug, 1 ct. VCR	Dismissal
9/16/2022	Donovan, Kristina	Child Protection Petition	Dismissal
9/16/2022	Clifford, John	1ct. Operating After HO Revocation, 1 ct. Operating After HO Revocation, Prior	Dismissal
9/16/2022	Peterson, Kurt	Assault	Dismissal
9/16/2022	Tanous, Nolan	Child Protection Petition	Dismissal
9/16/2022	Langworthy, James	Theft by Receiving Stolen Property	Dismissal
9/16/2022	Langworthy, James	Burglary	Dismissal
9/16/2022	Peterson, Kurt	DVA, Priors	Dismissal
9/16/2022	Burbank, Meegan	Indecent Conduct	Dismissal
9/16/2022	Elias, Thomas	DVA, Priors	Dismissal
9/16/2022	Rodgers, Cassandra	Probation Violation	Dismissal
9/16/2022	Chipman, Richard	1 ct. Assault, 1 ct. VCR	Deferred GO = Dismissal
9/16/2022	Berrymont, Christopher	1 ct. DVA, 1 ct. Domestic Violence Terrorizing, Priors	Dismissal
9/16/2022	Hodgkins, Nathan	1 ct. Unlawful Possession of Scheduled Drug, 1 ct. VCR	Dismissal
9/15/2022	Shanoski, Henry	Unlawful Poss. (misdemeanor)	Dismissal
9/22/2022	Doane, Wayne	Child Protection Petition	TPR Denied as to 3/4 Children after Hearing
9/22/2022	Ramirez, Amanda	Criminal Mischief	Dismissal
9/22/2022	Akinjiola, Akintoye	1 ct. DVA Priors, 1 ct. DVA Criminal Threatening	Dismissal
9/22/2022	Fowler, Nick	Child Protection Petition	Dismissal
9/22/2022	Hanson, Allan	Child Protection Petition	Dismissal
9/23/2022	Gallagher, Tamara	Child Protection Petition	TPR Denied after Hearing

Good Outcomes

9/23/2022	Elias, Thomas	1 ct. Criminal Mischief, 1 ct. DTE, 1 ct. Failing to Notify of Motor Vehicle Accident	Dismissal
9/26/2022	Zirschky, David	1 ct. Trafficking in Prison Contraband, 2 cts. Unlawful Possession of Scheduled Drugs	Dismissal
9/26/2022	Duffett, Neale	Crim. Threat. w/ a Dangerous Weapon, VCR	Dismissed--Incompetent Finding
9/26/2022	Miller, Amber	Juvenile Unlawful Sexual Touching	Filing
9/26/2022	Geller, David	DV Terrorizing, DV Assault	Dismissal
9/27/2022	Leonard, Sean	Child Protection Petition	Dismissal
9/27/2022	Kaiser, Lauren	1 ct. Refusing to Submit, 1 ct. Assault	Dismissal
9/27/2022	Carey, Jennifer	1 ct. Felony Murder, 1 ct. Arson	Dismissal - Client's Identity Successfully kept Confidential
9/29/2022	Nadeau, Tina	Criminal Trespass	Dismissal
9/29/2022	Paris, David	Child Protection Petition	Dismissal through PRR
9/29/2022	Ellis, Cameron	1 ct. OUI (Drugs or Combo) w/ Priors, 2 cts. Unlawful Possession of Scheduled Drugs	Dismissal
9/29/2022	Dawson, Andrew	1 ct. Criminal Mischief	Deferred GO = Dismissal
9/29/2022	O'Donnell, John	1 ct. DV Criminal Threatening, 1 ct. Criminal Mischief	Dismissal
9/29/2022	Quinn, Daniel	1 ct. DVA	Unconditional Discharge
9/29/2022	McMorran, Kelly	Child Protection Petition	Dismissal through PRR
9/29/2022	Smith, Caitlyn	2 cts. Unlawful Trafficking in Schedule Drugs	Dismissal
9/29/2022	Rice, Curtis	1 ct. DVA	Deferred GO = Dismissal
9/29/2022	Reeves, Charles	Child Protection Petition	Dismissal through PRR
9/29/2022	McMorran, Kelly	Child Protection Petition	Dismissal through PRR
9/30/2022	Paris, David	Child Protection Petition	Dismissal through PRR
9/30/2022	Chipman, Richard	Child Protection Petition	Dismissal
9/30/2022	Leary, Justin	2 Ct. Aggravated Trafficking of Scheduled Drugs	Dismissal
9/30/2022	Dawson, Andrew	OUI - No Test	Dismissal
9/30/2022	Bates, Randy	OUI	Dismissal
9/30/2022	Fowler, Benjamin	Assault	Dismissal
9/30/2022	Banda, Darrick	OUI - 1 Prior	Dismissal
9/30/2022	Paris, David	OAS	Dismissal
9/30/2022	Wilson, Jeffrey	2 cts. Aggravating Trafficking of Scheduled Drugs, 1 ct. Endangering the Welfare of a Child	Dismissal
9/30/2022	Catherman, Andrew	Habitual Motor Vehicle Offender	Dismissal



MAINE COMMISSION ON INDIGENT LEGAL SERVICES

October 5, 2022

Governor Janet T. Mills
1 State House Station
Augusta, ME 04330

Sen. Jeffrey Timberlake
284 Ricker Hill Road
Turner, ME 04282

President Troy Jackson
167 Allagash Road
Allagash, ME 04774

Rep. Kathleen Dillingham
2 State House Station
Augusta, ME 04330

Speaker Ryan Fecteau
P.O. Box 2244
Biddeford, ME 04005

Re: **MCILS Supplemental Appropriation and Authority Request**

Dear Governor Mills, President Jackson, Speaker Fecteau, Senator Timberlake, and Rep. Dillingham:

In my role as Chair of the Maine Commission on Indigent Legal Services, individually, and on behalf of the Commission whole by its vote of September 28, 2022, I write to you today to respectfully urge you to consider calling a special session of the Legislature to address the funding issues MCILS faces, by granting authority to MCILS to increase the hourly rate paid to private attorneys serving consumers of indigent legal services on behalf of the State and by making an appropriation to fund that increase.

We understand that it is a busy season for elected representatives. We would not make this request if we did not believe that our ability to uphold the State's obligation to its people were not at risk. MCILS continues to see a decline in the number of private attorneys willing to shoulder the load of safeguarding the 6th Amendment, while the rate at which new cases accrue continues to exceed pre-pandemic levels and the backlog of unresolved cases in the criminal justice system persists.

Maine has chosen a market approach to its 6th Amendment responsibility, sourcing legal services from the private bar. Today the market is telling the State that the rate it has chosen to pay for those services is not adequate to acquire those services in the volume needed to fulfill the need. The State must adjust the rate it is willing to pay to match the market requirement.

Commission staff have engaged in repeated analysis to determine the hourly rate that is necessary to provision private assigned counsel to a level like that enjoyed by prosecutors employed by the State. Each time staff have reached the same conclusion. That rate is \$150 per hour. While we cannot predict that attorneys will flock back to the rosters at that rate, unless we increase the rate our attorney count will continue to decline.

For that reason, the Commission voted in August to seek authority and funding to increase the hourly rate paid to assigned counsel to \$150 per hour in the next biennium. On September 28th, the Commission voted unanimously to seek to implement that increase on an emergency basis through a supplemental appropriation. That day the Commission also resolved to make this request of you.

The Commission and its staff have worked hard over the last 22 months to address your concerns about oversight and fiscal responsibility. While we still have room to evolve, we have made great progress. We have now reached the end of our ability to make progress on our own, however. We thus turn the issue over to you. Only you can resolve this crisis. We urge you to take the issue up, and to take the steps necessary to ensure that the State can continue to meet the requirements of the constitution.

Sincerely,

/s/ Joshua Tardy

Joshua Tardy
Chair MCILS

cc: Chairs of the Judiciary Committee
Chairs of the Appropriations Committee
Chairs of the Government Oversight Committee

Maciag, Eleanor

From: Andrus, Justin
Sent: Thursday, October 6, 2022 2:37 PM
To: MCILS
Cc: Hudson, Megan
Subject: FW: MCILS appeal for support

Good afternoon, Commissioners.

Last night I sent you a copy of the letter we sent to the Governor and certain key legislators. I am happy to report that we received an engaged response from the Governor almost immediately. That response, and my subsequent reply are in-line below.

JWA

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

From: Andrus, Justin
Sent: Thursday, October 6, 2022 2:35 PM
To: Mills, Janet T <Janet.T.Mills@maine.gov>; Jackson, Troy <troy.jackson@legislature.maine.gov>; Fecteau, Ryan <ryan.fecteau@legislature.maine.gov>; Timberlake, Jeffrey <jeffrey.timberlake@legislature.maine.gov>; Dillingham, Kathleen <kathleen.dillingham@legislature.maine.gov>
Cc: Libby, Nathan <nathan.libby@legislature.maine.gov>; Stover, Holly <holly.stover@legislature.maine.gov>; Carney, Anne <anne.carney@legislature.maine.gov>; Harnett, Thomas <thom.harnett@legislature.maine.gov>; Breen, Catherine <cathy.breen@legislature.maine.gov>; Pierce, Teresa <teresa.pierce@legislature.maine.gov>; Joshua A. Tardy <jtardy@rudmanwinchell.com>; MCILS <MCILS@maine.gov>; Hudson, Megan <Megan.Hudson@maine.gov>; Crete, Lindsay <Lindsay.Crete@maine.gov>
Subject: RE: MCILS appeal for support

Good afternoon, Governor Mills.

Thank you for your email, and the chance to address some of your concerns. I've done some of that below, and would welcome the opportunity to meet with you to address other or more specific concerns and provide more information about our budget needs.

We are working hard at MCILS to promote the program and recruit legal talent. The five public defender positions authorized last session are currently in their second week of being advertised. I am happy to report that we were able to resolve our brief disconnect with the bureau of human resources. Ultimately, BHR concluded that the legislation creating those positions did call for them to be compensated on the same grades that prosecutors enjoy. We have begun reviewing candidate submissions, and anticipate that we will begin to interview after next week.

With respect to recruiting new lawyers, we have several things on tap. We will participate in the MSBA Bridging the Gap program offered to new lawyers in December. We plan to make a presentation during the first session of the day, and then to remain on site in a designated area to meet with anyone who might be interested in serving consumers of

indigent legal services. In addition, we plan to attend the ceremonies at which attorneys are sworn-in. We may have to make some decisions about which to attend, because there are times that those sessions occur in more than one court at a time. I anticipate that we will make those decisions by balancing the expected attendance with the geographic needs. Next week we will attend the pro bono / public interest fair in Portland. I have also asked the chair of the MSBA young lawyer section for a meeting at which we can discuss other ways to reach those new lawyers. For the future, we are looking forward to meeting with the Law School next week to brainstorm ways to support each other. One idea in support of that process is the proposed internship program laid out in our biennial budget submission.

For the existing bar, we've met with the Chief Justice and the executives at the MSBA and Maine Trial Lawyers Association to develop a program to promote participation in MCILS. We are working with NACDL to develop a program appropriate to experienced attorneys, without asking those attorneys to attend a new-lawyer level program. We expect to be able to roll that program out this fall, and I anticipate that we will each issue press releases, or perhaps issue a joint release. Following our meeting, we saw an uptick in the number of attorneys at existing firms who reached out to us to participate. For the moment, we bring those people in through our existing educational programming.

For all lawyers, we are trying to ensure that we are able to provide initial educational programming that is adequate and appropriate to supporting constitutionally adequate counsel, without becoming overbearing. We also work actively with our attorneys to assist them in achieving eligibility for panels that require specific demonstration of knowledge or experience. This includes, among other things, by providing the National Association of Public Defense's training program to all assigned counsel without charge; and, by working with counsel to obtain opportunities to gain experience through serving as co-counsel. Our training and supervision division is engaged with NACDL through a grant funded by the Department of Justice to set up more advanced training for our attorneys as well.

While this does not represent a complete recapitulation of everything we're doing on these fronts, I hope some of this is helpful to allay your concerns. Again, I am open to hearing other or more specific concerns, and to hearing other ideas from any quarter. I hope to speak with you soon.

JWA

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

From: Mills, Janet T <Janet.T.Mills@maine.gov>
Sent: Wednesday, October 5, 2022 7:30 PM
To: Andrus, Justin <Justin.Andrus@maine.gov>; Jackson, Troy <troy.jackson@legislature.maine.gov>; Fecteau, Ryan <ryan.fecteau@legislature.maine.gov>; Timberlake, Jeffrey <jeffrey.timberlake@legislature.maine.gov>; Dillingham, Kathleen <kathleen.dillingham@legislature.maine.gov>
Cc: Libby, Nathan <nathan.libby@legislature.maine.gov>; Stover, Holly <holly.stover@legislature.maine.gov>; Carney, Anne <anne.carney@legislature.maine.gov>; Harnett, Thomas <thom.harnett@legislature.maine.gov>; Breen, Catherine <cathy.breen@legislature.maine.gov>; Pierce, Teresa <teresa.pierce@legislature.maine.gov>; Joshua A. Tardy <jtardy@rudmanwinchell.com>; MCILS <MCILS@maine.gov>; Hudson, Megan <Megan.Hudson@maine.gov>; Crete, Lindsay <Lindsay.Crete@maine.gov>
Subject: Re: MCILS appeal for support

Thank you.

I have reviewed some comments from Commissioner Alexander and am concerned that you have not made adjustments to your own rules and guidelines to allow more lawyers to join the ranks of indigent counsel. Dozens of people just

passed the Maine Bar. What effort have you made to encourage these new lawyers to represent indigent clients and reduce any barriers to their serving these clients? How have you worked with the judiciary to encourage lawyers from every firm in Maine to designate members of the firms to take court appointed cases and get courtroom experience? I would like a lot more information as well about your budget and the progress on job descriptions for the authorized public defender positions that comport with state HR procedures.

Thank you.

JTM

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From: Andrus, Justin <Justin.Andrus@maine.gov>

Sent: Wednesday, October 5, 2022 7:02:24 PM

To: Mills, Janet T <Janet.T.Mills@maine.gov>; Jackson, Troy <troy.jackson@legislature.maine.gov>; Fecteau, Ryan <ryan.fecteau@legislature.maine.gov>; Timberlake, Jeffrey <jeffrey.timberlake@legislature.maine.gov>; Dillingham, Kathleen <kathleen.dillingham@legislature.maine.gov>

Cc: Libby, Nathan <nathan.libby@legislature.maine.gov>; Stover, Holly <holly.stover@legislature.maine.gov>; Carney, Anne <anne.carney@legislature.maine.gov>; Harnett, Thomas <thom.harnett@legislature.maine.gov>; Breen, Catherine <cathy.breen@legislature.maine.gov>; Pierce, Teresa <teresa.pierce@legislature.maine.gov>; Joshua A. Tardy <jtardy@rudmanwinchell.com>; MCILS <MCILS@maine.gov>; Hudson, Megan <Megan.Hudson@maine.gov>

Subject: MCILS appeal for support

Good evening.

Attached to this email is Chair Tardy's letter of today.

JWA

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

Maciag, Eleanor

From: Andrus, Justin
Sent: Thursday, October 6, 2022 3:04 PM
To: MCILS
Cc: Hudson, Megan; Nash, Lynne; Guillory, Christopher; Fisher, Darcy; Brochu, Stephen; Washer, Arthur; Gariepy, Rachel; Breau, Jennifer
Subject: FW: Letter from the Chairs and Distinguished Members of the Government Oversight Committee Re: The Maine Commission on Indigent Legal Services
Attachments: GOC Letter to the Presiding Officers and Distinguished Members of the 130th Maine Legislature - Re MCILS - 10.6.22.pdf; GOC Letter to the Presiding Officers and Distinguished Members of the 130th Maine Legislature - Re MCILS - 10.6.22.pdf

Well, there's more, Commissioners

Attached is the letter the Government Oversight Committee sent to the legislature today. Their formal monitoring is concluded.

That's your staff at work. I get to do the fun part of performing in public, but it is everyone else here getting it done. From Ellie and Lynne, who survived a wicked and abrupt transition in leadership, under the darkest professional cloud, during the nastiest time any of us can remember, to persevere into a new era; to Chris, Darcy, Steve, and Art who showed up here to the chaos of my half-finished ideas and worked completely unreasonable hours to implement programs and policies from whole cloth under the constant rain of criticism from clients, attorneys, clerks, and judges; to Rachel and Jen, who came here to be paralegals and were immediately turned into researchers, data miners, and customer service representatives; and, all of our screeners working in the field to ensure that the right consumers make it into our program, your staff is getting it done. You could replace me tomorrow without a hiccup, but all of these other people have proven dedicated, insightful, able, and caring, and without any one of them this place falls apart.

I thank them all and individually.

JWA

Justin W. Andrus
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From: Schleck, Peter <Peter.Schleck@legislature.maine.gov>
Sent: Thursday, October 6, 2022 12:29 PM
To: Andrus, Justin <Justin.Andrus@maine.gov>; Maciag, Eleanor <Eleanor.Maciag@maine.gov>
Subject: FW: Letter from the Chairs and Distinguished Members of the Government Oversight Committee Re: The Maine Commission on Indigent Legal Services

For your information. This just went to the Senate President, the Speaker of the House, and the Distinguished Members of the Maine State Legislature.

Peter Schleck | Director
Office of Program Evaluation & Government Accountability

Maine State Legislature
peter.schleck@legislature.maine.gov
(207) 287-1903 | 82 SHS, Augusta, ME 04333
<http://legislature.maine.gov/opega/>

From: Schleck, Peter
Sent: Thursday, October 6, 2022 12:26 PM
To: Schleck, Peter <Peter.Schleck@legislature.maine.gov>
Subject: Letter from the Chairs and Distinguished Members of the Government Oversight Committee Re: The Maine Commission on Indigent Legal Services

Thank you for the opportunity to transmit this letter from the Chairs and Distinguished Members of the Government Oversight Committee, which concerns the operations of the Maine Commission on Indigent Legal Services.

Peter Schleck | Director
Office of Program Evaluation & Government Accountability
Maine State Legislature
peter.schleck@legislature.maine.gov
(207) 287-1903 | 82 SHS, Augusta, ME 04333
<http://legislature.maine.gov/opega/>

Maciag, Eleanor

From: Andrus, Justin
Sent: Thursday, October 6, 2022 3:04 PM
To: MCILS
Cc: Hudson, Megan; Nash, Lynne; Guillory, Christopher; Fisher, Darcy; Brochu, Stephen; Washer, Arthur; Gariepy, Rachel; Breau, Jennifer
Subject: FW: Letter from the Chairs and Distinguished Members of the Government Oversight Committee Re: The Maine Commission on Indigent Legal Services
Attachments: GOC Letter to the Presiding Officers and Distinguished Members of the 130th Maine Legislature - Re MCILS - 10.6.22.pdf; GOC Letter to the Presiding Officers and Distinguished Members of the 130th Maine Legislature - Re MCILS - 10.6.22.pdf

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I thank them all and individually.

JWA

Justin W. Andrus
Executive Director
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(207) 287-3254
Justin.andrus@maine.gov

From: Schleck, Peter <Peter.Schleck@legislature.maine.gov>
Sent: Thursday, October 6, 2022 12:29 PM
To: Andrus, Justin <Justin.Andrus@maine.gov>; Maciag, Eleanor <Eleanor.Maciag@maine.gov>
Subject: FW: Letter from the Chairs and Distinguished Members of the Government Oversight Committee Re: The Maine Commission on Indigent Legal Services

For your information. This just went to the Senate President, the Speaker of the House, and the Distinguished Members of the Maine State Legislature.

Peter Schleck | Director
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Sent: Thursday, October 6, 2022 12:26 PM
To: Schleck, Peter <Peter.Schleck@legislature.maine.gov>
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Peter Schleck | Director
Office of Program Evaluation & Government Accountability
Maine State Legislature
peter.schleck@legislature.maine.gov
(207) 287-1903 | 82 SHS, Augusta, ME 04333
<http://legislature.maine.gov/opega/>



SEN. NATHAN LIBBY, SENATE CHAIR
REP. HOLLY STOVER, HOUSE CHAIR

MEMBERS:

SEN. LISA KEIM
SEN. DONNA BAILEY
SEN. RICHARD BENNETT
SEN. SUSAN DESCHAMBAULT
SEN. JEFFREY TIMBERLAKE
REP. H. SAWIN MILLETT, JR.
REP. AMY ARATA
REP. MARK BLIER
REP. MARGARET O'NEIL
REP. JESSICA FAY

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

October 6, 2022

To: The Honorable Troy D. Jackson, Senate President
The Honorable Ryan M. Fecteau, Speaker of the House
Members of the 130th Maine State Legislature

Re: The Maine Commission on Indigent Legal Services

Dear President Jackson, Speaker Fecteau, and Distinguished Members,

The Government Oversight Committee, with the assistance of the Office of Program Evaluation and Government Accountability, has devoted a significant amount of time and attention in recent years to the effective administration of the Maine Commission on Indigent Legal Services (MCILS). See, e.g., [Maine Commission on Indigent Legal Services \(MCILS\) - An evaluation of MCIL's structure of oversight and the adequacy of its systems and procedures to administer payments and expenditures](#). We are now pleased to observe that through the sustained efforts of new leadership and staff, and based on the regular reporting to us in recent years by that agency, MCILS appears to have made welcome and appropriate progress in addressing our concerns regarding the adequacy of business and financial controls, so much so that we are concluding our formal ongoing monitoring of MCILS operations.

At the same time, an increasingly acute challenge concerns the continuing ability of MCILS to ensure that adequate legal representation remains available to indigent criminal defendants, parents in child protection proceedings, and persons subject to involuntary commitment. Despite the work to improve the system, a variety of factors, including the impact of pandemic conditions on court operations and schedules, and the resulting backlogs of unresolved cases, has contributed to a steep and continuing decrease in attorneys available, willing, and able to take appointments to represent indigent parties. Based on the reporting to us by MCILS about the difficult environment at hand, we have concluded that a further and substantial increase in the hourly rate of attorney reimbursement is not only necessary and appropriate, but essential. Maine has Constitutional obligations to ensure that certain indigent persons have adequate legal representation.

Our confidence in making this recommendation has been enhanced in no small measure by the apparent progress of MCILS to demonstrate better stewardship of taxpayer resources. That work must continue.

We appreciate your attention to this matter.

Sincerely,



Nathan L. Libby
Senate Chair



Holly Stover
House Chair



SEN. NATHAN LIBBY, SENATE CHAIR
REP. HOLLY STOVER, HOUSE CHAIR

MEMBERS:

SEN. LISA KEIM
SEN. DONNA BAILEY
SEN. RICHARD BENNETT
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SEN. JEFFREY TIMBERLAKE
REP. H. SAWIN MILLETT, JR.
REP. AMY ARATA
REP. MARK BLIER
REP. MARGARET O'NEIL
REP. JESSICA FAY

MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

October 6, 2022

Senator Susan Collins
United States Senate
413 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Angus King
United States Senate
133 Hart Senate Office Building
Washington DC 20510

Congresswoman Chellie Pingree
United States House of Representatives
2162 Rayburn House Office Building
Washington, DC 20515

Congressman Jared Golden
United States House of Representatives
1222 Longworth House Office Building
Washington, DC 20515

VIA ELECTRONIC MAIL

Dear Senator Collins, Senator King, Congresswoman Pingree, and Congressman Golden,

We are writing to you today in our capacities as the Senate and House Chairs, and on behalf of our fellow Members, of the Government Oversight Committee of the 130th Maine State Legislature. This relates to a matter of ongoing and great urgency: our State's ability to ensure that adequate legal representation remains available to indigent criminal defendants, parents in child protection proceedings, and persons subject to involuntary commitment. As you are no doubt aware, Maine faces an ongoing and increasingly acute crisis in this regard, one with Constitutional ramifications, as the rosters of available and willing attorneys to take on such representation in Maine continues to dwindle.

A number of remedies and solutions will continue to be explored and pursued at the State level, but it has come to our attention that certain Federal regulations do not apparently permit private attorneys accepting court

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AUGUSTA, MAINE 04333-0082
TELEPHONE: 207-287-1901 FAX: 207-287-1906

appointments through the Maine Commission on Indigent Legal Services (MCILS) to participate in any public service student loan forgiveness on that basis. Expanding eligibility to include such service, we believe, will help encourage more attorneys in our State, especially those under financial strain repaying loans for legal education, to help address our current crisis by taking on MCILS appointments.

We welcome any assistance you may be able to provide in this matter at the Federal level, and have taken the liberty of providing a link here to a pertinent issue paper from the U.S. Department of Education: [5 PSLF eligibility \(ed.gov\)](#)

Thank you.

Sincerely,



Nathan L. Libby
Senate Chair



Holly Stover
House Chair

Maciag, Eleanor

From: Andrus, Justin
Sent: Wednesday, October 5, 2022 7:09 PM
To: Leigh Saufley
Cc: scheherazade.mason@maine.edu; Christopher Northrop; Molly Butler Bailey; Sarah Branch; Toby D. Jandreau; dmitry.bam@maine.edu; daniel.pi@maine.edu; MCILS
Subject: RE: MCILS Outreach through Maine Law

Yes, please. I have protected the time. I don't know who the right players are so I would be happy to see everyone who might be appropriate.

I'm looking forward to it. Thank you.

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

From: Leigh Saufley <leigh.saufley@maine.edu>
Sent: Wednesday, October 5, 2022 7:07 PM
To: Andrus, Justin <Justin.Andrus@maine.gov>
Cc: scheherazade.mason@maine.edu; Christopher Northrop <christopher.northrop@maine.edu>; Molly Butler Bailey <molly.butlerbailey@maine.edu>; Sarah Branch <sarah.branch@maine.edu>; Toby D. Jandreau <tdjandreau@gmail.com>; dmitry.bam@maine.edu; daniel.pi@maine.edu; MCILS <MCILS@maine.gov>
Subject: Re: MCILS Outreach through Maine Law

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.

Thanks, Justin. I appreciate the quick response. Shall we have some of the Clinic faculty and our fabulous new Experiential Learning Professor join us? How about 10 am next Friday, the 14th in my office. I know that most of the faculty are busy in the mornings, but I will put out an invitation.

On Wed, Oct 5, 2022 at 6:24 PM Andrus, Justin <Justin.Andrus@maine.gov> wrote:

Good evening, Dean Saufley. Thank you very much for this email. I'm sorry for the timing. I haven't had to deal with accreditation over here, but I can imagine its stressful and time consuming.

I appreciate the rundown on some of what's happening at Maine Law. I didn't know about the GAL class in particular. That's fantastic. They lay outside my purview, but when I was in practice I struggled to engage guardians at times. Its great that there's a program there.

I didn't intend to convey that I thought the school wasn't engaging students in some of the work. I meant to convey that there is a gap between education and practice for those who want to head toward the defense side. I'm open to learning that I'm missing something there, too, but my perception is that there are more direct roads into state service than there are for defenders. It's that gap that I hope to work with you to fill. For example, we've asked the legislature to fund an internship program that would place students with practitioners. I don't think it can be similar to a clinical environment or what the prosecutors can do (yet!) but it's a start. In any event, I think we can help those students with an interest in defense move forward into that part of the field, and is so doing help fulfill the state's obligation to parents and defendants.

I'm really looking forward to some conversation about how we might do that. I'd enjoy coffee. I can come to you. What would work for timing?

JWA

Justin W. Andrus

Executive Director

Maine Commission on Indigent Legal Services

(207) 287-3254

Justin.andrus@maine.gov

From: Leigh Saufley <leigh.saufley@maine.edu>

Sent: Wednesday, October 5, 2022 4:26 PM

To: Andrus, Justin <Justin.Andrus@maine.gov>

Cc: scheherazade.mason@maine.edu; Christopher Northrop <christopher.northrop@maine.edu>; Molly Butler Bailey <molly.butlerbailey@maine.edu>; Sarah Branch <sarah.branch@maine.edu>; Toby D. Jandreau <tdjandreau@gmail.com>; dmitry.bam@maine.edu; daniel.pi@maine.edu; MCILS <MCILS@maine.gov>

Subject: Re: MCILS Outreach through Maine Law

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.

Justin, your email of last Friday, September 30th, arrived just as the University of Maine was about to undergo a site visit by its accreditor, the New England Commission of Higher Education, NECHE. All of the University's leadership has been engaged in the process, thus, my response to you may not have been as swift as you may have hoped.

I can certainly understand your sense of urgency. In the last two years, the number of attorneys working in criminal justice defense has declined substantially, and the State finds itself in a true crisis.

Let me suggest that improved communication might help in our mutual goal of educating and motivating lawyers to engage in these areas of practice. From your latest communication to leaders at Maine Law, it appears to me that you may be unaware of the amazing work of the many aspects of the Maine Law Clinic and of the experiential education at Maine Law that prepare and encourage students to seek many different careers, including those in criminal justice. While there are always improvements to be made, we are particularly proud of:

- The Summer Rural Justice Fellows program;
- The Juvenile Justice Clinic, where students have the opportunity to receive direct supervised in-court experience in representing youth along with the opportunity to learn how to advocate for improved justice for that population;
- The Prisoners Clinic, which introduces students to the many civil legal needs of incarcerated individuals;
- The child protective guardian ad litem class taught by a respected member of the judiciary; and
- The soon-to-open Rural Justice Clinic, the first of its kind in Maine.

And these programs are just to name a few. To be sure, there is always work to be done to expand and strengthen Maine Law's criminal Justice programs, and we are working toward improvements all the time. Bonnie Hoffman at NACDL has been helpful, and our internship and externship programs are expanding every year. Maine Law graduates have many options; our graduates can be found throughout Maine's Criminal Justice System.

Perhaps a more collaborative approach to problem solving would assist in your efforts? I have assured Josh Tardy that the Law School is more than willing to discuss options, act as a partner in problem solving, and play a positive role in finding solutions.

I would welcome a cup of coffee.

Best, Leigh

On Fri, Sep 30, 2022 at 4:49 PM Andrus, Justin <Justin.Andrus@maine.gov> wrote:

Good afternoon, everyone! I hope everyone is enjoying the advent of fall.

As I think everyone is likely aware, MCILS is working hard to establish continuity in the availability of constitutionally adequate counsel for consumers of indigent legal services in Maine. We are hoping to work with you to provide information and access to Maine Law students about options related to providing services to those consumers. I hope you will join us in a conversation soon about things MCILS can offer to students interested in the practice areas we serve, and ways we can facilitate on ramps toward work in these areas.

MCILS was very proud last week, to appear before the Government Oversight Committee, to report on our evolution toward ensuring excellence in representation. While MCILS has been successful in making substantial progress, we still have a long way to go. The largest area in which we need to improve is in the retention, and particularly in the recruitment of attorneys. GOC members asked us pointed questions about our work to recruit new attorneys. I was happy to be able to report that we've had some dialogue with some of you, but also unable to report that we were actively working to engage with law students who are interested in juvenile, criminal and child protective law. It saddens me to know that those Maine Law students who are interested in pursuing careers in these areas are generally unable to do so, or may choose to leave the state to serve in institutional roles elsewhere.

I am hoping to change that. I believe the students would benefit from the programming we can offer directly; through our partners through the National Association of Criminal Defense Lawyers; and, through the training bank we've acquired through National Association of Public Defense. I also believe that we can offer support and encouragement through formal and informal engagement with students through functions like brown bag lunches or coffee hours. I believe we can help serve our mutual interests through effective and consistent collaboration. Lets do that.

I don't know who should serve as a point of contact for this mission. If you'd let me know who to talk with and when we might get rolling on something together, I'd appreciate it.

JWA

Justin W. Andrus

Executive Director

Maine Commission on Indigent Legal Services

(207) 287-3254

Justin.andrus@maine.gov

|

--

Leigh I. Saufley, President & Dean

she/her/hers

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246 Deering Avenue

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--

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Chapter 303: PROCEDURES REGARDING LEGAL RESEARCH ACCESS AND MATERIALS

Summary: This Chapter establishes the procedures for attorneys to request access to legal research services and to request reimbursement for the purchase of legal research materials.

SECTION 1. DEFINITIONS

1. **Executive Director.** "Executive Director" means the Executive Director of the Maine Commission on Indigent Legal Services or the Executive Director's decision-making designee.
2. **MCILS or Commission.** "MCILS" or "Commission" means the Maine Commission on Indigent Legal Services.
3. **Legal Research Services.** "Legal Research Services" means a subscription based online provider of access to primary and/or secondary legal research materials. For the purpose of this rule, "Legal Research Services" are limited to the provider(s), if any, with which MCILS has contracted to provide those materials.
4. **Legal Research Materials.** "Legal Research Materials" means other written or electronic materials an eligible attorney deems necessary to support the representation of a consumer of indigent legal services.
5. **Eligible Attorney.** For the purpose of this rule, "Eligible Attorney" means a Maine licensed attorney in good standing with the Board of Overseers of the Bar, to whom is or was assigned a consumer of indigent legal services in a matter approved by MCILS.
6. **Consumer of Indigent Legal Services.** "Consumer of Indigent Legal Services" means a person entitled to representation at state expense under the United States Constitution or the Constitution or laws of Maine and who has been found indigent or partially indigent by a state court or by MCILS.

SECTION 2. ACCESS TO LEGAL RESEARCH SERVICES

1. Any eligible attorney may apply to MCILS for access to legal research services. If MCILS grants that eligible attorney access to legal research services, those services shall be used exclusively for the benefit of consumers of indigent legal services.
2. Access to legal research services may be granted from month to month and shall be limited to those eligible attorneys who bear present professional responsibility for one or more matters on behalf of at least one consumer of indigent legal services.

3. Eligible attorneys shall not access MCILS contracted legal research services when an attorney does not bear present professional responsibility for one or more matters on behalf of at least one consumer of indigent legal services.
4. Eligible attorneys who have received access to MCILS contracted legal research services shall inform MCILS if an attorney no longer bears present professional responsibility for one or more matters on behalf of at least one consumer of indigent legal services within seven calendar days. At that time, MCILS may terminate access to its legal research provider for that attorney.
5. As a condition of use of MCILS contracted legal research services, each eligible attorney agrees to log the client for whom that attorney accesses that service in the manner prescribed by MCILS, including through the service itself, if so directed.
6. Eligible attorneys who wish to be granted access to MCILS contracted legal research services shall apply in the manner directed by the Executive Director, which may include a prescribed form and may also include a directive to apply through the MCILS secure website.

SECTION 3. APPLICATION FOR REIMBURSEMENT OF LEGAL RESEARCH MATERIALS

1. Any eligible attorney may apply to MCILS in the manner prescribed by the Executive Director for permission to purchase legal research materials that attorney deems necessary to support the representation of a consumer of indigent legal services.
2. The Executive Director may approve the purchase of legal research materials by an eligible attorney if the Executive Director finds that that proposed purchase is reasonably necessary to support the representation of a consumer of indigent legal services.
3. The application for permission to purchase legal research materials shall be made in writing in the manner directed by the Executive Director, which may include a prescribed form and may also include a directive to apply through the MCILS secure website.
4. The Executive Director shall review the application and the grounds therefore and, in the Executive Director's sole discretion, shall either grant the funds applied for, in whole or in part, or deny the application. When granting an application in whole or in part, the Executive Director may condition the expenditure of funds as set forth in MCILS Rule Chapter 301, *Fee Schedule and Administrative Procedures for Payment of Court or Commission Assigned Counsel*, and other MCILS procedures. The determination of the Executive Director shall be in writing and may be communicated to the applicant by electronic means.
5. Eligible attorney who wish to be reimbursed for the purchase of legal research materials for which permission has been granted by the Executive Director shall seek reimbursement by providing the following documents in .pdf form:
 - a. The request upon which the Executive Director acted;
 - b. The decision of the Executive Director;
 - c. Either payment confirmation from the vendor specifying the product purchased and the amount paid; or an invoice and proof of payment.

6. Retroactive requests for reimbursement shall not be granted except in extraordinary circumstance on a showing that for reasons outside of that attorney's control a timely request could not be made.
7. Purchases made prior to the effective date of this rule shall not be subject to reimbursement.

STATUTORY AUTHORITY:

4 M.R.S. §§ 1804(2)(G), (3)(A) and (4)(D)

EFFECTIVE DATE:

CHAPTER 303 DETAILED BASIS STATEMENT:

P.L. 2022, Ch. 720, Sec. 2, allocated ongoing funds to allow the Commission to provide online legal research services at no cost to its rostered attorneys who provide direct client services and to allow those attorneys to seek reimbursement for necessary legal research materials to support the representation of indigent clients. Providing access to these materials works to fulfil the Commission's statutory mission of providing efficient, high-quality representation to indigent clients.

Maine Commission on Indigent Legal Services

Proposed Rule: Chapter 303, Procedures Regarding Legal Research Access and Materials

Response to Public Comments

Comment #1:

The Commission should consider removing the requirement that attorneys using Westlaw enter the client's name prior to each session search since this is not a requirement for prosecutors using online legal research.

Attorney Tina Nadeau, Executive Director, Maine Association of Criminal Defense Lawyers

MCILS Response:

The requirement that attorneys using the Westlaw service enter the name of the client prior to conducting a search is a vendor requirement in order to enjoy the government rate for this service. It is thus a necessary requirement in the rule.

Comment #2:

The Commission should clarify the term “extraordinary circumstance” as used in Section 3 and what would be involved to qualify for such a finding.

Attorney Tina Nadeau, Executive Director, Maine Association of Criminal Defense Lawyers

MCILS Response:

The Commission is unable to list in the rule all the instances that would qualify as extraordinary circumstances. The Commission views the term exceptional circumstance to mean circumstances that could not be reasonably foreseen and for which there was insufficient time to take the necessary actions prior to occurrence.

Comment #3:

Attorneys who keep research materials for future use want clarification about using the fruits of the research from MCILS client searches in non-MCILS matters.

Attorney Robert Ruffner, Ruffner-Greenbaum

MCILS Response:

The Commission understands that once an attorney properly gathers caselaw or other legal research materials on Westlaw through an MCILS client search, that the attorney cannot then unlearn that information. The Commission does not expect counsel to dispose of printed or electronically saved information that they gathered during an MCILS client search.

DRAFT

CASELOAD STANDARDS – ATTY WORKLOAD AND STAFF

TO: COMMISSION

FROM: JWA

SUBJECT: CASELOAD STANDARDS – ATTY WORKLOAD AND STAFF RATIO ASSUMPTIONS

DATE: 5/23/2022

CC:

In January 2022, Staff opened a survey of assigned counsel to learn more about attorney demographics and expenses. Staff left the survey open to develop as much information as possible. As of May 23, 2022, 97 attorneys had answered the survey.

Of the 97 attorneys who answered the survey, 91 answered a question asking what proportion of their total number of hours worked were worked for MCILS clients. The average from those respondents is 68%.

79 attorneys responded to a question asking if they had staff. Of those 79 respondents, 54% indicated that they do not have staff to assist them.

These numbers are significant to the discussion of the caseload standards in at least two important ways. First, the Delphi assessments work around the idea of Full Time Equivalent (FTE) attorneys. Where our average attorney does not provide services to consumers of indigent legal services on a full-time basis, we need to apply a discount rate.

Second, the ABA assessment process assumes that counsel have staff, and that staff is doing all appropriate tasks. Where more than half of our reporting attorneys do not have staff, we need to again discount the hours. We've arrived at 1,850 billable hours per year as a baseline for the moment.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: Commission
FROM: Training and Supervision Director Chris Guillory
SUBJECT: Proposed Caseload Limits Analysis.
DATE: May 23, 2022

Commission staff have drafted a proposed caseload standard for all assigned counsel.¹ This memo outlines the reasons caseload limits must be imposed, the methodology used in developing the proposed standards, and the potential impacts that the proposed limits will have on indigent representation in Maine.

I. The basis for caseload standards

4 M.R.S.A. §1804(2)(C) requires the Commission to develop standards governing the delivery of indigent legal services, including standards for assigned and contract counsel caseloads. In the November 2020 report on MCILS, the Office of Program Evaluation and Government Accountability (OPEGA) noted that, with regard to establishing caseload limits, “[t]hese standards have not been developed and it does not appear to OPEGA that there are imminent plans to resolve non-compliance with these statutory requirements (either by meeting the requirements or advancing a proposal to amend statute)[.]”. OPEGA further stated that “The requirements for case load and conflicts of interest standards were enacted by PL 2009, c. 419 and therefore have been in place for over a decade.” (OPEGA report SR-MCILS-19 pg. 32).

Principle 5 of the ABA Ten Principles of a Public Defense Delivery System requires that, “Defense counsel’s workload is controlled to permit the rendering of quality representation.”

The lack of caseload limits was also an issue identified in the Sixth Amendment Center’s 2019 report on MCILS. The Sixth Amendment Center noted that, “Maine does not have any statewide limits on the number of cases that an attorney representing indigent clients may handle in a year.” (Sixth Amendment Center April 2019 report, pg. 66). The imposition of caseload limits for all assigned counsel is necessary to ensure that MCILS satisfies its constitutional and statutory mandates.

¹Additional analysis will be necessary when considering caseload standards for employed counsel. There will be efficiencies in a centralized defender office that may warrant revised standards.

II. How Standards were developed

In developing these proposed caseload limits, Commission staff reviewed some of the different models used throughout the country. After evaluating those models, staff determined that a weighted point-based system, like that used by the Committee for Public Counsel Services in Massachusetts, would be the most effective and most amenable to reasonable implementation.

In determining the weight assigned to each case type, Commission staff began by analyzing historical voucher data, focusing on the amount of time attorneys spent on cases by case type. Further analysis of this data was done by staff to attempt to remove outliers and refine the data to present a more relevant average and range of time spent on cases. In consideration of that fact that not all of the time that counsel spends working is billable, a baseline of 1,850 working hours per year was adopted by staff as a working limit.² That limit underlies the point system. Based on the amount of time assigned attorneys are currently spending on cases, and assuming an 1,850-hour working year, Commission staff developed initial case weights. Those weights were then amended based on staff's knowledge and experience in various types of representation to determine values reflecting the complexity of issues involved in each case type. This produced a point-based system in which case types are weighted based on the amount of time that staff estimates should be spent on them to provide the highest quality representation.

The proposal thus sets forth two limits: a maximum caseload limit of 250 points, where a baseline misdemeanor case is weighted as 1.5 points; and, a maximum annual hours limit of 1,850.

The standards are designed to make use of real-time case data supplied by the Judicial Branch to MCILS for tracking case assignments. Contemporaneous billing will also be needed to allow for enforcement of the maximum annual hours limit.

² The 1,850 hour limit is intended to recognize that under the ABA assessment model, attorneys are assumed to have staff, and staff is assumed to perform staff functions, while in Maine fewer than half of assigned counsel responding to an MCILS survey had staff.

The proposed point values are:

Case Type	Point Value	Maximum Case Type	Average Hours Per Case
Class A Crime	4	63	29.6
Class B & C Person Crime	3	83	22.2
Class B & C Property Crime	2	125	14.8
Class D & E Crime	1.5	167	11.1
Probation Violation	1.25	200	9.25
Post-Conviction Review	6	42	44.4
Appeal	10	25	74
Juvenile	2	125	14.8
Lawyer of the Day (per appearance)	.5	500	3.7
Protective Custody	5	50	37
Involuntary Commitment	1.25	200	7.4
Inv. Commit. Appeal to Superior Court	2	125	14.8
Emancipation	.75	333	5.6
Probate	3	83	22.2
Specialty Courts (per appearance)	.5	500	3.7
Pet. for Mod. of Release or Treatment	3	83	22.2
Petition for Release	3	83	22.2

Maximum Case Type: represents the maximum number of cases of a particular case type that an attorney could carry at one time, if the attorney only accepted cases of that one type.

Average Hours Per Case: the anticipated average amount of hours—based on 1,850 annual billable hours—to be spent on a case of a particular type.

The guidelines published by the National Advisory Commission on Criminal Justice Standards and Goals (NAC) issued in 1973 recommended the following annual case limits:

Felony	150
Misdemeanor	400
Juvenile	200
Mental Health	200
Appeal	25

By reflecting more accurately the actual time spent on cases, the proposed caseload limits meet or exceed all of these guidelines. The ABA Ten Principles of a Public Defense Delivery System, provide that “[n]ational caseload standards should in no event be exceeded.” The ABA then cites to the NAC standards referenced above.

III. Impacts of Implementation

To project potential impacts of implementing these caseload limits, staff reviewed the cases entered in defenderData with appointment dates between January 1, 2021 and January 1, 2022, 12-month case totals from May 10, 2021 to May 10, 2022, and case entry totals based on 2022 year to date totals. Staff then applied both the proposed point system and a point system based on ABA standards to the data.

The analysis herein is subject to the caveat that the data relied upon information was manually entered into defenderData by assigned counsel or their staff. Without obtaining the data directly from the Judicial Branch, staff cannot verify whether all cases that have been assigned by the courts have been entered into defenderData or confirm that all cases have been entered accurately (see OPEGA report at pg.7).

Staff converted the NAC caseload standards to be compatible with a 250-point system to allow for direct comparison of those case standards with those proposed by staff. Staff then applied both the NAC based point model and the proposed point model to the sets of available caseload data.

Under the NAC Standards model in 2021, 40 attorneys exceeded the caseload limit of 250 points. Those attorneys carried 36% of all points entered for the year. To bring those attorneys down to the maximum of 250 points each, a number of points would have needed to be reassigned equal to 11% of the annual point total.³ To redistribute those points would require 105 attorneys working at the maximum capacity allowed by the system. In 2021, only 65 attorneys (inclusive of those over the cap) were at 75% of a maximum point total or higher.

Applying the NAC standard to the available 2022 year-to-date data, as of May 10, 2022, 44 attorneys are above the pro-rated limit for cases, and one attorney has already exceeded the yearly limit. Those attorneys are responsible for cases representing 43% percent of all entered points so far this year. These attorneys exceed the prorated limit by 14% of the gross total for the year.

Under the NAC standards, 36% of all cases in 2021 and 43% of cases in 2022 were assigned to attorneys who exceeded limits and would be considered overburdened. Imposing these standards would require redistributing 11% of the gross points in the system in 2021 and 14% of gross points year to date.

³ “Redistribution” as used above as a concept is strictly used for purposes of mathematically analyzing the capacities and stresses to the roster and system in these models. Staff is not proposing in any way that any cases be removed from any attorneys at this moment in time.

Under the caseload standards proposed by staff, there were 69 attorneys over the point limit in 2021. Those attorneys handled 51.3% of the total points entered that year. To bring those attorneys into compliance, 16.9% of the annual point total would have had to have been reassigned. To redistribute those points would require 175 attorneys working at the maximum capacity allowed by the system. Under this model, 100 attorneys (inclusive of those over the cap) were at 75% of a maximum point total or higher in 2021.

Applying the proposed caseload standards to the data available year to date as of May 10, 2022, 75 attorneys are above the pro-rated case limit, and two attorneys have already exceeded the yearly limit, with a third 0.75 points away. At that rate of accrual, those attorneys are on track to reach triple the caseload limit by year end. Those attorneys are responsible for cases representing 61% percent of all entered points so far this year. These 75 attorneys exceed the prorated limit by 24% of the gross total for the year.

Under the staff model, 51% of all cases assigned in 2021 and 61% of cases in 2022 were assigned to attorneys who exceeded system limits and would be considered overburdened. Imposing these standards would require redistributing 16.9% of the gross points in the system in 2021 and 24.5% of gross points year to date.

Additionally, in calculating the number of year-to-date appointments a total of 280 attorneys were represented as having entered appointments for this calendar year. In reviewing roster information, 46 of those attorneys are no longer active on our rosters as of May 14, 2022. Between January 8, 2019 and March 16, 2022, attorneys accepting assigned cases have decreased by approximately 46%. Over that same interval, the number of criminal cases pending in the UCD courts has increased by 71.5%.

IV. Conclusions

The increase in pending cases and decrease in the number of attorneys accepting case assignments presents an obstacle to imposing caseload limits. Namely that even the minimum acceptable standard, represented by the NAC standards model, will result in significant impacts to the system. Additionally, those impacts were modeled without considering factors such as regionally varying caseloads and rosters.

Yet, there are significant risks in not imposing caseload limits. The data currently illustrates a core group of attorneys carrying very high caseloads. Excessive caseloads pose a risk both to individual clients, who run the risk of not getting their attorneys' full effort and attention, and a risk to the attorneys of exhaustion and loss of the ability to focus and manage their cases to the best of their ability. Attorney exhaustion can be seen in the numbers reflecting rates at which counsel are leaving this program or opting out of receiving further case assignments.

Excessive caseloads also pose a risk to the system itself should an overburdened attorney become incapacitated or rendered unable to accept new cases. Or need to relinquish their existing caseload for any reason be it incapacity, changing employers. Such events where an attorney with points significantly higher than proposed limits exits the system poses a danger that there may be a scenario in the future where there may not be sufficient instant capacity to restaff cases.

CASELOAD STANDARDS BIBLIOGRAPHY

TO: COMMISSION
FROM: JWA
SUBJECT: CASELOAD STANDARDS – BIBLIOGRAPHY
DATE: 5/23/2022
CC: INTERESTED PARTIES

The following are links to documents that were helpful to the development of the Staff position on caseload standards, and that may be helpful to the Commission. They are linked rather than copied here because MCILS does not own any of these documents.

1. [ABA 10 Principles](#)
2. [ABA - Use of Delphi Method in ABA SCLAIID Public Defense Workload Studies](#)

“This report will detail the methodology used in the ABA SCLAIID workload studies and share lessons learned. The purpose of this report is to assist public defense organizations in determining whether they have the necessary infrastructure and resources to undertake similar studies, and to assist other research entities that may seek to conduct such studies. Part I of this report reviews the history of efforts to develop reliable workload limits for public defenders. Part II provides an overview of the Delphi method used by ABA SCLAIID and its research partners. Part III delves deeper into the ABASCLAIID use of the Delphi method, looking at decisions made during implementation.” (2021)

3. Selection of Reports
 - a. [Indiana](#)
 - b. [Louisiana](#)
 - c. [Missouri](#)
 - d. [New Mexico](#)
 - e. [Rhode Island](#)
4. [CPCS Assigned Counsel Manual](#)

See in particular 5.16.

5. [1973 NAC Standards](#)

Widely acknowledged to be inadequate and out of date.

Maciag, Eleanor

From: Donald Alexander <donald.g.alexander@gmail.com>
Sent: Thursday, October 6, 2022 3:42 PM
To: Andrus, Justin; Maciag, Eleanor; Josh Tardy (jtardy@rudmanwinchell.com); Josh Tardy; mcarey; Mike Carey
Subject: Caseload Limits
Attachments: Z Caseload limits.pdf

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.

Josh, Mike, Justin, Ellie:

Attached is a memo I have prepared regarding the proposed Rule on Caseload Standards that I hope can be circulated for consideration with our discussion of caseload standards on Oct. 11. Thank you. DGA

CASELOAD LIMITS RULE:

- I. **PURPOSE:** The purpose of this rule is to establish caseload limits and standards for the enforcement of those standards for attorneys accepting assignments to represent consumers of indigent legal services. The objective is to ensure that attorneys are able to provide effective, high quality, representation to every client.
- II. **APPLICATION:** This rule applies to all attorneys accepting assignments to represent consumers of indigent legal services.
- III. **DEFINITIONS:**
 - a. Points: the weight assigned to each case type.
 - b. Case type: the type of matter to which the attorney is assigned.
 - c. Maximum case type: represents the maximum number of cases of a particular case type that an attorney could carry at one time, if the attorney only accepted cases of that one type.
 - d. Average hours per case: the anticipated average amount of hours that would be spent on a case of a particular type.
 - e. Maximum active caseload limit: the maximum total points across all case types that an attorney may carry on their caseload at any given time, based on the percentage of an attorney's work hours which are dedicated to assigned cases.
 - f. Maximum annual hours limit: the maximum number of hours that an attorney may bill to MCILS over a rolling 12-month period, based on the percentage of an attorney's work hours which are dedicated to assigned cases.
 - i. The maximum annual hours limit is only used for purposes of applying the caseload limits. If an attorney's vouchers exceed the maximum annual hours, the attorney will still be paid in accordance with Commission rules.
- IV. **CASE TYPE CALCULATION:**
 - a. Criminal & Juvenile Cases:
 - i. In each docket, the charge assigned the highest points—at the time of appointment—determines the case type.
 - ii. Other offenses contained within a single charging instrument are not assigned a point value.

- iii. If an attorney represents a client on multiple dockets, each docket is considered a new case type. Each case type is assigned cumulative points.
 - iv. The point value assigned is applicable to each case from appointment through disposition of the matter in the unified court. Post-conviction reviews and probation violations are considered new case types, regardless of whether the attorney represented the client in the original case.
- b. Child Protective Cases:
- i. The point value assigned is applicable to the entire case, from appointment through final resolution of the matter at the district court level. Points are not assigned to each distinct phase (*e.g.*, jeopardy, termination of parental rights).
 - ii. If a client has multiple pending PC docket numbers because the client has multiple children, only one docket number is assigned a point value.
- c. Appeals to the Supreme Court of Maine:
- i. Appeals to the Supreme Court of Maine are considered new case types, regardless of whether the attorney represented the client in the trial court.
- d. Lawyer of the Day:
- i. The point value associated with lawyer for the day duties is assigned per appearance.
 - 1. If counsel serves as lawyer of the day for a morning session that continues into the afternoon, that will be one appearance. If counsel serves as lawyer of the day for a morning session and then a subsequent afternoon session with a second appearance time and list, that will be two appearances.
- e. Specialty Courts and Projects:
- i. The point value assigned to specialty courts only applies to the attorney who is the defense representative for that specialty court, or who performs an administrative function for MCILS with respect to that specialty court or project, not to every attorney who has a client sentenced to the specialty court or otherwise engaged in a project.
 - ii. The point value assigned to specialty courts and projects applies per court appearance, regardless of duration.
 - 1. Court appearance is defined by an instance in which the specialty court is in session, not by the number of participants who appear in court at a particular session.

V. POINTS:

a. MCILS has established the following point values for each respective case type:

Case Type:	Point Value:	Maximum Case Type:	Average Hours Per Case:
Class A Crime	4	63	29.6
Class B & C Person Crime	3	83	22.2
Class B & C Property Crime	2	125	14.8
Class D & E Crime	1	250	7.4
Probation Violation	1.25	200	9.25
Post-Conviction Review	6	42	44.4
Appeal	10	25	74
Juvenile	2	125	14.8
Lawyer of the Day (per appearance)	.5	500	3.7
Protective Custody	5	50	37
Involuntary Commitment	1.25	200	7.4
Inv. Commit. Appeal to Superior Court	2	125	14.8
Emancipation	.75	333	5.6
Probate	3	83	22.2
Specialty Courts (per appearance)	.5	500	3.7
Pet. for Mod. of Release or Treatment	3	83	22.2
Petition for Release	3	83	22.2

b. MCILS will reevaluate and update the point values as appropriate.

VI. LIMITS:

a. MCILS has established a maximum active caseload limit of 250 points. An attorney may not maintain a caseload exceeding 250 points at any one time, unless granted a waiver pursuant to Section IX below.

b. For purposes of the maximum annual hours limit, the hours are calculated based on vouchers submitted for work performed within the preceding 12 months.

c. The applicable maximum caseload and hours limits are reduced proportionately, based upon the percentage of the attorney's work hours that are dedicated to MCILS cases. The following chart reflects this calculation, based on an active caseload limit of 250 points and an annual limit of 1,850 billed hours:

% of Attorney's Work Hours Spent on MCILS Cases:	Caseload Limit:	Hours Limit:
100%	250	1,850
75%	188	1,388
50%	125	925
25%	63	463
10%	25	185

- d. Case Closed:
 - i. When a case is closed in defenderData, the points assigned to that case are deducted from the attorney's active caseload points total.
- e. Deferred Disposition:
 - i. When the disposition of a case in defenderData is changed to reflect a deferment, the points assigned to that case are deducted from the attorney's active caseload points total.

VII. APPLICATION:

- a. Applicable Caseload Limit:
 - i. All attorneys accepting assignments to represent consumers of indigent legal services are required to annually certify to MCILS approximately what portion of their annual working hours are dedicated to assigned cases.
 - ii. All attorneys with active assigned cases are required to submit their certification 30 days prior to the effective date of this rule.
 - iii. Attorneys who apply to accept MCILS cases will be required to submit this certification prior to receiving any case assignments.
 - iv. After a certification is submitted, the attorney's maximum caseload limit will be set in the MCILS information management system.
 - v. If an attorney's workload percentages change significantly prior to the annual certification, the attorney can request that MCILS adjust their maximum caseload and/or hours limits.
 - 1. Attorneys will always have the ability to opt out of case types and courts to reduce the number of new assignments they receive.
 - vi. This certification must be completed on the form provided by MCILS. The form may be a webform. If so, the certification must be provided through that webform.

- vii. Failure to complete the certification as required will result in suspension from all rosters until the certification has been completed to the satisfaction of the Executive Director or their designee.
- viii. Suspected falsification of a certification will result in the initiation of an MCILS assessment and/or investigation.

b. Case Entry & Closing:

- i. Counsel are responsible for ensuring that all cases are opened in Defender Data within 7 calendar days of the receipt of notice of assignment in any form, and that cases are closed in Defender Data within 7 days of the completion of work in the file.
- i.

VIII. EXCEPTIONS:

- a. If an attorney has reached the active caseload and/or annual hours limit, the attorney may exceed those limits to accept new assigned cases for a client the attorney then presently represents. The points and hours associated with the new cases will be calculated and added to the attorney's total in accordance with this rule.

IX. WAIVER:

- a. An attorney may apply for a temporary waiver of the active caseload limit or the annual hours limit, but not both.
- b. A temporary waiver may be granted for a period of up to 90 calendar days.
- c. Application must be made to the Executive Director or their designee in the manner designated by MCILS.
- d. Waivers are discretionary and will only be granted for good cause.
- e. In determining whether to grant a waiver, the Executive Director or their designee may consider some or all the following factors:
 - i. The attorney's representation about their current capacity to accept additional cases;
 - ii. The reason the waiver is being requested;
 - iii. The attorney's experience level;
 - iv. Whether the attorney has support staff;
 - v. Whether the attorney represents a client in multiple, related dockets which require less time to resolve; and/or
 - vi. Any other factors relevant to whether the waiver should be granted.

Memorandum: Caseload Limits

October 6, 2022

To: MCILS

From: Donald G. Alexander *DGA*

Re: Proposed Caseload Limits

At our meeting on October 11, 2022, we are scheduled to consider a Caseload Limits Rule to comply with our statutory mandate that MCILS have some oversight of attorney caseloads. I have some concerns that the numbers in the draft caseload limits chart and maximums for each case type overstate the numbers of hours required for common MCILS assigned cases and thus may result in limits that are lower than the numbers of cases that experienced MCILS attorneys can competently handle. I hope we can discuss these concerns at our meeting before approving any draft rule. My specific concerns:

1. I understand that the average hours per case may be derived from billing records for each listed case type, or similar data from other states. If so, those numbers may be skewed high from the few cases – represented by the cases that have billed over \$5000 that we see on our monthly report – that have extraordinarily high numbers compared to the majority of more common cases.

Examples: (a) Right now we are in litigation addressing, among other issues, what we assert was excessive billing in a post-conviction case. If the unusual hours for that case are included in the average hours for the relatively few post-conviction cases we support each year, that could make the average hours much higher than for most post-conviction cases.

(b) Based on 74 average hours per case, appeals are limited to 25 cases per year – one appeal every two weeks – with no other work allowed if that attorney has 25 pending appeals. Assuming that the attorney on appeal was not the trial attorney and, from experience, is knowledgeable of the legal issues that regularly arise in criminal appeals, most criminal appeals in cases that did not involve a jury trial or a homicide should take no more than five or six days to prepare: perhaps one day – likely less - to communicate with the prior attorney and new client; two days – likely less – to review the record and transcript; another two days to write and submit a brief; a day to review the

State's response and prepare and file a reply brief; and another day for the minority of appeals in which there is oral argument.

If we must use average hours in calculating caseload maximums, the numbers may get closer to reality if we use the mean or median, rather than the average to set the number, or if, in using averages, we exclude the highest 10% and the lowest 10% of hours reflected on bills and then calculate the caseload maximums and point values from the remaining average.

2. As was pointed out by attorneys in a prior forum that discussed caseload limits among other things, attorneys who are successful, early in a case, in developing a potential path to family reunification and case resolution in a child protective case, or an alternative disposition with conditions in a criminal case, may have caseloads unduly limited by one-size-fits-all caseload limits. Other than oversight with clients, these cases, if successful, may require little attorney involvement in the time – which may be a year or two - while the reunification or rehabilitation plans are being implemented.

3. The average hours per case figure does not include a time factor, which would appear important in setting maximum limits. Prior to the pandemic, average times from case filing to disposition were much lower than they are now. It may be that if 29.6 hours is the average hours for resolution of a Class A crime, then a case maximum of 63 may be appropriate if average time to resolution for Class A cases is about a year with 1850 available hours. In courts where the average time to disposition is nine months, the case maximum would have to be lower. And in most post-pandemic courts where the average time to disposition is perhaps double what it was before the pandemic, the case maximum could be well above 63, without overburdening an attorney with that higher caseload.

4. MCILS may need to consider more flexible case maximums, perhaps for: (a) cases that are likely to resolve within 3 to 6 months from first appearance without a contested evidentiary hearing; (b) cases that are likely to require a contested evidentiary hearing, but not a jury trial, prior to resolution; and (c) cases that are likely to require a jury trial prior to resolution.

Note: Only about 1 % of criminal cases, other than homicide, are resolved by a jury trial (looking at 2018-2019 numbers). Only 10 to 15% of criminal

cases have a contested evidentiary hearing of some kind – motion to suppress, bail, motion to dismiss, probation revocation, non-jury trial.

For child protective cases the categories could be: (a) likely to resolve without a TPR hearing; and (b) likely to require a TPR hearing.

Ideas for Discussion

September 23, 2022

To: Maine Commission on Indigent Legal Services
Fr: Donald Alexander

Re: Suggestions for promoting greater attorney participation in MCILS criminal and child protective cases.

MCILS has well documented the significant decline in the number of attorneys willing to do MCILS work in criminal and child protective cases, with now less than half of the attorneys available to take MCILS cases compared to pre-pandemic numbers of available attorneys. Attorney availability problems exist across the State, but they are particularly acute in the more rural areas: Oxford, Franklin, Somerset, Piscataquis, Aroostook, and Washington Counties, and the Millinocket and Lincoln District Court service areas in Northern Penobscot County.

Matters Outside of MCILS Control

The greatest influences driving the decline in attorneys (and other professionals) wanting to practice and live in more rural areas are issues that can be influenced by government policies, but outside of matters that could be influenced by MCILS policies or funding alone. These influences are:

1. The combination of slow or no economic growth and an ageing population which, for economic, social, and cultural reasons have made many rural communities less attractive for many persons trained in law, health care, education, and other professions or trades to consider beginning or relocating their profession or trade. This issue was a major concern in law, health care, and education in the decade before the pandemic. *See* Hannah Haksgaard, *Rural Practice as Public Interest Work*, 71 Me. L. Rev. 210 (2019); Christopher Chavis, *The Past Present and Future of Rural Northern New England: A Study of the Demographics Crisis and How it Affects the Rural Lawyer Shortage*, 71 Me. L. Rev. 274 (2019); Davies & Clark, *Gideon in the Desert: An Empirical Study of Providing Counsel to Criminal Defendants in Rural Places*, 71 Me. L. Rev. 246 (2019).

The challenges to providing professional services in rural areas were exacerbated by the pandemic which severely limited person-to-person contacts so essential to a functioning rural society, including law practice and the courts, and aggravated the preexisting shortages, particularly in healthcare and education services and personnel.

2. The tensions of the pandemic, differences over how the pandemic should be addressed, and declines in respectful treatment of others, made many jobs that necessitated live in-person contact with the public more stressful and less attractive. Whether the public contact jobs were retail sales, health care, education, first responders (police, fire, EMTs), corrections, elections, or law, many skilled and experienced workers, if they could afford to do so, retired or sought other, less stressful, work. Others tried to work in ways that reduced in-person contacts or conflicts, causing more delays in completing necessary tasks. Finding replacements to fill vacant public contact positions, even with increased pay, has proven difficult.

3. More closely related to MCILS, but outside of its control, the pandemic caused significant delays that have now resulted in large backlogs in court operations. As a result, the pending backlog of MCILS cases needing to be addressed is approximately double what it was before the pandemic. The courts and the bar adopted creative changes, such as remote video hearings and more promotion of early dispositions, in an attempt to move the cases. But close cases that involve fundamental rights, be they criminal or child protective cases, most often will require some live court appearance for a contested hearing, a trial, or an agreed final disposition where rights are explained in person before the case can be finally resolved. Scheduling such proceedings is difficult because of the backlog and availability of court personnel to run the hearings – with one of the biggest challenges getting the necessary court officers because of reductions in available court officers and some clerk staff incident to the issue discussed in #2 above.

The court backlog has been a particular problem for the many MCILS attorneys who, beyond MCILS work, have private, paying clients whose civil or criminal cases are also backlogged. Even in normal times, maintaining an active litigation practice with both civil and criminal cases on dockets in several courts has always proven a challenge. It has become much more of a challenge as courts try to address pending backlogs in ways that make it difficult to accommodate the schedules of attorneys with cases on several dockets. This

challenge has resulted in some attorneys withdrawing from MCILS work. These attorneys are competent, hard-working attorneys, dedicated to serving their clients and meeting their ethical obligations, but the competing demands on their limited time is proving too stressful for their practice and the family and personal lives they deserve to live outside the law.

Matters That MCILS May Influence or Control

There are also some matters within MCILS authority that have affected attorney participation in MCILS work. In considering such matters, one must recognize Maine is not alone. A recent survey of Massachusetts, plus some other states demographically similar to Maine, conducted by MCILS staff, has demonstrated that other states' indigent defense programs are facing similar and sometimes more severe problems in staffing cases than we are experiencing in Maine. In 2020, the Massachusetts Supreme Judicial Court opinion, *Carrasquillo v. Hampden County District Courts*, 484 Mass. 367, 142 N.E.3d 28 (2020) had indicated that, even before the pandemic, severe problems existed in staffing indigent cases in Massachusetts.

For the first decade of its existence, MCILS was correctly criticized for the lack of accountability and oversight of attorneys doing MCILS paid work. *See* Office of Program Evaluation & Government Accountability, *Maine Commission on Indigent Legal Services (MCILS) – An evaluation of MCILS's structure of oversight and the adequacy of its systems and procedures to administer payments and expenditures* (November 2020). That lack of accountability and oversight caused difficulty in meeting MCILS perceived needs for increased funding and program changes, because MCILS was unable to demonstrate to the Legislature and the Executive that its existing funding was being spent effectively.

Recently, with Legislative and Executive Support, MCILS has been reorganized with a changed Commission, an increased and energized staff, and new reporting, billing and oversight practices that have worked transformative change in accountability and oversight of the work of MCILS paid attorneys. Concurrent with these changes, and with some confidence that the changes would work to improve oversight and accountability, in 2021 the Legislature increased the hourly rate for MCILS work 33%, from \$60 an hour to \$80 an hour. Ironically, the rate of attrition of attorneys from MCILS rosters *increased* after the change in the hourly rate was approved.

The \$80 an hour rate placed Maine in the middle of hourly rates paid nationally for contract attorneys in 2021. However, in many states hourly rates for contract attorneys vary according to the severity of the case. The MCILS staff survey also identified one state where contract attorneys are paid a flat rate per case, with the rate based on the severity of the case, and another state that pays an annual flat rate for services by a contract attorney – similar to the program that formerly operated in Somerset County.

Matters within MCILS control that are causing attrition from MCILS rosters include:

1. The \$80 an hour compensation rate: This rate is perceived by many as insufficient to provide reasonable compensation for one's professional services plus cover other costs that attorneys must pay such as overhead (support staff and services, utilities, computers and electronic equipment, etc.), health and malpractice insurance, and, for some, education debt. It becomes more of a problem when attorneys are required to manage conflicting dockets and work demands from several courts, while representing both MCILS and private pay clients.
2. Improved, more rigorous billing and reporting practices: These changes, necessary to improve accountability and oversight, caused some attorneys who were more comfortable with the too casual billing and reporting practices that existed before 2021, to withdraw from MCILS rosters as these changes were being implemented.
3. Increased individual attorney workload: As a result of fewer attorneys being available to take the increased number of cases resulting from the backlog, some attorneys are temporarily or permanently withdrawing from taking MCILS cases, when they believe that they have the number of cases that they can responsibly and ethically handle.
4. Concerns about the complexity of rostering and anticipated MCILS supervision: MCILS presently has 16 different roster categories on which attorneys must qualify to take cases, and MCILS has become more rigorous in removing from cases attorneys who, though competent, were assigned to cases for which they were not rostered. Attorneys must regularly requalify for each separate roster. Some of the rostering requirements are unduly complex, for example, jury trial experience requirements that are not reasonably attainable

with today's dramatically reduced number of jury trials. Some attorneys are electing not to register with these complex and in some cases unrealistic rostering requirements.

Some attorneys are also concerned with a proposal, not yet implemented, for MCILS staff to view attorneys' in court actions and meet with attorneys up to four times a year to review their cases and case strategies. This is a particular concern to experienced attorneys, with some indicating they are withdrawing or may withdraw from MCILS work in anticipation of these changes.

Ideas to Consider for Improved Attorney Participation

Following are some ideas for changes that may encourage attorneys to remain on or return to rosters for taking MCILS cases or otherwise make themselves available for MCILS work.

These ideas are in addition to the highest priority proposals in the MCILS budget to (a) increase the hourly rate, and (b) create two regional offices of employee public defenders. These offices would serve the more underserved areas of the State where it appears unlikely that MCILS will be able to attract sufficient numbers of contract attorneys, and there is a need for attorneys to be reasonably physically available to meet with clients, witnesses, and opposing parties, and to attend settlement discussions and court sessions, sometimes on short notice. The offices might also be able to provide some logistical support for the representation by contract attorneys in the coverage area.

The following suggestions for improvement, beyond increasing the hourly rate and creating two regional offices of employed public defenders, are not necessarily in order of priority.

1. *A Higher Minimum Attorney-for-the-Day Fee*: The minimum attorney for the day fee should increase to 3 x the hourly rate for any morning or afternoon first appearance session at court. Incident to this arrangement, MCILS would work with the courts, prosecutors, and law enforcement to change not in custody first appearance scheduling practice so that defendants would be required to appear 30 minutes before the judge's anticipated entry into the courtroom. In this time (a) court staff would play the first appearance video, (b) the attorney for the day would then speak to (i) explain to all present the process about to occur, (ii) invite those who might qualify for court appointed counsel to fill out

Commented [AJ1]: 30 minutes is not enough time to discharge the LOD obligations. We will try to source data that shows LOD counts, and estimate the time necessary. The reality is likely that counsel would need access to lists and information at least one day prior to the LOD appearance for this to become meaningful.

the necessary forms, (iii) invite and respond to questions about the process from anyone in the room, and (iv) consult with anyone who (A) desired to talk about their case and (B) appeared likely to qualify for court appointed counsel.

The minimum fee for any attorney for the day at the jail, or any second (backup) attorney for the day in the courtroom, would increase to 2.5 x the hourly rate.

Commented [AJ2]: Why would this be less than for in person appearances?

For any time in excess of 3 hours for the primary attorney for the day, or 2.5 hours for the jail or backup attorney for the day, the attorney would be compensated at the regular hourly rate. For those defendants not likely to qualify for court appointed counsel, the attorney for the day, any backup attorney for the day, or any other qualified attorney could make private representation arrangements with the defendant.

Commented [AJ3]: I would want the process to be that the person item bills for time spent working, and only claimed the minimum in the amount necessary to bulk it up, because otherwise we lose granularity.

Commented [AJ4]: This presents the possibility of conflict. We would need to have written waiver requirements.

2. *A Variable Hourly Rate Schedule:* As in many indigent defense programs in other states, create a variable rate schedule depending on the severity of the pending charge or charges. This change might provide incentive for very skilled and experienced attorneys to remain available for assignment to the more difficult cases where they could receive a higher hourly rate.

3. *A Modified Contract with Counsel:* For counties or individual courts where there is difficulty getting local counsel to staff MCILS criminal or child protective cases, pay attorneys agreeing to provide regularly available MCILS representation an up front, annual fee of between \$20,000 (250 hours a year @ \$80 an hour) and \$50,000 (525 hours a year @ \$80 an hour). The fee would be negotiated and depend on the amount of service the attorney would be anticipated to provide, plus perhaps a review of the attorney's past performance in either MCILS work or other work measured by hours worked. Note: An attorney in full-time practice may anticipate availability to bill between 1500 and 2000 hours a year if mostly fully engaged with work 48 to 50 weeks a year.

Commented [AJ5]: This will likely require consent from the Controller's office. As it stands now, we cannot prepay for contract work, and we cannot contract at or over \$5,000 without RFP or single-source justification.

Commented [AJ6]: What are the proposed criteria for determining which counties or courts would qualify?

The up front fee payments would be recovered by a set off of one half of the hourly rate earned, until the up front fee was covered. Thus, an attorney with an annual up front fee arrangement, at the current \$80 an hour rate, would retain \$40 an hour for work on each case until the up front fee was covered, and \$80 an hour thereafter. This system avoids the concern expressed about the current contract counsel program that it incentivizes doing as little work as

Commented [AJ7]: MCILS will require a new electronic system to account for this.

possible on each case, because there is no compensation for putting in extra hours. Based on my experience with the contract counsel program, I do not share that concern, but this proposal provides more compensation for more work. If counsel did not do enough work in a year to set off the up front fee, the remaining fee might be paid back or carried over for the next year. But no new annual up front fee should be paid before any previously paid fees are covered by MCILS work performed.

Commented [AJ8]: This will require statutory changes, including, perhaps, tax offsets. Otherwise, we are dependent on the Office of the AAG for pursuing collections.

Attorneys contracting to receive the up front annual fees would be free to also accept paying clients in criminal cases and any type of civil case, as long as they met their commitment for MCILS cases. The up front fee could be particularly beneficial to attorneys seeking to maintain or establish practices in underserved areas, as attorneys could depend on a base amount of income to support overhead and staff which is a particular challenge in rural and underserved communities.

Health Insurance and Education Loan Forgiveness: An up front annual fee program, if applied to a significant number of attorneys, may also open opportunity to explore two other concerns of many attorneys serving MCILS programs. First, a grouping of a significant number of attorneys participating in the up front fee program may be a mechanism to support an affinity group health insurance program, with MCILS committing to pay all or part of the individual's health insurance costs if the individual committed to performing a certain number of MCILS hours work annually – for example 400 or 500 hours. The health insurance program might offer benefits similar to benefits offered by a small or medium sized law firm. The individual attorney could pay an additional fee to get family coverage.

Commented [AJ9]: I will research this issue. We will face the issue of prepayment of money to contractors. These payments will qualify as regular taxable income because these attorneys will not be employees.

Second, the up front fee program, once implemented, might be a basis to support change to public or university education loan forgiveness programs. Such programs presently provide significant educational loan forgiveness for professionals doing public service or doing work serving underserved communities or areas. Such programs for lawyers tend to be limited to attorneys employed full time for public defenders and other government or non-profit agencies or legal services organizations serving low income individuals. There is no such limitation on loan forgiveness programs for physicians or large animal veterinarians serving what are designated underserved areas or communities. These professionals can provide and be compensated for services to wealthy individuals, or their farm animals, as long

Commented [AJ10]: This will require legislative changes, likely to include changes to the CFR.

as the community where the professional service is provided is designated an underserved community. An attorney serving MCILS and private pay clients in a designated underserved area should be entitled to similar benefits, particularly if it could be demonstrated that a significant portion of the attorney's work was representing low income clients. A loan forgiveness program such as this may be under consideration by the U.S. Department of Education.

4. *Inviting Return of Experienced Defense Attorneys:* The current complex rostering requirements should be simplified to no more than 6 separate rosters: A. for child protective, B. for juvenile, C. for homicide, D. for violence and drug felonies, E. for property felonies and misdemeanor crimes of violence, and F. for "other" crimes (Title 17-A misdemeanors, all Title 12 and Title 29-A non-violent crimes, and other non-violent crimes in the statutes).

Commented [AJ11]: We will need formal rule making on this issue. I am open to your proposed rules.

Any attorney who maintains an active criminal practice representing retained cases and who, (1) in the past 22¹ years, has tried 7 jury trials as a criminal defense attorney, or 15 jury trials as either a prosecutor or a criminal defense attorney, and (2) can demonstrate having taken 12 hours of CLE related to criminal cases in the last 3 years, and (3) has represented criminal defendants in at least 25 separate cases in the last three or four years, should, upon application, automatically qualify to be placed on the rosters for the category (E) and (F) cases, and perhaps the category (D) cases, described above. The twelve hours of criminal CLE, if that has not been accomplished, could be replaced by taking a current MCILS, MACDL, MTLA, MSBA, or ACLUME CLE courses focusing on criminal law – perhaps with specified hours of CLE on specified subjects required.

Commented [AJ12]: These should be broadened to include NACLD, NAPDL, NAPD, e.g.

Once qualified for a roster, an attorney who continues to take MCILS cases and participates in required annual training programs should not have to reapply to remain on any roster.

Separately, any attorney who has brought or defended and briefed to the Law Court at least 5 child protective appeals in the last 10 years, or 5 criminal appeals in the last 10 years, should qualify, at least provisionally, for the appeal rosters for D, E & F criminal cases or child protective cases. Any former AAG for child protective cases or former prosecutor for criminal cases who has

¹ The 22-year lookback assumes that any significant jury trial experience would have been gained before the start of 2020.

defended 10 child protective or criminal appeals in the past 10 years should likewise qualify for the D, E & F criminal or child protective case appeal rosters. These standards are suggestions for discussion of criteria to get experienced attorneys to join MCILS rosters by reducing to complexity of the current rosters which deter experienced attorney participation in MCILS work.

5. *Realistic Roster Qualification and Attorney Supervision Requirements:* The MCILS roster qualification and attorney supervision requirements should recognize the realities of today's practice and that fact that over the years, many attorneys have represented clients in MCILS type cases very competently with not a great amount of prior in court experience. In fact, one way good attorneys have gained valuable experience in the past is by doing MCILS E & F type cases after they have had some training – which may have included law school clinical work. One cannot get that court experience, if, before you qualify, you must have already had that court experience. The complexity of rostering requirements should be reduced.

MCILS should eliminate the prior jury trial experience prerequisites, except for homicide. Except for homicides, less than ½ of 1 % of criminal cases go to a jury trial. If a jury trial is in prospect late in a proceeding, and an assigned attorney has little or no jury trial experience, have another attorney with jury trial experience join the representation as a mentor or co-counsel.

The 2020 MCILS proposed amendments to the rostering rules [not yet considered for adoption] provided one example of an unrealistic requirement. To qualify for the MCILS child protective case roster, it was proposed that the applicant be required to show proof of attendance and observation at 8 PC hearings, including one contested Termination of Parental Rights hearing - a substantial uncompensated time demand. Quite a challenge because all PC proceedings are confidential by law; casual observers are not permitted. 22 M.R.S. § 4007(1), "All child protection proceedings shall be conducted according to the rules of civil procedure and the rules of evidence, except as provided otherwise in this chapter. . . . *All proceedings and records shall be closed to the public, unless the court orders otherwise.*" (emphasis added). See also 22 M.R.S. §§ 4005-D(3) & (7), 4008(1). That the entity setting qualification standards for attorneys for protective custody proceedings was, in 2020, apparently unaware of the broad confidentiality requirement in the law is troubling.

Turning to supervision rules: Supervision by observing attorneys in court performance and by meeting with attorneys to discuss their cases and strategies should be limited to the first 2 or 3 years of court work by a contract attorney, except where MCILS receives a complaint or in some other way a cause for concern about an attorney's performance is brought to MCILS attention. Supervision standards for persons employed full-time by MCILS as public defenders would have to be different and are not addressed in this memo aimed at attracting more attorneys to do or return to doing MCILS roster work.

6. *An Annual Training Program:* During the week in the Fall when the courts take an administrative week to accommodate the annual prosecutors conference, MCILS, in cooperation with other bar organizations (and perhaps AG/DHHS for CP proceedings) should plan an annual training program that would include training sessions on:

For Criminal Cases: 1. Initial client contact and communication, explanation of rights, discussion of expectations, obtaining and review of discovery; 2. Consideration of early diversion programs; preparation for and participation in the Dispositional Conference; 3. Pretrial practice, suppression motions, limitation of issues; 4. Approaches to plea discussions (i) with the client; (ii) with the prosecutor; 5. Practice points for trials, jury or nonjury, etc.

For Child Protective Cases: 1. Initial client contact and communication, confidentiality of proceedings, explanation of rights, discussion of expectations, obtaining and review of discovery; 2. Difficulties in dealing with parent/client, lack of cooperation, reluctance to participate or openly communicate, evaluation of client's risk of exposure to criminal charges, relations with other parent and counsel, access to child; 3. Preliminary proceedings, jeopardy hearings, role of GALs, placement of child – relatives or foster parents, family reunification efforts; 4. Termination of parental rights proceedings, practice for such hearings.

Newly admitted attorneys – and any other qualified attorneys – should be allowed to qualify for E & F criminal cases or child protective cases if they (a) did litigation related clinical work or externships in law school or in subsequent employment, and (b) have completed the annual training for criminal or child protective work. The annual training program should be scheduled to be held after the summer bar exam results are announced.

7. A *Mentoring Program*: Attorneys with substantial criminal practice experience, including a specified number of jury trials, who MCILS recognizes to have substantial experience and a good reputation, should be invited to present at training programs and to mentor new MCILS attorneys for: (1) strategy and planning for pretrial practice, including consideration of motions to suppress, and/or (2) strategy, preparation for, and conduct of jury and nonjury trials. A very experienced attorney of good reputation could be a mentor even if not a rostered attorney.

Commented [AJ13]: This is narrower than our current mentorship practices.

Commented [AJ14]: How will this be defined?

Attorney Qualification:

1. Panels:

- a. Criminal:
 - i. Misdemeanor
 - ii. Felony
 - iii. Sex Offense
 - iv. Murder
 - v. Post-Conviction Review
 - vi. Appeals
 - vii. Juvenile
- b. Child Protective
- c. Probate:
 - i. Emancipation
 - ii. Guardianship
 - iii. Civil Commitment

2. Certification:

- a. In General:
 - i. All certification and recertification to be approved by MCILS staff.
 - ii. Applications are required for provisional and full certification in each panel.
 - iii. Applicant to submit a complete application package to MCILS. Incomplete applications will not be considered.
 - iv. Certification, recertification, and participation in any or all panels or individual cases is at the Executive Director's discretion.
 - v. During a period of provisional certification for any panel, the attorney must meet with their supervising attorney a minimum of one time weekly.
 - vi. Once an attorney is fully certified, they must meet with their supervising attorney a minimum of one time monthly.
- b. Waivers:
 - i. No waivers of any requirement will be permitted for new applicants.
 - ii. For existing rostered attorneys, a waiver of the provisional and/or full certification processes for any panel may be granted at the discretion of the Executive Director or their designee if:
 - 1. The attorney submits a written request using a designated waiver request form to MCILS@maine.gov on or before [deadline];
 - 2. The attorney has been a licensed Maine attorney for a minimum of 2 years;
 - 3. The attorney has conducted a minimum of 2 trials;

4. The Executive Director or their designee determines that the attorney has demonstrated sufficient competency to practice law in each panel for which a waiver is requested;
5. Is currently a rostered attorney in good standing with MCILS; and
6. Meets all additional panel-specific waiver criteria outlined herein:
 - a. Misdemeanor:
 - i. Is currently eligible for OUI and DV case assignments; and
 - ii. Has tried a minimum of 2 criminal cases in the past 5 years.
 - b. Felony:
 - i. Is currently eligible for serious violent felony (SVF) case assignments; and
 - ii. Has tried a minimum of 2 criminal cases in the past 5 years.
 - c. Sex Offense:
 - i. Is currently eligible to receive sex offense cases; and
 - ii. Has tried a minimum of 1 felony sex offense case in the past 5 years.
 - d. Murder:
 - i. Has tried a minimum of 1 murder case in the past 5 years.
 - e. Post-Conviction Review:
 - i. Is currently eligible to receive PCR case assignments; and
 - ii. Has represented clients in a minimum of 3 post-conviction review cases in the last 5 years.
 - f. Appeals:
 - i. Is currently eligible to receive appeals case assignments; and
 - ii. Has represented clients in a minimum of 3 appeals in the last 5 years.
 1. If applying for a waiver to handle PC and criminal appeals, applicant must have represented clients in a minimum of 3 appeals in the past 5 years for each case type.
 - g. Juvenile:
 - i. Is currently eligible to receive juvenile misdemeanor, felony, and sex offense case types; and

- ii. Has represented a minimum of 10 clients in juvenile proceedings from the beginning to the conclusion of the cases in the last 5 years.
 - h. Child Protective:
 - i. Is currently eligible to receive child protective case assignments;
 - ii. Has conducted a minimum of 3 contested jeopardy hearings in the last 5 years; and
 - iii. Has conducted a minimum of 3 contested termination of parental rights hearings in the last 5 years.
 - i. Probate:
 - i. Emancipation, guardianship, civil commitment experience requirements?
 - iii. Anyone granted a waiver of either or both the provisional and full certification processes will not be exempt from recertification processes.
 - iv. Anyone granted a waiver of the provisional and/or full certification processes must complete the relevant minimum standards training(s) no later than their first recertification deadline.
 - v. Waivers are not available to assistant public defenders.
- c. General Requirements:
 - i. In addition to all panel-specific certifications outlined in (d) below, all applicants must satisfy the following requirements to be eligible for provisional or full certification for any panel:
 - 1. Licensed to Practice
 - a. The attorney must be licensed to practice law in the State of Maine and be in good standing with the Maine Board of Overseers of the Bar.
 - b. The attorney must promptly inform the Commission, in writing, of any complaint against the attorney filed with the Maine Board of Overseers of the Bar, or with the entity responsible for governing attorney conduct in any other jurisdiction. Failure to comply with this requirement is grounds for revoking the attorney's MCILS certification.
 - c. The attorney must inform the Commission, in writing, within 5 calendar days of any criminal charge filed against the attorney in any jurisdiction and promptly inform the Commission of any disposition of such charge. Failure to comply with this requirement is grounds for revoking the attorney's MCILS certification.

2. Office, Telephone, and Electronic Mail

- a. The attorney must maintain an office or have the use of space that is reasonably accessible to clients and that permits the private discussion of confidential and other sensitive matters.
- b. The attorney must maintain a telephone number, which shall be staffed by personnel available for answering telephone calls or an answering service, an answering machine or voicemail capability that ensures client confidentiality.
- c. The attorney must maintain a confidential working e-mail account as a means of receiving information from and providing information to the Commission.
- d. The attorney must keep the Commission and the courts in which the attorney represents indigent clients apprised of the attorney's work telephone number and postal and electronic mail addresses. The attorney must ensure that the courts have the ability to contact the attorney by mail and by telephone.

3. Application

- a. The attorney must complete the application in its entirety.
- b. The attorney must swear to the accuracy of the application package.
- c. The attorney must certify that they have read, understood, and agree to be bound by the Commission Rules.
- d. The attorney must agree to fully cooperate with all Commission assessments, investigations, evaluations, audits, reviews, and requests for information.

d. Panel-Specific Certification Requirements:

i. Criminal:

1. Misdemeanors:

- a. Provisional Certification:
 - i. Complete criminal minimum standards training and meet all other current application requirements; and
 - ii. Must have fully certified co-counsel for all substantive motions and first 3 trials.
- b. Full Certification:
 - i. Minimum 12 months of practice under provisional certification;
 - ii. Completed minimum 3 misdemeanor trials under provisional certification;

- iii. Recommendation of direct supervisor, certified in writing; and
- iv. Completed trial bootcamp.

2. Felonies:

a. Provisional Certification:

- i. Complete criminal minimum standards training and meet all other current application requirements; and
- ii. During provisional certification period, must have fully certified co-counsel for all substantive motions and first 5 felony trials.

b. Full Certification:

- i. Must submit a writing sample from one of applicant's cases which demonstrates zealous, effective, high-quality representation;
- ii. Minimum 1 year of practice under felony provisional certification;
- iii. Must be fully certified for misdemeanors;
- iv. Completed minimum 5 felony trials under felony provisional certification;
- v. Written recommendation of direct supervisor; and
- vi. Completed trial bootcamp.

3. Sex Offenses:

a. Provisional Certification:

- i. Complete criminal law and sex offense minimum standards trainings;
- ii. Meet all current application requirements; and
- iii. Must have fully certified co-counsel for all substantive motions for sex offense cases and on first 3 sex offense trials.

b. Full Certification:

- i. Must submit a writing sample from one of applicant's cases which demonstrates zealous, effective, high-quality representation;
- ii. Minimum 18 months of practice under sex offense provisional certification;
- iii. Completed minimum 3 sex offense trials under sex offense provisional certification;
- iv. Must be fully certified in felony panel;
- v. Letters of support from 3 Maine licensed attorneys;
- vi. Written recommendation of direct supervisor; and
- vii. Completed trial bootcamp.

4. Murder:

a. Provisional Certification:

- i. Complete murder minimum standards training;
- ii. Meet all current application requirements;
- iii. Must be fully certified in felony panel; and
- iv. Must have fully certified co-counsel for all substantive motions on murder cases and first 3 murder trials.

b. Full Certification:

- i. Must submit a writing sample from one of applicant's cases which demonstrates zealous, effective, high-quality representation;
- ii. Minimum 2 years of practice under provisional certification;
- iii. Completed minimum of 3 murder trials under murder provisional certification;
- iv. Letters of support from 3 Maine licensed attorneys;
- v. Written recommendation of direct supervisor; and
- vi. Completed trial bootcamp.

5. Post-Conviction Review:

a. Provisional Certification:

- i. Complete PCR minimum standards training;
- ii. Meet all current application requirements;
- iii. Must be fully certified in misdemeanors and felonies; and
- iv. Must have fully certified co-counsel for the first 3 PCR cases.

b. Full Certification:

- i. Requires application;
- ii. Must submit a writing sample from one of applicant's PCR cases which demonstrates zealous, effective, high-quality representation;
- iii. Minimum 2 years of practice under provisional certification;
- iv. Completed minimum 3 PCR cases under provisional certification;
- v. Letters of support from 3 Maine licensed attorneys; and
- vi. Written recommendation of direct supervisor.

6. Appeals:

a. Provisional Certification:

- i. Complete appeals minimum standards training;
- ii. For PC appeals, must be fully certified for the PC panel;
- iii. For criminal appeals, must be fully certified in misdemeanor, felony, and sex offense panels; and
- iv. Must have fully certified co-counsel for first 3 appeals.

b. Full Certification:

- i. Completed a minimum of 3 appeals from initiation of the appeal through conclusion;
 - 1. If seeking certification for both PC and criminal appeals, applicant must have completed a minimum of 3 appeals from each case type;
- ii. Must submit a brief from one of applicant's appellate cases which demonstrates zealous, effective, high-quality representation;
- iii. Minimum 2 years of practice under appeals provisional certification;
- iv. Letters of support from 3 Maine licensed attorneys; and
- v. Written recommendation of direct supervisor.

7. Juvenile:

a. Provisional Certification:

- i. Completed criminal and juvenile law minimum standards trainings;
- ii. Must meet all other current application requirements;
- iii. Must have fully certified co-counsel at all court appearances and client meetings until the attorney has represented at least 5 juvenile clients in cases from the beginning through the conclusion of those cases.

b. Full Certification:

- i. Must have been provisionally certified for juvenile offenses for a minimum of 1 year;
- ii. Must have represented at least 10 juvenile defendants from the beginning through the conclusion of their cases;

1. This must include at least 2 felony and 2 sex offense cases;
 - iii. Written recommendation of direct supervisor; and
 - iv. Completed trial bootcamp.
 - ii. Child Protective:
 1. Provisional Certification:
 - a. Complete PC minimum standards training and meet all other current application requirements to become provisionally certified;
 - b. Must have fully certified co-counsel for the first 10 contested hearings; and
 - c. Must have fully certified co-counsel for the first 3 TPR hearings.
 2. Full Certification:
 - a. Minimum 12 months of practice under provisional certification;
 - b. Completed minimum of 10 contested hearings and 3 contested TPR hearings under provisional certification;
 - c. Written recommendation of direct supervisor; and
 - d. Completed trial bootcamp.
 - iii. Probate:
 1. Provisional Certification:
 - a. Must complete the probate minimum standards training;
 - b. Must meet all other current application requirements; and
 - c. Must have fully certified co-counsel for all court appearances for the first 2 cases of each case type (emancipation, guardianship, civil commitment, and NCR).
 2. Full Certification:
 - a. Minimum 1 year of practice under provisional probate certification;
 - b. Completed a minimum of 2 cases of each case type for which the applicant is seeking case assignments;
 - c. Written recommendation of direct supervisor; and
 - d. Completed trial bootcamp.

3. Recertification:

- a. Attorneys must recertify for each panel for which they have previously certified every 3 years.
- b. Will review prior 3 years' evaluations.
- c. Must be recommended by direct supervisor to recertify.
- d. Must demonstrate competency, zealous advocacy.
- e. Provide a writing sample from a case the attorney handled within the past 3 years.
- f. Provide brief synopsis of all cases the attorney tried in the past 3 years.
- g. Must provide proof of completion of all required CLEs for each panel.

4. Annual Renewal:

- a. Attorneys must continue to renew annually.
- b. Certification that they have completed all required CLEs, with proof (Board of Overseers printout, or other verification).
- c. Annual renewals will be due at the same time as annual evaluations.