

**MCILS**

**July 7, 2020**

**Commissioner's Meeting  
Packet**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**JULY 7, 2020**  
**TELEPHONIC COMMISSION MEETING**  
**AGENDA**

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- 1) Approval of June 3, 2020, Commission Meeting Minutes
- 2) Operations Reports
- 3) Jail Recordings of Attorney/Client Calls
- 4) Budget Update
- 5) Proposed Legislation on MCILS Rulemaking
- 6) Prosecutor Interactions with Pro Se Defendants
- 7) Summary of Complaints about Attorneys
- 8) Training RFP Update
- 9) Public Comment
- 10) Set Date, Time and Location of Next Regular Meeting of the Commission
- 11) Executive Session, if needed (Closed to Public)

**(1.)**

**June 3, 2020  
Commission Meeting  
Minutes**

**Maine Commission on Indigent Legal Services – Commissioners Meeting  
June 3, 2020**

**Minutes**

**Commissioners Present by Telephone:** Michael Carey, Sarah Churchill, Robert Cummins, Roger Katz, Robert LeBrasseur, Ronald Schneider, Joshua Tardy, Mary Zmigrodski

**MCILS Staff Present:** Ellie Maciag, John Pelletier

<b>Agenda Item</b>	<b>Discussion</b>	<b>Outcome/Action Item/Responsible Party</b>
Approval of the May 5, 2020 Commission Meeting Minutes	Commissioner Cummins moved to amend the minutes to move the attorney-client jail recording discussion to a separate agenda item. Commissioner Carey seconded. All voted in favor, with Commissioner Schneider absent. Approved as amended.	
Operations Reports	<p><u>May 2020 Operations Report:</u> 1,439 new cases were opened in the DefenderData system in May. This was a 22 case increase over April. The number of submitted vouchers in May was 1,815, a decrease of 146 vouchers from April, totaling \$838,093, a decrease of \$270,000 from April. The average price per voucher was \$474.49, down \$79.43 per voucher from April. NCR Release and Post-Conviction Review cases had the highest average vouchers. There were 5 vouchers exceeding \$5,000 paid in May. 57 authorizations to expend funds were issued in May, and we paid \$34,787 for experts and investigators, etc. The monthly transfer from the Judicial Branch for counsel fees for May, which reflects April’s collections, totaled \$96,231, down approximately \$31,500 from April. One attorney complaint was received in May. Commissioner Cummins relayed that he received two complaints from incarcerated individuals and will forward to staff after he acknowledges receipt. A brief discussion ensued about how staff processes complaints. Commissioner Cummins wants the practice to change so that staff reaches out to each individual submitting a complaint. Chair Tardy requested staff provide a summary for the next meeting of how complaints have been processed for the past several years.</p>	

<b>Agenda Item</b>	<b>Discussion</b>	<b>Outcome/Action Item/Responsible Party</b>
<p>Jail Recordings of Attorney/Client Calls</p>	<p>Director Pelletier explained the jail call recording process in Maine and provided an update on the progress staff has made in determining the scope of the problem. He explained that two third-party vendors provide inmate calling services in every jail in Maine. The default is that a call is recorded, and a warning is given to both parties on the call that the call is being recorded. In both recent instances of the recording of an attorney-client call being provided to the DA’s office, the district attorney alerted both the court and defense counsel about the intercepted attorney call. Director Pelletier outlined the steps taken by staff to address the issue in the short-term. Staff collated attorney phone numbers and provided them to the phone vendor Securus and jail personnel at Two Bridges and Somerset County jails so the phone numbers could be added to the no-record list. Director Pelletier requested every jail examine the backlog of recorded calls against the comprehensive list of attorney phone numbers. Director Pelletier relayed that the jail response to this request has been underwhelming. Director Pelletier suggested the Commissioners begin a discussion on developing a new, comprehensive way to ensure that attorney-client phone calls are not recorded. This would include working with district attorney offices and law enforcement about the process for obtaining those recordings so that any attorney-client call that does get recorded is screened and not provided to law enforcement or the district attorney’s office. Director Pelletier has emailed all jail administrators to provide confirmation whether the telephones in the non-contact areas are being recorded. Director Pelletier noted that the Kennebec County Jail turned off the recording feature in the non-contact visit area and has erased all recordings. Director Pelletier cautioned that a long-term solution needs to be found and will likely require input from the Legislature. Commissioner Cummins stated that this problem goes beyond the purview of the Commission since it affects non-Commission lawyers all over the state. Commissioner Cummins noted that this issue needs a comprehensive look and attention in the courts. Representative Evangelos was on the call and added that the Commission could collaborate with the Judiciary Committee on legislation to address this issue. Commissioner Churchill cautioned that recording calls is just one piece of the problem since inmate phones are typically not in a confidential space. She noted that to solve that problem, each correctional facility must provide</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>space for an inmate to call their attorney where others cannot overhear the conversation. Commissioner Katz suggested a legislative fix that would require attorney calls not be recorded, allow for confidential space for an inmate to have attorney calls, and for attorney calls to be free of charge. Chair Tardy requested staff provide an update on June 12<sup>th</sup> to provide feedback about progress made and determine whether an additional June meeting would be necessary.</p>	
<p>Response to COVID-19 Outbreak</p>	<p>Director Pelletier updated the Commissioners on the pilot program for provisional appointments for summons cases in Region 3 – Androscoggin, Franklin, and Oxford counties. For the risk of jail cases, attorneys will receive regular appointments. For non-risk of jail cases, attorneys will receive limited appointments that will last through the initial arraignment. Director Pelletier explained that the courts want to see if it’s a worthwhile program in a small group of courts before expanding. Director Pelletier also gave an update on other staff efforts, including involvement with addressing parent/child visitation issues with DHHS and attorney training with juvenile attorneys for committed youth at Long Creek. Discussion ensued about deferring the CLE requirement for the upcoming annual renewal attorney registration, with the Commissioners deciding to extend the CLE deadline to the end of the year.</p>	
<p>Budget Update</p>	<p>Director Pelletier gave a brief update on the status of the budget. He noted that costs are down due to court closures and that the Commission is on track to end the year with a \$2.5 million surplus. Due to the Commission’s funding being in an Other Special Revenue Account, the funds will not lapse at the end of the year. The funding for FY’21 is projected to be short by approximately \$2.5 million.</p>	
<p>OPEGA Update</p>	<p>Director Pelletier relayed that the OPEGA staff is beginning to work on the other three topics and have started asking staff for information. The Director of OPEGA informed staff that OPEGA’s findings could not be shared early and that the Commission would have to wait until OPEGA reports back to the legislature. Assistant Attorney General Hudson stated that she will contact the AAG for OPEGA</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	to discuss this further.	
Attorney Compensation for CLE Attendance	<p>The Maine Association of Criminal Defense Lawyers requested the Commission consider compensating rostered attorneys for their time attending three ethics CLE webinars it is sponsoring as well as consider covering the cost of attendance. Chair Tardy explained he was not in favor considering the Budget Office’s guidance about not undertaking new initiatives. Commissioner LeBrasseur explained that solo attorneys lose money when they attend CLEs, while district attorneys get paid for attending trainings and that the Commission should work to equal the playing field and pay for this training. Commissioner Zmigrodski cautioned that this could open the door to PC attorneys making a similar request and lead to substantial costs. Commissioner Churchill suggested looking at raising the hourly rate to make it affordable for attorneys to attend trainings as opposed to compensate them for attending the trainings. Commissioner LeBrasseur moved for the Commission to pay attorneys at the hourly rate to attend Commission-approved CLEs. Commissioner Cummins seconded. Commissioners Churchill, Carey, Katz, Tardy, and Zmigrodski all voted no. Commissioners Cummins and Schneider voted yes.</p>	
Public Comment	<p><u>Representative Jeffrey Evangelos</u>: Rep. Evangelos stated that tablets have been distributed to about 70% of the prison population and all its contents are recorded, raising the potential of attorney-client communications being monitored in this format as well. Rep. Evangelos explained he was the source of one complaint received by staff concerning a rostered attorney. Rep. Evangelos will forward additional documents to staff concerning this complaint.</p> <p><u>Attorney Robert Ruffner, Esq.</u>: Attorney Ruffner is unaware if his efforts to avoid recording his client calls are working since he still hears the warning at the beginning of the call. Attorney Ruffner disclosed a new incident with his client call being recorded in Cumberland County. Attorney Ruffner relayed that non-collect call line is possible with Securus. Attorney Ruffner called for legislative change to fix the issue and faulted staff for not doing a better job informing the attorneys of</p>	

<b>Agenda Item</b>	<b>Discussion</b>	<b>Outcome/Action Item/Responsible Party</b>
	<p>steps they needed to take to avoid having their calls recorded. Attorney Ruffner suggested staff make training videos available online instead of extending the CLE deadline. Attorney Ruffner also suggested spending unused funds on training and expressed disappointment in the Commissioners' vote, especially in light of the surplus.</p>	
Executive Session	None	
Adjournment of meeting	The next meeting will be held telephonically on July 7, 2020 at 8 am.	



**(2.)**

# **Operations Reports**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**TO:** MCILS COMMISSIONERS  
**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR  
**SUBJECT:** JUNE 2020 OPERATIONS REPORTS  
**DATE:** JULY 1, 2020

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Attached you will find the June, 2020, Operations Reports for your review and our discussion at the Commission meeting on July 7, 2020. A summary of the operations reports follows:

- 1,976 new cases were opened in the DefenderData system in June. This was a 537 case increase over May. Year to date, new cases down less than 1%, from 27,437 at this time last year to 27,229 this year. New cases had been running about 10% higher than last year, but the number of new cases has declined significantly during the pandemic.
- The number of vouchers submitted electronically in June was 2,126, an increase of 311 vouchers over May, totaling \$911,069.99, an increase of \$73,000 over May. Year to date, the number of submitted vouchers is down by approximately 1%, from 32,803 at this time last year to 32,378 this year, with the total amount for submitted vouchers is down 9.5%, from \$17,415,000 at this time last year to \$15,774,000 this year.
- In June, we paid 2,600 electronic vouchers totaling \$1,114,440.72, representing an increase of 650 vouchers and \$189,000 compared to May. Year to date, the number of paid vouchers is down less than 1%, from 32,573 at this time last year to 32,343 this year, and the total amount paid is down 9%, from \$17,275,000 at this time last year to \$15,718 this year.
- We paid no paper vouchers in June.
- The average price per voucher in June was \$428.63, down \$45.86 per voucher from May. Year to date, the average price per voucher is down approximately 8%, from \$530.33 at this time last year to \$485.99 this year.
- Appeal and Post-Conviction Review cases had the highest average voucher in June. There were 2 vouchers exceeding \$5,000 paid in June. See attached addendum for details.
- In June, we issued 104 authorizations to expend funds: 53 for private investigators, 36 for experts, and 15 for miscellaneous services such as interpreters and transcriptionists. In June, we paid \$62,978.97 for experts and investigators, etc. One request for funds was modified to authorize a reduced amount based on a reduction in the provider's hourly rate.

- In June, we received two complaints about attorneys in the form of letters to the court seeking new counsel. The complaint letters have been sent to the attorneys, and staff is awaiting responses. Staff will follow up.
- In June, we approved four requests for co-counsel, Three involved serious charges of Murder, Gross Sexual Assault, and Robbery, respectively. On the fourth case, a person represented by relatively new attorney was charged with an OUI in another county. An attorney on the OUI roster was assigned to the new case, but, based on the client's request and in the interest of providing experience to a new attorney, the original attorney was assigned as co-counsel on the OUI as well.

In our All Other Account, the total expenses for the month of June were \$1,313,887.13. Of that amount, just under \$11,500 was devoted to the Commission's operating expenses.

In the Personal Services Account, we had \$73,019.52 in expenses for the month of June.

In the Revenue Account, the transfer for June, reflecting May's collections, totaled \$80,889.88, a decrease of approximately \$16,000 from the previous month.

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

VOUCHERS EXCEEDING \$5,000 PAID JUNE 2020

	Voucher Total	Case Total
Interim voucher in a Post-Conviction Review case arising from a cold-case Murder conviction after trial. Voucher submitted after two-day evidentiary hearing. The case has been complicated by extensive litigation over discovery prior to the hearing. On the eve of the evidential hearing, the State disclosed a cache of newly discovered photographs that were not provided to trial counsel and will draw out the matter further.	\$25,265	\$33,440 (\$8,175 paid to previous PCR counsel who withdrew at the client's request)
Voucher in a Child Protection case after a four-day judicial review hearing that took place over the course of three months. Counsel also submitted written closing arguments and proposed findings. Decision pending.	\$5,115	\$5,115

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Case Type

6/30/2020

DefenderData Case Type	Jun-20						Fiscal Year 2020			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
Appeal	10	20	\$ 23,575.68	22	\$ 23,386.75	\$ 1,063.03	173	252	\$ 378,362.31	\$ 1,501.44
Child Protection Petition	210	455	\$ 242,063.61	560	\$ 294,696.92	\$ 526.24	2,557	5,177	\$ 2,809,655.00	\$ 542.72
Drug Court	1	10	\$ 6,966.00	12	\$ 9,906.00	\$ 825.50	6	92	\$ 95,015.83	\$ 1,032.78
Emancipation	7	3	\$ 504.00	3	\$ 504.00	\$ 168.00	67	61	\$ 16,679.82	\$ 273.44
Felony	437	370	\$ 214,330.97	440	\$ 264,562.71	\$ 601.28	6,305	6,407	\$ 4,914,470.54	\$ 767.05
Involuntary Civil Commitment	89	77	\$ 16,043.20	107	\$ 20,140.66	\$ 188.23	1,025	971	\$ 202,456.87	\$ 208.50
Juvenile	22	39	\$ 22,238.52	56	\$ 39,842.16	\$ 711.47	711	852	\$ 437,985.22	\$ 514.07
Lawyer of the Day - Custody	272	265	\$ 56,662.05	354	\$ 74,012.33	\$ 209.07	3,070	2,925	\$ 675,854.43	\$ 231.06
Lawyer of the Day - Juvenile	6	10	\$ 2,591.88	10	\$ 2,597.88	\$ 259.79	343	339	\$ 66,577.83	\$ 196.39
Lawyer of the Day - Walk-in	116	49	\$ 10,320.80	52	\$ 10,677.80	\$ 205.34	1,226	1,141	\$ 279,442.91	\$ 244.91
Misdemeanor	678	442	\$ 118,233.20	517	\$ 143,041.82	\$ 276.68	8,710	8,349	\$ 3,019,308.60	\$ 361.64
Petition, Modified Release Treatment	1	5	\$ 2,755.77	9	\$ 3,696.53	\$ 410.73	7	57	\$ 25,525.41	\$ 447.81
Petition, Release or Discharge	0	0		0			0	6	\$ 2,928.40	\$ 488.07
Petition, Termination of Parental Rights	9	38	\$ 24,346.76	51	\$ 30,891.76	\$ 605.72	272	720	\$ 497,243.05	\$ 690.62
Post Conviction Review	5	12	\$ 35,602.04	12	\$ 35,602.04	\$ 2,966.84	120	110	\$ 190,016.26	\$ 1,727.42
Probate	5	0		2	\$ 820.00	\$ 410.00	31	26	\$ 27,240.04	\$ 1,047.69
Probation Violation	84	110	\$ 36,374.07	132	\$ 46,146.75	\$ 349.60	1,717	1,794	\$ 696,776.70	\$ 388.39
Represent Witness on 5th Amendment	0	0		0			9	12	\$ 5,601.00	\$ 466.75
Resource Counsel Criminal	0	2	\$ 252.00	4	\$ 594.00	\$ 148.50	2	35	\$ 5,676.00	\$ 162.17
Resource Counsel Juvenile	0	0		1	\$ 18.00	\$ 18.00	1	12	\$ 1,029.00	\$ 85.75
Resource Counsel Protective Custody	0	1	\$ 312.00	1	\$ 312.00	\$ 312.00	3	9	\$ 1,908.00	\$ 212.00
Review of Child Protection Order	24	213	\$ 97,315.44	249	\$ 111,886.61	\$ 449.34	849	2,974	\$ 1,362,636.74	\$ 458.18
Revocation of Administrative Release	0	5	\$ 582.00	6	\$ 1,104.00	\$ 184.00	25	22	\$ 6,078.28	\$ 276.29
<b>DefenderData Sub-Total</b>	<b>1,976</b>	<b>2,126</b>	<b>\$ 911,069.99</b>	<b>2,600</b>	<b>\$ 1,114,440.72</b>	<b>\$ 428.63</b>	<b>27,229</b>	<b>32,343</b>	<b>\$ 15,718,468.24</b>	<b>\$ 485.99</b>
<b>Paper Voucher Sub-Total</b>	<b>0</b>	<b>0</b>	<b>\$ -</b>	<b>0</b>	<b>\$ -</b>	<b>#DIV/0!</b>	<b>1</b>	<b>1</b>	<b>\$ 240.00</b>	<b>\$ 240.00</b>
<b>TOTAL</b>	<b>1,976</b>	<b>2,126</b>	<b>\$911,069.99</b>	<b>2,600</b>	<b>\$1,114,440.72</b>	<b>\$ 428.63</b>	<b>27,230</b>	<b>32,344</b>	<b>\$ 15,718,708.24</b>	<b>\$ 485.99</b>

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**  
**FY20 FUND ACCOUNTING**  
AS OF 06/30/2020

Account 014 95F Z258 01 (All Other)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY20 Total
FY20 Professional Services Allotment		\$ 4,727,001.00		\$ 4,597,001.00		\$ 4,737,477.00		\$ 2,413,246.00	
FY20 General Operations Allotment		\$ 48,000.00		\$ 48,000.00		\$ 48,000.00		\$ 48,000.00	
FY19 Encumbered Balance Forward		\$ 32,712.53		\$ -		\$ -		\$ -	
Budget Order Adjustment		\$ (224,979.00)		\$ 224,979.00		\$ -		\$ -	
Supplemental Budget Allotment		\$ -		\$ -		\$ -		\$ 2,036,206.00	
Reduction due to encumbrance closure		\$ -		\$ -		\$ (0.04)		\$ -	
Financial Order Unencumbered Balance Fwd		\$ -		\$ -		\$ -		\$ 768,774.00	
<b>Total Budget Allotments</b>		<b>\$ 4,582,734.53</b>		<b>\$ 4,869,980.00</b>		<b>\$ 4,785,476.96</b>		<b>\$ 5,266,226.00</b>	<b>\$ 19,504,417.49</b>
Total Expenses	1	\$ (947,049.13)	4	\$ (1,377,980.25)	7	\$ (1,080,553.54)	10	\$ (1,806,520.06)	
	2	\$ (1,849,796.47)	5	\$ (1,100,530.17)	8	\$ (1,269,483.45)	11	\$ (973,235.76)	
	3	\$ (1,715,368.33)	6	\$ (2,053,491.02)	9	\$ (1,531,335.50)	12	\$ (1,188,890.55)	
Encumbrances (Justice Works)		\$ (52,720.00)		\$ 18,135.00		\$ 18,820.00		\$ 3,047.50	\$ (12,717.50)
Encumbrances (B Taylor)		\$ (13,000.04)		\$ (17,853.34)		\$ 17,593.37		\$ 13,260.00	\$ (0.01)
Encumbrances (Videographer & business cards)		\$ (4,800.00)		\$ -		\$ (900.00)		\$ -	\$ (5,700.00)
<b>TOTAL REMAINING</b>		<b>\$ 0.56</b>		<b>\$ 338,260.22</b>		<b>\$ 939,617.84</b>		<b>\$ 1,313,887.13</b>	<b>\$ 2,591,765.75</b>

Q4 Month 12	
<b>INDIGENT LEGAL SERVICES</b>	
Counsel Payments	\$ (1,114,440.72)
Interpreters	\$ (975.75)
Private Investigators	\$ (10,227.04)
Mental Health Expert	\$ (18,327.50)
Misc Prof Fees & Serv	\$ -
Transcripts	\$ (8,414.57)
Other Expert	\$ (24,875.43)
Process Servers	\$ (158.68)
Subpoena Witness Fees	\$ -
Out of State Witness Travel	\$ -
<b>SUB-TOTAL ILS</b>	<b>\$ (1,177,419.69)</b>
<b>OPERATING EXPENSES</b>	
Service Center	\$ -
DefenderData	\$ (3,590.00)
Language Line	\$ -
Mileage/Tolls/Parking	\$ (433.55)
Mailing/Postage/Freight	\$ (57.65)
West Publishing Corp	\$ (198.09)
Shredding on Site	\$ (0.50)
Office Supplies/Equip.	\$ (25.02)
Cellular Phones	\$ (248.15)
OIT/TELCO	\$ (2,269.59)
Office Equipment Rental	\$ (96.31)
Training Videographer	\$ -
Barbara Taylor monthly fees	\$ (4,420.00)
Periodicals	\$ (132.00)
Training Printing Fees	\$ -
<b>SUB-TOTAL OE</b>	<b>\$ (11,470.86)</b>
<b>TOTAL</b>	<b>\$ (1,188,890.55)</b>

INDIGENT LEGAL SERVICES	
Q4 Allotment	\$ 5,266,226.00
Q4 Encumbrances for Justice Works contract	\$ 3,047.50
Barbara Taylor Contract	\$ 13,260.00
Videographer	\$ -
Q4 Expenses to date	\$ (3,968,646.37)
<b>Remaining Q4 Allotment</b>	<b>\$ 1,313,887.13</b>

Non-Counsel Indigent Legal Services	
Monthly Total	\$ (62,978.97)
Total Q1	\$ 276,360.62
Total Q2	\$ 230,435.64
Total Q3	\$ 291,610.68
Total Q4	\$ 178,943.72
<b>Fiscal Year Total</b>	<b>\$ 977,350.66</b>

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

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**  
**FY20 FUND ACCOUNTING**  
As of 06/30/20

Account 014 95F Z258 01 (Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY20 Total
<b>Total Budget Allotments</b>		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00	\$ 1,100,000.00
Financial Order Adjustment	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Financial Order Adjustment	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Budget Order Adjustment	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
Budget Order Adjustment		\$ -		\$ -		\$ -	12	\$ -	\$ -
<b>Total Budget Allotments</b>		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00	\$ 1,100,000.00
Cash Carryover from Prior Quarter		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB	1	\$ 78,559.60	4	\$ 86,636.49	7	\$ 61,320.62	10	\$ 127,868.58	
Promissory Note Payments		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB	2	\$ 79,457.90	5	\$ 93,840.18	8	\$ 73,756.21	11	\$ 96,231.87	
Court Ordered Counsel Fee		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB (late transfer)		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB	3	\$ 114,887.22	6	\$ 103,917.30	9	\$ 160,542.79	12	\$ 80,889.88	
Returned Checks-stopped payments		\$ -		\$ -		\$ -		\$ -	
<b>TOTAL CASH PLUS REVENUE COLLECTED</b>		\$ 272,904.72		\$ 284,393.97		\$ 295,619.62		\$ 304,990.33	\$ 1,157,908.64
Counsel Payments	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Other Expenses		\$ -		\$ -		\$ -	***	\$ -	
Counsel Payments	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Other Expenses		\$ -		\$ -		\$ -		\$ -	
Counsel Payments	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
Other Expenses	*	\$ -	**	\$ -	***	\$ -		\$ -	
<b>REMAINING ALLOTMENT</b>		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00	\$ 1,100,000.00
Overpayment Reimbursements	1	\$ (168.00)	4	\$ (434.53)	7	\$ 138.00	10	\$ -	
	2	\$ (904.00)	5	\$ (200.00)	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ (884.00)	12	\$ (746.66)	
<b>REMAINING CASH Year to Date</b>		\$ 271,832.72		\$ 283,759.44		\$ 294,873.62		\$ 304,243.67	\$ 1,154,709.45

<b>Collections versus Allotment</b>	
Monthly Total	\$ 80,889.88
Total Q1	\$ 274,669.72
Total Q2	\$ 284,393.97
Total Q3	\$ 295,757.62
Total Q4	\$ 304,990.33
Allotment Expended to Date	\$ -
Fiscal Year Total	\$ 1,159,811.64

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**  
**FY20 FUND ACCOUNTING**  
AS OF 06/30/2020

<b>Account 014 95F Z258 01 (Personal Services)</b>	<b>Mo.</b>	<b>Q1</b>	<b>Mo.</b>	<b>Q2</b>	<b>Mo.</b>	<b>Q3</b>	<b>Mo.</b>	<b>Q4</b>	<b>FY20 Total</b>
FY20 Allotment		\$ 326,128.00		\$ 242,565.00		\$ 214,283.00		\$ 233,702.00	\$ -
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustments		\$ (20,744.00)		\$ (1,709.00)		\$ (17,942.00)		\$ 40,395.00	
<b>Total Budget Allotments</b>		<b>\$ 305,384.00</b>		<b>\$ 240,856.00</b>		<b>\$ 196,341.00</b>		<b>\$ 274,097.00</b>	<b>\$ 1,016,678.00</b>
Total Expenses	1	\$ (62,240.56)	4	\$ (99,140.23)	7	\$ (70,131.98)	10	\$ (105,662.20)	
	2	\$ (174,797.03)	5	\$ (71,894.07)	8	\$ (59,062.25)	11	\$ (72,755.94)	
	3	\$ (68,346.25)	6	\$ (69,821.39)	9	\$ (67,146.73)	12	\$ (73,019.52)	
<b>TOTAL REMAINING</b>		<b>\$ 0.16</b>		<b>\$ 0.31</b>		<b>\$ 0.04</b>		<b>\$ 22,659.34</b>	<b>\$ 22,659.85</b>

<b>Q4 Month 12</b>	
Per Diem	\$ (330.00)
Salary	\$ (36,217.25)
Vacation Pay	\$ (1,174.02)
Holiday Pay	\$ (2,221.04)
Sick Pay	\$ (1,433.45)
Empl Hlth SVS/Worker Comp	\$ (166.00)
Health Insurance	\$ (11,608.24)
Dental Insurance	\$ (387.52)
Employer Retiree Health	\$ (4,466.64)
Employer Retirement	\$ (2,672.86)
Employer Group Life	\$ (446.88)
Employer Medicare	\$ (597.54)
Retiree Unfunded Liability	\$ (7,811.04)
Longevity Pay	\$ (112.00)
Perm Part Time Full Ben	\$ (3,375.04)
Premium & Standard OT	\$ -
Retro Lump Sum Pymt	\$ -
<b>TOTAL</b>	<b>\$ (73,019.52)</b>



MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Court

6/30/2020

Court	Jun-20						Fiscal Year 2020			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
ALFSC	4	3	\$ 4,952.00	3	\$ 4,952.00	\$ 1,650.67	33	50	\$ 33,739.10	\$ 674.78
AUBSC	0	1	\$ 240.00	1	\$ 240.00	\$ 240.00	15	19	\$ 12,907.20	\$ 679.33
AUGDC	35	66	\$ 23,903.78	71	\$ 26,528.84	\$ 373.65	582	796	\$ 383,710.97	\$ 482.05
AUGSC	2	12	\$ 5,044.77	16	\$ 5,985.53	\$ 374.10	46	132	\$ 71,934.42	\$ 544.96
BANDC	43	104	\$ 27,851.60	116	\$ 32,597.60	\$ 281.01	673	1,283	\$ 396,046.72	\$ 308.69
BANSC	1	0		0			6	5	\$ 816.00	\$ 163.20
BATSC	0	0		0			2	1	\$ 132.00	\$ 132.00
BELDC	25	25	\$ 14,663.24	28	\$ 15,342.25	\$ 547.94	165	313	\$ 157,145.51	\$ 502.06
BELSC	0	0		0			0	1	\$ 1,530.64	\$ 1,530.64
BIDDC	31	56	\$ 35,039.44	69	\$ 43,451.74	\$ 629.74	675	982	\$ 554,325.84	\$ 564.49
BRIDC	3	6	\$ 2,709.44	12	\$ 7,384.12	\$ 615.34	109	216	\$ 110,615.08	\$ 512.11
CALDC	1	2	\$ 282.00	5	\$ 1,206.00	\$ 241.20	47	90	\$ 41,077.60	\$ 456.42
CARDC	14	27	\$ 14,915.30	38	\$ 21,981.58	\$ 578.46	151	313	\$ 128,897.76	\$ 411.81
CARSC	0	0		0			7	8	\$ 3,893.45	\$ 486.68
DOVDC	12	21	\$ 5,533.64	22	\$ 6,463.12	\$ 293.78	68	172	\$ 60,140.92	\$ 349.66
DOVSC	0	0		0			0	0		
ELLDC	19	43	\$ 31,788.00	55	\$ 36,924.00	\$ 671.35	205	455	\$ 278,103.05	\$ 611.22
ELLSC	1	1	\$ 264.00	1	\$ 264.00	\$ 264.00	5	5	\$ 1,848.50	\$ 369.70
FARDC	8	7	\$ 4,291.67	11	\$ 6,304.67	\$ 573.15	92	213	\$ 143,242.31	\$ 672.50
FARSC	0	0		0			3	3	\$ 370.16	\$ 123.39
FORDC	14	21	\$ 9,898.02	20	\$ 9,388.02	\$ 469.40	84	113	\$ 51,957.97	\$ 459.81
HOUDC	12	31	\$ 18,139.77	29	\$ 16,857.05	\$ 581.28	243	384	\$ 160,576.91	\$ 418.17
HOUSC	1	0		0			3	3	\$ 1,056.00	\$ 352.00
LEWDC	72	106	\$ 47,987.04	118	\$ 51,737.04	\$ 438.45	885	1,328	\$ 580,988.68	\$ 437.49
LINDC	5	11	\$ 3,494.04	16	\$ 4,652.00	\$ 290.75	105	194	\$ 90,824.80	\$ 468.17
MACDC	4	11	\$ 3,897.20	13	\$ 4,266.00	\$ 328.15	85	178	\$ 75,923.38	\$ 426.54
MACSC	0	0		0			0	3	\$ 600.00	\$ 200.00
MADDC	0	0		0			17	17	\$ 5,261.36	\$ 309.49
MILDC	2	4	\$ 1,445.92	6	\$ 1,715.92	\$ 285.99	48	96	\$ 26,827.48	\$ 279.45
NEWDC	2	24	\$ 5,575.32	27	\$ 7,156.32	\$ 265.05	161	391	\$ 127,315.04	\$ 325.61
PORDC	42	66	\$ 32,905.67	97	\$ 49,954.83	\$ 515.00	877	1,275	\$ 628,098.13	\$ 492.63
PORSC	0	0		0			13	12	\$ 8,865.44	\$ 738.79
PREDC	6	24	\$ 11,431.37	38	\$ 16,786.37	\$ 441.75	207	336	\$ 137,386.03	\$ 408.89
ROCDC	17	15	\$ 6,650.37	22	\$ 9,401.97	\$ 427.36	212	321	\$ 141,987.53	\$ 442.33
ROSC	2	3	\$ 528.00	2	\$ 372.00	\$ 186.00	15	17	\$ 4,746.04	\$ 279.18
RUMDC	5	20	\$ 14,862.00	22	\$ 15,324.00	\$ 696.55	160	177	\$ 156,823.37	\$ 886.01
SKODC	25	75	\$ 23,970.92	105	\$ 35,117.93	\$ 334.46	346	873	\$ 340,823.02	\$ 390.40
SKOSC	0	1	\$ 25,264.04	1	\$ 25,264.04	\$ 25,264.04	2	3	\$ 26,199.24	\$ 8,733.08
SOUDC	4	32	\$ 18,972.20	40	\$ 21,174.20	\$ 529.36	147	276	\$ 148,527.80	\$ 538.14
SOUSC	0	0		0			2	7	\$ 4,343.75	\$ 620.54
SPRDC	25	45	\$ 26,368.88	55	\$ 34,911.36	\$ 634.75	430	654	\$ 367,538.61	\$ 561.99
Law Ct	6	14	\$ 17,920.02	17	\$ 18,295.09	\$ 1,076.18	132	204	\$ 325,269.53	\$ 1,594.46
YORCD	160	166	\$ 64,778.77	200	\$ 85,426.83	\$ 427.13	2,485	2,730	\$ 1,792,165.06	\$ 656.47
AROCD	108	59	\$ 16,947.61	85	\$ 28,720.65	\$ 337.89	1,467	1,326	\$ 586,163.61	\$ 442.05
ANDCD	200	105	\$ 43,030.68	118	\$ 52,138.84	\$ 441.85	1,826	1,766	\$ 816,669.79	\$ 462.44
KENCD	116	77	\$ 32,616.83	105	\$ 44,803.45	\$ 426.70	1,855	1,800	\$ 751,778.80	\$ 417.65
PENCD	139	139	\$ 65,824.03	159	\$ 70,059.37	\$ 440.62	2,645	2,569	\$ 1,106,087.33	\$ 430.55
SAGCD	8	16	\$ 7,175.61	21	\$ 9,133.11	\$ 434.91	298	294	\$ 143,986.44	\$ 489.75
WALCD	18	14	\$ 9,914.88	17	\$ 10,844.88	\$ 637.93	360	385	\$ 256,881.54	\$ 667.22
PISCD	16	15	\$ 7,491.67	18	\$ 10,536.95	\$ 585.39	193	186	\$ 56,438.71	\$ 303.43
HANCD	15	27	\$ 10,734.00	39	\$ 15,940.20	\$ 408.72	516	574	\$ 280,123.59	\$ 488.02
FRACD	57	22	\$ 6,215.00	32	\$ 9,407.24	\$ 293.98	453	485	\$ 247,794.92	\$ 510.92
WASCD	31	42	\$ 14,334.00	46	\$ 16,788.00	\$ 364.96	420	476	\$ 181,459.24	\$ 381.22
CUMCD	292	217	\$ 86,785.02	249	\$ 100,686.26	\$ 404.36	3,993	4,220	\$ 2,288,949.00	\$ 542.40
KNODC	38	30	\$ 10,735.04	35	\$ 13,313.44	\$ 380.38	588	569	\$ 259,938.38	\$ 456.83
SOMCD	114	157	\$ 28,548.04	167	\$ 32,206.64	\$ 192.85	1,102	778	\$ 184,666.40	\$ 237.36
OXFCD	129	67	\$ 19,503.17	106	\$ 27,900.61	\$ 263.21	910	823	\$ 317,593.00	\$ 385.90
LINCD	33	11	\$ 3,002.32	15	\$ 4,059.52	\$ 270.63	351	321	\$ 140,036.47	\$ 436.25
WATDC	29	44	\$ 20,475.88	55	\$ 24,062.88	\$ 437.51	306	535	\$ 249,420.41	\$ 466.21
WESDC	16	24	\$ 13,343.04	40	\$ 17,635.52	\$ 440.89	242	351	\$ 147,299.02	\$ 419.66
WISDC	12	12	\$ 6,613.74	12	\$ 6,583.74	\$ 548.65	88	127	\$ 61,897.64	\$ 487.38
WISSC	1	0		0			5	3	\$ 2,219.50	\$ 739.83
YORDC	1	5	\$ 2,211.00	5	\$ 2,193.00	\$ 438.60	68	106	\$ 54,482.05	\$ 513.98
<b>TOTAL</b>	<b>1,976</b>	<b>2,126</b>	<b>\$ 911,069.99</b>	<b>2,600</b>	<b>\$ 1,114,440.72</b>	<b>\$ 428.63</b>	<b>27,229</b>	<b>32,343</b>	<b>\$ 15,718,468.24</b>	<b>\$ 485.99</b>

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

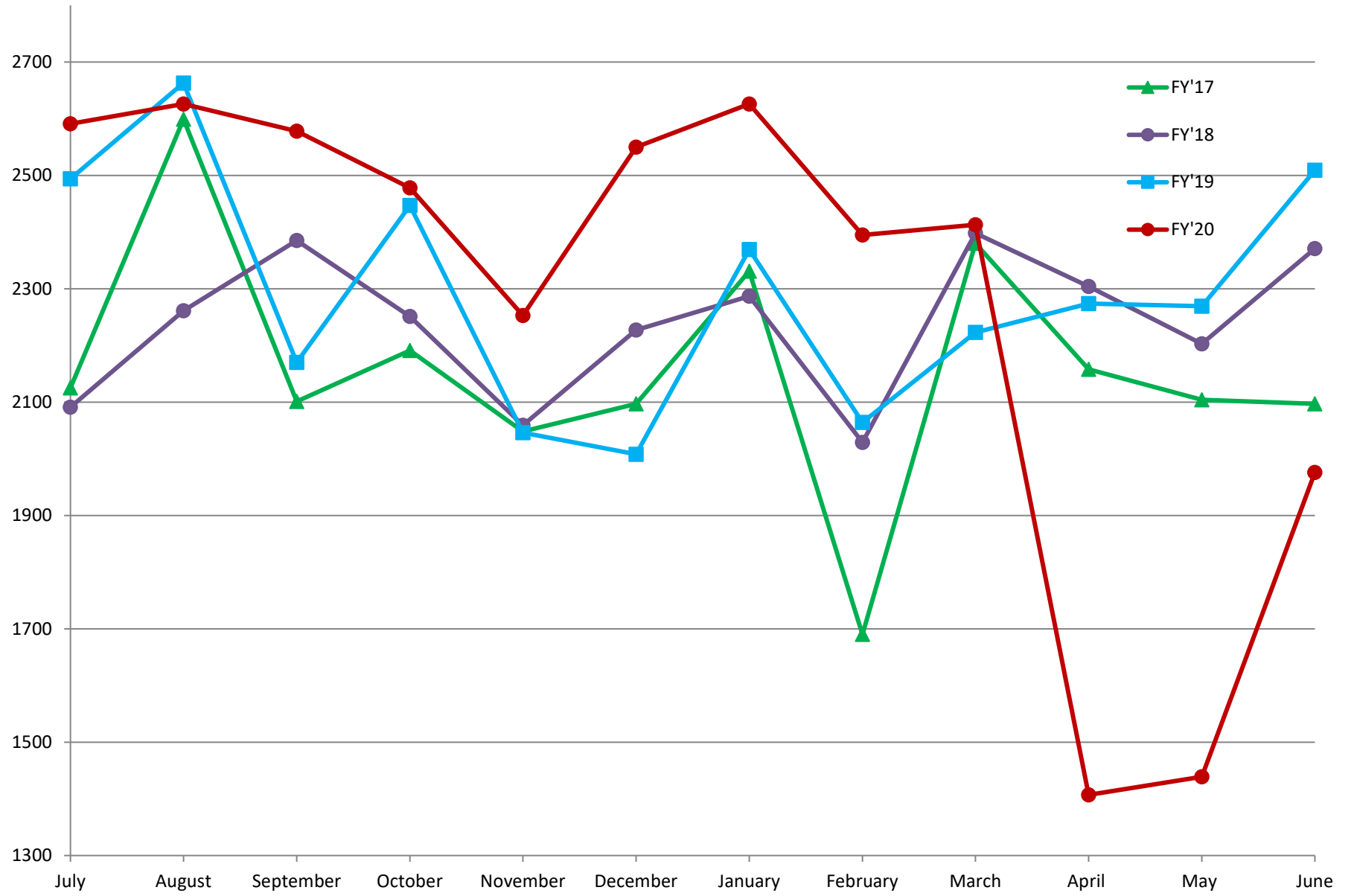
**Number of Attorneys Rostered by Court**

**06/30/2020**

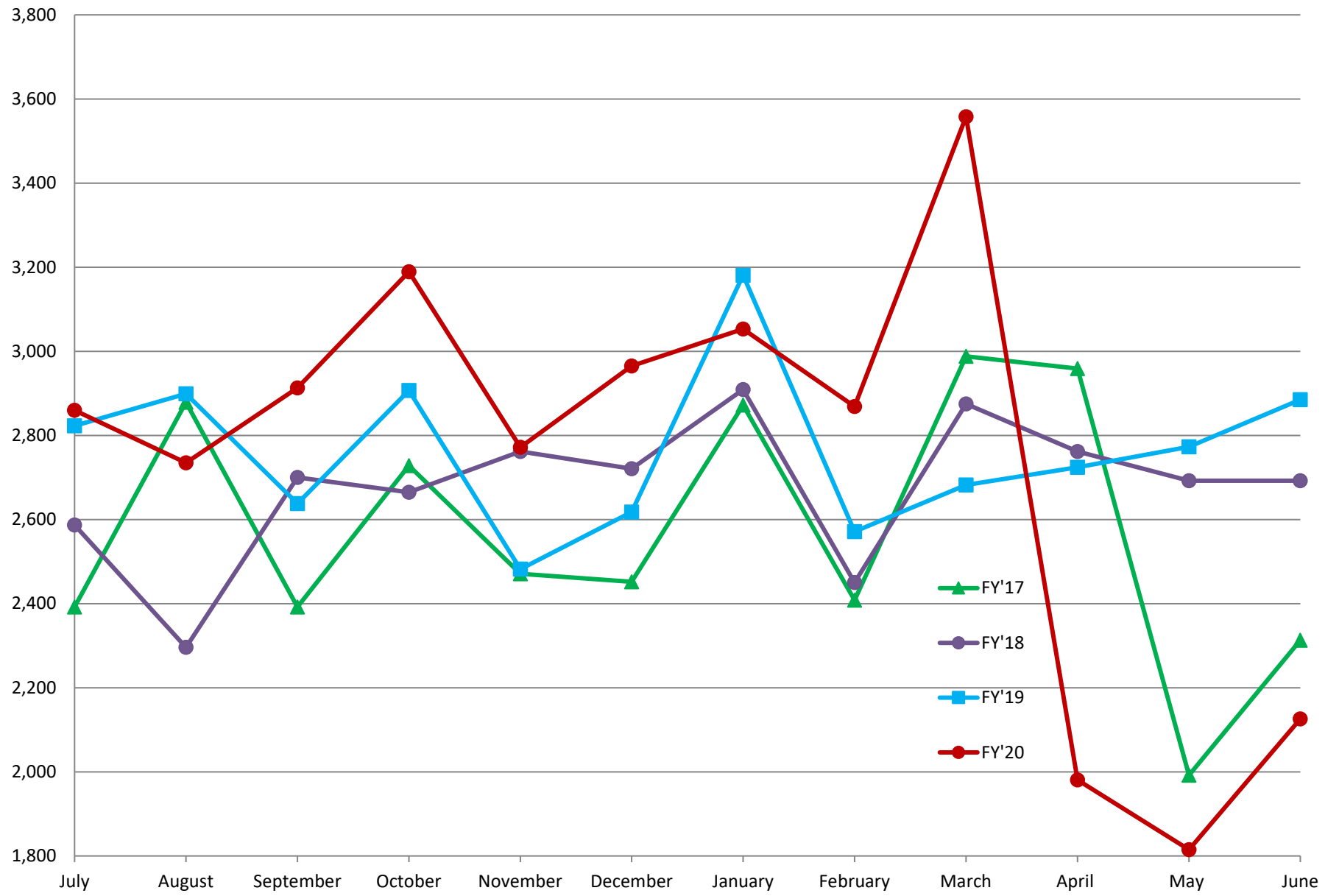
<b>Court</b>	<b>Rostered Attorneys</b>
Augusta District Court	73
Bangor District Court	40
Belfast District Court	38
Biddeford District Court	113
Bridgton District Court	72
Calais District Court	8
Caribou District Court	15
Dover-Foxcroft District Court	23
Ellsworth District Court	31
Farmington District Court	32
Fort Kent District Court	10
Houlton District Court	12
Lewiston District Court	110
Lincoln District Court	21
Machias District Court	12
Madawaska District Court	11
Millinocket District Court	14
Newport District Court	28
Portland District Court	136
Presque Isle District Court	13
Rockland District Court	29
Rumford District Court	23
Skowhegan District Court	23

<b>Court</b>	<b>Rostered Attorneys</b>
South Paris District Court	48
Springvale District Court	99
Unified Criminal Docket Alfred	98
Unified Criminal Docket Aroostook	21
Unified Criminal Docket Auburn	90
Unified Criminal Docket Augusta	67
Unified Criminal Docket Bangor	43
Unified Criminal Docket Bath	75
Unified Criminal Docket Belfast	38
Unified Criminal DocketDover Foxcroft	22
Unified Criminal Docket Ellsworth	34
Unified Criminal Docket Farmington	34
Unified Criminal Docket Machias	14
Unified Criminal Docket Portland	132
Unified Criminal Docket Rockland	25
Unified Criminal Docket Skowhegan	20
Unified Criminal Docket South Paris	40
Unified Criminal Docket Wiscasset	42
Waterville District Court	38
West Bath District Court	88
Wiscasset District Court	51
York District Court	86

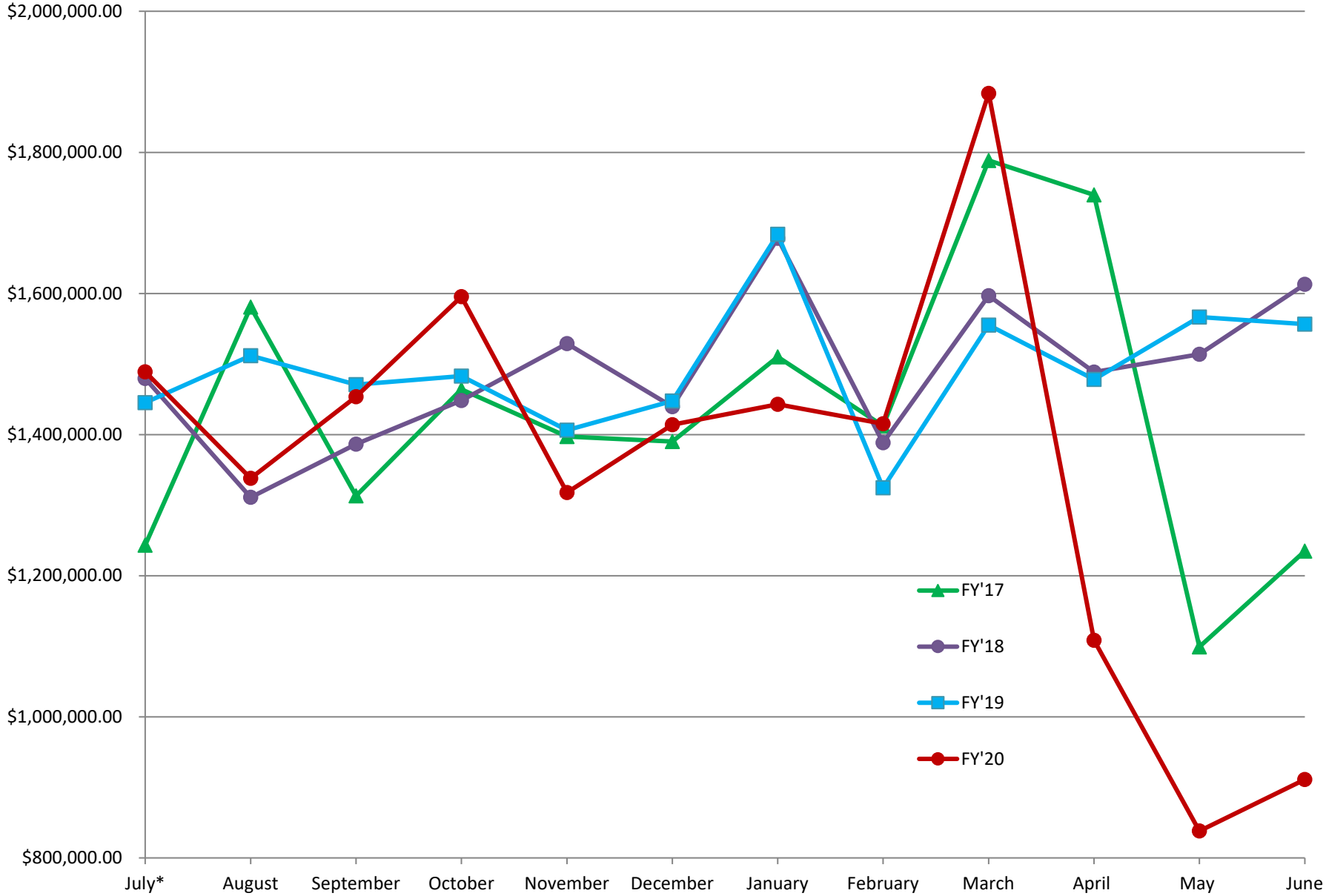
# NEW CASES



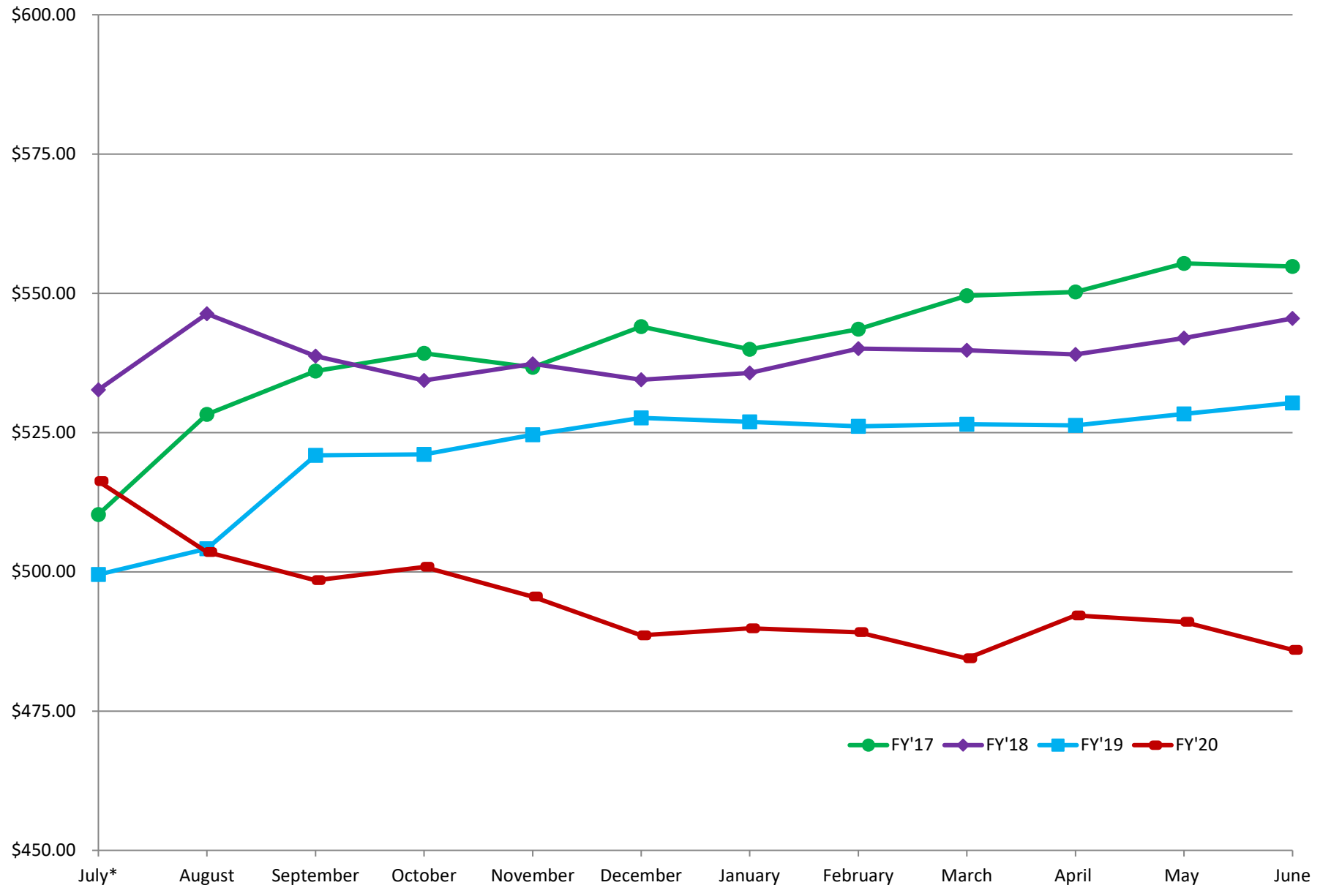
# Submitted Vouchers



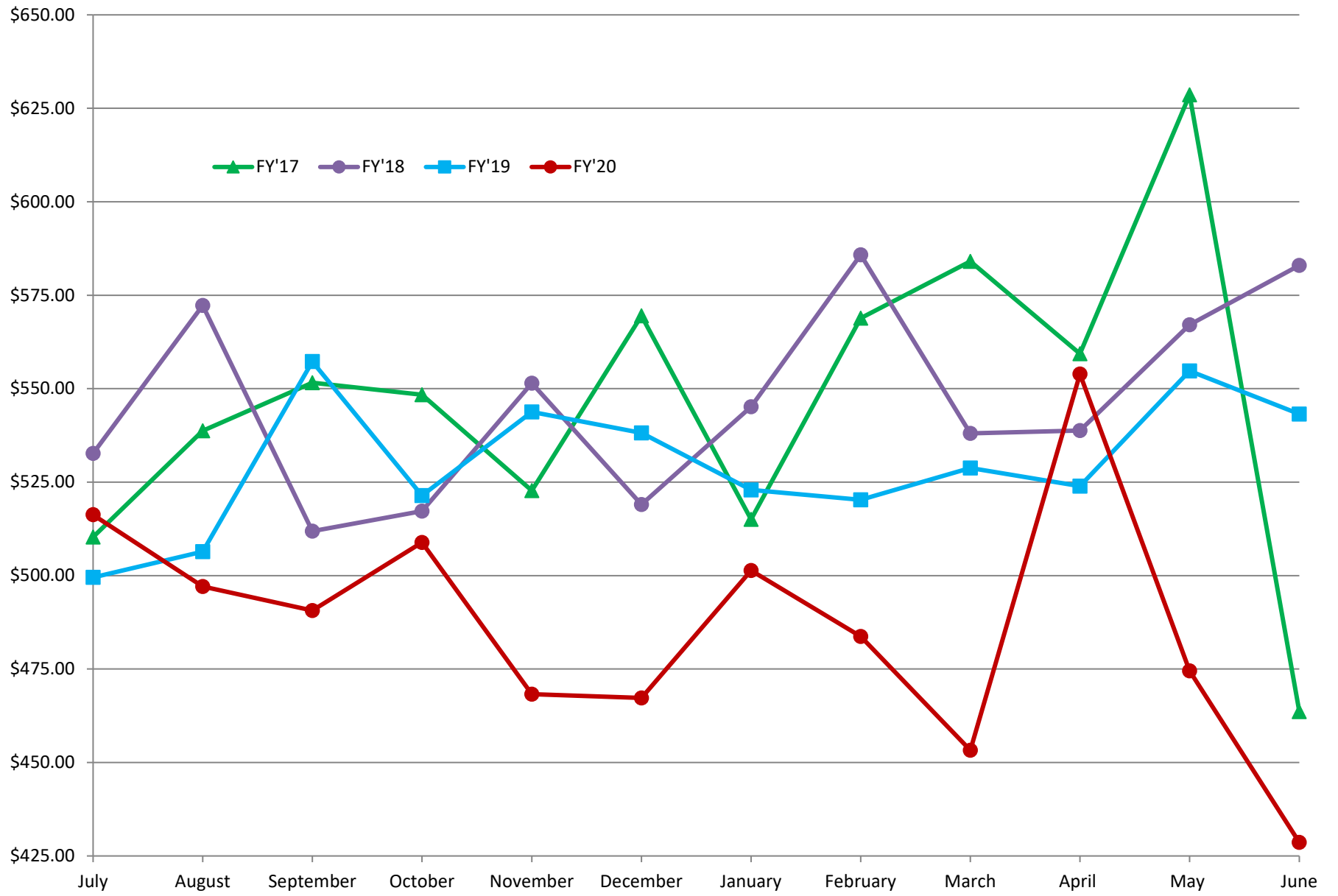
### Submitted Voucher Amount



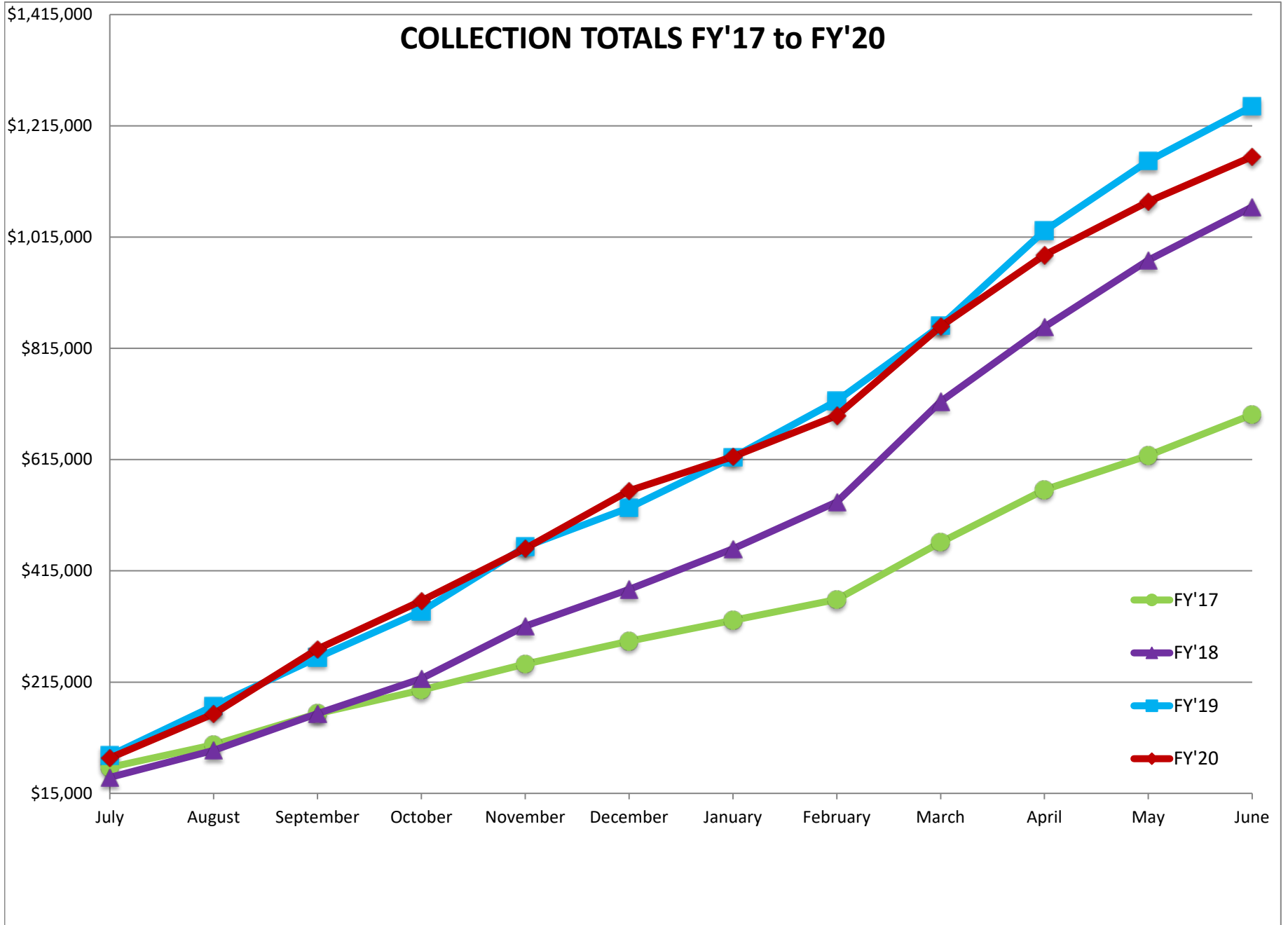
# Average Voucher Price Fiscal Year to Date



# Monthly Price Per Voucher



### COLLECTION TOTALS FY'17 to FY'20





**(3.)**

**Jail Recordings of  
Attorney/Client Calls**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**TO:** MCILS COMMISSIONERS  
**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR  
**CC:** ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR  
**SUBJECT:** JAIL RECORDINGS OF ATTORNEY - CLIENT CALLS  
**DATE:** JULY 1, 2020

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Attached is an email update on this issue provided to Commissioners on June 12, 2020. Since that update, the Commission has received substantive responses to our Freedom of Access requests from four (4) additional counties. Aroostook, Androscoggin, and Franklin Counties have all provided call detail reports prepared by their vendor showing all calls made to the attorney phone numbers listed on a spreadsheet we provided to the jails. Each of these reports showed a large number of calls to attorney phone numbers that were, in fact, recorded:

	Total Calls	Recorded Calls
Androscoggin	1,273	267
Aroostook	982	678
Franklin	148	55

Aroostook and Franklin Counties have been asked to block access to the recorded calls between inmates and attorneys. Androscoggin County has reported that the recorded calls to attorney phone numbers have been erased.

Somerset County provided a response over the phone rather than a documentary response. Sheriff Lancaster told me that their provider had searched its database of recorded calls against the attorney phone numbers that we provided and had identified calls to attorney numbers that were, in fact, recorded. The Sheriff reported that those calls had been erased. I asked whether Somerset could provide a list of the calls identified and was told that doing so would be labor intensive for jail staff and result in a cost. I have requested an estimate of what they would charge to produce the requested data.

I will also work with the jails to determine whether the recorded calls to attorney phone numbers have been previously accessed for any reason.

From my interaction with attorneys representing other counties, I expect to be able to obtain similar data from most, if not all, jails through further informal engagement. Nevertheless, the data obtained so far demonstrate that there is a significant problem and that the measures previously in place to avoid the recording of attorney-client calls are inadequate. Securus, the provider for 13 jails, appears

to rely solely on the attorney to make arrangements to avoid recording of calls to the attorney numbers. Somerset and Two Bridges utilize a second provider, and their system appears to rely on the inmate to identify the number of their attorney for “no-record” status. Two Bridges also proactively obtains the numbers of attorneys in their local area from public sources and enters those numbers on their “no-record” list.

Just recently, Commission staff has provided all jails with the phone numbers for all attorneys working on MCILS cases. Continuing that practice remains a viable option. In addition, at the last meeting, the possibility of legislation in this area was discussed. Attached is a summary of various state statutes, including in Maine, that pertain to the recording of calls from jails. I expect that other options will be explored at the upcoming meeting.

**From:** [Pelletier, John](#)  
**To:** [jtardy@rudmanwinchell.com](mailto:jtardy@rudmanwinchell.com); [Michael Carey](#); [Sarah Churchill](#); [Robert P. Cummins](#); [rkatz@lipmankatz.com](mailto:rkatz@lipmankatz.com); [Robert LeBrasseur](#); [Ron Schneider](#); [Mary Zmigrodski](#)  
**Cc:** [Maciag, Eleanor](#); [Hudson, Megan](#)  
**Subject:** RE: Follow-Up Report on Recorded Inmate Calls  
**Date:** Friday, June 12, 2020 12:58:00 PM

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Commissioners:

I am writing to update you on MCILS's request to the jails for documentation of any calls made to attorneys. At the last meeting, I indicated that the response to these requests had been underwhelming. In fact, as of June 5, 2020, one week after the requests were sent, I had not had any meaningful response other than simple acknowledgements of receipt. As a result, on June 5, 2020, I re-sent my requests as formal FOAA requests.

To date, three counties have conducted the requested search of the database of their recorded calls and reported that they found no calls made to any of the attorney phone numbers. These jails are Two Bridges Regional Jail, the Oxford County Jail and the Waldo County Jail. Note that the latter two jails are 72-hour holding facilities. Two Bridges, however, was a jail involved with recorded attorney calls in 2015, but their current database did not contain any calls to the attorney phone numbers we submitted.

Most other counties have responded with what look like "pro forma" initial denials of FOAA requests. In one case, the response came directly from an attorney representing three counties. Others came from jail staff, but were obviously written by counsel. At this time, I am working with two attorneys who represent many, but not all of the counties. Somerset County has only responded with an acknowledgement of receipt and nothing further.

I don't believe the proffered reasons for denying the requests have merit, and will continue to press for the requested information. I hope that I can work with the attorneys to obtain the information we need on a cooperative basis. But should that fail, the matters are in a position where we can resort to enforcement through the courts.

John

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**From:** Pelletier, John  
**Sent:** Friday, May 29, 2020 11:36 AM  
**To:** jtardy@rudmanwinchell.com; Michael Carey <MCarey@brannlaw.com>; Sarah Churchill <schurchill@nicholschurhill.com>; Robert P. Cummins <rcummins@nhdlaw.com>; rkatz@lipmankatz.com; Robert LeBrasseur <bob@mainecrimes.com>; Ron Schneider <rschneider@bernsteinshur.com>; Mary Zmigrodski <lawmjz@gmail.com>  
**Cc:** Maciag, Eleanor <Eleanor.Maciag@maine.gov>; Hudson, Megan <Megan.Hudson@maine.gov>  
**Subject:** Follow-Up Report on Recorded Inmate Calls

Commissioners:

Attached please find a follow-up report on the issue of recorded calls between jail inmates and their attorneys.

John

Alaska

22 AAC 05.530. Prisoner phone calls

(a) The commissioner will establish procedures by which a prisoner may periodically make phone calls of a personal nature to maintain contact with his or her family or attorney.

(b) In order to preserve the security and orderly administration of the correctional facility and to protect the public, facility staff members may monitor or record prisoner telephone calls and conversations on visitor intercommunication phones as long as a sign placed near the prisoner's extension advises the prisoner that the conversation is subject to monitoring or recording. A prisoner's call to an attorney may not be monitored unless authorized by a court.

(c) The superintendent may limit a prisoner's access to a telephone, except to call an attorney, if reasonable grounds exist to believe that the prisoner's use of a telephone threatens the security of the facility or the protection of the public. A prisoner who is classified maximum custody, or who is placed in punitive segregation or administrative segregation because the prisoner poses a threat to others or to the security of a correctional facility, may not have access to a telephone except (1) to communicate with an attorney, (2) to otherwise communicate as provided in 22 AAC 05.015, or (3) in an emergency as determined appropriate by the superintendent.

California

California Penal Code Section 636(a)

Every person who, without permission from all parties to the conversation, eavesdrops on or records, by means of an electronic device, a conversation, or any portion thereof, between a person who is in the physical custody of a law enforcement officer or other public officer, or who is on the property of a law enforcement agency or other public agency, and that person's attorney, religious adviser, or licensed physician, is guilty of a felony punishable by imprisonment pursuant to subdivision (h) of Section 1170.

Pennsylvania

Pennsylvania Statutes Title 18 Pa.C.S.A. Crimes and Offenses § 5704. Exceptions to prohibition of interception and disclosure of communications.

...

(ii) So as to safeguard the attorney-client privilege, the Department of Corrections shall not intercept, record, monitor or divulge an oral communication, electronic communication or wire communication between an inmate and an attorney.

Texas

§ 495.027. Inmate Pay Telephone Service

(f) The department shall ensure that no confidential attorney-client communication is monitored or recorded by the department or any person acting on the department's behalf and shall provide to the vendor the name and telephone number of each attorney who represents an inmate to ensure that communication between the inmate and the attorney is not monitored or recorded.

Washington

RCW § 9.73.095. Intercepting, recording, or divulging offender conversations-Conditions-Notice

(4) So as to safeguard the sanctity of the attorney-client privilege, the department of corrections shall not intercept, record, or divulge any conversation between an offender or resident and an attorney. The department shall develop policies and procedures to implement this section. The department's policies and procedures implemented under this section shall also recognize the privileged nature of confessions made by an offender to a member of the clergy or a priest in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs as provided in RCW 5.60.060(3).

West Virginia

§31-20-5e. Monitoring of inmate telephone calls and electronic communications; procedures and restrictions; attorney-client privilege protected and exempted.

(a) The executive director or his or her designee is authorized to monitor, intercept, record and disclose the content of telephone calls and, if available to inmates, emails and other forms of electronic communications to or from inmates housed in regional jails in accordance with the following provisions:

...

(b) To safeguard the sanctity of the attorney-client privilege, an adequate number of telephone lines that are not monitored shall be made available for telephone calls between inmates and their attorneys. Such calls shall not be monitored, intercepted, recorded or disclosed in any matter.

Wisconsin

WIS. STAT. §§ 968.30(9)(a), (10) and 968.31(2)(b).

(9) (a) Any aggrieved person in any trial, hearing or proceeding in or before any court, department, officer, agency, regulatory body or other authority of this state, or a political subdivision thereof, may move before the trial court or the court granting the original warrant to suppress the contents of any intercepted wire, electronic or oral communication, or evidence derived therefrom, on the grounds that the communication was unlawfully intercepted; the order of authorization or approval under which it was intercepted is insufficient on its face; or the interception was not made in conformity with the order of authorization or approval.

....

(10) Nothing in ss. 968.28 to 968.37 shall be construed to allow the interception of any wire, electronic or oral communication between an attorney and a client.

Feds

28 CFR § 540.102 - Monitoring of inmate telephone calls.

The Warden shall establish procedures that enable monitoring of telephone conversations on any telephone located within the institution, said monitoring to be done to preserve the security and orderly management of the institution and to protect the public. The Warden must provide notice to the inmate of the potential for monitoring. Staff may not monitor an inmate's properly placed call to an attorney. The Warden shall notify an inmate of the proper procedures to have an unmonitored telephone conversation with an attorney.

Maine

15 M.R.S. § 712 Exceptions (INTERCEPTION OF WIRE AND ORAL COMMUNICATIONS)

1. Switchboard operators, communication common carrier agent. It is not a violation of this chapter for an operator of a switchboard or an officer, employee or agent of any communication common carrier, as defined in this chapter, to intercept, disclose or use that communication in the normal course of employment while engaged in any activity which is a necessary incident to the rendition of service or to the protection of the rights or property of the carrier of the communication, provided that the communication common carriers shall not utilize service for observing or random monitoring, except for mechanical or service quality control checks, nor shall any such officer, employee or agent use or disclose to another the contents as defined in this chapter of the communication so intercepted.

2. Investigative officers. It is not a violation of this chapter for an investigative officer, or for another employee of the Department of Corrections authorized to exercise law enforcement

powers as described in Title 34-A, section 3011, to intercept, disclose or use that communication in the normal course of employment while engaged in any activity that is related to the administration of criminal justice as defined in Title 16, section 703, subsection 1 for the purposes of the Criminal History Record Information Act or as defined in Title 16, section 803, subsection 2 for the purposes of the Intelligence and Investigative Record Information Act; while engaged in any activity that is related to the administration of juvenile justice; or while engaged in any activity that is related to the administration of juvenile criminal justice if:

- A. Either the sender or receiver of that communication is a person residing in an adult or juvenile correctional facility administered by the Department of Corrections; and
- B. Notice of the possibility of interception is provided in a way sufficient to make the parties to the communication aware of the possibility of interception, which includes:
  - (1) Providing the resident with a written notification statement;
  - (2) Posting written notification next to every telephone at the facility that is subject to monitoring; and
  - (3) Informing the recipient of a telephone call from the resident by playing a recorded warning before the recipient accepts the call.

This subsection does not authorize any interference with the attorney-client privilege.

3. Jail investigative officer. It is not a violation of this chapter for a jail investigative officer, as defined in this chapter, or for a jail employee acting at the direction of a jail investigative officer to intercept, disclose or use that communication in the normal course of employment while engaged in any activity that is related to the administration of criminal justice as defined in Title 16, section 703, subsection 1 for the purposes of the Criminal History Record Information Act or as defined in Title 16, section 803, subsection 2 for the purposes of the Intelligence and Investigative Record Information Act if:

- A. Either the sender or the receiver of that communication is a person residing in an adult section of the jail; and
- B. Notice of the possibility of interception is provided in a way sufficient to make the parties to the communication aware of the possibility of interception, which includes:
  - (1) Providing the resident with a written notification statement;
  - (2) Posting written notification next to every telephone at the jail that is subject to monitoring; and
  - (3) Informing the recipient of a telephone call from the resident by playing a recorded warning before the recipient accepts the call.

This subsection does not authorize any interference with the attorney-client privilege.



**(4.)**

## **Budget Update**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**TO:** MCILS COMMISSIONERS  
**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR  
**CC:** ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR  
**SUBJECT:** BUDGET UPDATE  
**DATE:** JULY 1, 2020

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June 30, 2020 constituted the end of fiscal year 2020. The Commission finished the fiscal year with an unspent balance of \$2,591,765.75. The Budget Office has confirmed that, because these funds are in an Other Special Revenue account, they will not lapse, but will remain in that account as an unencumbered balance forward. As a result, the Governor has authority to issue a Financial Order making those funds available for the Commission's fiscal year 2021 budget.

Overall, prior to the pandemic, the Commission saw a persistent increase, as compared to the previous year, in the number of new cases and vouchers submitted. Our budget, however, remained on track with projections due to a corresponding persistent decline in the average cost per voucher. With the pandemic, the number of new cases and submitted vouchers declined, ending the year basically flat with the previous year, and the average cost per voucher declined even further, resulting in the unspent balance.

As has been discussed, the budget for fiscal year 2021 is short by approximately \$2.8 million of the amount needed to cover costs for a "normal" year. The pandemic continues, however, and the State's overall financial picture is uncertain at best. Accordingly, we are fortunate to have the surplus described above that hopefully can be accessed to cover the Commission's needs without the need for a supplemental appropriation from the General Fund.

**(5.)**

**Proposed Legislation on  
MCILS Rulemaking**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**TO:** MCILS COMMISSIONERS  
**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR  
**CC:** ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR  
**SUBJECT:** PROPOSED LEGISLATION AFFECTING MCILS RULEMAKING  
**DATE:** JULY 1, 2020

---

As has been discussed, under the Commission statute, rules governing the eligibility of attorneys for Commission rosters are “major substantive,” and as a result, they require review and passage by the Legislature in addition to the standard agency rulemaking process. Prior to the Legislature’s adjournment, the Judiciary Committee had drafted a statute to make such rules “routine technical,” requiring only the agency rulemaking process to become effective, until July 1, 2021. A copy of this proposal is attached.

The Judiciary Committee staff has inquired whether the Commission believes that July 1, 2021 provides enough time for rulemaking on eligibility requirements or whether the Commission would like to see that date moved back. The Committee is planning for upcoming committee meetings and would like the Commission’s feedback on this question.

OFFICE OF THE REVISOR OF STATUTES

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DRAFT DOCUMENT SUMMARY

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LR#: 3299

ITEM #: 1

TYPE: ACT

DRAFT TYPE: O

SUB TYPE:

INST. TYPE: ACTPUB

3/16/20

Final to MJR

from SR

(EMERGENCY)

---

TITLE:

*An Act Authorizing Rulemaking Concerning Attorney Training, Standards and Qualifications  
by the Maine Commission on Indigent Legal Services*

---

SPONSOR:

COSPONSORS:

LEGEND: SUBMITTED BY THE JOINT STANDING COMMITTEE ON JUDICIARY PURSUANT  
TO JOINT ORDER 2019, H.P. 1541.

AUTHORITY FOR INTRODUCTION: PURSUANT TO JOINT ORDER/RESOLUTION (PJO)

DRAFTER: TECH: PROOF: REVIEWER:

DATE/TIME LAST PRINTED: 03/16/20 09:08

SHORT TITLE: AUTHORIZING RULEMAKING CONCERNING ATTORNEY TRAINING

---

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

3           **Whereas,** rules governing attorney training, standards and qualifications adopted by  
4 the Maine Commission on Indigent Legal Services are designated as major substantive  
5 rules; and

6           **Whereas,** the rules governing attorney training, standards and qualifications need  
7 immediate strengthening, as recommended by the Sixth Amendment Center; and

8           **Whereas,** waiting for submission of stronger rules to the 130th Legislature prolongs  
9 the existing disservice to those in need of high-quality attorneys appointed to represent  
10 indigent defendants, juveniles, parents and others; and

11           **Whereas,** in the judgment of the Legislature, these facts create an emergency within  
12 the meaning of the Constitution of Maine and require the following legislation as  
13 immediately necessary for the preservation of the public peace, health and safety; now,  
14 therefore,

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

16           **Sec. 1. 4 MRSA §1804, sub-§4, ¶D,** as amended by PL 2013, c. 368, Pt. RRR,  
17 §1 and affected by §4, is further amended to read:

18           D. Adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to  
19 this paragraph are routine technical rules as defined in Title 5, chapter 375,  
20 subchapter 2-A, except that rules adopted to establish standards under subsection 2,  
21 paragraph B and rates of compensation for assigned counsel and contract counsel  
22 under subsection 2, paragraph F are major substantive rules as defined in Title 5,  
23 chapter 375, subchapter 2-A. Notwithstanding this paragraph, until July 1, 2021,  
24 rules adopted to establish standards under subsection 2, paragraph B are routine  
25 technical rules as defined in Title 5, chapter 375, subchapter 2-A; and

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

28   **SUMMARY**

29           This bill amends the provisions governing the rule-making authority of the Maine  
30 Commission on Indigent Legal Services to create a time period during which the rules  
31 governing attorney training, standards and qualifications are routine technical rules. This  
32 allows the commission to adopt strengthened rules through regular rulemaking and have  
33 the rules in place more quickly than the major substantive rules process would allow.  
34 Any rules adopted after July 1, 2021 are major substantive rules.

**(6.)**

**Prosecutor Interactions  
with Pro Se Defendants**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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---

**TO:** MCILS COMMISSIONERS  
**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR  
**CC:** ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR  
**SUBJECT:** PROSECUTOR INTERACTION WITH PRO SE DEFENDANTS  
**DATE:** JULY 2, 2020

---

In response to the Sixth Amendment Center report's discussion of prosecutor interaction with pro se defendants, the Maine Prosecutor's Association sought an informal opinion from Bar Counsel on whether Maine's ethical rules prohibit prosecutors from engaging in plea discussions with unrepresented defendants before those defendants have been advised of their right to counsel by the court. Bar Counsel issued an opinion dated May 27, 2020 stating that Maine's Rules of Professional Conduct do not prohibit such interactions. A copy of the opinion is attached.

The opinion is based on Maine's failure to adopt subsections 3.8(b) & (c) of the ABA Model Rules when Maine adopted the current Rules of Professional Conduct. There are several ways the Commission could address this failure. The Supreme Judicial Court maintains an Advisory Committee on Professional Conduct, and the Commission could issue a formal communication to the Advisory Committee urging the Committee to recommend adoption of those subsections to the Supreme Judicial Court. As the court itself has ultimate responsibility for promulgating and amending the Rules of Professional Conduct, the Commission could direct a similar communication directly to the Supreme Judicial Court. Finally, the Commission could urge the Legislature, as did the Sixth Amendment Center report, to pass a statute to prohibit prosecutors from communicating with defendants unless the defendant has been advised of the right to counsel by a court and has waived that right.

As an example of the effect of this recent opinion, I have attached two documents. One is a letter sent by the Aroostook County District Attorney's office to unrepresented defendants that seeks early resolution of the defendant's case based on an offer made in the letter. As this letter has a number of troubling aspects, several attorneys in Aroostook County joined in a letter to the District Attorney setting forth objections to the D.A.'s letter. A copy of that letter is attached as well.



**BOARD MEMBERS**

Judson B. Esty-Kendall, Esq., Chair

---

Laura E.S. Curtis, Esq.  
 Richard P. Dana, CPA  
 Mary A. Denison, Esq.  
 Christopher L. Gaunce  
 Benjamin R. Gideon, Esq.  
 Ann M.S. LeBlanc, Ph.D., ABPP  
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**BOARD OF OVERSEERS OF THE BAR**

*Established by the Maine Supreme Judicial Court*

97 Winthrop Street  
 P O Box 527  
 Augusta, ME 04332-0527

Phone 207-623-1121 • Fax 207-623-4175  
 Email: Board@mebaroverseers.org • Web: www.mebaroverseers.org

**BOARD STAFF**

**BAR COUNSEL**  
 Aria Eee

**ASSISTANT BAR COUNSEL**  
 Justin W. Andrus  
 Alan P. Kelley

**SPECIAL COUNSEL**  
 Angela M. Morse

**EXECUTIVE DIRECTOR**  
 Jacqueline M. Rogers  
 (2004-2020)

May 27, 2020

District Attorney Andrew Robinson  
 Office of the District Attorney  
 55 Lisbon Street  
 Lewiston, ME 04240

Re: MPA Questions - Negotiating with Pro Se Defendants

Dear District Attorney Robinson:

In response to your request of March 5<sup>th</sup> regarding the effect of ABA formal Opinion #486 on Maine prosecutors' negotiation of criminal cases with *pro se* defendants, Bar Counsel offers the following informal opinion pursuant to Maine Bar Rule 2(c).

ABA formal Opinion #486 (May 2019) analyzes the effect of Model Rules 1.1 (*Competence*); 1.3 (*Diligence*); 3.8 (a)(b)(c) (*Special Responsibilities of Prosecutor*), 4.1 (*Truthfulness in Statements to Others*); 4.3 (*Dealing with Unrepresented Person*); 5.3 (*Responsibilities Regarding Nonlawyer Assistants*); and 8.4(a)(c)(d) (*Misconduct*) on interaction of Prosecutors with unrepresented individuals, whether accused or charged, with misdemeanor offenses. Initially, it is important to understand that the Opinion is based upon the application of the ABA Model Rules. While Maine's MRPC Rules 1.1, 1.3, 4.1, 4.3, 5.3 and 8.4(a)(c)(d) are substantially identical to the ABA Model Rules, Maine's Rule 3.8 differs significantly.

The first two sections of Opinion #486 introduce the ethical issues for Prosecutors raised by the ABA Model Rules, and discuss what the perceived plea bargaining practices of Prosecutors are in dealing with unrepresented individuals. Section III the Opinion deals with the requirements of Model Rule 3.8, specifically addressing the ethical standards that the Model Rule imposes on prosecutors. Section IV discusses prosecutors' duties arising out of the interaction of Rule 3.8(b) & (c) with an accused's right to counsel, and Section V discusses the prosecutors' duties when plea bargaining with the unrepresented person, under Rules 4.1, 4.3, and 8.4(c), irrespective of the application of Model Rule 3.8(b) & (c).

Model Rule 3.8(a), which is identical to Maine's Rule 3.8(a), prohibits prosecutors from prosecuting cases unless they are supported by probable cause. The Opinion concludes that the competence and diligence requirements imposed upon attorneys by Rules 1.1 and 1.3 respectively, apply to a Prosecutor's evidentiary assessment of their cases, concluding that reliance upon police reports alone, absent

“reasonable confidence in the thoroughness of the fact finding and evenhandedness of the judgment of other law enforcement officers who prepare the supporting documents and investigation,” is “likely to be misplaced.” The Opinion clearly stands for the proposition that in determining probable cause, prosecutors are ethically bound by the requirements of competence and diligence when screening any new criminal charges against an accused prior to the institution of those charges.

The aspects of Opinion #486 most germane to the questions that you have posed relate to the analysis the provisions of Model Rules 3.8(b) and (c) which impose duties upon prosecutors to “make reasonable efforts to assure that the accused has been advised of the right to obtain counsel,” and to “not seek to obtain from an unrepresented accused a waiver of important pretrial rights.” Maine has not adopted either provision of Model Rule 3.8, and as a result, the Opinion’s analysis of the requirements of Model Rules 3.8(b) & (c) does not apply to Maine Prosecutors.

Sections III and IV of the Opinion focus on the application of Model Rules 3.8(b) & (c), ultimately concluding that if a misdemeanor charge triggers an accused’s right to counsel, a prosecutor cannot ethically engage in plea bargaining until advising that individual of their rights under Model Rule 3.8(b). Moreover, the prosecutor cannot ethically attempt to induce a defendant to accept a plea offer, even after the defendant has been advised of their rights. The Opinion suggests that asking a defendant if they want to waive their rights is improper, if it is clear from the circumstances that the individual does not fully understand the consequences of that waiver. That having been said, as indicated above, because Rule 3.8(b) & (c) have not been adopted by the State of Maine, those portions of the Opinion’s analysis do not apply to Maine Prosecutors.

In Section V, the Opinion goes on to discuss Model Rules 4.1 and 4.3 emphasizing that a prosecutor must be scrupulously truthful when dealing with an unrepresented individual, ensuring that there is no misrepresentation, whether by commission or omission. The Prosecutor must ensure that the individual fully understands the Prosecutor’s role. The opinion concludes that a failure by a Prosecutor to disclose known collateral consequences of a plea amounts to a misrepresentation.

In summary, Opinion #486 imposes significant restrictions upon prosecutors regarding their dealings with unrepresented individuals. That having been said, because the most significant aspects of the Opinion are focused on the provisions in Model Rules 3.8(b) & (c), many of the restrictions upon Prosecutors imposed by the Opinion, do not apply to Maine Prosecutors.

Applying the applicable provisions of Opinion #486 to your specific questions, I would draw the following conclusions:

1. *“Is it appropriate to discuss a pending case with a pro se defendant who contacts our office prior to his or her arraignment date? The person will not have*

*had his or her rights provided to them by the court at this stage, but often wants to discuss the case and find out what we are recommending to court.”*

Because Maine has not adopted Model Rules 3.8(b) & (c), many of the potential ethical issues raised by meeting with a *pro se* defendant prior to arraignment, as described in Opinion #486, are not present. As a result, there is no ethical prohibition against a Maine Prosecutor meeting with *pro se* defendants prior to them being advised of their rights.

2. *“On the day of arraignment but before the court has started, is it appropriate to provide a written offer to a pro se defendant before they have been informed of their rights by the court. We often provide an offer letter with our discovery packets which is given to the Defendant with no further discussion. The Defendant then goes into the courtroom and enters a plea after being informed of his or her rights.”*

As indicated above, the provisions of Model Rule 3.8(b) & (c) that would arguably prohibit a Prosecutor from making a plea offer prior to a *pro se* defendant being advised of their rights are not applicable to Maine Prosecutors.

3. *“On the day of arraignment, is it appropriate to discuss a case with a pro se defendant who has been informed of his or her rights by the court? Does it matter if there is an attorney for the day available? Should we obtain a waiver of the right to counsel before discussing the case?”*

Given the inapplicability of Model Rules 3.8(b) & (c), there is no ethical prohibition under the MRPC that would prohibit a Prosecutor from discussing a case with a *pro se* defendant who has been advised of their rights by the court. If an attorney for the day is available, a Prosecutor should ascertain whether the defendant has spoken with counsel and is represented, or intends to obtain counsel, before discussing the substance of the case. The Maine Rules of Professional Conduct do not specifically require that a prosecutor obtain a waiver of the right to counsel from a *pro se* defendant.

4. *“On the day of dispositional conference, is it appropriate to discuss a case with a pro se defendant who has been informed of his or her rights by the court? Should we obtain a waiver of counsel before engaging in the discussion? Is it better to insist that all negotiations occur before the court?”*

As discussed in the answers to the above questions, Maine’s Rules of Professional Conduct do not prevent a Prosecutor from discussing a case with a *pro se* defendant at any stage in the process; nor do they require that the Prosecutor obtain a waiver of right to counsel from the defendant prior to such discussions taking place.

While Rule 3.8(b) & (c) do not apply to Maine Prosecutors, and while as a result, many of the ethical concerns raised in Opinion #496 by Prosecutors plea bargaining cases with *pro se* defendants are not applicable, the remainder of the Opinion addressing Rules 1.1, 1.3, 4.1, 4.3 and 8.4(a)(c)(d) should provide guidance to Maine Prosecutors for the manner in which they should conduct their plea bargaining discussions with *pro se* defendants.

As indicated above, this opinion is offered by Bar Counsel pursuant to Maine Bar Rule 2(c), and as such, it is an “informal advisory opinion,” and it is not binding. This opinion may be subject to future revision, and, or reversal, by either the Grievance Commission, or the Professional Ethics Commission.

Thank you for your attention to this matter.

Sincerely,

s/Alan P. Kelley

Alan P. Kelley  
Assistant Bar Counsel

APK/apk

TODD R. COLLINS  
District Attorney

STATE OF MAINE

Reply To:

144 Sweden Street   
Caribou, ME 04736-2353  
207-498-2557  
FAX 207-493-3493 \_\_\_\_\_

27 Riverside Drive   
Presque Isle, ME 04769-2730  
207-764-0504  
FAX 207-764-2046 \_\_\_\_\_

26 Court Street, Suite 101   
Houlton, ME 04730  
207-532-4294  
FAX 207-532-1504 \_\_\_\_\_

CARRIE L. LINTHICUM  
Deputy District Attorney

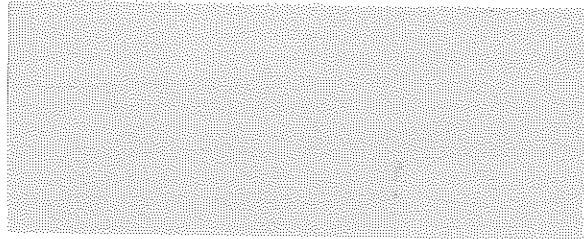


OFFICE OF THE DISTRICT ATTORNEY  
AROOSTOOK COUNTY  
PROSECUTORIAL DISTRICT NUMBER 8

KARI WELLS-PUCKETT  
CHRISTIANA REIN  
MATTHEW HUNTER  
CHARLES E. FYLER II  
Assistant District Attorneys

DATE: May 12, 2020

TO:



I am prepared to offer the following plea recommendation:

OFFENSE

RECOMMENDED DISPOSITION

1. CRIMINAL OUI (CLASS D)

48 hours jail, \$500 fine, 150 day license suspension.

**All fines are increased by court costs.**

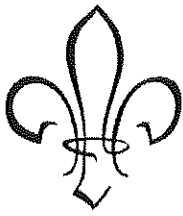
You must appear in court on your scheduled arraignment date.

The Aroostook County District Attorney's Office is committed to the safety of the entire community, including those accused of breaking the law, especially during these trying times. As you know, it is vitally important to the safety of everyone that travel and personal interaction should be limited as much as possible. We are offering you the opportunity to resolve your pending case through the mail. Please review the offer and any attached documents. If you accept the State's offer, simply fill out the forms and return them to the Fort Kent District Court, 139 Market Street, #101, Fort Kent, Maine 04743. Please take the time you need to consider the offer and to consult with an attorney. If you have questions, call the office or send us an email, please do not make any unnecessary travel to our Offices or to the Courts.

You May Not argue for less. This offer expires on 6/15/2020.

\_\_\_\_\_  
ATTORNEY FOR THE STATE

copy: Arresting Officer  
Victim/Witness Advocate



June 26, 2020

Todd Collins  
District Attorney  
Office of the District Attorney  
144 Sweden St.  
Caribou, Maine 04736

**RE: New Language in DA's Office Plea Recommendations**

Dear Todd,

I, joined by Adam Swanson, Neil Prendergast, Dan Umphrey, John Tebbetts, and Jeff Ashby, am reaching out regarding the attached plea recommendation for my client that I received yesterday in the mail. In the recommendation there is a paragraph that discusses how, in the effort of keeping the community “safe” it would be best for defendants to “resolve” their case by mail. All they have to do, according to this letter signed by your Deputy District Attorney, is “simply” fill out the forms and return them to the appropriate court—essentially, these letters are encouraging unrepresented defendants to accept plea offers and enter guilty pleas by mail. While defense attorneys also want to keep our community safe from the spread of COVID-19, this language is troubling to myself and many of the defense attorneys in Aroostook County. Your office’s proposed solution undermines defendants’ inviolable Constitutional rights in the name of “safety,” and is fundamentally inconsistent with M.R.U. Crim. P. 11(a-j). This is not acceptable.

Your letter encourages unrepresented defendants—who are wholly unaware of any of their Constitutionally-guaranteed rights—to waive all rights and enter pleas of guilty and accept the plea offer from the DA’s Office. This even includes plea offers that involve *jail time*. As you are well aware, defendants normally watch a Judicial Branch-produced video at arraignment that explains their rights to them prior to each defendant entering a plea of some sort. If a defendant was not present to watch the arraignment video, the presiding judge will not so much as permit them to speak beyond indicating that they have not seen the video. It is unclear to what extent any rights are being explained. As of the Bench Bar Conference on Tuesday, no Court approved waiver form exists.

As an attorney who covers as Lawyer of the Day, I often must take these defendants aside and explain their Constitutional rights to them prior to their proceeding with their case, even if their intention is to plead not guilty. Our judges will not accept pleas from any defendant unless that defendant has been informed of his or her rights. Period.

The right to be presumed innocent, the right to force the State to prove guilt beyond a reasonable doubt, the right to a jury trial, the right to remain silent, the right to testify, the right to an attorney and to have the State pay for an attorney if the defendant cannot afford one, the right to accept or reject a proposed plea offer—all these rights and more would be obliterated if defendants were allowed to enter guilty pleas, unaware of all the rights they are relinquishing in so doing. A waiver of any Constitutionally-guaranteed right must be done knowingly, intelligently, and voluntarily. If there is *any* question about the validity of a defendant's waiver, "every reasonable presumption should be indulged against . . . waiver." No reasonable jurist, no reasonable attorney would *ever* conclude that a waiver based on your office's letter was at all valid.

We are also very concerned by the fact that your office's letter fails to warn defendants of collateral, and potentially devastating, consequences stemming from their admissions or pleas by mail. As you know, at arraignment, the presiding judge warns defendants and recommends that they speak to an attorney to discuss collateral consequences prior to pleading. This is especially important in Aroostook County, where the inability to cross into Canada can be financially devastating for some defendants. Also, a number of defendants in the St. John Valley are not citizens: a guilty plea to many crimes could result in deportation for non-citizens. The consequences of license suspension and revocation from the Bureau of Motor Vehicle can also be life-altering for someone who has no other means of transportation. Firearms prohibitions would certainly be important to review with any defendant, given the rich history of hunting in the County. As Lawyer of the Day, prior to anyone who speaks with me agreeing to take a plea, I always take the time necessary to explain the various potential collateral consequences of said plea. If I am unsure of the collateral consequences, I refer them to an attorney who can help. Failure to do either of these things constitutes ineffective assistance of counsel: an attorney who fails to advise.

Another issue this raises is that the DA's office does not have to produce discovery materials until the arraignment date, therefore, by the terms of this letter, *pro se* defendants will plead without having any opportunity to review their discovery. Prior to

COVID-19 it was common practice for the DA's office to send offer sheets to defendants and then provide them the discovery at the arraignment. This latest development would deprive defendants of discovery altogether.

This raises another concern that has worried the Defense Bar for years, yet never rose to the level it does now. The offer says explicitly that the defendant "may not argue" for less than is offered. We all know that this is simply untrue and has been untrue for as long as we have worked together. However, this statement, coupled with the new "plea by mail" language creates a situation where an unrepresented person is being told that if they do not admit to guilt, they could be punished more severely. It is a long-standing, well-established principle that a defendant cannot be punished for asserting their Constitutional rights. That is exactly what is being suggested by this letter. To an untrained, unrepresented defendant, that sounds like a threat, or, at the very least, a promise. This is not an idle concern. Many defendants are hesitant to engage the services of the Lawyer of the Day *precisely* because they have received an offer in the mail with this language in it. Many more are reluctant to let the Lawyer of the Day negotiate on their behalf, despite repeated reassurances.

All of these issues combined create a great and unique risk that defendants will assent to pleas without understanding or even being made aware their rights, potentially suffer grievously from collateral consequences that they have not been made aware of, or plead under the mistaken assumption that to argue with the State is to invite harsher punishment. *Pro se* defendants should not need to trade their rights to due process and right to counsel for the State and the courts to more quickly dispose of these cases—particularly when many of these *pro se* defendants could very well be entitled to court-appointed counsel. Your office's letter is interfering with that right, completely and inexplicably.

At this point, we are asking that you cease sending these letters to all defendants immediately. If any defendant has "pleaded" by mail or waived any rights due to their receipt of such a letter, their pleas must be allowed to be withdrawn. To allow this practice to go on unabated is to allow Constitutionally-infirm pleas, made by underinformed people, stand. That is not fair. That is not justice.

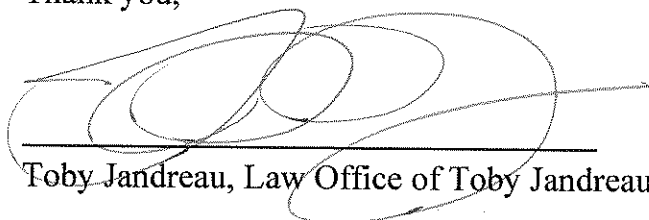
We would ask that your office provide to the Clerk's Office(s) a list of names and docket numbers for all defendants who have been mailed these letters so that the Clerk's office can reschedule these cases for arraignment. Furthermore, this is also to head off the



inevitable tidal wave of post-conviction reviews that will occur, or attacks on predicate offenses at future trials, that will only overwhelm an already overburdened system.

We are copying the local judiciary on this email, as the Constitutional concerns raised and the imposition upon people's liberty interests would be of concern to them as well. This is particularly a concern if the courts need to start scheduling withdrawals of pleas and arraignments for all defendants who have received this or any similar letter. In our opinion, your office's unconstitutional efforts to "streamline" the criminal process in Aroostook County will create more work for everyone.

Thank you,

A handwritten signature in black ink, appearing to read 'Toby Jandreau', is written over a horizontal line. The signature is stylized and somewhat illegible due to the cursive nature of the handwriting.

Toby Jandreau, Law Office of Toby Jandreau, PA

Enclosure

CC: Justice Harold Stewart II  
Justice Stephen Nelson  
Judge David Soucy  
Active Retired Justice Allen Hunter  
Active Retired Judge Ronald Daigle  
Maine Commission on Indigent Legal Services  
Maine Association of Criminal Defense Lawyers  
Maine Board of Bar Overseers  
Aroostook County Defense Bar

TODD R. COLLINS  
District Attorney

STATE OF MAINE

Reply To:

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CARRIE L. LINTHICUM  
Deputy District Attorney

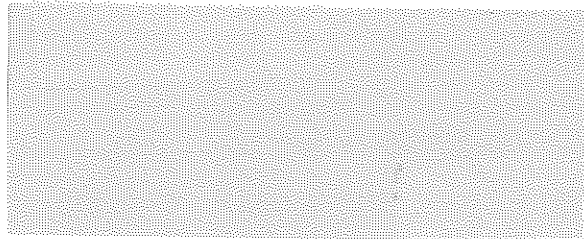


OFFICE OF THE DISTRICT ATTORNEY  
AROOSTOOK COUNTY  
PROSECUTORIAL DISTRICT NUMBER 8

KARI WELLS-PUCKETT  
CHRISTIANA REIN  
MATTHEW HUNTER  
CHARLES E. FYLER II  
Assistant District Attorneys

DATE: May 12, 2020

TO:



I am prepared to offer the following plea recommendation:

OFFENSE

RECOMMENDED DISPOSITION

1. CRIMINAL OUI (CLASS D)


48 hours jail, \$500 fine, 150 day license suspension.

**All fines are increased by court costs.**

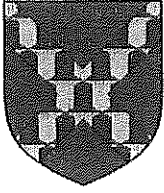
You must appear in court on your scheduled arraignment date.

The Aroostook County District Attorney's Office is committed to the safety of the entire community, including those accused of breaking the law, especially during these trying times. As you know, it is vitally important to the safety of everyone that travel and personal interaction should be limited as much as possible. We are offering you the opportunity to resolve your pending case through the mail. Please review the offer and any attached documents. If you accept the State's offer, simply fill out the forms and return them to the Fort Kent District Court, 139 Market Street, #101, Fort Kent, Maine 04743. Please take the time you need to consider the offer and to consult with an attorney. If you have questions, call the office or send us an email, please do not make any unnecessary travel to our Offices or to the Courts.

You May Not argue for less. This offer expires on 6/15/2020.

  
\_\_\_\_\_  
ATTORNEY FOR THE STATE

copy: Arresting Officer  
Victim/Witness Advocate



## Prendergast Law Office, NJP Law, LLC

---

*Neil J. Prendergast, Esq*  
*(207) 316-4943*  
[www.njplawllc.com](http://www.njplawllc.com)

*PO Box 263*  
*73 Market Street*  
*Fort Kent, ME 04743*

June 26, 2020

Todd Collins  
144 Sweden Street  
Caribou, ME 04735

**RE: New Language in DA's Office Plea Recommendations:**

I, Neil J. Prendergast, the undersigned do hereby join Toby Jandreau in his letter of today's date expressing concerns regarding the current plea recommendation process.

Sincerely,

Neil J. Prendergast

Adam P. Swanson, Esquire  
aswanson@swansonlawpa.com

Cassie Rodgers, Esquire  
croddgers@swansonlawpa.com



487 Main Street, Suite 1  
Presque Isle, ME 04769  
Tel: (207) 768-5800  
Fax: (207) 768-5801  
www.swansonlawpa.com

Friday, June 26, 2020

Todd Collins, DA  
AROOSTOOK COUNTY DISTRICT ATTORNEY'S OFFICE  
144 Sweden Street  
Caribou, ME 04736

**RE: Plea offer recommendations to *pro se* defendants**

Todd:

Swanson Law, P.A. joins Toby Jandreau in his letter expressing concerns regarding your office's plea recommendation process.

Sincerely,

SWANSON LAW, P.A.

A handwritten signature in black ink, appearing to read "Adam P. Swanson", with a long, sweeping horizontal stroke extending to the left.

Adam P. Swanson, Esq.

RICHARD D. SOLMAN  
SCOTT G. HUNTER  
DAN P. UMPHREY

LAW OFFICES  
**SOLMAN & HUNTER, P.A.**  
709 MAIN STREET  
P.O. BOX 665  
CARIBOU, MAINE 04736

DAVID SOLMAN (1932-1965)  
RICHARD N. SOLMAN (1955-2007)  
ROBERT H. PAGE (1970-1987)

rsolman@solmanhunter.com  
shunter@solmanhunter.com  
dan\_umphrey@solmanhunter.com

Telephone 207- 496-3031  
Facsimile 207- 498-2258

June 26, 2020

DA Todd Collins  
144 Sweden Street  
Caribou, ME 04736

RE: New Language in Plea Offers

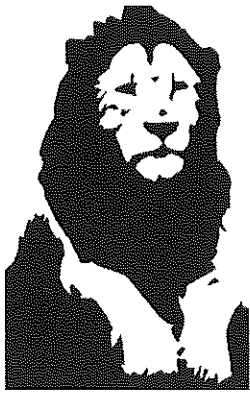
Dear Todd:

I, Dan Umphrey, Esq., do hereby join Toby Jandreau, Esq. in his letter of even date herewith expressing concerns about regarding your current plea recommendation process.

Sincerely,



DAN P. UMPHREY



# Tebbetts Law Office, LLC

John W. Tebbetts, Esq.  
Attorney at Law

June 26, 2020

Todd Collins  
District Attorney  
Office of the District Attorney  
144 Sweeden Street  
Caribou, Maine 04736

RE: Pro Se Defendant Letter

Dear Todd,

I share all the concerns raised in the letter from Toby Jandreau regarding the plea offers made to *pro se* defendants, and join his letter.

Sincerely,

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John W. Tebbetts, Esq.  
Maine Bar No.: 005453

cc: file

**(7.)**

**Summary of Complaints  
about Attorneys**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**TO:** MCILS COMMISSIONERS  
**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR  
**CC:** ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR  
**SUBJECT:** COMPLAINT SUMMARY  
**DATE:** JULY 2, 2020

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At the last meeting, Chair Tardy requested that staff prepare a summary of complaints received about attorney performance and how the staff has dealt with those complaints for the last several years. The summary is attached.



## **2018**

1 - complaint received by Resource Counsel from a DA. Attorney was contacted by Commission staff and instructed to utilize resource counsel

8 – client feedback form received with complaint, attorney notified of complaint, attorney submitted a satisfactory response, no follow up action needed

1 – client emailed complaint, attorney contacted and instructed to contact client, staff confirmed with client that attorney followed through

1 - complaint received from superintendent of psychiatric hospital, attorney notified of complaint, attorney acknowledged problematic behavior and agreed to change their practices at the hospital

1 – complaint received from a clerk, attorney notified of complaint, staff instructed attorney to provide additional notice to clerk's office

1 - client feedback form from LOD appearance, attorney notified of complaint, attorney counseled on better practices

1- client emailed complaint, staff spoke to client, attorney notified of complaint, issue with attorney and client resolved

## **2019**

5 – complaint included on a notice of appointment forwarded by successor counsel asking for case to be approved, attorney notified of the complaint, attorney submitted a satisfactory response, no follow up action needed

1 – client complaint received by phone, staff emailed attorney with summary of complaint, attorney relayed that client was supervising attorney's client, staff sent supervising attorney an email with a summary of the complaint, supervising attorney responded that office will work on improving the recording and documentation of client communications in the file

1 – complaint received from GAL about attorney in a PC case, staff spoke to client, attorney informed of complaint and instructed on next steps, staff followed up with client to ensure issue was resolved

5 – client feedback form received with complaint, attorney notified of complaint, attorney submitted a satisfactory response, no follow up action needed

3 - complaints received from superintendent of psychiatric hospital, attorney notified of complaint, after discussion with staff about potential action, attorney voluntarily withdrew name from rosters

1 – client complaint received on feedback form, attorney no longer on rosters

1 – client complaint letter sent to staff, attorney notified of complaint, attorney submitted a satisfactory response, no follow up action needed

1 – client complaint email sent to staff, attorney notified of complaint, attorney submitted a satisfactory response, no follow up action needed

## **2020**

1 – client feedback form received with complaint, attorney notified of complaint and instructed to get in touch with client, client updated attorney with new phone number

1 – parent of client complaint received by phone, staff emailed attorney with summary of complaint and followed up with phone calls to attorney and client’s parent, attorney connected with client and resolved issue

1 – complaint received by phone from attorney, attorney notified of complaint and instructed to contact client, attorney withdrew from the case, review of attorney’s overall performance is ongoing

2 – client feedback form received with complaint, attorney notified of complaint, attorney submitted a satisfactory response, no follow up action needed

1 – client complaint letter sent to staff, attorney notified of complaint, attorney submitted a satisfactory response, no follow up action needed

1 – complaint received by email from screener, attorney notified of complaint, waiting on a response

1 – complaint received by from member of the legislature, attorney notified of complaint, attorney has submitted a response, decision is pending

3 – complaint letter sent to the court asking for new counsel and forwarded to staff, attorney notified of the complaint, attorney submitted a satisfactory response, no follow up action needed

2 – complaint letter sent to the court asking for new counsel and forwarded to staff, attorney notified of the complaint, waiting on a response

1 – complaint letter sent to the court asking for new counsel and forwarded to staff, attorney notified of the complaint, attorney submitted a response, attorney counseled on better practice going forward

2 - Staff received 2 complaint letters that were originally sent to a member of the commission, attorney notified of complaints and both have responded, complaining defendants and both attorneys interviewed by staff, matters remain pending

**(8.)**

# **Training RFP Update**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**TO:** MCILS COMMISSIONERS  
**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR  
**CC:** ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR  
**SUBJECT:** TRAINING RFP  
**DATE:** JULY 2, 2020

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The Commission received one proposal in response to its RFP regarding a 5-day training for new attorneys joining the roster. Chair Tardy has designated himself and Commissioner Churchill, together with the Executive Director and Deputy Executive Director, as the review committee required by the State's purchasing rules. The review committee will be reviewing the proposal and expects to have a recommendation for the full Commission to be taken up at the Commission's meeting in August.