

**MCILS**

**February 25, 2020  
Commissioner's Meeting  
Packet**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**FEBRUARY 25, 2020**

**COMMISSION MEETING**

**JUDICIARY COMMITTEE ROOM, ROOM 438, STATEHOUSE, AUGUSTA**

**AGENDA**

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- 1) Approval of February 11, 2020, Commission Meeting Minutes
- 2) Report of Sub-Committee Activity and Next Steps Discussion
- 3) LOD Staffing
- 4) Financial Screener Status
- 5) Supplemental Budget Update
- 6) Juvenile Defense Grant
- 7) Public Comment
- 8) Set Date, Time and Location of Next Regular Meeting of the Commission
- 9) Executive Session, if needed (Closed to Public)

**(1.)**

**February 11, 2020  
Commission Meeting  
Minutes**

**Maine Commission on Indigent Legal Services – Commissioners Meeting  
February 11, 2020**

**Minutes**

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

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

<b>Agenda Item</b>	<b>Discussion</b>	<b>Outcome/Action Item/Responsible Party</b>
Approval of the January 14, 2020 Commission Meeting Minutes	No discussion of meeting minutes.	Commissioner Churchill moved to approve. Commissioner Katz seconded. All voted in favor. Approved. Commissioners Schneider and Zmigrodski were not present for the vote.
Operations Reports Review	<u>January 2020 Operations Report:</u> 2,626 new cases were opened in the DefenderData system in January. This was a 76 case increase over December. The number of submitted vouchers in January was 3,053, an increase of 88 vouchers from December, totaling \$1,442,853, an increase of \$29,000 over December. The average price per voucher was \$501.35, up \$34.10 per voucher from December. Probate and Post-Conviction Review cases had the highest average vouchers. There were 9 vouchers exceeding \$5,000 paid in January. 132 authorizations to expend funds were issued in January, and we paid \$120,633 for experts and investigators, etc. The monthly transfer from the Judicial Branch for counsel fees for January, which reflects December's collections, totaled \$61,320, down approximately \$42,000 from December. Four attorney complaints were received in January. Commissioner Katz requested that staff also provide a year-over-year analysis as well.	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
<p>Report of Sub-Committee Activity and Next Steps Discussions</p>	<p>Each subcommittee gave a status update of their group's efforts to date:</p> <p><u>Financial</u></p> <p>Commissioner Katz stated that the financial subcommittee was looking at what systems could be put in place for increased scrutiny on vouchers, including getting details about attorney work on non-MCILS cases. Commissioner Carey stated that the high billing alert has only been partially implemented due to the thorough and manual process that is involved in tracking responses and that staff is currently unable to put a hold on payment for vouchers that have been flagged. He noted that responses have only been received for about a quarter of the alerts. Commissioner Katz emphasized that the Commission is understaffed. Director Pelletier relayed that he had preliminary discussions with the vendor about a technical solution. The system could be changed to require daily timesheet entries, so if an attorney exceeded 12 hours for an individual day, they would get an alert and the system would preclude time on that timesheet from being distributed to the voucher. Commissioner Katz noted that the subcommittee will meet again and will have specific proposed changes for the next meeting.</p> <p><u>Public Defender</u></p> <p>Commissioner Schneider stated that the public defender subcommittee members had had discussions with officials in Massachusetts and visited the public defender offices in New Hampshire. He noted that the subcommittee is inclined to recommend a public defender office starting in one to three counties, Cumberland, Kennebec, and Penobscot, and then expand elsewhere. He believes that the New Hampshire model could work well in Maine, noting that it provides a 5-week training program for new lawyers, constant mentorship, presence in the courthouse, no pressure to bill, no gap in assignments, and no need to review vouchers. Commissioner Cummins, participating by telephone, commented that there might be backlash to a public defender proposal, but he believes the perception will change after attorneys learn about the proposals and how it will benefit the system. Commissioner Carey asked about having the same set of metrics for both systems – public defender and assigned counsel – in order to compare the two. Commissioner Schneider acknowledged that as a potential issue. Commissioner Schneider stated that the group anticipates having</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>a memo and presentation ready for the next Commission meeting. Chair Tardy cautioned that the Commission must make sure it has the legal authority and have the legislative buy-in before acting on any proposals. Commissioner Schneider agreed that the Commission must have legislative buy-in and suggested an RFP with a target date so it could be part of the biennial budget discussion.</p> <p><u>Child Protective and Involuntary Commitment Practice Standards</u></p> <p>Commissioner Zmigrodski stated that the child protective subcommittee has worked on revising the current practice standards, including adding a new section on ineffective assistance of counsel. She relayed that the main suggestion for the child protection subcommittee will be more attorney training and more hands-on observation and participation in court proceedings. She stated that a resource counsel for involuntary commitment practitioners would be a recommendation as well as the creation of general standards for involuntary commitment cases. She cautioned that the standards would need to be general since each facility is different on how attorneys get information and how attorneys meet with patients. Commissioner Zmigrodski stated that she and Commissioner LeBrasseur agreed that the criminal and civil divisions of the Commission should be split up.</p> <p><u>Criminal Practice Standards</u></p> <p>Commissioner LeBrasseur stated that the criminal standards subcommittee looked at other jurisdictions' standards as a guide to make our standards better and focused on addressing the oversight issue and the issues surrounding the lawyer of the day program. He noted that the lawyer of the day standards could be implemented right away. Commissioner Schneider noted that in New Hampshire, the first appearance is not meant for defendants to plead guilty and that this shift would be a significant culture change in Maine. Commissioner Churchill noted that during a meeting with the Judicial Branch on the lawyer of the day program, the Court seemed receptive to change and potentially less guilty pleas at arraignment. Commissioner LeBrasseur cautioned that implementation of any new standards would have to coincide with increased staffing at the Commission and an increase in the hourly rate. He noted that 40 attorneys had left the rosters in the last 4 months and sees this as an hourly rate issue. He believes that the billing rules must change and allow attorneys to be</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>paid on a weekly basis. Commissioner Carey stated that he was not comfortable with attorneys having to carry the cost through the end of the case but was wary of switching to paying on a weekly basis. Commissioner Carey suggested a phased approach and asked what changes are recommended now and what changes are aspirational for the next budget.</p> <p><u>Training</u></p> <p>Chair Tardy stated that the training subcommittee will propose a 5-day training program for new lawyers, to coincide with bar results and the court's administrative week. Chair Tardy stated that the subcommittee recognized that establishing a new training program would require a significant amount of staff time that the current staff does not have. At the next meeting, he will ask for a vote on a proposal that the Commission contract with a consultant to develop and implement the 5-day new lawyer training program. Chair Tardy reminded the Commissioners that the Commission would have the right to reject any proposal under the RFP process. Commissioner Churchill added that the new lawyer training was a good place to start and that the Commission will also need to tackle the specialized panel training. Commissioner LeBrasseur questioned why the new attorney hire could not organize the training. Chair Tardy stated that he hopes that the new training is implemented for Fall 2020 so that is why the subcommittee is suggesting asking for outside help now.</p>	
Assistance of Counsel	John Pelletier announced that Assistant Attorney General Megan Hudson has been assigned to assist the Commission.	
Supplemental Budget Update	<p>Director Pelletier reviewed the Governor's recently released supplemental budget, which included funding for the current fiscal year funding gap of \$2,036,206. The budget did not include \$2.8 million to fund the gap for next fiscal year nor did it include funding for two new staff positions. Director Pelletier informed the Commissioners that the Appropriations Committee invited the Commissioners to discuss the budget on Thursday, February 13.</p> <p>Chair Tardy requested staff calculate the budget impact for increased lawyer</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	of the day ratios and potential consultant costs.	
Somerset County Statistics	<p>Director Pelletier reviewed his analysis of the vouchers paid on Somerset County cases. He found that Somerset County criminal cases average well below nearly all other UCD courts, yet Somerset has more cases than 8 other UCD courts, so the low average is not explained by the size of the docket. Moreover, the new cases average lower than the carry-over cases from the contract, \$205.10 versus \$273.47 per voucher. Director Pelletier explained that most of the new cases are being handled by attorneys who also practice in Augusta, which has a much more typical average cost per case. Commissioner LeBrasseur expressed some concern in the decrease in already low cost when attorneys are traveling more so even less time is being spent on cases. Commissioner Carey stated that he is interested in working on this further with staff.</p>	
Public Comment	<p><u>Zachary Heiden, Esq.</u>: Attorney Heiden thanked the subcommittees for their work. He reminded the Commission that oversight and quality control is the state's obligation and is not dischargeable and cannot be contracted away. Attorney Heiden recalled Commissioner LeBrasseur's comment about additional obligations under the criminal standards subcommittee's proposals and agreed with his call for an increase in the hourly rate to go along with the additional obligations.</p> <p><u>Cynthia Dill, Esq.</u>: Attorney Dill suggested that the Commission review several areas of concern, including partially indigency determinations, expert attorney payment rates that are higher than the normal payment rate, and the rates paid to vendors.</p> <p><u>Robert Ruffner, Esq.</u>: Attorney Ruffner urged the Commission to consider an immediate increase in the number of lawyer of the day attorneys. Attorney Ruffner stated that an RFP for a public defender non-profit could include a requirement of following best practices. Attorney Ruffner stated that the Commission has off-loaded supervision onto attorneys and that a public defender has built-in supervision. He</p>	



Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	concluded that the lack of Commission independence results in hampering some of the decisions it can make.	
Executive Session	Following the subcommittee reports, Chair Tardy stated that there would be a need for two executive sessions. Commissioner Carey made a motion to move into executive session to consult with counsel on the Commission's legal rights and duties and pending or contemplated litigation pursuant to 1 MRS section 405, subsections (6)(E) and (6)(A). Commissioner Katz seconded. All voted in favor. After a discussion, the Commission briefly moved out of executive session and Commissioner Carey made a motion to move into a second executive session to consult with counsel concerning the Commission's legal rights and duties, pursuant to 1 MRS section 405, subsection 6(E). Commissioner Katz seconded. All voted in favor. Commissioner Katz made a motion to move out of executive session and Commissioner Carey seconded.	
Adjournment of meeting	The next meeting will be on February 25, 2020 at 9 am.	

**(2.)**

**Sub-Committee Reports  
and Next Steps Discussion**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**TO:** MCILS COMMISSIONERS  
**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR  
**CC:** ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR  
**SUBJECT:** SUB-COMMITTEE REPORTS AND NEXT STEPS DISCUSSION  
**DATE:** FEBRUARY 20, 2020

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Practice Standards

Draft practice standards related to criminal cases were emailed to Commissioners on February 10, 2020, prior to the last meeting. Commissioner LeBrasseur made the draft standards available to criminal defense attorneys, and the Commission has received a number of comments. The comments attached.

Work continues on draft practice standards related to child protective cases and civil commitment cases. Any updated draft will be forwarded to Commissioners, and copies will be available at the meeting.

Public Defender Office

Commissioner Schneider stated at the last meeting that the subcommittee would prepare a memo outlining its proposal to be available at the upcoming meeting.

Financial Oversight

Commissioners Katz and Carey stated at the last meeting that the sub-committee intended to meet again and would have recommendations available at the upcoming meeting.

Training

The sub-committee recommended instituting a 5-day minimum standards training and hiring a consultant to design and implement the training. The Commission reviewed a draft RFP for these consultant services. Attached is an updated draft RFP (without pages that are entirely boilerplate) for final consideration at the upcoming meeting.

Unrelated to subcommittee work, but relevant to a discussion of potential next steps, attached you will find a copy of a letter addressed to Commissioner Katz and mailed to the Commission's central office. It is included here for your review and discussion.

Pratt & Simmons, P.A.  
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Camden, Maine 04843  
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Ellen Simmons, Esq.: ellen@midcoastlaw.com  
Telephone: (207) 236-0020 - Facsimile: (888) 848-9479

February 13, 2020

Joshua Tardy, Esq. Commission Chair  
Maine Commission on Indigent Legal Services  
154 State House Station  
Augusta, ME 04333

To Commissioner Tardy and the other members of the Commission:

I am generally in support of the proposed criminal practice standards that were articulated at the February 11, 2020 Commission meeting which included lawyer of the day standards, the mentor panel qualifications, workload standards, and qualifications for specialized panels.

However, I believe these standards will result in an unattended consequence that has not been addressed. In the rural counties where I practice there is a severe shortage of qualified court appointed attorneys. Based on speaking to fellow court appointed practitioners throughout the State this shortage is not limited to the areas where I practice. If the proposed standards are implemented I believe this will result in even less attorneys doing court appointed work in rural counties.

My recommendation to the Commission is for the formation of a subcommittee to address the ongoing issue of lack of court appointed counsel and the potential effects these practice standards may have on rural practitioners or, in the alternative, for all of the existing subcommittees to report on how their proposals would impact rural practice.

Thank you.

/s/

Jeremy Pratt, Esq.

## **Maciag, Eleanor**

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**From:** Pelletier, John  
**Sent:** Wednesday, February 19, 2020 8:25 AM  
**To:** Maciag, Eleanor  
**Subject:** FW: Comments on MCILS deliberations

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**From:** Marcus Wraight <marcus@wraight.law>  
**Sent:** Tuesday, February 18, 2020 11:08 PM  
**To:** Pelletier, John <John.Pelletier@maine.gov>; bob@mainecrimes.com  
**Subject:** Comments on MCILS deliberations

**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.

Mr. Pelletier:

Below are my comments to the commission - for what they're worth as a new attorney - on the current discussions going on about reforms. I've listened online (in full) or attended the last three commission meetings and read the 6AC report. This email has sat in my draft folder for some time and undergone many revisions because while I want to continue to be collegial, I also want to stress important points in the most effective way. I value what reputation I have and what reputation I want to create. So this is hard. I've tempered my comments accordingly. Apologies in advance for being so long-winded.

Firstly, the positive - and please don't mistake my brevity for lack of enthusiasm. I love the improved emphasis on better training for new attorneys, the idea of more co-counsel work to better mentor new and existing attorneys (as you may know, John, I'm doing this now) and this is something I've heard other newer attorneys mention with considerable enthusiasm. I love the emphasis on providing improved public confidence in financial oversight (the media narrative of greedy attorneys bilking taxpayers at \$60/hr is laughable), and I love that reform generally is happening - particularly the Lawyer Of the Day (even if not doing it in its present form for my own ethical reasons is at professional cost in getting fewer assigned cases). I also welcome Bob LeBrasseur's and Sarah Churchill's suggestion of paying and/or timekeeping weekly or biweekly. Private attorneys should not indirectly subsidize the State of Maine with delayed payment of any kind (whether vouchers or a budget shortfall) and certainly not a subsidy beyond the meager \$60/hr rate, which must also be addressed. Thank you Bob LeBrasseur particularly for, again, addressing that.

The Maine bar has been very supportive and on the whole doors and hearts have been open to taking newbies like me under their wing one way or another, or giving aid and comfort when it is asked for. I love this state for the welcome it has given me as someone from away. It's quite disarming for a fighter like me, used to the sharp elbows of Massachusetts!

Now, a few observations:

This one feels like the most pressing. There needs to be better continued education and assessment of existing attorneys appointed to indigent cases. This is absolutely vital, but appears to be being overlooked based on what I've heard from the last three meetings.

**Assessment** - a vital part of what should also be the commission's work — that had just a few minutes of discussion at the last meeting — is the lack of any ongoing effectiveness assessment of currently rostered attorneys. This strikes me as an important omission in addressing the heart of the 6AC's concerns. Continued assessment is a fundamental factor in the calculus of monitoring what constitutional effective indigent defense is being provided by the State of Maine every day. It seems to be being overlooked in current deliberations (apologies if that is not the case) and needs addressing urgently. CPCS in Mass does it for private Bar Counsel and Maine should be doing it right now. It makes sure guidelines are followed and standards maintained, and that clients get a decent defense because those on the roster have been scrutinized, monitored or assessed.

**Training** - a week-long course, while considerably better than what exists now, is still sub-optimal. Newly-rostered attorneys are expected to pay towards the cost of what they are required to undertake now (is it a subsidized cost?), and that seems reasonable for a longer training course too - and I would suggest that (perhaps) in return for that demonstration of commitment (particularly if selected for places based on need and geography), new attorneys are allotted a minimum number of mentored cases - however modest - to offset that cost and open up the bar (with improved continued oversight to thin out those not providing it). In the meantime I'm currently trying to attend one of the two three-week trial boot camps planned for the summer in other states - at my own expense - to make up for the training I feel I should have to go through as a newly rostered attorney as a minimum standard in Maine. Clients and my representation will be much better for it. I have felt woefully unprepared, but I know that and I'm putting in the work to get there (with legal research, mentoring with MCILS support, and the courses mentioned). Any additional CLE help is not systemic and merely ad hoc, or given only to those who ask - rather than be mandatory. Ongoing systemic mandatory training for already rostered attorneys was another 6AC concern that does not appear to be addressed.

**Public defender model**. In law school I interned at CPCS in Massachusetts, where I worked for some of the best lawyers I've ever seen, and interned with a judge who was that rare breed - a legendary former public defender / defense attorney. Why? My passion for this work, and court time to get practical experience and learn from the best. CPCS is a brilliant organization but only because the Commonwealth of Massachusetts regards civil rights and criminal defense as vital (in legislation and via State constitutional protections, as well as adequate funding) - with political and legislative support beyond CPCS to back up that commitment. The same applies in my country of birth, the UK (for instance, I can't imagine a Police And Criminal Evidence Act ever becoming law in Maine). The UK also uses the Maine-type model of providing private, publicly-recompensed lawyers. It isn't the form that matters but political support far beyond the commission's discussions, otherwise all the good work done by commissioners to date will be for naught without it. I fear this is the case (as shown by the highly questionable ineligibility for indigent defense if a prosecutor does not seek a term of imprisonment). Justice isn't cheap and criminal defense needs broader support beyond MCILS. It isn't a box to check. Contracting this problem out to a PD and punting it to any new organization will only buy time and allow blame for any claims of ineffectiveness against the State to be merely diverted and delayed under the guise of tackling the report's concerns.

I hope these comments and suggestions are helpful as you deliberate. Who am I but a lowly newcomer? So take these comments for what they are worth on that basis.

With respect,  
Marcus Wraight, Esq.

PS. Comments have been made about "dabbling" in this work or using assigned cases to "subsidize" a practice. Aside from ignoring the effectiveness of that representation (even big firm attorneys will work for nothing on occasion doing cases for a good cause, right?) perhaps I could offer an alternative hypothesis, based on my own situation as it relates to the "dabbling" accusation. Those of us who are new and hungry and committed to being great criminal defense attorneys, willing to push back and be the zealous advocates defendants are constitutionally required to have, are shut out - only to be thrown an occasional bone. In the meantime, we are forced to look for other work (and market our services in a practice, even doing other areas of law) to subsidize our actual passion for criminal defense (and is another reason to assess those currently rostered to get only the most committed and objectively effective). But, what do I know?

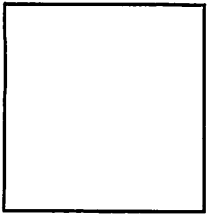
Marcus Wraight

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**Address:** 357 Elm St, Biddeford, ME 04005



[wraight.law](http://wraight.law)

**Pelletier, John**

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**From:** bob@mainecrimes.com  
**Sent:** Tuesday, February 18, 2020 10:44 AM  
**To:** Pelletier, John  
**Subject:** Fwd: Mcils

**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.

Hello John,

Can you include this for public comment at the next meeting.

Begin forwarded message:

**From:** "Meegan J. Burbank" <[meegan@berryandburbank.com](mailto:meegan@berryandburbank.com)>  
**Subject:** Mcils  
**Date:** February 18, 2020 at 8:00:16 AM EST  
**To:** "[bob@mainecrimes.com](mailto:bob@mainecrimes.com)" <[bob@mainecrimes.com](mailto:bob@mainecrimes.com)>

Hi Bob,

If we may be asked to report our time daily or weekly, what is the chance you might be able to request that the time keeping system be upgraded to one that includes an app for our phones so that we can just log the time right at the courthouse, or after leaving a jail visit, for example?

Thank you,  
Meegan Burbank

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## **Maciag, Eleanor**

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**From:** Pelletier, John  
**Sent:** Thursday, February 20, 2020 8:02 AM  
**To:** Maciag, Eleanor  
**Subject:** FW: Attorney Winger's Preliminary Comments on Proposed MCILS Standards & Changes

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**From:** Lawrence Winger <lawrence.c.winger@gmail.com>  
**Sent:** Wednesday, February 19, 2020 7:42 PM  
**To:** Pelletier, John <John.Pelletier@maine.gov>  
**Subject:** Attorney Winger's Preliminary Comments on Proposed MCILS Standards & Changes

**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.

John:

Please accept this email as my submission to you and the Commission of my preliminary comments on the various proposed MCILS standards and changes.

Re: Proposed Child Protection Standards - No comment. I don't handle child protection cases and have no plans to do so in the future.

Re: Proposed Civil Commitment Standards - No comment. I don't handle civil commitment cases and have no plans to do so in the future.

Re: Proposed Criminal Practice Standards - These are quite long and detailed. In general, I agree with the stated standards, but I think some of them are quite unrealistic or impractical. For example, the very first standard mentions "interviews" within 7 days or 30 days. Good goal, but sometimes that's not realistic or necessary. Also, the preference for "in-person interviews" is understandable, but with many clients, telephone calls, emails, or exchanges of text messages are much more useful and practical and sufficient; with many clients, phone calls and emails are no problem, but arranging "in-person interviews and discussions" can be very difficult. Many clients face extreme transportation or logistical limitations. A preference for "private, quiet and safe/neutral setting for meetings" is understandable, but many meetings occur inside or just outside the courthouse. Etc.

Re: Proposed General Standards (document "Draft of complete standards 2-10-2020.docx") - Same comments as above to Criminal Practice Standards. General Standards B.19 & 20 talk about a "motion bank" and a "transcript bank": Are we supposed to be doing that now? I have no objection to this proposal, but I think much more thought needs to go into how these programs would actually operate. If all rostered attorneys were regularly sending in their motions and transcripts, that would be a ton of material. Can current MCILS staff effectively manage these programs?

NOTE: The Proposed General Standards are quite long and very detailed. Some proposed standards seem very sensible, some seem completely unrealistic and/or excessively burdensome or requiring a major investment of resources far beyond current resources and practices, and some I just don't understand. I will separately comment further on specific proposals.

Re: Proposed Increases in Training and Oversight. No objection in general, but some of the specific proposals seem unrealistic or excessively burdensome.

Re: Proposed Increase in Rostered Attorney Compensation. Yes, of course. \$60 / hour is ridiculously low.

Re: Proposed "STANDARDS OF PRACTICE FOR ATTORNEYS WHO REPRESENT PARENTS IN CHILD PROTECTIVE CASES"  
- No comment. I don't handle child protection cases and have no plans to do so in the future.

Thank you,

Larry.

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Lawrence C. Winger, Esq.  
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Portland, ME 04101  
Tel 207-807-0333  
Fax 207-772-0385  
Cell 207-807-0333  
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## Maciag, Eleanor

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**From:** Pelletier, John  
**Sent:** Thursday, February 20, 2020 8:01 AM  
**To:** Maciag, Eleanor  
**Subject:** FW: Attorney Winger's Comments on Proposed MCILS Lawyer of the Day Specialized Panel

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**From:** Lawrence Winger <lawrence.c.winger@gmail.com>  
**Sent:** Thursday, February 20, 2020 7:07 AM  
**To:** Pelletier, John <John.Pelletier@maine.gov>  
**Subject:** Attorney Winger's Comments on Proposed MCILS Lawyer of the Day Specialized Panel

**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.

John:

I support the concept of lawyer of the day specialized panels and the desire to improve the training and quality of attorneys serving as lawyers of the day, but I think some of the provisions in the draft standards for the lawyer of the day specialized panels are in error.

First of all, the LOD standards should distinguish between lawyers of the day for adult walk-in arraignments and lawyers of the day for adult in-custody arraignments. That is the MCILS current rostering practice, and that should continue. At least in Cumberland County, "walk-ins" and "in-custodies" are completely separate and distinct and totally different. The walk-in cases are almost all misdemeanors or minor felonies, many are "no jail" cases, and all the defendants in such cases are not in custody. The in-custody cases are completely different and typically much more serious.

Second, I have no comment on the Juvenile client LOD standards because I don't handle juvenile cases and have no plans to do so in the future.

Third, for Adult client LOD standards, I have these comments (inserted after the draft provisions):

1. Attend and complete the minimum training standards for LOD. If MCILS has not established a minimum training standard for adult LOD the attorney must complete 6 CLE hours dedicated to felony defense representation, felony sentencing in Maine, sentencing alternatives, probation in Maine, collateral consequences of felony convictions or similar topics within the last 2 years. These CLE requirements are only applicable if MCILS certified CLE classes are provided in Maine that meet these requirements or if MCILS authorizes and pays for attendance, travel, 3 meals, accommodations, and 8 hours of daily pay at the hourly rate to attend an out of state CLE that meets all these requirements when such CLEs are not offered in Maine;

COMMENT: This "felony-focused training" is appropriate for in-custody LODs, not walk-in LODs.

2. Must have shadowed with a MCILS staff attorney or mentor rostered attorney for a minimum of 2 occasions. Shadowing means the shadowing attorney must be present at all time with the MCILS staff attorney or mentor rostered

attorney from the time they arrive at court until the LOD proceeding is concluded including the review of discovery. Attorneys doing the shadowing shall be paid for their time

COMMENT: Agreed.

In item 3 the reference in this sentence to the juvenile LOD roster should be deleted: "Once the necessary additional training is completed the attorney must perform 1 adult LOD assignment with a MCILS staff attorney or mentor rostered staff attorney and be recommended for placement on the juvenile LOD roster by the MCILS staff attorney or mentor rostered staff attorney before they can be a rostered adult LOD attorney." Should say "be recommended for placement on the adult LOD roster."

4. Have concluded a minimum of 100 MCILS assigned cases. Cannot do shadowing until this provision is met;

COMMENT: This is definitely an excessive and excessively restrictive requirement, especially for adult walk-in LODs. Shadowing should be allowed AND ENCOURAGED for newly rostered attorneys. A 100 case minimum is completely unnecessary and will excessively restrict the pool of potential LOD attorneys.

5. Must be on the felony panel

COMMENT: Only for the in-custody LODs, not the walk-in LODs.

6. Must recertify every year that all requirements are met to remain on the panel. It is sufficient for recertification purposes that the rostered specialized panel attorney has met any specialized panel CLE requirements to remain certified for the adult LOD panel except the same CLE panel requirements cannot be repeated in 2 consecutive years.

COMMENT: Agreed, except for the "CLE no repeat in 2 consecutive years" limitation, which is an unrealistic limitation, given the very likely lack of LOD CLE training in Maine.

Please contact me if you have any questions concerning my above comments.

Thanks,

Larry.

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Lawrence C. Winger, Esq.  
75 Pearl Street, 2nd Floor  
Portland, ME 04101  
Tel 207-807-0333  
Fax 207-772-0385  
Cell 207-807-0333  
Email [lawrence.c.winger@gmail.com](mailto:lawrence.c.winger@gmail.com)

## **Maciag, Eleanor**

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**From:** Pelletier, John  
**Sent:** Thursday, February 20, 2020 8:01 AM  
**To:** Maciag, Eleanor  
**Subject:** FW: Attorney Winger's Comments on Proposed MCILS Post-Conviction Review Panel Standards

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**From:** Lawrence Winger <lawrence.c.winger@gmail.com>  
**Sent:** Wednesday, February 19, 2020 9:34 PM  
**To:** Pelletier, John <John.Pelletier@maine.gov>  
**Subject:** Attorney Winger's Comments on Proposed MCILS Post-Conviction Review Panel Standards

**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.

John:

My comments on the proposed Post-Conviction Review Panel Standards are inserted into the draft as follows:

12. Post-Conviction Review. In order to be rostered for Post-Conviction Review assignments for adult or juvenile clients an attorney must:

a. Be on the roster for the case type applicable to the conviction being challenged on post-conviction review;

COMMENT: Agreed in general, but this requirement should be waivable by the Executive Director to account for attorneys who are otherwise well-qualified to handle PCR matters and the particular underlying crimes are actually not important to the PCR process.

b. Attend and complete the minimum training standards for the appellate panel. If MCILS has not established a minimum training standard for the appellate panel the applicant must complete 6 CLE hours dedicated specifically to post-conviction review or ineffective assistance of counsel claims. These CLE requirements are only applicable if MCILS certified CLE classes are provided in Maine that meet these requirements or if MCILS authorizes and pays for attendance, travel, 3 meals, accommodations, and 8 hours of daily pay at the hourly rate to attend an out of state CLE that meets all these requirements when such CLEs are not offered in Maine;

COMMENT: "6 CLE hours dedicated specifically to post-conviction review or ineffective assistance of counsel claims." That's overkill; 3 hours is enough. I could teach a 3 hour PCR course; I don't know what I would say for 6 hours.

c. Submit a letter explaining the applicant's interest in and qualifications for providing representation in post-conviction review cases, including a description of the applicant's criminal law experience generally and how that experience prepared the applicant to address the issues applicable to post-conviction review cases;  
Letters of reference and writing samples shall also be submitted upon the request of the Executive Director, or his or her designee;

COMMENT: Agreed.

and

e. Must recertify every year that all requirements are met to remain on the panel. It is sufficient for recertification purposes that the rostered specialized panel attorney has met any specialized panel CLE requirements to remained certified for the adult LOD panel except the same CLE panel requirements cannot be repeated in 2 consecutive years.

COMMENT: Agreed to annual re-certification. Delete the CLE limitation "except the same CLE panel requirements cannot be repeated in 2 consecutive years" because there may be only one PCR CLE program offered each year (if even that many!), and it may be the same program from year to year.

Please contact me if you have any questions concerning my above comments.

Thanks,

Larry.

--

Lawrence C. Winger, Esq.

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## Maciag, Eleanor

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**From:** Pelletier, John  
**Sent:** Thursday, February 20, 2020 8:02 AM  
**To:** Maciag, Eleanor  
**Subject:** FW: Attorney Winger's Comments on Proposed MCILS Appellate Panel Standards

---

**From:** Lawrence Winger <lawrence.c.winger@gmail.com>  
**Sent:** Wednesday, February 19, 2020 9:09 PM  
**To:** Pelletier, John <John.Pelletier@maine.gov>  
**Subject:** Attorney Winger's Comments on Proposed MCILS Appellate Panel Standards

**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.

John:

My comments on the proposed Appellate Panel Standards are inserted into the draft as follows:

11. Appellate Panel. In order to be rostered for appellate assignments for adult or juvenile clients an attorney must:

a) Have at least 3 years of rostered attorney experience or 1 year of law court clerkship experience;

COMMENT: 2 years of rostered attorney experience is enough, and this requirement should be waivable by the Executive Director to account for attorneys who have other relevant, qualifying experience.

b) All work must be reviewed by a MCILS staff attorney or rostered mentor attorney who is on the appellate panel prior to the submission of any filings with the appellate court. The MCILS executive director or their designee shall develop a procedure to ensure sufficient time is provided for reviews;

COMMENT: "Prior to the submission of any filings"? Very unrealistic, and if the attorney is on the appellate roster, then perhaps also unnecessary. Certainly, I am in favor of improving the collective quality of MCILS appellate attorneys' work, but "prior to any filings" is going much too far. What about routine motions to the Law Court? Is every filing actually going to have to be reviewed before it is filed? Briefs may sometimes be completed far enough in advance of filing deadlines that there would be time to send them for pre-filing reviews, but many times (most times?) there will not be time for that. "Ensure sufficient time is provided for reviews": only if drafts are done well in advance of applicable filing deadlines and the reviewers act quickly. If MCILS wants to appoint (and fund) TWO attorneys to work together on an appeal, then MCILS may do so, but in my opinion this "pre-filing review" process as stated won't work. Also, as above, this requirement should be waivable by the Executive Director to account for highly competent, experienced appellate attorneys who can be trusted to do an excellent job on the appeals they handle.

c) Attend and complete the minimum training standards for the appellate panel. If MCILS has not established a minimum training standard for the appellate panel the applicant must complete 6 CLE hours dedicated specifically to criminal appeals including but not limited to brief writing, legal writing, legal research, substantive criminal law updates; standards of review; using technology to write briefs; effective oral arguments; tips for everyday appellate practice; effective sentence appeals; and ethics in an appellate practice within the last 2 years. These CLE requirements are only applicable if MCILS certified CLE classes are provided in Maine that meet these requirements or if MCILS authorizes and

pays for attendance, travel, 3 meals, accommodations, and 8 hours of daily pay at the hourly rate to attend an out of state CLE that meets all these requirements when such CLEs are not offered in Maine;

COMMENT: To the list of appellate topics for training I would add "Law Court motions; discretionary appeals; amicus briefs; appellate strategies;" With regard to MCILS CLEs in Maine, I hereby offer to provide or participate in teaching such CLEs (I am currently involved in four pending criminal appeals in the Law Court right now and have handled numerous Law Court criminal appeals in the last few years; I would be happy to teach this Appellate CLE course).

d) Must complete regular reviews of recent Maine Law Court, US District Court, the US First Circuit Court of Appeals and US Supreme Court opinions and write a synopsis of the decision and how it might impact MCILS rostered attorneys' practice or how the opinion alters current law. The MCILS executive director or their designee shall distribute these synopses to all rostered counsel and develop a rotation amongst rostered appellate counsel as to who is to write the synopsis and when it shall be completed. Appellate counsel shall be paid for the cases they review and write synopsis on.

COMMENT: This sounds good to me, but (a) this will be a very major change in the way Maine rostered appellate attorneys do their work, (b) this will add a major new item of work for rostered appellate attorneys, (c) this may add a major new expense for MCILS to pay attorneys to write case synopses, (d) some rostered appellate attorneys won't have the time or interest to write such synopses, so are you really going to require this of all rostered appellate attorneys?, (e) I will be happy to write synopses for which I get paid, and I will be happy to read the synopses written by others, but unless a particular appellate decision is a major, landmark decision, or a confusing decision that needs to be explained, I can probably get all I need out of the decision just by reading the decision itself, which, according to the first sentence, I am supposed to do anyway. So, I like the idea of trying to improve the knowledge and quality of all rostered appellate attorneys and all other rostered attorneys, but I am not sure this is the time-effective or cost-effective way to do that.

e) Submit a letter explaining the applicant's interest in and qualifications for providing representation on appeal, including a description of the applicant's experience with appeals, representative examples of issues raised on appeal, and a summary of the results of those appeals. This should include the name and docket number of the cases the applicant has written a brief on;

COMMENT: Agreed.

f) Must have access to online legal research such as Westlaw, Lexus/Nexus, Casemaker, beyond the use of a search engine such as Google.

COMMENT: Agreed.

g) Letters of reference shall be submitted upon the request of the MCILS Executive Director or their designee;

COMMENT: Agreed.

h) Must recertify every year that all requirements are met to remain on the panel. It is sufficient for recertification purposes that the rostered specialized panel attorney has met any specialized panel CLE requirements to remain certified for the appellate panel except the same CLE panel requirements cannot be repeated in 2 consecutive years;

COMMENT: Agreed to annual re-certification. Delete the CLE limitation "except the same CLE panel requirements cannot be repeated in 2 consecutive years" because there may be only one Appellate CLE program offered each year (if even that many!), and it may be the same program from year to year.

and

i) This panel is applicable to all appeals except those appeals regarding the setting of bail.



COMMENT: Agreed.

Please contact me if you have any questions concerning my above comments.

Thanks,

Larry.

--

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## Maciag, Eleanor

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**From:** Pelletier, John  
**Sent:** Thursday, February 20, 2020 9:17 AM  
**To:** Maciag, Eleanor  
**Subject:** FW: Attorney Winger's Comments on Proposed MCILS Specialized Mentor Panel & Mentoring Program

---

**From:** Lawrence Winger <lawrence.c.winger@gmail.com>  
**Sent:** Thursday, February 20, 2020 9:12 AM  
**To:** Pelletier, John <John.Pelletier@maine.gov>  
**Subject:** Attorney Winger's Comments on Proposed MCILS Specialized Mentor Panel & Mentoring Program

**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.

John:

I recognize this Mentor Panel & Mentoring Program will be a major new undertaking for MCILS and its rostered attorneys, and I certainly support the general concept that newly rostered and less experienced attorneys can and should benefit from being mentored by more experienced rostered attorneys, but I think some of the provisions in the draft document are unrealistic or overly rigid and that as MCILS ventures into this new area MCILS must realize that there will be a "transition period" during which more flexibility may be more useful than detailed, formal rules and requirements.

In the draft document, the statements of "Purpose and Goals," "Goals of the mentor program are," and "General Standards" are all fine. The statements of the various rules and standards in the "Process" subsection should be amended, as follows:

1. The mentor/mentee relationship shall last at least 1 year. The mentor and mentee shall work on a total of 10 assigned cases from appointment to final disposition during that year. If the mentor and mentee have not handled 10 cases by the end of that year then the relationship shall continue unless the mentor files a written request to the MCILS Executive Director or their designee that the mentorship end. The MCILS Executive Director or their designee shall grant the written request if it is demonstrated that the mentee has obtained the necessary skills to fulfil all of the purposes, rules, and standards of MCILS.

COMMENT: Whoa; slow down. 10 cases in one year? Possible, but often unlikely, and probably unnecessary, too. Some of the 10 cases may be most appropriate for a joint mentorship work effort, but some will not be. And even getting 10 cases in one year to work on together will be unlikely for many attorneys. The relationship "shall last at least 1 year." For some "mentor pairs" that will be fine, but for many "mentor pairs" that will be unrealistic. To "end" the relationship, a written request to the Executive Director must be made. That seems too formal and too rigid.

2. The specific activities of a mentor will vary with the needs of the mentee while, at the same time, be guided by the written performance evaluation developed by the MCILS Executive Director or their designee in written. At a minimum, the mentor should initiate and conduct an initial face-to-face meeting with the assigned mentee at the earliest possible date.

COMMENT: Agreed.

3. For the first 3 case assignments the mentee must meet with mentor attorneys on a weekly basis to review all work completed, the future plan of the case and work to be performed and to review all billing entries. Thereafter, they must meet at least monthly to review cases and professional development goals. Depending on need, some mentor pairs will meet more often in the beginning until the mentor is comfortable with the mentee's skill level and knowledge of the substantive area. Likewise, as mentees gain experience and confidence, mentoring pairs may decide that they can meet less than monthly.

COMMENT: I am resisting these specifics: for first 3 cases, meet weekly. That is probably going to be completely unnecessary and unrealistic for many cases. Monthly meetings at the start of the relationship "to review cases and professional development goals" are fine.

4. Mentors and Mentees must attend all court hearings and client meetings together with direct supervision being provided by the mentor on the first 3 case assignments. Thereafter, the mentor should attend all court proceedings. However, the decision to attend client meetings or other meetings shall be left to the discretion of the mentor after the first 3 case assignments. If the mentor does not attend client meetings or other meetings the mentee must brief the mentor as to what occurred at the meeting.

COMMENT: "Attend all court proceedings" together: unrealistic and sometimes logistically impossible. Are the attorneys going to ask for a continuance because MCILS requires them both to attend but one of the two of them is unable to attend a particular court proceeding? Meetings with clients together: usually OK, but sometimes unnecessary and/or unrealistic. Agreed: "If the mentor does not attend client meetings or other meetings the mentee must brief the mentor as to what occurred at the meeting."

5. Mentor and mentees must have full access to the client's file.

COMMENT: Agreed.

6. Mentors and mentees should meet in an office setting or other space that permits the private discussion of confidential and other sensitive matters. This should be the same space where rostered attorney meet with their clients.

COMMENT: First sentence is fine. Second sentence should be deleted. Let them meet where they want, as long as it's private.

7. Mentors shall provide ongoing feedback to the mentee and the MCILS Executive Director or their designee in written format.

COMMENT: Don't make this more burdensome on mentors than necessary. Can the "written format" just be an email message? To be sent on the mentor's own initiative, or at the request of the Executive Director, or at the request of the mentee?

8. At the conclusion of the tenth case worked on between the mentor and mentee or if the relationship ends earlier the mentor must certify in writing to the MCILS Executive Director or their designee the mentee has demonstrated the skill necessary to work independently of a mentor and complete the written performance evaluation developed by the MCILS Executive Director or their designee. If the mentor is unable to make such certification, they must identify the issues preventing certification and work with the mentor and the MCILS Executive Director or their designee to develop a plan to assist the mentee to become certified.

COMMENT: So formal. Too formal? Too burdensome on mentors? What are the standards for "certification?"

9. The mentee must advise the client in writing of the mentor's name and that the mentor's role in representation is not to represent the client but to supervise the mentee's representation of the client.

COMMENT: No. The mentor will BOTH supervise the mentee AND represent the client. In their joint meetings and joint appearances, the mentor and mentee will be providing legal services and/or legal advice to the client. The Standards state elsewhere that the mentor and mentee will be "co-counsel" to the client.

Please contact me if you have any questions concerning my above comments or suggestions.

Thanks,

Larry.

--

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## **Maciag, Eleanor**

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**From:** Pelletier, John  
**Sent:** Thursday, February 20, 2020 8:01 AM  
**To:** Maciag, Eleanor  
**Subject:** FW: Attorney Winger's Comments on Proposed MCILS "Waiver to be on Specialized Panels" Provisions

---

**From:** Lawrence Winger <lawrence.c.winger@gmail.com>  
**Sent:** Thursday, February 20, 2020 7:38 AM  
**To:** Pelletier, John <John.Pelletier@maine.gov>  
**Subject:** Attorney Winger's Comments on Proposed MCILS "Waiver to be on Specialized Panels" Provisions

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John:

I think you should have much more discretion to waive requirements, or make limited waivers of requirements, than the draft gives you. Draft Section 14(2) should be deleted in its entirety; it is too restrictive and detailed. I recommend that Section 14 provide as follows:

14. Waiver to be on Specialized Panels. Rostered attorneys seeking to be on a specialized panel can seek a waiver of the requirements they are not meeting. A requesting attorney must:

- (1) Send a letter or written communication to the MCILS Executive Director identifying:
  - (a) The panel for which a waiver is being sought;
  - (b) The requirements that are being sought to be waived;
  - (c) Why the waiver is appropriate; and
  - (d) Enclosing appropriate documentation or other information supporting the waiver request.

(2) The Executive Director may require that the requesting attorney submit further documentation, information, or letters of recommendation in support of the waiver request.

(3) At the discretion of the Executive Director, MCILS may approve or deny the waiver request, or approve the waiver request to a limited extent, or approve the waiver request on such terms and conditions as the Executive Director may require.

Please contact me if you have any questions concerning my above comments or suggestions.

Thanks,

Larry.

--

Lawrence C. Winger, Esq.  
75 Pearl Street, 2nd Floor

## **Maciag, Eleanor**

---

**From:** Pelletier, John  
**Sent:** Thursday, February 20, 2020 9:59 AM  
**To:** Maciag, Eleanor  
**Subject:** FW: Attorney Winger's Comments on Proposed MCILS Appellate Panel Criminal Standards

---

**From:** Lawrence Winger <lawrence.c.winger@gmail.com>  
**Sent:** Thursday, February 20, 2020 9:48 AM  
**To:** Pelletier, John <John.Pelletier@maine.gov>  
**Subject:** Attorney Winger's Comments on Proposed MCILS Appellate Panel Criminal Standards

**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.

John:

My comments on this portion of the draft:

### **Q. Appellate Panel Criminal Standards**

1. For interlocutory appeals, trial counsel shall notify the MCILS executive director or their designee of the appeal. The MCILS executive director or their designee shall appointment rostered appellate counsel. Rostered appellate counsel who is appointed shall enter their appearance for purposes of the appeal only. Rostered appellate counsel shall be primarily responsible for the interlocutory appeal. Trial counsel shall not withdraw but shall assist rostered appellate counsel with the appeal and provided all trial file materials to appellate counsel as co-counsel. Roster appellate counsel, at the conclusion of the appeal process, shall file a motion to withdraw and trial counsel shall be responsible for the assigned case.

**COMMENT:** Agreed, except in the second sentence the word "appointment" should be "appoint."

2. Rostered counsel who conducted the trial cannot be the appellate counsel for that case.

**COMMENT:** This will usually be a good rule, but not always, and it is somewhat contrary to current practice. See M.R. App. P. 2A(b)(2)(A)("In criminal appeals, the attorney . . . filing the notice of appeal shall be deemed to be representing the appellant unless new counsel appears or counsel withdraws pursuant to M.R.U. Crim. P. 44(a)(2) and 44B."); M.R.U. Crim. P. 44(a)(2)("Counsel assigned to a case in the Unified Criminal Docket shall continue to represent the defendant unless relieved by order of the trial court or the Law Court."). Sometimes trial counsel should stay in an appeal case as co-appellate-counsel. Sometimes non-trial proceedings may lead to an appeal. The Standards statement should be:

"Unless a court orders or the Executive Director determines otherwise, rostered counsel who conducted a trial or other trial court proceedings in a case cannot be the appellate counsel for that case and must move under M.R.U. Crim. P. 44(a)(2) to withdraw as appellate counsel for the client."

Please contact me if you have any questions concerning my above comments or suggestions.

Thanks,

LISA COHEN LUNN  
TERENCE M. HARRIGAN  
ROSALIND PRINCE GILMAN  
JAMES C. MUNCH, III  
JANE S.E. CLAYTON  
SETH D. HARROW  
ARMANDA BEAL DAY  
KAYLEE J. FOLSTER  
NICOLE A. BLACK  
STEVEN E. RICE  
BRITTANIE L. BRADLEY  
EUGENE C. COUGHLIN (Of Counsel)



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LEWIS V. VAFIADES (1919-2001)  
NICHOLAS P. BROUNTAS (1923-2008)  
SUSAN R. KOMINSKY (1943-2013)  
MARVIN H. GLAZIER (1944-2017)

TELEPHONE: 207-947-6915  
FAX: 207-941-0863

VIA EMAIL

John Pelletier, Executive Director  
MCILS  
154 State House Station  
Augusta, ME 04333

Re: Court Appointed Attorney Practice Standards and Training

Dear John--

I am writing to ask you to provide my thoughts to the appropriate subcommittees studying the court-appointed attorney practice standards, training and payment issues.

When I first read the articles in the newspaper and the outcry thereafter, my feeling was that the press and indeed, the follow-up was conflating two very different, distinct, and unrelated issues.

The first, there are clearly people taking court appointed cases who are overstating their bills. There is no question that this is occurring and needs to be addressed. I think the algorithm that notifies lawyers when they've spent a certain amount of each day on court-appointed cases is a great start. I think that I have received 3 of these and it caused me to go back, look at my billing system and my bills and make sure that I hadn't over-billed. I did each quickly as I didn't want there to be an error and indeed, in one of them, I found an error which I reported.

However, when discussing this with other attorneys, I was shocked to learn that some attorneys don't even respond to these notices! I can't imagine being so brazen. So, I would respectfully suggest that your office or someone be given the power to enforce non-responsiveness to these issues, i.e. if you don't respond, you receive no payment for the voucher or day in question—if it happens more than once, increasingly more severe penalties are imposed. This will at least give the commission some ability to gather information as to why, punish real offenders, and hopefully, stop the practice of over-billing.

But, you should also know that whether court-appointed counsel are paid \$60 per hour or \$200 per hour, there will be those that try to scam this or any other system. Unfortunately, that is just the way of the world—I don't like it, but I don't think we should blow up or re-create the system because there are dishonest people out there. Regardless of any system imposed, there

John Pelletier, Executive Director  
February 20, 2020  
Page 2

will be those that try and take advantage—no “system” can prevent that. However, if we give MCILS ways to ferret out who’s cheating and make rules and punishments that give enforcement real teeth, then I think that is a “tweak” that will pay dividends.

Also, I understand that there is some talk of requiring court-appointed counsel to enter their time as they go in the system. If that’s a requirement, my office may stop doing court-appointed work. That is, 3 of us do an ever increasing amount of court-appointed work, primarily because local attorneys are doing fewer and fewer in Penobscot County. We feel an obligation to pick up the slack, even though it is getting burdensome to do, with each of us working at about 30% of our normal hourly rate. One of the ways we can justify continuing to take on this caseload is by having a staff member enter all of the bills at once, once in awhile, when the cases are completed. We cannot justify having our staff spend time each day making entries—it would require too much staff time that we cannot cover at \$60/hour. We would have to seriously consider not doing any court-appointed work in that circumstance.

The second issue that was discussed and often conflated with the costs above, was the training and expertise of the court-appointed attorneys. Somehow, people are confusing those who choose to commit, in essence, theft from MCILS with those that do great work as court-appointed attorneys. These are two separate issues that are clearly not related.

By way of background, as you know, I’ve been an attorney for 32 years. Back when I started and indeed, until MACDL started championing more training such that MCILS and its training requirements became mandatory, an attorney “learned” how to be a lawyer by taking court-appointed cases. It was a dangerous system as those out of law school could take virtually any case other than a murder, with no experience and no requirements of ongoing training. I remember a local attorney telling me once how an attorney fresh out of law school called him, because he and the new attorney had co-defendants in an arson case and he wanted to know if they could work together. The local attorney half-jokingly remarked to the new attorney, “what, they didn’t have a murder they could give you?” Thankfully, that way of doing things has changed and changed for the better.

As with all meaningful change, it is best to do things incrementally over time, tweaking what does work and examining what doesn’t. The ever increasing experience and training requirements that have grown over time have, in my humble opinion, worked really well. Defendants are so much better represented now than they were back in the early to late 90’s. Attorneys are trained and are required to continue their training to remain on panels. The problem becomes, the more training that is required, the more costly to court-appointed attorneys, and the less likely they are going to want to stay on the panels. I see that in Bangor now, when, this time last year, on most panels, there was something like a 4-5 page list of attorneys who would take cases. That list today, in some areas, is two pages. As I indicated to you in a previous email, this time last year, I had something in the vicinity of 5-7 appointments at



John Pelletier, Executive Director

February 20, 2020

Page 3

any one time—I now have over twice that, sometimes three times that amount which is problematic for me from a business perspective, but also, because there are only so many hours in a day and I don't want to give any client's case a moment's less time than it deserves. So, what the committee's very difficult balancing act will be, figuring out a way to continue to strengthen training opportunities and requirements, but in such a way that does not discourage attorneys from remaining on court-appointed panels. Believe me, if I had a reasonable suggestion, I would offer it. I mention this simply because the committee needs to be aware that requiring more without increasing the rates or the caps, will make it more likely that attorneys will stop taking work. In other words, if the proper balance is not struck, you could create a constitutional crisis by having fewer and therefore, overworked attorneys representing all indigent defendants.

Finally, I hope that the committee is completely and totally dissuaded from the notion of a "Public Defender" system. The only way a PD system would work (and by "work" I mean that it would be cost efficient) would be to have but a few defenders taking on too many cases in a particular court, which means they will be overworked and underpaid, which is precisely the problem now, WITHOUT a PD's office.

Additionally, the resources to be expended to have a PD's office that stretches across the state, will be so much more expensive than the current system which, I would suggest, is working well. If this is a problem that the State wants to throw money at, my suggestion would be to, over time, increase the court-appointed rate to \$100 per hour with corresponding increases in the caps. With this increase, can come requirements for further training and CLE as well as "enforcement" funds for MCILS. All of this could be done at a fraction of the cost of a PD's office.

I find it disturbing and ironic that a public defender system is still being considered when virtually every PD's office in the country has been the subject of a civil rights lawsuit of some sort due to overworked PD's, understaffed offices, and therefore, almost universal infringement on defendants' rights in states with those systems. See [www.nacdl.org/Content/PublicDefenseLitigation](http://www.nacdl.org/Content/PublicDefenseLitigation). This system is a uniform failure and the only reason it works federally is that there are far fewer filings, each defender's office is supported by a panel of attorneys who, when conflicts arise or the defender has reached his/her quota of active cases, are appointed and are compensated at \$131/hour. So, fewer cases, more money, more attorneys, more resources. Maine doesn't have the resources to do this properly, I am sad to say. I am perpetually confused as to why this model keeps popping up every few years. It is an out and out failure for both reasons of its utter failure to adequately protect defendants' rights and its fiscal inefficiencies as a publically supported entity.

In the end, I feel it is always good to look at our current system to look to ways to improve it. Indeed, the incremental changes over the past 15 or so years have been wonderful

John Pelletier, Executive Director

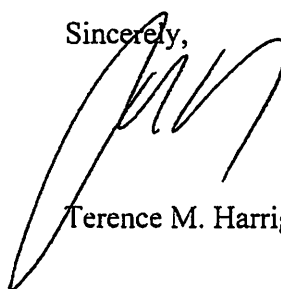
February 20, 2020

Page 4

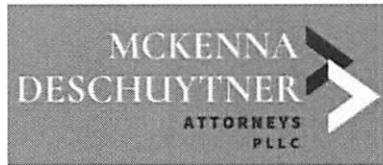
and have brought about thoughtful and meaningful improvements. I hope the committees will continue down this path as there are no quick or magic fixes to these issues. Certainly, “blowing it up” and starting over is a colossally bad idea, almost as bad as a public defender’s office. I would respectfully suggest that it certainly cannot be done for less money and indeed, significant change will require significant expenditure and I know that throwing money at criminal defense is not popular and not likely in Maine. However, with some minor increases in funding to the present system and corresponding tweaks, some real improvements can be made.

Sorry for the meandering nature of this letter. I hope this is at least thought provoking if not helpful.

Sincerely,

A handwritten signature in black ink, appearing to be 'TH', written over the printed name.

Terence M. Harrigan, Esq.



Maine Commission on Indigent Legal Services  
Via email

February 19, 2020

In Re: Court Appointed Attorney Practice Standards and Training

Dear MCILS and Subcommittees,

I am writing in response to potential changes to court appointed attorney practice standards, training and related issues that are currently being discussed.

First and foremost, I would like to thank John Pelletier and Eleanor Maciag for their exemplary work directing MCILS. I do not believe another area of government exists where essentially two people manage a budget of approximately \$20,000,000 and hundreds of independent contractors; never mind do it extremely well.

Second, while I think changes to MCILS can make things better for everyone involved in the court system, I do not believe there is a dire ineffective assistance of counsel problem occurring in Maine. We have a unique system where private attorneys provide a valuable public service. It is often a thankless job and not one that pays particularly well compared to other areas of the law. Maine consistently ranks as having the lowest or amongst lowest incarceration rates in the nation. This is not because prosecutors and judges are saving defendants from ineffective assistance of counsel. I believe the contrary - that those who serve as court appointed lawyers represent the best in the nation in defending indigent citizens charged with crimes. Look at the other end of the spectrum: Louisiana. It consistently has the highest or amongst the highest incarceration rate in the nation. It has a public defender system in crisis with a lack of qualified public defenders, sham criminal prosecutions of public defenders for doing their job, astronomical caseloads and the list goes on. A simple online search reveals headlines that read

as if they were from the satirical news publication *The Onion*. We have it good in Maine and I hope that changes in MCILS allow us to continue the best in the nation representation that we already have.

My comments on proposed attorney practice standards, training and related areas are as follows. Please keep in mind that I practice in Cumberland and York counties, so these comments reflect my experience in those areas of the State.

**Comment 1: Lawyer of the Day (LOD) is the area in the most urgent need and in my view the most easily addressed.**

Simply put, we need more LODs per court event. The current practice of two LODs per court event is insufficient for the majority of LOD scenarios. It is not uncommon to have arraignment lists with 50-100+ defendants, only two LODs and only three hours of time. It is virtually impossible to even speak with everyone who would like to talk to a lawyer in those scenarios. As for in-custody LODs, it is not uncommon to have lists of 20+ defendants. In Portland, you are told by the court you have approximately 30 minutes to inform all defendants of their rights, provide them with discovery, go over their charges, review their personal circumstances for bail and answer their questions. In practice, the 30 minutes can be stretched to an hour, but not without pushback from various entities at the court. Regardless if it is 30 minutes or an hour, trying to accomplish what needs to be done with that number of defendants, in that amount of time necessitates either someone who is extremely competent or more LODs. While many LODs are actually extremely competent and can handle this, some have difficulty or are just slower. Nevertheless, increasing the number of LODs would alleviate this issue.

In the proposal I saw mention of proposed ratios of LODs to defendants. Those ratios would be more than enough. However, in the meantime I would suggest that we start assigning at least one more LOD to each court event immediately. I know this number sounds small, but just having one more LOD would make an incredible difference and that difference could start now, while the exact ratios are worked out later.

In regard to the proposed LOD training, I think that is fine as a whole. Since LODs are so unique and vary greatly from court to court, I would suggest video training for each court and type (walk-in arraignments/in-custodies). A video recording of experienced LODs doing their work would be a fantastic training tool and I would be more than happy to assist in that.

On a related note, the court plays a video for all defendants (except Portland in-custody) that purports to explain their rights and the process. There are a few issues with this video. First, almost everyone in the video pleads guilty. This is a problem as showing people a video where people only plead guilty is highly suggestive that you, the video watcher, should conform to what you just saw numerous people on the video do. Behavioral psychologists call it social proof. This type of psychological influence should not be underestimated and should be addressed. Also, it does not reflect reality and best practice that defendants should generally not be pleading guilty at their arraignment, where they have not had sufficient time to review the evidence against them, nor the time to thoroughly discuss their options and consequences with a lawyer. Furthermore, no one is shown pleading not guilty, asserting their innocence and asking that their case be heard for a trial. That process is the cornerstone of American criminal procedure and should be shown. Second, someone in the video waives during their plea as to whether or not to plea guilty. The judge eventually takes their guilty plea and moves on. Again, for the reasons above, is not what we should be showing defendants. Third, no one makes a bail argument or challenges court-imposed conditions of release. This is something that should be shown as it is extremely common at arraignment and carries severe consequences for violations. While these issues should be addressed with the current video, MCILS could provide their own video. Some of these points could be made, in addition to a discussion of collateral consequences, frequently asked questions, etc. That is currently done with a speech made off the top of the LODs head. While almost every speech I've heard has covered very important additional topics, a video could be a way of standardizing it. While I do like the live speech, as those LODs that are good at it can really grab the audience's attention, that could always be done in addition to a short video.

**Comment 2: Workload Standards are a good idea but need some tweaking.**

Given the perception that some have that court appointed attorneys are abusing the system financially, I believe it is a good idea to have workload standards. It should help improve the public perception of court appointed attorneys, reduce errors and perhaps deter those who may abuse the system. The one thing I am most concerned about is how we do that without overburdening attorneys with large amounts of time dedicated to using multiple systems to track time and provide that to MCILS in an efficient manner. For example, I currently log all my time contemporaneously in a case management system called Clio. It is great, as I can see all my time I have spent in real time, in addition to by day, week or any other measure. Then I must reenter that time into Defender Data to provide to MCILS. Reentering that time from Clio to Defender Data takes approximately 5 or so hours per week to do. Court appointed attorneys do not get paid for that time. If there is a move to a weekly time log system, I would hope that it would not add additional time to do that. In fact, I hope during this process that MCILS considers either upgrading the current Defender Data system to a more efficient and easier to use system, or allows submissions of time from programs like Clio. That would greatly improve the lives of court appointed attorneys and make a weekly log more realistic.

Furthermore, the 50 hour per week limit I believe is too low. Taken as a whole, 2000 hours per year works out to 40 hours per week. However, due to holidays, vacation/sick time, trial preparation, etc. the time billed in any given week can easily exceed 50 hours. While there is a provision to explain to MCILS why you are working so hard in a given week, again that adds considerable time for the court appointed lawyer to do. Especially given that the proposed workload includes non-MCILS cases and CLEs. Then there are the obvious confidentiality issues surrounding disclosing work on non-MCILS cases. Perhaps a 60 hour per week flag and a 180 hour per month flag (2000 hours divided by 12 months is approximately 167 hours) would strike a better balance between the desire for weekly logs and the imposition on attorney personal life time.

**Comment 3: Proposed qualification for specialized panels and mentor program are good as a whole.**

**Comment 4: MCILS should not divide the criminal and civil defense systems.** This is so because it seems the majority of court appointed attorneys do both. In addition, it is common to represent someone criminally and in child protective proceedings. Dividing the two systems may create problems and I do not currently see any good reason as to why they should be separated.

**Comment 5: I encourage that no new standards be submitted to the legislature without submitting a proposal regarding funding of MCILS and increased attorney payment.**

**Comment 6: I encourage that no new standards be submitted to the legislature without submitting an oversight proposal and increased MCILS staff to have oversight.**

Sincerely,



Cory R. McKenna  
Attorney at Law - Bar 5219  
McKenna Deschuytner, PLLC  
cory@mdmelaw.com  
207-382-8100

February 20, 2020

Maine Commission for Indigent Legal Services  
*via email*

RE: Commentary on proposed changes to indigent legal service delivery

Dear Commissioners,

I am writing to provide comment on the contemplated and proposed changes to Maine's indigent defense system.

Dividing criminal defense and civil defense systems

Under the current model, many attorneys who practice criminal defense are also rostered for protective custody. In many ways, the overlap is helpful, as a fair number of individuals facing criminal charges are also involved in a child protective matter. It is helpful for criminal defense counsel to understand the impact of certain dispositions on the protective custody case, and equally helpful for protective custody counsel to be aware of the potential dispositions in the criminal case. Dividing the systems would be counterproductive to encouraging a holistic approach to defense and may result in less competent representation. Where attorneys already must meet different standards to practice in each realm, it is unclear what the benefit to division would be.

Proposed standards

More stringent standards are clearly needed in this system, however the standards also need to be enforced differently. Currently, there is no means of ensuring that rostered counsel actually adhere to the standards in practice. This does not just apply to newly admitted attorneys; there are plenty of established attorneys who fail to stay abreast of legal developments or who have simply become jaded by years of practice. While there is obviously value in having experienced attorneys representing indigent defendants, there needs to be a mechanism for evaluating the performance both of attorneys seeking to be rostered for the first time and those who are already rostered.

LOD standards must be increased. LOD should not be treated as a means of gaining new experience but as a challenging task for any attorney. When acting in this capacity, an attorney must be immediately familiar with myriad charges, potential defenses, sentencing options, bail options, and consequences of conviction. LOD is fast-paced and requires attorneys to be able to advise clients quickly and competently.

Many of the issues that arise from in-custody LOD shifts are not due to shortcomings on the part of counsel but on the part of the courts. There is tremendous pressure to move quickly, interview, and counsel a significant number of clients. The proposed ratios should help with this, however the courts must also understand the challenges faced by counsel during these shifts, and court schedules should be flexible in conducting initial appearances. Often in Portland, the bus arrives with the clients at 12:45 and the court is pressuring counsel to begin proceedings by 1:30, when counsel has at least seven to ten individuals to speak with, often divided among three separate holding areas. This pressure is unnecessary; the court is open until 4:30 and the priority should be ensuring that clients are adequately and accurately advised of the charges, their rights, and their options.

MCILS staff attorney

A MCILS staff attorney could be useful in coordinating trainings, however the training program in existence does not necessarily call for a new position to be created. One potential benefit of



a staff attorney could also be accomplished with a public defender system: coordination of defense strategy and mentorship. Having recently been rostered in the federal system, I was pleasantly surprised by the support provided by the public defender's office. I called many times to talk through issues or ask questions about procedure as I was learning how to navigate a new system. Additionally, the Federal Defender's Office provides a hotline for attorneys to call simply to talk through a case or strategize a defense. This type of system would be incredibly helpful for attorneys, whether through a staff position or a public defender's office.

John Pelletier and Ellie Maciag have been doing great work, but they could use some help. The system is large and cumbersome. John and Ellie would likely be in the best position to assess the areas in which additional help is needed to provide the training and oversight necessary. If they believe a staff attorney would be the appropriate fix, I would defer to their judgment.

#### Compensation

The current hourly rate provided to rostered attorneys is absurdly low. I would gladly devote all of my time to representing indigent defendants, but with my firm's compensation structure, my take-home pay would be insufficient to pay my monthly bills (including large law school loans). Additionally, even though the work is in the public interest and at a lower hourly rate commensurate with public service work in other sectors, it is not accompanied by the benefits typically provided to public servants. In order to attract and maintain high-quality and experienced attorneys, the hourly rate must be increased. The current federal rate is \$148 per hour. Most attorneys in private practice charge at minimum \$175 per hour. Even a modest increase to \$90 or \$100 per hour would make a significant difference.

Compensation at various hourly rates based upon the complexity of the work may also be helpful. When preparing for trial in a complex case, we spend hours of our time just thinking about trial strategy and planning - time that is not billable. Additionally, whether a case is more complex or whether the client is incarcerated, indigent defense often takes precedence over retained work, so attorneys must push aside higher-paying work in order to make space for indigent cases.

Finally, this system deserves and sorely needs some updating, but the vast majority of rostered attorneys that I know work tirelessly to provide the best possible representation to their clients. And these clients receive the benefit of hardworking and experienced counsel who are willing to take compensation at a rate less than half of what they would earn from a private-pay client. The work of these attorneys is commendable and should not be overlooked as the Commission explores how best to address the issues in our system.

Best,

Valerie A. Randall, Esq.

## Maciag, Eleanor

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**From:** Pelletier, John  
**Sent:** Thursday, February 20, 2020 1:52 PM  
**To:** Maciag, Eleanor  
**Subject:** FW: MCILS comments.

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**From:** Jesse James Ian Archer <jessejamesianarcher.esq@outlook.com>  
**Sent:** Thursday, February 20, 2020 1:52 PM  
**To:** bob@mainecrimes.com; Pelletier, John <John.Pelletier@maine.gov>  
**Subject:** MCILS comments.

**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.

John, Bob,

I am having a very hard time keeping up with the changes, proposed changes, speculated changes, pushes for PD Office, pushes against PD office, pushes for contracts, pushes against contracts. Just trying to stay abreast regarding what other people are deciding regarding my future and my livelihood is dizzying and depressing. Just finding the time to write this when I have a hearing in a manslaughter case tomorrow gives me anxiety. But this is my life, and what others are deciding about it for me matters.

With that said, I really wanted to share some of my thoughts with you. Sorry that they are in stream of thought form.

In June, I will have been licensed to practice for 4 years. The past 3 of those have been in criminal defense only. I left Isaacson & Raymond in April of 2017 and started practicing indigent criminal defense exclusively. If you remember the timing, it was awful—I opened a private office at the exact time MCILS stopped having the ability to pay us. I survived off of a small savings. Local attorneys offered me side jobs and one even offered me a loan if needed.

There has been no reprieve since. I carry an incredible amount of anxiety just in the practice of criminal defense alone. But I also have to have the constant worry of the doom and gloom that what I do (indigent criminal defense) is going to be taken from me.

When “panels”, “boards”, 6A Center, Etc. discuss MCILS, people like me get lumped in with people who are billing SIX TIMES MORE THAN ME. That is, I get lumped in with people who claim they are billing, not just in their office, but *billing*, 75+ hours a week

52 weeks a year. My worry is that I am going to be shoved out via overreaching standards that I don't meet because I have practiced less than 5 years or because I don't have 10 jury trials on my own. Or, that I will be shoved out via a private, non-governmental, contracted firm that gets labeled a "Public Defender" office. Likely some of the more experienced people, who may or may not include those who have serious overbilled, will be deemed more qualified than me and will have the opportunity to fill whatever positions are left. And I will literally be out of work.

I have recommitted my entire adult life around representing the indigent accused. To my detriment. I say "no" to family law clients who can actually pay. I've spent *at least* 10-20% of my earnings in each of the past three years to bettering myself as a criminal defense attorney. I've spent a combined MONTH at Gerry Spence's Ranch attending the "Trial Lawyer's College" and "The Defense of the Damned." I spent two weeks at the National Criminal Defense College in Georgia. Three days at the "Reptile" criminal defense in Georgia. Those are just a few. Obviously, I am concerned that what I have dedicated the entirety of my thirties to is going to be taken from me with zero contingency built in for me and others like me. And even if I am not obsoleted by a PD office, I am worried that, despite dedicating months and thousands of dollars to further educating myself on criminal defense, I will be deemed unqualified for this roster or that because of new standards and experience requirements.

I also want to discuss my PD Office observations. While attending NCDC, DOD, TLC, and other national schools and seminars, I have met probably 30-75 Public Defenders. I remain friends with several of them. In my opinion a PD office has pros and cons.

Some pros are collaboration and group organization. Two heads are always better than one. I don't think we co-counsel enough cases. Some PD offices co-counsel every single case (San Francisco, just as one example)—Even their versions of Class E Misdemeanors. I have been second chair or co-counsel at a much higher than average rate, and to spectacular effect (both in results for the accused and to furthering my knowledge and experience for the future accused I represent). Jim Howaniec and I have won several extremely difficult Class A and B cases. Don Hornblower and I won every count of a 7 count GSA this time last year, in a case that seemed impossible to win. I don't think this would have happened without the help of a second attorney.

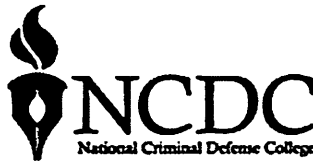
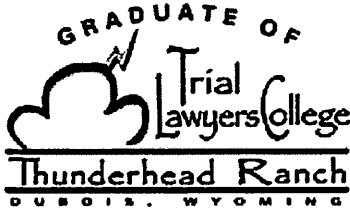
Some cons of a PD office are the workload. I've met PDs with 200+ current, active cases. They are walking poster children of PTSD, and often are dealing with 20-30 cases in court on any given day. They virtually all describe "triaging" cases (and virtually all of them use that terminology to describe it), and virtually all of them admit they perpetually underwork many cases. Compare that to my first jury trial I had completely by myself. It was a Class D DV Assault and my African American client swore he was innocent. I worked that case like that client's life was on the line—as to him, in many ways, it was. In my opinion, after many discussions with PDs, odds are, a misdemeanor public defender would have picked up that file the day before and used

a canned opening, cross, and closing. And I don't say this pejoratively, these PDs don't like that that is often the truth and how they are forced to operate.

In my experience speaking with PDs, these offices are always less-funded than the DA Office, and usually have less man-power than a DA office. The whole office shares one or two "assistants." I am not sure how that is fair. The Giants don't get to spend twice as much as the Patriots and have a larger roster and more trainers, etc. But DA vs PD always do.

Thank you for your time, and for listening. Regardless of where you stand, as you are called on to discuss the outcome of MCILS, please keep me, and those who may be like me in mind. Please feel free to share this. -Jesse

Jesse James Ian Archer, Esq.  
11 Lisbon Street, Suite 103A  
PO Box 681 Lewiston, ME 04243  
(207) 669-5900



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In accordance with Internal Revenue Service Circular 230, we hereby advise you that if this E-mail or any attachment hereto contains any tax advice, such tax advice was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer by the Internal Revenue Service.

This E-Mail may contain information that is privileged, confidential and / or exempt from discovery or disclosure under applicable law. Unintended transmission shall not constitute waiver of the attorney-client or any other privilege. If you are not the intended recipient of this communication, and have received it in error, please do not distribute it and notify me immediately by E-mail or via telephone 207-669-5900 and delete the original message. Unless expressly stated in this e-mail, nothing in this message or any attachment should be construed as a digital or electronic signature or as a legal opinion.

RECEIVED

FEB 18 2020

MCILS

Feb. 15, 2020

Comm. Roger Katz, Esq.  
Me. Commission on Ind. & Services  
154 State House Station  
Augusta, Me. 04333

Dear Commissioner Katz,

I am a volunteer at the Prob. Co. Jail and am hoping you can shed light on why indigent inmates are waiting so long in jail before going to court. This, for some, is in violation of receiving a speedy trial (Article 1, Section 6 of the Me. Constitution). When indigent inmates remain in jail awaiting trial and have no means of paying bail, they can lose their jobs, property, relationships and sometimes custody of their children. Many are charged with non-violent crimes. Without timely access to legal counsel, their lives are further traumatized.

If the Commission you are a member of is a service provided with my Maine tax dollars, I am wondering why the people I see in jail aren't showing evidence of it working for them. Sixty to Seventy percent of the inmates I see have been convicted of nothing since they are in pretrial status awaiting their day in court. Is the Commission not adequately funded? Understaffed? I am aware there was a Public Hearing recently in response to the 6th Amendment Center Report. Were any changes recommended after that hearing that will change spending oversight?

In closing, can you share this with your peers on the Commission? Thanks you.

Monique Gantreau  
14 Savage St  
Bangor Me 04401  
mgantreau54@hotmail.com

**STATE OF MAINE**  
**Maine Commission on Indigent Legal Services**



**RFP# (Inserted by Procurement Services when assigned/approved)**

**Consultant for Implementation of New Lawyer Training Program**

<b>RFP Coordinator</b>	<i>All communication regarding this RFP <u>must</u> be made through the RFP Coordinator identified below.</i> <b>Name:</b> John Pelletier <b>Title:</b> Executive Director <b>Contact Information:</b> john.pelletier@maine.gov
<b>Bidders Conference</b>	<b>Date:</b> (Insert Date) <b>Time:</b> (Insert Time), local time <b>Location:</b> (Insert Location)
<b>Submitted Questions Due</b>	<i>All questions <u>must</u> be received by the RFP Coordinator identified above by:</i> <b>Date:</b> (Insert Date), no later than 4:00 p.m., local time
<b>Proposal Submission</b>	<i>Proposals <u>must</u> be received by the Division of Procurement Services by:</i> <b>Submission Deadline:</b> (Insert Date), no later than 11:59 p.m., local time. <i>Proposals <u>must</u> be submitted electronically to the following address:</i> <b>Electronic (email) Submission Address:</b> <a href="mailto:Proposals@maine.gov">Proposals@maine.gov</a>



## PUBLIC NOTICE

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**State of Maine**  
**Maine Commission on Indigent Legal Services**  
**RFP# (Inserted by Procurement Services when assigned/approved)**  
**Consultant for Implementation of New Lawyer Training Program**

The State of Maine is seeking proposals for a consultant to develop, organize, and implement a new lawyer training program in the areas of child protective, criminal law, and juvenile law.

A copy of the RFP, as well as the Question & Answer Summary and all amendments related to this RFP, can be obtained at the following website:

<https://www.maine.gov/dafs/bbm/procurementservices/vendors/rfps>

A Bidders Conference will be held on (insert date) at (Insert time) at the following location:  
(Insert address)

Proposals must be submitted to the State of Maine Division of Procurement Services, via e-mail, to the following email address: [Proposals@maine.gov](mailto:Proposals@maine.gov). Proposal submissions must be received no later than 11:59 pm, local time, on (Insert date). Proposals will be opened at the Burton M. Cross Office Building, 111 Sewall Street - 4<sup>th</sup> Floor, Augusta, Maine the following business day. Proposals not submitted to the Division of Procurement Services' aforementioned email address by the aforementioned deadline will not be considered for contract award.

\*\*\*\*\*

**State of Maine**  
**Maine Commission on Indigent Legal Services**  
**RFP# (Inserted by Procurement Services when assigned/approved)**  
**Consultant for Implementation of New Lawyer Training Program**

**PART I INTRODUCTION**

**A. Purpose and Background**

The **Maine Commission on Indigent Legal Services** (Department) is seeking proposals to provide **consulting services**, as defined in this Request for Proposals (RFP) document, **to develop and implement a comprehensive new lawyer training program for attorneys seeking to become rostered to accept child protective, criminal, and juvenile cases. The Commission has a duty to provide training to ensure an adequate pool of qualified attorneys pursuant to 4 MRS § 1804(3)(D).** This document provides instructions for submitting proposals, the procedure and criteria by which the Provider(s) will be selected and the contractual terms which will govern the relationship between the State of Maine (State) and the awarded Bidder(s).

**B. General Provisions**

1. From the time this RFP is issued until award notification is made, all contact with the State regarding this RFP must be made through the aforementioned RFP Coordinator. No other person/ State employee is empowered to make binding statements regarding this RFP. Violation of this provision may lead to disqualification from the bidding process, at the State's discretion.
2. Issuance of this RFP does not commit the Department to issue an award or to pay expenses incurred by a Bidder in the preparation of a response to this RFP. This includes attendance at personal interviews or other meetings and software or system demonstrations, where applicable.
3. All proposals should adhere to the instructions and format requirements outlined in this RFP and all written supplements and amendments (such as the Summary of Questions and Answers), issued by the Department. Proposals are to follow the format and respond to all questions and instructions specified below in the "Proposal Submission Requirements" section of this RFP.
4. Bidders shall take careful note that in evaluating a proposal submitted in response to this RFP, the Department will consider materials provided in the proposal, information obtained through interviews/presentations (if any), and internal Departmental information of previous contract history with the Bidder (if any). The Department also reserves the right to consider other reliable references and publicly available information in evaluating a Bidder's experience and capabilities.
5. The proposal shall be signed by a person authorized to legally bind the Bidder and shall contain a statement that the proposal and the pricing contained therein will remain valid and binding for a period of 180 days from the date and time of the bid opening.
6. The RFP and the selected Bidder's proposal, including all appendices or attachments, shall be the basis for the final contract, as determined by the Department.
7. Following announcement of an award decision, all submissions in response to this RFP will be considered public records available for public inspection pursuant to the State of Maine Freedom of Access Act (FOAA) (1 M.R.S. §§ 401 et seq.).  
[State of Maine Freedom of Access Act](#)



8. The Department, at its sole discretion, reserves the right to recognize and waive minor informalities and irregularities found in proposals received in response to this RFP.
9. All applicable laws, whether or not herein contained, shall be included by this reference. It shall be the Bidder's responsibility to determine the applicability and requirements of any such laws and to abide by them.

### C. Eligibility to Submit Bids

All interested parties are invited to submit bids in response to this Request for Proposals.

### D. Contract Term

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

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

Period	Start Date	End Date
Initial Period of Performance	05/01/2020	04/30/2021

### E. Number of Awards

The Department anticipates making **one** award as a result of this RFP process.

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

The Commission is seeking a consultant to develop and implement a comprehensive new lawyer training program for lawyers seeking to join the child protective, criminal, and juvenile rosters.

The consultant will be expected to:

- 1) Provide the curriculum for a 5-day training for child protective, criminal law, and juvenile law that includes instruction on skills such as client interviewing, bail advocacy and negotiation; exposing the new lawyers to important areas of substantive law; and a trial skills component with work on courtroom skills through evidence and objection exercises and conducting mock motion hearings. The curriculum to be approved by the Commission;
- 2) Identify and invite faculty to participate in the program. The Commission will have final approval of faculty selections; and
- 3) Identify an appropriate facility to hold the training event and coordinate all logistics.



## PART V PROPOSAL EVALUATION AND SELECTION

Evaluation of the submitted proposals shall be accomplished as follows:

### A. Evaluation Process - General Information

1. An evaluation team, comprised of qualified reviewers, will judge the merits of the proposals received in accordance with the criteria defined in the RFP.
2. Officials responsible for making decisions on the selection of a contractor shall ensure that the selection process accords equal opportunity and appropriate consideration to all who are capable of meeting the specifications. The goals of the evaluation process are to ensure fairness and objectivity in review of the proposals and to ensure that the contract is awarded to the Bidder whose proposal provides the best value to the State of Maine.
3. The Department reserves the right to communicate and/or schedule interviews/presentations with Bidders if needed to obtain clarification of information contained in the proposals received, and the Department may revise the scores assigned in the initial evaluation to reflect those communications and/or interviews/presentations. Interviews/presentations are not required, and changes to proposals will not be permitted during any interview/presentation process. Therefore, Bidders should submit proposals that present their rates and other requested information as clearly and completely as possible.

### B. Scoring Weights and Process

1. **Scoring Weights:** The score will be based on a 100-point scale and will measure the degree to which each proposal meets the following criteria.

#### **Section I. Organization Qualifications and Experience (40 points)**

Includes all elements addressed above in Part IV, B, Section I.

#### **Section II. Proposed Services (35 points)**

Includes all elements addressed above in Part IV, B, Section II.

#### **Section III. Cost Proposal (25 points)**

Includes all elements addressed above in Part IV, B, Section III.

2. **Scoring Process:** The review team will use a consensus approach to evaluate and score Sections I & II above. Members of the review team will not score those sections individually but, instead, will arrive at a consensus as to assignment of points for each of those sections. Sections III, the Cost Proposal, will be scored as described below.
3. **Scoring the Cost Proposal:** The total cost proposed for conducting all the functions specified in this RFP will be assigned a score according to a mathematical formula. The lowest bid will be awarded 25 points. Proposals with higher bids values will be awarded proportionately fewer points calculated in comparison with the lowest bid.

The scoring formula is:

$$(\text{Lowest submitted cost proposal} / \text{Cost of proposal being scored}) \times (25) = \text{pro-rated score}$$

No Best and Final Offers: The State of Maine will not seek a best and final offer (BAFO)

APPENDIX D

State of Maine  
Maine Commission on Indigent Legal Services  
COST PROPOSAL FORM

RFP# (Inserted by Procurement Services when assigned/approved)  
Consultant for Implementation of New Lawyer Training Program

Bidder's Organization Name:	
Proposed Cost:	\$

Proposed Fixed or Hourly Cost \$ \_\_\_\_\_

**(3.)**

**Lawyer of the Day Staffing**

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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:** LAWYER OF THE DAY STAFFING  
**DATE:** FEBRUARY 20, 2020

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After discussion with a member of the Judiciary, Commissioner LeBrasseur has raised the question whether the Commission should undertake immediate efforts to increase Lawyer of the Day staffing. His email to the staff is attached.

I have also attached a copy of a spreadsheet showing the potential cost of increased staffing. The data reflects the annual cost of each of the three types of LOD services for all of fiscal year 2019.

There are approximately four months left in FY'20. The attachment sets forth the estimated cost of doubling LOD staffing for the balance of the year, as well as the cost of increasing LOD staffing by 50% for the same period.

As stated at previous meetings, the Commission ended the second quarter of FY'20 with an available balance of \$338,000.00.

Note that increasing LOD staffing would require the cooperation of the various Clerk's offices because Commission staff do not assign LOD's directly. Also, a number of courts have difficulty finding attorneys to perform LOD services at the current level, so substantially increasing the number of LOD's in those courts would be difficult.

## Cost of Increased LOD Staffing

FY'19 Annual Cost		Additional cost to double LOD staffing for final four months of fiscal year.	Additional cost to increase LOD staffing by 50% for final four months of fiscal year.
LOD Custody	\$ 620,542.42	\$ 206,640.63	\$ 103,320.31
LOD Juvenile	\$ 79,028.60	\$ 26,316.52	\$ 13,158.26
LOD Walk-In	\$ 334,015.76	\$ 111,227.25	\$ 55,613.62
Total		\$ 344,184.40	Total \$ 172,092.20

**(4.)**

**Financial Screener Status**



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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:** FINANCIAL SCREENER STATUS  
**DATE:** FEBRUARY 20, 2020

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On February 18, 2020, the Judiciary Committee held a public hearing on LD 182, a bill completely unrelated to MCILS. During the hearing, the sponsor asked to amend the bill to eliminate the original language and, instead, use the bill as a vehicle to transfer the financial screener positions from MCILS to the Judicial Branch.

The bill is now set for a work session on the afternoon of February 25<sup>th</sup>, after the AFA hearing on the Commission portion of the Supplemental Budget. The Commission will need to determine whether to take a position on this proposal, and if so, what that position should be.

**(5.)**

**Supplemental Budget**

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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:** SUPPLEMENTAL BUDGET UPDATE  
**DATE:** FEBRUARY 20, 2020

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Chair Tardy and Commissioner Katz appeared before the Appropriations Committee on February 13<sup>th</sup>. They both gave brief presentations on the issues before the Commission and steps being taken to address them and then answered questions from Committee members.

On February 25, 2020 at 1:00, the Appropriations Committee will hold a public hearing on the MCILS portion, among others, of the Governor's Supplemental budget.

**(6.)**

**Juvenile Defense Grant**

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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:** POTENTIAL JUVENILE INDIGENT DEFENSE GRANT  
**DATE:** FEBRUARY 20, 2020

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Attached please find a federal grant solicitation aimed at improving indigent juvenile defense, particularly in rural areas. States and units of local government can apply.

Applications must identify a specific issue or problem to be addressed, preferably based on existing research or evaluation studies, and describe a plan to address the issue through the use of grant funds. The solicitation emphasizes the identification of measurable outcomes and require a plan for collecting data on performance measures.

**U.S. Department of Justice**  
Office of Justice Programs  
*Office of Juvenile Justice and Delinquency Prevention*



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## **OJJDP FY 2020 Enhancing Juvenile Indigent Defense FY 2020 Competitive Grant Solicitation**

**CFDA #16.836**

**Grants.gov Solicitation Number:** OJJDP-2020-17353

**Solicitation Release Date:** February 5, 2020

**Application Deadline:** 11:59 p.m. eastern time (ET) on April 6, 2020

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The U.S. Department of Justice (DOJ), Office of Justice Programs (OJP), Office of Juvenile Justice and Delinquency Prevention (OJJDP) is seeking applications for funding under the fiscal year (FY) 2020 Enhancing Juvenile Indigent Defense program. This program will provide funding to states and localities to enhance juvenile defense delivery systems. This program furthers the Department's mission to reduce violent crime by supporting states and localities in their efforts to address barriers and gaps within their juvenile justice systems for indigent youth in order to reduce reoffending and decrease recidivism.

This solicitation incorporates the OJP Grant Application Resource Guide by reference. The OJP Grant Application Resource Guide provides guidance to applicants on how to prepare and submit applications for funding to OJP. If this solicitation expressly modifies any provision in the OJP Grant Application Resource Guide, the applicant is to follow the guidelines in this solicitation as to that provision.

### **Eligibility (Who may apply):**

The following entities are eligible to apply:

- states and territories, and
- units of local government.<sup>1</sup>

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<sup>1</sup> A "unit of local government" means—

(a) Any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a state.

(b) Any law enforcement district or judicial enforcement district that—

(i) Is established under applicable state law, and

(ii) Has the authority to, in a manner independent of other state entities, establish a budget and impose taxes.

(c) For the purposes of assistance eligibility, any agency of the government of the District of Columbia or the federal government that performs law enforcement functions in and for—

(i) The District of Columbia, or

(ii) Any Trust Territory of the United States.

# **OJJDP FY 2020 Enhancing Juvenile Indigent Defense**

## **CFDA #16.836**

### **A. Program Description**

#### **Overview**

This program supports improvements for juvenile indigent defense.

#### **Statutory Authority**

This program is authorized under the Department of Justice Appropriations Act, 2020, Pub. L. No. 116–93, 133 Stat. 2317, 2407.

#### **Program-Specific Information**

The Enhancing Juvenile Indigent Defense program will support states and localities in developing and implementing strategies to improve juvenile indigent defense.

#### **Goals, Objectives, and Deliverables**

The goal of this program is to implement enhancements that improve juvenile indigent defense. Program objectives are to ensure that youth involved with the juvenile justice system have access to legal representation and access to resources that address the collateral consequences of justice system involvement. Best practices for Enhancing Juvenile Indigent Defense can be found in the National Juvenile Defense Standards.<sup>2</sup>

The Goals, Objectives, and Deliverables are directly related to the performance measures that demonstrate the results of the work completed, as discussed under What an Application Should Include.

#### **OJP Priority Areas**

In FY 2020, and in addition to executing any statutory prioritization that may be applicable, OJP will give priority consideration to applications as follows:

- Applications that address specific challenges that rural communities face.
- Applications that demonstrate that the individuals who are intended to benefit from the requested grant reside in high-poverty areas or persistent-poverty counties.
- Applications that offer enhancements to public safety in economically distressed communities (Qualified Opportunity Zones).

To receive priority consideration under the rural priority, applicants must describe what makes the geographic service area rural (using U.S. Census or other appropriate government data; for assistance, applicants may wish to refer to <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural.html>), how isolated the area is from needed services, and how they will address specific challenges in rural communities.

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<sup>2</sup> For National Juvenile Defense Standards, see <https://njdc.info/national-juvenile-defense-standards/>.

To receive priority consideration under the poverty priority, the applicant must provide information to demonstrate that the individuals who are intended to benefit from the requested grant reside in high-poverty areas or persistent poverty counties. For purposes of this priority consideration, the term “high-poverty area” means any census tract with a poverty rate of at least 20 percent as measured by the 2013–2017 5-year data series available from the American Community Survey of the Census Bureau (applicants may search by census tract at <https://www.census.gov/acs/www/data/data-tables-and-tools/narrative-profiles/2017/>) and the term “persistent poverty counties” means any county that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1990 and 2000 decennial censuses and the most recent Small Area Income and Poverty Estimates (applicants may search by county at <https://www.census.gov/data/tables/time-series/dec/census-poverty.html> and at <https://www.census.gov/programs-surveys/saie.html>).

To receive priority consideration under the Qualified Opportunity Zones priority, applicants must include information that specifies how the project will enhance public safety in the specified QOZs. For resources on QOZs, and for a current list of designated QOZs, see the U.S. Department of the Treasury’s resource webpage, accessible at <https://www.cdfifund.gov/pages/opportunity-zones.aspx>.

### **Evidence-Based Programs or Practices**

OJP strongly emphasizes the use of data and evidence in policymaking and program development in criminal justice, juvenile justice, and crime victim services. For additional information and resources on evidence-based programs or practices, see the [OJP Grant Application Resource Guide](#).

### **Information Regarding Potential Evaluation of Programs and Activities**

Applicants should note that OJP may conduct or support an evaluation of the programs and activities funded under this solicitation. For additional information, see the [OJP Grant Application Resource Guide](#) section titled “Information Regarding Potential Evaluation of Programs and Activities.”

## **B. Federal Award Information**

Maximum number of awards OJJDP expects to make	4
Estimated maximum dollar amount for each award	\$437,500
Total amount anticipated to be awarded under solicitation	\$1,750,000
Period of performance start date	October 1, 2020
Period of performance duration	36 months

Under this solicitation, only one application by any particular applicant entity will be considered. An entity may, however, be proposed as a subrecipient (subgrantee) in more than one application.

All awards are subject to the availability of appropriated funds and to any modifications or additional requirements that may be imposed by law.



## **Type of Award**

OJJDP expects to make awards under this solicitation as grants. See the “Administrative, National Policy, and Other Legal Requirements” section of the [OJP Grant Application Resource Guide](#) for additional information.

## **Financial Management and System of Internal Controls**

Award recipients and subrecipients (including recipients or subrecipients that are pass-through entities) must, as described in the Part 200 Uniform Requirements<sup>3</sup> as set out at 2 C.F.R. 200.303, comply with standards for financial and program management. See the [OJP Grant Application Resource Guide](#) for additional information.

## **Budget Information**

### **Cost Sharing or Match Requirement**

This solicitation does not require a match.

**Please see the [OJP Grant Application Resource Guide](#) for information on the following:**

[Preagreement Costs \(also known as Preaward Costs\)](#)

[Limitation on Use of Award Funds for Employee Compensation; Waiver](#)

[Prior Approval, Planning, and Reporting of Conference/Meeting/Training Costs](#)

[Costs Associated With Language Assistance](#) (if applicable)

## **C. Eligibility Information**

For eligibility information, see the title page.

For information on cost sharing or match requirements, see [Cost Sharing or Match Requirement](#).

## **D. Application and Submission Information**

This solicitation expressly modifies the OJP Grant Application Resource Guide by not incorporating the “Disclosure of Process Related to Executive Compensation” provisions in the “Application Attachments” section of the OJP Grant Application Resource Guide.

### **What an Application Should Include**

The following application elements **MUST** be included in the application submission for an application to meet the basic minimum requirements (BMR) to advance to peer review and receive consideration for funding: Program Narrative, Budget Detail Worksheet, and Budget Narrative.

See the “Application Elements and Formatting Instructions” section of the [OJP Grant Application Resource Guide](#) for information on what happens to an application that does not contain all of the specified elements or that is nonresponsive to the scope of the solicitation.

### **1. Application for Federal Assistance (Standard Form (SF)-424)**

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<sup>3</sup> The “Part 200 Uniform Requirements” means the DOJ regulation at 2 C.F.R Part 2800, which adopts (with certain modifications) the provisions of 2 C.F.R. Part 200.

The SF-424 is a required standard form used as a cover sheet for submission of preapplications, applications, and related information. See the OJP Grant Application Resource Guide for additional information on completing the SF-424.

**Intergovernmental Review:** This solicitation ("funding opportunity") is subject to Executive Order 12372. An applicant may find the names and addresses of State Single Points of Contact (SPOCs) at the following website: [https://www.whitehouse.gov/wp-content/uploads/2017/11/Intergovernmental\\_-Review-\\_SPOC\\_01\\_2018\\_OFFM.pdf](https://www.whitehouse.gov/wp-content/uploads/2017/11/Intergovernmental_-Review-_SPOC_01_2018_OFFM.pdf). If the applicant's state appears on the SPOC list, the applicant must contact the state SPOC to find out about, and comply with, the state's process under E.O. 12372. In completing the SF-424, an applicant whose state appears on the SPOC list is to make the appropriate selection in response to question 19, once the applicant has complied with its state E.O. 12372 process. (An applicant whose state does not appear on the SPOC list should answer question 19 by selecting the response that the: "Program is subject to E.O. 12372, but has not been selected by the state for review.").

## **2. Project Abstract**

Include a project abstract (no more than 400 words) that summarizes the proposed project including primary activities, products and deliverables, the service area, and who will benefit. Project abstracts should be—

- Written for a general public audience.
- Submitted as a separate attachment with "Project Abstract" as part of its file name.
- Single-spaced, using a standard 12-point Times New Roman font with 1-inch margins.

## **3. Program Narrative**

Applicants must submit a program narrative that presents a detailed description of the purpose, goals, objectives, strategies, design, and management of the proposed program. The program narrative should be double-spaced with 1-inch margins, not exceeding 30 pages of 8½ by 11 inches, and use a standard 12-point Times New Roman font. Pages should be numbered "1 of 30," etc. The tables, charts, pictures, etc., including all captions, legends, keys, subtext, etc., may be single-spaced and will count in the 30-page limit. Material required under the Budget and Budget Narrative and Additional Attachments sections will not count toward the program narrative page count. Applicants may provide bibliographical references as a separate attachment that will not count toward the 30-page program narrative limit. If the program narrative fails to comply with these length-related restrictions, OJJDP may negatively consider such noncompliance in peer review and in final award decisions.

The program narrative should address the following selection criteria: (1) description of the issue, (2) program design and implementation, (3) capabilities and competencies, and (4) plan for collecting the data required for this solicitation's performance measures. The applicant should clearly delineate the connections between and among each of these sections. For example, the applicant should derive the goals and objectives directly from the problems to be addressed. Similarly, the project design section should clearly explain how the program's structure and activities will accomplish the goals and objectives identified in the previous section.

The following sections should be included as part of the program narrative:

- a. **Description of the Issue.** Describe the nature and scope of the problem that the program will address (e.g., access to legal representation, data collection issues, gaps in youth services, etc.). The applicant should use data to provide evidence that the problem exists, demonstrate the size and scope of the problem, and document the effects of the problem on the target population and the larger community. Any data or research referenced in the narrative should include information about the source of the data and/or a citation. Applicants should describe the target population and any previous or current attempts to address the problem.

Applicants should describe any research or evaluation studies that relate to the problem and contribute to their understanding of its causes and potential solutions. While OJJDP expects applicants to review the research literature for relevant studies, they should also explore whether unpublished local sources of research or evaluation data are available.

- b. **Project Design and Implementation.** Detail how the project will operate throughout the funding period and describe the strategies that they will use to achieve the goals and objectives identified. Applicants should describe how they will complete the deliverables stated in the Goals, Objectives, and Deliverables section on page 4. OJJDP encourages applicants to select evidence-based practices for their programs.

Applicants are encouraged to identify any training and technical assistance needs associated with their proposed projects and build required experts, if any, directly into their program narrative's project design and their budget.

This section should also include details regarding any leveraged resources (cash or in-kind) from local sources to support the project and discuss plans for sustainability beyond the grant period.

**Timeline.** Applicants should submit a realistic timeline or milestone chart that indicates major tasks associated with the goals and objectives of the project, assigns responsibility for each, and plots completion of each task by month or quarter for the duration of the award, using "Year 1," "Month 1," "Quarter 1," etc., not calendar dates (see "Sample Project Timelines" [here](#)).

Applicants should submit the timeline as a separate attachment. On receipt of an award, the recipient may revise the timeline, based on training and technical assistance that OJJDP will provide.

- c. **Capabilities and Competencies.** Describe the experience and capability of the applicant organization and any contractors or subgrantees that the applicant will use to implement and manage this effort and its associated federal funding, highlighting any previous experience implementing projects of similar design or magnitude. Applicants should highlight their experience/capability/capacity to manage subawards, including details on their system for fiscal accountability. Management and staffing patterns should be clearly connected to the project design described in the previous section. Applicants should describe the roles and responsibilities of project staff and explain the program's organizational structure and operations. Applicants should include a copy of an organizational chart showing how the organization operates, including who manages the

finances; how the organization manages subawards, if there are any; and the management of the project proposed for funding.

- d. **Plan for Collecting the Data Required for This Solicitation's Performance Measures.** OJP will require each successful applicant to submit regular performance data that demonstrate the results of the work carried out under the award. The performance data directly relate to the goals, objectives, and deliverables identified under "Goals, Objectives, and Deliverables."

Applicants should visit OJP's performance measurement page at [www.ojp.gov/performance](http://www.ojp.gov/performance) for an overview of performance measurement activities at OJP.

Award recipients will be required to provide the relevant data by submitting semi-annual performance metrics through OJJDP's online Performance Measurement Tool (PMT), located at <https://ojpsso.ojp.gov/>. Applicants should review the complete list of performance measures for this solicitation here.

The application should demonstrate the applicant's understanding of the performance data reporting requirements for this grant program and detail how the applicant will gather the required data should it receive funding.

Please note that applicants are not required to submit performance data with the application. Performance measures information is included as an alert that successful applicants will be required to submit performance data as part of the reporting requirements under an award.

#### **Note on Project Evaluations**

An applicant that proposes to use award funds through this solicitation to conduct project evaluations should follow the guidance under Note on Project Evaluations in the OJP Grant Application Resource Guide.

Please see the OJP Grant Application Resource Guide for information on the following:

4. **Budget Information and Associated Documentation** in the Budget Preparation and Submission Information section.

Applicants are encouraged to identify any training and technical assistance needs associated with their proposed projects and build required experts, if any, directly into their budget.

5. **Indirect Cost Rate Agreement**

6. **Financial Management and System of Internal Controls Questionnaire (including applicant disclosure of high-risk status)**

7. **Disclosure of Lobbying Activities**

8. **Applicant Disclosure of Pending Applications**