

**MCILS**

**January 27, 2021  
Commissioner's Meeting  
Packet**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**JANUARY 27, 2021  
ZOOM COMMISSION MEETING  
AGENDA**

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- 1) Introduction of Justin Andrus, interim Executive Director
- 2) Executive Director Search Update
- 3) Approval of January 4 and January 8, 2021 Commission Meeting Minutes
- 4) Operations Reports
- 5) Rulemaking Discussion – Chapters 2, 301 and 302
- 6) Budget Update
- 7) Financial Subcommittee Update
- 8) Attorney Shortage Discussion
- 9) Protective Custody Rostering Discussion
- 10) New Attorney Rostering Discussion
- 11) Bureau of Justice Assistance TTA application
- 12) Set Date, Time and Location of Next Regular Meeting of the Commission
- 13) Public Comment
- 14) Executive Session, if needed (Closed to Public)

**(3.)**

**Approval of  
January 4, 2021  
January 8, 2021  
Commission Meeting  
Minutes**

**Maine Commission on Indigent Legal Services – Commissioners Meeting  
January 4, 2021**

**Minutes**

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

**MCILS Staff Present:** Ellie Maciag

<b>Agenda Item</b>	<b>Discussion</b>	<b>Outcome/Action Item/Responsible Party</b>
Approval of the December 21, 2020 Meeting Minutes	No discussion of meeting minutes.	Commissioner Cummins moved to approve. Commissioner Carey seconded. Commissioners Churchill and Schneider absent for the vote. Commissioner Katz abstained since not present at last meeting. All voted in favor. Approved.
Rulemaking Discussion	Deputy Director Maciag went over next steps in the rulemaking process and a discussion ensued about whether to move forward with the rules. Commissioner Schneider voiced some concern about not moving forward with the Chapter 2 eligibility requirements. Commissioner Cummins suggested that the Commission table both Chapters 2 and 3 since it is unable to fulfil its obligations of the Sixth Amendment, arguing that there is no urgency to these rules. Commissioner Schneider agrees with Commissioner Cummins statement but countered that delaying at least Chapter 2 would be a mistake. Following a discussion about the scope of Chapter 2, Commissioner Cummins argued that those additional clarifications concerning disciplinary issues are implicit in our rules of professional conduct and Chapter 2 needs restructuring and	

<b>Agenda Item</b>	<b>Discussion</b>	<b>Outcome/Action Item/Responsible Party</b>
	<p>simplification. The Commission reviewed staff's draft responses to public comment for Chapter 2. Commissioner Carey moved to adopt the staff's draft responses as written. Commissioner Schneider seconded. All voted in favor with Commissioner Cummins abstaining. Commissioner Schneider moved to adopt the detailed basis statement/summary for Chapter 2. Commissioner Carey seconded. All voted in favor with Commissioner Cummins abstaining. Commissioner Carey suggested some language change to Chapter 2, section 2(6) and Commissioner LeBrasseur suggested removing language in Section (1)(B)(5) dealing with mentor requirements since the Commission is not moving forward with Chapter 3 revisions. Commissioner Carey moved to amend the proposed Chapter 2 as discussed and to republish for public comment. Commissioner Katz seconded. All voted in favor with Commissioner Cummins abstaining and Commissioner Schneider absent. The discussion then turned to Chapter 3. Commissioner Carey explained that he has submitted language to the governor's office to be included in the supplemental budget to change our current rules that are major substantive to routine technical. Commissioner Carey moved to table the proposed changes to Chapter 3 including the discussion around the draft responses to public comment and basis statement. Commissioner Katz seconded. All voted in favor with Commissioner Schneider absent.</p>	
Rule Enforcement Update	<p>Deputy Director Maciag explained that the court does not always follow the specialized panel roster when making case assignments. Deputy Director Maciag spoke to Beth Maddaus from the Judicial Branch in mid-December about the need for the court to follow the rosters. The Commissioners agreed that Chapter 3 needs to be revisited to allow for some staff discretion and instructed Deputy Director Maciag to enforce the rule as written. Deputy Director Maciag alerted the Commissioners about the 90-day voucher submission requirement having not been enforced over the years. The Commissioners instructed Deputy Director Maciag to enforce the rule as written and indicated a willingness to engage in rulemaking to add some</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	discretion for the executive director to approve late vouchers for good cause shown.	
Budget Update	Deputy Director Maciag informed the Commissioners that the budget initiative adding \$2.8 million to each year of the biennium to cover the cost of Commission operations that had been previously included is now unincorporated in the latest working version of the budget.	
Executive Director Search Update	Deputy Director Maciag gave a brief update on the executive director search.	
Financial Subcommittee Next Steps	Commissioner Carey gave an update on the financial subcommittee's activities. Retired Justice Alexander will be joining the subcommittee and subcommittee work will resume to finalize the draft report that was submitted last winter. Further work on the report was put on hold while the subcommittee waited for the OPEGA report to be issued. Commissioner Carey noted that it was critically important to not make any duct tape-type IT changes and that the Commission needs to be sure that any IT changes will solve our problems.	
Proposal for Subcommittee on Retention/Recruitment	Commissioner Zmigrodski outlined some items that the child protection bar suggested that would not be too costly that could serve as great recruitment/retention tools for the Commission. The Commissioners were in full support for the creation of this new subcommittee on recruitment/retention.	
New Attorney Rostering Discussion	The Commissioners continued the discussion about what training the Commission will authorize for new attorneys applying to join the rosters. Commissioner Cummins is lukewarm on the idea of a one-day training by video. Commissioners LeBrasseur noted pursuing the training route of one-day minimum standards videos is precisely what the Sixth Amendment Center report has said we are doing wrong and urged the Commission to not allow for that route on to the rosters. Commissioners Cummins and Schneider both	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>agree. Commissioner Carey suggested holding video replays of current trainings with a moderator. Commissioner Cummins suggested a full stop on training until we can get the system fixed. Commissioner LeBrasseur moved to approve previously recorded Commission trainings be approved as Commission approved trainings. Following a short discussion, Chair Tardy asked for a motion to table and indicated that the training subcommittee would work with counsel and staff and consult with Commissioner LeBrasseur and will have a more streamlined approach at the next meeting. Commission Carey moved and Commissioner Schneider seconded. All voted in favor.</p>	
Annual Report Discussion	<p>Commissioner Carey had three suggested changes to staff's draft version of the annual report which the full Commission supported.</p>	
Public Comment	<p><u>Attorney Robert Ruffner:</u> Attorney Ruffner reminded the Commission that any discussion of the budget during executive session pursuant to 405(6)(A) is expressly prohibited. Attorney Ruffner hopes the retention and recruitment subcommittee expands to not just cover child protection. Attorney Ruffner renewed his request that the Commission address the issue of courts delaying the assignment of counsel and increased training for lawyers of the day.</p> <p><u>Attorney Zach Heiden:</u> Attorney Heiden appreciates the comment on following the rule on billing as written. Attorney Heiden noted that not following the rules does not serve the Commission or the State of Maine well since it gives the perception that the rules are not important. He stated that the right course of action is to work to change the rule and not ignore it. Attorney Heiden stressed that the one-day training for new attorneys is not enough. Attorney Heiden stated that it is critically important for the Legislature to hear from the Commission that it is unable to meet its statutory obligations.</p>	
Executive Session	<p>Commissioner Carey moved to go into executive session pursuant to 1 MRS 405(6)(A). Commissioner Cummins seconded. All voted in favor.</p>	

<b>Agenda Item</b>	<b>Discussion</b>	<b>Outcome/Action Item/Responsible Party</b>
Adjournment of meeting	The next meeting will be held by Zoom on January 27, 2021 at 1:00 pm.	



**Maine Commission on Indigent Legal Services – Commissioners Meeting  
January 8, 2021**

**Minutes**

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

**MCILS Staff Present:** Ellie Maciag

<b>Agenda Item</b>	<b>Discussion</b>	<b>Outcome/Action Item/Responsible Party</b>
Executive Director Search	Commissioner Carey moved to go into executive session pursuant to 1 MRS 405(6)(A). Commissioner Cummins seconded. All voted in favor. Following executive session, Commissioner Carey moved that the Commission offer the job of interim executive director to the person that was unanimously recommended by the personnel subcommittee. Commissioner Cummins seconded. All voted in favor. Chair Tardy anticipates making a public announcement next week once the candidate has accepted.	
Fee Rule Discussion	Commissioner Carey moved to go into executive session pursuant to 1 MRS 405(6)(E) to consult with legal counsel. Commissioner Churchill seconded. All voted in favor. Following executive session, Commissioner Carey moved that Commission staff issue a public communication that the Commission will be strictly enforcing the 90-day rule for voucher submission beginning on April 1, 2021. Commissioner Cummins seconded. Commissioner Carey noted that the rule is clear on the 90-day deadline but that due to prior staff policy of non-enforcement, adequate notice should be given to attorneys that the rule will be enforced beginning on April 1, 2021. Commissioner Carey said this period will allow the Commission time to engage in rulemaking to revise the rule to provide for a waiver opportunity. Chair Tardy requested staff draft a revised rule for Commission discussion that provides for more discretion for Commission staff to authorize a waiver. All voted in favor. Commissioner Carey requested the	

<b>Agenda Item</b>	<b>Discussion</b>	<b>Outcome/Action Item/Responsible Party</b>
	proposed waiver language provide for a process that rests the authority with the Commission and not staff, similar to the process employed by the Maine Commission on Governmental Ethics.	
Public Comment	<p><u>Attorney Tina Nadeau</u>: Attorney Nadeau cautioned the Commissioners against taking on the role of deciding what constitutes good cause for the 90-day deadline waiver since that is typically a function held by the executive director. Attorney Nadeau appreciates the April 1<sup>st</sup> start date for enforcement of the 90-day voucher rule, recognizing that attorneys have been relying on the non-enforcement of that rule for 11 years now. Attorney Nadeau also cautioned the Commission against assuming the role of adjudicator since it needs to preserve its function as an appellate body.</p> <p><u>Attorney Cory McKenna</u>: Attorney McKenna expressed concerned about the frequent use of executive session at Commission meetings causing the public to not be able to hear the Commissioners debate and thoughts. Attorney McKenna questioned whether the threshold was met today for the Commissioners to talk in executive session about who to hire as the interim executive director or about the broad request for seeking guidance from counsel about the Commission’s legal rights and duties.</p>	
Adjournment of meeting	The next meeting will be held by Zoom on January 27, 2021 at 1:00 pm.	

**(4.)**

# **Operations Reports**

## MAINE COMMISSION ON INDIGENT LEGAL SERVICES

**TO:** MCILS COMMISSIONERS

**FROM:** JUSTIN ANDRUS, EXECUTIVE DIRECTOR

**SUBJECT:** OPERATIONS REPORTS

**DATE:** JANUARY 25, 2021

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Attached you will find the December 2020, Operations Reports for your review and our discussion at the Commission meeting on January 27, 2021. A summary of the operations reports follows:

- 2,046 new cases were opened in the DefenderData system in December. This was a 93 case decrease from November. Year to date, new cases are down 3%, from 15,040 at this time last year to 14,571 this year.
- The number of vouchers submitted electronically in December was 2,418, a decrease of 244 vouchers from November, totaling \$1,109,791, a decrease of \$34,468 from November. Year to date, the number of submitted vouchers is down by approximately 16%, from 17,308 at this time last year to 14,529 this year, with the total amount for submitted vouchers down 23%, from \$8,491,957 at this time last year to \$6,524,127 this year.
- In December, we paid 2,592 electronic vouchers totaling \$1,140,293, representing an increase of 406 vouchers and an increase of \$210,175 compared to November. Year to date, the number of paid vouchers is down approximately 21%, from 17,271 at this time last year to 13,522 this year, and the total amount paid is down approximately 28%, from \$8,438,535 at this time last year to \$6,072,685 this year.
- We paid no paper vouchers in December.
- The average price per voucher in December was \$439.93, up \$14.44 per voucher from November. Year to date, the average price per voucher is down approximately 9.3%, from \$495.54 at this time last year to \$449.10 this year.
- Appeal and Drug Court cases had the highest average voucher in December. There were 3 vouchers exceeding \$5,000 paid in December. See attached addendum for details.
- In December, we issued 78 authorizations to expend funds: 49 for private investigators, 24 for experts, and 5 for miscellaneous services such as interpreters and transcriptionists. In December, we paid \$61,291 for experts and investigators, etc. Two requests for funds were modified to authorize a lower hourly rate based on a reduction in the hourly rate by the provider and two requests were authorized for a reduced amount.
- In December, we received two complaints about one attorney.

- In December, we approved five requests for co-counsel.

In our All Other Account, the total expenses for the month of December were \$1,221,776. During December, approximately \$20,191 was devoted to the Commission's operating expenses.

In the Personal Services Account, we had \$87,292 in expenses for the month of December.

In the Revenue Account, the transfer from the Judicial Branch for December, reflecting November's collections, totaled \$69,647, a decrease of approximately \$8,200 from the previous month.

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

VOUCHERS EXCEEDING \$5,000 PAID DECEMBER 2020

	Voucher Total	Case Total
Felony case involving arresting officer who testified at a PV hearing who later died of a fentanyl overdose and was discovered to be stealing drugs. Included suppression hearing and day long jury trial and separate sentencing hearing.	\$7,814	\$7,814
Appeal of a double murder conviction with a life sentence following a lengthy jury trial. Law Court also granted a sentence appeal.	\$7,020	\$7,020
Manslaughter case out of Bangor with client housed at Two Bridges and Farmington jail facilities. Delays due to COVID and had prepared for contested sentencing hearing.	\$5,435	\$5,435

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

**Activity Report by Case Type**

12/31/2020

DefenderData Case Type	Dec-20						Fiscal Year 2021			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
Appeal	9	13	\$ 24,264.64	13	\$ 28,120.01	\$ 2,163.08	41	67	\$ 110,681.30	\$ 1,651.96
Child Protection Petition	203	380	\$ 215,796.17	357	\$ 201,252.05	\$ 563.73	1,114	2,197	\$ 1,264,029.04	\$ 575.34
Drug Court	0	7	\$ 5,088.00	3	\$ 4,296.00	\$ 1,432.00	2	43	\$ 54,834.00	\$ 1,275.21
Emancipation	3	2	\$ 510.00	2	\$ 564.00	\$ 282.00	33	25	\$ 6,422.91	\$ 256.92
Felony	493	510	\$ 337,034.18	551	\$ 332,650.24	\$ 603.72	3,329	2,516	\$ 1,640,990.63	\$ 652.22
Involuntary Civil Commitment	80	61	\$ 10,908.00	75	\$ 14,834.42	\$ 197.79	521	432	\$ 87,066.44	\$ 201.54
Juvenile	39	71	\$ 29,255.91	75	\$ 33,343.10	\$ 444.57	371	380	\$ 179,964.77	\$ 473.59
Lawyer of the Day - Custody	211	200	\$ 47,225.88	197	\$ 45,628.36	\$ 231.62	1,447	1,317	\$ 314,552.84	\$ 238.84
Lawyer of the Day - Juvenile	20	17	\$ 3,182.40	17	\$ 3,881.02	\$ 228.30	147	126	\$ 27,663.09	\$ 219.55
Lawyer of the Day - Walk-in	91	81	\$ 21,515.67	103	\$ 27,579.73	\$ 267.76	1,019	959	\$ 225,450.80	\$ 235.09
Misdemeanor	725	690	\$ 211,967.36	807	\$ 251,593.00	\$ 311.76	5,330	3,367	\$ 1,046,960.78	\$ 310.95
Petition, Modified Release Treatment	0	4	\$ 1,816.35	4	\$ 1,816.35	\$ 454.09	5	26	\$ 12,104.27	\$ 465.55
Petition, Release or Discharge	0	3	\$ 1,087.65	2	\$ 925.65	\$ 462.83	1	6	\$ 3,569.43	\$ 594.91
Petition, Termination of Parental Rights	14	48	\$ 40,481.84	42	\$ 34,664.15	\$ 825.34	144	277	\$ 199,645.25	\$ 720.74
Post Conviction Review	11	12	\$ 16,064.52	16	\$ 19,171.68	\$ 1,198.23	38	45	\$ 68,018.72	\$ 1,511.53
Probate	1	0		0			10	5	\$ 5,492.80	\$ 1,098.56
Probation Violation	91	112	\$ 46,228.56	135	\$ 50,173.82	\$ 371.66	702	627	\$ 257,819.99	\$ 411.20
Represent Witness on 5th Amendment	0	0		1	\$ 234.00	\$ 234.00	2	2	\$ 1,134.00	\$ 567.00
Resource Counsel Criminal	0	1	\$ 90.00	2	\$ 210.00	\$ 105.00	0	10	\$ 1,632.00	\$ 163.20
Resource Counsel Juvenile	0	1	\$ 18.00	0			0	3	\$ 438.00	\$ 146.00
Resource Counsel Protective Custody	0	0		0			0	1	\$ 408.00	\$ 408.00
Review of Child Protection Order	54	204	\$ 96,502.70	190	\$ 89,355.88	\$ 470.29	307	1,089	\$ 563,695.05	\$ 517.63
Revocation of Administrative Release	1	1	\$ 754.00	0			8	2	\$ 111.52	\$ 55.76
<b>DefenderData Sub-Total</b>	<b>2,046</b>	<b>2,418</b>	<b>\$ 1,109,791.83</b>	<b>2,592</b>	<b>\$ 1,140,293.46</b>	<b>\$ 439.93</b>	<b>14,571</b>	<b>13,522</b>	<b>\$ 6,072,685.63</b>	<b>\$ 449.10</b>
<b>Paper Voucher Sub-Total</b>	<b>0</b>	<b>0</b>	<b>\$ -</b>	<b>0</b>	<b>\$ -</b>		<b>0</b>	<b>0</b>		
<b>TOTAL</b>	<b>2,046</b>	<b>2,418</b>	<b>\$1,109,791.83</b>	<b>2,592</b>	<b>\$1,140,293.46</b>	<b>\$ 439.93</b>	<b>14,571</b>	<b>13,522</b>	<b>\$ 6,072,685.63</b>	<b>\$ 449.10</b>

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

**Activity Report by Court**

12/31/2020

Court	Dec-20						Fiscal Year 2021			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
ALFSC	1	0		2	\$ 720.00	\$ 360.00	22	24	\$ 9,774.00	\$ 407.25
AUBSC	0	1	\$ 438.00	0			4	2	\$ 258.00	\$ 129.00
AUGDC	34	70	\$ 39,737.78	52	\$ 28,119.52	\$ 540.76	214	289	\$ 157,751.70	\$ 545.85
AUGSC	0	7	\$ 2,904.00	8	\$ 3,570.00	\$ 446.25	15	43	\$ 22,331.77	\$ 519.34
BANDC	69	93	\$ 20,425.96	87	\$ 22,819.96	\$ 262.30	349	517	\$ 146,007.61	\$ 282.41
BANSC	1	0		0			1	0		
BATSC	0	0		0			1	0		
BELDC	6	21	\$ 9,199.06	17	\$ 5,988.06	\$ 352.24	66	168	\$ 87,337.54	\$ 519.87
BELSC	0	0		0			1	0		
BIDDC	40	64	\$ 37,950.41	61	\$ 32,664.43	\$ 535.48	255	339	\$ 195,084.92	\$ 575.47
BRIDC	8	16	\$ 8,043.85	31	\$ 12,943.03	\$ 417.52	58	116	\$ 54,147.81	\$ 466.79
CALDC	3	7	\$ 1,764.00	2	\$ 2,250.00	\$ 1,125.00	22	37	\$ 18,343.04	\$ 495.76
CARDC	0	24	\$ 6,706.50	15	\$ 4,809.00	\$ 320.60	40	128	\$ 51,460.42	\$ 402.03
CARSC	0	0		0			0	1	\$ 360.00	\$ 360.00
DOVDC	10	21	\$ 11,185.88	16	\$ 7,328.68	\$ 458.04	39	85	\$ 35,397.04	\$ 416.44
DOVSC	0	0		0			0	0		
ELLDC	11	30	\$ 18,930.00	40	\$ 23,226.00	\$ 580.65	65	176	\$ 123,177.70	\$ 699.87
ELLSC	0	0		0			0	0		
FARDC	14	22	\$ 10,646.68	11	\$ 5,259.14	\$ 478.10	41	73	\$ 48,755.73	\$ 667.89
FARSC	0	0		0			0	3	\$ 2,173.35	\$ 724.45
FORDC	1	3	\$ 2,142.00	4	\$ 2,311.98	\$ 578.00	44	64	\$ 38,034.59	\$ 594.29
HOUDC	16	30	\$ 13,364.29	15	\$ 8,201.87	\$ 546.79	53	125	\$ 72,807.47	\$ 582.46
HOUSC	0	0		0			1	0		
LEWDC	52	98	\$ 51,662.96	100	\$ 47,564.94	\$ 475.65	385	482	\$ 254,907.12	\$ 528.85
LINDC	11	19	\$ 9,871.44	5	\$ 3,395.92	\$ 679.18	61	59	\$ 30,808.68	\$ 522.18
MACDC	2	6	\$ 2,710.72	5	\$ 2,320.72	\$ 464.14	9	34	\$ 23,893.63	\$ 702.75
MACSC	0	0		2	\$ 510.00	\$ 255.00	2	3	\$ 2,336.30	\$ 778.77
MADDC	0	0		0			3	3	\$ 1,275.52	\$ 425.17
MILDC	9	10	\$ 1,448.96	5	\$ 732.00	\$ 146.40	34	35	\$ 11,677.84	\$ 333.65
NEWDC	6	19	\$ 6,509.44	16	\$ 5,768.40	\$ 360.53	67	154	\$ 52,471.00	\$ 340.72
PORDC	61	98	\$ 60,296.04	94	\$ 56,690.23	\$ 603.09	409	546	\$ 267,194.53	\$ 489.37
PORSC	0	0		0			6	4	\$ 3,259.52	\$ 814.88
PREDC	6	21	\$ 14,386.82	22	\$ 14,811.44	\$ 673.25	66	134	\$ 62,496.24	\$ 466.39
ROCDC	9	13	\$ 5,163.00	13	\$ 4,572.30	\$ 351.72	79	138	\$ 65,154.37	\$ 472.13
ROCSC	0	1	\$ 234.00	1	\$ 234.00	\$ 234.00	3	6	\$ 1,230.00	\$ 205.00
RUMDC	5	25	\$ 15,792.96	24	\$ 16,697.90	\$ 695.75	54	126	\$ 100,149.18	\$ 794.83
SKODC	14	43	\$ 24,352.02	35	\$ 14,837.25	\$ 423.92	137	311	\$ 142,591.28	\$ 458.49
SKOSC	0	0		0			2	1	\$ 330.00	\$ 330.00
SOUDC	3	19	\$ 9,279.48	13	\$ 9,860.40	\$ 758.49	37	82	\$ 49,469.07	\$ 603.28
SOUSC	0	0		0			1	0		
SPRDC	19	34	\$ 22,353.72	35	\$ 20,976.80	\$ 599.34	154	220	\$ 129,101.12	\$ 586.82
Law Ct	6	13	\$ 27,555.31	12	\$ 27,592.01	\$ 2,299.33	37	55	\$ 96,475.79	\$ 1,754.11
YORCD	185	218	\$ 111,588.26	193	\$ 96,651.87	\$ 500.79	1,126	841	\$ 453,986.50	\$ 539.82
AROCD	97	140	\$ 46,161.94	134	\$ 48,327.15	\$ 360.65	830	621	\$ 227,600.03	\$ 366.51
ANDCD	140	233	\$ 91,403.60	187	\$ 81,667.08	\$ 436.72	1,194	968	\$ 337,363.65	\$ 348.52
KENCD	172	135	\$ 56,724.32	129	\$ 48,760.06	\$ 377.98	1,095	807	\$ 336,031.36	\$ 416.40
PENCD	210	157	\$ 64,801.18	205	\$ 68,343.77	\$ 333.38	1,386	940	\$ 397,727.08	\$ 423.11
SAGCD	45	41	\$ 12,917.70	32	\$ 10,528.50	\$ 329.02	225	180	\$ 71,685.08	\$ 398.25
WALCD	54	59	\$ 20,556.30	51	\$ 18,248.15	\$ 357.81	385	252	\$ 93,118.67	\$ 369.52
PISCD	29	26	\$ 6,226.72	17	\$ 3,977.15	\$ 233.95	133	88	\$ 27,234.81	\$ 309.49
HANCD	52	37	\$ 20,941.76	61	\$ 27,190.12	\$ 445.74	290	249	\$ 100,535.34	\$ 403.76
FRACD	41	43	\$ 19,305.54	54	\$ 25,051.40	\$ 463.91	277	241	\$ 87,062.69	\$ 361.26
WASCD	43	28	\$ 9,636.00	40	\$ 13,338.00	\$ 333.45	309	215	\$ 103,725.92	\$ 482.45
CUMCD	281	364	\$ 173,867.44	385	\$ 170,191.87	\$ 442.06	2,355	1,706	\$ 789,068.13	\$ 462.53
KNOCD	69	49	\$ 16,564.00	73	\$ 25,649.40	\$ 351.36	428	274	\$ 108,813.13	\$ 397.13
SOMCD	97	61	\$ 19,020.97	54	\$ 16,188.44	\$ 299.79	518	363	\$ 95,345.96	\$ 262.66
OXFCD	62	67	\$ 25,158.48	100	\$ 39,552.84	\$ 395.53	588	489	\$ 166,020.85	\$ 339.51
LINCD	36	47	\$ 18,799.24	51	\$ 22,044.48	\$ 432.24	255	215	\$ 78,131.92	\$ 363.40
WATDC	23	41	\$ 24,939.65	34	\$ 15,700.92	\$ 461.79	146	230	\$ 112,992.19	\$ 491.27
WESDC	17	27	\$ 12,159.00	28	\$ 12,432.20	\$ 444.01	124	149	\$ 70,131.88	\$ 470.68
WISDC	1	11	\$ 6,288.72	10	\$ 5,508.72	\$ 550.87	38	57	\$ 33,564.10	\$ 588.84
WISSC	0	0		0			1	0		
YORDC	4	5	\$ 2,874.00	11	\$ 4,165.36	\$ 378.67	40	54	\$ 24,522.46	\$ 454.12
<b>TOTAL</b>	<b>2,075</b>	<b>2,617</b>	<b>\$ 1,194,990.10</b>	<b>2,592</b>	<b>\$ 1,140,293.46</b>	<b>\$ 439.93</b>	<b>14,580</b>	<b>13,522</b>	<b>\$ 6,072,685.63</b>	<b>\$ 449.10</b>



**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**  
**FY21 FUND ACCOUNTING**  
AS OF 12/31/2020

Account 010 95F Z112 01 (All Other)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY20 Total
FY21 Professional Services Allotment		\$ 4,372,000.00		\$ 4,312,000.00		\$ 4,452,000.00		\$ 2,113,725.00	
FY21 General Operations Allotment		\$ 48,000.00		\$ 48,000.00		\$ 48,000.00		\$ 48,000.00	
FY20 Encumbered Balance Forward		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustment		\$ 80,000.00		\$ -		\$ -		\$ -	
Supplemental Budget Allotment		\$ -		\$ -		\$ -		\$ -	
Reduction due to encumbrance closure		\$ -		\$ -		\$ -		\$ -	
Financial Order Unencumbered Balance Fwd		\$ -		\$ -		\$ -		\$ -	
<b>Total Budget Allotments</b>		<b>\$ 4,500,000.00</b>		<b>\$ 4,360,000.00</b>		<b>\$ 4,500,000.00</b>		<b>\$ 2,161,725.00</b>	<b>\$ 15,521,725.00</b>
Total Expenses	1	\$ (765,783.81)	4	\$ (1,102,607.41)	7	\$ -	10	\$ -	
	2	\$ (940,166.23)	5	\$ (1,007,967.84)	8	\$ -	11	\$ -	
	3	\$ (1,428,757.76)	6	\$ (1,221,776.56)	9	\$ -	12	\$ -	
Encumbrances (Justice Works)		\$ (62,405.00)		\$ 13,277.00		\$ -		\$ -	\$ (49,128.00)
Encumbrances (B Taylor)		\$ (66,300.00)		\$ 13,260.00		\$ -		\$ -	\$ (53,040.00)
Encumbrance (Jamesa Drake training contract)		\$ -		\$ (92,400.00)		\$ -		\$ -	\$ (92,400.00)
<b>TOTAL REMAINING</b>		<b>\$ 1,236,587.20</b>		<b>\$ 961,785.19</b>		<b>\$ 4,500,000.00</b>		<b>\$ 2,161,725.00</b>	<b>\$ 8,860,097.39</b>

**Q2 Month 6**

**INDIGENT LEGAL SERVICES**

Counsel Payments	\$ (1,140,293.46)
Interpreters	\$ (3,759.00)
Private Investigators	\$ (12,820.00)
Mental Health Expert	\$ (23,562.50)
Misc Prof Fees & Serv	\$ (550.00)
Transcripts	\$ (10,587.94)
Other Expert	\$ (9,575.00)
Process Servers	\$ (437.49)
Subpoena Witness Fees	\$ -
Out of State Witness Travel	\$ -
<b>SUB-TOTAL ILS</b>	<b>\$ (1,201,585.39)</b>
<b>OPERATING EXPENSES</b>	
Service Center	\$ -
DefenderData	\$ (5,330.00)
Parking Fees in Biddeford	\$ -
Mileage/Tolls/Parking	\$ (564.30)
Mailing/Postage/Freight	\$ (503.88)
West Publishing Corp	\$ (211.96)
Safety/Protective Supplies	\$ -
Office Supplies/Equip.	\$ (125.87)
Cellular Phones	\$ -
OIT/TELCO	\$ (2,213.64)
Office Equipment Rental	\$ (98.52)
Training Videographer	\$ -
Barbara Taylor monthly fees	\$ (4,420.00)
Dues	\$ -
AAG Legal Svcs Quarterly Payment	\$ (6,723.00)
<b>SUB-TOTAL OE</b>	<b>\$ (20,191.17)</b>
<b>TOTAL</b>	<b>\$ (1,221,776.56)</b>

**INDIGENT LEGAL SERVICES**

Q2 Allotment	\$ 4,360,000.00
Q2 Encumbrances for Justice Works contract	\$ 13,277.00
Barbara Taylor Contract	\$ 13,260.00
James Drake training contract	\$ (92,400.00)
Q2 Expenses to date	\$ (3,332,351.81)
<b>Remaining Q2 Allotment</b>	<b>\$ 961,785.19</b>

**Non-Counsel Indigent Legal Services**

Monthly Total	\$ (61,291.93)
Total Q1	\$ 110,837.23
Total Q2	\$ 175,002.15
Total Q3	\$ -
Total Q4	\$ -
<b>Fiscal Year Total</b>	<b>\$ 285,839.38</b>

**Conference Account Transactions**

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

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**  
**FY21 FUND ACCOUNTING**  
AS OF 12/31/2020

<b>Account 010 95F Z112 01 (Personal Services)</b>	<b>Mo.</b>	<b>Q1</b>	<b>Mo.</b>	<b>Q2</b>	<b>Mo.</b>	<b>Q3</b>	<b>Mo.</b>	<b>Q4</b>	<b>FY20 Total</b>
FY21 Allotment		\$ 236,986.00		\$ 245,444.00		\$ 216,987.00		\$ 197,826.00	\$ 897,243.00
Financial Order Adjustments		\$ 20,000.00		\$ (20,000.00)		\$ -		\$ -	
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustments		\$ (8,758.00)		\$ 8,758.00		\$ -		\$ -	
<b>Total Budget Allotments</b>		<b>\$ 248,228.00</b>		<b>\$ 234,202.00</b>		<b>\$ 216,987.00</b>		<b>\$ 197,826.00</b>	<b>\$ 897,243.00</b>
Total Expenses	1	\$ (72,711.14)	4	\$ (72,760.83)	7	\$ -	10	\$ -	
	2	\$ (72,775.12)	5	\$ (72,759.89)	8	\$ -	11	\$ -	
	3	\$ (102,741.37)	6	\$ (87,292.61)	9	\$ -	12	\$ -	
<b>TOTAL REMAINING</b>		<b>\$ 0.37</b>		<b>\$ 1,388.67</b>		<b>\$ 216,987.00</b>		<b>\$ 197,826.00</b>	<b>\$ 416,202.04</b>

<b>Q2 Month 6</b>	
Per Diem	\$ (165.00)
Salary	\$ (32,362.73)
Vacation Pay	\$ (12,904.05)
Holiday Pay	\$ (4,442.08)
Sick Pay	\$ (1,560.08)
Empl Hlth SVS/Worker Comp	\$ -
Health Insurance	\$ (11,840.50)
Dental Insurance	\$ (321.20)
Employer Retiree Health	\$ (5,330.16)
Employer Retirement	\$ (3,645.99)
Employer Group Life	\$ (446.88)
Employer Medicare	\$ (753.85)
Retiree Unfunded Liability	\$ (9,668.20)
Longevity Pay	\$ (160.00)
Perm Part Time Full Ben	\$ (3,691.89)
Premium & Standard OT	\$ -
Retro Lump Sum Pymt	\$ -
<b>TOTAL</b>	<b>\$ (87,292.61)</b>

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**  
**FY21 FUND ACCOUNTING**  
As of 12/31/2020

Account 014 95F Z112 01 (Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY20 Total
<b>Total Budget Allotments</b>		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00	\$ 1,100,000.00
Financial Order Adjustment	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Financial Order Adjustment	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Budget Order Adjustment	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
Budget Order Adjustment		\$ -		\$ -		\$ -	12	\$ -	\$ -
<b>Total Budget Allotments</b>		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00	\$ 1,100,000.00
Cash Carryover from Prior Quarter		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB	1	\$ 88,434.06	4	\$ 57,481.90	7	\$ -	10	\$ -	
Promissory Note Payments		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB	2	\$ 72,639.44	5	\$ 77,875.90	8	\$ -	11	\$ -	
Court Ordered Counsel Fee		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB (late transfer)		\$ -		\$ -		\$ -		\$ -	
Collected from McIntosh Law	3	\$ -	6	\$ 9,000.00	9	\$ -	12	\$ -	
Collected from ME Ctr Public Int Reporting	3	\$ -	6	\$ 5,333.00	9	\$ -	12	\$ -	
Collected Revenue from JB	3	\$ 74,498.74	6	\$ 69,647.82	9	\$ -	12	\$ -	
Returned Checks-stopped payments		\$ -		\$ -		\$ -		\$ -	
<b>TOTAL CASH PLUS REVENUE COLLECTED</b>		\$ 235,572.24		\$ 219,338.62		\$ -		\$ -	\$ 454,910.86
Counsel Payments	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Other Expenses		\$ -		\$ -		\$ -	***	\$ -	
Counsel Payments	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Other Expenses		\$ -		\$ -		\$ -		\$ -	
Counsel Payments	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
Other Expenses	*	\$ -	**	\$ -	***	\$ -		\$ -	
<b>REMAINING ALLOTMENT</b>		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00	\$ 1,100,000.00
Overpayment Reimbursements	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
<b>REMAINING CASH Year to Date</b>		\$ 235,572.24		\$ 219,338.62		\$ -		\$ -	\$ 454,910.86

<b>Collections versus Allotment</b>	
Monthly Total	\$ 83,980.82
Total Q1	\$ 235,572.24
Total Q2	\$ 219,338.62
Total Q3	\$ -
Total Q4	\$ -
Allotment Expended to Date	\$ -
Fiscal Year Total	\$ 454,910.86

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

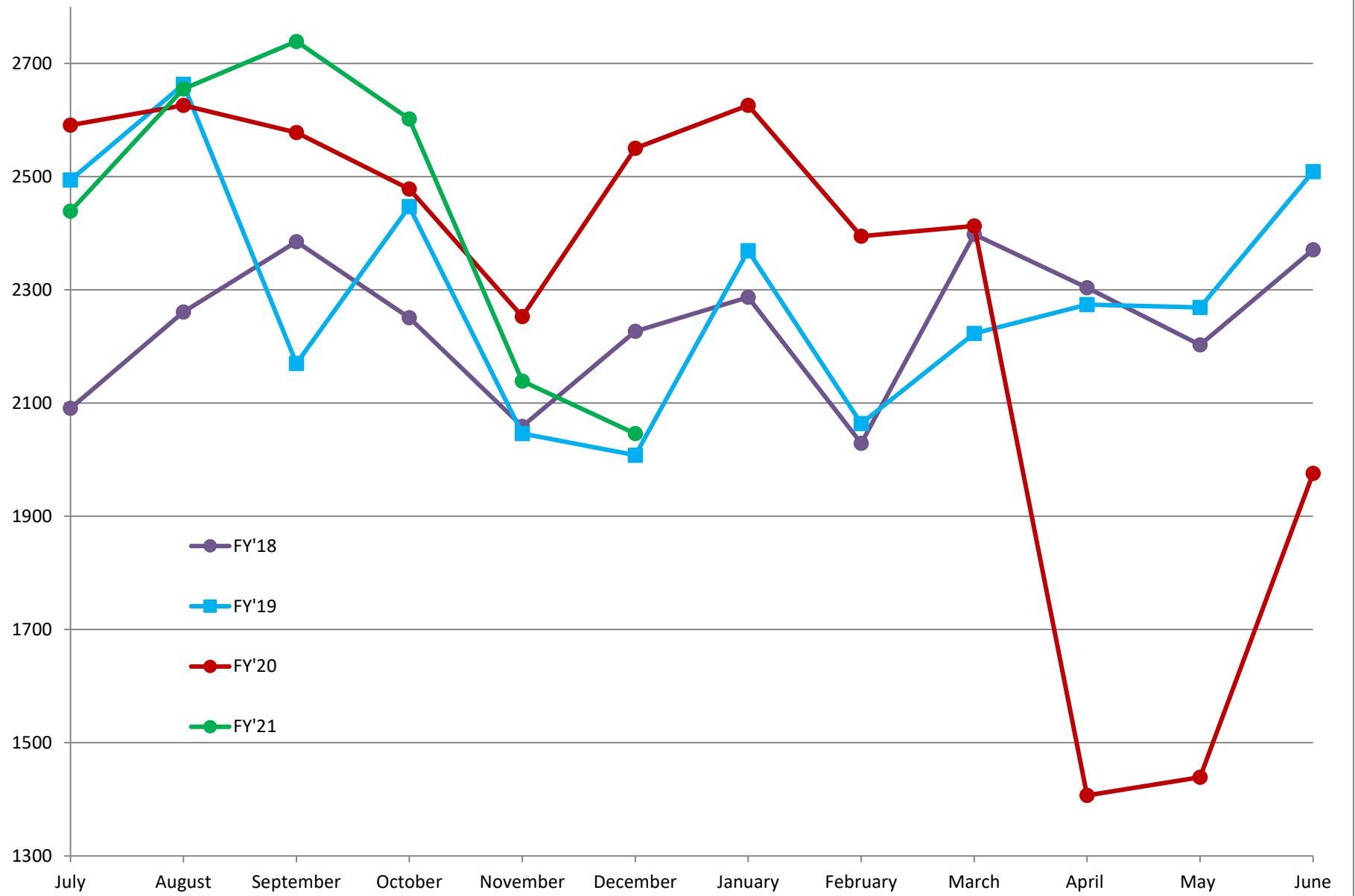
**Number of Attorneys Rostered by Court**

**12/31/2020**

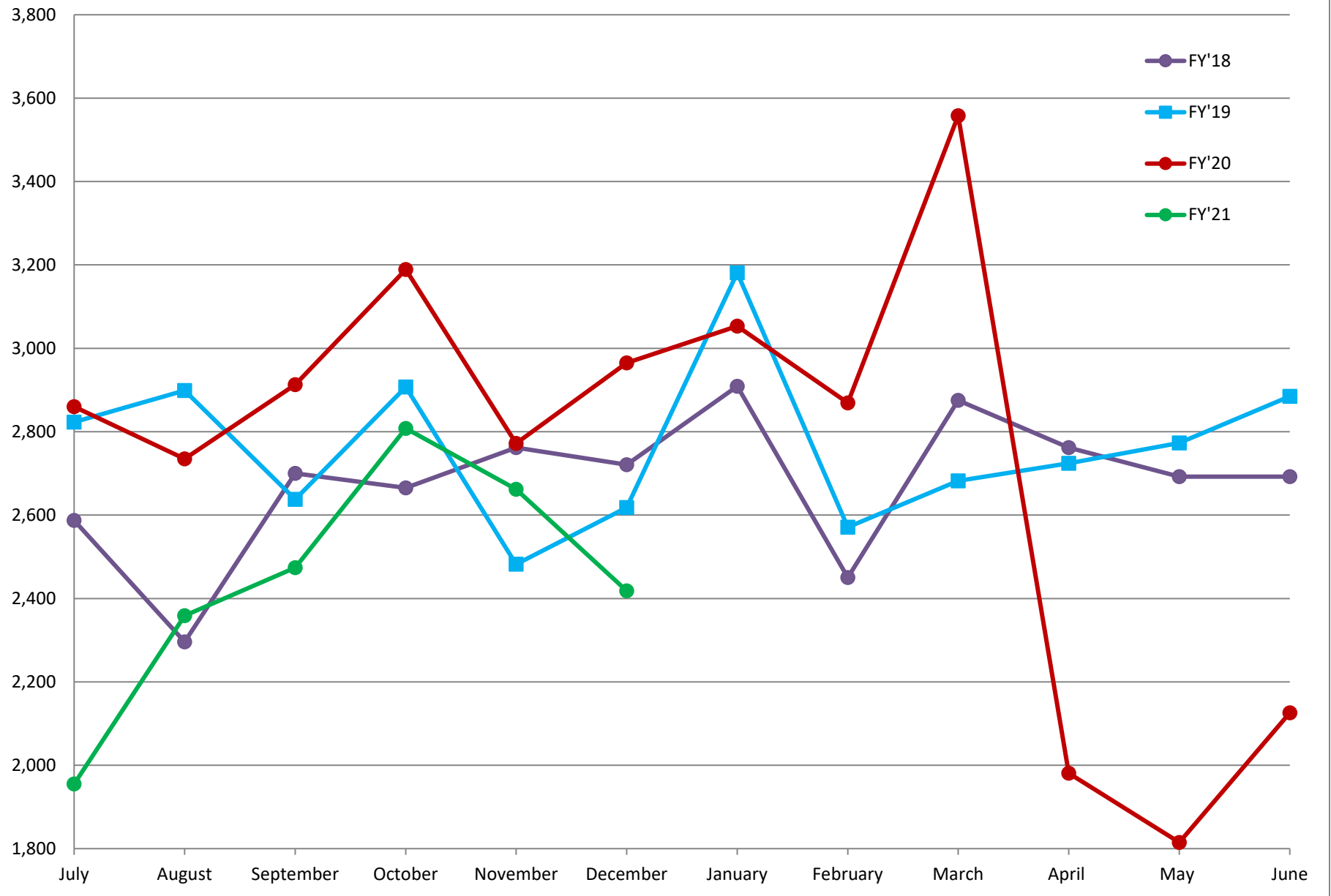
<b>Court</b>	<b>Rostered Attorneys</b>
Augusta District Court	64
Bangor District Court	36
Belfast District Court	33
Biddeford District Court	108
Bridgton District Court	63
Calais District Court	7
Caribou District Court	15
Dover-Foxcroft District Court	21
Ellsworth District Court	29
Farmington District Court	28
Fort Kent District Court	10
Houlton District Court	12
Lewiston District Court	97
Lincoln District Court	19
Machias District Court	11
Madawaska District Court	11
Millinocket District Court	13
Newport District Court	24
Portland District Court	124
Presque Isle District Court	13
Rockland District Court	27
Rumford District Court	18
Skowhegan District Court	18

<b>Court</b>	<b>Rostered Attorneys</b>
South Paris District Court	41
Springvale District Court	94
Unified Criminal Docket Alfred	92
Unified Criminal Docket Aroostook	21
Unified Criminal Docket Auburn	80
Unified Criminal Docket Augusta	62
Unified Criminal Docket Bangor	36
Unified Criminal Docket Bath	69
Unified Criminal Docket Belfast	32
Unified Criminal Docket Dover Foxcroft	18
Unified Criminal Docket Ellsworth	31
Unified Criminal Docket Farmington	30
Unified Criminal Docket Machias	13
Unified Criminal Docket Portland	119
Unified Criminal Docket Rockland	19
Unified Criminal Docket Skowhegan	16
Unified Criminal Docket South Paris	37
Unified Criminal Docket Wiscasset	40
Waterville District Court	31
West Bath District Court	81
Wiscasset District Court	48
York District Court	83

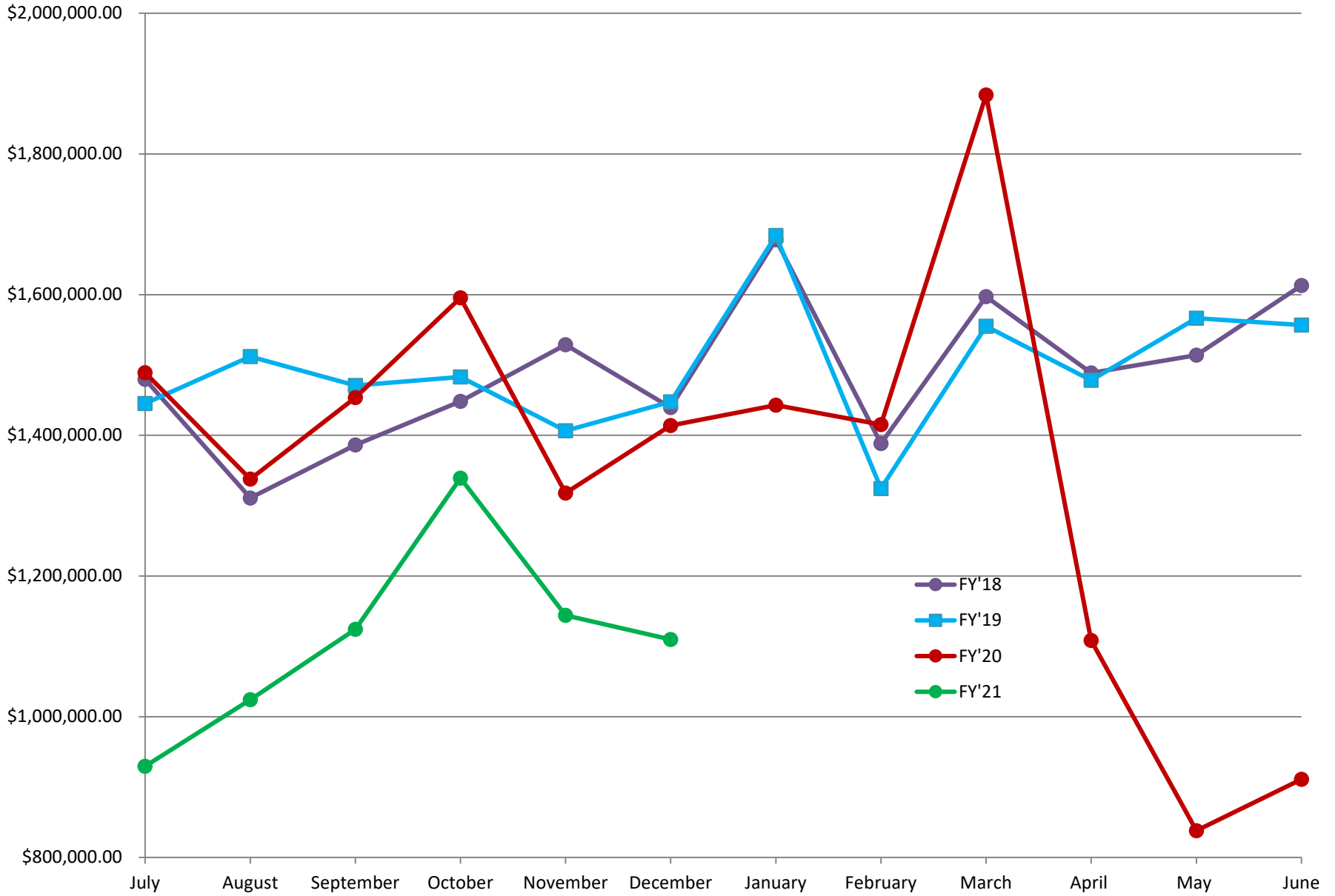
# NEW CASES



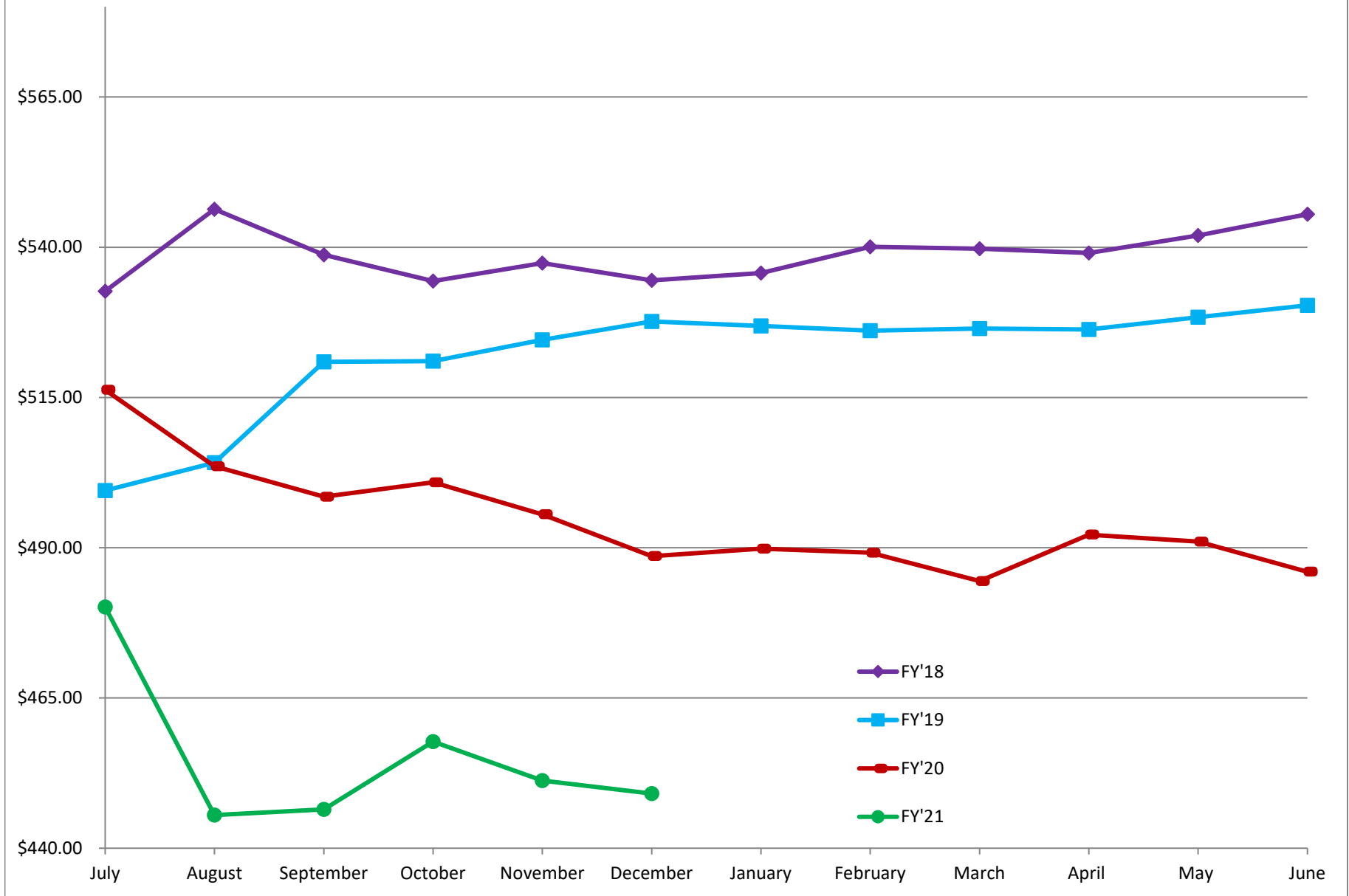
# Submitted Vouchers



# Submitted Voucher Amount

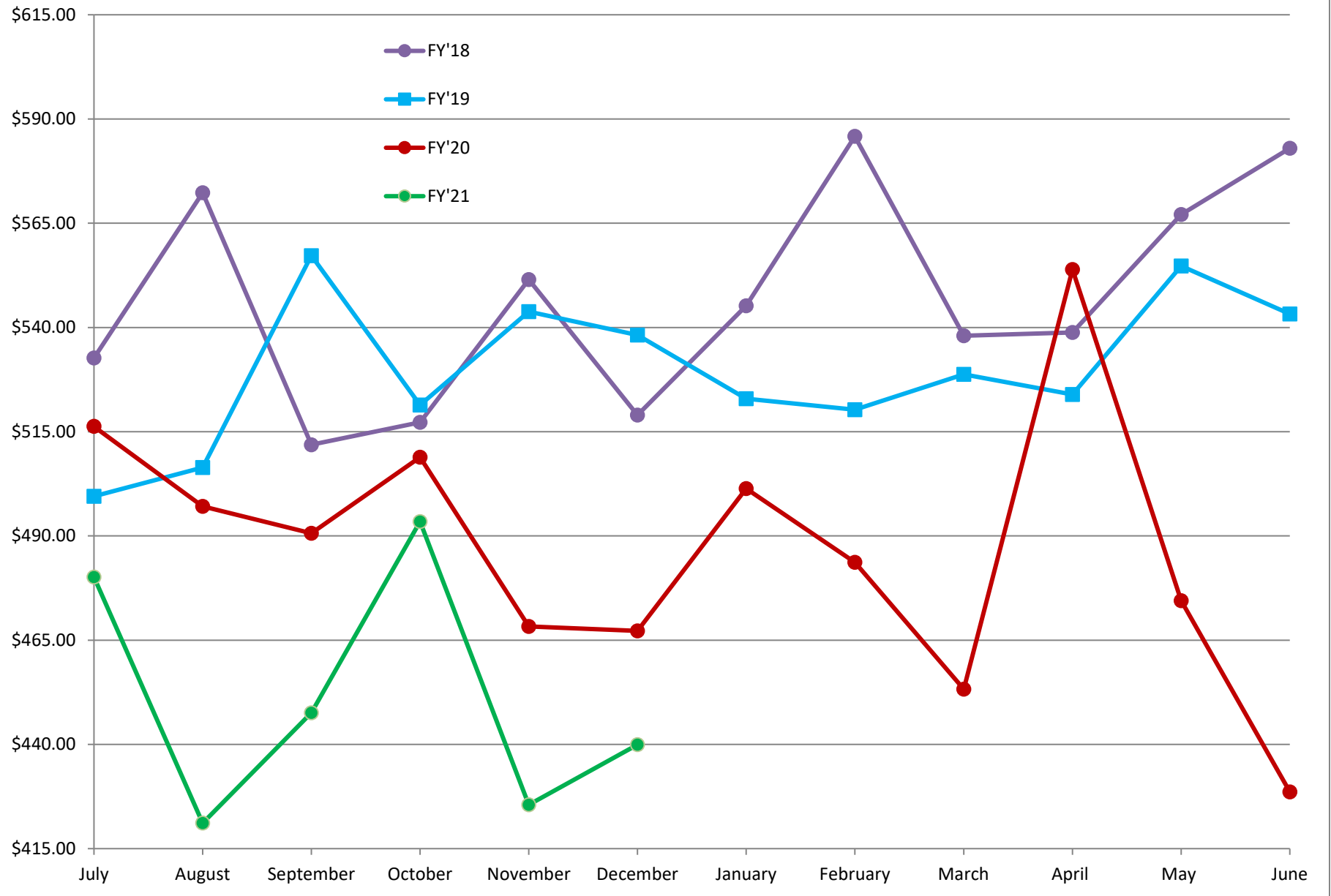


## Average Voucher Price Fiscal Year to Date

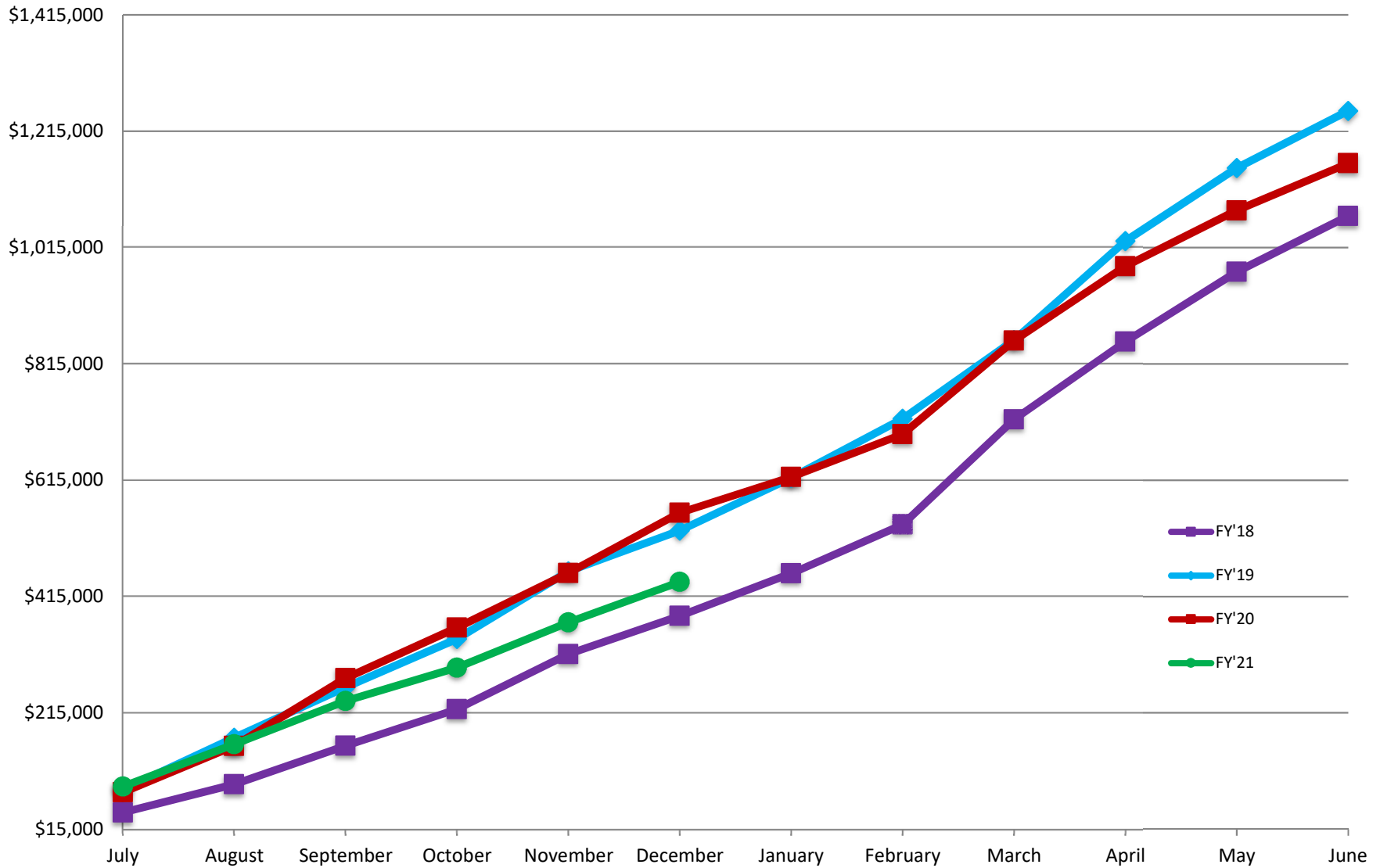




# Monthly Price Per Voucher



# COLLECTION TOTALS FY'18 to FY'21



**(5.)**

**Rulemaking Discussion –  
Chapters 2, 301 and 302**

Chapter 2: STANDARDS FOR QUALIFICATIONS OF  
~~ROSTERED QUALIFIED ASSIGNED ELIGIBLE~~ COUNSEL

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**Summary:** This chapter establishes the standards prescribing minimum experience, training and other qualifications for ~~contract~~ counsel ~~and rostered qualified assigned counsel~~ to be eligible to ~~accept~~ ~~receive~~ ~~receive~~ ~~appointments~~ ~~assignments~~ to represent indigent people, who are eligible for a constitutionally-required attorney.

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### SECTION 1. Application

All attorneys wishing to ~~accept~~ ~~receive~~ case assignments ~~by~~ ~~from~~ the Commission must complete an application in the manner prescribed by the Commission through its Executive Director. The ~~Commission~~ Executive Director will not act on an application until it is complete. No attorney will be assigned a case until that attorney completes an application and is found qualified to be placed on the roster of attorneys eligible to receive assignments. Rostered Qualified counsel means an attorney who meets all the qualifications to ~~accept~~ receive assignments from the Commission. With respect to specialized case-types, qualified counsel means an attorney who meets the qualifications to receive assignments of that case type and Rostered counsel means an attorney who has ~~is~~ actually been placed on ~~the~~ roster.

#### SECTION 1A. Qualifications for Previously ~~Rostered Qualified~~ Counsel at the Time These Amended Rules and Standards are Implemented.

The attorney shall demonstrate the necessary and sufficient experience and proficiency required to ~~accept~~ receive assignments, including as provided below:

1. Currently ~~rostered qualified~~ counsel shall maintain their current status on rosters for the first year after the enactment of this rule. ~~Whenever the qualification standards are amended, T~~he Executive Director shall create an application for all ~~then~~ currently ~~rostered qualified~~ counsel to complete to demonstrate they meet all new eligibility requirements. After the first year following the enactment of ~~these amended~~ rules and standards, ~~rostered qualified~~ counsel must comply with all eligibility requirements of this rule as a condition of remaining qualified.
2. Any attorney not previously ~~rostered~~ qualified to receive assignments from the Commission when this rule is enacted must comply with all requirements to be ~~remain~~ ~~rostered~~ qualified.

#### SECTION 1B. General Eligibility Requirements

1. The Executive Director or their designee, shall have the sole discretion to make the determination ~~if as to whether~~ an attorney is qualified to be placed on a roster. In addition, the Executive Director or their designee, shall have the sole discretion, to grant or deny a waiver pursuant to, and in accordance with waiver of eligibility requirements. The Executive Director's decision to not roster an attorney may be appealed to the full Commission pursuant to 4 M.R.S.A. § 1804(3)(J) and Commission Rule 94-649 Chapter 201.
2. The Executive Director or their designee, may, in their sole discretion, remove an attorney from a roster at any time if the attorney is not meeting the minimum qualifications and standards as determined by the Executive Director or their designee. This does not exempt an attorney from satisfying the requirements of this Chapter at any time thereafter or limit the authority of the Executive Director or their designee, to remove an attorney from any roster at any time.
3. All attorneys must comply with all standards, procedures, and rules of the Commission.
4. The Executive Director or their designee may deny the rostering of an attorney who meets the minimum qualifications necessary to be placed on a roster, including specialized rosters, if there are a sufficient number of ~~rostered~~qualified attorneys as determined by the Executive Director or their designee currently on the roster in the region the applicant attorney plans to practice.
5. ~~A newly rostered~~qualified attorney cannot be assigned a case until a ~~rostered~~qualified mentor has been assigned.

#### SECTION 1C. General Policies Applicable to All ~~Rostered~~Qualified Counsel

1. ~~Rostered~~Qualified counsel must register with the Commission annually in a manner prescribed by the Commission. By registering with the Commission an attorney certifies that the attorney has read all of the rules and standards of the Commission, and agrees as a condition of participation to accept those rules and standards.
2. ~~Rostered~~Qualified counsel must also timely comply with any Commission request, investigation or audit on any topic relating to the representation, including, complaints, time records, billing, financial practices, discovery in the matter, and pleadings or other filings. ~~Rostered~~Qualified counsel shall provide other information that, in the view of the Executive Director or their designee, concerns the question of whether the attorney is fit to remain on the roster.
3. ~~Rostered~~Qualified counsel shall not knowingly make a false statement of material fact or law to the court, the Commission, or a third person.
4. ~~Rostered~~Qualified counsel must keep all clients, the Commission and the courts in which the attorney represents indigent clients apprised of the attorney's work telephone number and postal and electronic mail addresses.
5. ~~Rostered~~Qualified counsel shall not ~~accept~~receive any compensation or other consideration for assigned cases except through the Commission.

6. ~~6. RosteredQualified~~ counsel must enter a new assignment into the Commission billing system within 5 days of receiving notice of the assignment.
7. ~~By submitting information to the Commission, an attorney certifies the truthfulness of that information.~~
8. ~~Each qualified attorney is responsible for information submitted to the Commission under that attorney's credentials, including the attorney's login credentials to any Commission electronic information system, whether the attorney entered the information personally or not.~~

## **SECTION 2. Minimum Experience, Training, ~~A~~ and Other Eligibility Requirements to be RosteredQualified**

~~Any attorney wishing to acceptreceive case assignments from the Commission, serve as contract counsel or otherwise be approved by the Commission to acceptreceive assignments must satisfy the following conditions: Repealed.~~

### ~~1. Licensed To Practice Repealed.~~

- a.) ~~The attorney must be licensed to practice law in the State of Maine and be in good standing with the Maine Board of Overseers of the Bar. Repealed.~~
- b.) ~~The attorney must promptly inform the Commission, in writing, of any complaint against the attorney filed with the Maine Board of Overseers of the Bar that has been set for a grievance panel hearing or hearing before a single justice of the Supreme Judicial Court. Failure to comply with this requirement is grounds for removal from the roster. Repealed.~~
- c.) ~~The attorney must inform the Commission, in writing, within 5 days of any criminal charge filed against the attorney in any jurisdiction and promptly inform the Commission of any disposition of such charge. Failure to comply with this requirement is grounds for removal from the roster. Repealed.~~

### ~~2. Attorney Cooperation with Procedures and Monitoring~~

- a. ~~The attorney must register with the Commission annually in a manner prescribed by the Commission. Repealed.~~
- b. ~~The attorney must comply with all applicable Commission rules and procedures. Repealed.~~
- c. ~~RosteredQualified counsel~~ The attorney must cooperate ~~comply~~ with Commission monitoring, and performance evaluations, and provide information as requested regarding complaints or billing ~~discrepancies~~. Failure to comply in a timely manner could result in the ~~rosteredqualified~~ counsel's vouchers not being paid and/or suspension from the roster(s). The attorney must also comply with any Commission investigation of complaints, billing ~~discrepancies~~, or other information that, in the view of the Executive Director, concerns the question of whether the attorney is fit to remain on the ~~roster~~. Except as pertains to indigent cases assigned to the attorney, the

Executive Director cannot require an attorney to disclose information that is privileged or made confidential by statute, by court rule or by court order.

3. RosteredQualified counsel must be in good standing with the Board of Overseers of the Bar and licensed to practice law in the State of Maine prior to being rosteredqualified.
4. Any attorney not previously rosteredqualified must satisfactorily complete a Commission-sponsored or Commission-approved training course in order to be eligible to receive assignments.
5. Attorneys applying to be rosteredqualified and rosteredqualified counsel must disclose any criminal convictions. The Executive Director or their designee shall use their discretion to determine if the conviction disqualifies the applicant attorney.
6. An attorney applying to be rosteredqualified who has any pending disciplinary matters or pending criminal charges cannot may not be rosteredqualified, at the discretion of the Executive Director, until the outcome of the proceeding is concluded. The allegations and outcome of the proceeding must be considered by the Executive Director in deciding if the attorney is eligible to be rosteredqualified. In making that determination the Executive Director shall consider whether an attorney is charged with a "serious crime," as defined in Section 7.

### SECTION 3. Office, Telephone, and Electronic Mail

1. The attorney RosteredQualified counsel must maintain an office or have the use of space that is reasonably accessible to clients and that permits the private discussion of confidential and other sensitive matters or the use of secure virtual office meetings.
2. The attorney RosteredQualified counsel must maintain a telephone number, which shall be staffed by personnel available for answering telephone calls or an answering service, an answering machine or voicemail capability that ensures client confidentiality. RosteredQualified counsel must be able to acceptreceive calls from correctional institutions in the counties in which they primarily practice and should acceptreceive such calls if available to speak with the client.
3. The attorney RosteredQualified counsel must maintain a confidential working e-mail account as a means of receiving information from and providing information to the Commission, the Courts, and clients.
4. The attorney RosteredQualified counsel must keep the Commission and the courts in which the attorney represents indigent clients apprised of the attorney's work telephone number and postal and electronic mail addresses. The

~~attorney~~RosteredQualified counsel must ensure that the court has the ability to contact the attorney by mail and by telephone.

#### **SECTION 4. Experience and Proficiency Repealed.**

~~The attorney shall demonstrate the necessary and sufficient experience and proficiency required to acceptreceive appointments as provided below.~~

1. ~~Repealed.~~
2. ~~Any attorney not previously having been acceptreceived to receive assignments from the Commission must satisfactorily complete a Commission sponsored or Commission approved training course for the area of the law for which the attorney is seeking to receive assignments, including but not limited to, criminal defense, juvenile defense, civil commitment, child protective, or emancipation prior to being placed on the roster and receiving assignments; or Repealed.~~
3. ~~An attorney may be acceptreceived for placement on the roster and receive assignments from the Commission without completing a Commission sponsored or Commission approved training course as provided above if the attorney demonstrates to the Commission a commitment to and proficiency in the practice of the area of the law for which the Attorney is willing to acceptreceive assignments over the course of at least the three years prior to receiving assignments from the Commission. Repealed.~~

#### **SECTION 5. Training and CLE Requirements for RosteredQualified Counsel**

~~The attorney shall annually complete 8 hours of continuing legal education (CLE) approved by the Commission. Repealed.~~

~~The attorney shall meet any specific training requirements of any specialized panels. Repealed.~~

1. ~~An attorney may be acceptreceived for placement on a roster and receive assignments from the Commission without completing a Commission-sponsored or Commission-approved training course as provided above if the attorney demonstrates to the Commission a commitment to and proficiency in the practice of the area of the assignment as determined by the Executive Director.~~
2. ~~At a minimum, rosteredqualified counsel shall annually complete 8 hours of continuing legal education (CLE) approved by the Commission.~~
  - A. ~~These hours are not in addition to any other Commission CLE requirements but are included in any other Commission CLE requirements. CLE credits applicable to specialized panel CLE requirements may also satisfy this 8-hour~~



CLE requirement.

B. ~~Rostered~~Qualified counsel eligible to receive assignments in both criminal and child protection cases shall annually complete 8 hours of criminal law related CLE and 8 hours of child protection law CLE, but only if the Commission offers such CLE training.

## **SECTION 6. Removal or Suspension from the Roster**

1. The Executive Director may remove indefinitely or suspend ~~an attorney a rostered~~qualified counsel from ~~the any~~ roster completely or from the roster for ~~certain specialized~~ case types and court locations for any failure to comply with ~~any Commission this or any other Commission rule or standard or in the interest of the Commission.~~ In addition, the Executive Director may remove indefinitely or suspend ~~an attorney a rostered~~qualified counsel from the roster completely or from the roster for certain case types and court locations if the Executive Director determines ~~rostered~~qualified counsel ~~that the attorney~~ is no longer qualified to provide quality indigent legal services ~~based on the nature of any criminal charge or on investigation by the Executive Director or the Executive Director's designee of any complaint or other information.~~ The Executive Director's decision to remove or suspend an attorney from the roster ~~may take immediate effect or may be stayed in the discretion of the Executive Director, and~~ shall be in writing and shall reflect the Executive Director's reasoning in a manner sufficient to inform the attorney and the public of the basis for the ~~Executive Director's action.~~ The Executive Director may consult with Commissioners in determining the appropriate action to be taken, if any.
2. ~~Rostered~~Qualified counsel ~~Attorneys removed disqualified~~ indefinitely must re-apply to the Commission if they wish to receive assignments in the future. ~~Rostered~~Qualified counsel ~~Attorneys~~ suspended from the roster need not re-apply; but must demonstrate compliance with any conditions made part of a suspension. Removal or suspension may also include a requirement that the attorney immediately identify to the Commission all open assigned cases and ~~file a motion to~~ withdraw ~~in from~~ each case.
3. Upon receipt of evidence demonstrating that a qualified or rostered attorney subject to these rules has committed a violation of these rules or is incapacitated; and by reason of that violation or incapacity threatens imminent injury to a client, to the public, or to the administration of justice, the Executive Director may take such action as is necessary to ameliorate that threat.
4. The Executive Director's decision to remove or suspend an attorney may be appealed to the full Commission pursuant to 4 M.R.S.A. § 1804(3)(J) and Commission Rule 94-649 Chapter 201.

## **SECTION 7. Affirmative Duty to Report Complaints or Potential Conflicts**

1. RosteredQualified counsel shall notify the Executive Director or their designee in writing within five business days of learning of any of the following:
  - a. Being summonsed, charged, or convicted of a crime, a ~~rostered~~qualified attorney must disclose in writing the summons, charge, or conviction to MCILS. The Executive Director shall have the discretion to reassign any MCILS case currently assigned to the ~~rostered~~qualified attorney and/or suspend the ~~rostered~~qualified counsel from the roster(s). RosteredQualified counsel has an ongoing obligation to keep the Executive Director or their designee apprised of the allegation and the outcome of said allegation
  - b. A ~~rostered~~qualified counsel who has been convicted of a Title 17-A, Chapter 45 (Drugs) or Title 29-A, § 2411 (OUI) or similar crimes in a different jurisdiction while ~~rostered~~qualified cannot receive any new assignments until the ~~rostered~~qualified counsel has completed a substance abuse evaluation and is engaged in any recommended counseling and confirmed that a referral has been made to the Maine Assistance Program for Lawyers and Judges.
  - c. A complaint has been filed against ~~rostered~~qualified counsel before the Maine Board of Overseers of the Bar or similar institution in any jurisdiction or court;
  - d. RosteredQualified counsel is the subject of disciplinary action before any non-attorney professional licensing board or agency;
  - e. RosteredQualified counsel's license to practice law has been suspended or terminated for any reason, including for administrative reasons such as non-payment of bar dues;
  - f. A court or agency has either made a report to the Maine Board of Overseers of the Bar, or found that the attorney engaged in conduct which is subject to mandatory reporting under the Maine Rules of Professional Conduct;
  - g. Any condition or circumstance that exist that renders the ~~rostered~~qualified attorney unable or unwilling to comply with applicable Commission standards, procedures, or rules; or
  - h. Any conduct that constitutes a violation of any of the ~~rostered~~qualified counsel's ethical duties.
2. The obligations set forth above apply independently of each other and without regard to either the jurisdiction in which the proceedings are instituted or take place, or whether any portion of said proceedings are otherwise considered to be private or confidential.
3. With regard to a complaint opened or petition for discipline filed by the Maine Board of Overseers of the Bar or the attorney licensing authority of any state or jurisdiction ~~rostered~~qualified counsel shall, within five business days of learning

of such complaint or disciplinary action, provide a copy of the complaint or petition to the Executive Director or their designee. The attorney shall also provide to the Executive Director or their designee a copy of ~~rostered~~qualified counsel's answer to the complaint or petition within one week after its filing. Finally, within one week after the disposition or resolution of a complaint or disciplinary action before the Maine Board of Overseers of the Bar or the attorney licensing authority of any state or jurisdiction, including a disposition or resolution under which imposed discipline does not take effect immediately, ~~rostered~~qualified counsel shall provide to the Executive Director or their designee a copy of any order, agreement, or other document which sets forth the disposition or resolution of the matter.

4. The requirements of this section shall apply regardless of whether the complaint or other disciplinary action, including the final disposition or resolution of the complaint or disciplinary action, is treated as a public or private matter by the Maine Board of Overseers of the Bar or the attorney licensing authority of any state or jurisdiction.
5. Any information obtained or gathered by the Commission when performing an evaluation or investigation of an attorney is confidential, except that it may be disclosed to the attorney being evaluated or investigated.
6. ~~Rostered~~Qualified counsel who receives a disciplinary sanction or criminal conviction with regards to the obligations set forth above cannot receive any new assignments and must reapply to become ~~rostered~~qualified. The Executive Director shall have the discretion to reassign any Commission case currently assigned to the ~~rostered~~qualified counsel and mandate the ~~rostered~~qualified counsel withdraw from those cases. In making that determination, the Executive Director shall consider whether the attorney has been convicted of a serious crime. A "serious crime" is any felony or any lesser crime that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or any crime a necessary element of which, as determined by the statutory or common law definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt, conspiracy or solicitation of another to commit a "serious crime." For purposes of the any investigation or proceeding relating to an attorney's qualification to receive assignments, a certified copy of a conviction constitutes conclusive evidence that the lawyer committed the crime.

EFFECTIVE DATE:  
June 25, 2010

AMENDED:

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**94-649 MAINE COMMISSION ON INDIGENT LEGAL SERVICES****Chapter 301: FEE SCHEDULE AND ADMINISTRATIVE PROCEDURES FOR PAYMENT OF COMMISSION ASSIGNED COUNSEL**

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**Summary:** This Chapter establishes a fee schedule and administrative procedures for payment of Commission assigned counsel. The Chapter sets a standard hourly rate and maximum fee amounts for specific case types. The Chapter also establishes rules for the payment of mileage and other expenses that are eligible for reimbursement by the Commission. Finally, this Chapter requires that, unless an attorney has received prior authorization to do otherwise, all vouchers must be submitted using the MCILS electronic case management system.

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**SECTION 1. DEFINITIONS**

1. Attorney. "Attorney" means an attorney licensed to practice law in the State of Maine.
2. MCILS or Commission. "MCILS" or "Commission" means the Commissioners of the Maine Commission on Indigent Legal Services.
3. Executive Director. "Executive Director" means the Executive Director of MCILS or the Executive Director's decision making designee.

**SECTION 2. HOURLY RATE OF PAYMENT**

Effective July 1, 2015:

A rate of Sixty Dollars (\$60.00) per hour is authorized for time spent on an assigned case.

**SECTION 3. EXPENSES**

1. **Routine Office Expenses.** Routine Office expenses are considered to be included in the hourly rate. Routine office expenses, including but not limited to postage, express postage, regular telephone, cell telephone, fax, office overhead, utilities, secretarial services, routine copying (under 100 pages), local phone calls, parking (except as stated below), and office supplies, etc., will not be reimbursed.
2. **Itemized Non-Routine Expenses.** Itemized non-routine expenses, such as discovery from the State or other agency, long distance calls (only if billed for long distance calls by your phone carrier), collect phone calls, extensive copying (over 100 pages), printing/copying/ binding of legal appeal brief(s), relevant in-state mileage (as outlined below), tolls (as outlined below), and fees paid to third parties. Necessary parking fees associated with multi-day trials and hearings will be reimbursed, ~~but must be approved in advance by the Executive Director.~~
3. **Travel Reimbursement.** Mileage reimbursement shall not exceed the applicable State rate. Mileage reimbursement will be paid for travel to and from courts other than an attorney's home district and superior court. Mileage reimbursement will not be paid for

travel to and from an attorney's home district and superior courts. Tolls will be reimbursed, except that tolls will not be reimbursed for travel to and from attorney's home district and superior court. All out-of-state travel, other than same day travel to meet with a client or witness in custody in another jurisdiction, or any overnight travel must be approved by the MCILS in writing prior to incurring the expense. Use of the telephone, video equipment, and email in lieu of travel is encouraged as appropriate.

4. **Itemization of Claims.** Claims for all expenses must be itemized and documented.
5. **Discovery Materials.** The MCILS will reimburse only for one set of discovery materials. If counsel is permitted to withdraw, appropriate copies of discovery materials must be forwarded to new counsel forthwith.
6. **Expert and Investigator Expenses.** Other non-routine expenses for payment to third parties, which historically required preapproval by the Court before July 1, 2010 (e.g., investigators, interpreters, medical and psychological experts, testing, depositions, etc.) are required to be approved in advance by MCILS. Funds for third-party services will be provided by the MCILS only upon written request and a sufficient demonstration of reasonableness, relevancy, and need in accordance with the MCILS rules and procedures governing requests for funds for experts and investigators. See Chapter 302 Procedures Regarding Funds for Experts and Investigators.
7. **Witness, Subpoena, and Service Fees.** In criminal and juvenile cases, witness, subpoena, and service fees will be reimbursed only pursuant to M.R. Crim. P. 17(b). It is unnecessary for counsel to advance these costs, and they shall not be included as a voucher expense. Fees for service of process by persons other than the sheriff shall not exceed those allowed by 30-A M.R.S. § 421. The same procedure shall be followed in civil cases.

#### SECTION 4. MAXIMUM FEES

Vouchers submitted for amounts greater than the applicable maximum fees outlined in this section will not be approved for payment, except as approved by the Executive Director:

1. **Trial Court Criminal Fees**
  - A. Maximum fees, excluding any itemized expenses, are set in accordance with this subsection. Counsel must provide MCILS with written justification for any voucher that exceeds the maximum fee limit.

Effective July 1, 2015:

- 1) **Murder.** Fee to be set by the Executive Director on a case by case basis.
- 2) **Class A.** \$3,000
- 3) **Class B and C (against person).** \$2,250
- 4) **Class B and C (against property).** \$1,500

- 5) **Class D and E (Superior or Unified Criminal Court).** \$750
  - 6) **Class D and E (District Court).** \$540
  - 7) **Post-Conviction Review.** \$1,200
  - 8) **Probation Revocation.** \$540
  - 9) **Miscellaneous (i.e. witness representation on 5<sup>th</sup> Amendment grounds, etc.)** \$540
  - 10) **Juvenile.** \$540
- B. In cases involving multiple counts against a single defendant, the maximum fee shall be that which applies to the most serious count. In cases where a defendant is charged with a number of unrelated offenses, Counsel is expected to coordinate and consolidate services as much as possible.
- C. Criminal and juvenile cases will include all proceedings through disposition as defined in Section 5.1.A below. Any subsequent proceedings, such as probation revocation, will require new application and appointment.
- D. When doing so will not adversely affect the attorney-client relationship, Commission-assigned counsel are urged to limit travel and waiting time by cooperating with each other to stand in at routine, non-dispositive matters by having one attorney appear at such things as arraignments and routine non-testimonial motions, instead of having all Commission-assigned counsel in an area appear.
- E. Upon written request to MCILS, assistant counsel may be appointed in a murder case or other complicated cases, or to provide mentorship:
- 1) the duties of each attorney must be clearly and specifically defined and counsel must ~~avoid not unnecessary duplication duplicate of~~ effort;
  - 2) each attorney must submit a voucher to MCILS. Counsel should coordinate the submission of voucher so that they can be reviewed together. Co-counsel who practice in the same firm may submit a single voucher that reflects the work done by each attorney.

## 2. **District Court Child Protection**

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

Effective July 1, 2015:

- 1) **Child protective cases** (each stage). \$900

2) **Termination of Parental Rights** (with a hearing). \$ 1,260

- B. Counsel must provide MCILS with written justification for any voucher that exceeds the maximum fee limit. Each child protective stage ends when a proceeding results in a court order as defined in Section 5.1.B below. Each distinct stage in on-going child protective cases shall be considered a new appointment for purposes of the maximum fee. A separate voucher must be submitted at the end of each stage.

3. **Other District Court Civil**

- A. Maximum fees, excluding any itemized expenses, are set in accordance with this subsection. Counsel must provide MCILS with written justification for any voucher that exceeds the maximum fee limit.

Effective July 1, 2015:

- 1) **Application for Involuntary Commitment.** \$420
- 2) **Petition for Emancipation.** \$420
- 3) **Petition for Modified Release Treatment.** \$420
- 4) **Petition for Release or Discharge.** \$420

4. **Law Court**

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

Effective July 1, 2015:

- 1) **Appellate work following the grant of petition for certificate of probable cause.** \$1,200
- B. Expenses shall be reimbursed for printing costs and mileage to oral argument at the applicable state rate. Vouchers for payment of counsel fees and expenses must be submitted, including an itemization of time spent.

**SECTION 5: MINIMUM FEES**

Effective July 1, 2015:

1. Attorneys may charge a minimum fee of \$150.00 for appearance as Lawyer of the Day. Vouchers seeking the minimum fee shall show the actual time expended and the size of the minimum fee adjustment rather than simply stating that the minimum fee is claimed. In addition to previously scheduled representation at initial appearance sessions, Lawyer



of the Day representation includes representation of otherwise unrepresented parties at the specific request of the court on a matter that concludes the same day. Only a single minimum fee may be charged regardless of the number of clients consulted at the request of the court.

## SECTION 6: ADMINISTRATION

1. ~~1.~~ Vouchers for payment of counsel fees and expenses shall be submitted within ninety days of the event triggering the right to submit a voucher. Triggering events are after the date of disposition of a criminal, juvenile or appeals case, ~~or~~ completion of a stage of a child protection case resulting in an substantive order; or, in any other case or matter the entry of any substantive order. An order granting withdrawal, or the filing of a notice of withdrawal where appropriate, constitutes a triggering event. For attorneys serving as counsel to ongoing roles, including CODC and drug courts, March 31, June 30, September 30, and December 31 of each year shall be trigger events. Vouchers submitted more than ninety days after final disposition, or completion of a stage of a child protection case, shall not be paid except at the discretion of the Executive Director on a showing of good cause. Good cause shall be found only where exigencies actually prevent an attorney from timely filing a request for payment; for illness; or for parental or family medical leave. Excess case load shall not support a finding of exigency.

Counsel may request leave to submit an interim voucher and the Executive Director may grant that leave if the request is reasonable, except that the Executive Director may not authorize submission of an interim voucher more often than once every 90 days; and, an interim voucher shall not be used to claim payment that would have been waived due to late submission.

- A. For purposes of this rule, "disposition" of a criminal or juvenile case shall be at the following times:
- 1) entry of judgment (sentencing, acquittal, dismissal, or filing);
  - 2) upon entry of a deferred disposition;
  - 3) upon issuance of a warrant of arrest for failure to appear;
  - 4) upon granting of leave to withdraw;
  - 5) upon decision of any post-trial motions;
  - 6) upon completion of the services the attorney was assigned to provide (e.g., mental health hearings, "lawyer of the day," bail hearings, etc.); or
  - ~~7) specific authorization of the Executive Director to submit an interim voucher.~~
- B. For purposes of this rule, "each stage" of a child protection case shall be:

- 1) Order after Summary Preliminary hearing or Agreement
- 2) Order after Jeopardy Hearing
- 3) Order after each Judicial Review
- 4) Order after a Cease Reunification Hearing
- 5) Order after Permanency Hearing
- 6) Order after Termination of Parental Rights Hearing
- 7) Law Court Appeal

2. Unless otherwise authorized in advance, all vouchers must be submitted using the MCILS electronic case management program and comply with all instructions for use of the system.
3. All time on vouchers shall be detailed and accounted for in .10 of an hour increments. The purpose for each time entry must be self-evident or specifically stated. Use of the comment section is recommended.
4. All expenses claimed for reimbursement must be fully itemized on the voucher. Copies of receipts for payments to third parties shall be retained and supplied upon request.
5. Legal services provided in the district court for cases subsequently transferred to the superior court shall be included in the voucher submitted to the MCILS at disposition of the case.

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STATUTORY AUTHORITY: 4 M.R.S. §§ 1804(2)(F), (3)(B), (3)(F) and (4)(D)

EFFECTIVE DATE:

August 21, 2011 – filing 2011-283

AMENDED:

March 19, 2013 – filing 2013-062  
July 1, 2013 – filing 2013-150 (EMERGENCY)  
October 5, 2013 – filing 2013-228  
July 1, 2015 – filing 2015-121 (EMERGENCY)  
June 10, 2016 – filing 2016-092

**Chapter 302: PROCEDURES REGARDING FUNDS FOR EXPERTS AND INVESTIGATORS**

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**Summary:** This Chapter establishes the procedures for attorneys and pro se ~~defendants-parties~~ to request funds for experts and investigators from the Commission and provides that the Executive Director shall make the determination to grant or deny the request. It also establishes the procedures for payment of expert and investigator services authorized in this Chapter.

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**SECTION 1. DEFINITIONS**

1. **Executive Director.** "Executive Director" means the Executive Director of the Maine Commission on Indigent Legal Services or the Executive Director's decision-making designee.
2. **MCILS or Commission.** "MCILS" or "Commission" means the Maine Commission on Indigent Legal Services.

**SECTION 2. APPLICATION FOR FUNDS FOR EXPERT AND INVESTIGATIVE ASSISTANCE**

1. **Who May Apply.** ~~Defendants, respondents, petitioners or patients who are~~ Any person who is entitled to representation at state expense under the United States Constitution or the Constitution or laws of Maine and who ~~have~~ has been found indigent by a state court or who claims to be without sufficient funds to employ necessary expert or investigative assistance may file, on his or her own or through his or her attorney, applications to MCILS for funds to obtain expert or investigative assistance or both.
2. **Application Directed to the Executive Director.** An application for funds to obtain necessary expert or investigative assistance or both shall be directed to the Executive Director.
3. **Form and Contents of Application.** The application shall:
  - A. Be in writing and include a case caption setting forth the court in which the case is pending, the docket number, and the parties;
  - B. Set forth the date on which the applicant was found indigent or, if the applicant has not been found indigent, set forth the basis on which the applicant claims to be without sufficient funds. For persons not found

indigent by a court, the application shall be supported by an affidavit demonstrating financial need;

- C. Describe the nature of the proceeding for which assistance is sought, and in proceedings with respect to adult or juvenile crimes, specifically identify each pending charge and class of each pending charge;
- D. Set forth a clear and concise statement of the reasons why the assistance is necessary for adequate presentation of the applicant's claim or defense;
- E. Set forth a clear and concise statement as to the work that will be done by the expert and/or investigator.

4. **Electronic Filing Permitted by Non-Attorneys.** The application may be filed with MCILS by email or facsimile.

- A. **Email.** Applications filed by email shall be directed to the Executive Director at the email address for the Executive Director listed on the MCILS website. The application shall be transmitted as an attached document and not set forth in the body of the email. Electronic documents that reflect the signature of the applicant or the applicant's attorney are preferred, but are not required.
- B. **Facsimile.** Applications filed by facsimile shall be directed to the Executive Director at the "Fax" number listed on the MCILS website. The application shall be accompanied by a separate cover page that identifies the sender and sets forth the sender's address, telephone number and email address, if any. Applications filed by facsimile shall bear the signature of the applicant or the applicant's attorney.
- C. ~~Exception: Affidavits. Applications supported by affidavit as set forth above, may be filed electronically for prompt review, but no action will be taken thereon until an original signed copy of the affidavit is filed with the Commission, either in person or by mail. Repealed.~~

5. **Attorney Filers.** The application must be filed with MCILS according to the procedure directed by the Executive Director. That procedure may mandate the use of e-mail, including specifically formatted email, and/or the use of specific required forms. Any procedure developed by the Executive Director shall be designed to protect privileged information from disclosure, and to promote the efficient handling of funds requests by Commission staff.

### SECTION 3. DETERMINATION BY THE EXECUTIVE DIRECTOR

The Executive Director shall review the application and the grounds therefore and, in the Executive Director's sole discretion, shall either grant the funds applied for, in whole or in part, or deny the application. When granting an application in whole or in part, the Executive Director may condition the expenditure of funds as set forth in MCILS Rule Chapter 301, Fee Schedule and Administrative Procedures for Payment of Commission Assigned Counsel, and other MCILS procedures. The determination of the Executive Director shall be in writing and may be communicated to the applicant by electronic means ~~as set forth in Section 2.~~

#### **SECTION 4. PAYMENT FOR EXPERT OR INVESTIGATIVE ASSISTANCE**

Upon receipt of an invoice for services for which the expenditure of funds has previously been authorized, the applicant or the applicant's attorney shall forward the invoice to MCILS for processing and payment, together with the relevant authorization. Attorneys shall comply with any procedures established by the Executive Director. The applicant or the applicant's attorney must state that the services were satisfactory and that all applicable reports and other information have been received. The applicant or the applicant's attorney should review the invoice to verify that it conforms to MCILS requirements and that the appropriate rates for services and mileage were billed. The applicant or the applicant's attorney is not required by the Commission to advance funds to investigators or other service providers, subject to any professional conduct requirements. The applicant should make every effort to ensure that the service providers include a State of Maine Vendor Code number on each invoice.

#### **SECTION 5. Transition**

~~Repealed. Invoices for expert and investigative services authorized by a court prior to July 1, 2010 and not submitted to the court for payment before that date shall be submitted to MCILS for processing and payment. All invoices submitted must be accompanied by a copy of the court order authorizing expenditure of the funds.~~

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

EFFECTIVE DATE:

**(6.)**

## **Budget Update**

## MAINE COMMISSION ON INDIGENT LEGAL SERVICES

**TO:** MCILS COMMISSIONERS  
**FROM:** JUSTIN ANDRUS, EXECUTIVE DIRECTOR  
**SUBJECT:** BUDGET UPDATE  
**DATE:** JANUARY 25, 2021

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The Governor submitted her supplemental budget proposal for FY'21 and biennial budget proposal for FY'22-23 to the Legislature on January 8.

For the supplemental budget, one initiative was included that will move \$2.6 million in the OSR account to our regular Revenue account. This will help with any potential shortfall at the end of this fiscal year. Our request for two additional central office staff positions was not included in the budget proposal.

For the biennial budget, none of the four requested initiatives were included. The All Other funding remains at \$15.5 million. You will note in Part FFF, the eligibility rules (Chapters 2 and 3) are proposed to become routine technical. The Part FFF summary, however, incorrectly notes what is being changed to routine technical and has no binding effect.

<b>MAINE COMMISSION ON INDIGENT LEGAL SERVICES Z112</b>
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**Initiative:** Increases allocation due to the cost of indigent legal services.

	<b>2019-20</b>	<b>2020-21</b>
All Other		2,635,396
<b>Total</b>	0	2,635,396

**Summary - OTHER SPECIAL REVENUE FUNDS**

All Other

	<b>2019-20</b>	<b>2020-21</b>
All Other		2,635,396
<b>Total</b>	0	2,635,396

**Total Agency/Department**

All Funds		2,635,396
OTHER SPECIAL REVENUE FUNDS		2,635,396



## PART R

**Sec. R-1. Transfer to MaineCare Stabilization Fund.** Notwithstanding any law to the contrary, the State Controller shall transfer \$25,500,000 from the unappropriated surplus of the General Fund to the MaineCare Stabilization Fund established in the Maine Revised Statutes, Title 22, section 3174-KK on or before June 30, 2021.

**Sec. R-2. Transfer for MaineCare payments.** Notwithstanding any law to the contrary, the State Controller shall transfer up to \$40,000,000 from the balance available in the MaineCare Stabilization Fund established in the Maine Revised Statutes, Title 22, section 3174-KK for MaineCare payments in the Department of Health and Human Services. Amounts transferred may be expended based on allotment established by financial order approved by the Governor. The amounts transferred are considered adjustments to appropriations. The Governor shall inform the Legislative Council and the joint standing committees of the Legislature having jurisdiction over appropriations and financial affairs and health and human services matters immediately upon such a transfer from the MaineCare Stabilization Fund.

## PART R SUMMARY

This Part authorizes the transfer from the unappropriated surplus of the General Fund to the MaineCare Stabilization Fund of \$25,500,000 and authorizes the MaineCare Stabilization Fund transfer for MaineCare payments of \$40,000,000.

## PART S

**Sec. S-1 Transfer balances; Indigent Legal Services.** Notwithstanding any provision of law to the contrary, prior to June 30, 2021, the State Controller shall transfer, after the deduction of all allocations, financial commitments and other designated funds and any other transfer authorized by statute, any remaining balance in the Reserve for Indigent Legal Services account, Other Special Revenue Funds to the Maine Commission on Indigent Legal Services account, Other Special Revenue Funds in the Maine Commission on Indigent Legal Services.

## PART S SUMMARY

This Part authorizes the transfer any remaining balance in the Reserve for Indigent Legal Services account, Other Special Revenue Funds to the Maine Commission on Indigent Legal Services account, Other Special Revenue Funds in the Maine Commission on Indigent Legal Services.

Indigent Legal Services, Maine Commission on

	<u>Actual</u> 2019-20	<u>Current</u> 2020-21	<u>Budgeted</u> 2021-22	<u>Budgeted</u> 2022-23
<b>Department Summary - All Funds</b>				
Positions - LEGISLATIVE COUNT	11,500	11,500	11,500	11,500
Personal Services	1,016,678	897,243	954,855	977,284
All Other	18,711,931	16,678,725	16,678,725	16,678,725
<b>Total</b>	<b>19,728,609</b>	<b>17,575,968</b>	<b>17,633,580</b>	<b>17,656,009</b>

<b>Department Summary - GENERAL FUND</b>				
Positions - LEGISLATIVE COUNT		11,500	11,500	11,500
Personal Services		897,243	954,855	977,284
All Other	9,000	15,521,725	15,521,725	15,521,725
<b>Total</b>	<b>9,000</b>	<b>16,418,968</b>	<b>16,476,580</b>	<b>16,499,009</b>

<b>Department Summary - OTHER SPECIAL REVENUE FUNDS</b>				
Positions - LEGISLATIVE COUNT	11,500			
Personal Services	1,016,678			
All Other	18,702,931	1,157,000	1,157,000	1,157,000
<b>Total</b>	<b>19,719,609</b>	<b>1,157,000</b>	<b>1,157,000</b>	<b>1,157,000</b>

Indigent Legal Services, Maine Commission on

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES Z112**

**What the Budget purchases:**

The Maine Commission on Indigent Legal Services program provides efficient, high-quality representation to Maine citizens who are entitled to counsel at state expense under the United States Constitution or under the Constitution or statutes of Maine.

	<u>Actual</u> 2019-20	<u>Current</u> 2020-21	<u>Budgeted</u> 2021-22	<u>Budgeted</u> 2022-23
<b>Program Summary - GENERAL FUND</b>				
Positions - LEGISLATIVE COUNT		11,500	11,500	11,500
Personal Services		897,243	954,855	977,284
All Other	9,000	15,521,725	15,521,725	15,521,725
<b>Total</b>	<b>9,000</b>	<b>16,418,968</b>	<b>16,476,580</b>	<b>16,499,009</b>

<b>Program Summary - OTHER SPECIAL REVENUE FUNDS</b>				
All Other		1,157,000	1,157,000	1,157,000
<b>Total</b>	<b>0</b>	<b>1,157,000</b>	<b>1,157,000</b>	<b>1,157,000</b>

Initiative: NONE

	<u>Actual</u> 2019-20	<u>Current</u> 2020-21	<u>Budgeted</u> 2021-22	<u>Budgeted</u> 2022-23
<b>Revised Program Summary - GENERAL FUND</b>				
Positions - LEGISLATIVE COUNT		11,500	11,500	11,500
Personal Services		897,243	954,855	977,284
All Other	9,000	15,521,725	15,521,725	15,521,725
<b>Total</b>	<b>9,000</b>	<b>16,418,968</b>	<b>16,476,580</b>	<b>16,499,009</b>

<b>Revised Program Summary - OTHER SPECIAL REVENUE FUNDS</b>				
All Other		1,157,000	1,157,000	1,157,000
<b>Total</b>	<b>0</b>	<b>1,157,000</b>	<b>1,157,000</b>	<b>1,157,000</b>

**RESERVE FOR INDIGENT LEGAL SERVICES Z258**

**What the Budget purchases:**

The Maine Commission on Indigent Legal Services program provides efficient, high-quality representation to Maine citizens who are entitled to counsel at state expense under the United States Constitution or under the Constitution or statutes of Maine.

	<u>Actual</u> 2019-20	<u>Current</u> 2020-21	<u>Budgeted</u> 2021-22	<u>Budgeted</u> 2022-23
<b>Program Summary - OTHER SPECIAL REVENUE FUNDS</b>				
Positions - LEGISLATIVE COUNT	11,500			
Personal Services	1,016,678			
All Other	18,702,931			
Total	19,719,609	0	0	0

Initiative: NONE

	<u>Actual</u> 2019-20	<u>Current</u> 2020-21	<u>Budgeted</u> 2021-22	<u>Budgeted</u> 2022-23
<b>Revised Program Summary - OTHER SPECIAL REVENUE FUNDS</b>				
Positions - LEGISLATIVE COUNT	11,500			
Personal Services	1,016,678			
All Other	18,702,931			
Total	19,719,609	0	0	0

**PART DDD**

**Sec. DDD-1. Department of Health and Human Services; Additional Support for People in Retraining and Employment account; lapsed balances.** Notwithstanding any other provision of law, \$10,000,000 of unencumbered balance forward from the Department of Health and Human Services, Additional Support for People in Retraining and Employment, General Fund carrying account, All Other line category lapses to the unappropriated surplus of the General Fund no later than June 30, 2022.

**PART DDD  
SUMMARY**

This Part lapses \$10,000,000 of the unencumbered balance forward of the Department of Health and Human Services, Additional Support for People in Retraining and Employment, General Fund account to the General Fund in fiscal year 2021-22.

**PART EEE**

**Sec. EEE-1. Department of Health and Human Services; Medical Care Services account; lapsed balances.** Notwithstanding any other provision of law, \$60,000,000 of unencumbered balance forward from the Department of Health and Human Services, Medical Care Services, General Fund carrying account, All Other line category lapses to the unappropriated surplus of the General Fund no later than June 30, 2022.

**PART EEE  
SUMMARY**

This Part lapses \$60,000,000 of the unencumbered balance forward of the Department of Health and Human Services, Medical Care Services, General Fund account to the General Fund in fiscal year 2021-22.

**PART FFF**

**Sec. FFF-1. 4 MRSA, §1804, sub-§4, ¶D** is amended to read:

**4. Powers.** The commission may:

- A. Establish and maintain a principal office and other offices within the State as it considers necessary;
- B. Meet and conduct business at any place within the State;
- C. Use voluntary and uncompensated services of private individuals and organizations as may from time to time be offered and needed;

D. Adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that rules adopted to establish ~~standards under subsection 2, paragraph B and~~ rates of compensation for assigned counsel and contract counsel under subsection 2, paragraph F are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A; and

E. Appear in court and before other administrative bodies represented by its own attorneys.

### **PART FFF SUMMARY**

This Part allows the Maine Indigent Legal Services Commission to establish rates of compensation for assigned counsel and contract counsel through routine technical, rather than major substantive, rulemaking, enabling the Commission to make these changes more quickly and efficiently.

### **PART GGG**

**Sec. GGG-1. 12 MRSA §10202, sub-§9**, as amended by PL 2019, c. 343, Pt. LLL, §1, is further amended to read:

**9. Fiscal Stability Program.** The Fiscal Stability Program is established to ensure that the general public and hunters and anglers share the cost of the fish and wildlife conservation programs of the department. To achieve this goal, beginning with the ~~2022-2023~~2024-2025 biennial budget and for each biennial budget thereafter, the biennial budget submitted by the executive branch must include an additional General Fund appropriation of 18% in excess of the department's requested biennial budget.

### **PART GGG SUMMARY**

This Part amends the fiscal stability program to begin in the 2024-2025 biennium.

### **PART HHH**

**Sec. HHH-1. Transfer of funds; Department of Inland Fisheries and Wildlife carrying account.** On or before August 1, 2021, the State Controller shall transfer \$45,000 from the Inland Fisheries and Wildlife Carrying Balances – General Fund account to the Enforcement Operations – Inland Fisheries & Wildlife program, General Fund account for the purchase of one replacement aircraft engine. On or before August 1, 2022, the State Controller shall transfer \$46,000 from the Inland Fisheries and Wildlife Carrying Balances – General Fund account to the Enforcement

**(7.)**

**Financial  
Subcommittee  
Update**

## MAINE COMMISSION ON INDIGENT LEGAL SERVICES

**TO:** MCILS COMMISSIONERS  
**FROM:** COMMISSIONERS CAREY & KATZ  
**SUBJECT:** FINANCIAL RESPONSIBILITY SUBCOMMITTEE UPDATE  
**DATE:** JANUARY 26, 2021

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Tina Nadeau, the Honorable Donald Alexander and Zachary Heiden are now members of the subcommittee, joining Roger Katz, Michael Carey and Donald Hornblower. Ellie Maciag and Justin Andrus both participated. The Committee decided to limit sub subcommittee membership to 7 people, with the remaining slot to be filled by a person with experience in audits and/or investigations. Please let Roger, Mike or Justin know if you have suggestions.

The Financial Responsibility Subcommittee met twice in recent weeks. All subcommittee members and staff participated in the meetings and heard public comment from a pair of rostered-attorneys. The subcommittee received a number of written public comments, which are included in your packet. The Subcommittee's deliberation focused on three questions: which projects should the Commission consider to improve financial review processes; what risk factors should the Commission use to identify higher risk vouchers/matters for further review; and, what actions will be taken in the next three months to improve financial oversight.

The subcommittee unanimously agreed to Justin's suggested initial priorities over the next three months:

- Free staff time to address substantive issues relating to both financial oversight and the quality of representation by curtailing manual review of vouchers for certain small vouchers that pose less risk and are less likely to generate concerns.
- Communicate the expectation that an attorney must keep contemporaneous time records to support future voucher time entries.
- Institute an audit or investigation process for a deeper review of certain vouchers.

The subcommittee sought expertise from the State of Maine Office of Information Technology to help scope and negotiate any technology changes that may be needed. The expert has reviewed recent reports regarding the Commission and monitored one of the subcommittee's meetings. The Office of the Governor was instrumental in identifying the right person and seeking approval from the Department of Administration and Financial Affairs.

## Possible Projects and Possible Risk Metrics for Consideration

The subcommittee developed lists of possible projects for the Commission to consider to improve financial processes and possible metrics that the Commission may use to identify higher risk vouchers/matters for further review. The lists below are the collected suggestions of the subcommittee members and public comment, listed in no particular order. Except as explicitly indicated, the subcommittee has not sought or reached consensus on any particular item or otherwise taken action.

### *Possible projects to improve financial processes for the Commission's consideration*

1. Overhaul the voucher review process, which may include:
  - a. Instituting the use of risk-based metrics to identify vouchers/matters for further review;
  - b. Changing rules and/or the voucher submission form/process to clarify that attorney swears to a voucher's accuracy;
  - c. Adding a presumed max time entry for each possible line item on a voucher (eg, 1 hr for a phone call), and updating the IT system to allow entry of more time than the max, in such case, requiring an explanation in the comment field.
  - d. Adding the ability for staff to directly query the database to identify issues;
  - e. Reviewing the of list of possible time entries to determine which may be eliminated, further detailed or split into multiple entries; and,
  - e. A requirement that a voucher include an indication of the hours already claimed for the year on all previous vouchers, as well as for non-MCILS cases;
2. Improve the current high-risk flag system to make it usable;
3. Institute a forward-looking audit or investigative process to validate voucher accuracy;
4. Institute an expectation that an attorney keep contemporaneous time records to support future voucher time entries, by rule/standard, with a possible future IT implementation of contemporaneous time entry into the MCILS billing system;
5. Review maximum fees in ch. 310, section 4;
6. Consider changing to a timecard-based payment system, with monthly reimbursement;
7. Improve the entry of time, which may include:
  - a. Implementing an import interface from other billing systems, such as CLIO; and,
  - b. Allowing entry of a day's time on one screen, without having to enter to a matter-specific screen;
8. Prepare rostered attorney billing system RFP which, by law, must be newly awarded before 7/1/22;
9. Create a billing and record-keeping training; and,
10. Consider moving one or more staff from financial screening to central office to augment financial oversight processes.



The subcommittee asked staff to take the lead on any future consideration of moving existing headcount to a new function.

*Possible metrics to identify higher risk vouchers/matters for the Commission's consideration*

1. Time billed for a specific time entry;
2. Total billed for matter, incl. a low amount billed, billing over the cap, deviation from mean, etc.;
3. High amount billed for a period (day, week, etc.);
4. Number of motions to suppress filed;
5. Duplicate charges across vouchers (e.g., travel time, time waiting in court) for both rostered attorneys and non-counsel service providers;
6. Duplicate billings by non-counsel service providers;
7. Total amount billed by non-counsel service provider
8. The history of the attorney, which may include:
  - a. That the attorney has been convicted of a crime relating to billing;
  - b. That the attorney has a high number of high-billing flags;
  - c. That the attorney received a recent complaint to the commission or the board of bar overseers; and,
  - d. That the attorney may be brand-new to MCILS, or the practice of law; and,
9. Other factors relating to the case, which may include:
  - a. The client's naturalization status;
  - b. The number of years that the client was sentenced to imprisonment; and,
  - c. Whether it was the client's first felony.

MCILS  
Financial Subcommittee

January 13, 2021

Re: Thoughts about what should be risk factors that the commission should consider when prioritizing vouchers/matters for review

1) The viewpoint of it being a risk factor rather than an overbilling factor is something I have never heard considered. That philosophical approach I believe is a much better way of addressing the issues such as underbilling / not doing enough or appropriate work on a case, as well as mistakenly or intentionally overbilling.

2) In prioritizing vouchers for review, the current "caps" are fairly low amounts. Perhaps not reviewing vouchers that are within the cap and not egregiously under the cap (creating a baseline minimum, ex 2 hours; 2 client phone calls or meetings, whatever you decide) would likely take the majority of vouchers out of the manual human review process and those parameters would mean the voucher is at low risk of over or under work / billing.

3) Suggestion 2 above would be greatly improved by the function that was suggested of adding a flagging system in real time in DefenderData for time entries that exceed 1 hour. In my 10 years of using DefenderData (yes, since I was in law school it has not changed in a material way, a whole nother issue) the number one issue with time entries is a typographical error of failing to enter a period or dot on a time entry. So that 15-minute phone call goes from .3 to 3 into the system. That results in that 15-minute phone call being entered as a 3-hour phone call. Off the top of my head, I open about 100-200 dockets a year into DefenderData, with the amount of time entries per docket ranging from 10 to over 100. This task is ridiculously monotonous and all it takes is one light press on the period key on your computer on one time entry to screw things up. Statistically it is going to happen. Having something in real time that tells the attorney in essence "hey, are you sure about spending 3 hours on this task?" would drop those mistakes like a rock into a lake.

4) In prioritizing vouchers for review, the prior history of the attorney could be taken into account. For example, has the attorney been convicted of a crime; has the attorney been flagged 20 times this year for billing more than 12 hours in a day; has the attorney received a recent complaint to the commission or the board of bar overseers; etc. Those attorneys should have their vouchers focused on.

5) In prioritizing vouchers for review, is this a brand-new attorney to MCILS? If so, maybe their first year they should have their vouchers reviewed. This would really hit the mark on quality control. Have an experienced attorney or voucher reviewer take a look and make sure that new attorney is on track. Are they not talking to their client? Are they not getting any dismissals or deferred dispositions? Have they considered defenses, motions or case law? This would help those attorneys who may need help; those attorneys who are not in what I like to refer to as

apprenticeship roles - working under an experienced and respected criminal defense attorney. Issues around quality could be addressed early on in the attorney's career, not later on when it has become a disaster.

6) In prioritizing vouchers or matters for review, factors that could also be considered are: is the client not a US citizen (currently not an option to select in DefenderData); was the client sentenced to an underlying term of imprisonment greater than X number of years; was this the client's first felony (not currently an option to select in DefenderData - may also be hard to ascertain on out of state convictions for clients "don't remember" as we do not have access to III - Interstate Identification Index - criminal history information on our own).

Lastly, and this is not directly on point to risk factors but does speak to the risk of mis-entering time into DefenderData, something needs to change with that system. What seems most efficient and accurate to me would be to offer an integration with common billing software that attorneys already have. Not only would this reduce what are essentially transcription errors to almost zero, it would save each attorney on the roster countless unpaid and frankly unnecessary hours in this age of technology. If DefenderData cannot support such an integration, then another system should be looked at. In the interim, because I know that even if it could happen, it will be a long time till that ever really occurs, a more user-friendly interface should be implemented. I could go on about this in detail but suffice it to say that if there was the ability to just have one screen where I could enter times on any docket for any day, instead of going searching for them and clicking through a bunch of things to get there, I would take it in a heartbeat. Not only that, but it would be the only way to give attorneys a realistic shot of entering their time in 10 days or whatever the commission is going to decide on that.

I hope this helps and please reach out any time. I feel your best resource is the attorneys who have been doing this as their main practice for their entire careers.

Sincerely,



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

To: Maine Commission on Indigent Legal Services  
From: Subcommittee On Financial Responsibility  
Date: February 24, 2020  
Re: DRAFT Initial Findings and Recommendations for Improvements

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The scope of the Financial Responsibility Subcommittee is to recommend the future state of effective financial controls for the Maine Commission on Indigent Legal Services. The Subcommittee held separate, detailed discussions with the Executive Director, the Deputy Executive Director and Commission Accountant Lynne Nash. Ms. Nash, who attended with counsel, did not share much information regarding her job responsibilities.

### Findings

Six days a week, DefenderData runs a process to determine when an attorney has entered more than 12 hours for a given day and send out a warning flag. When that occurs, DefenderData sends an email to the rostered attorney that lists all dockets for which the attorney billed that day. If the attorney, on another day, enters more time for that day, DefenderData generates a new email. The email asks the attorney to respond, but does not set an unambiguous expectation. Only about 25% of flags have been resolved.

It is far more onerous than need be for an attorney to respond to a flag. The auto-generated email contains no hyperlinks. Instead, the attorney must search separately for each voucher—a rostered attorney on the Subcommittee shared a recent example of a day when he billed to 32 different cases. Further, the attorney cannot respond to the email (it comes from [DoNotReply@defenderdata.com](mailto:DoNotReply@defenderdata.com)) but must separately contact MCILS staff.

Similarly, staff's responsibilities to track flags is more onerous than need be. Currently, staff track the resolution of flags on a manually-created detailed spreadsheet. When reviewing a voucher, staff does not know whether a voucher contains billing on a day that is subject to a flag. Voucher approval currently constitutes a significant portion of the Executive Director and Deputy Executive Director's job responsibilities. One estimate is that reviewing a voucher for payment takes about 2 minutes, on average. Based on data through 12/31/19, staff will spend about 1,150 hours reviewing vouchers in FY20.

In its history, MCILS has conducted two audits. Staff initiated an audit of Attorney Fethke that resulted, in part, in his removal from the roster, and it audited certain billing in response to the VI Amendment Center report.

### Recommendations for Improvement


The warning flag system was an important addition. The Subcommittee proposes investing resources in both DefenderData upgrades and staffing to fully implement the warning flag system. Payment should not be made on vouchers subject to a flag. Attorneys should be required to enter their time within 10 business days. DefenderData should be upgraded to allow the easy entry of all time for a day on a single screen. Such a screen would also include space to enter the total time worked for non-MCILS clients and total CLE/training time. Before entered time is

# Summary of Comments on 2020-02-24 DRAFT Financial Responsibility Subcommittee Initial Findings and Recommendations.pdf

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Page: 1

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 Number: 1 Author: Cory Mckenna Date: 1/26/2021 11:22:07 AM

Good idea. Even better would be an export function from commonly used time tracking software, i.e. Clio, rocket matter, etc. Maybe just pick one and I bet almost all attorneys will migrate to that.

Also, updating the task descriptions to be more intuitive and simple, i.e. I wrote a letter to someone, I have to enter "prepare correspondence with" (11 options) some of which don't even fit; instead it would just be prepared letter, fill in comment section; "review (19 options)" on and on

 Number: 2 Author: Cory Mckenna Date: 1/11/2021 2:52:13 PM

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committed to the system, the screen would require the attorney to affirm that the entry is true and accurate. The new screen would provide a space for explanation if the time totals more than 12 hours. Staff should timely review days subject to a flag and request further information where needed. With these changes, the initial review would be done by the billing attorney, not staff. Further, the attorney would be more likely to be responding to the alert when the information is recent. The DefenderData changes would decrease the amount of staff time needed to respond. However, additional staffing resources—over the current practice—may be needed to ensure timely and complete follow-through on all flags. The recommended next steps are for:

1. Staff to draft the scope of any needed DefenderData upgrades and engage the vendor to estimate time and cost for such changes;
2. Staff to draft an internal procedure for review of time entered on days subject to flags; and,
3. Staff to determine the amount of staff time that would need to be budgeted, the level of the experience that such a function would require and, specifically, whether staff must be an attorney.

The Subcommittee recommends that the Commission and staff retain the authority to initiate audits on such parameters as they define. In addition, staff should begin to randomly audit selected vouchers. <sup>1</sup> Under a system of random audits, a particular voucher would be more likely to be randomly selected based on certain criteria—such criteria may include, for example, vouchers that include entered time on a day when the attorney billed more than 12 hours, if the attorney has previously submitted erroneous vouchers, if the voucher is over the Commission’s cap for that case-type, etc. The Subcommittee anticipates that most audits would be desk audits, but that some would be <sup>2</sup> randomly conducted on-premises. While an audit’s focus would be a particular voucher, necessary supporting information would likely include documents such as the docket, case file, and daily billing records. Client feedback may be solicited. This recommendation is focused on auditing the billing records, but the Commission may choose that an audit should also include a review of the quality of representation provided. The Subcommittee anticipates that an audit would be initiated and completed relatively soon after the submission of a voucher. The Commission would set the scope of the audit function by the amount of staff resources it would budget; the initial of the Subcommittee is that the scope of the audit function should be between 0.25 and 0.5 FTE. The recommended next steps are for:

4. Staff to advise on the level of experience an audit function would require of staff and, specifically, whether staff must be an attorney;
5. Staff to propose any needed rule changes, and draft an audit procedure for the Commission’s approval; and,
6. Commission to determine the portion of an FTE to devote to audit, the level of experience needed and when the position would begin.

The Subcommittee recommends that <sup>3</sup> DefenderData improve the voucher review module to provide a dashboard of meta-data to put the voucher under review in context; improvements may include

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Number: 1 Author: Cory Mckenna Date: 1/26/2021 11:22:42 AM  
This is the opposite of random; this is a rules based audit system.

T Number: 2 Author: Cory Mckenna Date: 1/11/2021 3:02:11 PM

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Number: 3 Author: Cory Mckenna Date: 1/11/2021 3:03:46 PM  
This sounds onerous on the attorney. Will this be paid?

T Number: 4 Author: Cory Mckenna Date: 1/11/2021 3:03:18 PM

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Number: 5 Author: Cory Mckenna Date: 1/11/2021 3:07:42 PM  
Metadata collection, aggregation and analysis raises privacy concerns in any context, this should be more fully considered and reviewed before serious proposals are made and implemented

T Number: 6 Author: Cory Mckenna Date: 1/11/2021 3:05:39 PM

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average voucher submission amount for that case-type, number of over cap voucher that attorney has submitted, etc. The implementation of the changes recommended above would likely improve the accuracy of vouchers submitted to the Commission, provide two control processes that currently do not exist and provide staff with richer information with which to consider a particular voucher. We anticipate that other Commission changes to address quality of representation likely would further improve the quality of data in the vouchers as well as the quality of representation being billed. However, it is likely unreasonable to expect that the average time to review a voucher will decrease from 2 minutes. The Subcommittee views the continued review of each voucher to be important. However, to the extent that staff is under resourced—whether from a lower Legislative appropriation than requested or fewer trained staff working then budgeted—the Subcommittee urges the commission to prioritize the complete implementation of financial controls. The recommended next steps are for:

7. Staff to draft the scope of any needed DefenderData upgrades for voucher dashboard and engage the vendor to determine time and cost for such changes.

The Subcommittee proposes Commission rules be amended, or guidance, issued to make certain standards explicit. As to billing, attorneys must keep contemporaneous records of time they spend, in addition to the expectation that time will be entered within 10 business days. <sup>1</sup> Topics for standards should include drive time, waiting in court, opening a file and closing a file, etc. While 0.1 hours would remain the smallest billing increment, standards should make explicit that multiple small entries (e.g., for reviewing email related to an assigned matter) should be aggregated and rather than rounded up.


General standards would include a general prohibition from the acceptance of private reimbursement for a case for which counsel was retained. When the Commission determines that a rostered attorney has entered more time than appropriate, has submitted a higher amount for payment than appropriate or has been paid more than appropriate, the Commission shall ensure that it pays the appropriate amount, including through overpayment if needed. Existing professional standards cover record-keeping requirements, and failure to keep proper records may result in an audit finding, in addition to any discipline by the Bar Overseers. An attorney's home or office must generally be located within 90 minutes of any court if they accept assignment. An attorney may not accept cases for which he is not rostered, and the Commission shall not reimburse an unrostered attorney. <sup>3</sup> All attorneys receiving case assignments through the Commission must regularly review the MCILS website for updates of policies, procedures, and guidelines. Staff should create a billing and record-keeping training to ensure that counsel have all needed resources to succeed. The recommended next steps are for:

8. Staff to draft rules and guidance to incorporate billing and general standards; and,
9. Staff and rostered attorneys to create a billing and record-keeping training, for CLE credit if possible.

As is evident, the Subcommittee focused its review of the voucher review process and the warning flag system. It has not yet reviewed the payment process after a voucher is approved for payment




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 Number: 1 Author: Cory Mckenna Date: 1/11/2021 3:09:55 PM

Standard individualized billing vs block billing - attorney input should be sought as they have the best sense for this.

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 Number: 2 Author: Cory Mckenna Date: 1/11/2021 3:08:38 PM

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 Number: 3 Author: Cory Mckenna Date: 1/11/2021 3:11:49 PM

Attorneys should be informed of changes, not have to go searching for them.

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 Number: 4 Author: Cory Mckenna Date: 1/11/2021 3:11:27 PM

or the payment process for expenses other than attorney voucher, in part because of an abbreviated conversation with Ms. Nash. The next steps are for:


10. The Subcommittee to complete its review of the payment processing function by speaking with Ms. Nash, other staff or the Controller's office.

In December 2017, the Working Group to Improve the Provision of Indigent Legal Service made a number of recommendations, two of which relate to financial responsibility and have not been addressed. First, the Working Group recommended the creation of a Deputy Director-level chief financial officer to be responsible for review of vouchers and payment of attorneys and general oversight of cost control. Voucher review, the review of flags and audit all include review and oversight of both finances and quality representation. The Subcommittee expects high-level staff attention to every financial control. Whether the financial and quality functions can be entirely separated remains to be seen. Second, the Working Group recommended that the screening process include a revision of the counsel application form to make clear that <sup>1</sup> is a firm to intentionally provide false information when requesting an attorney. The VIth Amendment Center recommended that the Legislature remove the indigency screening function from the Commission, <sup>3</sup> yet MCILIS must continue to properly administer the function while it remains.


11. Staff to draft a revised indigency screening function; and,

12. Staff to draft the scope of any needed DefenderData upgrades to meet the requirements detailed in the State Controller's report. <sup>4</sup>


The changes outlined here would be made prospectively, without prejudice to any staff or Commission action regarding time entered or vouchers incurred before the changes take effect. Before instituting each initiative, the Commissions should ensure that a clear transition plan exists to maintain effective representation of clients, provide for data stability and ensure that the Commission remains able to investigate and remediate past billing errors.

 Number: 1 Author: Cory Mckenna Date: 1/11/2021 3:13:10 PM  
Do you mean felony or crime?


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 Number: 2 Author: Cory Mckenna Date: 1/11/2021 3:12:57 PM

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 Number: 3 Author: Cory Mckenna Date: 1/13/2021 5:11:58 PM  
MCILS should make a rule barring attorneys from being required by the court to financially screen defendants

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 Number: 4 Author: Cory Mckenna Date: 1/11/2021 3:19:43 PM  
Finally, does something similar exist at the offices of the district attorneys or attorney general? If not, it seems like a double standard

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**From:** [Tina Nadeau](#)  
**To:** [Maciag, Eleanor](#); [Michael Carey](#); [rkat@kblawmaine.com](mailto:rkat@kblawmaine.com); [Donald Alexander](#); [Zach Heiden](#); [donaidthornblower@myfairpoint.net](mailto:donaidthornblower@myfairpoint.net)  
**Subject:** [External]Attorney Emails re: Contemporaneous Billing  
**Date:** Wednesday, January 13, 2021 6:46:21 PM

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Attorney #1:

"I hate the idea of having to enter my time into the system as I go. I enter my time into the case in TABS (our firm's billing system) and then, at the conclusion of the case, look at and edit the bill. Sometimes, I can't justify the time I have in on the case and so I edit in MCILS's favor. Other times, I know I missed entries and go back and look at the file and, if I can, re-create time or find that it was entered in the wrong file. When I've properly edited the bill, I enter it into their system. This makes the most sense for me. If they are going to require us to enter it into their system within 10 days of when we do the work, that will create too much admin time as we will have to have someone do it almost daily for the 4 attorneys here who do the work. My firm does a ton of court-appointed work and we frankly, are considering stopping because it is a losing money proposition to start with. If more admin costs are going to be incurred, we may be out altogether. Not a threat, but a practicality. I bill at \$275/hour on retained cases; \$60 on court-appointed, which we only make work because of efficiencies in how we have set them up."

Attorney #2:

"I have a couple concerns about this talk of contemporaneous billing. Firstly it sounds inconvenient as all hell and will likely double if not triple the amount of unbillable time spent on admin for entering billing piecemeal vs tracking a case and entering everything at completion of a docket. Secondly i'm not sure if the platform would react well to having every rostered attorney simultaneously logged in constantly because we have to track our billing in real time as defend data seems somewhat unstable as it is under its normal usage load."

--

Tina H. Nadeau, Esq.  
**Executive Director**  
**Maine Association of Criminal Defense Lawyers**  
P.O. Box 17642  
Portland, ME 04112-8642  
(207) 523-9869  
<http://www.mainemacdl.org>  
*Pronouns: she/her/hers*

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**From:** [Tina Nadeau](#)  
**To:** [Maciag, Eleanor](#); [Michael Carey](#); [rkat@lkblawmaine.com](mailto:rkat@lkblawmaine.com); [Donald Alexander](#); [Zach Heiden](#); [donaidhornblower@myfairpoint.net](mailto:donaidhornblower@myfairpoint.net)  
**Subject:** [External]Re: Attorney Emails re: Contemporaneous Billing  
**Date:** Wednesday, January 13, 2021 10:09:05 PM

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From Attorney Chris Guillory:

"After listening to the meeting it seems the rolling billing is based off a concern of spotting and explaining days that are over billed closer to the date of billing rather than months down the line when no-one can remember what they were doing that day. It seems there are a couple ways that can be addressed. The easiest for the defense bar would be a rule requiring we all track independently our daily billings in a way that is immediately aggregated and storable and accessible like a daily spreadsheet of the billable events for a given day. Requiring such contemporaneous billing on our side of the record keeping ledger would enable us to self flag when we've overfilled a day and correct whatever the error is before anything gets submitted, or to make a note for ourselves that hey i worked 15 hours today, yay me, and secondly if there is a problem down the line we can just scroll over to Date X and reference all the things we did that day and how long we did them. Again this relies on us all to keep good records and will not be a total fix to the issue.

Alternatively they could do the continuous billing, but i see a couple dangers in there. Firstly what is the enforcement mechanism going to be. If it is non payment for any events not logged after ten days i fear that may just become the generic threat for every new policy, do it or we won't pay you.

Even if the platform can be engineered to lock us out of our own billing events after ten days, which i haven't seen any time sensitive functionality implemented so but maybe they could, but i bet defend data would charge an arm and a leg to implement that type of self executing rolling functionality for every voucher put into the system. That type of change is going to put a lot of pressure on a lot of people. Look how many people were impacted by the 90 day rule. That will likely be too much pressure for some practitioners, especially ones who may not use software or technology to assist with practice management and time management. With that much pressure come mistakes and inconsistencies and likely more issues than are currently presenting. Also when does the 10 day clock start running, i often hear about appointments several days before i receive the actual appointment notice from the court, if there is a delay in us being notified from the court we could run the risk of starting every case a step behind.

On the flip side of totally embracing continuous billing, if Defend data could be made much more user friendly, how long do vouchers and records of time logged stay in their system, would practitioners be able to rely on using defend data as their only time tracking methodology and have those records maintained the 8 years required by the overseers? In the case of a PCR would those records be easily printable or extractable for documenting how time was spent. would there be a way to track overall weekly and daily activity across all of our cases so the commission could essentially track who the full and part time defenders are and assess how much time is spent on types of cases between those two groups.

I think the idea of kicking the financial screeners back into the judiciary makes a lot of sense, their role is mostly tied to the judiciary's duty to screen and appoint not the commission's task of providing services, plus the optics are terrible if a client lies on the affidavit for a

commission staffer being a potential witness at the aggravated forgery trial."

**From:** [RJR](#)  
**To:** [Michael Carey](#)  
**Subject:** [External]Montana  
**Date:** Friday, January 8, 2021 12:48:10 PM  
**Attachments:** [120-TimeReporting.pdf](#)  
[130-PolicyContractCounsel.pdf](#)

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Commissioner Carey:

As I said in my phone conversation this week. This research was done at the very beginning of my work on reforming indigent representation in Maine.

These policies are from 2006 and were still in effect in 2008, and reflect a bi-weekly payment for Commission work.

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Robert J. Ruffner, Esq.  
Ruffner - Greenbaum  
Attorneys At Law  
415 Congress Street  
Suite 202  
Portland, Maine 04101  
(207) 221-5736  
(866) 324-0606 (fax)  
[rjr@mainecriminaldefense.com](mailto:rjr@mainecriminaldefense.com)  
[www.mainecriminaldefense.com](http://www.mainecriminaldefense.com)

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# Office of the State Public Defender Administrative Policies

Subject: <b>Time Reporting</b>	Policy No.: <b>120</b>
Title <b>47</b>	Pages: <b>1</b>
Section: <b>1-202</b>	Last Review Date:
Effective Date: <b>7/01/06</b>	Revision Date:

## 1.0 POLICY

- 1.1 All attorneys employed by the Office of Public Defender shall maintain and report work time for each case to which they are assigned.
- 1.2 In maintaining and reporting time, each attorney will:
  - A. Report time worked on each case on a bi-weekly basis consistent with pay periods;
  - B. Designate each case by:
    - i. Office of Public Defender number and
    - ii. Amount of time spent during each week;
  - C. Report time in increments of .10 of an hour;
  - D. Transmit electronically, by the Monday of the following week, the compilation of time worked on each case to the regional administrative assistant or public defender office manager on the forms provided.

## 2.0 CLOSING

Questions about this policy should be directed to the State Office at the following address:

Office of the State Public Defender  
Administrative Service Division  
44 West Park  
Butte, MT 59701  
Phone 406-496-6080



# Office of the State Public Defender Administrative Policies

Subject: <b>Contract Counsel</b>	Policy No.: <b>130</b>
Title: <b>47</b>	Pages: <b>2</b>
Section: <b>1-216</b>	Revision Date:
Effective Date: <b>7-1-06</b>	Effective Date:

## 1.0 POLICY

- 1.1 The Office of the State Public Defender (OPD) may enter into contracts with outside counsel to provide services pursuant to the Montana Public Defender Act (Act).
- 1.2 District court judges, the Supreme Court Administrator, and the counties may not contract for public defender/indigent defense services in those cases deemed the responsibility of the OPD under the Act.
- 1.3 State contracts are viewed as a cost-effective manner in which to ensure that public defender/indigent defense services are available in those areas where full time staff public defender services are unavailable, when conflict situations arise, or to alleviate workload issues.

## 2.0 PROCEDURE

- 2.1 Prospective contract counsel must complete the Attorney's Summary of Education and Experience as provided on the OPD website at <http://publicdefender.mt.gov>.
- 2.2 Upon receipt of the Attorney's Summary of Education and Experience information, the OPD will review this information and provide qualified applicants with a Memorandum of Understanding (MOU).
- 2.3 Prospective contract counsel acknowledge that they have read and agree to abide by the Public Defender Standards of Conduct by signing the MOU and returning it to the OPD. The MOU also requires that contract counsel complete Continuing Legal Education training annually, as determined by the Public Defender Commission.
- 2.4 Prospective contract counsel are then placed in a pool based on their qualifications and the Region(s) in which they choose to work.
- 2.5 The Regional Deputy Public Defender is responsible for assigning specific cases to attorneys from the regional pool, ensuring that the attorney has the qualifications to handle the specific type of case being assigned.
- 2.6 The Regional Deputy Public Defender will monitor the performance of the contract counsel and will participate in the annual proficiency determination of each contract counsel.

## 3.0 PAYMENTS FOR SERVICES

- 3.1 The OPD shall directly pay contracted counsel for services rendered.
- 3.2 Contract counsel services shall be paid at the rate of \$60 per hour for non-death penalty cases, and at the rate of \$120 per hour for death penalty cases.
- 3.3 Pre-approved travel expenses shall be paid at the state travel rates.

- 3.4 OPD shall offer a stipend of up to \$25 per month to help defray office costs such as telephone, postage, and copies.
- 3.5 Other expenses shall be paid as pre-approved under OPD procedures.

#### 4.0 PAYMENT AND PROCEDURES

It is understood that contract counsel services will be supervised by the Regional Deputy Public Defender and the OPD.

Contracted counsel shall submit an itemized claim on the standard payment form provided by OPD. This form and accompanying instructions are posted on the OPD web site at <http://publicdefender.mt.gov>. Hourly time shall be broken down into six minute increments. Each form **must** contain the case number **assigned** by the Regional Office. Said form shall be submitted to the supervising Regional Deputy Public Defender for review, who shall within five (5) days review and forward the claim to the State Office. The OPD will review, approve and pay said claim within thirty (30) days of receipt of the same. Payment may be delayed if the claims are returned for corrections, clarification or for failure to include the **assigned** case number.

#### 5.0 CLOSING

Questions about this policy should be directed to OPD at the following address:

Office of the State Public Defender  
Administrative Service Division  
44 West Park  
Butte, MT 59701  
Phone 406-496-6080