

MCILS

June 14, 2016

**Commissioner's Meeting
Packet**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

JUNE 14, 2016

COMMISSION MEETING

**CRIMINAL JUSTICE COMMITTEE ROOM, ROOM 436, STATEHOUSE,
AUGUSTA**

AGENDA

- 1) Approval of May 10, 2016 Commission Meeting Minutes
- 2) Operations Reports Review
- 3) Appellate Contracts
- 4) Probate Cases in District Court
- 5) Payment for Requests for Certiorari to the United States Supreme Court
- 6) Public Comment
- 7) Set Date, Time and Location of Next Regular Meeting of the Commission
- 8) Executive Session, if needed (Closed to Public)

(1.)
May 10, 2016
Commission Meeting
Minutes

**Maine Commission on Indigent Legal Services – Commissioners Meeting
May 10, 2016**

Minutes

Commissioners Present: Steven Carey, Marvin Glazier, William Logan, Carlann Welch

MCILS Staff Present: John Pelletier, Ellie Maciag

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Approval of the April 12, 2016 Commission Meeting Minutes	No discussion of meeting minutes.	Commissioner Glazier moved for approval, Commissioner Logan seconded. All present in favor. Approved.
Outgoing Commissioner	Chair Carey thanked Commissioner Susan Roy for her time at the Commission and for the valuable input and perspective she brought to the Commission with her non-profit background.	
Operations Reports Review	Director Pelletier presented the April 2016 Operations Reports. 1,934 new cases were opened in the DefenderData system in April. This was a 445 case decrease from March, which had been a high month for new cases. The number of submitted vouchers in April was 2,506, a decrease of 475 vouchers from March, totaling \$1,465,175, a decrease of \$198,000 from March. In April, the Commission paid 2,092 vouchers totaling \$1,210,459, a decrease of 2,027 vouchers and \$967,000 from March. Director Pelletier noted that the sharp decrease from March's totals was due to staff using surplus funds to pay all vouchers submitted in March and not having the usual two week carry-over of vouchers into April. The average price per voucher in April was \$578.61, up \$50.03 per voucher over March. Appeal and Post-Conviction Review cases had the highest average vouchers in April. There were 11 vouchers exceeding \$5,000 paid in April. The monthly transfer from the Judicial Branch for counsel fees for April, which reflects March's collections, totaled	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>\$78,703, down approximately \$27,988 from the previous month. Director Pelletier noted that collection totals are still much lower than they were at this same time last year and will most likely not match last year's totals.</p> <p>Commissioner Logan asked staff to start tracking the number of vouchers that exceed the fee cap so the Commission will know where overruns are happening. Commissioner Welch also asked staff to start listing the median voucher amount for all case types on the monthly report.</p>	
Appellate Contracts	The Commissioners discussed the revised draft appellate RFP, including whether to issue one and whether there should be a malpractice insurance requirement. Director Pelletier noted that the Somerset Contract does require malpractice insurance and believed that state purchasing requires all vendors to be insured. The Commissioners unanimously decided to issue an RFP.	
Payment for Requests for Certiorari to the US Supreme Court	At the May Commission meeting, the Commissioners discussed a request for payment for drafting a US Supreme Court cert petition and decided not to approve the request. Following the meeting, Commissioner Spierer asked for additional time to reconsider the request. After a discussion on the points raised at the last meeting by the requesting attorney, the Commissioners again decided that the Commission's enabling statute does not provide authority to cover the cost of filing US Supreme Court cert petitions and decided to not approve the request. Because Commissioner Spierer was absent, Chair Carey indicated that the topic could be discussed again, including whether the Commission should seek a change to the enabling statute, at the June Commission meeting.	
Renewal of Existing Contracts	Director Pelletier gave an update on the status of the Justice Works and Somerset County contracts. He recommended that the Commission issue an RFP for its electronic billing needs early in the next fiscal year in order to give ample time to another organization to tailor a system to the Commission's needs by the following July 1. As for the Somerset County contract, Director Pelletier informed the	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>Commissioners that during FY'14-FY'15, the contract hourly rate was substantially higher than the hourly rate paid to rostered attorneys. This was a marked departure from FY'13 which was squarely in line with the hourly rate paid to rostered attorneys. Director Pelletier recommended that the Commission renew the Somerset Contract for an additional one-year term in July, but issue an RFP in the next year instead of authorizing a second one-year renewal. Chair Carey agreed with Director Pelletier's recommendation and noted that he was concerned about the quality of the work being done after reviewing the data provided by the Somerset County contract attorneys. Director Pelletier relayed that no issues with respect to the quality of work being done by contract counsel were raised during his informal conversations with the court and DA's office.</p>	
Public Comment	<p><u>Robert J. Ruffner, Esq.</u>: Attorney Ruffner asked the Commission to address an issue he sees with fully indigent defendants having bail money taken to pay for counsel fees. He noted that the number of vouchers over \$5,000 is small compared to the total number of cases. He also noted that the cost drivers are different in different locations and could be due to how attorneys classify time events. Attorney Ruffner asked whether the Commission knows what the Somerset County contract attorneys have for a current non-contract caseload, and if not, it should. He contended that the court and district attorney feedback about liking the current contract system is not a good judge of the system. Attorney Ruffner urged the Commission to put forward a proposal to implement an attorney evaluation program and request additional staff from the Legislature. Finally, Attorney Ruffner believes that the newly imposed 5 minute public comment limit will dissuade attorney participation at Commission meetings.</p> <p><u>Jamesa Drake, Esq.</u>: Attorney Drake again asked the Commissioners to reconsider their decision denying her request for the Commission to pay for US Supreme Court cert petitions. Attorney Drake disagreed with the Commission's position that it does not have authority to pay for cert petitions under its enabling statute, noting that the Commission currently pays for a wide variety of services that are not constitutionally</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	required. Attorney Drake found it unacceptable to require attorneys to file cert petitions on a pro bono basis. Attorney Drake requested the data on the number of appellate cases that will be handled by trial counsel in order to submit an accurate bid for the appellate contract.	
Executive Session	none	
Adjournment of meeting	The Commission voted to adjourn with the next meeting to be on June 14, 2016 at 9:30 a.m.	Commissioner Logan moved to adjourn. Commissioner Welch seconded. All present at the meeting in favor.

(2.) Operations Reports

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
SUBJECT: MAY 2016 OPERATIONS REPORTS
DATE: JUNE 6, 2016

Attached you will find the May, 2016 Operations Reports for your review and our discussion at the upcoming Commission meeting on June 14, 2016. A summary of the operations reports follows:

- 2,250 new cases were opened in the DefenderData system in May. This was a 316 case increase over April.
- The number of vouchers submitted electronically in May was 2,813, an increase of 307 vouchers over April, totaling \$1,572,348.10, an increase of \$107,000 over April. In May, we paid 2,681 electronic vouchers totaling \$1,509,153.62 representing an increase of 589 vouchers and \$298,000 compared to April.
- There were no paper vouchers submitted and paid in May.
- The average price per voucher in May was \$562.91, down \$15.70 per voucher from April.
- Appeal and Post-Conviction Review cases had the highest average vouchers in May. There were 5 vouchers exceeding \$5,000 paid in May. One voucher involved a charge of attempted murder that was dismissed in return for a plea to reckless conduct and a county jail sentence. Another involved a charge of aggravated trafficking that was dismissed when the state's evidence was suppressed. A third voucher involved a gross sexual assault charge that was dismissed in return for a plea to aggravated assault after litigation regarding DNA testing. Another voucher involved a plea to a charge of vehicular manslaughter, and the final voucher involved a post-conviction review in a kidnapping case.

In our All Other Account, the total expenses for the month of May were \$1,627,974.86. Of the amount, just over \$11,000 was devoted to the Commission's operating expenses.

In the Personal Services Account, we had \$81,692.58 in expenses for the month of May. This amount was larger than usual because three pay periods were charged to our account in May.

In the Revenue Account, the May transfer of collected revenue, reflecting April collections, totaled \$61,151.57. With one installment of collected funds yet to be received during this fiscal year, the total collected year to date equals \$616,654. We are

on track for a year of healthy collections, but still less than the highest ever total of \$776,000 collected in fiscal year 2015.

In our Conference Account, we paid expenses related to our April training in Bangor and collected revenues for that training and for the upcoming minimum standards training, leaving the account balance to \$12,223.72.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Case Type

5/31/2016

DefenderData Case Type	May-16						Fiscal Year 2016			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
Appeal	19	20	\$ 21,910.87	24	\$ 29,312.95	\$ 1,221.37	143	237	\$ 319,395.83	\$ 1,347.66
Child Protection Petition	166	389	\$ 243,953.72	392	\$ 251,154.82	\$ 640.70	1,665	3,627	\$ 2,313,570.52	\$ 637.87
Drug Court	0	9	\$ 4,733.20	7	\$ 3,941.20	\$ 563.03	3	69	\$ 43,377.70	\$ 628.66
Emancipation	4	7	\$ 3,312.50	7	\$ 2,442.00	\$ 348.86	70	83	\$ 25,217.84	\$ 303.83
Felony	556	716	\$ 617,674.76	704	\$ 581,785.29	\$ 826.40	5,995	6,717	\$ 5,402,377.76	\$ 804.28
Involuntary Civil Commitment	53	57	\$ 14,412.93	37	\$ 9,559.65	\$ 258.37	747	686	\$ 164,534.03	\$ 239.85
Juvenile	77	69	\$ 37,473.35	65	\$ 33,427.93	\$ 514.28	903	954	\$ 414,832.98	\$ 434.84
Lawyer of the Day - Custody	210	218	\$ 53,517.14	186	\$ 45,841.18	\$ 246.46	2,436	2,283	\$ 532,608.94	\$ 233.29
Lawyer of the Day - Juvenile	37	32	\$ 6,623.04	31	\$ 6,480.24	\$ 209.04	442	414	\$ 84,443.42	\$ 203.97
Lawyer of the Day - Walk-in	140	122	\$ 30,011.67	120	\$ 29,876.56	\$ 248.97	1,306	1,197	\$ 298,314.00	\$ 249.22
Misdemeanor	720	772	\$ 317,981.89	739	\$ 312,671.80	\$ 423.10	7,539	7,524	\$ 2,972,680.97	\$ 395.09
Petition, Modified Release Treatment	2	8	\$ 3,011.65	8	\$ 5,019.50	\$ 627.44	7	52	\$ 21,301.43	\$ 409.64
Petition, Release or Discharge	0	2	\$ 678.15	2	\$ 678.15	\$ 339.08	1	5	\$ 11,017.78	\$ 2,203.56
Petition, Termination of Parental Rights	25	48	\$ 45,116.80	35	\$ 37,464.42	\$ 1,070.41	203	555	\$ 430,030.44	\$ 774.83
Post Conviction Review	8	7	\$ 16,021.10	6	\$ 15,073.64	\$ 2,512.27	78	71	\$ 120,491.70	\$ 1,697.07
Probation Violation	172	182	\$ 78,468.21	175	\$ 72,392.64	\$ 413.67	1,838	1,845	\$ 740,505.68	\$ 401.36
Represent Witness on 5th Amendment	2	2	\$ 318.00	1	\$ 582.00	\$ 582.00	30	25	\$ 5,404.78	\$ 216.19
Review of Child Protection Order	59	149	\$ 76,289.12	138	\$ 70,609.65	\$ 511.66	433	1,720	\$ 864,595.84	\$ 502.67
Revocation of Administrative Release	0	4	\$ 840.00	4	\$ 840.00	\$ 210.00	30	27	\$ 7,193.58	\$ 266.43
DefenderData Sub-Total	2,250	2,813	\$ 1,572,348.10	2,681	\$ 1,509,153.62	\$ 562.91	23,869	28,091	\$ 14,771,895.22	\$ 525.86
Paper Voucher Sub-Total	0	0	\$ -	0	\$ -	#DIV/0!	6	6	\$ 8,767.78	\$ 1,461.30
TOTAL	2,250	2,813	\$1,572,348.10	2,681	\$1,509,153.62	\$ 562.91	23,875	28,097	\$ 14,780,663.00	\$ 526.06

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY16 FUND ACCOUNTING
AS OF 05/31/2016

Account 010 95F Z112 01 (All Other)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY16 Total
FY16 Professional Services Allotment		\$ 4,428,945.00		\$ 4,364,292.00		\$ 4,515,272.00		\$ 4,873,093.00	
FY16 General Operations Allotment		\$ 34,560.00		\$ 34,560.00		\$ 34,560.00		\$ 34,560.00	
Financial Order Adjustment		\$ -		\$ 8,633.00		\$ 8,633.00		\$ 8,634.00	
Financial Order Adjustment		\$ -		\$ -		\$ -		\$ -	
Total Budget Allotments		\$ 4,463,505.00		\$ 4,407,485.00		\$ 4,558,465.00		\$ 4,916,287.00	\$ 18,345,742.00
Total Expenses	1	\$ (1,034,674.33)	4	\$ (1,209,786.02)	7	\$ (896,072.76)	10	\$ (1,290,307.52)	\$ (4,430,840.63)
	2	\$ (1,384,090.42)	5	\$ (1,175,979.15)	8	\$ (1,333,137.69)	11	\$ (1,627,974.86)	\$ (5,521,182.12)
	3	\$ (1,609,871.30)	6	\$ (1,821,435.96)	9	\$ (2,149,816.40)	12	\$ -	\$ (5,581,123.66)
Encumbrances (Somerset PDP & Justice Works)		\$ (213,187.50)		\$ 71,062.50		\$ 71,062.50		\$ 47,375.00	\$ (23,687.50)
Encumbrances (WestLaw)						\$ (1,692.00)		\$ -	\$ (1,692.00)
TOTAL REMAINING		\$ 221,681.45		\$ 271,346.37		\$ 248,808.65		\$ 2,045,379.62	\$ 2,787,216.09

Q4 Month 11 (as of 05/31/16)

INDIGENT LEGAL SERVICES

Counsel Payments	\$ (1,509,153.62)
Somerset County	\$ (22,912.50)
Subpoena Witness Fees	\$ -
Private Investigators	\$ (15,708.10)
Mental Health Expert	\$ (17,422.80)
Transcripts	\$ (23,156.25)
Other Expert	\$ (25,500.49)
Air fare-out of state witness	\$ -
Process Servers	\$ (799.85)
Interpreters	\$ (1,399.45)
Misc Prof Fees & Serv	\$ (836.14)

SUB-TOTAL ILS \$ (1,616,889.20)

OPERATING EXPENSES

Service Center	\$ -
DefenderData	\$ (4,372.25)
Ergonomic Eval/Adjustments	\$ (205.00)
Mileage/Tolls/Parking	\$ (1,073.39)
Mailing/Postage/Freight	\$ (88.26)
Registration Fee	\$ (185.00)
Annual Report Print Cost	\$ -
Office Supplies/Equip.	\$ (309.32)
Cellular Phones	\$ (133.40)
Subscriptions	\$ (98.00)
Office Equipment Rental	\$ (271.60)
Notary Fees	\$ -
OIT/TELCO	\$ (4,349.44)

SUB-TOTAL OE \$ (11,085.66)

TOTAL \$ (1,627,974.86)

INDIGENT LEGAL SERVICES

Q4 Allotment	\$ 4,916,287.00
Q4 Encumbrances for Somerset cty PDP & Justice Works contracts	\$ 47,375.00
Q4 WestLaw Contract 12 month encumbrance	\$ -
Q4 Expenses as of 05/31/16	\$ (2,918,282.38)
Remaining Q4 Allotment as of 05/31/16	\$ 2,045,379.62

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY16 FUND ACCOUNTING
As of 04/30/16

Account 014 95F Z112 01 (Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY16 Total
Total Budget Allotments		\$ 180,124.00		\$ 180,124.00		\$ 180,124.00		\$ 180,125.00	\$ 720,497.00
Financial Order Adjustment	1	\$ (2,872.00)	4	\$ -	7	\$ -	10	\$ -	
Financial Order Adjustment	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Budget Order Adjustment	3	\$ -	6	\$ -	9	\$ 2,872.00	12	\$ -	
Financial Order Adjustment	3	\$ 14,106.00	4	\$ 15,000.00	9	\$ 15,000.00	12	\$ 15,000.00	\$ 59,106.00
Total Budget Allotments		\$ 191,358.00		\$ 195,124.00		\$ 197,996.00		\$ 195,125.00	\$ 779,603.00
Cash Carryover from Prior Quarter		\$ 59,106.00		\$ 16,758.55		\$ 0.44			
Collected Revenue from JB	1	\$ 54,101.64	4	\$ 46,384.74	7	\$ 47,754.68	10	\$ 78,703.87	
Promissory Note Payments		\$ 50.00		\$ -		\$ -		\$ -	
Collected Revenue from JB	2	\$ 44,316.49	5	\$ 48,960.09	8		11	\$ 61,151.57	
Promissory Note Payments		\$ 50.00		\$ 200.00		\$ -		\$ -	
Collected Revenue from JB (late transfer)		\$ -		\$ -	9	\$ 43,023.74		\$ -	
Collected Revenue from JB	3	\$ 43,704.16	6	\$ 41,462.08	9	\$ 106,691.66	12	\$ -	
Promissory Note Payments		\$ 50.00		\$ 50.00		\$ -		\$ -	
TOTAL CASH PLUS REVENUE COLLECTED		\$ 201,378.29		\$ 153,815.46		\$ 197,470.52		\$ 139,855.44	\$ 616,654.72
Counsel Payments	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Other Expenses		\$ (90.50)		\$ -		\$ -	***	\$ (671.83)	
Counsel Payments	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Other Expenses		\$ (1.93)							
Counsel Payments	3	\$ (178,086.96)	6	\$ (149,790.00)	9	\$ (193,857.00)	12	\$ -	
Other Expenses	**	\$ (3,802.16)		\$ (3,198.02)		\$ (3,467.02)			
REMAINING ALLOTMENT		\$ 9,376.45		\$ 42,135.98		\$ 671.98		\$ 195,125.00	\$ 247,309.41
Overpayment Reimbursements	1	\$ (2,394.19)	4	\$ (295.00)	7	\$ -	10		
	2	\$ (244.00)	5	\$ (532.00)	8	\$ -	11	\$ (380.50)	
	3	\$ -	6	\$ -	9	\$ (146.50)	12	\$ -	
REMAINING CASH Year to Date		\$ 16,758.55		\$ 0.44		\$ 0.00		\$ 138,803.11	

Q4 Month 11 (as of 05/31/16)	
DEFENDER DATA COUNSEL PAYMENTS	
	\$ -
SUB-TOTAL ILS	\$ -
OVERPAYMENT REIMBURSEMENTS	\$ (380.50)
Paper Voucher	\$ -
Somerset County CDs	\$ -
Private Investigators	\$ -
Mental Health Expert	\$ -
Transcripts	\$ -
Other Expert	\$ -
StaCap Expense	
SUB-TOTAL OE	\$ (380.50)
TOTAL	\$ (380.50)

** StaCap pulled in October but charged against Q1 expenses

*** Cash from Q4 pulled to cover Q3 StaCap

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY16 FUND ACCOUNTING
AS OF 05/31/2016

Account 010 95F Z112 01 (Personal Services)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY16 Total
FY16 Allotment	\$	197,643.00	\$	197,641.00	\$	174,658.00	\$	181,575.00	\$ -
Financial Order Adjustments	\$	-	\$	-	\$	-	\$	-	
Financial Order Adjustments	\$	-	\$	-	\$	-	\$	-	
Budget Order Adjustments	\$	(20,000.00)	\$	-	\$	-	\$	20,000.00	
Total Budget Allotments	\$	177,643.00	\$	197,641.00	\$	174,658.00	\$	201,575.00	\$ 751,517.00
Total Expenses	1	\$ (73,500.45)	4	\$ (51,930.26)	7	\$ (52,614.99)	10	\$ (54,222.20)	
	2	\$ (49,758.60)	5	\$ (52,356.41)	8	\$ (53,480.85)	11	\$ (81,692.58)	
	3	\$ (48,847.23)	6	\$ (74,897.31)	9	\$ (55,530.51)	12	\$ -	
TOTAL REMAINING	\$	5,536.72	\$	18,457.02	\$	13,031.65	\$	65,660.22	\$ 102,685.61

Q4 Month 11 (as of 05/31/16)

Per Diem Payments	\$ (165.00)
Salary	\$ (38,472.98)
Vacation Pay	\$ (2,460.59)
Holiday Pay	\$ (1,605.88)
Sick Pay	\$ (1,108.10)
Employee Hlth Svs/Workers Comp	\$ (111.00)
Health Insurance	\$ (14,990.19)
Dental Insurance	\$ (374.22)
Employer Retiree Health	\$ (4,845.65)
Employer Retirement	\$ (3,404.73)
Employer Group Life	\$ (377.58)
Employer Medicare	\$ (644.43)
Retiree Unfunded Liability	\$ (8,274.90)
Retro Pymt	\$ (40.00)
Perm Part Time Full Ben	\$ (4,817.33)
TOTAL	\$ (81,692.58)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY16 FUND ACCOUNTING
As of 05/31/16

Account 014 95F Z112 02 (Conference)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY16 Total
Total Budget Allotments		\$ 10,385.00		\$ 15,000.00		\$ 15,000.00		\$ 20,000.00	\$ 60,385.00
Financial Order Adjustment	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Financial Order Adjustment	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Financial Order Adjustment	3	\$ 1,196.00	6	\$ 3,000.00	9	\$ 3,000.00	12	\$ 2,000.00	\$ 9,196.00
Total Budget Allotments		\$ 11,581.00		\$ 18,000.00		\$ 18,000.00		\$ 22,000.00	\$ 69,581.00
Cash Carryover from Prior Quarter		\$ 12,580.84		\$ 11,962.77		\$ 11,122.60		\$ 11,572.34	
Collected Revenue	1	\$ -	4	\$ 1,400.00	7	\$ -	10	\$ 200.00	
Collected Revenue	2	\$ 22.50	5	\$ 625.00	8	\$ -	11	\$ 1,200.00	
Collected Revenue	3	\$ -	6	\$ 1,275.00	9	\$ 550.00	12	\$ -	
TOTAL CASH PLUS REVENUE COLLECTED		\$ 12,603.34		\$ 15,262.77		\$ 11,672.60		\$ 1,400.00	\$ 5,272.50
Total Expenses	1	\$ (99.00)	4	\$ -	7	\$ (65.26)	10	\$ (0.75)	
	2	\$ (530.29)	5	\$ (1,060.79)	8	\$ -	11	\$ (737.87)	
	3	\$ (11.28)	6	\$ (3,079.38)	9	\$ (35.00)	12	\$ -	
Encumbrances		\$ (3,385.00)		\$ 2,325.00					\$ (1,060.00)
REMAINING ALLOTMENT		\$ 7,555.43		\$ 16,184.83		\$ 17,965.00		\$ 22,000.00	\$ 63,705.26
REMAINING CASH Year to Date		\$ 11,962.77		\$ 11,122.60		\$ 11,572.34		\$ 12,233.72	

Q4 Month 11 (as of 05/31/16)	
Training Manuals Printing	\$ (322.86)
Training Refreshments/Meals	\$ (380.01)
Media Northeast (encumbered Q1)	\$ -
Refund(s) for non-attendance	\$ -
Office Supplies	\$ -
CLE App to the Bar	\$ (35.00)
State Cap Expense	\$ -
TOTAL	\$ (737.87)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Court

5/31/2016

May-16							Fiscal Year 2016			
Court	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
ALFSC	36	119	\$ 120,695.17	116	\$ 100,936.25	\$ 870.14	680	1,558	\$ 1,233,411.39	\$ 791.66
AUBSC	11	48	\$ 41,567.23	59	\$ 45,889.73	\$ 777.79	281	807	\$ 579,046.49	\$ 717.53
AUGDC	52	67	\$ 40,566.62	45	\$ 31,241.10	\$ 694.25	493	694	\$ 351,136.13	\$ 505.96
AUGSC	30	60	\$ 31,733.35	53	\$ 24,560.73	\$ 463.41	441	721	\$ 525,825.18	\$ 729.30
BANDC	40	79	\$ 33,073.96	87	\$ 36,117.37	\$ 415.14	587	1,003	\$ 358,817.89	\$ 357.74
BANSC	0	0		4	\$ 2,294.00	\$ 573.50	12	23	\$ 18,911.60	\$ 822.24
BATSC	1	5	\$ 3,160.04	5	\$ 3,160.04	\$ 632.01	18	25	\$ 14,020.25	\$ 560.81
BELDC	15	22	\$ 10,712.87	23	\$ 13,291.63	\$ 577.90	84	264	\$ 137,008.56	\$ 518.97
BELSC	2	3	\$ 5,140.72	6	\$ 2,494.00	\$ 415.67	26	116	\$ 80,243.12	\$ 691.75
BIDDC	80	71	\$ 32,123.26	79	\$ 35,609.89	\$ 450.76	672	932	\$ 466,977.94	\$ 501.05
BRIDC	12	21	\$ 15,291.20	19	\$ 12,464.44	\$ 656.02	117	194	\$ 112,364.18	\$ 579.20
CALDC	11	10	\$ 3,777.74	7	\$ 5,205.12	\$ 743.59	58	113	\$ 68,115.34	\$ 602.79
CARDC	10	10	\$ 5,657.00	9	\$ 3,403.94	\$ 378.22	130	232	\$ 121,571.64	\$ 524.02
CARSC	8	12	\$ 5,294.22	7	\$ 2,538.41	\$ 362.63	136	272	\$ 174,395.28	\$ 641.16
DOVDC	3	10	\$ 1,951.00	14	\$ 3,098.20	\$ 221.30	31	160	\$ 50,018.12	\$ 312.61
DOVSC	0	0		2	\$ 7,510.00	\$ 3,755.00	3	5	\$ 10,007.10	\$ 2,001.42
ELLDC	6	25	\$ 15,698.36	22	\$ 15,151.76	\$ 688.72	120	368	\$ 210,346.85	\$ 571.59
ELLS	1	3	\$ 588.00	2	\$ 390.00	\$ 195.00	11	49	\$ 14,623.43	\$ 298.44
FARDC	12	9	\$ 3,539.57	13	\$ 5,285.57	\$ 406.58	95	139	\$ 115,378.33	\$ 830.06
FARSC	1	1	\$ 3,042.50	1	\$ 3,042.50	\$ 3,042.50	12	12	\$ 8,423.52	\$ 701.96
FORDC	4	8	\$ 6,197.13	7	\$ 3,402.64	\$ 486.09	61	99	\$ 55,343.89	\$ 559.03
HOUDC	18	28	\$ 12,683.22	32	\$ 15,734.47	\$ 491.70	386	510	\$ 202,292.22	\$ 396.65
HOUSC	0	3	\$ 5,905.48	8	\$ 9,108.12	\$ 1,138.52	59	123	\$ 103,771.45	\$ 843.67
LEWDC	71	101	\$ 55,654.44	92	\$ 50,786.38	\$ 552.03	902	1,363	\$ 626,635.45	\$ 459.75
LINDC	15	19	\$ 12,695.03	25	\$ 15,408.47	\$ 616.34	129	178	\$ 107,753.97	\$ 605.36
MACDC	24	23	\$ 8,591.70	14	\$ 5,911.82	\$ 422.27	123	179	\$ 81,184.15	\$ 453.54
MACSC	4	5	\$ 1,935.75	2	\$ 673.75	\$ 336.88	47	90	\$ 48,742.06	\$ 541.58
MADDC	3	6	\$ 1,811.36	6	\$ 1,811.36	\$ 301.89	43	43	\$ 13,201.14	\$ 307.00
MILDC	1	4	\$ 1,356.00	4	\$ 1,356.00	\$ 339.00	27	30	\$ 9,375.16	\$ 312.51
NEWDC	15	21	\$ 10,238.97	25	\$ 11,592.12	\$ 463.68	196	240	\$ 99,478.38	\$ 414.49
PORDC	76	110	\$ 67,227.59	92	\$ 60,260.45	\$ 655.00	834	1,253	\$ 674,726.81	\$ 538.49
PORSC	1	1	\$ 223.80	1	\$ 223.80	\$ 223.80	34	36	\$ 30,651.93	\$ 851.44
PREDC	5	30	\$ 18,080.44	30	\$ 17,546.03	\$ 584.87	213	441	\$ 176,811.39	\$ 400.93
RODC	20	32	\$ 17,720.42	34	\$ 16,817.69	\$ 494.64	236	319	\$ 129,659.59	\$ 406.46
ROCSC	3	13	\$ 12,079.80	15	\$ 18,300.78	\$ 1,220.05	93	144	\$ 124,479.25	\$ 864.44
RUMDC	11	23	\$ 11,138.84	21	\$ 8,710.44	\$ 414.78	115	168	\$ 80,552.50	\$ 479.48
SKODC	15	55	\$ 27,443.60	37	\$ 19,986.64	\$ 540.18	162	438	\$ 230,647.14	\$ 526.59
SKOSC	0	0		0			3	5	\$ 9,383.20	\$ 1,876.64
SOUDC	20	24	\$ 6,306.90	18	\$ 5,334.90	\$ 296.38	142	203	\$ 83,546.83	\$ 411.56
SOUSC	8	21	\$ 14,416.24	18	\$ 13,790.06	\$ 766.11	136	289	\$ 187,777.71	\$ 649.75
SPRDC	66	91	\$ 45,732.97	85	\$ 48,190.87	\$ 566.95	612	762	\$ 391,450.86	\$ 513.72
Law Ct	15	15	\$ 19,406.36	16	\$ 21,774.18	\$ 1,360.89	107	155	\$ 210,981.47	\$ 1,361.17
YORCD	149	179	\$ 120,698.17	170	\$ 114,419.75	\$ 673.06	1,471	897	\$ 492,302.38	\$ 548.83
AROCD	90	67	\$ 38,410.17	66	\$ 39,535.19	\$ 599.02	472	262	\$ 131,965.99	\$ 503.69
ANDCD	114	107	\$ 61,008.47	100	\$ 53,780.21	\$ 537.80	1,111	597	\$ 264,017.35	\$ 442.24
KENCD	151	161	\$ 67,685.42	132	\$ 45,776.88	\$ 346.79	1,479	1,127	\$ 409,408.41	\$ 363.27
PENCD	203	234	\$ 99,004.19	231	\$ 100,965.47	\$ 437.08	2,357	2,494	\$ 1,130,570.40	\$ 453.32
SAGCD	41	42	\$ 25,857.98	36	\$ 21,681.66	\$ 602.27	386	357	\$ 231,209.63	\$ 647.65
WALCD	35	31	\$ 12,388.02	26	\$ 17,230.27	\$ 662.70	321	252	\$ 105,377.86	\$ 418.17
PISCD	17	16	\$ 3,044.00	17	\$ 3,020.00	\$ 177.65	153	153	\$ 47,607.38	\$ 311.16
HANCD	51	55	\$ 27,172.90	53	\$ 30,956.90	\$ 584.09	622	619	\$ 289,480.03	\$ 467.66
FRACD	42	43	\$ 14,869.13	60	\$ 21,947.84	\$ 365.80	572	597	\$ 226,719.47	\$ 379.76
WASCD	36	37	\$ 11,683.35	24	\$ 7,539.75	\$ 314.16	409	289	\$ 75,163.06	\$ 260.08
CUMCD	351	371	\$ 219,791.62	380	\$ 222,621.26	\$ 585.85	3,489	3,380	\$ 1,937,063.52	\$ 573.10
KNOC	75	55	\$ 32,965.38	48	\$ 34,135.94	\$ 711.17	578	427	\$ 203,028.93	\$ 475.48
SOMCD	0	0		0			7	12	\$ 31,010.26	\$ 2,584.19
OXFCD	52	56	\$ 27,621.71	43	\$ 20,018.19	\$ 465.54	587	310	\$ 109,547.50	\$ 353.38
LINCD	44	45	\$ 21,990.87	42	\$ 20,596.35	\$ 490.39	408	339	\$ 164,255.05	\$ 484.53
WATDC	33	36	\$ 20,320.82	33	\$ 18,994.27	\$ 575.58	248	444	\$ 212,749.71	\$ 479.17
WESDC	20	37	\$ 12,037.65	33	\$ 11,774.01	\$ 356.79	248	353	\$ 139,294.26	\$ 394.60
WISDC	2	14	\$ 10,440.27	14	\$ 9,915.03	\$ 708.22	88	158	\$ 82,199.08	\$ 520.25
WISSC	3	4	\$ 2,041.40	3	\$ 1,239.00	\$ 413.00	41	104	\$ 82,418.86	\$ 792.49
YORDC	15	15	\$ 12,857.73	15	\$ 12,600.00	\$ 840.00	155	165	\$ 77,417.20	\$ 469.20
TOTAL	2,250	2,813	\$ 1,572,348.10	2,681	\$ 1,509,153.62	\$ 562.91	23,869	28,091	\$ 14,771,895.22	\$ 525.86

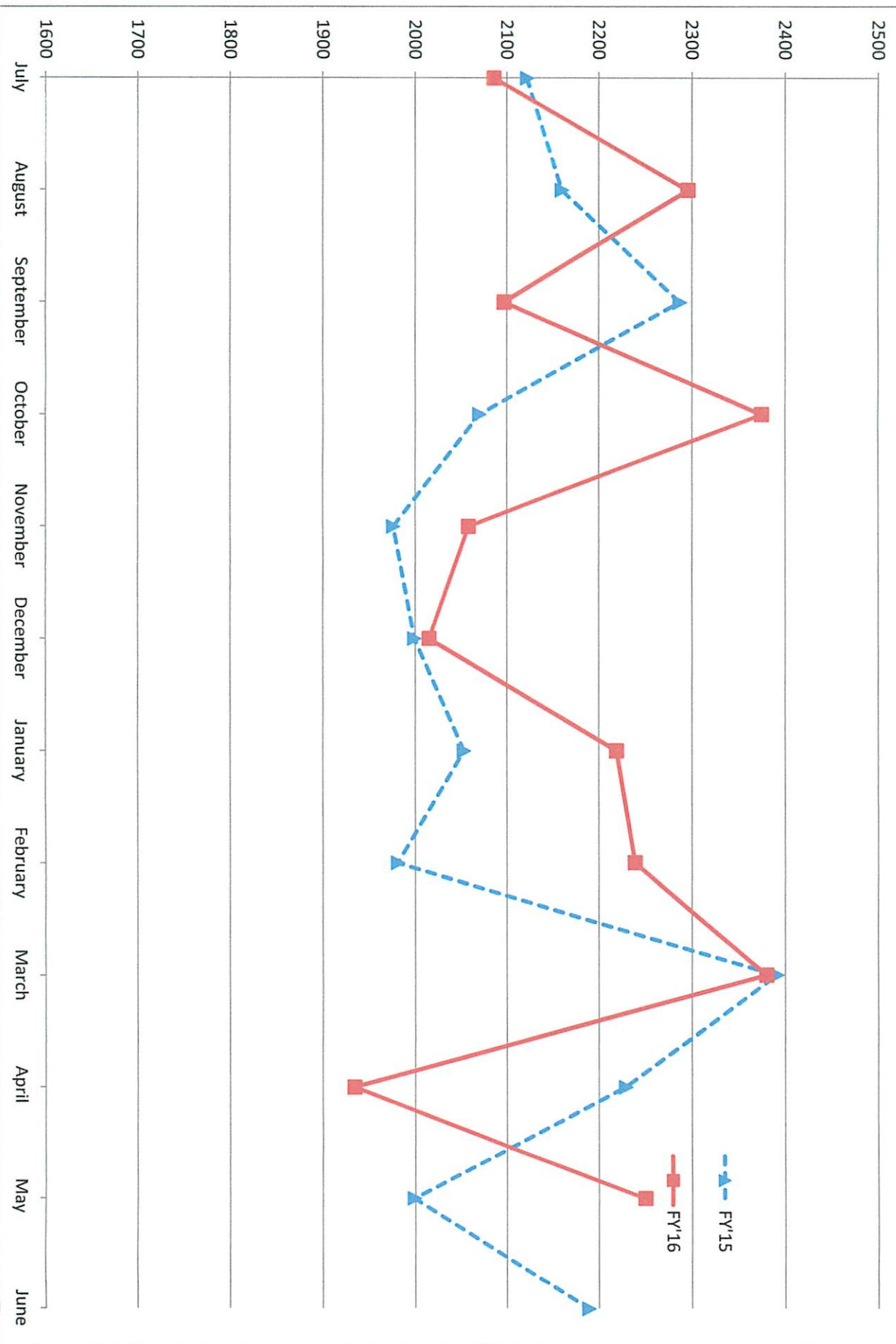
MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Number of Attorneys Rostered by Court

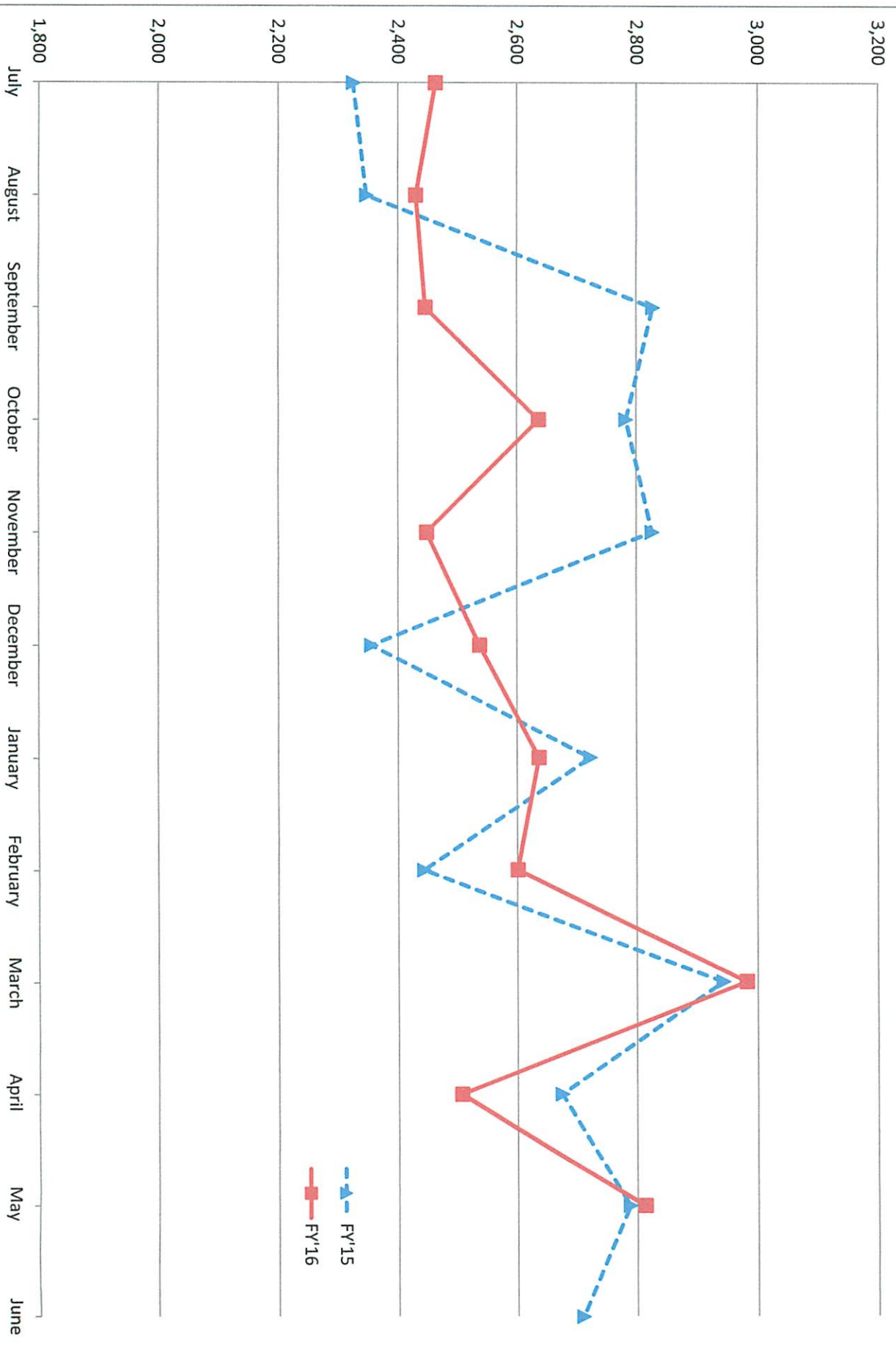
05/31/2016

Court	Rostered Attorneys	Court	Rostered Attorneys
Augusta District Court	100	South Paris District Court	59
Bangor District Court	55	Springvale District Court	121
Belfast District Court	54	Unified Criminal Docket Alfred	111
Biddeford District Court	135	Unified Criminal Docket Aroostook	22
Bridgton District Court	96	Unified Criminal Docket Auburn	102
Calais District Court	11	Unified Criminal Docket Augusta	94
Caribou District Court	18	Unified Criminal Docket Bangor	56
Dover-Foxcroft District Court	30	Unified Criminal Docket Bath	93
Ellsworth District Court	47	Unified Criminal Docket Belfast	47
Farmington District Court	26	Unified Criminal Docket Dover Foxcroft	26
Fort Kent District Court	11	Unified Criminal Docket Ellsworth	42
Houlton District Court	16	Unified Criminal Docket Farmington	27
Lewiston District Court	128	Unified Criminal Docket Machias	17
Lincoln District Court	31	Unified Criminal Docket Portland	148
Machias District Court	18	Unified Criminal Docket Rockland	41
Madawaska District Court	12	Unified Criminal Docket Skowhegan	20
Millinocket District Court	21	Unified Criminal docket Soperth Paris	97
Newport District Court	40	Unified Criminal Docket Wiscasset	72
Portland District Court	162	Waterville District Court	55
Presque Isle District Court	14	West Bath District Court	111
Rockland District Court	50	Wiscasset District Court	79
Rumford District Court	22	York District Court	108
Skowhegan District Court	28		

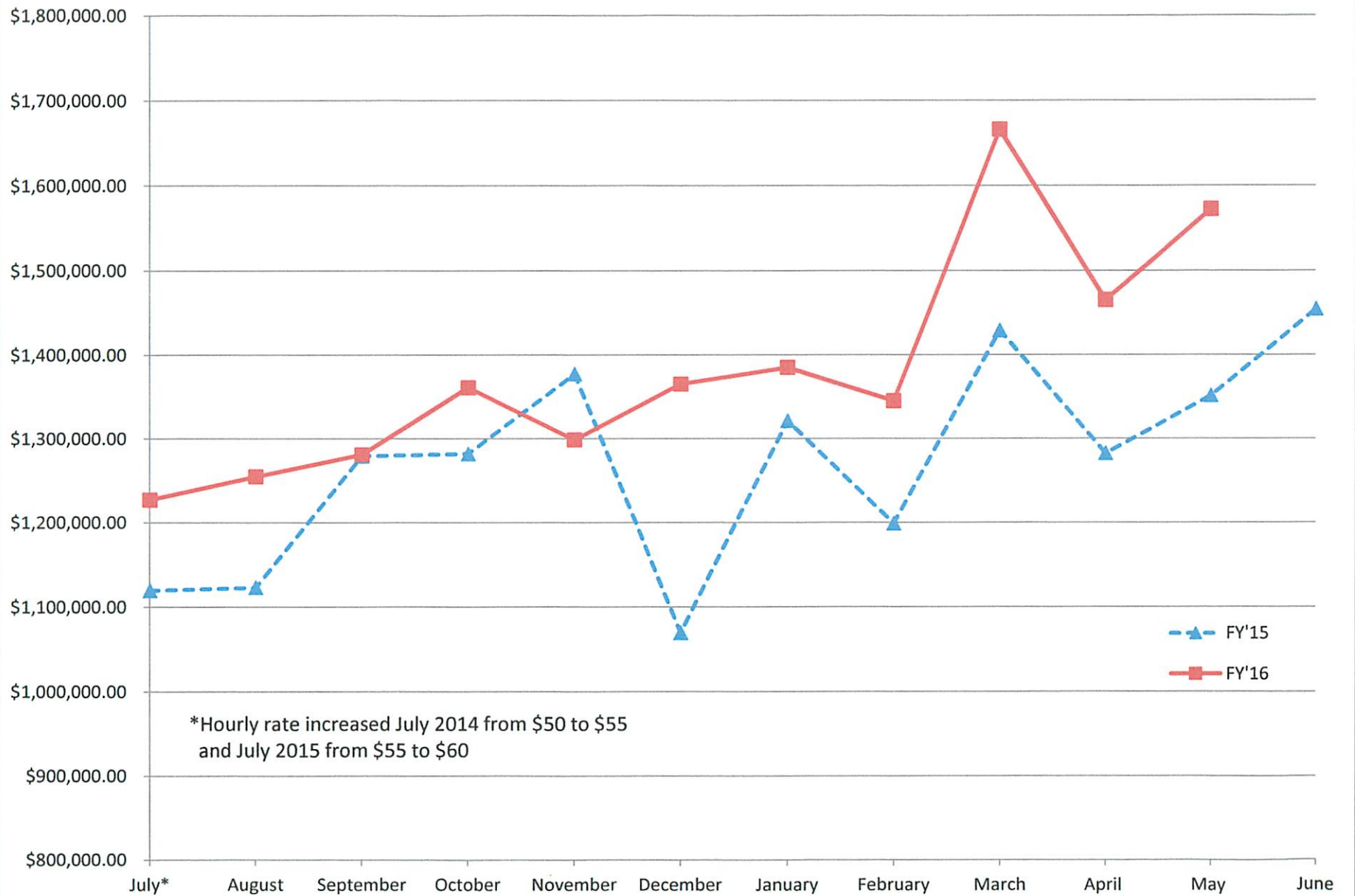
NEW CASES



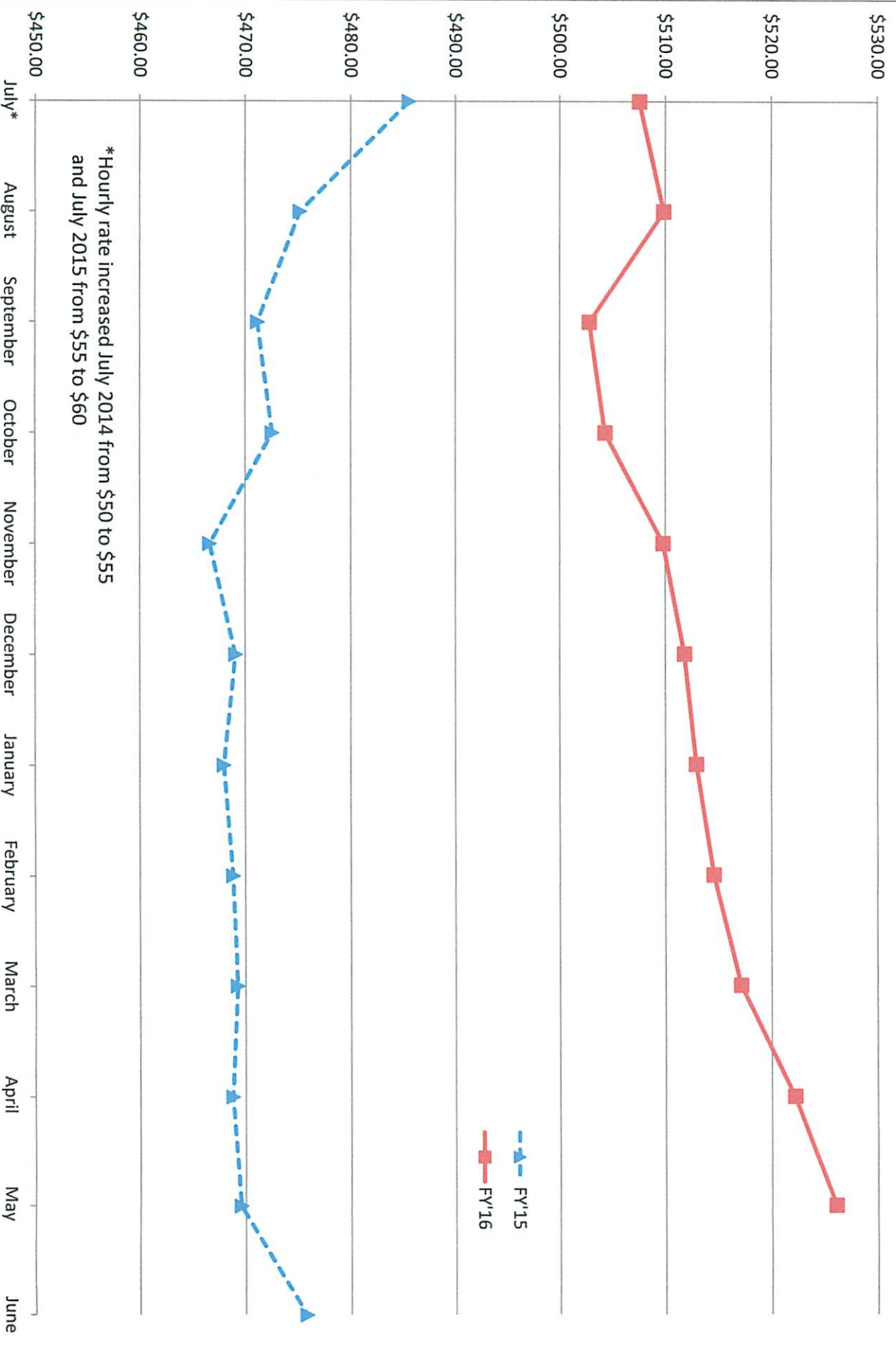
Submitted Vouchers



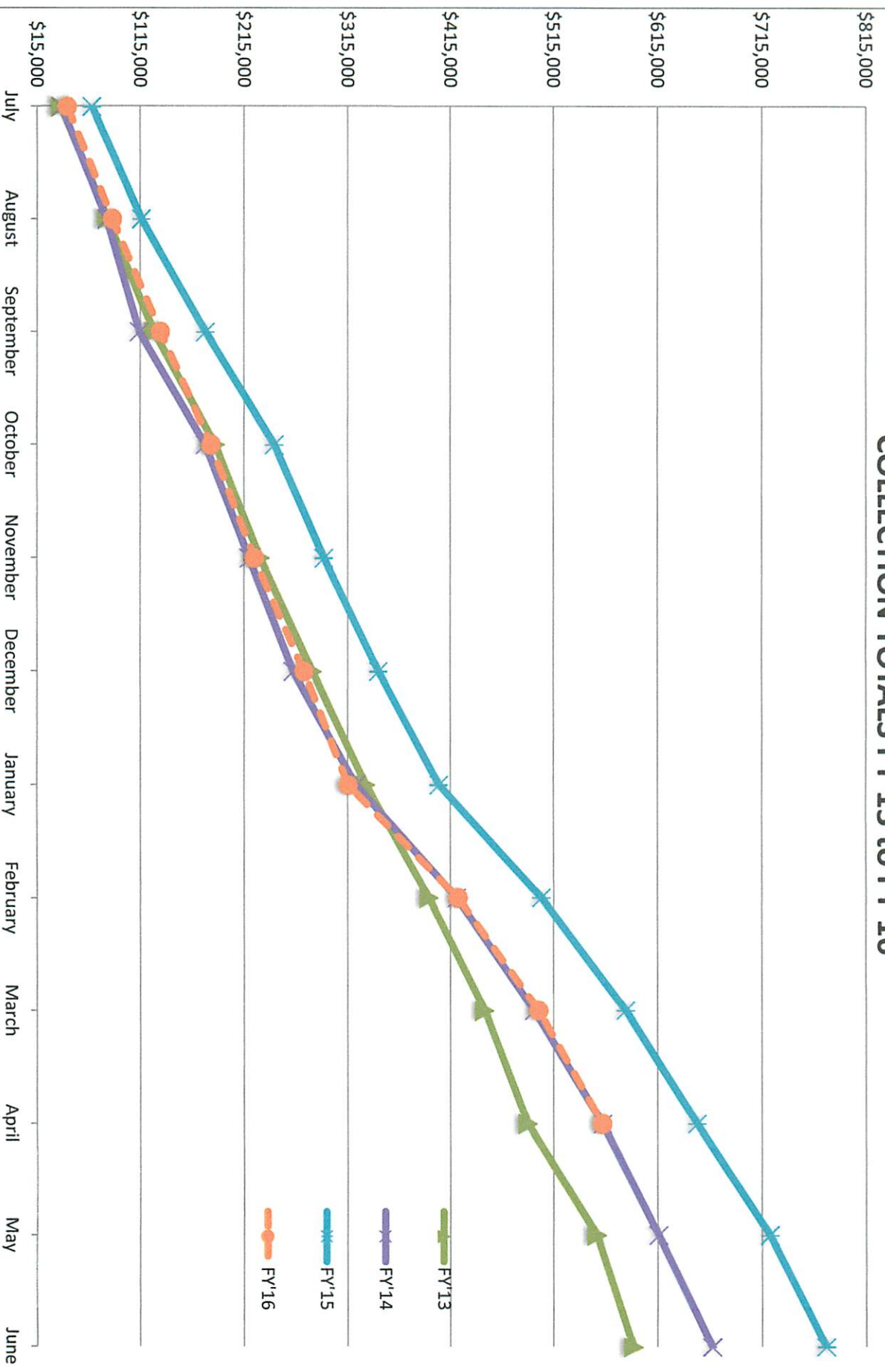
Submitted Voucher Amount



Average Voucher Price Fiscal Year to Date



COLLECTION TOTALS FY'13 to FY'16



(3.)

Appellate Contracts

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: APPELLATE CONTRACTS
DATE: June 7, 2016

At the end of May's meeting, public comment suggested that to assist bidders in crafting contract proposals, the RFP should specify the number of appeals of a given case type that a contract proposal should cover. I pointed out that because court rules currently call for the continuation of trial counsel on appeal and the court currently assigns counsel in cases where trial counsel has withdrawn, the Commission would need the cooperation of the Judicial Branch before designating a certain number of appeals within a contract.

Since the May meeting, I have met with a member of the Supreme Judicial Court to discuss this issue. I believe that the Commission can be confident that if it decides to award a contract for appellate work, the Judicial Branch will cooperate with respect to the procedure for assigning appellate counsel, including by rule amendment if necessary, to accommodate the structure of any contract awarded. Given anticipated cooperation and flexibility from the Judicial Branch, the Commission could proceed with designating in the RFP the number and type of appeals for which bids are sought.

The staff recommends, however, that the Commission refrain from including a specified number of appeals in the RFP. The RFP under discussion represents an initial foray into a new method for providing indigent legal services in appeal cases. As has been discussed at several meetings, although the Commission is prepared to solicit bids, it has made no firm decision to accept any bid and issue an appellate contract. As the Commission proceeds on a step-by-step basis in this area, staff suggests that the decision on how many appeals a contract should cover – primarily whether a contract should cover all appeals in a given case type or only a portion of appeals for one or more case types – should be deferred until the Commission has had a chance to review the bids submitted. To accomplish this, the staff suggests modifying the RFP to explicitly authorize individual bidders to submit more than one bid reflecting alternative proposals with respect to the scope of work, each crafted in a manner tailored to the scope of work proposed.

Accordingly, when the Commission evaluates bids, it can look at both the quality of the bid and the policy choice of what percentage of the work the Commission seeks to commit to an individual contract. Staff believes that the scoring criteria "specification of work to be performed" would allow for the Commission's ultimate policy choice to weigh heavily in the evaluation of the bids received.

State of Maine - Department of (Insert Department name)
(Insert Division/Office name)
RFP# (Inserted by Purchases when assigned/approved)
(Insert RFP title)

PART I INTRODUCTION

A. Purpose and Background

The Maine Commission on Indigent Legal Services (“Department”) is seeking proposals to provide appellate indigent legal services as defined in this Request for Proposals (RFP) document. This document provides instructions for submitting proposals, the procedure and criteria by which the Provider(s) will be selected, and the contractual terms which will govern the relationship between the State of Maine (“State”) and the awarded Bidder(s).

Pursuant to 4 M.R.S. § 1804 (3) (A), the Commission has a duty to “develop and maintain a system that [...] contracts with individual attorneys or groups of attorneys [...] to provide quality and efficient indigent legal services[.]”

MCILS requests proposals from individual attorneys, groups of attorneys, individual law firms, groups of law firms, or groups of attorneys organized as a non-profit entity to represent indigent clients in criminal appeals, discretionary appeals (post-conviction review and probation violation), and child protection appeals. A successful bid will provide legal services to a qualified indigent client for either criminal, discretionary, or child protection appeals to the Law Court in a highly-qualified manner in accordance with the Sixth Amendment of the United States Constitution; Art. I., § 6 of the Maine Constitution; Chapter 2 and Chapter 3 of the Commission’s Rules for minimum and specialized case types eligibility requirements; the Maine Rules of Professional Conduct, applicable national standards (including the NLADA Standards and Guidelines and ABA relevant guidelines), case law, and the terms of the contract.

B. General Provisions

1. From the time this RFP is issued until award notification is made, all contact with the State regarding this RFP must be made through the aforementioned RFP Coordinator. No other person/ State employee is empowered to make binding statements regarding this RFP. Violation of this provision may lead to disqualification from the bidding process, at the State’s discretion.
2. Issuance of this RFP does not commit the Department to issue an award or to pay expenses incurred by a Bidder in the preparation of a response to this RFP. This includes attendance at personal interviews or other meetings and software or system demonstrations, where applicable.
3. All proposals should adhere to the instructions and format requirements outlined in this RFP and all written supplements and amendments (such as the Summary of Questions and Answers), issued by the Department. Proposals are to follow the format and respond to all questions and instructions specified below in the “Proposal Submission Requirements” section of this RFP.
4. Bidders shall take careful note that in evaluating a proposal submitted in response to this RFP, the Department will consider materials provided in the proposal, information obtained through interviews/presentations (if any), and internal Departmental information of previous contract history with the Bidder (if any). The Department also reserves the right to consider other reliable references and publicly available information in evaluating a Bidder’s experience and capabilities.

5. The proposal shall be signed by a person authorized to legally bind the Bidder and shall contain a statement that the proposal and the pricing contained therein will remain valid and binding for a period of 180 days from the date and time of the bid opening.
6. The RFP and the selected Bidder's proposal, including all appendices or attachments, shall be the basis for the final contract, as determined by the Department.
7. Following announcement of an award decision, all submissions in response to this RFP will be considered public records available for public inspection pursuant to the State of Maine Freedom of Access Act (FOAA) (1 M.R.S. §§ 401 et seq.).
<http://www.mainelegislature.org/legis/statutes/1/title1sec401.html>
8. The Department, at its sole discretion, reserves the right to recognize and waive minor informalities and irregularities found in proposals received in response to this RFP.
9. The State of Maine Division of Purchases reserves the right to authorize other Departments to use the contract(s) resulting from this RFP, if it is deemed to be beneficial for the State to do so.
10. All applicable laws, whether or not herein contained, shall be included by this reference. It shall be Proposer's/Vendor's responsibility to determine the applicability and requirements of any such laws and to abide by them.

C. Eligibility to Submit Bids

Individual attorneys, groups of attorneys, individual law firms, groups of law firms, or groups of attorneys organized as a non-profit entity are invited to submit bids in response to this Request for Proposals provided that applicant attorneys are in good standing with the Maine Board of Overseers of the Bar.

D. Contract Term

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

Contract Renewal: Following the initial term of the contract, the Department may opt to renew the contract for (2) two renewal periods, as shown in the table below, and subject to continued availability of funding and satisfactory performance.

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

Period	Start Date	End Date
Initial Period of Performance	07/01/2017	06/31/2018
Renewal Period #1	07/01/2018	06/31/2019
Renewal Period #2	07/01/2019	06/31/2020

E. Number of Awards

The Commission reserves the right to make one or multiple awards for criminal, discretionary, and child protection appeals, whichever is in the best interests of the State, as a result of this RFP process.

The Commission has compiled statistics on the number of appeals for criminal and child protection matters based on data from the Law Court for the past five (5) fiscal years:

	FY'11	FY'12	FY'13	FY'14	FY'15
Child Protective	46	38	45	64	66
Criminal	137	116	102	93	111
Criminal – Discretionary	45	42	36	41	29
Sentence Review Panel	49	40	44	42	42
Total – All	277	236	227	240	248

PART II SCOPE OF SERVICES TO BE PROVIDED

Representation of indigent clients on:

- 1) Criminal appeals to the Law Court
- 2) Child Protective appeals to the Law Court
- 3) Discretionary appeals to the Law Court (e.g. Post-Conviction Review, Probation Violation)

With respect to each case assigned under the contract, the applicant will perform the tasks necessary to provide high-quality appellate representation in accordance with the standards described in Part I, Section A. Proposals should be for a period of one (1) year, with two (2) one (1) year renewals. Applicants may propose to provide representation in criminal appeals, discretionary appeals (including the drafting of the post-conviction review petition), child protective appeals or a combination of the three.

PART III KEY RFP EVENTS

A. Bidders Conference

The Department will sponsor a Bidders' Conference concerning this RFP beginning at the date and time shown on the RFP cover page. The Bidders' Conference will be held at (Insert place, including a complete address)

The purpose of the Bidders' Conference is to answer and/or field questions, clarify for potential Bidders any aspect of the RFP requirements that may be necessary and provide supplemental information to assist potential Bidders in submitting responses to the RFP. Although attendance at the Bidders' Conference is not mandatory, it is strongly encouraged that interested Bidders attend.

B. Questions

1. General Instructions

- a. It is the responsibility of each Bidder to examine the entire RFP and to seek clarification, in writing, if the Bidder does not understand any information or instructions.
- b. Submitted Questions must be submitted by e-mail and received by the RFP Coordinator, identified on the cover page of this RFP, as soon as possible but no later than the dates and times specified on the RFP cover page.
- c. Submitted Questions should include the RFP Number and Title in the subject line. The Department assumes no liability for assuring accurate/complete/on time e-mail transmission and receipt.
- d. Be sure to refer to the page number and paragraph within this RFP relevant to the question presented for clarification, if applicable.

2. **Summary of Questions and Answers:** Responses to all substantive and relevant questions will be compiled in writing and distributed to all registered, interested persons by e-mail no later than seven (7) calendar days prior to the proposal due date. Only those answers issued in writing by the RFP Coordinator will be considered binding. The Department reserves the right to answer or not answer any question received.

C. Submitting the Proposal

1. **Proposals Due:** Proposals must be received no later than 2:00 p.m. local time, on the date listed on the cover page of this RFP, at which point they will be opened. Proposals received after the 2:00 p.m. deadline will be rejected without exception.
2. **Mailing/Delivery Instructions:** The official delivery site is the State of Maine, Division of Purchases (Please refer to the RFP cover page for submission address).
 - a. Only proposals received at the official delivery site prior to the stated deadline will be considered. Bidders submitting proposals are responsible for allowing adequate time for delivery. Postmarks do not count and fax or electronic mail transmissions of proposals are not permitted. Any method of hardcopy delivery is acceptable, such as US Mail, in-person delivery by Bidder, or use of private courier services.
 - b. The Bidder must send its proposal submission in a sealed package and must include **an original, signed copy and one electronic copy** of their complete proposal. The electronic copy of the proposal must be provided on USB flash drive with the complete narrative and attachments in MS Word format. Any attachments that cannot be submitted in MS Word format may be submitted as Adobe (.pdf) files.

- c. Bidders' submission packages are to be clearly labeled and contain the following information:
- Proposal submission address provided on the RFP cover page
 - The Bidder's full business name and address
 - The RFP Number and Title

PART IV PROPOSAL SUBMISSION REQUIREMENTS

Proposal submissions must:

1. Identify the type and number of appellate cases for which the proposal is submitted (e.g. criminal appeals, post-conviction review petitions and appeals, probation violation appeals, child protective appeals or a combination);
2. Identify the number of attorneys available to prosecute the appeals and describe the attorneys' workload under the proposal in the context of other legal work performed by the attorneys sufficiently to assure the Commission that the proposal will not result in an excessive workload or exceed the NLADA Standards on caseload limits. List for the previous calendar year the number of new cases opened for each attorney, describing the type of cases handled (e.g. civil or criminal, trial or appeal);
3. Identify the attorneys' experience and qualifications to prosecute appeals as proposed, including trial and appellate court experience. List whether the attorney has handled any of the specialized case types enumerated in Chapter 3 (e.g. homicide, serious violent felony, sex offense);
4. Identify the office space, technology, including whether attorneys have access to a subscription legal research program, support staff and other resources available to support the provision of quality appellate representation;
5. Include at least three (3) references for review by MCILS;
6. Include three (3) original motions or briefs that were submitted to a court from each attorney who will prosecute appeals under the proposal;
7. Include a current list of MCILS approved CLE credits to meet the minimum required 8 hours;
8. Document good standing with the Maine Board of Overseers of the Bar;
9. Document applicable malpractice insurance in force.
10. Agree to monitoring and evaluation by MCILS to ensure private attorneys provide high-quality representation to indigent clients and are in compliance with attorney performance evaluation procedures as established by the Commission, including but not limited to audits of contracted counsels' finances for discrepancies.

This section contains instructions for Bidders to use in preparing their proposals. The Bidder's proposal must follow the outline used below, including the numbering and section and sub-section headings as they appear here. Failure to use the outline specified in this section, or to respond to all questions and instructions throughout this document, may result in the proposal being disqualified as non-responsive or receiving a reduced score. The Department, and its evaluation team for this RFP, has sole discretion to determine whether a variance from the RFP specifications should result in either disqualification or reduction in scoring of a proposal. Rephrasing of the content provided in this RFP will, at best, be considered minimally responsive. The Department seeks detailed yet succinct responses that demonstrate the Bidder's experience and ability to perform the requirements specified throughout this document.

A. Proposal Format

1. All pages of a Bidder's proposal should be numbered consecutively beginning with number 1 on the first page of the narrative (this does not include the cover page or table of contents pages) through to the end, including all forms and attachments. For clarity, the Bidder's name should appear on every page, including Attachments. Each Attachment must reference the section or subsection number to which it corresponds.

2. Bidders are asked to be brief and concise in responding to the RFP questions and instructions.
3. The Bidder may not provide additional attachments beyond those specified in the RFP for the purpose of extending their response. Additional materials not requested will not be considered part of the proposal and will not be evaluated.
4. Include any forms provided in the application package or reproduce those forms as closely as possible. All information should be presented in the same order and format as described in the RFP.
5. It is the responsibility of the Bidder to provide all information requested in the RFP package at the time of submission. Failure to provide information requested in this RFP may, at the discretion of the Department's evaluation review team, result in a lower rating for the incomplete sections and may result in the proposal being disqualified for consideration.
6. Bidders should complete and submit the "Proposal Cover Page" provided in **Appendix A** of this RFP and provide it with the Bidder's proposal. The cover page must be the first page of the proposal package. It is important that the cover page show the specific information requested, including Bidder address(es) and other details listed. The proposal cover page shall be dated and signed by a person authorized to enter into contracts on behalf of the Bidder.
7. Bidders should complete and submit the "Debarment, Performance and Non-Collusion Certification Form" provided in **Appendix B** of this RFP. Failure to provide this certification may result in the disqualification of the Bidder's proposal, at the discretion of the Department.

B. Proposal Contents

Section I Organization Qualifications and Experience

1. Required Attachments Related to Qualifications

- A. Present a statement of qualifications and short summary of relevant experience. The statement should include:
 1. The applicants' appellate qualifications including, but not limited to, clerkships or similar employment at an appellate court, and the number of appellate cases handled in the last five (5) years.
 2. Whether the applicant attorney is currently rostered with the Commission to receive indigent assignments.
 3. All attorneys' qualifications for the proposed case types and whether approved for relevant specialized case types. Include how all attorneys meet the Commission's minimum eligibility requirements pursuant to Chapter 102 Criminal Proceedings and Chapter 103 Child Protective Proceedings.
- B. Attach a certificate of insurance on a standard Acord form (or the equivalent) evidencing the Bidder's general liability, professional liability and any other relevant liability insurance policies that might be associated with this contract.
- C. Documentation of applicant(s) good standing with the Maine Board of Overseers of the Bar.
- D. Whether any applicant attorney has had prior criminal charges filed against the attorney in any jurisdiction within the last ten (10) years.
- E. Whether any applicant attorney has prior bar complaints that were set for a grievance panel hearing or hearing before a single justice of the Supreme Judicial Court within the last five (5) years.
- F. Documentation of applicable malpractice insurance in force.

- G. Include at least three (3) references for review by MCILS.
- H. Include three (3) original motions or briefs that were submitted to a court from each attorney who will prosecute appeals under the proposal.
- I. Include a current list of MCILS approved CLE credits to meet the minimum required 8 hours and a list of attendance at MCILS sponsored trainings since 2010.
- J. Attach a statement that applicant attorneys agree to monitoring and evaluation by MCILS to ensure private attorneys provide high-quality representation to indigent clients and are in compliance with attorney performance evaluation procedures as established by the Commission, including but not limited to audits of contracted counsels' finances for discrepancies.

Section II Proposed Services

1. Services to be Provided

Discuss how applicants will meet clients' needs, including attorneys' qualifications, office space, technology available to staff, familiarity with proposed case types and any other relevant information the Commission may find helpful in evaluating the proposal, including:

- a. Identify the type and number of appellate cases for which the proposal is submitted (e.g. criminal appeals, post-conviction review petitions and appeals, probation violation appeals, child protective appeals or a combination);
- b. Identify the number of attorneys available to prosecute the appeals and describe the attorneys' workload under the proposal in the context of other legal work performed by the attorneys sufficiently to assure the Commission that the proposal will not result in an excessive workload or exceed the NLADA Standards on caseload limits. List for the previous calendar year the number of new cases opened for each attorney, describing the type of cases handled (e.g. civil or criminal, trial or appeal);
- c. Identify the current or proposed location where services will be provided or from which the contract will be managed. Include applicant's ability to meet with clients in a confidential and appropriate manner.
- d. Identify the technology available, including whether attorneys have access to a subscription legal research program.
- e. Include information about staff and personnel, such as paralegals, legal interns, and staffed experts/investigators, that would provide the Commission with a better understanding of the applicant's client services.

Section III Cost Proposal

1. General Instructions

- a. The Bidder must submit a cost proposal that covers the entire period of the initial contract. Please use the expected "Initial Period of Performance" dates stated in PART I, D.
- b. The cost proposal shall include the costs necessary for the Bidder to fully comply with the contract terms and conditions and RFP requirements.
- c. No costs related to the preparation of the proposal for this RFP or to the negotiation of the contract with the Department may be included in the proposal. Only costs to be incurred after the contract effective date that are specifically related to the implementation or

operation of contracted services may be included.

2. Cost Proposal Form Instructions

The Commission is seeking proposals for appellate cases on a flat fee per case basis. The fee proposed may vary by case type. Out of pocket expenses (i.e. printing and binding costs, fees for investigators or other experts) should not be factored into the proposed fee.

The Bidder should fill out **Appendix D** (Cost Proposal Form), following the instructions detailed here and in the form. Failure to provide the requested information, and to follow the required cost proposal format provided, may result in the exclusion of the proposal from consideration, at the discretion of the Department.

Section IV Economic Impact within the State of Maine

Using the form in **Appendix E** (Economic Impact Form), the Bidder (Bidder identified on the “Proposal Cover Page” of their proposal submission) is required to describe the Bidder’s recent and anticipated economic impact upon and within the State of Maine. The use of economic impact in making contract award decisions is required in accordance with Executive Order 2012-004, which states that certain service contracts “...advertised for competitive bid shall include scoring criteria evaluating the responding Bidder’s economic impact on the Maine economy and State revenues.”

PART V PROPOSAL EVALUATION AND SELECTION

Evaluation of the submitted proposals shall be accomplished as follows:

A. Evaluation Process - General Information

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

B. Scoring Weights and Process

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

Section I. Organization Qualifications and Experience (35 points)

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

Section II. Specifications of Work to be Performed (35 points)

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

Section III. Cost Proposal (25 points)

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

Section IV. Economic Impact within the State of Maine (5 points)

Includes all elements addressed above in Part IV, D, Section IV.

2. **Scoring Process:** The review team will use a consensus approach to evaluate and score Sections I & II above. Members of the review team will not score those sections individually but, instead, will arrive at a consensus as to assignment of points for each of those sections. The Cost and Economic Impact sections will be scored as described below. The contract award(s) will be made to the Bidder(s) receiving the highest number of evaluation points based upon the proposals' satisfaction of the criteria established in the RFP.
3. **Scoring the Cost Proposal:** The total cost proposed for conducting all the functions specified in this RFP will be assigned a score according to a mathematical formula. The lowest bid will be awarded XX points. Proposals with higher bids values will be awarded proportionately fewer points calculated in comparison with the lowest bid.

The scoring formula is:

$$\left(\frac{\text{Lowest submitted cost proposal}}{\text{Cost of proposal being scored}} \right) \times (\text{Insert maximum cost points available}) = \text{pro-rated score}$$

No Best and Final Offers: The State of Maine will not seek a best and final offer (BAFO) from any Bidder in this procurement process. All Bidders are expected to provide their best value pricing with the submission of their proposal.

4. **Scoring the Economic Impact:** The Economic Impact for this RFP will be assigned a score according to a mathematical formula.

Recent Economic Impact: The highest recent economic impact will be awarded X points. Proposals with lower recent economic impact will be awarded proportionately fewer points calculated in comparison with the highest impact.

The Recent Economic Impact scoring formula is:

$$\left(\frac{\text{Recent Economic Impact proposal being scored}}{\text{Highest submitted recent Economic Impact proposal}} \right) \times X = \text{pro-rated score}$$

Projected Economic Impact*: The highest projected economic impact will be awarded X points. Proposals with lower projected economic impact will be awarded proportionately fewer points calculated in comparison with the highest projected economic impact.

The Projected Economic Impact scoring formula is:

$$\left(\frac{\text{Projected Economic Impact proposal being scored}}{\text{Highest submitted projected Economic Impact proposal}} \right) \times X = \text{pro-rated score}$$

**Projected Economic Impact is to be based solely on the resulting contract should the Bidder be awarded the contract for these services (See Appendix E for a more detailed explanation).*

Please note: If the State determines that the Bidder's recent and/or projected economic impact information is deemed to be substantially inaccurate, then the State may determine to not award any points for economic impact to that Bidder for the applicable section(s).

5. **Negotiations:** The Department reserves the right to negotiate with the successful Bidder to finalize a contract at the same rate or cost of service as presented in the selected proposal. Such negotiations may not significantly vary the content, nature or requirements of the proposal or the Department's Request for Proposals to an extent that may affect the price of goods or services requested. The Department reserves the right to terminate contract negotiations with a selected respondent who submits a proposed contract significantly different from the proposal they submitted in response to the advertised RFP. In the event that an acceptable contract cannot be negotiated with the highest ranked Bidder, the Department may withdraw its award and negotiate with the next-highest ranked Bidder, and so on, until an acceptable contract has been finalized. Alternatively, the Department may cancel the RFP, at its sole discretion.

C. Selection and Award

1. The final decision regarding the award of the contract will be made by representatives of the

PART VI CONTRACT ADMINISTRATION AND CONDITIONS

A. Contract Document

1. The successful Bidder will be required to execute a contract in the form of a State of Maine Agreement to Purchase Services (BP54). A list of applicable Riders is as follows:

Rider A: Specification of Work to be Performed

Rider B: Method of Payment and Other Provisions

Rider C: Exceptions to Rider B

Rider D: (Optional; for use by Department)

Rider E: (Optional; for use by Department)

Rider G: Identification of Country in Which Contracted Work Will Be Performed

The complete set of standard BP54 contract documents may be found on the Division of Purchases website at the following link: <http://www.maine.gov/purchases/info/forms/BP54.doc>

Other forms and contract documents commonly used by the State can be found on the Division of Purchases website at the following link: <http://www.maine.gov/purchases/info/forms.html>

2. Allocation of funds is final upon successful negotiation and execution of the contract, subject to the review and approval of the State Procurement Review Committee. Contracts are not considered fully executed and valid until approved by the State Procurement Review Committee and funds are encumbered. No contract will be approved based on an RFP which has an effective date less than fourteen (14) calendar days after award notification to Bidders. (Referenced in the regulations of the Department of Administrative and Financial Services, Chapter 110, § 3(B)(i): <http://www.maine.gov/purchases/policies/110.shtml>)

This provision means that a contract cannot be effective until at least 14 days after award notification.

3. The State recognizes that the actual contract effective date depends upon completion of the RFP process, date of formal award notification, length of contract negotiation, and preparation and approval by the State Procurement Review Committee. Any appeals to the Department's award decision(s) may further postpone the actual contract effective date, depending upon the outcome. The contract effective date listed in this RFP may need to be adjusted, if necessary, to comply with mandated requirements.
4. In providing services and performing under the contract, the successful Bidder(s) shall act as an independent contractor and not as an agent of the State of Maine.

B. Standard State Agreement Provisions

1. Agreement Administration

- a. Following the award, an Agreement Administrator from the Department will be appointed to assist with the development and administration of the contract and to act as administrator during the entire contract period. Department staff will be available after the award to consult with the successful Bidder in the finalization of the contract.
- b. In the event that an acceptable contract cannot be negotiated with the highest ranked Bidder, the Department may withdraw its award and negotiate with the next-highest ranked Bidder,

and so on, until an acceptable contract has been finalized. Alternatively, the Department may cancel the RFP, at its sole discretion.

2. Payments and Other Provisions

The State anticipates paying the Contractor on the basis of net 30 payment terms, upon the receipt of an accurate and acceptable invoice. An invoice will be considered accurate and acceptable if it contains a reference to the State of Maine contract number, contains correct pricing information relative to the contract, and provides any required supporting documents, as applicable, and any other specific and agreed-upon requirements listed within the contract that results from this RFP.

Department subject to approval by the State Procurement Review Committee.

2. Notification of contractor selection or non-selection will be made in writing by the Department.
3. Issuance of this RFP in no way constitutes a commitment by the State of Maine to award a contract, to pay costs incurred in the preparation of a response to this request, or to pay costs incurred in procuring or contracting for services, supplies, physical space, personnel or any other costs incurred by the Bidder.
4. The Department reserves the right to reject any and all proposals or to make multiple awards.

D. Appeal of Contract Awards

Any person aggrieved by the award decision that results from this RFP may appeal the decision to the Director of the Bureau of General Services in the manner prescribed in 5 MRSA § 1825-E and 18-554 Code of Maine Rules, Chapter 120 (found here: <http://www.maine.gov/purchases/policies/120.shtml>). The appeal must be in writing and filed with the Director of the Bureau of General Services, 9 State House Station, Augusta, Maine, 04333-0009 within 15 calendar days of receipt of notification of contract award.

If this RFP results in the creation of a pre-qualified or pre-approved list of vendors, then the appeal procedures mentioned above are available upon the original determination of that vendor list, but not during subsequent competitive procedures involving only the pre-qualified or pre-approved list participants.

(4.)
Probate Cases in
District Court

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: ASSIGNED COUNSEL FOR PROBATE MATTERS IN DISTRICT COURT
DATE: June 7, 2016

A newly enacted law (attached) has come to my attention that makes certain guardianship and adoption cases that were formerly handled in the Probate Court subject to the exclusive jurisdiction of the District Court. My understanding is that in these cases the District Court will adjudicate the matter, but it will be applying Probate law. Under the Probate Code, certain indigent parties, including parents and minors subject to contested guardianship or adoption proceedings, have a right to assigned counsel.

When these matters resided in the Probate Court, the court designated the attorney and the County paid the attorney fees. With these matters now being handled in the District Court, a state court rather than a county court, it appears we will be responsible for paying the assigned counsel. We will also need to create a guardianship/adoption roster.

This legislation did not come to our attention during the session. A fiscal note appropriated money for the Judicial Branch, but none for MCILS, and MCILS never received an inquiry from the fiscal office regarding the potential fiscal impact on our agency. We will need to assess that impact and include an amount in our supplemental request for FY'17.

I have discussed this matter with a member of the Supreme Judicial Court to begin planning for the transition. I was told that the Judicial Branch staff would try to obtain the number of these cases in which the Probate Court assigns counsel and a list of attorneys they currently use as assigned counsel in these cases. To date, I have not received that information.

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND SIXTEEN

H.P. 609 - L.D. 890

An Act To Ensure a Continuing Home Court for Cases Involving Children

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

Sec. 1. 4 MRSA §152, sub-§5-A is enacted to read:

5-A. Actions involving minors under Title 18-A. Exclusive jurisdiction of actions for guardianship, adoption, change of name or other matters involving custody or other parental rights brought under Title 18-A if proceedings involving custody or other parental rights with respect to a minor child, including but not limited to adoption, divorce, parental rights and responsibilities, grandparents' rights, protective custody, change of name, guardianship, paternity, termination of parental rights and protection from abuse or harassment, are pending in the District Court.

A. The District Court presiding over any matter involving custody or other parental rights with respect to a minor child shall require all parties to disclose whether they have knowledge of:

- (1) Any interim or final order then in effect concerning custody or other parental rights with respect to the minor child;
- (2) Any proceeding involving custody or other parental rights with respect to the minor child currently filed or pending before any court of this State or another state, including before a probate court in this State; or
- (3) Any other related action currently filed or pending before any court of this State or another state, including before a probate court in this State.

B. If the District Court presiding over any matter involving custody or other parental rights with respect to a minor child becomes aware that a proceeding for guardianship, adoption or change of name or another matter involving custody or other parental rights with respect to the minor child is pending in a probate court in this State, the District Court shall notify the Probate Court and take appropriate action to facilitate a transfer of the matter from the Probate Court;

Sec. 2. 4 MRSA §157, sub-§1, ¶A, as amended by PL 2015, c. 377, §1, is further amended to read:

A. The Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary matters and to confirmation by the Legislature, shall appoint to the District Court ~~38~~ 39 judges. At least one judge must be appointed from each district who is a resident of a county in which the district lies, except that in District 3 there must be 2 judges appointed who are residents of a county in which the district lies; in District 6 there must be 2 judges appointed who are residents of a county in which the district lies; and in District 9 there must be 2 judges appointed who are residents of a county in which the district lies. Each District Court Judge has a term of office of 7 years.

To be eligible for appointment as a District Judge, a person must be a member of the bar of the State. The term "District Judge" includes the Chief Judge and Deputy Chief Judge.

Sec. 3. 4 MRSA §251 is amended to read:

§251. General jurisdiction

Each judge may take the probate of wills and grant letters testamentary or of administration on the estates of all deceased persons who, at the time of their death, where inhabitants or residents of ~~his~~ the judge's county or who, not being residents of the State, died leaving estate to be administered in ~~his~~ the judge's county, or whose estate is afterwards found therein; and has jurisdiction of all matters relating to the settlement of such estates. ~~He~~ A judge may grant leave to adopt children, change the names of persons, appoint guardians for minors and others according to law; and has jurisdiction as to persons under guardianship, and as to whatever else is conferred ~~on him~~ by law, except in cases in which the District Court has jurisdiction over a child pursuant to section 152, subsection 5-A.

Sec. 4. 4 MRSA §251-A is enacted to read:

§251-A. Other proceedings involving parental rights; transfer to District Court

1. Disclosure of orders and proceedings. The judge of probate presiding over any matter involving guardianship, adoption or change of name or another matter involving custody or other parental rights with respect to a minor child shall require all parties to disclose whether they have knowledge of:

A. Any interim or final order then in effect concerning custody or other parental rights with respect to the minor child;

B. Any proceeding involving custody or other parental rights with respect to the minor child currently filed or pending before any court of this State or another state, including the District Court; or

C. Any other related action currently filed or pending before any court of this State or another state, including the District Court.

2. Transfer to District Court. If in a matter before the Probate Court concerning a minor child a judge of probate becomes aware that a proceeding involving custody or other parental rights with respect to the minor child is pending in the District Court, the

judge shall notify the District Court and take appropriate action to facilitate a transfer of the matter to the District Court.

Sec. 5. 18-A MRSA §1-701, sub-§(a), as enacted by PL 2001, c. 163, §1, is amended to read:

(a). If a person desires to have that person's name changed, the person may petition the judge of probate in the county where the person resides. If the person is a minor, the person's legal custodian may petition in the person's behalf. If there is a proceeding involving custody or other parental rights with respect to the minor pending in the District Court, the petition must be filed in the District Court.

Sec. 6. 18-A MRSA §5-102, sub-§(a), as enacted by PL 1979, c. 540, §1, is amended to read:

(a). The Subject to Title 4, section 152, subsection 5-A, the court has exclusive jurisdiction over guardianship proceedings and has jurisdiction over protective proceedings to the extent provided in section 5-402.

Sec. 7. 18-A MRSA §9-103, as enacted by PL 1995, c. 694, Pt. C, §7 and affected by Pt. E, §2, is amended to read:

§9-103. Jurisdiction

(a). The Subject to Title 4, section 152, subsection 5-A, the Probate Court has exclusive jurisdiction over the following:

- (1). Petitions for adoption;
- (2). Consents and reviews of withholdings of consent by persons other than a parent;
- (3). Surrenders and releases;
- (4). Termination of parental rights proceedings brought pursuant to section 9-204;
- (5). Proceedings to determine the rights of putative fathers of children whose adoptions or surrenders and releases are pending before the Probate Court; and
- (6). Reviews conducted pursuant to section 9-205.

(b). The District Court has jurisdiction to conduct hearings pursuant to section 9-205. The District Court has jurisdiction over any matter described in subsection (a) if the proceeding concerns a child over whom the District Court has exclusive jurisdiction pursuant to Title 4, section 152, subsection 5-A.

Sec. 8. 18-A MRSA §9-204, sub-§(a), as enacted by PL 1995, c. 694, Pt. C, §7 and affected by Pt. E, §2, is amended to read:

(a). A petition for termination of parental rights may be brought in Probate Court in which an adoption petition is properly filed as part of that adoption petition except when ~~a child protection proceeding is pending or is subject to review by~~ the District Court has exclusive jurisdiction over the child pursuant to Title 4, section 152, subsection 5-A.

Sec. 9. Appropriations and allocations. The following appropriations and allocations are made.

HEALTH AND HUMAN SERVICES, DEPARTMENT OF (FORMERLY DHS)

Mental Health Services - Children 0136

Initiative: Deappropriates funding from the Department of Health and Human Services, Mental Health Services - Children account to offset the additional court costs of having all pending matters concerning a child and family unit addressed by a single District Court Judge.

GENERAL FUND	2015-16	2016-17
All Other	\$0	(\$412,750)
GENERAL FUND TOTAL	<u>\$0</u>	<u>(\$412,750)</u>

**HEALTH AND HUMAN SERVICES,
DEPARTMENT OF (FORMERLY DHS)
DEPARTMENT TOTALS**

	2015-16	2016-17
GENERAL FUND	\$0	(\$412,750)
DEPARTMENT TOTAL - ALL FUNDS	<u>\$0</u>	<u>(\$412,750)</u>

JUDICIAL DEPARTMENT

Courts - Supreme, Superior and District 0063

Initiative: Provides funds for one Judge position, one Deputy Marshal position and one Assistant Clerk position due to an anticipated increase in the number of district court cases involving children.

GENERAL FUND	2015-16	2016-17
POSITIONS - LEGISLATIVE COUNT	0.000	3.000
Personal Services	\$0	\$297,950
All Other	\$0	\$114,800
GENERAL FUND TOTAL	<u>\$0</u>	<u>\$412,750</u>

**JUDICIAL DEPARTMENT
DEPARTMENT TOTALS**

	2015-16	2016-17
GENERAL FUND	\$0	\$412,750

DEPARTMENT TOTAL - ALL FUNDS	<u> \$0</u>	<u> \$412,750</u>
SECTION TOTALS	2015-16	2016-17
GENERAL FUND	\$0	\$0
SECTION TOTAL - ALL FUNDS	<u> \$0</u>	<u> \$0</u>

Maine Revised Statutes
Title 18-A: PROBATE CODE

Article :

§5-204. COURT APPOINTMENT OF GUARDIAN OF MINOR; CONDITIONS FOR APPOINTMENT

The court may appoint a guardian or coguardians for an unmarried minor if: [1995, c. 623, §1 (RPR) .]

(a). All parental rights of custody have been terminated or suspended by circumstance or prior court order;

[1995, c. 623, §1 (NEW) .]

(b). Each living parent whose parental rights and responsibilities have not been terminated or the person who is the legal custodian of the unmarried minor consents to the guardianship and the court finds that the consent creates a condition that is in the best interest of the child;

[2005, c. 371, §2 (AMD) .]

(c). The person or persons whose consent is required under subsection (b) do not consent, but the court finds by clear and convincing evidence that the person or persons have failed to respond to proper notice or a living situation has been created that is at least temporarily intolerable for the child even though the living situation does not rise to the level of jeopardy required for the final termination of parental rights, and that the proposed guardian will provide a living situation that is in the best interest of the child; or

[2005, c. 371, §2 (AMD) .]

(d). The person or persons whose consent is required under subsection (b) do not consent, but the court finds by a preponderance of the evidence that there is a de facto guardian and a demonstrated lack of consistent participation by the nonconsenting parent or legal custodian of the unmarried minor. The court may appoint the de facto guardian as guardian if the appointment is in the best interest of the child.

[2005, c. 371, §2 (NEW) .]

A guardian appointed by will as provided in section 5-202 whose appointment has not been prevented or nullified under section 5-203 has priority over any guardian who may be appointed by the court but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within 30 days after notice of the guardianship proceeding. [1995, c. 623, §1 (NEW) .]

If a proceeding is brought under subsection (c) or subsection (d), the nonconsenting parent or legal custodian is entitled to court-appointed legal counsel if indigent. In a contested action, the court may also appoint counsel for any indigent de facto guardian, guardian or petitioner when a parent or legal custodian has counsel. [2005, c. 371, §2 (AMD) .]

If a proceeding is brought under subsection (b), subsection (c) or subsection (d), the court may order a parent to pay child support in accordance with Title 19-A, Part 3. When the Department of Health and Human Services provides child support enforcement services, the Commissioner of Health and Human Services may designate employees of the department who are not attorneys to represent the department in court if a hearing is held. The commissioner shall ensure that appropriate training is provided to all employees who are designated to represent the department under this paragraph. [2005, c. 371, §2 (AMD) .]

If the court appoints a limited guardian, the court shall specify the duties and powers of the guardian, as required in section 5-105, and the parental rights and responsibilities retained by the parent of the minor. [1995, c. 623, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1995, c. 623, §1 (RPR). 1999, c. 46, §1 (AMD). 2001, c. 554, §2 (AMD). 2003, c. 689, §§B6,7 (REV). 2005, c. 371, §2 (AMD).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the First Regular Session of the 127th Maine Legislature and is current through October 15, 2015. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.
--

Maine Revised Statutes
Title 18-A: PROBATE CODE

Article :

§5-207. COURT APPOINTMENT OF GUARDIAN OF MINOR; PROCEDURE

(a). Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor is to be given by the petitioner in the manner prescribed by court rule under section 1-401 to:

- (1). The minor, if he is 14 or more years of age; [1979, c. 540, §1 (NEW) .]
- (2). The person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and [1979, c. 540, §1 (NEW) .]
- (3). Any living parent of the minor. [1979, c. 540, §1 (NEW) .]

[1979, c. 540, §1 (NEW) .]

(b). Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 5-204 have been met, and the welfare and best interests of the minor will be served by the requested appointment, it shall make the appointment. In other cases the court may dismiss the proceedings, or make any other disposition of the matter that will best serve the interest of the minor.

[1979, c. 540, §1 (NEW) .]

(c). If necessary, the court may appoint a temporary guardian, with the status of an ordinary guardian of a minor, but the authority of a temporary guardian may not last longer than 6 months, except as provided in subsection (c-1).

Notice of hearing on the petition for the appointment of a temporary guardian must be served as provided under subsection (a), except that the notice must be given at least 5 days before the hearing, and notice need not be given to any person whose address and present whereabouts are unknown and can not be ascertained by due diligence. Upon a showing of good cause, the court may waive service of the notice of hearing on any person, other than the minor, if the minor is at least 14 years of age.

[2003, c. 583, §3 (AMD) .]

(c-1). If one of the parents of a minor is a member of the National Guard or the Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days, a temporary guardianship that would otherwise expire is automatically extended until 30 days after the parent is no longer under those active duty orders or until an order of the court so provides. This subsection applies only if the parent's service is in support of:

- (1). An operational mission for which members of the reserve components have been ordered to active duty without their consent; or [2003, c. 583, §4 (NEW) .]
- (2). Forces activated during a period of war declared by Congress or a period of national emergency declared by the President or Congress. [2003, c. 583, §4 (NEW) .]

[2003, c. 583, §4 (NEW) .]

(d). If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen years of age or older.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1999, c. 303, §1 (AMD). 2003, c. 583, §§3,4 (AMD) .

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the First Regular Session of the 127th Maine Legislature and is current through October 15, 2015. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.

Maine Revised Statutes
Title 18-A: PROBATE CODE

Article :

§9-106. LEGAL REPRESENTATION

(a). The biological parents are entitled to an attorney for any hearing held pursuant to this article. If the biological mother or the biological or putative father wants an attorney but is unable to afford one, the biological mother or the biological or putative father may request the court to appoint an attorney. If the court finds either or both of them indigent, the court shall appoint and pay the reasonable costs and expenses of the attorney of the indigent party. The attorney may not be the attorney for the adoptive parents.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

(b). When the adoptee is unrelated to the petitioner, the court shall appoint an attorney who is not the attorney for the adoptive parents to represent a minor indigent biological parent at every stage of the proceedings unless the minor biological parent refuses representation or the court determines that representation is unnecessary.

[1995, c. 694, Pt. C, §7 (NEW); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1995, c. 694, §C7 (NEW) . 1995, c. 694, §E2 (AFF) .

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the First Regular Session of the 127th Maine Legislature and is current through October 15, 2015. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.

(5.)
Requests for Certiorari

Pelletier, John

From: Jamesa Drake <jamesa_drake@hotmail.com>
Sent: Thursday, March 17, 2016 8:22 PM
To: Pelletier, John; scarey@thecareylawfirm.com
Subject: state pay for cert. petitions
Attachments: Maine research (March 2016) - FInal.pdf

Hi John and Steve,

As you probably know, the Law Court recently decided State v. Nisbet. This is the case where the defendant threatened his (sixth) lawyer. The court held that the defendant **forfeited** his right to counsel, which (a) is a theory of constitutional law that the U.S. Supreme Court has never endorsed; and (b) is a theory of constitutional law that has splintered the lower courts (the split is over whether the right to counsel can be forfeited, rather than waived). I believe strongly that this case is cert-worthy.

I know that Maine has not, in the past, paid for cert petitions. So, I asked David Carroll at the Sixth Amendment Center to do a little research. He has confirmed that Maine is the only state without an intermediate appellate court that refuses to pay for cert petitions for indigent criminal defendants. David's work is attached.

In light of this new information, and considering the Nisbet case in particular, I am respectfully asking that the Commission pay for a cert petition in this case. Of course, I'm happy to answer any questions that you might have.

Thanks in advance for your consideration,
Jamesa

417 U.S. 600 (1974), 73-76, Ross v. Moffitt

Page 600

417 U.S. 600 (1974)

94 S.Ct. 2437, 41 L.Ed.2d 341

Ross

v.

Moffitt

No. 73-76

United States Supreme Court

June 17, 1974

Argued April 22, 1974

CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Syllabus

Respondent, an indigent, while represented by court-appointed counsel, was convicted of forgery in state court in two separate cases, and his convictions were affirmed on his appeals of right by the North Carolina Court of Appeals. In one case, he was denied appointment of counsel for discretionary review by the North Carolina Supreme Court, and in the other case, after that court had [94 S.Ct. 2439] denied certiorari, was denied appointment of counsel to prepare a petition for certiorari to this Court. Subsequently, Federal District Courts denied habeas corpus relief, but the United States Court of Appeals reversed, holding that respondent was entitled to appointment of counsel both on his petition for review by the State Supreme Court and on his petition for certiorari in this Court.

Held:

1. The Due Process Clause of the Fourteenth Amendment does not require North Carolina to provide respondent with counsel on his discretionary appeal to the State Supreme Court. Pp. 609-611.

(a) As contrasted with the trial stage of a criminal proceeding, a defendant appealing a conviction needs an attorney, not as a shield to protect him against being "haled into court" by the State and stripped of his presumption of innocence, but rather as a sword to upset the prior determination of guilt, the difference being significant since, while a State may not dispense with the trial stage without the defendant's consent, it need not provide any appeal at all. Pp. 610-611.

(b) The fact that an appeal has been provided does not automatically mean that the State then acts unfairly by refusing to provide counsel to indigent defendants at every stage of the way, but unfairness results only if the State singles out indigents and denies them meaningful access to the appellate system because of their poverty. P. 611.

2. Nor does the Equal Protection Clause of the Fourteenth Amendment require North Carolina to provide free counsel for indigent defendants seeking discretionary appeals to the State Supreme Court. Pp. 611-616.

Page 601

(a) A defendant in respondent's circumstances is not denied meaningful access to the State

Supreme Court simply because the State does not appoint counsel to aid him in seeking review in that court, since, at that stage, under North Carolina's multi-tiered appellate system, he will have, at the very least, a transcript or other record of the trial proceedings, a brief in the Court of Appeals setting forth his claims of error, and frequently an opinion by that court disposing of his case, materials which, when supplemented by any *pro se* submission that might be made, would provide the Supreme Court with an adequate basis for its decision to grant or deny review under its standards of whether the case has "significant public interest," involves "legal principles of major significance," or likely conflicts with a previous Supreme Court decision. Pp. 614-615.

(b) Both an indigent defendant's opportunity to have counsel prepare an initial brief in the Court of Appeals and the nature of the Supreme Court's discretionary review make the relative handicap that such a defendant may have in comparison to a wealthy defendant, who has counsel at every stage of the proceeding, far less than the handicap borne by an indigent defendant denied counsel on his initial appeal of right, *Douglas v. California*, 372 U.S. 353. P. 616.

(c) That a particular service might benefit an indigent defendant does not mean that the service is constitutionally required, the duty of the State not being to duplicate the legal arsenal that may be privately retained by a criminal defendant in a continuing effort to reverse his conviction, but only to assure the indigent defendant, as was done here, an adequate opportunity to present his claims fairly in the context of the State's appellate process. P. 616.

3. Similarly, the Fourteenth Amendment does not require North Carolina to provide counsel for a convicted indigent defendant seeking to file a petition for certiorari in this Court, under circumstances where the State will have provided counsel for his only appeal as of right, and the brief prepared by such [94 S.Ct. 2440] counsel together with one and perhaps two state appellate opinions will be available to this Court in order to decide whether to grant certiorari. Pp. 616-618.

(a) Since the right to seek discretionary review in this Court is conferred by federal statutes and not by any State, the argument that the State having once created a right of appeal must give all persons an equal opportunity to enjoy the right is, by

Page 602

its terms, inapplicable. *Griffin v. Illinois*, 351 U.S. 12, and *Douglas v. California*, *supra*, distinguished. P. 617.

(b) The suggestion that a State is responsible for providing counsel to an indigent defendant petitioning this Court simply because it initiated the prosecution leading to the judgment sought to be reviewed is unsupported by either reason or authority. Pp. 617-618.

483 F.2d 650, reversed.

REHNQUIST, J., delivered the opinion of the Court, in which BURGER, C.J., and STEWART, WHITE, BLACKMUN, and POWELL, JJ., joined. DOUGLAS, J., filed a dissenting opinion, in which BRENNAN and MARSHALL, JJ., joined, *post*, p. 619.

REHNQUIST, J., lead opinion

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

We are asked in this case to decide whether *Douglas v. California*, 372 U.S. 353 (1963), which requires appointment of counsel for indigent state defendants on their first appeal as of right, should be extended to require counsel for discretionary state appeals and for applications

for review in this Court. The Court of Appeals for the Fourth Circuit held that such appointment was required by the Due Process and Equal Protection Clauses of the Fourteenth Amendment.^[1]

I

The case now before us has resulted from consolidation of two separate cases, North Carolina criminal prosecutions brought in the respective Superior Courts for the counties of Mecklenburg and Guilford. In both cases, respondent pleaded not guilty to charges of forgery and uttering a forged instrument, and, because of his indigency, was represented at trial by court-appointed counsel. He was convicted, and then took separate appeals to the North Carolina Court of Appeals, where he was again represented by court-appointed counsel, and his convictions were affirmed.^[2] At this point, the procedural histories of the two cases diverge.

Following affirmance of his Mecklenburg County conviction, respondent sought to invoke the discretionary review procedures of the North Carolina Supreme Court. His court-appointed counsel approached the Mecklenburg County Superior Court about possible appointment to represent respondent on this appeal, but counsel was informed that the State was not required to furnish counsel for that petition. Respondent sought collateral relief in both the state and federal courts, first raising his right to counsel contention in a habeas corpus petition filed in the United States District Court for the Western District of North Carolina in February, 1971. Relief was denied at that time, and respondent's appeal to the Court

of Appeals for the Fourth Circuit was dismissed by stipulation in order to allow respondent to first exhaust state remedies on this issue. After exhausting state remedies, he reapplied for habeas relief, which was again denied. Respondent appealed that denial to the Court of Appeals for the Fourth Circuit.

Following affirmance of his conviction on the Guilford County charges, respondent also sought discretionary [94 S.Ct. 2441] review in the North Carolina Supreme Court. On this appeal, however, respondent was not denied counsel, but rather was represented by the public defender who had been appointed for the trial and respondent's first appeal. The North Carolina Supreme Court denied certiorari.^[3] Respondent then unsuccessfully petitioned the Superior Court for Guilford County for court-appointed counsel to prepare a petition for a writ of certiorari to this Court, and also sought post-conviction relief throughout the state courts. After these motions were denied, respondent again sought federal habeas relief, this time in the United States District Court for the Middle District of North Carolina. That court denied relief, and respondent took an appeal to the Court of Appeals for the Fourth Circuit.

The Court of Appeals reversed the two District Court judgments, holding that respondent was entitled to the assistance of counsel at state expense both on his petition for review in the North Carolina Supreme Court and on his petition for certiorari to this Court. Reviewing the procedures of the North Carolina appellate system and the possible benefits that counsel would provide for indigents seeking review in that system, the court stated:

As long as the state provides such procedures and allows other convicted felons to seek access to the

higher court with the help of retained counsel, there is a marked absence of fairness in denying an indigent the assistance of counsel as he seeks access to the same court.^[4]

This principle was held equally applicable to petitions for certiorari to this Court. For, said the Court of Appeals,

[t]he same concepts of fairness and equality, which require counsel in a first appeal of right, require counsel in other and subsequent discretionary appeals.^[5]

We granted certiorari, 414 U.S. 1128, to consider the Court of Appeals' decision in light of *Douglas v. California*, and apparently conflicting decisions of the Courts of Appeals for the Seventh and Tenth Circuits.^[6] For the reasons hereafter stated we reverse the Court of Appeals.

II

This Court, in the past 20 years, has given extensive consideration to the rights of indigent persons on appeal. In *Griffin v. Illinois*, 351 U.S. 12 (1956), the first of the pertinent cases, the Court had before it an Illinois rule allowing a convicted criminal defendant to present claims of trial error to the Supreme Court of Illinois only if he procured a transcript of the testimony adduced at his trial.^[7] No exception was made for the indigent

defendant, and thus one who was unable to pay the cost of obtaining such a transcript was precluded from obtaining appellate review of asserted trial error. Mr. Justice Frankfurter, who cast the deciding vote, said in his concurring opinion:

... Illinois has decreed that only defendants who can afford to pay for the stenographic minutes of a trial may have trial errors reviewed on appeal by the Illinois Supreme Court.

Id. at 22. The Court in *Griffin* held that this discrimination violated the Fourteenth Amendment.

[94 S.Ct. 2442] Succeeding cases invalidated similar financial barriers to the appellate process, at the same time reaffirming the traditional principle that a State is not obliged to provide any appeal at all for criminal defendants. *McKane v. Durston*, 153 U.S. 684 (1894). The cases encompassed a variety of circumstances, but all had a common theme. For example, *Lane v. Brown*, 372 U.S. 477 (1963), involved an Indiana provision declaring that only a public defender could obtain a free transcript of a hearing on a *coram nobis* application. If the public defender declined to request one, the indigent prisoner seeking to appeal had no recourse. In *Draper v. Washington*, 372 U.S. 487 (1963), the State permitted an indigent to obtain a free transcript of the trial at which he was convicted only if he satisfied the trial judge that his contentions on appeal would not be frivolous. The appealing defendant was in effect bound by the trial court's conclusions in seeking to review the determination of frivolousness, since no transcript or its equivalent was made available to him. In *Smith v. Bennett*, 365 U.S. 708 (1961), Iowa had required a filing fee in order to process a state habeas corpus application by a convicted defendant, and in *Burns v. Ohio*, 360 U.S. 252 (1959), the State of Ohio required a \$20 filing fee in

Page 607

order to move the Supreme Court of Ohio for leave to appeal from a judgment of the Ohio Court of Appeals affirming a criminal conviction. Each of these state-imposed financial barriers to the adjudication of a criminal defendant's appeal was held to violate the Fourteenth Amendment.

The decisions discussed above stand for the proposition that a State cannot arbitrarily cut off appeal rights for indigents while leaving open avenues of appeal for more affluent persons. In *Douglas v. California*, 372 U.S. 353 (1963), however, a case decided the same day as *Lane*, *supra*, and *Draper, supra*, the Court departed somewhat from the limited doctrine of the transcript and fee cases and undertook an examination of whether an indigent's access to the appellate system was adequate. The Court in *Douglas* concluded that a State does not fulfill its responsibility toward indigent defendants merely by waiving its own requirements that a convicted defendant procure a transcript or pay a fee in order to appeal, and held that the State must go further and provide counsel for the indigent on his first appeal as of right. It is this decision we are asked to extend today.

Petitioners in *Douglas*, each of whom had been convicted by a jury on 13 felony counts, took appeals as of right to the California District Court of Appeal. No filing fee was exacted of them, no transcript was required in order to present their arguments to the Court of Appeal, and the appellate process was therefore open to them. Petitioners, however, claimed that they not only had the right to make use of the appellate process, but were also entitled to court-appointed and state-compensated counsel because they were indigent. The California appellate court examined the trial record on its own initiative, following the then-existing rule in California, and concluded that "no good whatever could be

Page 608

served by appointment of counsel." 372 U.S. at 355. It therefore denied petitioners' request for the appointment of counsel.

This Court held unconstitutional California's requirement that counsel on appeal would be appointed for an indigent only if the appellate court determined that such appointment would be helpful to the defendant or to the court itself. The Court noted that, under this system, an indigent's case was initially reviewed on the merits, without the benefit of any organization or argument by counsel. By contrast, persons of greater means were not faced with the preliminary "*ex parte* examination of the record," *id.* at 356, but had their arguments presented to the court [94 S.Ct. 2443] in fully briefed form. The Court noted, however, that its decision extended only to initial appeals as of right, and went on to say:

We need not now decide whether California would have to provide counsel for an indigent seeking a discretionary hearing from the California Supreme Court after the District Court of Appeal had sustained his conviction . . . or whether counsel must be appointed for an indigent seeking review of an appellate affirmance of his conviction in this Court by appeal as of right or by petition for a writ of certiorari which lies within the Court's discretion. But it is appropriate to observe that a State can, consistently with the Fourteenth Amendment, provide for differences so long as the result does not amount to a denial of due process or an "invidious discrimination." *Williamson v. Lee Optical Co.*, 348 U.S. 483, 489; *Griffin v. Illinois, supra*, p. 18. Absolute equality is not required; lines can be, and are, drawn, and we often sustain them.
Id. at 356-357.

The precise rationale for the *Griffin* and *Douglas* lines of cases has never been explicitly stated, some support

being derived from the Equal Protection Clause of the Fourteenth Amendment, and some from the Due Process Clause of that Amendment.^[8] Neither Clause, by itself, provides an entirely satisfactory basis for the result reached, each depending on a different inquiry which emphasizes different factors. "Due process" emphasizes fairness between the State and the individual dealing with the State, regardless of how other individuals in the same situation may be treated. "Equal protection," on the other hand, emphasizes disparity in treatment by a State between classes of individuals whose situations are arguably indistinguishable. We will address these issues separately in the succeeding sections.

III

Recognition of the due process rationale in *Douglas* is found both in the Court's opinion and in the dissenting opinion of Mr. Justice Harlan. The Court in *Douglas* stated that, "[w]hen an indigent is forced to run this gauntlet of a preliminary showing of merit, the right to appeal does not comport with fair procedure." 372 U.S. at 357. Mr. Justice Harlan thought that the due process issue in *Douglas* was the only one worthy of extended

consideration, remarking:

The real question in this case, I submit, and the only one that permits of satisfactory analysis, is whether or not the state rule, as applied in this case, is consistent with the requirements of fair procedure guaranteed by the Due Process Clause.

Id. at 363.

We do not believe that the Due Process Clause requires North Carolina to provide respondent with counsel on his discretionary appeal to the State Supreme Court. At the trial stage of a criminal proceeding, the right of an indigent defendant to counsel is fundamental and binding upon the States by virtue of the Sixth and Fourteenth Amendments. *Gideon v. Wainwright*, 372 U.S. 335 (1963). [94 S.Ct. 2444] But there are significant differences between the trial and appellate stages of a criminal proceeding. The purpose of the trial stage from the State's point of view is to convert a criminal defendant from a person presumed innocent to one found guilty beyond a reasonable doubt. To accomplish this purpose, the State employs a prosecuting attorney who presents evidence to the court, challenges any witnesses offered by the defendant, argues rulings of the court, and makes direct arguments to the court and jury seeking to persuade them of the defendant's guilt. Under these circumstances, reason and reflection require us to recognize that, in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.

Id. at 344.

By contrast, it is ordinarily the defendant, rather than the State, who initiates the appellate process, seeking not to fend off the efforts of the State's prosecutor, but rather to overturn a finding of guilt made by a judge or jury below. The defendant needs an attorney on appeal not as a shield to protect him against being "haled into court"

by the State and stripped of his presumption of innocence, but rather as a sword to upset the prior determination of guilt. This difference is significant for, while no one would agree that the State may simply dispense with the trial stage of proceedings without a criminal defendant's consent, it is clear that the State need not provide any appeal at all. *McKane v. Durston*, 153 U.S. 684 (1894). The fact that an appeal has been provided does not automatically mean that a State then acts unfairly by refusing to provide counsel to indigent defendants at every stage of the way. *Douglas v. California, supra*. Unfairness results only if indigents are singled out by the State and denied meaningful access to the appellate system because of their poverty. That question is more profitably considered under an equal protection analysis.

IV

Language invoking equal protection notions is prominent both in *Douglas* and in other cases treating the rights of indigents on appeal. The Court in *Douglas*, for example, stated: [W]here the merits of *the one and only appeal* an indigent has as of right are decided without benefit of counsel, we think an unconstitutional line has been drawn between rich and poor.

372 U.S. at 357 (Emphasis in original.) The Court in *Burns v. Ohio* stated the issue in the following terms:

[O]nce the State chooses to establish appellate review in criminal cases, it may not foreclose indigents from access to any phase of that procedure because of their poverty.

360 U.S. at 257.

Despite the tendency of all rights "to declare themselves

Page 612

absolute to their logical extreme,"^[9] there are obviously limits beyond which the equal protection analysis may not be pressed without doing violence to principles recognized in other decisions of this Court. The Fourteenth Amendment "does not require absolute equality or precisely equal advantages," *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 24 (1973), nor does it require the State to "equalize economic conditions." *Griffin v. Illinois*, 351 U.S. at 23 (Frankfurter, J., concurring). It does require that the state appellate system be "free of unreasoned distinctions," *Rinaldi v. Yeager*, 384 U.S. 305, 310 (1966), and that indigents have an adequate opportunity to present their [94 S.Ct. 2445] claims fairly within the adversary system. *Griffin v. Illinois, supra*; *Draper v. Washington*, 372 U.S. 487 (1963). The State cannot adopt procedures which leave an indigent defendant "entirely cut off from any appeal at all," by virtue of his indigency, *Lane v. Brown*, 372 U.S. at 481, or extend to such indigent defendants merely a "meaningless ritual" while others in better economic circumstances have a "meaningful appeal." *Douglas v. California, supra*, at 358. The question is not one of absolutes, but one of degrees. In this case, we do not believe that the Equal Protection Clause, when interpreted in the context of these cases, requires North Carolina to provide free counsel for indigent defendants seeking to take discretionary appeals to the North Carolina Supreme Court, or to file petitions for certiorari in this Court.

A. The North Carolina appellate system, as are the appellate systems of almost half the States^[10] is multi-tiered, providing for both an intermediate Court of Appeals and a Supreme Court. The Court of Appeals was

created effective January 1, 1967, and, like other intermediate state appellate courts, was intended to absorb a substantial share of the caseload previously burdening the Supreme Court. In criminal cases, an appeal as of right lies directly to the Supreme Court in all cases which involve a sentence of death or life imprisonment, while an appeal of right in all other criminal cases lies to the Court of Appeals. N.C.Gen.Stat. § 7A-27 (1969 and Supp. 1973). A second appeal of right lies to the Supreme Court in any criminal case

(1) [w]hich directly involves a substantial question arising under the Constitution of the United States or of this State, or (2) [i]n which there is a dissent. . . .

N.C.Gen.Stat. § 7A-30 (1969). All other decisions of the Court of Appeals on direct review of criminal cases may be further reviewed in the Supreme Court on a discretionary basis.

The statute governing discretionary appeals to the Supreme Court is N.C.Gen.Stat. § 7A-31 (1969). This statute provides, in relevant part, that, [i]n any cause in which appeal has been taken to the Court of Appeals . . . the Supreme Court may in its discretion, on motion of any party to the cause or on its own motion, certify the cause for review by the Supreme Court, either before or after it has been determined by the Court of Appeals.

The statute further provides that, [i]f the cause is certified for transfer to the Supreme Court after its determination by the Court of Appeals, the Supreme Court reviews the decision of the Court of Appeals.

The choice of cases to be reviewed is not left entirely within the discretion of the Supreme Court, but is regulated by statutory standards. Subsection (c) of this provision states: In causes subject to certification under subsection (a) of this section, certification may be made by the Supreme Court after determination of the cause by the Court of Appeals when in the opinion of the

Supreme Court (1) The subject matter of the appeal has significant public interest, or (2) The cause involves legal principles of major significance to the jurisprudence of the State, or (3) The decision of the Court of Appeals appears likely to be in conflict with a decision of the Supreme Court.

Appointment of counsel for indigents in North Carolina is governed by N.C.Gen.Stat. § 7A-450 *et seq.* (1969 and Supp. 1973). These provisions, although perhaps on their face broad enough to cover appointments such as those respondent sought here,^[11] have generally been construed to limit the right [94 S.Ct. 2446] to appointed counsel in criminal cases to direct appeals taken as of right. Thus, North Carolina has followed the mandate of *Douglas v. California, supra*, and authorized appointment of counsel for a convicted defendant appealing to the intermediate Court of Appeals, but has not gone beyond *Douglas* to provide for appointment of counsel for a defendant who seeks either discretionary review in the Supreme Court of North Carolina or a writ of certiorari here.

B. The facts show that respondent, in connection with his Mecklenburg County conviction, received the benefit of counsel in examining the record of his trial and in preparing an appellate

brief on his behalf for the state Court of Appeals. Thus, prior to his seeking discretionary review in the State Supreme Court, his claims had "once been presented by a lawyer and passed upon by an appellate court." *Douglas v. California*, 372 U.S.

Page 615

at 356. We do not believe that it can be said, therefore, that a defendant in respondent's circumstances is denied meaningful access to the North Carolina Supreme Court simply because the State does not appoint counsel to aid him in seeking review in that court. At that stage, he will have, at the very least, a transcript or other record of trial proceedings, a brief on his behalf in the Court of Appeals setting forth his claims of error, and in many cases an opinion by the Court of Appeals disposing of his case. These materials, supplemented by whatever submission respondent may make *pro se*, would appear to provide the Supreme Court of North Carolina with an adequate basis for its decision to grant or deny review.

We are fortified in this conclusion by our understanding of the function served by discretionary review in the North Carolina Supreme Court. The critical issue in that court, as we perceive it, is not whether there has been "a correct adjudication of guilt" in every individual case, see *Griffin v. Illinois*, 351 U.S. at 18, but rather whether "the subject matter of the appeal has significant public interest," whether "the cause involves legal principles of major significance to the jurisprudence of the State," or whether the decision below is in probable conflict with a decision of the Supreme Court. The Supreme Court may deny certiorari even though it believes that the decision of the Court of Appeals was incorrect, see *Peaseley v. Virginia Iron, Coal & Coke Co.*, 282 N.C. 585, 194 S.E.2d 133 (1973), since a decision which appears incorrect may nevertheless fail to satisfy any of the criteria discussed above. Once a defendant's claims of error are organized and presented in a lawyer-like fashion to the Court of Appeals, the justices of the Supreme Court of North Carolina who make the decision to grant or deny discretionary review should be able to ascertain whether his case satisfies the standards established by the legislature for such review.

Page 616

This is not to say, of course, that a skilled lawyer, particularly one trained in the somewhat arcane art of preparing petitions for discretionary review, would not prove helpful to any litigant able to employ him. An indigent defendant seeking review in the Supreme Court of North Carolina is therefore somewhat handicapped in comparison with a wealthy defendant who has counsel assisting him in every conceivable manner at every stage in the proceeding. But both the opportunity to have counsel prepare an initial brief in the Court of Appeals and the nature of discretionary review in the Supreme Court of North Carolina make this relative handicap far less than the handicap borne by the indigent defendant denied counsel on his initial appeal as of right [94 S.Ct. 2447] in *Douglas*. And the fact that a particular service might be of benefit to an indigent defendant does not mean that the service is constitutionally required. The duty of the State under our cases is not to duplicate the legal arsenal that may be privately retained by a criminal defendant in a continuing effort to reverse his conviction, but only to assure the indigent defendant an adequate opportunity to present his claims fairly in the context of the State's appellate process. We think respondent was given that opportunity under the existing North Carolina system.

Much of the discussion in the preceding section is equally relevant to the question of whether a State must provide counsel for a defendant seeking review of his conviction in this Court. North Carolina will have provided counsel for a convicted defendant's only appeal as of right, and the brief prepared by that counsel together with one and perhaps two North Carolina appellate opinions will be available to this Court in order that it may decide whether or not to grant certiorari.

This

Page 617

Court's review, much like that of the Supreme Court of North Carolina, is discretionary and depends on numerous factors other than the perceived correctness of the judgment we are asked to review.

There is also a significant difference between the source of the right to seek discretionary review in the Supreme Court of North Carolina and the source of the right to seek discretionary review in this Court. The former is conferred by the statutes of the State of North Carolina, but the latter is granted by statute enacted by Congress. Thus, the argument relied upon in the *Griffin* and *Douglas* cases, that the State having once created a right of appeal must give all persons an equal opportunity to enjoy the right, is, by its terms, inapplicable. The right to seek certiorari in this Court is not granted by any State, and exists by virtue of federal statute with or without the consent of the State whose judgment is sought to be reviewed.

The suggestion that a State is responsible for providing counsel to one petitioning this Court simply because it initiated the prosecution which led to the judgment sought to be reviewed is unsupported by either reason or authority. It would be quite as logical under the rationale of *Douglas* and *Griffin*, and indeed perhaps more so, to require that the Federal Government or this Court furnish and compensate counsel for petitioners who seek certiorari here to review state judgments of conviction. Yet this Court has followed a consistent policy of denying applications for appointment of counsel by persons seeking to file jurisdictional statements or petitions for certiorari in this Court. See, e.g., *Drumm v. California*, 373 U.S. 947 (1963); *Mooney v. New York*, 373 U.S. 947 (1963); *Oppenheimer v. California*, 374 U.S. 819 (1963). In the light of these authorities, it would be odd, indeed, to read the Fourteenth Amendment to

Page 618

impose such a requirement on the States, and we decline to do so.

VI

We do not mean by this opinion to in any way discourage those States which have, as a matter of legislative choice, made counsel available to convicted defendants at all stages of judicial review. Some States which might well choose to do so as a matter of legislative policy may conceivably find that other claims for public funds within or without the criminal justice system preclude the implementation of such a policy at the present time. North Carolina, for example, while it does not provide counsel to indigent defendants seeking discretionary review on appeal, does provide counsel for indigent prisoners in several situations where such appointments are not required by any constitutional decision of [94 S.Ct. 2448] this Court.^[12] Our reading

Page 619

of the Fourteenth Amendment leaves these choices to the State, and respondent was denied no

right secured by the Federal Constitution when North Carolina refused to provide counsel to aid him in obtaining discretionary appellate review.

The judgment of the Court of Appeals' holding to the contrary is
Reversed.

DOUGLAS, J., dissenting

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL concur, dissenting.

I would affirm the judgment below because I am in agreement with the opinion of Chief Judge Haynsworth for a unanimous panel in the Court of Appeals. 483 F.2d 650.

In *Douglas v. California*, 372 U.S. 353, we considered the necessity for appointed counsel on the first appeal as of right, the only issue before us. We did not deal with the appointment of counsel for later levels of discretionary review, either to the higher state courts or to this Court, but we noted that "there can be no equal justice where the kind of an appeal a man enjoys `depends on the amount of money he has.'" *Id.* at 355.

Chief Judge Haynsworth could find no logical basis for differentiation between appeals of right and permissive review procedures in the context of the Constitution and the right to counsel.

483 F.2d at 653. More familiar with the functioning of the North Carolina criminal justice system than are we, he concluded that, in the context of constitutional questions arising in criminal prosecutions, permissive review in the state's highest court may be predictably the most meaningful review the conviction will receive. *Ibid.* The North Carolina Court of Appeals, for example, will be constrained in diverging from an earlier opinion of the State Supreme Court, even if

Page 620

subsequent developments have rendered the earlier Supreme Court decision suspect. "[T]he state's highest court remains the ultimate arbiter of the rights of its citizens." *Ibid.*

Chief Judge Haynsworth also correctly observed that the indigent defendant proceeding without counsel is at a substantial disadvantage relative to wealthy defendants represented by counsel when he is forced to fend for himself in seeking discretionary review from the State Supreme Court or from this Court. It may well not be enough to allege error in the courts below in layman's terms; a more sophisticated approach may be demanded: *

An indigent defendant is as much in need of the

Page 621

assistance of a [94 S.Ct. 2449] lawyer in preparing and filing a petition for certiorari as he is in the handling of an appeal as of right. In many appeals, an articulate defendant could file an effective brief by telling his story in simple language without legalisms, but the technical requirements for applications for writs of certiorari are hazards which one untrained in the law could hardly be expected to negotiate.

Certiorari proceedings constitute a highly specialized aspect of appellate work. The factors which [a court] deems important in connection with deciding whether to grant certiorari are certainly not within the normal knowledge of an indigent appellant. Boskey, *The Right to Counsel*

in Appellate Proceedings, 45 Minn.L.Rev. 783, 797 (1961) (footnote omitted).

483 F.2d at 653. Furthermore, the lawyer who handled the first appeal in a case would be familiar with the facts and legal issues involved in the case. It would be a relatively easy matter for the attorney to apply his expertise in filing a petition for discretionary review to a higher court, or to advise his client that such a petition would have no chance of succeeding.

Douglas v. California was grounded on concepts of fairness and equality. The right to seek discretionary review is a substantial one, and one where a lawyer can be of significant assistance to an indigent defendant. It was correctly perceived below that the same concepts of fairness and equality, which require counsel in a first appeal of right, require counsel in other and subsequent discretionary appeals.

Id. at 655.

Notes:

[1] 483 F.2d 650 (1973).

[2] *State v. Moffitt*, 9 N.C.App. 694, 177 S.E.2d 324 (1970) (Mecklenburg); *State v. Moffitt*, 11 N.C.App. 337, 181 S.E.2d 184 (1971) (Guilford).

[3] *State v. Moffitt*, 279 N.C. 396, 183 S.E.2d 247 (1971).

[4] 483 F.2d at 654.

[5] *Id.* at 655. The court then decided to remand the case to the District Court to "appraise the substantiality of the federal claim." The court noted that it had no opportunity to examine the papers filed in the State Supreme Court and said that,

[i]n the circumstances of this case . . . , where the only remedy available to the District Court would be the prisoners release on a writ of habeas corpus,

it was appropriate for the District Court to determine whether respondent's claim was "patently frivolous." *Ibid.*

[6] See *United States ex rel. Pennington v. Pate*, 409 F.2d 757 (CA7 1969); *Peters v. Cox*, 341 F.2d 575 (CA10 1965).

[7] See 351 U.S. at 13 n.2.

[8] The Court of Appeals in this case, for example, examined both possible rationales, stating: If the holding [in *Douglas*] be grounded on the equal protection clause, inequality in the circumstances of these cases is as obvious as it was in the circumstances of *Douglas*. If the holding in *Douglas* were grounded on the due process clause, and Mr. Justice Harlan in dissent thought the discourse should have been in those terms, due process encompasses elements of equality. There simply cannot be due process of the law to a litigant deprived of all professional assistance when other litigants, similarly situated, are able to obtain professional assistance and to be benefited by it. The same concepts of fairness and equality, which require counsel in a first appeal of right, require counsel in other and subsequent discretionary appeals.

483 F.2d at 655.

[9] *Hudson County Water Co. v. McCarter*, 209 U.S. 349, 355 (1908).

[10] See Brief for Respondent 9 n. 5.

[11] For example, subsection (b)(6) of § 7A-451, effective at the time of respondent's appeals,

provides for counsel on

[d]irect review of any judgment or decree, including review by the United States Supreme Court of final judgment or decrees rendered by the highest court of North Carolina in which decision may be had.

But this provision apparently has not been construed to allow counsel for permissive appellate procedures. See 483 F.2d at 652.

[12] Section 7A-451 of N.C.Gen.Stat. (Supp. 1973) provides:

(a) An indigent person is entitled to services of counsel in the following actions and proceedings:

- (1) Any case in which imprisonment, or a fine of five hundred dollars (\$500.00), or more, is likely to be adjudged;
- (2) A hearing on a petition for a writ of habeas corpus under Chapter 17 of the General Statutes;
- (3) A post-conviction proceeding under Chapter 15 of the General Statutes;
- (4) A hearing for revocation of probation, if confinement is likely to be adjudged as a result of the hearing;
- (5) A hearing in which extradition to another state is sought;
- (6) A proceeding for judicial hospitalization under Chapter 122, Article 7 (Judicial Hospitalization) or Article 11 (Mentally Ill Criminals), of the General Statutes and a proceeding for involuntary commitment to a treatment facility under Article 5 of Chapter 122 of the General Statutes;
- (7) A civil arrest and bail proceeding under Chapter 1, Article 34, of the General Statutes; and
- (8) In the case of a juvenile, a hearing as a result of which commitment to an institution or transfer to the superior court for trial on a felony charge is possible.

[*] An indigent defendant proceeding without the assistance of counsel would be attempting to satisfy one of three statutory standards for review when seeking certiorari from the North Carolina Supreme Court:

- (1) The subject matter of the appeal has significant public interest, or
- (2) The cause involves legal principles of major significance to the jurisprudence of the State, or
- (3) The decision of the Court of Appeals appears likely to be in conflict with a decision of the Supreme Court.

N.C.Gen.Stat. § 7A-31(c) (1969).

It seems likely that only the third would have been explored in a brief on the merits before the Court of Appeals, and the indigent defendant would draw little assistance from that brief in attempting to satisfy either of the first two standards.

Rule 19 of this Court provides some guidelines for the exercise of our certiorari jurisdiction, including decisions by a state court on federal questions not previously decided by this Court; but it may not be enough simply to assert that there was error in the decision of the court below. Cf. *Magnum Import Co. v. Coty*, 262 U.S. 159, 163. Moreover, this Court is greatly aided by briefs prepared with accuracy, brevity, and clarity in its determination of whether certiorari should be granted. See *Furness, Withy & Co. v. Yan-Tsze Insurance Assn.*, 242 U.S. 430, 434.
