

MCILS

May 14, 2019

**Commissioner's Meeting
Packet**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

MAY 14, 2019

COMMISSION MEETING

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

- 1) Approval of April 9, 2019, Commission Meeting Minutes
- 2) Operations Reports
- 3) Fee Rule discussion
- 4) Action Items List Update
- 5) Legislative Update
- 6) DefenderData Upgrade
- 7) Juveniles at Long Creek
- 8) Public Comment
- 9) Set Date, Time and Location of Next Regular Meeting of the Commission
- 10) Executive Session, if needed (Closed to Public)

(1.)

**April 9, 2019
Commission Meeting
Minutes**

**Maine Commission on Indigent Legal Services – Commissioners Meeting
April 9, 2019**

Minutes

Commissioners Present: Steven Carey, Carlann Welch

MCILS Staff Present: Ellie Maciag, John Pelletier

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Approval of the March 12, 2019 Commission Meeting Minutes	No discussion of meeting minutes.	Commissioner Welch moved for approval, Chair Carey seconded. All voted in favor. Approved.
Operations Reports Review	<u>March 2019 Operations Report:</u> 2,223 new cases were opened in the DefenderData system in March. This was a 159 case increase over February. The number of submitted vouchers in March was 2,682, an increase of 111 vouchers over February, totaling \$1,555,153, an increase of \$231,000 over February. Director Pelletier noted that submissions were moderate and that the increased amount paid this month was due to staff having paid the backlog of vouchers to avoid any carryover balance into next quarter. The average price per voucher was \$528.76, up \$8.51 per voucher from February. Appeal and Drug Court cases had the highest average vouchers. There were 13 vouchers exceeding \$5,000 paid in March. 140 authorizations to expend funds were issued in March, and we paid \$106,084 for experts and investigators, etc. The monthly transfer from the Judicial Branch for counsel fees for March, which reflects February's collections, totaled \$134,996, up approximately \$33,000 from February. One attorney complaint was received in February. Director Pelletier will keep the Commissioners apprised of the investigation into this complaint.	
Sixth Amendment Center Presentation	Chair Carey indicated the Commissioners would have an initial discussion about the Sixth Amendment Center's Report and left open the possibility to have a special	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>meeting to continue the discussion. He also noted that the Commission needs to revise the actions items list based on the 6AC recommendations. Director Pelletier noted that there were two items included in David Carroll's presentation that were timely with the Commission's rulemaking for the fee rule amendment: (1) vouchers to be submitted under penalty of perjury and (2) lawyers required to keep daily log sheets for audit purposes. Chair Carey asked staff to ascertain whether daily bill sheets could be built into the DefenderData program. The Commissioners then discussed the 6AC findings in turn:</p> <p><u>Finding 1</u> – attorney qualifications are too lenient. Director Pelletier noted that the attorney qualification rule is a major substantive rule and the Commission will need to ask the legislature to change it to a minor technical rule so the Commission can amend it. The Commissioners requested that a review of the attorney qualifications be added to the action item list, including: (1) the number of attorneys on the rosters; (2) how to expand our training (looking at the 6AC report and other states); (3) strengthening the CLE requirement; and (4) ask David Carroll to clarify what recertification entailed.</p> <p><u>Finding 2</u> – uncounseled plea discussions. Chair Carey indicated that he would support legislation concerning early assignment of counsel and to develop ways to better inform indigent clients about their rights. He suggested staff develop a pamphlet or script for LOD attorneys to use to be able to better inform clients about their rights.</p> <p><u>Finding 3</u> – Oversight of financial screeners. Chair Carey indicated that he would either stay neutral or not object to the Commission relinquishing oversight of the financial screeners to another agency.</p> <p><u>Finding 4</u> – LOD program creates a critical gap in representation. Director Pelletier noted that in Massachusetts, duty lawyers get all the cases heard that day and that no guilty pleas are taken at initial appearance. Chair Carey supported that idea, but cautioned it would be difficult to implement. Chair Carey renewed his call for a lawyer of the day training.</p> <p><u>Finding 5</u> – too many underperforming attorneys on the rosters. Chair Carey asked staff to follow up on the attorney noted in the 6AC report who did not visit clients in</p>	<p>Chair Carey moved to</p>

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>custody.</p> <p><u>Finding 6</u> – implementing workload limits. Chair Carey asked staff to add workload limits to the action item list, including a way to track the hours or percentage of caseload for attorneys handling non-Commission cases. He noted that this might require amendments to the qualification and specialized panel rules.</p> <p><u>Finding 7</u> – Somerset County contract causes a financial conflict of interest. After some discussion, the Commissioners decided to not extend the contract once it expires in July. Chair Carey asked staff to notify the current contract holders about the decision and to move to the assigned counsel model while the Commission explores good contract models.</p> <p><u>Finding 8</u> – excessive billing and lack of Commission oversight. Commissioner Welch requested this item remain on the action item list and to also look at the low billers as well. The frequency of review also needs to be examined (annually, biannually, some other interval).</p>	<p>not renew or put out an RFP for a new contract and move towards an assigned counsel model in Somerset County, at least until the Commission has time to consider other models. Commissioner Welch seconded. All voted in favor.</p>
Budget Update	<p>Director Pelletier updated the Commissioners on the status of the current and biennial budgets. He relayed that the current fiscal year budget is in good shape and expects the Commission to be able to cover all costs. The Judiciary Committee voted unanimously to fill the funding gap in the biennial budget.</p>	
DefenderData Upgrade	<p>Director Pelletier relayed that the DefenderData program had been upgraded to track entry of unusually large numbers of hours for individual dates. An alert is emailed to the attorney and Commission staff if an attorney has entered hours that, together with previously entered hours, pushes the hours entered for a single day beyond 16 hours. The Commissioners instructed staff to reduce the time threshold from 16 to 12 hours.</p>	
Public Comment	<p><u>Robert Ruffner, Esq.</u>: Attorney Ruffner stated that it wasn't fair to heap criticism on the Commission or feign surprise that the Commission wasn't able to do it all. He suggested the Commission act on the following: (1) contact the courts to increase the number of lawyers at each LOD session; (2) increase the authorized hourly limit for Resource Counsel from 10 hours a month to 10 hours a week; (3) organize an LOD</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	training, covering how LOD should act and the importance of passing along info to assigned counsel; (4) require the disclosure of non-Commission cases worked on each year; and (5) reach out to other organizations such as MACDL for assistance. Attorney Ruffner relayed a public comment from Attorney Tina Nadeau who was not in attendance. Attorney Nadeau requested that the Commission delay rulemaking on the fee cap rule until all the vacant Commissioner seats are filled. She also noted the cost disparities between the annual cost of all juvenile defense (\$550,000) and the cost of housing one juvenile at Long Creek (over \$300,000).	
Executive Session	None	
Adjournment of meeting	The Commission voted to adjourn with the next meeting to be on May 14, 2019 at 9:30 a.m.	Chair Carey moved to adjourn. Commissioner Welch seconded. All present in favor.

(2.)

Operations Reports

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
SUBJECT: APRIL 2019 OPERATIONS REPORTS
DATE: MAY 7, 2019

Attached you will find the April, 2019, Operations Reports for your review and our discussion at the Commission meeting on May 14, 2019. A summary of the operations reports follows:

- 2,274 new cases were opened in the DefenderData system in April. This was a 51 case increase over March.
- The number of vouchers submitted electronically in April was 2,724 an increase of 42 vouchers over March, totaling \$1,478,221.34, a decrease of \$77,000 from March. In April, we paid 1,869 electronic vouchers totaling \$979,265.00 representing a decrease of 1,337 vouchers and \$716,000 compared to March.
- There were no paper vouchers submitted and paid in April.
- The average price per voucher in April was \$523.95, down \$4.81 per voucher over March.
- Post-Conviction Review and Drug Court cases had the highest average vouchers in April. There were 9 vouchers exceeding \$5,000 paid in April. See attached addendum for details.
- The contract amount paid for representation in Somerset County in April was \$22,687.50.
- In April, we issued 155 authorizations to expend funds: 92 for private investigators, 43 for experts, and 20 for miscellaneous services such as interpreters and transcriptionists. In April, we paid \$87,557.89 for experts and investigators, etc. In April, 1 request for funds was modified. See attached addendum for details.
- We received three complaints about attorneys in April and followed up on a complaint from March. The March complaint involved a client who was arrested when he failed to comply with the requirements of a Maine Pre-trial contact that the client stated had not been relayed to him by the lawyer. This involved an unusual situation where the contract applied to bail in one county, but unbeknownst to counsel, the client, rather than being released, was transferred to jail in a different county. Two lawyers were involved and both accepted responsibility and related steps they would take to avoid this in the future. We

counseled the lawyers about dividing responsibility on a case and the need for the assigned attorney to handle cases assigned to them. In April, we received a complaint about lack of contact from counsel in a child protective case. The attorney disagreed and related numerous contacts with the client. The attorney did note, however, that the client had failed to contact the attorney on a number of occasions. We reached out to the attorney to determine whether the attorney had been pro-active about contacting the client or was relying on the client to initiate the contact. We have yet to hear back but will continue to follow up. We also received a complaint from a GAL that a father in a PC case had been asked to provide money for fees for subpoena service. We confirmed with the client, but the client asked us not to contact the attorney so as not to disrupt the ongoing case. We view this as a serious matter and will intervene once the client authorizes us to do so, which we expect in the near future. Finally, we received a complaint from the significant other of an incarcerated client about lack of updates about the case from the attorney. We contacted the attorney who represented that he was on top of the matter, but the client was awaiting trial on a serious matter so there was no activity to update.

- Four requests for co-counsel were approved in April. One involved a Class A Gross Sexual Assault case. Another involved the need for a limited assignment of co-counsel licensed in New Hampshire to address a New Hampshire case with an outstanding warrant that was preventing resolution of the Maine case. We approved a request for co-counsel in a Termination of Parental Rights case that involved 10 children and where lead counsel believed assistance was necessary. Finally, we approved co-counsel in a Domestic Violence case where resource counsel felt the experience would benefit co-counsel and co-counsel agreed to payment at one-half the hourly rate. In April, we denied one request for co-counsel due to the class and seriousness of the charge.

In our All Other Account, the total expenses for the month of April were \$1,108,203.03. Of that amount, approximately \$17,000 was devoted to the Commission's operating expenses. The operations expenses were unusually high because we made the annual payment for administration of our website.

In the Personal Services Account, we had \$82,142.29 in expenses for the month of April in which checks were issued for three payroll periods.

In the Revenue Account, the transfer for April, reflecting March's collections, totaled \$170,311.86, an increase of approximately \$35,000 from the previous month.

During April, we paid facilities and meals charges for a Juvenile training in Portland. This training was the last funded by a juvenile training grant from the John T. Gorman Foundation.

VOUCHERS EXCEEDING \$5,000 PAID APRIL 2019

	Voucher Total	Case total
Voucher in a Class A Aggravated Trafficking case. Client pled guilty at jury selection to a Class B trafficking. Case handled by co-counsel in the same firm with companion Tampering case. Highly contested with 10+ litigated pretrial motions. Issues included joinder, use of evidence in one case at trial on the other, and use of out-of-court victim statements. Alibi on tampering charge involved witnesses in other state and cell location data. Tampering charge dismissed. State sought 8-9 years, defendant sentenced to nine months. Tampering dismissed.	\$14,888	\$29,662 (\$14,774 paid on companion case)
Voucher in a Class C Tampering with a Witness case. Case dismissed. Case handled by co-counsel in the same firm with companion Class A Trafficking case case. Highly contested with 10+ litigated pretrial motions. Issues included joinder, use of evidence in one case at trial on the other, and use of out-of-court victim statements. Alibi on tampering charge involved witnesses in other state and cell location data. State sought 8-9 years, defendant sentenced to nine months at jury selection on Class B trafficking charge.	\$14,774	\$29,662 (\$14,888 paid on companion case)
Final voucher in a case where the defendant was charged with over 30 burglaries across multiple counties. All burglaries dismissed as trial about to commence. Defendant pled to single count of violating conditions of release. Case lasted from 2/22/15 to 4/18/19. Case involved multi-day Franks litigation, and experts on DNA, tool mark, and cell location data.	\$12,660	\$50,520 (\$37,869 paid on four previously submitted vouchers)
Voucher in Aggravated Assault case. Defendant pled to simple Assault on eve of jury selection, an offer the defendant had made early on in the case. Matter involved extensive pre-trial litigation, including use of out-of-court victim statements, both recording and disclosure of grand jury testimony, and multiple bail motions.	\$9,826	\$9,826
Voucher after two-day suppression hearing in a murder case. Co-counsel in the same firm.	\$8,898	\$13,285 (\$4,387 paid on interim voucher after initial discovery review)
Voucher after a 3-day trial in an Aggravated Trafficking case. Hung jury. Co-counsel from same firm. Cases involved suppression litigation and DNA evidence.	\$7,314	\$7,314
Voucher after a 3-day trial in a Robbery case where the defendant raised a mental health defense. Defendant found guilty.	\$6,245	\$6,245

Voucher in an OUI case where the defendant pled to Driving to Endanger after the trial commenced. Interpreter required for client with limited English. Litigation over effect of language barrier on Field Sobriety Tests.	\$5,382	\$5,382
Voucher in a Burglary case. Motion for acquittal granted after first day of trial. Counsel prepared for trial twice because initial trial date continued due to discovery violation. Further litigation on discovery issue prior to trial actually commencing.	\$5,180	\$5,180

FUNDS REQUESTS DENIED/MODIFIED APRIL 2019

- One request for funds was modified to authorize a reduced amount. The attorney requested funds for paralegal time, and the amount was reduced based on a reduction in the hourly rate requested.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Case Type

4/30/2019

	Apr-19						Fiscal Year 2019			
DefenderData Case Type	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
Appeal	16	14	\$ 17,739.73	3	\$ 2,678.82	\$ 892.94	128	181	\$ 276,260.60	\$ 1,526.30
Child Protection Petition	270	506	\$ 291,372.65	359	\$ 197,387.58	\$ 549.83	2,141	3,892	\$ 2,303,438.53	\$ 591.84
Drug Court	0	5	\$ 6,534.00	4	\$ 5,880.00	\$ 1,470.00	4	53	\$ 58,028.00	\$ 1,094.87
Emancipation	7	7	\$ 2,029.48	5	\$ 1,471.48	\$ 294.30	71	64	\$ 22,853.31	\$ 357.08
Felony	490	507	\$ 487,099.69	331	\$ 317,818.82	\$ 960.18	5,027	5,372	\$ 4,621,540.57	\$ 860.30
Involuntary Civil Commitment	66	88	\$ 19,660.09	67	\$ 15,569.65	\$ 232.38	830	795	\$ 180,390.72	\$ 226.91
Juvenile	69	95	\$ 49,668.74	67	\$ 26,757.80	\$ 399.37	698	778	\$ 374,346.11	\$ 481.16
Lawyer of the Day - Custody	218	189	\$ 42,941.10	133	\$ 30,871.18	\$ 232.11	2,258	2,079	\$ 497,154.10	\$ 239.13
Lawyer of the Day - Juvenile	37	38	\$ 7,083.68	27	\$ 5,182.40	\$ 191.94	345	327	\$ 65,143.92	\$ 199.22
Lawyer of the Day - Walk-in	118	119	\$ 28,640.76	87	\$ 20,607.12	\$ 236.86	1,280	1,123	\$ 268,653.87	\$ 239.23
Misdemeanor	721	739	\$ 314,484.78	479	\$ 207,863.36	\$ 433.95	7,248	7,253	\$ 2,908,959.02	\$ 401.07
Petition, Modified Release Treatment	1	8	\$ 5,660.56	5	\$ 2,042.19	\$ 408.44	5	39	\$ 20,428.78	\$ 523.81
Petition, Release or Discharge	0	3	\$ 390.35	1	\$ 312.35	\$ 312.35	1	8	\$ 4,110.74	\$ 513.84
Petition, Termination of Parental Rights	22	32	\$ 22,282.36	28	\$ 19,382.60	\$ 692.24	210	520	\$ 401,121.06	\$ 771.39
Post Conviction Review	5	6	\$ 16,341.91	4	\$ 11,617.36	\$ 2,904.34	84	92	\$ 168,910.86	\$ 1,835.99
Probate	5	7	\$ 9,685.39	3	\$ 2,693.92	\$ 897.97	37	16	\$ 14,702.12	\$ 918.88
Probation Violation	184	155	\$ 59,571.57	106	\$ 44,241.69	\$ 417.37	1,684	1,694	\$ 676,137.05	\$ 399.14
Represent Witness on 5th Amendment	1	1	\$ 666.00	1	\$ 666.00	\$ 666.00	22	26	\$ 9,710.16	\$ 373.47
Resource Counsel Criminal	0	4	\$ 606.00	4	\$ 744.00	\$ 186.00	12	37	\$ 5,760.00	\$ 155.68
Resource Counsel Juvenile	0	1	\$ 24.00	1	\$ 24.00	\$ 24.00	6	3	\$ 132.00	\$ 44.00
Resource Counsel Protective Custody	0	3	\$ 420.00	5	\$ 528.00	\$ 105.60	9	20	\$ 2,520.00	\$ 126.00
Review of Child Protection Order	43	196	\$ 94,904.50	149	\$ 64,924.68	\$ 435.74	563	1,803	\$ 898,515.32	\$ 498.34
Revocation of Administrative Release	1	1	\$ 414.00	0		\$ -	11	14	\$ 4,382.76	\$ 313.05
DefenderData Sub-Total	2,274	2,724	\$ 1,478,221.34	1,869	\$ 979,265.00	\$ 523.95	22,674	26,189	\$ 13,783,199.60	\$ 526.30
Paper Voucher Sub-Total		0		0	\$ -	#DIV/0!		0		#DIV/0!
TOTAL	2,274	2,724	\$1,478,221.34	1,869	\$979,265.00	\$ 523.95	22,674	26,189	\$ 13,783,199.60	\$ 526.30

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY19 FUND ACCOUNTING
AS OF 04/30/2019

Account 014 95F Z258 01 (All Other)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY19 Total
FY19 Professional Services Allotment		\$ 4,455,000.00		\$ 4,347,001.00		\$ 4,595,478.00		\$ 4,795,226.00	
FY19 General Operations Allotment		\$ 45,000.00		\$ 45,000.00		\$ 45,000.00		\$ 45,000.00	
Budget Order Adjustment		\$ (310,496.00)		\$ 310,496.00		\$ -		\$ -	
Legislative Amendment (revenue & conference)		\$ 198,374.00		\$ 198,374.00		\$ 198,374.00		\$ 198,375.00	
Total Budget Allotments		\$ 4,387,878.00		\$ 4,900,871.00		\$ 4,838,852.00		\$ 5,038,601.00	\$ 19,166,202.00
Total Expenses	1	\$ (882,611.39)	4	\$ (1,766,940.01)	7	\$ (1,672,817.43)	10	\$ (1,108,203.03)	
	2	\$ (1,830,038.43)	5	\$ (1,150,745.03)	8	\$ (1,411,849.66)	11	\$ -	
	3	\$ (1,406,760.51)	6	\$ (2,024,450.12)	9	\$ (1,844,099.59)	12	\$ -	
Encumbrances (Somerset PDP & Justice Works)		\$ (255,467.50)		\$ 84,597.50		\$ 84,070.00		\$ 28,192.50	\$ (58,607.50)
Encumbrances (B Taylor, business cards)		\$ (13,000.00)		\$ 8,666.66		\$ 4,333.33		\$ -	\$ (0.01)
Encumbrances (B Taylor)				\$ (52,000.00)		\$ 12,999.99		\$ 4,333.33	\$ (34,666.68)
Encumbrances (Videographer)						\$ (4,800.00)		\$ -	\$ (4,800.00)
TOTAL REMAINING		\$ 0.17		\$ 0.00		\$ 6,688.64		\$ 3,962,923.80	\$ 3,969,612.61

Q4 Month 10	
INDIGENT LEGAL SERVICES	
Counsel Payments	\$ (979,265.00)
Somerset County	\$ (22,687.50)
Somerset County Discovery	\$ -
Subpoena Witness Fees	\$ -
Private Investigators	\$ (21,792.53)
Mental Health Expert	\$ (21,046.47)
Transcripts	\$ (15,691.97)
Other Expert	\$ (26,431.50)
Lodging & Airline Fees for Trial	\$ (591.92)
Process Servers	\$ (257.13)
Interpreters	\$ (563.72)
Misc Prof Fees & Serv	\$ (1,182.65)
SUB-TOTAL ILS	\$ (1,089,510.39)
OPERATING EXPENSES	
InforME Annual Fee	\$ (2,640.00)
DefenderData	\$ (5,505.00)
Service Center	\$ (773.75)
Mileage/Tolls/Parking	\$ (1,163.80)
Mailing/Postage/Freight	\$ (283.73)
West Publishing Corp	\$ (185.13)
VDT eyeglasses	\$ (150.00)
Office Supplies/Equip.	\$ (146.45)
Cellular Phones	\$ (143.58)
OIT/TELCO	\$ (2,215.15)
Office Equipment Rental	\$ (112.24)
Training Facilities & Meals	\$ (1,040.48)
Barbara Taylor monthly fees	\$ (4,333.33)
SUB-TOTAL OE	\$ (18,692.64)
TOTAL	\$ (1,108,203.03)

INDIGENT LEGAL SERVICES	
Q4 Allotment	\$ 5,038,601.00
Q4 Encumbrances for Somerset PDP & Justice Works contracts	\$ 28,192.50
Barbara Taylor Contract	\$ 4,333.33
Videographer Contract	\$ -
Q4 Expenses to date	\$ (1,108,203.03)
Remaining Q4 Allotment	\$ 3,962,923.80

Non-Counsel Indigent Legal Services	
Monthly Total	\$ (87,557.89)
Total Q1	\$ (260,358.16)
Total Q2	\$ (250,267.57)
Total Q3	\$ (329,340.04)
Total Q4	\$ (87,557.89)
Fiscal Year Total	\$ (927,523.66)

Conference Account Transactions	
Training Videographer	\$ -
Training Facilities & Meals	\$ (1,040.48)
Printing/Binding	\$ -
Overseers of the Bar CLE fee	\$ -
Collected Registration Fees	\$ -
Current Month Total	\$ (1,040.48)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY19 FUND ACCOUNTING
As of 04/30/19

Account 014 95F 2258 01 (Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY19 Total
Total Budget Allotments		\$ 184,124.00		\$ 184,124.00		\$ 184,124.00		\$ 184,125.00	\$ 736,497.00
Financial Order Adjustment	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Financial Order Adjustment	2	\$ -	5	\$ -	8	\$ -	11		
Budget Order Adjustment	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
Budget Order Adjustment		\$ -		\$ -		\$ -	12	\$ -	\$ -
Total Budget Allotments		\$ 184,124.00		\$ 184,124.00		\$ 184,124.00		\$ 184,125.00	\$ 736,497.00
Cash Carryover from Prior Quarter		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB	1	\$ 83,016.89	4	\$ 82,863.81	7	\$ 90,705.92	10	\$ 170,311.86	
Promissory Note Payments		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB	2	\$ -	5	\$ 116,115.85	8	\$ 101,822.48	11	\$ -	
Court Ordered Counsel Fee		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB (late transfer)		\$ 89,153.94		\$ -	9	\$ -		\$ -	
Collected Revenue from JB	3	\$ 86,999.14	6	\$ 70,129.23	9	\$ 134,996.48	12	\$ -	
Returned Checks-stopped payments		\$ -		\$ -		\$ -		\$ -	
TOTAL CASH PLUS REVENUE COLLECTED		\$ 259,169.97		\$ 269,108.89		\$ 327,524.88		\$ 170,311.86	\$ 1,026,115.60
Counsel Payments	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Other Expenses		\$ -		\$ -		\$ -	***	\$ -	
Counsel Payments	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Other Expenses		\$ -		\$ -		\$ -		\$ -	
Counsel Payments	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
Other Expenses	*	\$ -	**	\$ -	***	\$ -		\$ -	
REMAINING ALLOTMENT		\$ 184,124.00		\$ 184,124.00		\$ 184,124.00		\$ 184,125.00	\$ 736,497.00
Overpayment Reimbursements	1		4	\$ (1,694.84)	7	\$ -	10	\$ (1,776.53)	
	2	\$ (2,905.00)	5	\$ (69.00)	8	\$ (224.00)	11	\$ -	
	3	\$ (560.00)	6	\$ (618.00)	9	\$ (186.00)	12	\$ -	
REMAINING CASH Year to Date		\$ 255,704.97		\$ 266,727.05		\$ 327,114.88		\$ 168,535.33	\$ 1,018,082.23

Q4 Month 10	
DEFENDER DATA COUNSEL PAYMENTS	
	\$ -
SUB-TOTAL IL	\$ -
OVERPAYMENT REIMBURSEMENTS	\$ (1,776.53)
Paper Voucher	\$ -
Somerset County CDs	\$ -
Private Investigators	\$ -
Mental Health Expert	\$ -
Transcripts	\$ -
Other Expert	\$ -
StaCap Expense	\$ -
SUB-TOTAL OE	\$ (1,776.53)
TOTAL	\$ (1,776.53)

Collections versus Allotment	
Monthly Total	\$ 170,311.86
Total Q1	\$ 259,169.97
Total Q2	\$ 269,108.89
Total Q3	\$ 327,524.88
Total Q4	\$ 170,311.86
Allotment Expended to Date	\$ (613,747.00)
Fiscal Year Total	\$ 412,368.60

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY19 FUND ACCOUNTING
AS OF 04/30/2019

Account 014 95F Z258 01 (Personal Services)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY19 Total
FY19 Allotment	\$	197,081.00	\$	223,111.00	\$	197,084.00	\$	215,289.00	\$ -
Financial Order Adjustments	\$	-	\$	-	\$	-	\$	-	
Financial Order Adjustments	\$	-	\$	-	\$	-	\$	-	
Budget Order Adjustments			\$	-	\$	-			
Total Budget Allotments	\$	197,081.00	\$	223,111.00	\$	197,084.00	\$	215,289.00	\$ 832,565.00
Total Expenses	1 \$	(55,638.04)	4 \$	(78,750.49)	7 \$	(56,280.97)	10 \$	(82,142.29)	
	2 \$	(56,106.91)	5 \$	(55,548.91)	8 \$	(54,894.29)	11 \$	-	
	3 \$	(55,392.68)	6 \$	(55,885.11)	9 \$	(54,880.79)	12 \$	-	
TOTAL REMAINING	\$	29,943.37	\$	32,926.49	\$	31,027.95	\$	133,146.71	\$ 227,044.52

Q4 Month 10	
Per Diem Payments	\$ -
Salary	\$ (37,666.94)
Vacation Pay	\$ (3,785.74)
Holiday Pay	\$ (1,626.88)
Sick Pay	\$ (2,625.36)
Standard Overtime	\$ -
Health Insurance	\$ (13,930.71)
Dental Insurance	\$ (334.83)
Employer Retiree Health	\$ (5,353.52)
Employer Retirement	\$ (3,135.95)
Employer Group Life	\$ (413.70)
Employer Medicare	\$ (649.65)
Retiree Unfunded Liability	\$ (9,566.32)
July & August Per Diem	\$ -
Perm Part Time Full Ben	\$ (3,052.69)
TOTAL	\$ (82,142.29)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Court

4/30/2019

Apr-19							Fiscal Year 2019			
Court	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
ALFSC	2	4	\$ 3,087.00	2	\$ 801.00	\$ 400.50	37	62	\$ 60,915.44	\$ 982.51
AUBSC	1	2	\$ 744.00	0			12	20	\$ 18,981.84	\$ 949.09
AUGDC	28	42	\$ 22,488.50	31	\$ 16,308.50	\$ 526.08	368	543	\$ 280,422.52	\$ 516.43
AUGSC	4	18	\$ 13,408.91	10	\$ 8,918.54	\$ 891.85	71	133	\$ 75,571.00	\$ 568.20
BANDC	75	109	\$ 37,096.88	82	\$ 29,660.76	\$ 361.72	703	1,007	\$ 343,233.75	\$ 340.85
BANSC	0	0		0			3	9	\$ 24,338.02	\$ 2,704.22
BATSC	1	0		0			3	0		
BELDC	9	23	\$ 12,848.83	17	\$ 10,257.32	\$ 603.37	83	231	\$ 165,462.26	\$ 716.29
BELSC	1	0		0			4	6	\$ 12,879.06	\$ 2,146.51
BIDDC	81	108	\$ 55,535.02	87	\$ 44,996.74	\$ 517.20	612	837	\$ 434,927.26	\$ 519.63
BRIDC	16	23	\$ 9,424.32	15	\$ 5,505.56	\$ 367.04	142	185	\$ 92,994.33	\$ 502.67
CALDC	4	10	\$ 7,669.04	9	\$ 4,921.04	\$ 546.78	43	85	\$ 50,199.20	\$ 590.58
CARDC	13	48	\$ 24,489.37	20	\$ 12,034.11	\$ 601.71	116	165	\$ 79,147.74	\$ 479.68
CARSC	0	1	\$ 204.00	0			7	13	\$ 7,728.19	\$ 594.48
DOVDC	8	15	\$ 7,613.40	13	\$ 4,757.40	\$ 365.95	51	120	\$ 41,220.86	\$ 343.51
DOVSC	0	0		0			0	1	\$ 162.00	\$ 162.00
ELLDC	25	37	\$ 25,270.32	25	\$ 16,037.12	\$ 641.48	162	272	\$ 187,318.46	\$ 688.67
ELLSC	0	1	\$ 102.00	1	\$ 102.00	\$ 102.00	3	3	\$ 3,237.00	\$ 1,079.00
FARDC	11	25	\$ 10,616.27	11	\$ 6,175.99	\$ 561.45	145	217	\$ 150,109.69	\$ 691.75
FARSC	0	0		0			0	4	\$ 932.34	\$ 233.09
FORDC	5	17	\$ 8,850.78	17	\$ 8,568.78	\$ 504.05	56	88	\$ 53,771.82	\$ 611.04
HOUDC	15	19	\$ 7,291.39	16	\$ 7,046.35	\$ 440.40	171	234	\$ 104,078.10	\$ 444.78
HOUSC	0	3	\$ 600.00	0			1	3	\$ 7,961.58	\$ 2,653.86
LEWDC	69	130	\$ 60,705.76	76	\$ 30,735.04	\$ 404.41	702	1,090	\$ 499,030.12	\$ 457.83
LINDC	11	9	\$ 4,269.24	11	\$ 4,831.76	\$ 439.25	89	142	\$ 53,274.70	\$ 375.17
MACDC	9	12	\$ 2,136.00	6	\$ 1,026.00	\$ 171.00	89	153	\$ 54,742.04	\$ 357.79
MACSC	0	1	\$ 108.00	0			2	7	\$ 1,518.00	\$ 216.86
MADDC	1	2	\$ 543.60	1	\$ 150.00	\$ 150.00	14	14	\$ 4,209.56	\$ 300.68
MILDC	3	6	\$ 2,623.76	7	\$ 3,004.48	\$ 429.21	42	48	\$ 18,463.68	\$ 384.66
NEWDC	23	28	\$ 9,670.69	20	\$ 7,931.93	\$ 396.60	144	217	\$ 86,309.43	\$ 397.74
PORDC	56	115	\$ 52,307.37	94	\$ 35,559.92	\$ 378.30	739	1,051	\$ 530,193.27	\$ 504.47
PORSC	2	1	\$ 12,659.48	1	\$ 12,659.48	\$ 12,659.48	10	10	\$ 23,282.68	\$ 2,328.27
PREDC	21	37	\$ 22,372.76	30	\$ 17,477.01	\$ 582.57	147	239	\$ 114,505.92	\$ 479.10
ROCD	31	42	\$ 18,859.80	24	\$ 7,805.92	\$ 325.25	218	279	\$ 128,283.68	\$ 459.80
RODC	2	1	\$ 232.36	1	\$ 232.36	\$ 232.36	14	18	\$ 3,560.35	\$ 197.80
RUMDC	8	20	\$ 14,415.30	12	\$ 6,750.85	\$ 562.57	68	104	\$ 58,834.80	\$ 565.72
SKODC	26	63	\$ 31,071.30	35	\$ 16,057.08	\$ 458.77	245	456	\$ 259,850.58	\$ 569.85
SKOSC	0	0		0			0	1	\$ 486.00	\$ 486.00
SOUDC	5	12	\$ 10,947.58	9	\$ 9,089.64	\$ 1,009.96	62	102	\$ 59,412.29	\$ 582.47
SOUSC	0	0		0			0	10	\$ 10,407.85	\$ 1,040.79
SPRDC	46	51	\$ 24,540.13	49	\$ 23,972.29	\$ 489.23	426	593	\$ 324,586.41	\$ 547.36
Law Ct	11	13	\$ 14,061.73	3	\$ 2,678.82	\$ 892.94	98	142	\$ 233,860.25	\$ 1,646.90
YORCD	211	217	\$ 162,692.92	159	\$ 109,571.08	\$ 689.13	2,256	2,302	\$ 1,585,661.91	\$ 688.82
AROCD	115	132	\$ 71,643.54	89	\$ 42,404.79	\$ 476.46	1,257	1,171	\$ 669,576.46	\$ 571.80
ANDCD	141	152	\$ 71,830.68	111	\$ 53,948.56	\$ 486.02	1,486	1,595	\$ 773,027.78	\$ 484.66
KENDC	152	159	\$ 61,789.49	107	\$ 41,879.69	\$ 391.40	1,615	1,606	\$ 677,865.74	\$ 422.08
PENCD	244	211	\$ 101,901.26	149	\$ 69,448.73	\$ 466.10	2,213	2,232	\$ 1,066,511.42	\$ 477.83
SAGCD	28	24	\$ 7,000.44	15	\$ 4,433.76	\$ 295.58	298	315	\$ 197,404.32	\$ 626.68
WALCD	25	34	\$ 24,085.15	25	\$ 13,338.15	\$ 533.53	332	335	\$ 178,152.58	\$ 531.80
PISCD	18	21	\$ 5,262.00	13	\$ 3,402.00	\$ 261.69	156	143	\$ 38,177.27	\$ 266.97
HANCD	70	64	\$ 24,529.88	40	\$ 17,388.00	\$ 434.70	656	664	\$ 325,598.96	\$ 490.36
FRACD	35	30	\$ 30,701.77	10	\$ 4,035.40	\$ 403.54	387	456	\$ 202,151.81	\$ 443.32
WASCD	40	23	\$ 9,160.40	14	\$ 4,830.00	\$ 345.00	426	469	\$ 190,835.50	\$ 406.90
CUMCD	368	369	\$ 258,285.75	225	\$ 172,298.99	\$ 765.77	3,538	3,374	\$ 1,957,289.87	\$ 580.11
KNOCD	59	44	\$ 21,264.49	34	\$ 20,372.10	\$ 599.18	561	530	\$ 268,265.46	\$ 506.16
SOMCD	0	0		1	\$ 1,896.00	\$ 1,896.00	15	16	\$ 26,274.13	\$ 1,642.13
OXFCD	53	70	\$ 39,682.05	43	\$ 26,549.49	\$ 617.43	655	781	\$ 360,881.08	\$ 462.08
LINCD	30	34	\$ 15,511.85	24	\$ 12,326.13	\$ 513.59	273	332	\$ 163,808.76	\$ 493.40
WATDC	17	42	\$ 13,273.42	37	\$ 10,861.78	\$ 293.56	249	501	\$ 221,074.32	\$ 441.27
WESDC	24	26	\$ 21,123.18	20	\$ 8,830.28	\$ 441.51	237	241	\$ 86,771.34	\$ 360.05
WISDC	10	12	\$ 4,562.58	8	\$ 2,530.68	\$ 316.34	76	106	\$ 72,606.38	\$ 684.97
WISSC	0	1	\$ 360.00	1	\$ 360.00	\$ 360.00	2	4	\$ 8,694.22	\$ 2,173.56
YORDC	11	11	\$ 4,695.60	9	\$ 2,505.60	\$ 278.40	84	102	\$ 52,166.22	\$ 511.43
TOTAL	2,274	2,724	\$ 1,478,221.34	1,869	\$ 979,265.00	\$ 523.95	22,674	26,189	\$ 13,783,199.60	\$ 526.30

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

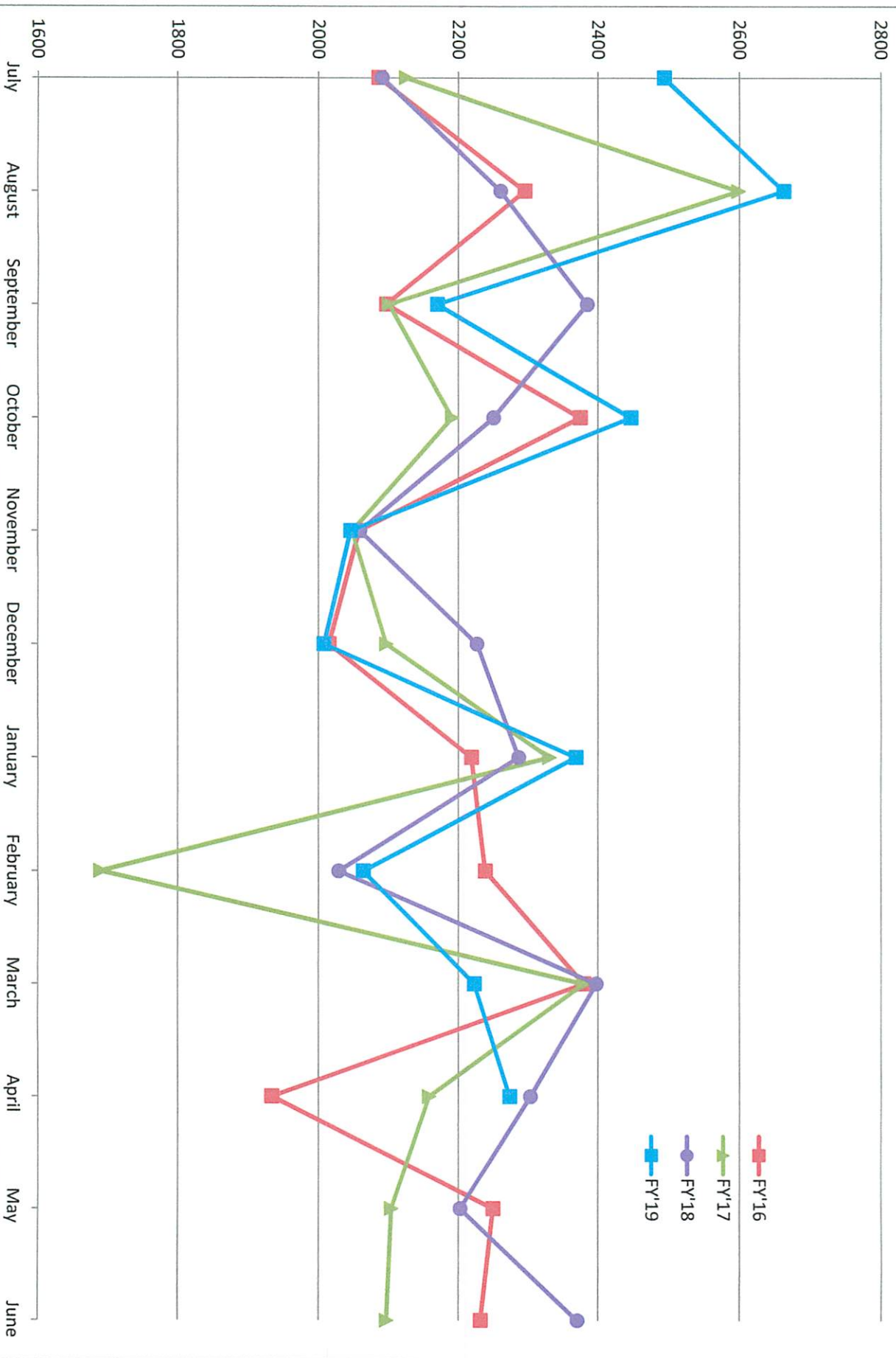
Number of Attorneys Rostered by Court

04/30/2019

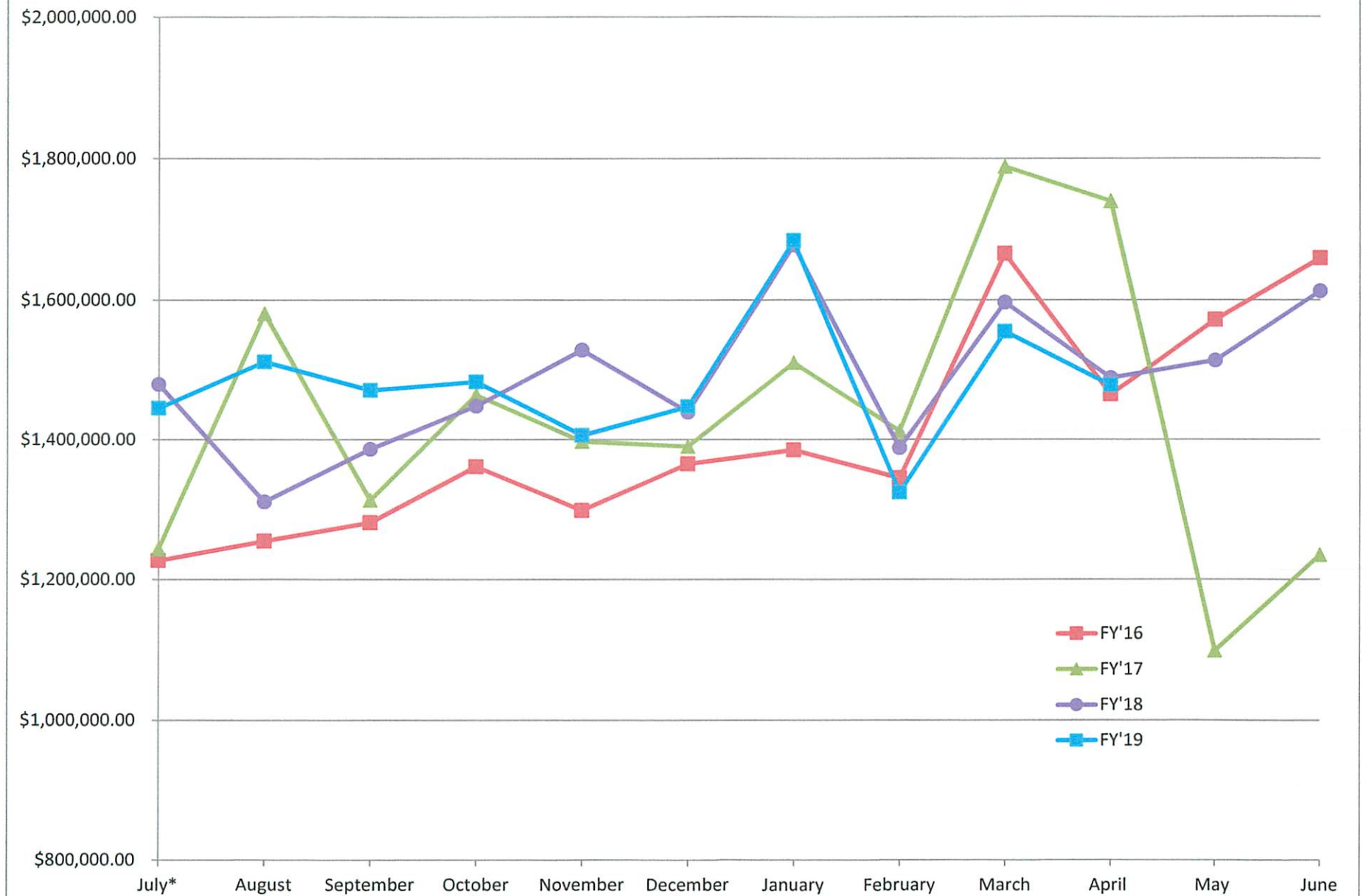
Court	Rostered Attorneys
Augusta District Court	87
Bangor District Court	44
Belfast District Court	42
Biddeford District Court	131
Bridgton District Court	82
Calais District Court	11
Caribou District Court	18
Dover-Foxcroft District Court	22
Ellsworth District Court	33
Farmington District Court	34
Fort Kent District Court	11
Houlton District Court	15
Lewiston District Court	119
Lincoln District Court	21
Machias District Court	16
Madawaska District Court	12
Millinocket District Court	16
Newport District Court	30
Portland District Court	152
Presque Isle District Court	15
Rockland District Court	35
Rumford District Court	25
Skowhegan District Court	23

Court	Rostered Attorneys
South Paris District Court	50
Springvale District Court	116
Unified Criminal Docket Alfred	114
Unified Criminal Docket Aroostook	23
Unified Criminal Docket Auburn	98
Unified Criminal Docket Augusta	80
Unified Criminal Docket Bangor	49
Unified Criminal Docket Bath	86
Unified Criminal Docket Belfast	42
Unified Criminal Docket Dover Foxcroft	21
Unified Criminal Docket Ellsworth	37
Unified Criminal Docket Farmington	36
Unified Criminal Docket Machias	17
Unified Criminal Docket Portland	146
Unified Criminal Docket Rockland	30
Unified Criminal Docket Skowhegan	17
Unified Criminal Docket South Paris	40
Unified Criminal Docket Wiscasset	47
Waterville District Court	44
West Bath District Court	101
Wiscasset District Court	54
York District Court	100

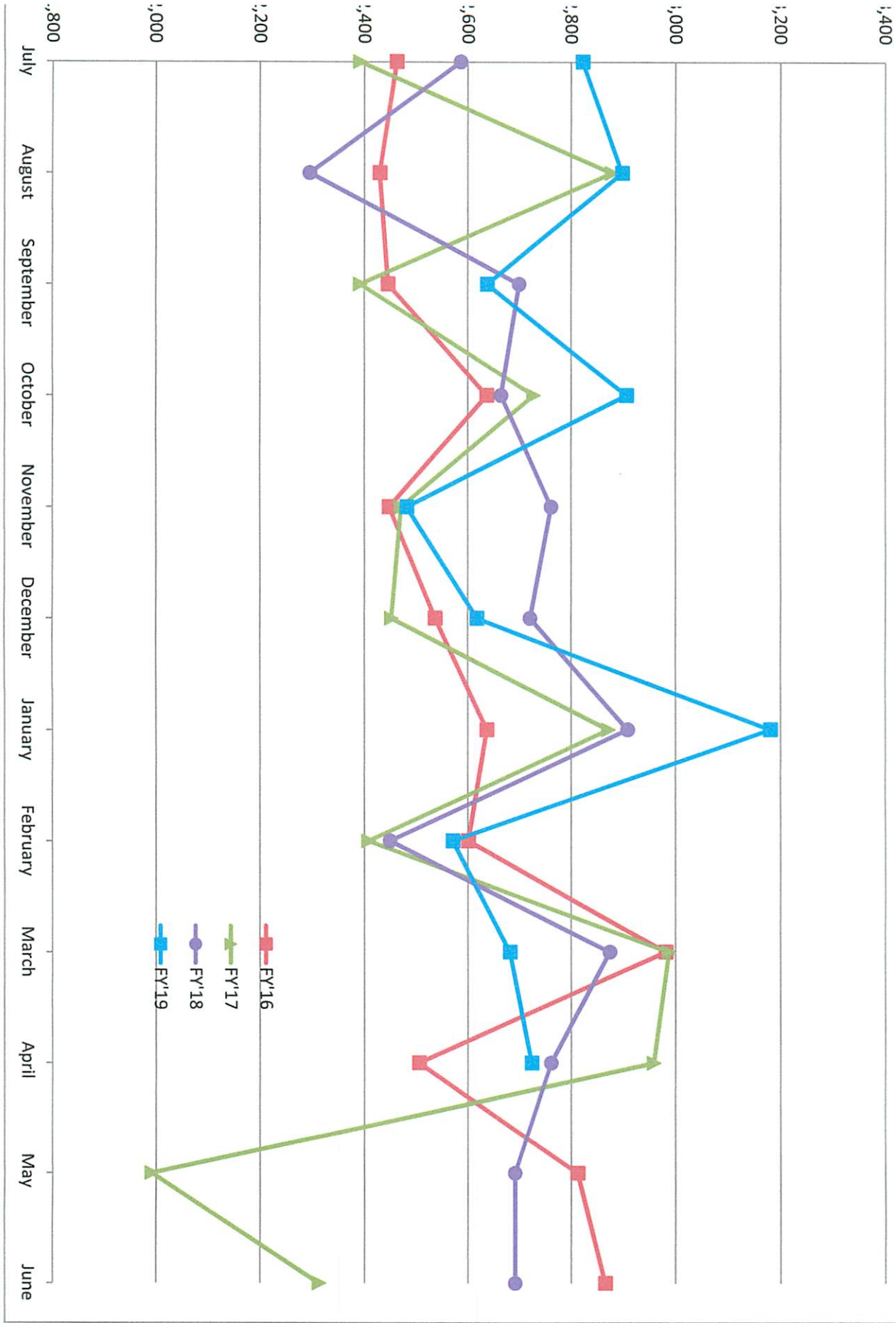
NEW CASES



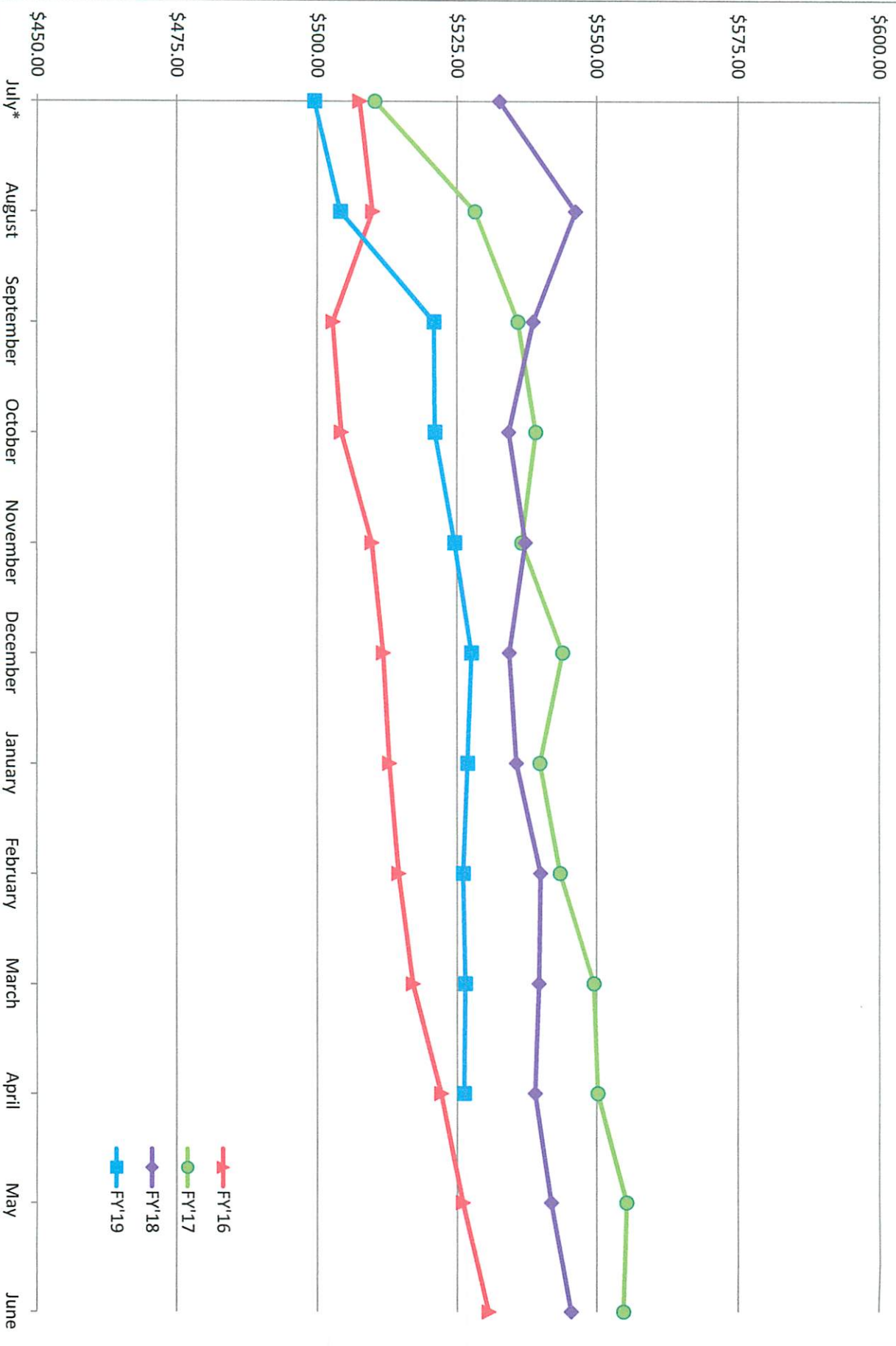
Submitted Voucher Amount



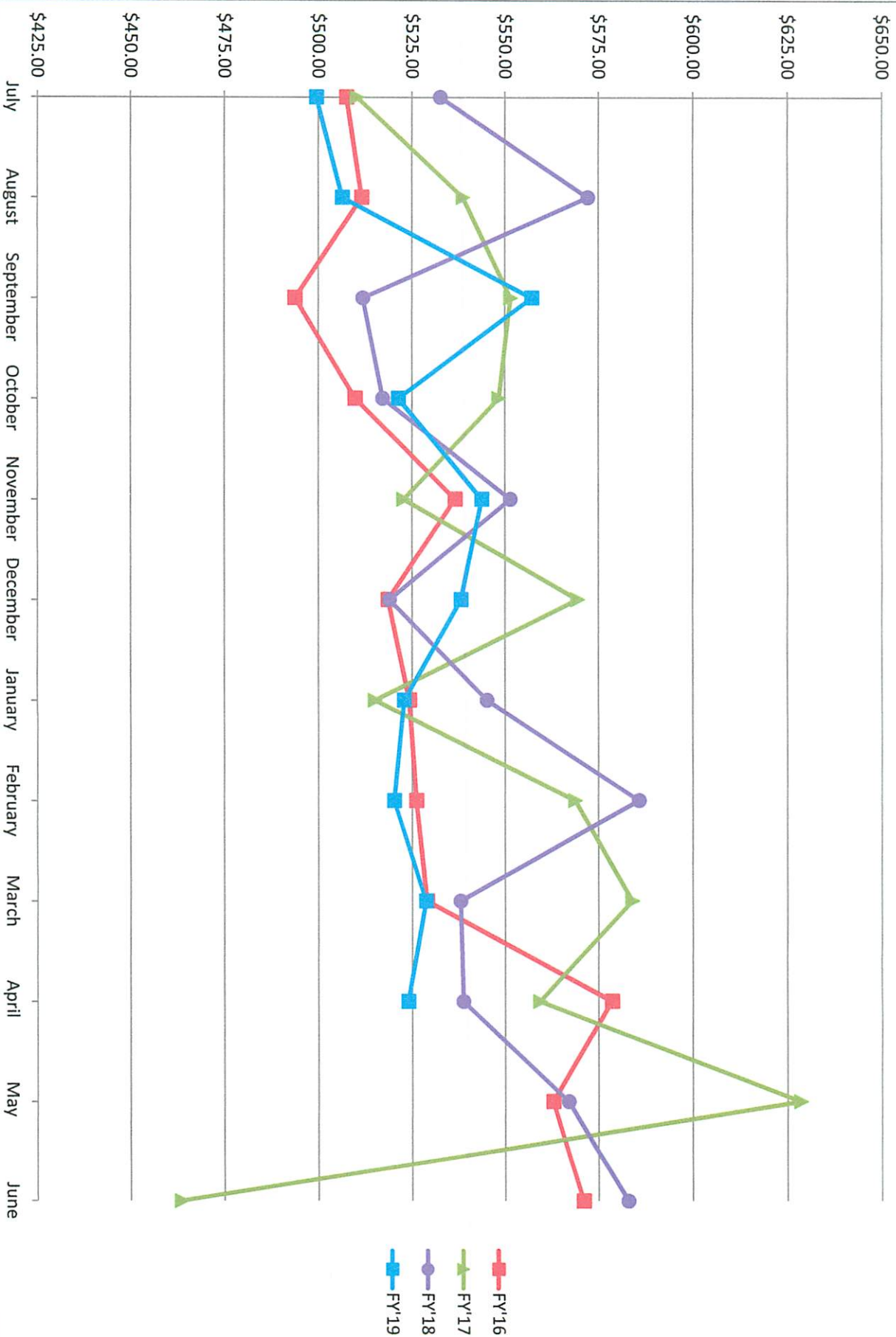
Submitted Vouchers



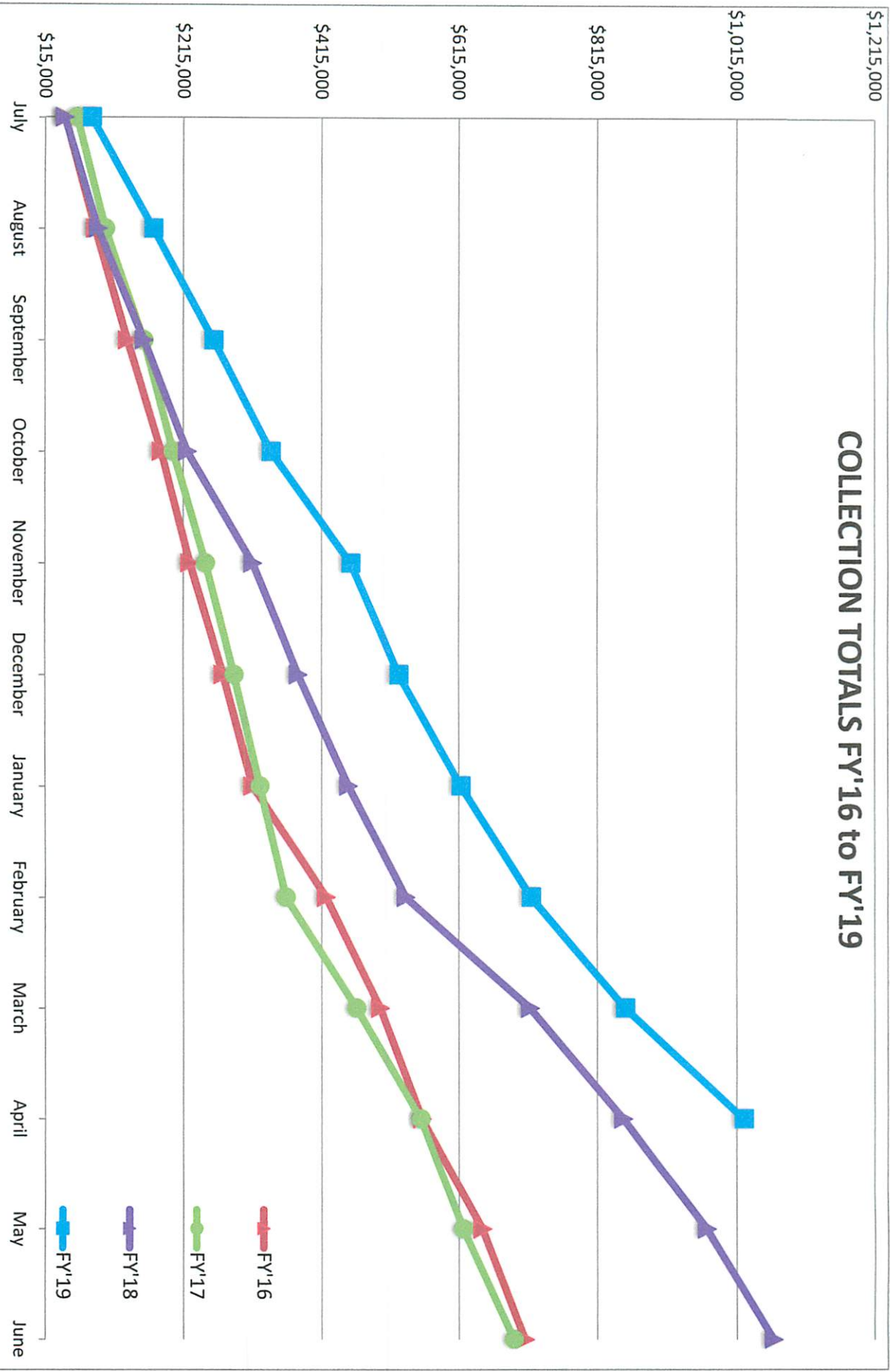
Average Voucher Price Fiscal Year to Date



Monthly Price Per Voucher



COLLECTION TOTALS FY'16 to FY'19



(3.)

Fee Rule Discussion

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: FEE SCHEDULE RULE
DATE: MAY 7, 2019

At its last meeting, the Commission asked for an updated draft of its proposed fee schedule rule to incorporate changes recommended by the Sixth Amendment Center. Attached is an updated draft. It includes language requiring that vouchers be submitted under penalty of perjury and requiring that attorneys must create and maintain a daily timesheet separate from the vouchers submitted to MCILS.

The attached draft contains two additional proposed changes. First, an error in a cross-reference in the existing rule was brought to our attention by one of our attorneys. In section 2.B, a reference to information in a later section has been changed from 5.1.B to 6.1.B to correct the reference. Second, proposed language has been added to the section on time increments to be reflected on vouchers. The new language encourages use of increments less than .1 hour to account for very quick items, such as review and responding to simple emails. This is a staff recommendation and is based on discussion with attorneys who have inquired about how to bill such quick items. These attorneys want to show each item that they performed, but acknowledge that they often take less than six minutes. We generally advise that they aggregate such items. The new language on billing increments is offered as an alternative way to address this situation.

The proposed changes are found in sections 4(2)(B), 6(2), 6(3), and 6(3-A).

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

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

SECTION 1. DEFINITIONS

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

SECTION 2. HOURLY RATE OF PAYMENT

Effective July 1, 2015:

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

SECTION 3. EXPENSES

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

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

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

SECTION 4. PRESUMPTIVE MAXIMUM FEES

Vouchers submitted for amounts greater than the applicable presumptive maximum fees outlined in this section will not be approved for payment, except as approved by the Executive Director ~~and/or the Commission.~~ Any voucher submitted that is in excess of the presumptive maximum but is less than or equal to 125% of the presumptive maximum fee will require written justification when submitting the voucher. Prior approval by the Executive Director is required for any voucher that is greater than 125% of the presumptive maximum fee.

1. **Trial Court Criminal Fees**

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

Effective July 1, 2015:

- 1) **Murder.** \$15,000 or Fee to be as set by the Executive Director ~~on a case by case basis after reviewing the complexity of the case, if requested by assigned counsel at the beginning of the case.~~
- 2) **Class A.** \$3,000

- 3) Class B and C (against person). ~~\$2,250~~ \$2,000
 - 4) Class B and C (against property). ~~\$1,500~~ \$1,250
 - 5) Class D and E, ~~(Superior or Unified Criminal Court)~~, \$750
 - 6) ~~Class D and E (District Court)~~, \$540
 - 7) Post-Conviction Review. ~~\$1,200~~
 - ~~a) Non-murder cases. \$3,500~~
 - ~~b) Murder cases. \$6,000 or as set by the Executive Director after reviewing the complexity of the case, if requested by assigned counsel at the beginning of the case.~~
 - 8) Probation Revocation. ~~\$540~~ \$750
 - 9) Miscellaneous (i.e. witness representation on 5th Amendment grounds, etc.) \$540
 - 10) Juvenile. ~~\$540~~
 - ~~a) Felony. \$1,000~~
 - ~~b) Misdemeanor. \$540~~
 - ~~c) Probation Violation. \$540~~
- B. In cases involving multiple counts against a single defendant, the presumptive maximum fee shall be that which applies to the most serious count. In cases where a defendant is charged with a number of unrelated offenses, Counsel is expected to coordinate and consolidate services as much as possible.
- C. Criminal and juvenile cases will include all proceedings through disposition as defined in Section 5.1.A below. Any subsequent proceedings, such as probation revocation, will require new application and appointment.
- ~~D. When doing so will not adversely affect the attorney-client relationship, Commission-assigned counsel are urged to limit travel and waiting time by cooperating with each other to stand in at routine, non-dispositive matters by having one attorney appear at such things as arraignments and routine non-testimonial motions, instead of having all Commission-assigned counsel in an area appear.~~
- E. Upon written request to MCILS, assistant counsel may be appointed in a murder case or other complicated cases:

- 1) the duties of each attorney must be clearly and specifically defined and counsel must avoid unnecessary duplication of effort;
- 2) each attorney must submit a voucher to MCILS. Counsel should coordinate the submission of voucher so that they can be reviewed together. Co-counsel who practice in the same firm may submit a single voucher that reflects the work done by each attorney.

2. District Court Child Protection

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

Effective July 1, 2015:

~~1) 1) — Child protective cases (each stage). \$900~~

- ~~a. Child Protective Petition. \$1,200~~
- ~~b. Judicial Review of Child Protective Order. \$1,000~~
- ~~c. Termination of Parental Rights. \$1,400~~

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

- B. ~~Counsel must provide MCILS with written justification for any voucher that exceeds the maximum fee limit.~~ Each child protective stage ends when a proceeding results in a court order as defined in Section 56.1.B below. Each distinct stage in on-going child protective cases shall be considered a new appointment for purposes of the presumptive maximum fee. A separate voucher must be submitted at the end of each stage.

- C. Upon written request to MCILS, assistant counsel may be appointed in a child protective case only for the purpose of the termination of parental rights hearing and if counsel of record has not tried a termination of parental rights before.

- 1) the duties of each attorney must be clearly and specifically defined and counsel must avoid unnecessary duplication of effort;
- 2) each attorney must submit a voucher to MCILS. Counsel should coordinate the submission of voucher so that they can be reviewed together.

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3. Other District Court Civil

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

Effective July 1, 2015:

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

4. Law Court

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

Effective July 1, 2015:

- 1) ~~Appellate work (without Oral Argument). \$2,500~~
 - 2) ~~Appellate work (with Oral Argument) following the grant of petition for certificate of probable cause. \$1,200. \$3,500.~~
- B. Expenses shall be reimbursed for printing costs and mileage to oral argument at the applicable state rate. Vouchers for payment of counsel fees and expenses must be submitted, including an itemization of time spent.

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SECTION 5: MINIMUM FEES

Effective July 1, 2015:

1. Attorneys may charge a minimum fee of \$150.00 for appearance as Lawyer of the Day. Vouchers seeking the minimum fee shall show the actual time expended and the size of the minimum fee adjustment rather than simply stating that the minimum fee is claimed. In addition to previously scheduled representation at initial appearance sessions, Lawyer of the Day representation includes representation of otherwise unrepresented parties at the specific request of the court on a matter that concludes the same day. Only a single minimum fee may be charged regardless of the number of clients consulted at the request of the court.

SECTION 6: ADMINISTRATION

1. Vouchers for payment of counsel fees and expenses shall be submitted within ~~ninety~~ sixty days after the date of disposition of a criminal, juvenile or appeals case, or completion of a stage of a child protection case resulting in an order. Vouchers submitted more than ~~ninety~~ sixty days after final disposition, or completion of a stage of a child protection case, shall not be paid.

A. For purposes of this rule, "disposition" of a criminal or juvenile case shall be at the following times:

- 1) entry of judgment (sentencing, acquittal, dismissal, or filing);
- 2) upon entry of a deferred disposition;
- 3) upon issuance of a warrant of arrest for failure to appear;
- 4) upon granting of leave to withdraw;
- 5) upon decision of any post-trial motions;
- 6) upon completion of the services the attorney was assigned to provide (e.g., mental health hearings, "lawyer of the day," bail hearings, etc.); or
- ~~7) specific authorization of the Executive Director to submit an interim voucher.~~

B. For purposes of this rule, "each stage" of a child protection case shall be:

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

1-A. An interim voucher may be submitted with prior authorization by the Executive Director. In cases lasting longer than 12 months, an interim voucher is recommended.

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2. ~~Unless otherwise authorized in advance, a~~ All vouchers must be submitted using the MCILS electronic case management program and comply with all instructions for use of the system. Vouchers must be certified as true and accurate under penalty of perjury.

3. All time on vouchers shall be detailed and accounted for in ~~10 of an hour~~ increments no larger than .10 hour. For tasks that do not require 6 minutes, such as reviewing a brief email or listening to a voicemail message, time should be recorded in increments of .02 hour. The purpose for each time entry must be self-evident or specifically stated. Use of the comment section is ~~recommended~~ required if the time entry is no self-evident.
- 3-A. In addition to time listed on vouchers, lawyers must complete a daily timesheet showing all work performed on MCILS cases during a single day. Daily timesheets may be recorded in electronic or paper form and must be maintained for a period of three (3) years.
4. All expenses claimed for reimbursement must be fully itemized on the voucher. Copies of receipts for payments to third parties shall be retained and supplied upon request.
- ~~5. Legal services provided in the district court for cases subsequently transferred to the superior court shall be included in the voucher submitted to the MCILS at disposition of the case.~~

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

EFFECTIVE DATE:

August 21, 2011 – filing 2011-283

AMENDED:

March 19, 2013 – filing 2013-062

July 1, 2013 – filing 2013-150 (EMERGENCY)

October 5, 2013 – filing 2013-228

July 1, 2015 – filing 2015-121 (EMERGENCY)

June 10, 2016 – filing 2016-092

(4.)

Action Items Update

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: ACTION ITEMS
DATE: May 8, 2019

At its April meeting, the Commission asked for a number of items to be added to the Action Items list. Attached is a revised list for review.

POTENTIAL ACTION ITEMS – MAY 2019

PRIORITY

Address fee schedule rule, including 1) adequacy of current fee caps, 2) whether to institute a pre-approval process for exceeding the cap or consider hard caps, 3) travel, mileage and geographic limitations issues, and 4) late vouchers.

- Final adjustment to proposed rule to be reviewed, then rule to be sent out for public comment and hearing.

Items related to Sixth Amendment Center report:

- Review of attorney qualification standards and training, including 1) asking the Legislature to make the qualification standards minor technical, as opposed to major substantive rules; 2) strengthening/increasing ongoing CLE requirements; 3) review of training programs of other states; 4) trainings specific to each specialized panel.
- Utilizing LOD program to provide information to pro se defendants about rights, including a script for LOD sessions and written materials to hand out.
- Increased LOD training. Reviewing LOD responsibility to notify and facilitate transition to assigned counsel.
- Investigate contract best practices to consider for use in Maine.
- Work with Justiceworks on an upgraded earnings report and review with frequency to be determined. Focus on low earners as well as high earners.

Review of the Criminal, Juvenile, and Child Protective Practice Standards. – The Commission will review the standards to determine whether any updates or changes are necessary. The Commission asked the staff to review the Criminal Standards, with the Juvenile and Child Protective Standards to be reviewed by various Commissioners.

COMPLETED ITEMS

Resource Counsel system. – Initial implementation of the Resource Counsel program was completed on August 1, 2018. Staff will monitor Resource Counsel activities and report to the Commission on how the program is being utilized. The Commission will review of the Policies and Procedures governing the program six months after implementation.

System to facilitate filing of complaints by clients. – Action: A feedback form for use by clients and other actors in the system has been developed and distributed.

New form for application for counsel. – A new request for assigned counsel and affidavit of indigency was developed with input from MCILS and is now in use by the Judicial Branch. Because the order for assignment was removed from the application itself, the new form has room for additional financial information and expanded warnings about the need to be truthful and to cooperate with follow-up investigations and the consequences of failing to do so. The new order of assignment highlights any payment order that is entered, makes clear that first-party bail is available to cover counsel fees, and imposes a requirement that the client keep the court advised of any change of address until any payment order is fully satisfied.

Early interface with new court case management system. Staff met with Judicial Branch staff, including Judges, clerks, and technology managers, as well as representatives of the case management system vendor to discuss the outline and requirements of any interface.

OTHER ITEMS

New procedure for collection hearings. An outline of a new procedure has been forwarded to the Judicial Branch, but follow-up is required.

Review and Possible amendment of the Criminal Practice Standards

Items requiring court cooperation:

Reimbursement of counsel fees when client with assigned counsel retains counsel.

Block case assignments.

Less formal briefs (avoid printing costs) in the Law Court.

Refusing to pay for discovery.

Closing rosters to new lawyers in areas flush with lawyers.

Identifying locales similar to Somerset that could benefit from a contract.

Evaluation surveys.

(5.)

Legislative Update

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: LEGISLATIVE UPDATE
DATE: May 7, 2019

On April 12, 2019, the Legislature's Government Oversight Committee voted to have the Office of Program Evaluation and Government Accountability (OPEGA) conduct a review focused on the Commission's financial practices and activities. On April 26, 2019, Chair Carey and I met with the OPEGA Director and the team assigned to the review. This was an informational meeting in which OPEGA explained the process they would follow and how findings would be reported to the Government Oversight Committee. To date, OPEGA has not submitted any requests for information, but I expect meet with the team and respond to information requests in the near future.

The Commission submitted the attached testimony on LD 1021, which would make the Commission responsible for rostering and paying attorneys appointed in Probate Court to represent indigent parties. The Commission took no position on the bill, but pointed out that it would need additional funding to cover the cost of Probate Court representation as well as additional staff to oversee and train lawyers working in Probate Court. Copies of the bill and the Commission's testimony are attached.

In addition, the Judiciary Committee is scheduled to hold a work session on May 9th to address LD 1067, An Act To Promote Fairness and Efficiency in the Delivery of Indigent Legal Services. This bill is a concept bill, without any proposed statutory language. The bill is intended as a vehicle to incorporate recommendations of the Sixth Amendment Center. Chair Carey plans to attend the work session and will report on the bill at the upcoming meeting. A copy of the bill is attached.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: HON. MICHAEL CARPENTER, SENATE CHAIR
HON. DONNA BAILEY, HOUSE CHAIR

JOINT STANDING COMMITTEE ON JUDICIARY

FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR

SUBJECT: TESTIMONY WITH RESPECT TO LD 1021

DATE: APRIL 24, 2019

Senator Carpenter, Representative Bailey, honorable members of the Committee on Judiciary, I am John Pelletier, Executive Director of the Maine Commission on Indigent Legal Services (Commission). I appear before you today to testify neither for nor against LD 1021.

The bill transfers oversight and financial responsibility for assigned counsel services in the Probate Court to the Commission. The Commission takes no position on this transfer of responsibility, but points out that additional funds for the Commission budget will be required to cover the additional cost. This transfer of responsibility will also place additional demands on the Commission's small staff, which is already operating at capacity. Accordingly, the transfer of Probate Court assignments would require hiring an additional staff attorney to accommodate the additional work needed to create rosters, provide training, and oversee attorneys representing clients in Probate cases.

The Commission also urges the Committee to make clear that the transfer only applies to attorneys for a party, not visitors or guardians ad litem. With respect to adult guardianships, the Uniform Guardianship and Protective Proceedings Act (Uniform Act) distinguishes between the appointment of a visitor and the appointment of an attorney. See 18-C M.R.S.A. § 5-304, 5-305. In

addition, a guardian ad litem could be appointed in an adult guardianship under the general provisions of the Probate Code. See 18-C M.R.S.A. § 5-115.

Visitors and guardians ad litem gather information for the court and report to the court as to the best interest of the client. As such, they are acting on behalf of the court and not as attorneys advocating for the stated wishes of the client. The Commission believes that the Probate Court should remain responsible for oversight and payment of visitors and guardians ad litem. The Commission should be responsible only for attorneys advocating for the client's stated wishes.

With respect to minors, the Uniform Act explicitly provides for the appointment of a guardian ad litem. See 18-C M.R.S.A. § 5-212. There is no explicit provision for appointment of an attorney for the minor. Note that in the District Court child protective system, the Commission oversees attorneys for the parents, but the court remains responsible for guardians ad litem for children. Similarly, if the bill passes, guardians ad litem for minors should remain the responsibility of the Probate Court, and only actual attorneys appointed to represent minors should become the Commission's responsibility.



129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1021

S.P. 300

In Senate, February 28, 2019

**An Act To Require the Maine Commission on Indigent Legal
Services To Pay Court-appointed Attorneys for Certain Probate
Court Cases**

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in dark ink, appearing to read "D M Grant".

DAREK M. GRANT
Secretary of the Senate

Presented by Senator DAVIS of Piscataquis.

Cosponsored by Senators: BLACK of Franklin, CARPENTER of Aroostook, HAMPER of Oxford, KEIM of Oxford, Representatives: HANINGTON of Lincoln, HEAD of Bethel, PICKETT of Dixfield.

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

2 **Sec. 1. 4 MRSA §1801**, as enacted by PL 2009, c. 419, §2, is amended to read:

3 **§1801. Maine Commission on Indigent Legal Services; established**

4 The Maine Commission on Indigent Legal Services, established by Title 5, section
5 12004-G, subsection 25-A, is an independent commission whose purpose is to provide
6 efficient, high-quality representation to indigent criminal defendants, juvenile defendants,
7 minors and indigent adults subject to conservatorship or guardianship under the Uniform
8 Guardianship and Protective Proceedings Act and children and parents in child protective
9 cases, consistent with federal and state constitutional and statutory obligations. The
10 commission shall work to ensure the delivery of indigent legal services by qualified and
11 competent counsel in a manner that is fair and consistent throughout the State and to
12 ensure adequate funding of a statewide system of indigent legal services, which must be
13 provided and managed in a fiscally responsible manner, free from undue political
14 interference and conflicts of interest.

15 **Sec. 2. 4 MRSA §1802, sub-§4, ¶B**, as enacted by PL 2009, c. 419, §2, is
16 amended to read:

17 B. An indigent party in a civil case in which the United States Constitution or the
18 Constitution of Maine or federal or state law requires that the State provide
19 representation; ~~and~~

20 **Sec. 3. 4 MRSA §1802, sub-§4, ¶¶B-1 and B-2** are enacted to read:

21 B-1. An indigent adult for whom legal representation was appointed under the
22 Uniform Guardianship and Protective Proceedings Act;

23 B-2. A minor for whom legal representation was appointed under the Uniform
24 Guardianship and Protective Proceedings Act; and

25 **Sec. 4. 4 MRSA §1804, sub-§3, ¶D**, as enacted by PL 2009, c. 419, §2, is
26 amended to read:

27 D. Develop criminal defense, guardianship and protective proceedings, child
28 protective and involuntary commitment representation training and evaluation
29 programs for attorneys throughout the State to ensure an adequate pool of qualified
30 attorneys;

31 **Sec. 5. 18-C MRSA §5-128** is enacted to read:

32 **§5-128. Attorney's fees for indigent adults and minors**

33 If an attorney is appointed by the court to represent an adult subject to
34 conservatorship, an adult subject to guardianship, a minor subject to conservatorship or a
35 minor subject to guardianship under this Article and, if an adult, the person is indigent,
36 the attorney's fees must be paid by the Maine Commission on Indigent Legal Services
37 pursuant to Title 4, chapter 37.

1

SUMMARY

2

3

4

This bill provides that when a probate court appoints an attorney for a party in a guardianship or protective proceeding, if the party is indigent or a minor, the attorney's fees must be paid by the Maine Commission on Indigent Legal Services.



129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1067

H.P. 790

House of Representatives, March 5, 2019

An Act To Promote Fairness and Efficiency in the Delivery of Indigent Legal Services

Reference to the Committee on Judiciary suggested and ordered printed.

Robert B. Hunt
ROBERT B. HUNT
Clerk

Presented by Representative CARDONE of Bangor.

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

2 **CONCEPT DRAFT**

3 **SUMMARY**

4 This bill is a concept draft pursuant to Joint Rule 208.

5 This bill proposes to implement the recommendations of a national center dedicated
6 to protecting rights secured by the Sixth Amendment to the United States Constitution
7 regarding the delivery of indigent legal services in Maine.

(6.)

DefenderData Upgrade

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: DEFENDERDATA UPGRADE
DATE: May 8, 2019

During March, Justiceworks implemented an upgrade to DefenderData to track entry of unusually large numbers of hours for individual dates. At the April meeting, the Commission asked that the system be adjusted to issue alerts for days in excess of 12 hours rather than in excess of 16 hours. This change has been implemented.

I discussed two other items with Justiceworks that relate to the Sixth Amendment Center recommendations: 1) certifying vouchers under penalty of perjury; and 2) creating a daily timesheet system, separate from the vouchers themselves, for time entry. The first item can likely be implemented easily. Justiceworks relates that they have several options for the latter, and we have a video chat scheduled for May 16th to review options. If we move forward on a timesheet option, time will be needed for development and costs will be involved, so we will likely need a contract amendment.