

MCILS

**October 11, 2016
Commissioner's Meeting
Packet**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

OCTOBER 11, 2016

COMMISSION MEETING

JUDICIARY COMMITTEE ROOM, ROOM 438, STATEHOUSE, AUGUSTA

AGENDA

- 1) Approval of September 16, 2016 Commission Meeting Minutes
- 2) Operations Reports Review
- 3) Recommended Decision on Appeal
- 4) Attorney Evaluations
- 5) Status of RFP's Update
- 6) Draft Amendment Re: Cert Petitions
- 7) Training Update
- 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.)
September 16, 2016
Commission Meeting
Minutes

**Maine Commission on Indigent Legal Services – Commissioners Meeting
September 16, 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 August 9, 2016 Commission Meeting Minutes	No discussion of meeting minutes.	Commissioner Logan moved for approval, Commissioner Glazier seconded. All voted in favor. Approved.
Operations Reports Review	Director Pelletier presented the August 2016 Operations Reports. 2,599 new cases were opened in the DefenderData system in August. This was a 474 case increase over July. Director Pelletier noted that these amounts were running well ahead of last year's totals for the same time period, but were in line with the budget as projected. The number of submitted vouchers in August was 2,879, an increase of 488 vouchers over July, totaling \$1,580,731, an increase of \$337,000 over July. In August, the Commission paid 3,058 vouchers totaling \$1,647,245, an increase of 1,279 vouchers and \$739,000 over July. The average price per voucher was \$538.72, up \$28.42 per voucher from July. Appeal and Post-Conviction Review cases had the highest average vouchers. There were 8 vouchers exceeding \$5,000 paid in August. The monthly transfer from the Judicial Branch for counsel fees for August, which reflects July's collections, totaled \$40,789, down approximately \$21,000 from the previous month.	
Budget Update	Director Pelletier provided the Commissioners with copies of the narrative budget justification and back-up documentation that was submitted to the Budget Office on September 1. Director Pelletier briefly reviewed some of the bigger cost drivers for the budget: increase in new criminal cases, including an increase in the number of	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	felony cases; a spike in child protective custody cases, which are long and expensive, beginning in FY 2013 and only starting to subside in FY 2106; and an increase in the number of probation violation cases.	
MACDL Request for Reconsideration of Payment for Cert Petitions	Director Pelletier informed the Commissioners that Attorney Drake had submitted a \$1,200 voucher for work done to draft and file a US cert petition. Based on the Commission's position that its enabling statute does not allow for payment of these services, Director Pelletier did not pay the voucher. Director Pelletier told the Commissioners that after viewing the amount submitted by Attorney Drake, he might have overstated the costs associated with filing cert petitions at a previous meeting. He also suggested that if the Commission determined that it could pay for cert petition filings, Commission staff could screen cases before attorneys would be allowed to file. The Commissioners took public comment out of order in order to complement the Commissioners' discussion of the issue. They heard from Attorney Walt McKee, MACDL representative Attorney Jamesa Drake, Attorney Robert Ruffner, and Dani Nisbet. Attorney McKee joined in MACDL President Attorney Amy Robidas' call for the Commission to pay for filing of US cert petitions. He noted that in his 23 years in practice that he has not had to file a single US cert petition. He believes that there are a very small number of cases that get appealed and that experienced attorneys who know what they are doing are the ones handling these cases. Dani Nisbet, the mother of Attorney Drake's client appealing to the US Supreme Court, spoke next about her son's inability to pay for Attorney Drake's work since he is incarcerated. She believes that access to the Supreme Court should be based on the merits of a person's case and not based on their financial status and urged the Commission to allow access for all indigent defendants. Attorney Ruffner urged the Commission to draft a bill for the next legislative session to make the necessary changes to its enabling statute to allow for payment of cert	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	petition filings. He also cautioned against Commission staff screening cases since it would present a conflict. Attorney Jamesa Drake spoke on behalf of MACDL and urged the Commission to allow payment for US cert petition filings. She asserted that basic equity should make the Commission want to act on this issue since taxpayers pay for the Attorney General and Governor to litigate at the Supreme Court and that the only group that cannot are indigent defendants. She contended that these services are fully covered in the Commission's enabling statute and suggested that statute change was unnecessary and the reason why MACDL will not be drafting a bill as Attorney Ruffner suggested. Attorney Drake was also not in favor of Commission staff screening cases that would be eligible for further review. After hearing public comment, the Commissioners discussed the issue further, ultimately deciding that clarification from the legislature about the enabling statute was necessary in order to pay for these services. Following a vote on the issue, Chair Carey requested Director Pelletier provide draft language of a bill for review at the next meeting.	Chair Carey moved for the Commission to draft legislation to clarify language in the Commission's enabling statute to authorize payment for the filing of US cert petitions in all cases where cert can be filed. Commission Glazier seconded the motion. All voted in favor.
Status of RFP's Update	Notice about the immigration RFP has been posted on Purchasing's website and Director Pelletier has received several requests so far. The deadline for submitting proposals is October 13. Director Pelletier informed the Commissioners that much back and forth had gone on between Purchasing and Commission staff about the appellate RFP and it was decided that a set number of cases was the proper way to	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	proceed. The Commissioners decided on 30 criminal cases and 20 child protective cases per year to be let out to contract.	
Attorney Evaluations	Chair Carey and Commissioner Logan requested additional time to review the staff's proposal. Chair Carey indicated that he will talk informally with attorneys to gage the interest level in the supervising attorney positions.	
Public Comment	<u>Robert J. Ruffner, Esq.</u> : Attorney Ruffner stressed the importance of increased supervision for rostered attorneys. He gave the Commissioners an example of a recent experience he had with a fellow rostered attorney while he was lawyer of the day where increased mentoring and supervision would have greatly benefited this attorney. Attorney Ruffner thought that the minimum standards training was a good first step, but that there is a real need for supervision and that the Commission should use a multifaceted approach.	
Executive Session	None	
Adjournment of meeting	The Commission voted to adjourn with the next meeting to be on October 11, 2016 at 9:00 a.m.	Commissioner Logan 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: SEPTEMBER 2016 OPERATIONS REPORTS
DATE: OCTOBER 4, 2016

Attached you will find the September, 2016, Operations Reports for your review and our discussion at the upcoming Commission meeting on October 11, 2016. A summary of the operations reports follows:

- 2,101 new cases were opened in the DefenderData system in September. This was a 498 case decrease from August.
- The number of vouchers submitted electronically in September was 2,392, a decrease of 487 vouchers from August, totaling \$1,313,002.05, a decrease of \$268,000 from August. In September, we paid 2,412 electronic vouchers totaling \$1,330,422.58 representing a decrease of 646 vouchers and \$317,000 compared to August.
- There was 1 paper voucher submitted and paid in September totaling \$535.85
- The average price per voucher in September was \$551.58, up \$12.86 per voucher over August.
- Appeal and Post-Conviction Review cases had the highest average vouchers in September. There were 9 vouchers exceeding \$5,000 paid in September. Three vouchers involved complete not guilty verdicts after trial, one on a charge of gross sexual assault, one on two charges of criminal threatening with a dangerous weapon, and one on charges of forgery and theft. Two vouchers involved dismissals, one the complete dismissal of Class A drug charges after the granting of a motion to suppress, and another, the dismissal of a felony sex offense in return for pleas to misdemeanor charges that do not give rise to a sex offense registration requirement. Another voucher involved a juvenile charged with murder where the juvenile was committed to Long Creek on a lesser offense and bound over on a manslaughter charge with a totally suspended consecutive sentence. Finally, there was a voucher on a murder case where counsel was forced to withdraw on the eve of trial and a voucher in a termination of parental rights case where counsel was the client's fourth lawyer and had significant travel because local counsel had all either withdrawn or had a conflict.

In our All Other Account, the total expenses for the month of September were \$1,290,758.70. Of the amount, just over \$10,000 was devoted to the Commission's operating expenses.

In the Personal Services Account, we had \$56,599.36 in expenses for the month of September.

In the Revenue Account, the September transfer of collected revenue, reflecting August collections, totaled \$55,760.61, up \$15,000 from August. In September, we paid \$154,443.22 in counsel vouchers from the revenue account through the DefenderData system.

In our Conference Account, we received registration payments for the upcoming minimum standards trainings and Probate training, leaving an account balance at \$32,159.21.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Case Type

9/30/2016

DefenderData Case Type	Sep-16						Fiscal Year 2017			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
Appeal	20	22	\$ 28,660.37	21	\$ 37,469.66	\$ 1,784.27	60	72	\$ 105,578.45	\$ 1,466.37
Child Protection Petition	197	325	\$ 218,904.88	314	\$ 209,201.44	\$ 666.25	543	943	\$ 623,796.53	\$ 661.50
Drug Court	0	5	\$ 2,899.76	8	\$ 9,793.76	\$ 1,224.22	2	17	\$ 16,299.26	\$ 958.78
Emancipation	12	5	\$ 2,373.44	6	\$ 1,906.44	\$ 317.74	29	18	\$ 6,831.84	\$ 379.55
Felony	464	496	\$ 438,389.28	511	\$ 459,078.27	\$ 898.39	1,485	1,563	\$ 1,295,306.94	\$ 828.73
Involuntary Civil Commitment	57	67	\$ 14,684.20	62	\$ 13,908.76	\$ 224.33	203	178	\$ 38,896.92	\$ 218.52
Juvenile	56	81	\$ 48,945.67	72	\$ 42,079.75	\$ 584.44	208	220	\$ 108,503.24	\$ 493.20
Lawyer of the Day - Custody	190	206	\$ 45,557.92	232	\$ 54,079.56	\$ 233.10	715	674	\$ 165,463.33	\$ 245.49
Lawyer of the Day - Juvenile	40	39	\$ 7,442.28	37	\$ 7,119.24	\$ 192.41	128	116	\$ 21,743.54	\$ 187.44
Lawyer of the Day - Walk-in	110	117	\$ 28,331.43	137	\$ 34,688.04	\$ 253.20	412	396	\$ 98,691.88	\$ 249.22
Misdemeanor	715	648	\$ 280,463.28	639	\$ 263,867.67	\$ 412.94	2,262	1,930	\$ 766,325.84	\$ 397.06
Petition, Modified Release Treatment	1	6	\$ 7,957.96	3	\$ 2,129.96	\$ 709.99	4	10	\$ 5,313.10	\$ 531.31
Petition, Release or Discharge	0	0		0			1	0		
Petition, Termination of Parental Rights	33	43	\$ 36,345.06	45	\$ 38,599.02	\$ 857.76	93	162	\$ 146,357.63	\$ 903.44
Post Conviction Review	4	5	\$ 6,173.00	6	\$ 7,349.00	\$ 1,224.83	20	23	\$ 45,374.15	\$ 1,972.79
Probate	2	0		0			3	0		
Probation Violation	149	183	\$ 71,039.57	175	\$ 69,408.31	\$ 396.62	507	478	\$ 182,121.44	\$ 381.01
Represent Witness on 5th Amendment	0	0		0			0	4	\$ 312.00	\$ 78.00
Review of Child Protection Order	47	143	\$ 74,636.46	144	\$ 79,743.70	\$ 553.78	139	444	\$ 258,426.17	\$ 582.04
Revocation of Administrative Release	4	1	\$ 198.00	0			7	1	\$ 342.00	\$ 342.00
DefenderData Sub-Total	2,101	2,392	\$ 1,313,002.56	2,412	\$ 1,330,422.58	\$ 551.58	6,821	7,249	\$ 3,885,684.26	\$ 536.03
Paper Voucher Sub-Total	1	1	\$ 535.85	1	\$ 535.85	\$ 535.85	5	5	\$ 2,593.20	\$ 518.64
TOTAL	2,102	2,393	\$1,313,538.41	2,413	\$1,330,958.43	\$ 551.58	6,826	7,254	\$ 3,888,277.46	\$ 536.02

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

FY16 FUND ACCOUNTING

AS OF 09/30/2016

Account 010 95F Z112 01 (All Other)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY16 Total
FY17 Professional Services Allotment		\$ 4,278,098.25		\$ 4,357,441.00		\$ 4,712,015.00		\$ 2,083,667.00	
FY17 General Operations Allotment		\$ 34,560.00		\$ 34,560.00		\$ 34,560.00		\$ 34,560.00	
Financial Order Adjustment		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustment		\$ -		\$ -		\$ -		\$ -	
Total Budget Allotments		\$ 4,312,658.25		\$ 4,392,001.00		\$ 4,746,575.00		\$ 2,118,227.00	\$ 15,569,461.25
Total Expenses	1	\$ (993,008.98)	4	\$ -	7	\$ -	10	\$ -	\$ (993,008.98)
	2	\$ (1,778,404.21)	5	\$ -	8	\$ -	11	\$ -	\$ (1,778,404.21)
	3	\$ (1,290,758.70)	6	\$ -	9	\$ -	12	\$ -	\$ (1,290,758.70)
Encumbrances (Somerset PDP & Justice Works)		\$ (249,075.75)		\$ -		\$ -		\$ -	\$ (249,075.75)
Encumbrances (WestLaw)		\$ (1,410.00)				\$ -		\$ -	\$ (1,410.00)
TOTAL REMAINING		\$ 0.61		\$ 4,392,001.00		\$ 4,746,575.00		\$ 2,118,227.00	\$ 11,256,803.61

Q1 Month 3 (as of 09/30/16)

INDIGENT LEGAL SERVICES	
Counsel Payments	\$ (1,176,515.21)
Somerset County	\$ (22,687.50)
Subpoena Witness Fees	\$ -
Private Investigators	\$ (19,754.14)
Mental Health Expert	\$ (10,740.00)
Transcripts	\$ (27,687.48)
Other Expert	\$ (20,733.75)
Analysts & Lab Services	\$ -
Process Servers	\$ (506.42)
Interpreters	\$ (1,749.25)
Misc Prof Fees & Serv	\$ (196.80)
SUB-TOTAL ILS	\$ (1,280,570.55)
OPERATING EXPENSES	
Service Center	\$ -
DefenderData	\$ (5,520.25)
West Publishing Corp	\$ (141.00)
Mileage/Tolls/Parking	\$ (904.35)
Mailing/Postage/Freight	\$ (452.52)
Dues	\$ (585.00)
Risk Management	\$ (34.20)
Office Supplies/Equip.	\$ (92.07)
Cellular Phones	\$ (167.27)
Subscriptions	\$ (60.00)
Office Equipment Rental	\$ (134.48)
Notary Fees	\$ -
OIT/TELCO	\$ (2,097.01)
SUB-TOTAL OE	\$ (10,188.15)
TOTAL	\$ (1,290,758.70)

INDIGENT LEGAL SERVICES

Q1 Allotment	\$ 4,312,658.25
Q1 Encumbrances for Somerset PDP & Justice Works contracts	\$ (249,075.75)
WestLaw Contract 12 month encumbrance	\$ (1,410.00)
Q1 Expenses as of 08/31/16	\$ (4,062,171.89)
Remaining Q1 Allotment as of 08/31/16	\$ 0.61

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY16 FUND ACCOUNTING
As of 09/30/16

Account 014 95F Z112 01 (Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY16 Total
Total Budget Allotments		\$ 184,125.00		\$ 184,124.00		\$ 184,124.00		\$ 184,124.00	\$ 736,497.00
Financial Order Adjustment	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Financial Order Adjustment	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Budget Order Adjustment	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
Financial Order Adjustment	3	\$ -	4	\$ -	9	\$ -	12	\$ -	\$ -
Total Budget Allotments		\$ 184,125.00		\$ 184,124.00		\$ 184,124.00		\$ 184,124.00	\$ 736,497.00
Cash Carryover from Prior Quarter		\$ 23.05		\$ -		\$ -			
Collected Revenue from JB	1	\$ 61,742.47	4	\$ -	7	\$ -	10	\$ -	
Promissory Note Payments		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB	2	\$ 40,789.66	5	\$ -	8	\$ -	11	\$ -	
Promissory Note Payments		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB (late transfer)		\$ -		\$ -	9	\$ -		\$ -	
Collected Revenue from JB	3	\$ 55,760.61	6	\$ -	9	\$ -	12	\$ -	
Promissory Note Payments		\$ -		\$ -		\$ -		\$ -	
TOTAL CASH PLUS REVENUE COLLECTED		\$ 158,315.79		\$ -		\$ -		\$ -	\$ 158,292.74
Counsel Payments	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Other Expenses		\$ -		\$ -		\$ -	***	\$ -	
Counsel Payments	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Other Expenses		\$ -		\$ -		\$ -		\$ -	
Counsel Payments	3	\$ (154,443.22)	6	\$ -	9	\$ -	12	\$ -	
Other Expenses	**	\$ -		\$ -		\$ -		\$ -	
REMAINING ALLOTMENT		\$ 29,681.78		\$ 184,124.00		\$ 184,124.00		\$ 184,124.00	\$ 582,053.78
Overpayment Reimbursements	1	\$ (100.00)	4	\$ -	7	\$ -	10		
	2	\$ (713.20)	5	\$ -	8	\$ -	11	\$ -	
	3	\$ (45.00)	6	\$ -	9	\$ -	12	\$ -	
REMAINING CASH Year to Date		\$ 3,014.37		\$ -		\$ -		\$ -	

Q1 Month 3 (as of 09/30/16)	
DEFENDER DATA COUNSEL PAYMENTS	
	\$ (154,443.22)
SUB-TOTAL ILS	\$ (154,443.22)
OVERPAYMENT REIMBURSEMENTS	\$ (45.00)
Paper Voucher	\$ -
Somerset County CDs	\$ -
Private Investigators	\$ -
Mental Health Expert	\$ -
Transcripts	\$ -
Other Expert	\$ -
StaCap Expense	
SUB-TOTAL OE	\$ (45.00)
TOTAL	\$ (154,488.22)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY16 FUND ACCOUNTING
AS OF 09/30/2016

Account 010 95F Z112 01 (Personal Services)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY16 Total
FY17 Allotment		\$ 181,545.00		\$ 205,445.00		\$ 181,540.00		\$ 189,421.00	\$ -
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Total Budget Allotments		\$ 181,545.00		\$ 205,445.00		\$ 181,540.00		\$ 189,421.00	\$ 757,951.00
Total Expenses	1	\$ (55,554.51)	4	\$ -	7	\$ -	10	\$ -	
	2	\$ (58,643.85)	5	\$ -	8	\$ -	11	\$ -	
	3	\$ (56,599.36)	6	\$ -	9	\$ -	12	\$ -	
TOTAL REMAINING		\$ 10,747.28		\$ 205,445.00		\$ 181,540.00		\$ 189,421.00	\$ 587,153.28

Q1 Month 3 (as of 09/30/16)	
Per Diem Payments	\$ (220.00)
Salary	\$ (24,123.07)
Vacation Pay	\$ (3,845.73)
Holiday Pay	\$ (1,662.68)
Sick Pay	\$ (592.64)
Employee Hlth Svs/Workers Comp	\$ (74.00)
Health Insurance	\$ (10,474.60)
Dental Insurance	\$ (249.48)
Employer Retiree Health	\$ (3,504.94)
Employer Retirement	\$ (2,350.02)
Employer Group Life	\$ (251.72)
Employer Medicare	\$ (441.54)
Retiree Unfunded Liability	\$ (5,779.46)
Retro Pymt	\$ -
Perm Part Time Full Ben	\$ (3,029.48)
TOTAL	\$ (56,599.36)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY16 FUND ACCOUNTING
As of 09/30/16

Account 014 95F Z112 02 (Conference)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY16 Total
Total Budget Allotments		\$ 10,000.00	\$	20,000.00	\$	20,000.00	\$	7,000.00	\$ 57,000.00
Financial Order Adjustment	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Financial Order Adjustment	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Financial Order Adjustment	3	\$ -	6	\$ -	9	\$ -	12	\$ -	\$ -
Total Budget Allotments		\$ 10,000.00	\$	20,000.00	\$	20,000.00	\$	7,000.00	\$ 57,000.00
Cash Carryover from Prior Quarter		\$ 14,054.73	\$	-	\$	-	\$	-	
Collected Revenue	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Collected Revenue	2	\$ 17,600.00	5	\$ -	8	\$ -	11	\$ -	
Collected Revenue	3	\$ 850.00	6	\$ -	9	\$ -	12	\$ -	
TOTAL CASH PLUS REVENUE COLLECTED		\$ 32,504.73	\$	-	\$	-	\$	-	\$ 18,450.00
Total Expenses	1	\$ (132.26)	4	\$ -	7	\$ -	10	\$ -	
	2	\$ (37.58)	5	\$ -	8	\$ -	11	\$ -	
	3	\$ (0.68)	6	\$ -	9	\$ -	12	\$ -	
Encumbrances		\$ (5,000.00)	\$	-					\$ (5,000.00)
REMAINING ALLOTMENT		\$ 4,829.48	\$	20,000.00	\$	20,000.00	\$	7,000.00	\$ 51,829.48
REMAINING CASH Year to Date		\$ 32,159.21	\$	-	\$	-	\$	-	

Q1 Month 3 (as of 09/30/16)	
Training Manuals Printing	\$ -
Training Refreshments/Meals	\$ -
Media Northeast (encumbered Q1)	\$ -
Refund(s) for non-attendance	\$ -
Office Supplies	\$ -
CLE App to the Bar	\$ -
State Cap Expense	\$ (0.68)
TOTAL	\$ (0.68)

0.68

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Court

9/30/2016

Sep-16							Fiscal Year 2017			
Court	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
ALFSC	24	63	\$ 55,887.75	69	\$ 57,776.47	\$ 837.34	77	163	\$ 128,780.11	\$ 790.06
AUBSC	21	42	\$ 29,178.68	47	\$ 37,702.95	\$ 802.19	49	103	\$ 74,070.98	\$ 719.14
AUGDC	44	53	\$ 22,214.78	76	\$ 37,197.86	\$ 489.45	143	197	\$ 100,225.52	\$ 508.76
AUGSC	19	33	\$ 17,264.43	35	\$ 12,425.03	\$ 355.00	89	116	\$ 51,015.49	\$ 439.79
BANDC	53	71	\$ 28,144.92	67	\$ 26,808.38	\$ 400.13	162	220	\$ 90,966.78	\$ 413.49
BANSC	1	1	\$ 108.00	1	\$ 990.32	\$ 990.32	2	3	\$ 2,363.82	\$ 787.94
BATSC	3	3	\$ 725.00	2	\$ 497.00	\$ 248.50	6	6	\$ 9,685.34	\$ 1,614.22
BELDC	9	15	\$ 19,710.43	16	\$ 17,338.01	\$ 1,083.63	29	53	\$ 35,841.36	\$ 676.25
BELSC	0	3	\$ 1,687.15	4	\$ 1,921.15	\$ 480.29	7	12	\$ 5,341.55	\$ 445.13
BIDDC	46	73	\$ 37,231.37	74	\$ 35,465.70	\$ 479.27	195	218	\$ 101,193.23	\$ 464.19
BRIDC	14	19	\$ 9,658.60	19	\$ 8,998.68	\$ 473.61	41	49	\$ 23,012.38	\$ 469.64
CALDC	22	10	\$ 3,731.52	3	\$ 1,110.00	\$ 370.00	50	28	\$ 17,688.00	\$ 631.71
CARDC	7	21	\$ 13,178.43	13	\$ 9,500.43	\$ 730.80	26	49	\$ 28,633.50	\$ 584.36
CARSC	11	12	\$ 4,490.27	13	\$ 5,486.57	\$ 422.04	26	30	\$ 23,074.54	\$ 769.15
DOVDC	2	9	\$ 4,525.84	5	\$ 5,167.84	\$ 1,033.57	9	26	\$ 17,712.40	\$ 681.25
DOVSC	0	0		1	\$ 168.00	\$ 168.00	2	1	\$ 168.00	\$ 168.00
ELLDC	5	22	\$ 11,958.00	16	\$ 13,008.00	\$ 813.00	48	84	\$ 94,911.50	\$ 1,129.90
ELLSC	0	2	\$ 438.00	3	\$ 864.00	\$ 288.00	1	7	\$ 1,992.00	\$ 284.57
FARDC	11	18	\$ 14,556.54	19	\$ 15,290.04	\$ 804.74	43	50	\$ 38,349.25	\$ 766.99
FARSC	4	5	\$ 2,331.74	5	\$ 2,331.74	\$ 466.35	13	11	\$ 3,778.72	\$ 343.52
FORDC	9	11	\$ 8,218.95	4	\$ 1,964.56	\$ 491.14	23	20	\$ 10,275.62	\$ 513.78
HOUDC	16	28	\$ 12,162.83	23	\$ 9,050.32	\$ 393.49	56	82	\$ 31,175.27	\$ 380.19
HOUSC	1	5	\$ 942.00	3	\$ 660.00	\$ 220.00	8	13	\$ 15,207.12	\$ 1,169.78
LEWDC	65	88	\$ 39,990.44	93	\$ 41,727.88	\$ 448.69	225	301	\$ 149,315.64	\$ 496.07
LINDC	12	14	\$ 6,900.00	13	\$ 6,648.06	\$ 511.39	28	59	\$ 30,419.16	\$ 515.58
MACDC	14	17	\$ 6,798.00	7	\$ 5,058.00	\$ 722.57	39	36	\$ 20,639.50	\$ 573.32
MACSC	3	3	\$ 739.84	0			7	5	\$ 2,412.00	\$ 482.40
MADDC	4	4	\$ 552.00	5	\$ 1,674.00	\$ 334.80	11	10	\$ 3,848.72	\$ 384.87
MILDC	5	9	\$ 3,246.28	3	\$ 1,266.28	\$ 422.09	12	10	\$ 4,092.20	\$ 409.22
NEWDC	26	28	\$ 20,526.29	33	\$ 22,567.79	\$ 683.87	64	87	\$ 46,278.37	\$ 531.94
PORDC	85	126	\$ 65,524.56	118	\$ 61,150.14	\$ 518.22	239	330	\$ 170,589.00	\$ 516.94
PORSC	3	0		0			5	4	\$ 3,707.94	\$ 926.99
PREDC	17	31	\$ 13,323.45	32	\$ 14,109.45	\$ 440.92	56	73	\$ 36,497.37	\$ 499.96
ROCD	20	27	\$ 14,807.59	27	\$ 15,448.61	\$ 572.17	50	71	\$ 27,232.27	\$ 383.55
ROCSC	4	2	\$ 1,140.00	4	\$ 3,518.04	\$ 879.51	10	26	\$ 15,081.66	\$ 580.06
RUMDC	9	7	\$ 3,747.00	7	\$ 1,749.00	\$ 249.86	35	30	\$ 11,503.80	\$ 383.46
SKODC	23	33	\$ 16,625.52	41	\$ 18,727.61	\$ 456.77	66	120	\$ 59,052.00	\$ 492.10
SKOSC	0	0		0			0	0		
SOUDC	7	11	\$ 4,330.00	11	\$ 3,539.50	\$ 321.77	20	37	\$ 17,333.50	\$ 468.47
SOUSC	7	12	\$ 4,223.89	12	\$ 6,047.60	\$ 503.97	24	42	\$ 27,363.34	\$ 651.51
SPRDC	31	55	\$ 29,644.59	68	\$ 32,435.05	\$ 476.99	203	232	\$ 119,335.72	\$ 514.38
Law Ct	16	18	\$ 19,268.95	16	\$ 23,904.50	\$ 1,494.03	46	50	\$ 71,363.76	\$ 1,427.28
YORCD	182	128	\$ 110,669.08	136	\$ 108,009.15	\$ 794.18	530	358	\$ 256,370.40	\$ 716.12
AROCD	79	74	\$ 32,992.82	66	\$ 26,260.67	\$ 397.89	269	214	\$ 111,402.42	\$ 520.57
ANDCD	115	114	\$ 69,546.59	130	\$ 68,358.99	\$ 525.84	344	309	\$ 172,103.19	\$ 556.97
KENCD	158	149	\$ 75,419.83	149	\$ 60,558.29	\$ 406.43	554	420	\$ 170,469.27	\$ 405.88
PENCD	180	200	\$ 84,196.25	203	\$ 103,859.85	\$ 511.62	645	620	\$ 295,736.09	\$ 476.99
SAGCD	35	29	\$ 18,760.58	28	\$ 17,632.58	\$ 629.74	97	105	\$ 56,673.73	\$ 539.75
WALCD	26	17	\$ 11,171.68	17	\$ 17,441.72	\$ 1,025.98	87	79	\$ 40,730.49	\$ 515.58
PISCD	11	13	\$ 3,344.16	13	\$ 3,302.16	\$ 254.01	33	31	\$ 8,653.60	\$ 279.15
HANCD	45	65	\$ 36,333.91	62	\$ 29,045.01	\$ 468.47	162	153	\$ 67,082.90	\$ 438.45
FRACD	38	44	\$ 16,860.53	55	\$ 19,718.25	\$ 358.51	122	142	\$ 49,878.53	\$ 351.26
WASCD	50	34	\$ 11,412.16	21	\$ 7,034.56	\$ 334.98	102	78	\$ 25,419.96	\$ 325.90
CUMCD	299	296	\$ 175,324.73	321	\$ 194,521.27	\$ 605.99	1,010	947	\$ 536,108.28	\$ 566.11
KNOCD	41	40	\$ 17,022.12	34	\$ 18,515.04	\$ 544.56	152	136	\$ 72,622.98	\$ 533.99
SOMCD	2	1	\$ 237.00	0			6	3	\$ 8,738.12	\$ 2,912.71
OXFCD	68	55	\$ 34,531.60	45	\$ 31,616.83	\$ 702.60	169	165	\$ 80,679.80	\$ 488.97
LINCD	30	23	\$ 9,722.53	20	\$ 10,076.01	\$ 503.80	94	96	\$ 49,528.28	\$ 515.92
WATDC	27	47	\$ 25,704.15	47	\$ 27,224.19	\$ 579.24	77	164	\$ 84,254.98	\$ 513.75
WESDC	26	33	\$ 16,229.06	34	\$ 13,243.80	\$ 389.52	64	81	\$ 30,047.99	\$ 370.96
WISDC	5	5	\$ 1,821.84	3	\$ 933.84	\$ 311.28	16	24	\$ 11,524.40	\$ 480.18
WISSC	2	1	\$ 264.00	2	\$ 654.00	\$ 327.00	6	9	\$ 3,707.94	\$ 411.99
YORDC	9	20	\$ 11,704.31	18	\$ 11,121.81	\$ 617.88	37	51	\$ 32,422.48	\$ 635.73
TOTAL	2,101	2,392	\$ 1,313,002.56	2,412	\$ 1,330,422.58	\$ 551.58	6,821	7,249	\$3,885,684.26	\$ 536.03

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

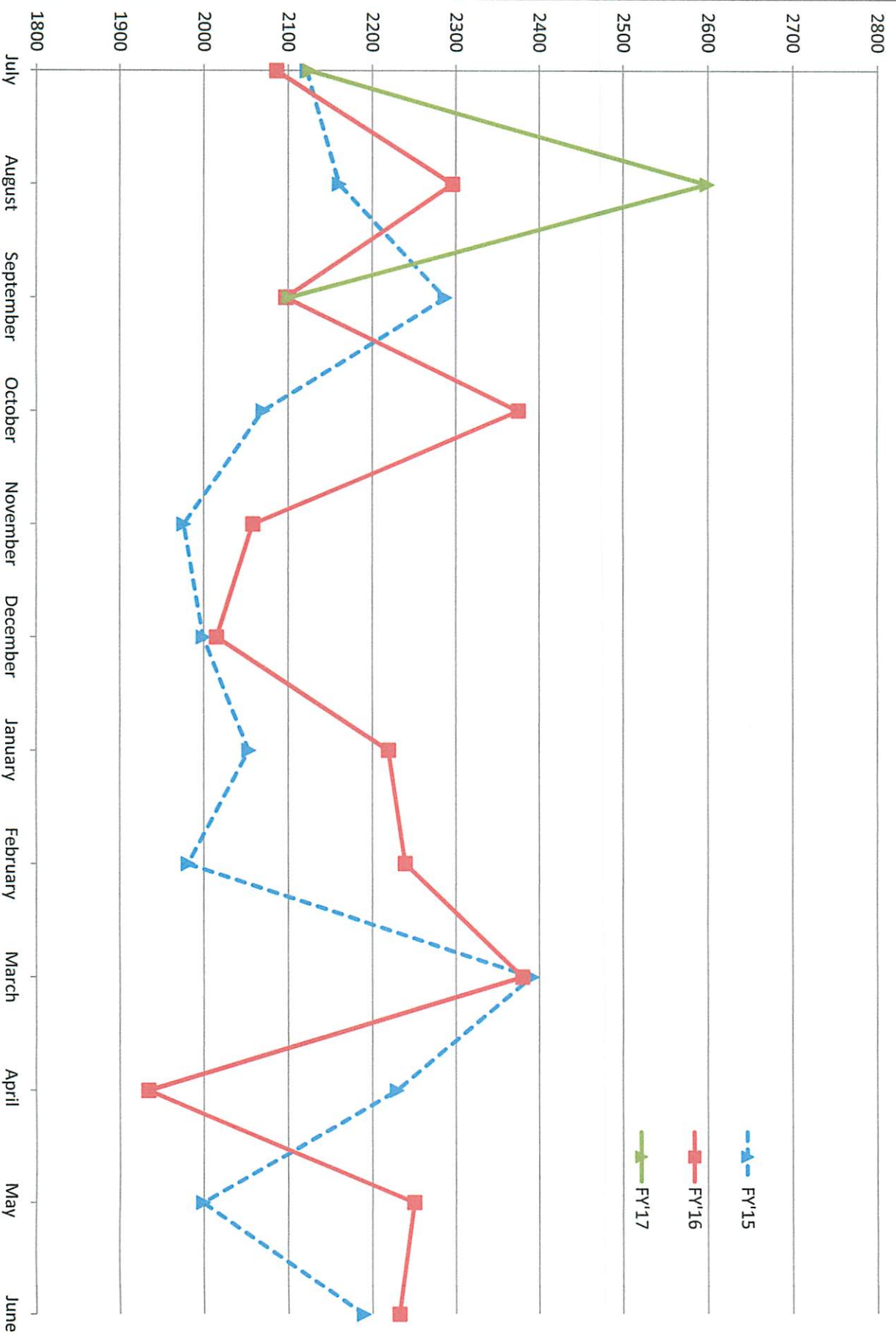
Number of Attorneys Rostered by Court

09/30/2016

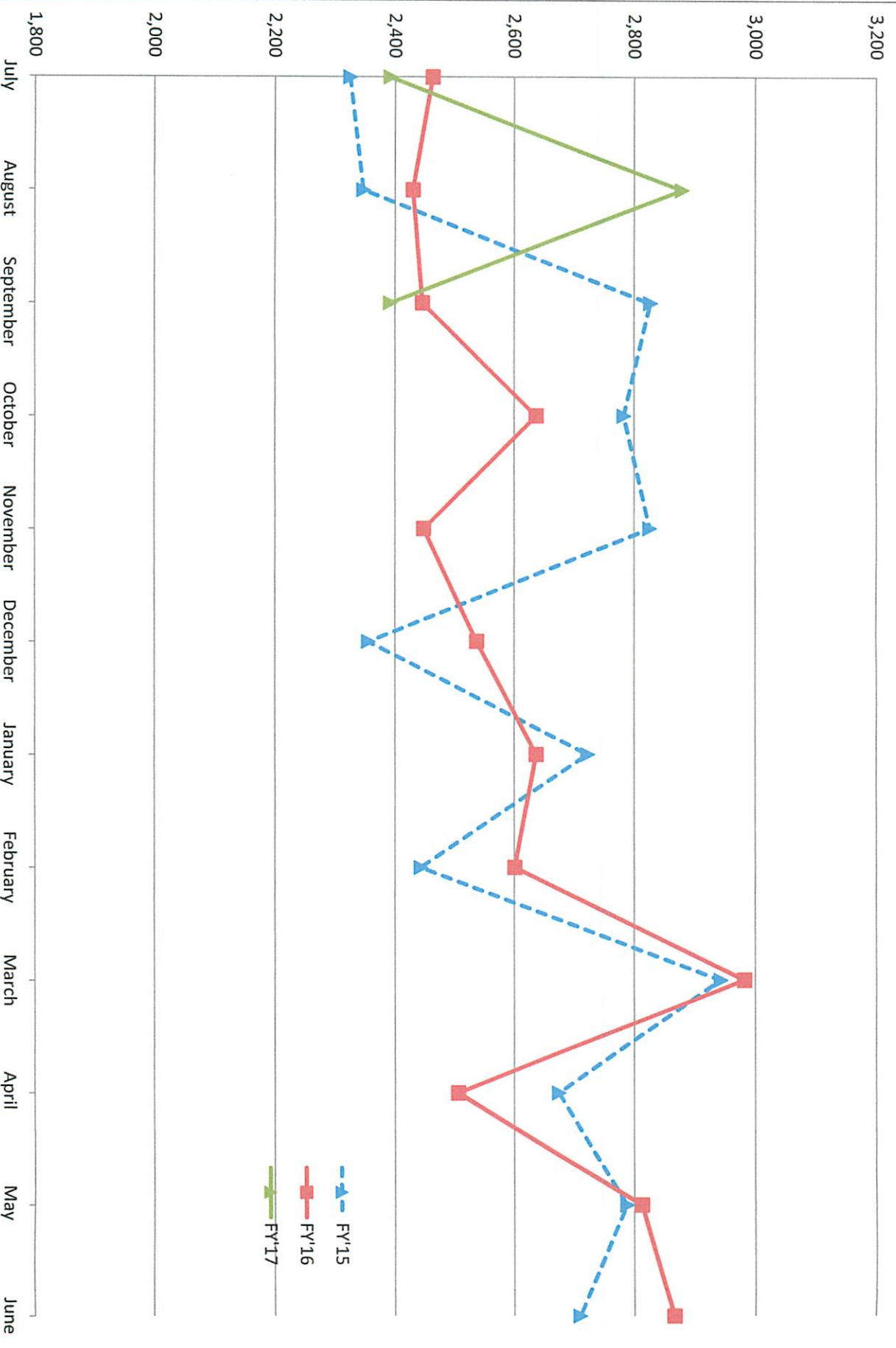
Court	Rostered Attorneys
Augusta District Court	100
Bangor District Court	54
Belfast District Court	49
Biddeford District Court	133
Bridgton District Court	99
Calais District Court	12
Caribou District Court	19
Dover-Foxcroft District Court	26
Ellsworth District Court	44
Farmington District Court	26
Fort Kent District Court	11
Houlton District Court	16
Lewiston District Court	129
Lincoln District Court	29
Machias District Court	18
Madawaska District Court	12
Millinocket District Court	21
Newport District Court	36
Portland District Court	162
Presque Isle District Court	14
Rockland District Court	42
Rumford District Court	24
Skowhegan District Court	26

Court	Rostered Attorneys
South Paris District Court	59
Springvale District Court	120
Unified Criminal Docket Alfred	107
Unified Criminal Docket Aroostook	25
Unified Criminal Docket Auburn	102
Unified Criminal Docket Augusta	92
Unified Criminal Docket Bangor	56
Unified Criminal Docket Bath	93
Unified Criminal Docket Belfast	46
Unified Criminal Docket Dover Foxcroft	24
Unified Criminal Docket Ellsworth	41
Unified Criminal Docket Farmington	28
Unified Criminal Docket Machias	18
Unified Criminal Docket Portland	146
Unified Criminal Docket Rockland	38
Unified Criminal Docket Skowhegan	20
Unified Criminal docket Soperth Paris	97
Unified Criminal Docket Wiscasset	57
Waterville District Court	51
West Bath District Court	114
Wiscasset District Court	64
York District Court	108

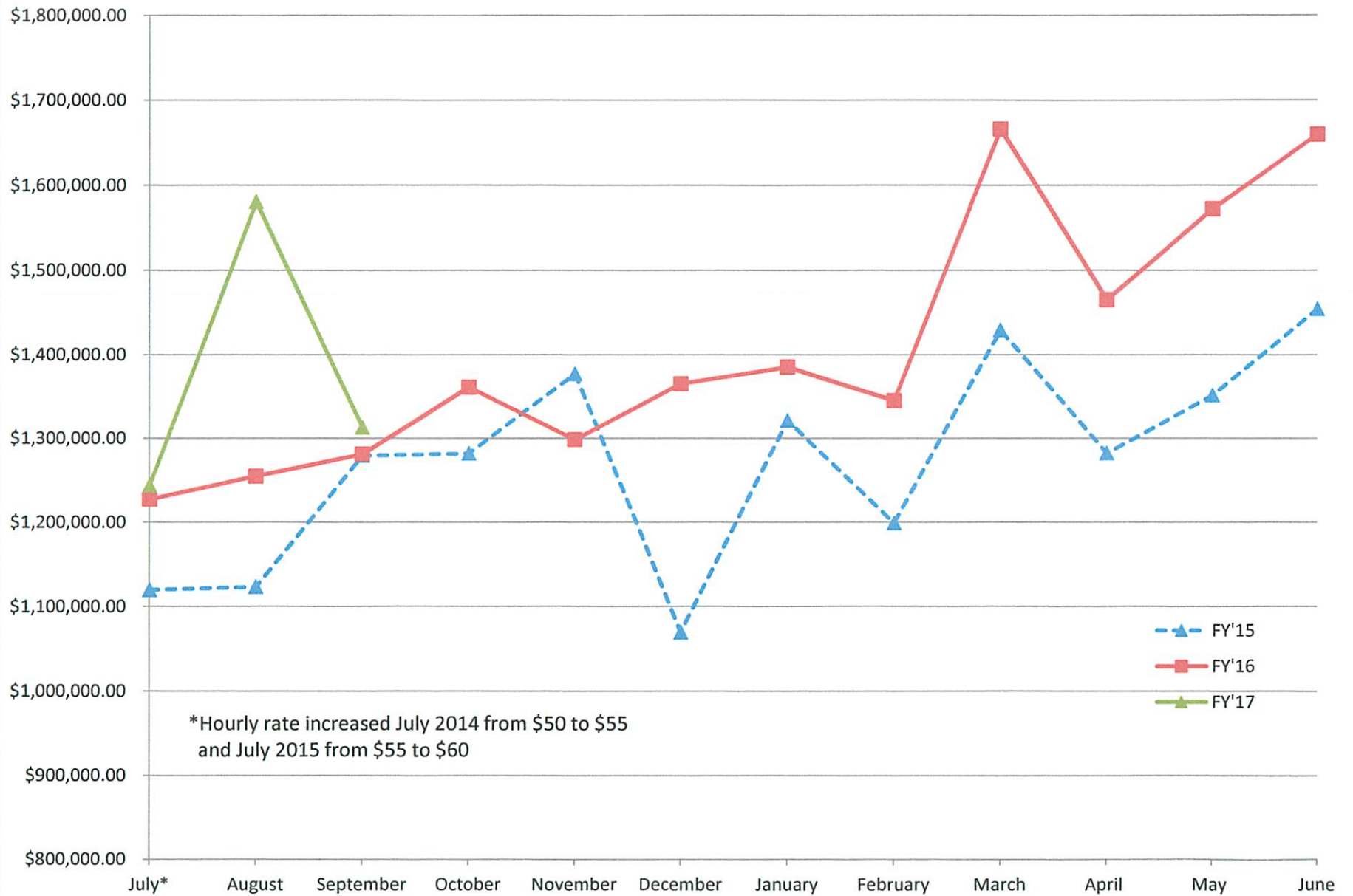
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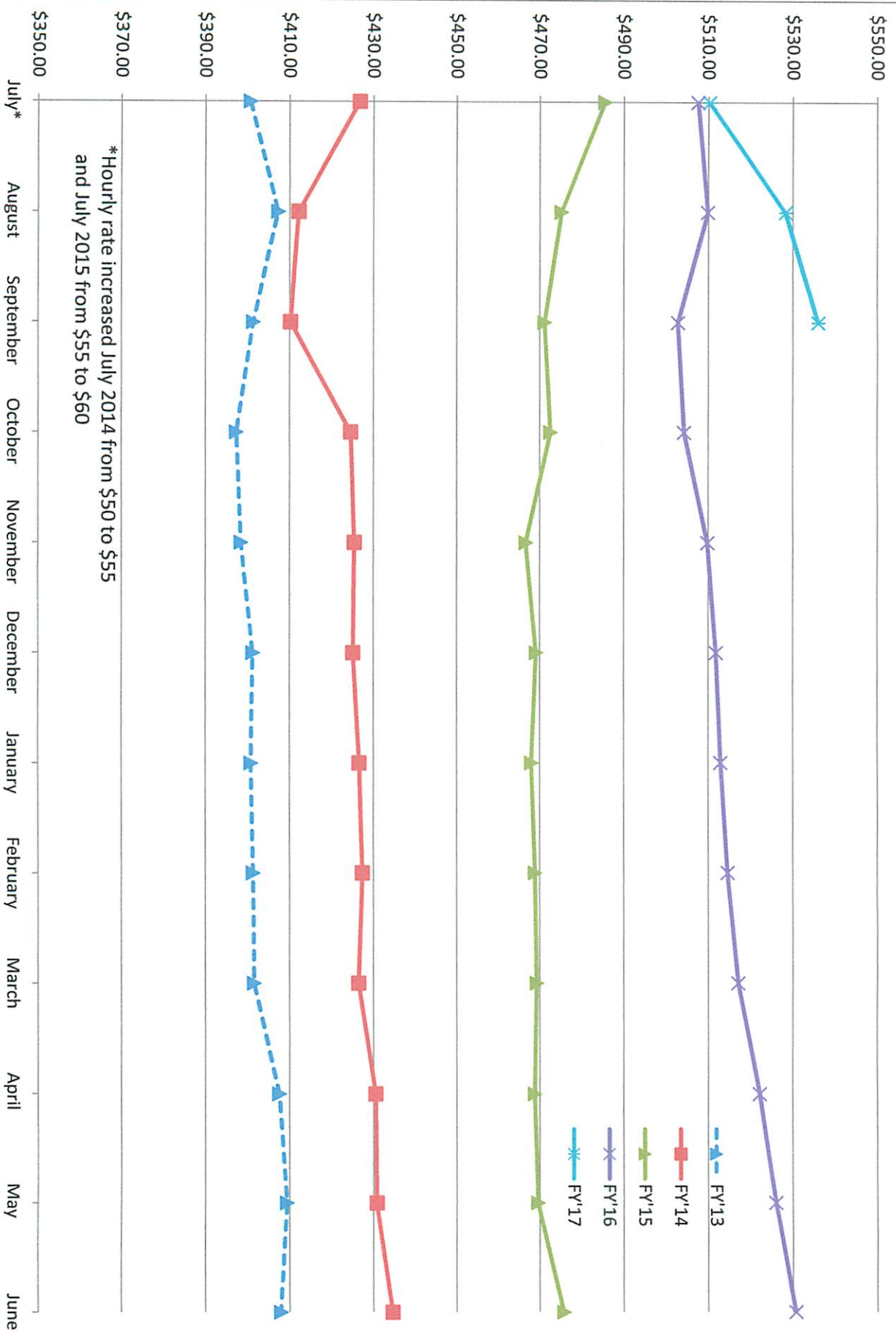
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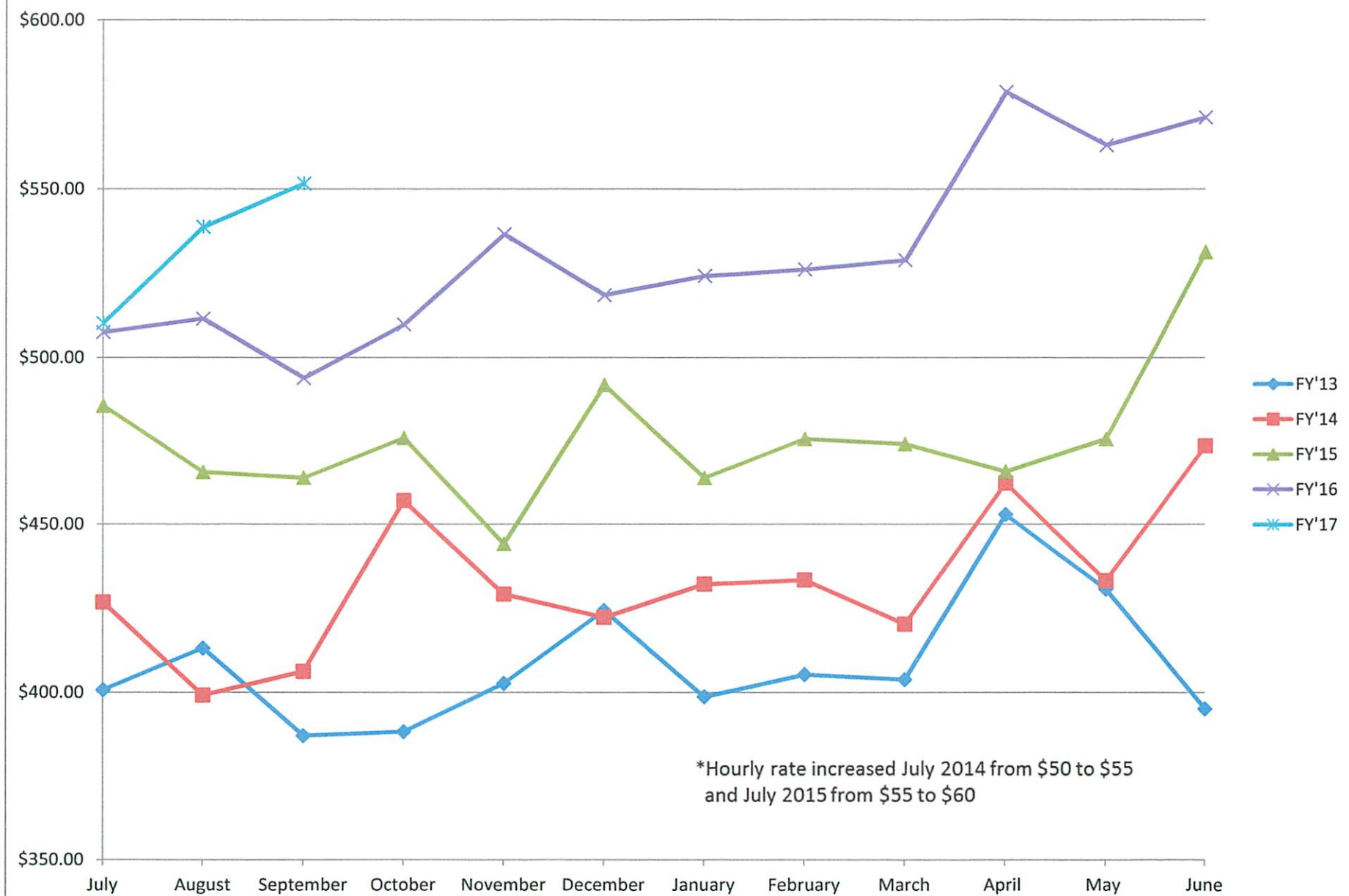
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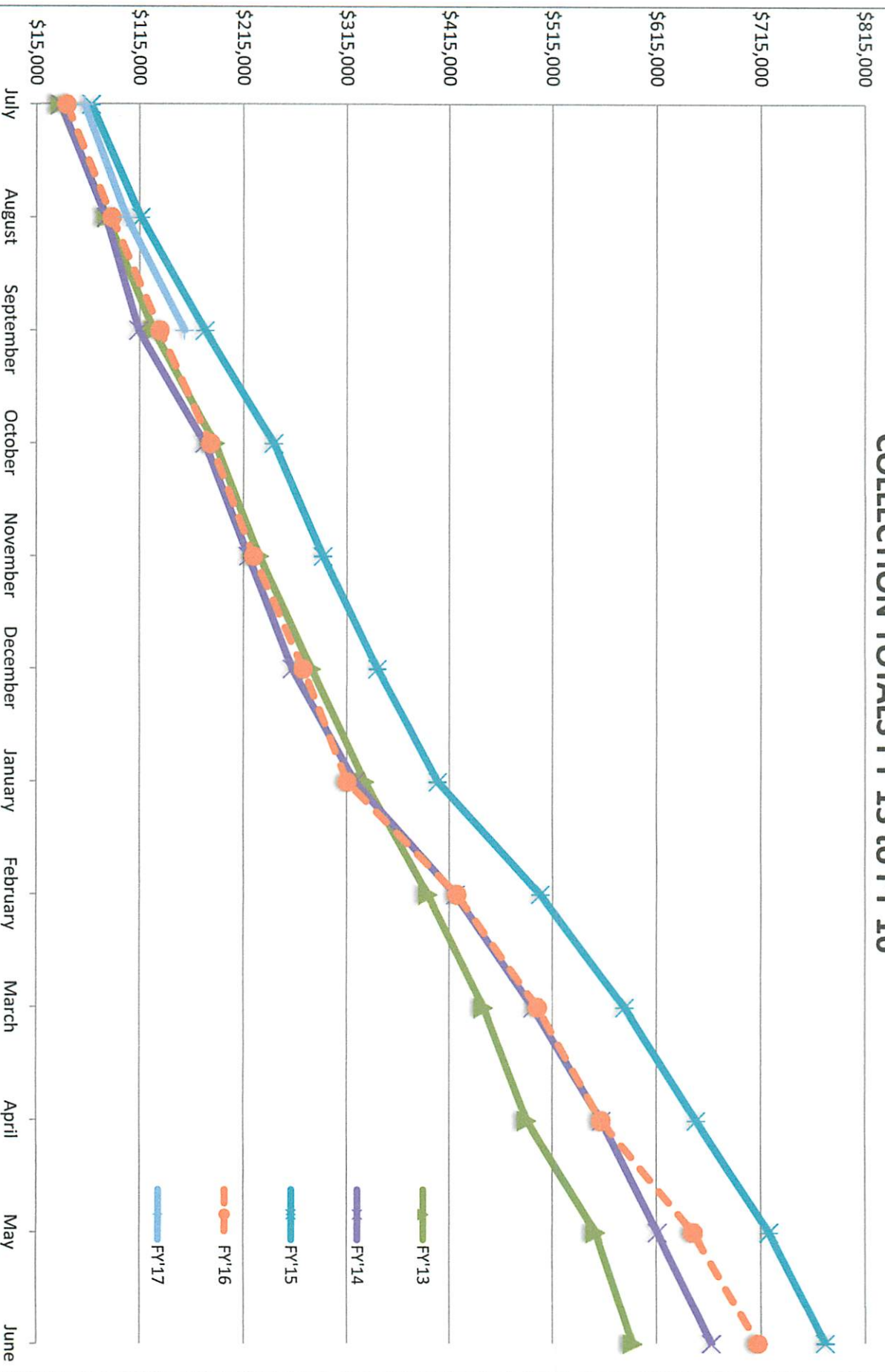
Average Voucher Price Fiscal Year to Date



Monthly Price Per Voucher



COLLECTION TOTALS FY'13 to FY'16



(3.) Appeal

Pelletier, John

From: Maciag, Eleanor
Sent: Tuesday, September 27, 2016 2:07 PM
To: Pelletier, John; 'Seth T. Carey, Esq.'
Subject: FW: In re: Seth Carey
Attachments: 20160927122223044.pdf

Attorneys Carey & Pelletier,

Presiding Officer Logan's draft recommended decision is attached. Pursuant to Commission Rule, Chapter 201, Section 12(2), you have the opportunity to submit written comments within 10 days of receipt of the decision. Please direct your written comments to me and I will forward them on Presiding Officer Logan.

Ellie

Ellie Brogan Maciag
Deputy Director
Maine Commission on Indigent Legal Services
154 State House Station
Augusta, ME 04333
T.207-287-3258
F.207-287-3293

From: Logan, William
Sent: Tuesday, September 27, 2016 12:32 PM
To: Maciag, Eleanor
Subject: In re: Seth Carey

Ellie,

Please find attached the draft recommended decision in the appeal filed by Seth Carey.

Pursuant to Commission Rule, Chapter 201, Section 12(2) please forward the recommended decision to attorneys Carey and Pelletier for their review and opportunity to submit written comments within 10 days of receipt of the decision.

Let me know if you have any questions.

-Bill

William P. Logan, Esq.
General Counsel
Office of MaineCare Services
(207) 624-4083

william.logan@maine.gov

Draft recommended decision

Subject of the appeal and statement of the issues:

The subject of the pending appeal is a decision by the Executive Director of the Maine Commission on Indigent Legal Services ("MCILS" or "the Commission") to remove Seth Carey, Esq. from the MCILS roster indefinitely.

The issues identified in Attorney Carey's statement of appeal were:

1. Whether the Executive Director lacked legal authority or justification; and
2. Whether the Executive Director's decision was arbitrary and capricious.

Hearing:

A hearing was held on August 8, 2016 at the Capitol Judicial Center in Augusta Maine.

John Pelletier, Esq. appeared on behalf of MCILS. Attorney Pelletier was the sole witness for MCILS.

Seth Carey, Esq. appeared in his own behalf. Attorney Carey was the sole witness for himself.

Evidence:

The following Exhibits were admitted into evidence without objection:

- a. March 15, 2016 Decision from Executive Director;
- b. March 24, 2016 Request for Reconsideration;
- c. April 11, 2016 Decision on Request for Reconsideration;
- d. May 10, 2016 Statement of Appeal;
- e. Title 4, Chapter 37 Maine Revised Statutes;
- f. MCILS Rule, Ch. 2 Standards for Qualifications of Assigned Counsel;
- g. 5 M.R.S. § 11007;
- h. Report of Findings and Order of Panel C of the Grievance Commission;
- i. March 7, 2016 Interim Order in Board of Bar Overseers v. Seth T. Carey, Esq.; and
- j. Numerous case materials related to criminal defendants represented by Attorney Carey.¹

Findings of Fact and Analysis:

¹ The Presiding Officer aggregates these exhibits as one for purpose of this written decision to protect the identity of the individual clients named in the materials.

1. Whether the Executive Director Possessed Legal Authority to Suspend Attorney Carey from the Roster

Executive Director Pelletier testified that 4 M.R.S. § 1801 states that the purpose of the Commission is to provide efficient, high-quality representation to indigent persons. He also testified that 4 M.R.S. § 1804 requires the Commission to establish standards for the delivery of indigent legal services. Moreover, Executive Director Pelletier cited to 4 M.R.S. § 1805 as requiring the Executive Director to ensure that the provision of indigent legal services complies with all constitutional, statutory and ethical standards. He also cited to Commission Rule Chapter 2, as legal authority for his decision.

Executive Director Pelletier testified that Commission Rule Ch. 2, Section 2(1)(b) requires attorneys to promptly inform the Commission of any complaint filed against the attorney with the Maine Board of Bar Overseers that has been set for a grievance panel hearing. He also testified that Commission Rule, Ch. 2, Section 2(6) authorizes him to suspend or remove an attorney from the MCILS roster. Executive Director Pelletier also testified that the Commission Rules were duly promulgated through the process outlined in the Administrative Procedures Act, 5 M.R.S. § 8001 *et seq.*

At hearing, Attorney Carey made no argument that the Commission rule was procedurally invalid or outside of the Commission's statutory mission. Nor did Attorney Carey argue that the rule did not allow for the action taken by Executive Director Pelletier. Instead, Attorney Carey focused his argument on the fact that the rule had not yet been litigated and upheld by a court. Executive Director Pelletier conceded that the Commission Rule had not been the subject of any legal challenge to date.

"Where a statute delegates to an administrative agency the power to make rules, courts recognize a presumption that such rules, when duly noticed, are valid." *Bangor Baptist Church v. Maine, Dep't of Educational and Cultural Services*, 549 F.Supp. 1208, 1228 (D.ME 1982). "The presumption is rebuttable on 'a showing that the challenged regulation is an unreasonable exercise of the delegated power – *i.e.* inconsistent with the statute. *Id.* at 1229 (citing *Commissioner v. Acker*, 361 U.S. 87, 90-92 (1959)).

Attorney Carey's argument that Executive Director Pelletier's decision lacked legal authority because the rule has not been challenged and upheld by a court is unavailing. First, this Presiding Officer finds that rules duly promulgated through the APA are presumptively valid. This Presiding Officer also finds that the statutory scheme of the APA supports this conclusion, in that it allows for persons aggrieved by agency rules, or stemming from agency action in an adjudicatory role in which the agency has applied a regulation, to seek judicial review of the validity of the rule in a civil action. *See* 5 M.R.S. §§ 8058, 11001, 11002. *See also Conservation Law Found. v. Dept. of Envtl. Prot.*, 2003 ME 62, ¶ 19. As such, the structure of the APA presumes the validity of agency rules and places the burden of demonstrating otherwise upon the person challenging the rule.

Executive Director Pelletier provided evidence that the rule was properly promulgated, including review for form and legality by the Office of the Attorney General, and that the rule was within the enabling statutes of the Commission. Executive Director Pelletier also produced evidence demonstrating that the Commission Rule explicitly authorized him to take such action. Attorney Carey provided no evidence to the contrary. Therefore, this Presiding Officer determines that Executive Director Pelletier possessed the legal authority to indefinitely remove Attorney Carey from the roster.

Based on the foregoing, the Presiding Officer recommends that the Commission find that Executive Director Pelletier possessed the requisite legal authority to indefinitely remove Attorney Carey from the roster.

2. Whether the Executive Director's Decision Was Arbitrary and Capricious

In determining whether agency action is arbitrary or capricious courts "review the administrative action in question to determine if it is 'unreasonable, has no rational factual basis justifying the conclusion or lacks substantial support in the evidence.'" *Carl L. Cutler Co. v. State Purchasing Agent*, 472 A.2d 913, 916 (Me. 1984). "To withstand scrutiny on appeal, an agency decision must simply contain factual findings sufficient to explain the basis for the sanctions imposed so that the court need not hypothesize about the agency's reasoning." *Bradley v. Head*, 2011 Me.Super. LEXIS 231 (Ken. Sup. Ct., Nov. 15, 2011).

Executive Director Pelletier testified that he based his decision on the Report of Findings and Order of Panel C of the Grievance Commission. That Order, issued after a four day hearing, contained numerous findings, including, but not limited to: that Attorney Carey's "approach is to substitute volume and bombast for skill," that he was "either unfamiliar or uncomfortable with criminal and civil procedure and with the rules of evidence," that he was "unable to deviate from his prepared script when testimony did not go as expected" or "persisted in the same line of questioning either because he did not understand the court's ruling or because he did not know what else to do." The Order also noted the opinion of a presiding judge that there "was a fair piece of real estate between the lower end of competence and [Attorney Carey's] performance" and that Attorney Carey was "close to the bottom of the barrel" of attorneys he had seen. The Order noted that Attorney Carey agreed at the Grievance Hearing that his performance was deficient in the examples adduced by Bar Counsel.

At the hearing of this appeal, Attorney Carey did not challenge these factual findings or the other findings in the Report and Order. In fact, Attorney Carey stated that he felt Executive Director Pelletier had "made a very strong case for his position." He also noted that he could not argue with the Grievance Order, calling its findings "damning." Instead, Attorney Carey noted that he was appealing the Grievance Order and believed that this "trumps" any findings in that Order. He also stated he believed his results for clients also "trump" the Executive Director's decision.

Attorney Carey noted, and Executive Director Pelletier conceded, that Executive Director Pelletier did not make any efforts to reach out to or speak with former clients of Attorney

Carey in reaching his decision to remove Attorney Carey from the roster. As additional support for his position, Attorney Carey provided this Presiding Officer with numerous client materials in support of his testimony that he achieved good results from his clients and "has never had a client complain."²

This Presiding Officer finds that there existed substantial evidence of record to support the Executive Director's decision to remove Attorney Carey from the roster indefinitely. Whether or not Attorney Carey is correct in that he obtains great results for his clients and has never had a client complain, such evidence does not "trump" the substantial evidence of record contained in the Grievance Order.³ Additionally, while it is true that Executive Director Pelletier could have reached out and spoken with Attorney Carey's current or former clients, there is nothing in statute or Commission rules that requires him to take such action. Moreover, under the facts and circumstances of this appeal, this Presiding Officer finds that Executive Director Pelletier's decision not to reach out to Attorney Carey's clients does not undermine his decision to rely upon the findings of the Grievance panel, let alone "trump" those findings.

This Presiding Officer also determines Attorney Carey's argument that his appeal of the Grievance Order "trumps" the findings in the Order to be similarly unavailing. First, Attorney Carey conceded at the Grievance hearing that his performance was deficient in the instances noted by Bar Counsel. Attorney Carey reiterated this position at the August 8, 2016 appeal hearing. Attorney Carey did not argue that the Grievance Panel's findings were erroneous. He did not submit any contradictory evidence showing factual errors. As such, this Presiding Officer cannot conclude that the pending appeal "trumps" the authority of the Executive Director to indefinitely remove an attorney from the MCILS roster.

This Presiding Officer determines that Executive Director Pelletier reasonably relied upon findings from an adjudicatory proceeding in which Attorney Carey was present and had the opportunity to participate and introduce evidence. The Order from that proceeding contained numerous findings of fact concerning the ability of Attorney Carey to represent clients. Therefore, this Presiding Officer cannot conclude that the Executive

² Attorney Carey also argued that the Executive Director's decision violated his procedural and substantive due process rights. This Presiding Officer concludes these arguments are without merit. Attorney Carey is appealing the decision pursuant to a procedure set forth in Commission rules and was given an opportunity to present his case and argument. Thus this Presiding Officer determines there is no violation of procedural due process rights. Regarding the substantive due process claim, Attorney Carey provided nothing more than a bare assertion that his rights were violated. Without identifying the alleged "right" violated, this Presiding Officer cannot conclude that the Executive Director's decision violated any substantive due process rights of Attorney Carey.

³ Both attorneys Pelletier and Carey agreed at the hearing that for the most part, facts drive decisions or outcomes in cases. Given this agreement, it is hard for this Presiding Officer to conclude that the outcomes of cases should negate evidence that Attorney Carey himself admitted was "damning."

Director's decision was unreasonable, has no rational factual basis justifying the conclusion or lacks substantial support in the evidence.

Based on the foregoing, the Presiding Officer recommends that the Commission find that Executive Director Pelletier's decision to indefinitely remove Attorney Carey from the roster was not arbitrary and capricious.

Recommended Decision: This Presiding recommends that the Commission affirm the decision of the Executive Director to indefinitely remove Attorney Seth Carey from the MCILS roster.

(4.)
Attorney Evaluations

Executive Summary

Overview

The State of Maine currently uses a system of private assigned counsel to provide high quality indigent legal services, with oversight and guidance from the Maine Commission on Indigent Legal Services. The Sixth Amendment of the United States Constitution provides for the right to counsel for criminal defendants, regardless of a defendant's ability to pay. In 2002, the American Bar Association established ten black letter principles, *Ten Principles of a Public Defense Delivery System*, that every jurisdiction should follow to ensure quality and efficient representation for indigent clients. However, nationwide research conducted by the NLADA and the Sixth Amendment Center identified three ABA Principles most often overlooked by indigent legal services systems, *Principle One* (maintaining an independent system of representation), *Principle Eight* (ensuring parity of resources between defense counsel and the prosecution), and *Principle Ten* (providing continuous attorney supervision to monitor quality and efficient representation). Due to limited staff and resources, Maine's system is not compliant with respect to providing continuous, systematic supervision and monitoring of attorneys' performance. See 37 M.R.S. § 1804 (2)(D) (2009) (stating the Maine Commission on Indigent Legal Services' responsibilities and standards) and ABA *Principle Ten*.

The purpose of this Report is to recommend a method for evaluating attorney performance to bring Maine into compliance with the statutory requirements and the ABA's *Principles*. Establishing statewide consistent supervision of attorneys' performance ensures high quality, independent indigent legal services and provides parity of resources between the indigent criminal defense bar and the prosecution.

Summary of Research

In addition to input provided by the NLADA and the Sixth Amendment Center, I conducted nationwide research on systems for evaluating attorney performance that I reduced to thirteen state models. I organized the systems based on the state's respective attorney performance evaluation methods ranging from surveys, enacted Standards of Performance, data collection, and hybrid models. I analyzed these performance evaluation systems according to the depth and quality of the method used, resulting in three distilled assessments: comprehensive performance evaluation models (Colorado, Massachusetts, North Carolina, Oregon, and Travis County (TX)), adequate performance evaluation models (San Mateo (CA) and Virginia), and minimum performance evaluation models (D.C., Vermont, New Hampshire, and New Mexico).

Recommendations

Based on my research, the best model for the State of Maine is a hybrid system of attorney performance evaluations (Colorado, Massachusetts, North Carolina, Oregon, San Mateo (CA), Travis County (TX), Vermont, and Virginia) comprised of annual surveys sent to organizations and criminal justice actors that frequently interact with assigned counsel; robust Standards of Practice for juvenile, criminal, child protective, civil commitment, and appeals; a formal mentoring protocol that pairs a newly rostered attorney with an experienced attorney located in the same county; a brief and motion bank to provide the most frequently used legal documents to all rostered attorneys; a review and submission process for client complaints that would consist of forms, made available online and provided in all courthouses, as well as a monitored collect-call phone number; a contracted Supervising Attorney position located in each county that would ensure highly qualified and well-respected local attorneys provide in-person

monitoring of appointed counsel, such as court observations and conducting initial investigations of client complaints; and finally, a data collection system used to track case types, pretrial services and other criminal justice data by coordinating with the courts to receive monthly data retrieval. While this proposed hybrid system requires personnel and financial resources to implement, this recommended system provides a robust and comprehensive process for ensuring high quality representation and accountability to taxpayers and the local community.

The second recommended model that would provide a practical, low-cost method of attorney performance evaluation is a combined survey and standards of practice model based on Vermont's survey system and Virginia's robust Standards of Practice. This model would not require a significant increase in personnel or financial resources to implement. However, I would caution that this system is likely to result in minimal assurance of attorney compliance as compared to conducting in-depth reviews of attorneys' performance.

(5.)
RFP's Update

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: RFP UPDATE – APPEALS AND IMMIGRATION
DATE: October 5, 2016

IMMIGRATION:

Bids are due on October 13, 2016. The Division of Purchases recommends that bids be scored by a team consisting of 3-6 members. Staff recommends a team of three consisting of John, Ellie and a single Commissioner. Accordingly, the staff requests that a Commissioner be designated to take part in the scoring process.

APPEALS:

The RFP seeking bids for representation on Law Court appeals has been posted and advertised. The bids are due November 17, 2016. At the November meeting, the Commission will be asked to determine the number and make-up of the scoring team for that RFP.

JUSTICEWORKS AND SOMERSET COUNTY:

In May, the Commission decided to implement one-year extensions for both contracts. This was the last extension under the existing Justiceworks contract, so an RFP should be issued for bids for the attorney billing system going forward. There remains one possible extension under the Somerset County contract, but the Commission decided in May to put that contract out to bid this year as well. Staff are working to prepare RFP's for these services and hope to have drafts for the Commission's review at the November meeting.

(6.)
Draft Amendment

Maine Revised Statutes

Title 4: JUDICIARY

Chapter 37: MAINE COMMISSION ON INDIGENT LEGAL SERVICES

§1802. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Assigned counsel. "Assigned counsel" means a private attorney designated by the commission to provide indigent legal services at public expense.

1-A. Appellate counsel. "Appellate counsel" means an attorney who is entitled to payment under Title 15, section 2115-A, subsection 8 or 9.

2. Commission. "Commission" means the Maine Commission on Indigent Legal Services under section 1801.

3. Contract counsel. "Contract counsel" means a private attorney under contract with the commission to provide indigent legal services.

4. Indigent legal services. "Indigent legal services" means legal representation provided to:

A. An indigent defendant in a criminal case in which the United States Constitution or the Constitution of Maine or federal or state law requires that the State provide representation;

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

C. Juvenile defendants.

"Indigent legal services" does not include the services of a guardian ad litem appointed pursuant to Title 22, section 4105, subsection 1-, but does include the filing of a petition for certiorari to the United States Supreme Court from an adverse decision of the Law Court on behalf of an indigent client.

(7.) Training Update

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: MCILS TRAINING UPDATE
DATE: OCTOBER 4, 2016

Juvenile Training – Sept 30 in Augusta:

This training was sponsored by the John T. Gorman Foundation and was attended by over 100 lawyers. Out-of-state speakers from Georgetown Law School and NYU Law School presented on the topics of Role of Counsel, Raising Race, and Trial Practice. Commission staff received positive feedback about this training.

Upcoming trainings for remainder of 2016:

November 14-16 – video replay of Juvenile, Emancipation, and Child Protection minimum standards training

November 15 – live 2 hour training in Augusta on handling Adoption and Guardianship cases in District Court

December 2 – live all-day training in Freeport for the Criminal Law minimum standards training. This will be held in conjunction with the Maine State Bar Association's Bridging the Gap CLE.

Planned 2017 trainings:

- March – live all-day training on OUI and PCR to be held in Augusta
- April – live half-day Juvenile training sponsored by the John T. Gorman Foundation to be held at University of Maine Farmington
- April/May – live 4 hr domestic violence training to be held in Saco, co-sponsoring with Scott Houde/YBA
- June & November – video replays of minimum standards training
- December – live Juvenile law minimum standards training
- TBD – video replay of September 30 Juvenile training to be shown in Presque Isle
- TBD – video replay of half-day April JV training to be shown in Ellsworth and Rockland