

MCILS

**October 6, 2020
Commissioner's Meeting
Packet**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

OCTOBER 6, 2020
TELEPHONIC COMMISSION MEETING
AGENDA

- 1) Approval of September 8, 2020, and September 23, 2020, Commission Meeting Minutes
- 2) Operations Reports
- 3) Budget Discussion
- 4) Rulemaking Process
- 5) Training RFP Update
- 6) OPEGA Report Discussion (Executive Session)
- 7) Public Comment
- 8) Set Date, Time and Location of Next Regular Meeting of the Commission

(1.)

**September 8, 2020 &
September 23, 2020
Commission Meeting
Minutes**

**Maine Commission on Indigent Legal Services – Commissioners Meeting
September 8, 2020**

Minutes

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

MCILS Staff Present: Ellie Maciag, John Pelletier

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Approval of the August 4, 2020 Commission Meeting Minutes	No discussion of meeting minutes.	Commissioner Carey moved to approve. Commissioner LeBrasseur seconded. All voted in favor. Approved.
Operations Reports	<u>August 2020 Operations Report:</u> 2,655 new cases were opened in the DefenderData system in August. This was a 216 case increase over August. The number of submitted vouchers in August was 2,359, an increase of 404 vouchers over July, totaling \$1,024,149, an increase of \$98,000 over July. Director Pelletier noted that while court activity is rebounding, vouchers and average voucher price are both down and overall expenditures are significantly below historic levels. The average price per voucher was \$421.12, down \$59.00 per voucher from July. Appeal and Post-Conviction Review cases had the highest average vouchers. There were 5 vouchers exceeding \$5,000 paid in August. 72 authorizations to expend funds were issued in August, and we paid \$27,080 for experts and investigators, etc. The monthly transfer from the Judicial Branch for counsel fees for August, which reflects July's collections, totaled \$72,639, down approximately \$16,000 from July. Two attorney complaints were received in August.	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Budget Update	<p>Director Pelletier relayed that DAFS Commissioner Figueroa issued a directive to all agencies to submit proposals for a 10% reduction for the current fiscal year. A 10% reduction for the Commission would total \$1.8 million. In the proposal, Director Pelletier made clear that Commission services are constitutionally mandated and that reforms being explored will require additional funding. The proposal also included a request for the \$2.6 million unencumbered balance to be applied to the current year budget. Director Pelletier explained that the biennial budget proposal deadline has been extended from September 1 to October 29 and will require a similar cost reduction to baseline. Director Pelletier and Chair Tardy will be meeting with budget officials on September 9 to discuss the biennial budget, including the \$2.8 shortfall in the current baseline budget, the need for additional staffing, and the need to increase the Commission's capacity to undertake reform. Commission Schneider would have preferred a special meeting take place before the proposal was submitted since he would have voted against it and argued that it should have been a vehicle to push back against any budget cuts. He believes that a staffing request of only two additional positions is inadequate. Commissioner Cummins stated that he was troubled by budget discussions envisioning maintaining the status quo and not reforms including a public defender system. Commission Cummins urged the Commission to approve a pilot public defender office in Kennebec County and solicit a proposal consistent with the New Hampshire model. Commissioner Cummins noted that there was support from the Judicial Branch and District Attorney's office for the concept and estimated that it would cost between \$2 to \$3 million. He added that lawyers have been discussing the concept and believes there is a qualified group that would be interested but there needs to be some show of support by the Commission. Chair Tardy suggested that it might be appropriate for the biennial budget proposal and cautioned that the Commission would first need to find out if there is support from the administration for the concept before taking action. Chair Tardy noted that he would support appointing a subcommittee to move the idea forward. Commissioner Carey suggested having an additional one or two meetings before</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>the October 29th budget submission deadline to have further discussions. Commissioner LeBrasseur reiterated Commissioner Schneider's view that a staffing request of only two additional positions is inadequate and urged the Commission to seek adequate funding regardless of the delivery system so it can meet its constitutional obligations.</p>	
Rulemaking Process	<p>Director Pelletier reviewed the rulemaking process and categorized sections the current subcommittee proposals as to what would be considered routine technical or major substantive rule changes. Commissioner Churchill inquired about the timing of the rulemaking process and suggested having additional Commission meetings in order to timely meet the legislative deadlines.</p>	
Pre-Arrestment Assignments	<p>Director Pelletier relayed that the request for statewide expansion of the Region 3 pre-arrestment assignment program for risk of jail cases is now under consideration by the trial chiefs. Director Pelletier noted that for the non-risk of jail cases, there was not an enthusiastic response from the lawyers, and the process caused a hardship on the clerks due to the extra work involved. As such there is not much interest in moving forward with that aspect of the program. There was also a considerable cost component making statewide expansion cost prohibitive. Director Pelletier noted that the risk of jail cases on the other hand had limited cost impact and had the added benefit of getting lawyers working early on in the case and avoided the problem of unrepresented defendants negotiating with prosecutors. For these reasons Director Pelletier has urged the trial chiefs to expand the pilot program statewide. Commissioner LeBrasseur stated that any person charged with a crime has a risk of jail and that it should not be left up to the prosecutors to decide who has a risk of jail and should instead be left to the court as a sentencing decision. Commissioner LeBrasseur noted that the Sixth Amendment Center report chided the Commission for using our limited resources for non-risk of jail cases and suggested the Commission evaluate the program moving forward and to use our funding resources appropriately.</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Samples of Complaints about Attorneys	<p>Director Pelletier reviewed the Commission staff's current process for handling attorney complaints. Commissioner Cummins wants to see more Commissioner involvement on how complaints are handled and suggested a subcommittee to work with staff. Chair Tardy asked whether increased Commissioner involvement would require a statute change. Director Pelletier said it was ambiguous and suggested that a workaround could consist of a subset of Commissioners who work on disciplinary matters in an appellate capacity who are not involved in the disciplinary decision-making process. Chair Tardy asked AAG Hudson to gather some information for Commission consideration about how other boards act in an appellate capacity.</p>	
Training RFP Discussion	<p>Commissioner Katz moved into executive session pursuant to 1 MRS section 405(6)(F) to discuss information contained in the records made, maintained or received by the Commission where access by the general public to those records is prohibited under 5 MRS section 1825(B) and 4 MRS section 1806(2)(F). Commissioner Churchill seconded. All voted in favor. After the Commission exited executive session, Commissioner Churchill moved to approve the issuance of a provisional award for the implementation of the new lawyer training program that has been discussed. Commissioner Carey seconded. All voted in favor.</p>	
Public Comment	<p><u>Attorney Cynthia Dill</u>: Attorney Dill supports Commissioner Cummins' proposal for a pilot PD project. Attorney Dill supports the urgency that was expressed by Commissioner Churchill about the rulemaking process and getting on the legislative calendar.</p> <p><u>Attorney Robert Ruffner</u>: Attorney Ruffner offered to speak to any Commissioner or connect them to resources to learn more about the efficacy of a PD model and what a good one looks like. Until the Commission proposes a public defender, the idea will not be going anywhere. Attorney Ruffner noted that no other state is</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	pointing to Maine as a best model and urged the Commission to finally act on the issue.	
Adjournment of meeting	The next meeting will be held telephonically on September 23, 2020 at 8 am to discuss the biennial budget.	

**Maine Commission on Indigent Legal Services – Commissioners Meeting
September 23, 2020**

Minutes

Commissioners Present by Telephone: Michael Carey, Robert Cummins, Robert LeBrasseur, Ronald Schneider, Joshua Tardy, Mary Zmigrodski

MCILS Staff Present: Ellie Maciag, John Pelletier

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Budget Discussion	Director Pelletier summarized the budget discussions with the administration to date. He and Chair Tardy met with budget officials on September 9 and informed the group of the Commission’s potential additional budget requests on top of the additional \$2.8 million needed this year and each year of the biennium to meet our anticipated financial obligations. Chair Tardy added that he was encouraged that the administration recognized the baseline funding issue. Director Pelletier relayed that the Governor’s recent curtailment order does not apply to the Commission. Chair Tardy outlined four areas that a new budget proposal should cover: additional 2 staff positions previously discussed, more staffing going forward, hourly rate increase for the attorneys, and a county specific public defender project. Commissioner Carey suggested the Commission focus on the baseline budget first and look at the 4-tiered payment system in Massachusetts. Commissioner Carey requested staff gather case data for misdemeanor, felony, serious violent felony, and homicide cases to see what a multi-tier payment system would look like in Maine. Commissioner Cummins expressed displeasure with the staff’s September 9 th memo to DAFS and would have preferred the number one focus be on a public defender and not more staffing and stated that the budgeting processes needs to move forward with a public defender office. Commissioner LeBrasseur suggested submitting two different budgets, one that increased staffing levels and the hourly rate for attorneys, and a second one for a public defender. Commissioner Schneider added that a public defender brings stability to the budgeting process and that the Commission must start somewhere and that it is better to start small than not all. He noted that Kennebec County has the	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>support of the Judiciary and the District Attorney’s Office and urged the Commission to focus on a Kennebec County pilot program. The discussion then turned to a realistic start date for a public defender pilot program. Chair Tardy noted that a budget might not pass until June and Commissioner Carey added that action on implementing a pilot program would have to wait until July 1 when the new fiscal year starts. Commissioner Cummins believes that the framing of an office can be done by an outside group. Commissioner Carey noted that David Carroll of the Sixth Amendment Center suggested a 9 to 12-month timeline for a creation of single public defender office. Commissioner Schneider stated that the timeline will be impacted by the type of format selected – contract or state agency. Commissioner Churchill believes that the idea of a public defender on a contract basis may make some sense if some of the issues raised with Somerset contract can be addressed. She suggested that the Commission ask for and address all of the major categories that need to be fixed – staffing, hourly rate, public defender – and put it all out there and give them the data and to not give any item short shrift. Chair Tardy agreed, adding that correcting the baseline budget to \$36 million needs to be a budget priority and that increase in staff and the hourly rate are part of the Commission’s constitutional duty. Commissioner Zmigrodski also agreed, explaining that the Sixth Amendment Center report provides the necessary data on the public defender office and noted that our needs are great. She reminded the Commissioners to not overlook the civil attorneys on the roster. Chair Tardy concluded that the Commission’s budget request needs to be credible and needs to recognize the current fiscal climate. Commissioner Carey added that he has strong concerns about a contract model for a public defender since some of the issues raised with the Somerset contract have appeared to have persisted. He advocated for the Sixth Amendment Center model for the Kennebec pilot project.</p>	
Public Comment	<p><u>Attorney Robert Ruffner</u>: Attorney Ruffner stated that a problem with the current system is that only attorney time is compensated and not support staff time. He believes that the staffing request needs to be respectful of the budget reality and that the Commission should lay out what is needed. He added that a public defender pilot</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>may cost more but it would be worth it to have a more structurally sound system.</p> <p><u>Attorney Corey McKenna:</u> Attorney McKenna advocated for an hourly rate increase and suggested adding a minimum court appearance fee due to shortened court times due to the pandemic. He added that his law firm has taken a huge financial hit during the pandemic. He contended that the public defender model will be extremely expensive and likely rejected by the legislature for financial reasons. He believes that an increase in staff is the most important budget item. He concluded that the public defender discussions are demoralizing to rostered attorneys, noting that many jobs will be eliminated and has resulted in a high level of anxiety for attorneys.</p> <p><u>Attorney Zach Heiden:</u> Attorney Heiden stated that the upcoming budget is a statement of values and not just about dollars and cents. He cautioned that no one thing is going to solve all the Commission's problems. He believes that the Sixth Amendment Center budget provides a much better start as a base proposal since it was put together by a nationally recognized expert hired by the legislature.</p> <p><u>Attorney Jamesa Drake:</u> Attorney Drake agreed with Commissioner Churchill and Attorney Heiden's comments about using the Sixth Amendment Center report's public defender budget as a starting point for the upcoming budget proposal. Attorney Drake pointed out that the Sixth Amendment Center report recommended against using a contract model.</p>	
Adjournment of meeting	The next meeting will be held telephonically on October 6, 2020 at 8 am.	

(2.)

Operations Reports

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
SUBJECT: SEPTEMBER 2020 OPERATIONS REPORTS
DATE: OCTOBER 1, 2020

Attached you will find the September, 2020, Operations Reports for your review and our discussion at the Commission meeting on October 6, 2020. A summary of the operations reports follows:

- 2,739 new cases were opened in the DefenderData system in September. This was a 84 case increase over August. Year to date, new cases are up 0.5%, from 7,784 at this time last year to 7,825 this year.
- The number of vouchers submitted electronically in September was 2,474, an increase of 115 vouchers over August, totaling \$1,124,285.34, an increase of \$100,000 over August. Year to date, the number of submitted vouchers is down by approximately 20%, from 8,459 at this time last year to 6,742 this year, with the total amount for submitted vouchers down 28%, from \$4,222,013 at this time last year to \$3,017,219 this year.
- In September, we paid 3,016 electronic vouchers totaling \$1,349,945.62, representing an increase of 885 vouchers and \$452,000 compared to August. Year to date, the number of paid vouchers is down approximately 20%, from 8,382 at this time last year to 6,649 this year, and the total amount paid is down approximately 29%, from \$4,178,242 at this time last year to \$2,968,494 this year.
- We paid no paper vouchers in September.
- The average price per voucher in September was \$447.59, up \$26.47 per voucher over August. Year to date, the average price per voucher is down approximately 10.5%, from \$498.48 at this time last year to \$446.46 this year.
- Appeal and Post-Conviction Review cases had the highest average voucher in September. There were 6 vouchers exceeding \$5,000 paid in September. See attached addendum for details.
- In September, we issued 100 authorizations to expend funds: 56 for private investigators, 33 for experts, and 11 for miscellaneous services such as interpreters and transcriptionists. In September, we paid \$54,557.32 for experts and investigators, etc. One request for expert funds from a defendant who had retained counsel was denied because the defendant was found not to be indigent.

- In September, we received two complaints about attorneys, both in the form of a letter to the court seeking new counsel. The complaints were sent to the attorneys seeking a response. Both responses were satisfactory, with one of the attorneys acknowledging that he had erred when he agreed to represent a current client on a case from a distant county.
- In September, we approved eight requests for co-counsel. One case involved a Murder charge and two involved a charge of Aggravated Attempted Murder. Two other cases involved a charge of Vehicular Manslaughter and Aggravated Trafficking. Two cases involved charges of Domestic Violence and Robbery, respectively, where more experienced and qualified counsel in the same firm joined as co-counsel with the originally assigned attorney, who was not on the relevant specialized panel. The eighth case involved a more experienced attorney bringing on a relatively new attorney as co-counsel on a case headed to trial.

In our All Other Account, the total expenses for the month of September were \$1,428,757.76. This account ended the 1st quarter with an unspent balance of \$1,156,587.20 that can be carried forward to meet expenses incurred later in the year. During September, just over \$24,000 was devoted to the Commission's operating expenses. This amount was higher than normal because we paid quarterly expenses for processing our payroll and for the services of the Attorney General's office.

In the Personal Services Account, we had \$102,741.37 in expenses for the month of September, a higher than usual amount because three bi-weekly checks were issued during September.

In the Revenue Account, the transfer from the Judicial Branch for September, reflecting August's collections, totaled \$74,498.74, an increase of approximately \$2,000 over the previous month. Year to date, we have accumulated just over \$235,572.24 in this account that can be applied to future counsel costs.

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

VOUCHERS EXCEEDING \$5,000 PAID SEPTEMBER 2020

	Voucher Total	Case Total
Voucher in a complex post-bindover Juvenile Manslaughter case that arose from an urban melee. Counsel withdrew after one year on the adult case when the Juvenile's family retained other counsel.	\$9,510	\$25,120 (counsel previously paid \$6,444 for litigating the bindover; co-counsel on the adult case paid interim vouchers on \$871, \$3,948, \$3,393, and \$954)
Voucher in a case charging Class B Aggravated Forgery, Unsworn Falsification and Failure to Comply with Sex Offender Registration. Counsel was convinced that the first two charges were without merit, but client was held in jail. Efforts including litigating motions, including a motion to dismiss, and repeated attempts to get the client out of jail, which were complicated and prolonged by the pandemic. Ultimately, the defendant pled to the Failure to Register charge and the other two charges were dismissed.	\$9,437	\$9,437
Voucher in a Child Protection case. The state sought to bar the client's unsupervised contact with the child and were moving toward termination of parental rights. Client had mental health issues and had, as a juvenile, been charged in a homicide. Counsel's efforts ultimately led to dismissal of the Child Protection case upon entry for a Parental Rights order with the child's other parent.	\$7,623	\$7,623
Voucher in a case that arose in 2015 and involved 30+ burglary charges across several counties. Case had been litigated from 2/22/15 to 4/18/19 and involved multi-day Franks litigation, experts on DNA, tool mark, and cell location data. That case was ultimately dismissed, and a new indictment was brought in 2019. Counsel litigated double jeopardy issues and prepared for trial on largely the same evidence. Case dismissed on the eve of trial.	\$7,609	\$7,609
Voucher covering two separate cases involving a total of three Robbery charges, Aggravated Assault, Criminal Threatening and Theft. Client had mental health issues. Counsel arranged evaluations and residential treatment. The client pled guilty to one Robbery, Aggravated Assault, Criminal Threatening and Theft, but received a sentence involving jail rather than prison time.	\$6,320	\$6,320
Voucher after a two-day trial on charges of Dissemination of Sexually Explicit Material and Possession of Sexually	\$5,865	\$5,865

Explicit Material. Defendant found not guilty of the former, but guilty of the latter.		
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MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Case Type

9/30/2020

DefenderData Case Type	Sep-20						Fiscal Year 2021			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
Appeal	3	3	\$ 2,066.84	2	\$ 1,910.84	\$ 955.42	13	33	\$ 52,889.92	\$ 1,602.72
Child Protection Petition	200	453	\$ 271,909.79	537	\$ 325,321.75	\$ 605.81	613	1,130	\$ 673,175.26	\$ 595.73
Drug Court	1	13	\$ 13,596.00	12	\$ 11,256.00	\$ 938.00	1	25	\$ 30,390.00	\$ 1,215.60
Emancipation	10	8	\$ 2,521.11	9	\$ 2,301.40	\$ 255.71	21	16	\$ 3,830.20	\$ 239.39
Felony	623	446	\$ 303,985.90	569	\$ 373,793.87	\$ 656.93	1,714	1,174	\$ 786,034.63	\$ 669.54
Involuntary Civil Commitment	81	79	\$ 17,998.48	97	\$ 21,214.48	\$ 218.71	267	235	\$ 50,611.08	\$ 215.37
Juvenile	96	68	\$ 31,140.63	90	\$ 44,592.95	\$ 495.48	218	181	\$ 87,566.99	\$ 483.80
Lawyer of the Day - Custody	244	252	\$ 60,386.51	291	\$ 70,393.15	\$ 241.90	751	707	\$ 171,660.85	\$ 242.80
Lawyer of the Day - Juvenile	30	30	\$ 6,744.90	32	\$ 7,320.56	\$ 228.77	76	71	\$ 18,164.76	\$ 255.84
Lawyer of the Day - Walk-in	152	168	\$ 41,315.89	230	\$ 54,428.69	\$ 236.65	632	592	\$ 131,529.46	\$ 222.18
Misdemeanor	1,060	618	\$ 195,248.44	732	\$ 223,327.21	\$ 305.09	2,865	1,525	\$ 466,006.31	\$ 305.58
Petition, Modified Release Treatment	0	4	\$ 1,194.35	4	\$ 1,194.35	\$ 298.59	3	14	\$ 6,522.77	\$ 465.91
Petition, Release or Discharge	0	0		0			1	1	\$ 682.33	\$ 682.33
Petition, Termination of Parental Rights	30	44	\$ 38,639.67	57	\$ 43,266.47	\$ 759.06	80	109	\$ 80,517.31	\$ 738.69
Post Conviction Review	6	1	\$ 4,255.96	2	\$ 6,287.31	\$ 3,143.66	17	12	\$ 26,206.88	\$ 2,183.91
Probate	1	2	\$ 1,416.00	2	\$ 1,416.00	\$ 708.00	2	3	\$ 1,836.00	\$ 612.00
Probation Violation	143	113	\$ 46,714.84	137	\$ 56,404.01	\$ 411.71	398	286	\$ 122,442.09	\$ 428.12
Represent Witness on 5th Amendment	0	0		0			1	0		
Resource Counsel Criminal	0	1	\$ 240.00	2	\$ 294.00	\$ 147.00	0	4	\$ 600.00	\$ 150.00
Resource Counsel Juvenile	0	1	\$ 102.00	1	\$ 102.00	\$ 102.00	0	2	\$ 318.00	\$ 159.00
Resource Counsel Protective Custody	0	1	\$ 408.00	1	\$ 408.00	\$ 408.00	0	1	\$ 408.00	\$ 408.00
Review of Child Protection Order	59	168	\$ 84,294.51	208	\$ 104,607.06	\$ 502.92	149	527	\$ 256,996.05	\$ 487.66
Revocation of Administrative Release	0	1	\$ 105.52	1	\$ 105.52	\$ 105.52	3	1	\$ 105.52	\$ 105.52
DefenderData Sub-Total	2,739	2,474	\$ 1,124,285.34	3,016	\$ 1,349,945.62	\$ 447.59	7,825	6,649	\$ 2,968,494.41	\$ 446.46
Paper Voucher Sub-Total	0	0	\$ -	0	\$ -	#DIV/0!	0	0		#DIV/0!
TOTAL	2,739	2,474	\$1,124,285.34	3,016	\$1,349,945.62	\$ 447.59	7,825	6,649	\$ 2,968,494.41	\$ 446.46

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

FY21 FUND ACCOUNTING

AS OF 09/30/2020

Account 010 95F Z112 01 (All Other)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY20 Total
FY21 Professional Services Allotment		\$ 4,372,000.00		\$ 4,312,000.00		\$ 4,452,000.00		\$ 2,113,725.00	
FY21 General Operations Allotment		\$ 48,000.00		\$ 48,000.00		\$ 48,000.00		\$ 48,000.00	
FY20 Encumbered Balance Forward		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustment		\$ -		\$ -		\$ -		\$ -	
Supplemental Budget Allotment		\$ -		\$ -		\$ -		\$ -	
Reduction due to encumbrance closure		\$ -		\$ -		\$ -		\$ -	
Financial Order Unencumbered Balance Fwd		\$ -		\$ -		\$ -		\$ -	
Total Budget Allotments		\$ 4,420,000.00		\$ 4,360,000.00		\$ 4,500,000.00		\$ 2,161,725.00	\$ 15,441,725.00
Total Expenses	1	\$ (765,783.81)	4	\$ -	7	\$ -	10	\$ -	
	2	\$ (940,166.23)	5	\$ -	8	\$ -	11	\$ -	
	3	\$ (1,428,757.76)	6	\$ -	9	\$ -	12	\$ -	
Encumbrances (Justice Works)		\$ (62,405.00)		\$ -		\$ -		\$ -	\$ (62,405.00)
Encumbrances (B Taylor)		\$ (66,300.00)		\$ -		\$ -		\$ -	\$ (66,300.00)
Encumbrances (Videographer & business cards)		\$ -		\$ -		\$ -		\$ -	\$ -
TOTAL REMAINING		\$ 1,156,587.20		\$ 4,360,000.00		\$ 4,500,000.00		\$ 2,161,725.00	\$ 12,178,312.20

Q1 Month 3

INDIGENT LEGAL SERVICES

Counsel Payments	\$ (1,349,945.62)
Interpreters	\$ (432.50)
Private Investigators	\$ (8,651.04)
Mental Health Expert	\$ (17,500.00)
Misc Prof Fees & Serv	\$ (4,172.58)
Transcripts	\$ (12,874.34)
Other Expert	\$ (10,425.00)
Process Servers	\$ (501.86)
Subpoena Witness Fees	\$ -
Out of State Witness Travel	\$ -
SUB-TOTAL ILS	\$ (1,404,502.94)

OPERATING EXPENSES

Service Center	\$ (1,829.25)
DefenderData	\$ (6,625.00)
Automobile Insurance	\$ (117.00)
Mileage/Tolls/Parking	\$ (701.55)
Mailing/Postage/Freight	\$ (7.77)
West Publishing Corp	\$ (198.09)
Safety/Protective Supplies	\$ (800.00)
Office Supplies/Equip.	\$ -
Cellular Phones	\$ -
OIT/TELCO	\$ (2,568.16)
Office Equipment Rental	\$ -
Training Videographer	\$ -
Barbara Taylor monthly fees	\$ (4,420.00)
Dues	\$ (265.00)
AAG Legal Svcs Quarterly Payment	\$ (6,723.00)
SUB-TOTAL OE	\$ (24,254.82)

TOTAL \$ (1,428,757.76)

INDIGENT LEGAL SERVICES

Q1 Allotment	\$ 4,420,000.00
Q1 Encumbrances for Justice Works contract	\$ (62,405.00)
Barbara Taylor Contract	\$ (66,300.00)
Videographer	\$ -
Q1 Expenses to date	\$ (3,134,707.80)
Remaining Q1 Allotment	\$ 1,156,587.20

Non-Counsel Indigent Legal Services

Monthly Total	\$ (54,557.32)
Total Q1	\$ 110,837.23
Total Q2	\$ -
Total Q3	\$ -
Total Q4	\$ -
Fiscal Year Total	\$ 110,837.23

Conference Account Transactions

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

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY21 FUND ACCOUNTING
As of 09/30/2020

Account 014 95F Z112 01 (Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY20 Total
Total Budget Allotments		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00	\$ 1,100,000.00
Financial Order Adjustment	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Financial Order Adjustment	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Budget Order Adjustment	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
Budget Order Adjustment		\$ -		\$ -		\$ -	12	\$ -	
Total Budget Allotments		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00	\$ 1,100,000.00
Cash Carryover from Prior Quarter		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB	1	\$ 88,434.06	4	\$ -	7	\$ -	10	\$ -	
Promissory Note Payments		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB	2	\$ 72,639.44	5	\$ -	8	\$ -	11	\$ -	
Court Ordered Counsel Fee		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB (late transfer)		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB	3	\$ 74,498.74	6	\$ -	9	\$ -	12	\$ -	
Returned Checks-stopped payments		\$ -		\$ -		\$ -		\$ -	
TOTAL CASH PLUS REVENUE COLLECTED		\$ 235,572.24		\$ -		\$ -		\$ -	\$ 235,572.24
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		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00	\$ 1,100,000.00
Overpayment Reimbursements	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
REMAINING CASH Year to Date		\$ 235,572.24		\$ -		\$ -		\$ -	\$ 235,572.24

Collections versus Allotment	
Monthly Total	\$ 74,498.74
Total Q1	\$ 235,572.24
Total Q2	\$ -
Total Q3	\$ -
Total Q4	\$ -
Allotment Expended to Date	\$ -
Fiscal Year Total	\$ 235,572.24

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY21 FUND ACCOUNTING
AS OF 09/30/2020

Account 010 95F Z112 01 (Personal Services)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY20 Total
FY21 Allotment	\$	236,986.00	\$	245,444.00	\$	216,987.00	\$	197,826.00	\$ 897,243.00
Financial Order Adjustments	\$	20,000.00	\$	(20,000.00)	\$	-	\$	-	
Financial Order Adjustments	\$	-	\$	-	\$	-	\$	-	
Budget Order Adjustments	\$	-	\$	-	\$	-	\$	-	
Total Budget Allotments	\$	256,986.00	\$	225,444.00	\$	216,987.00	\$	197,826.00	\$ 897,243.00
Total Expenses	1 \$	(72,711.14)	4 \$	-	7 \$	-	10 \$	-	
	2 \$	(72,775.12)	5 \$	-	8 \$	-	11 \$	-	
	3 \$	(102,741.37)	6 \$	-	9 \$	-	12 \$	-	
TOTAL REMAINING	\$	8,758.37	\$	225,444.00	\$	216,987.00	\$	197,826.00	\$ 649,015.37

Q1 Month 3	
Per Diem	\$ -
Salary	\$ (50,556.14)
Vacation Pay	\$ (5,117.47)
Holiday Pay	\$ (2,238.17)
Sick Pay	\$ (2,089.04)
Empl Hlth SVS/Worker Comp	\$ -
Health Insurance	\$ (11,791.24)
Dental Insurance	\$ (321.20)
Employer Retiree Health	\$ (6,463.32)
Employer Retirement	\$ (4,011.08)
Employer Group Life	\$ (670.32)
Employer Medicare	\$ (921.39)
Retiree Unfunded Liability	\$ (11,723.59)
Longevity Pay	\$ (208.00)
Perm Part Time Full Ben	\$ (6,630.41)
Premium & Standard OT	\$ -
Retro Lump Sum Pymt	\$ -
TOTAL	\$ (102,741.37)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Court

9/31/2020

	Sep-20						Fiscal Year 2021			
Court	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
ALFSC	2	5	\$ 1,335.00	8	\$ 3,777.00	\$ 472.13	5	14	\$ 18,306.00	\$ 1,307.57
AUBSC	0	0		0			4	1	\$ 12.00	\$ 12.00
AUGDC	47	37	\$ 21,432.30	54	\$ 28,746.59	\$ 532.34	126	142	\$ 80,184.80	\$ 564.68
AUGSC	3	4	\$ 1,194.35	4	\$ 1,194.35	\$ 298.59	11	20	\$ 7,800.77	\$ 390.04
BANDC	36	73	\$ 27,709.65	95	\$ 32,248.65	\$ 339.46	166	241	\$ 71,325.65	\$ 295.96
BANSC	0	0		0			0	0		
BATSC	0	0		0			1	0		
BELDC	11	25	\$ 15,102.70	27	\$ 15,943.45	\$ 590.50	40	54	\$ 30,413.19	\$ 563.21
BELSC	1	0		0			1	0		
BIDDC	46	57	\$ 37,157.82	73	\$ 43,667.28	\$ 598.18	122	166	\$ 93,594.02	\$ 563.82
BRIDC	6	30	\$ 14,177.68	37	\$ 16,529.68	\$ 446.75	33	67	\$ 31,122.10	\$ 464.51
CALDC	5	7	\$ 3,228.00	8	\$ 3,204.00	\$ 400.50	19	22	\$ 11,177.20	\$ 508.05
CARDC	7	17	\$ 6,441.05	19	\$ 8,723.99	\$ 459.16	18	69	\$ 31,235.50	\$ 452.69
CARSC	0	0		0			0	1	\$ 360.00	\$ 360.00
DOVDC	8	23	\$ 7,063.32	32	\$ 10,681.20	\$ 333.79	21	47	\$ 19,028.24	\$ 404.86
DOVSC	0	0		0			0	0		
ELLDC	11	39	\$ 26,508.91	50	\$ 32,118.91	\$ 642.38	31	86	\$ 60,289.50	\$ 701.04
ELLSC	0	0		0			0	0		
FARDC	8	17	\$ 8,118.11	17	\$ 8,118.11	\$ 477.54	19	40	\$ 30,474.08	\$ 761.85
FARSC	0	0		0			0	3	\$ 2,173.35	\$ 724.45
FORDC	14	23	\$ 11,988.13	21	\$ 14,239.79	\$ 678.09	29	46	\$ 28,577.46	\$ 621.25
HOUDC	13	29	\$ 18,928.52	26	\$ 18,682.00	\$ 718.54	36	76	\$ 43,870.04	\$ 577.24
HOUSC	0	0		0			0	0		
LEWDC	74	74	\$ 60,720.96	94	\$ 67,181.14	\$ 714.69	206	246	\$ 130,408.98	\$ 530.12
LINDC	11	16	\$ 7,387.64	22	\$ 11,867.64	\$ 539.44	43	40	\$ 19,070.04	\$ 476.75
MACDC	3	10	\$ 5,582.20	12	\$ 8,795.60	\$ 732.97	6	20	\$ 16,844.91	\$ 842.25
MACSC	0	0		0			0	1	\$ 1,826.30	\$ 1,826.30
MADDC	1	1	\$ 461.36	1	\$ 461.36	\$ 461.36	2	2	\$ 952.72	\$ 476.36
MILDC	6	1	\$ 348.00	9	\$ 3,940.92	\$ 437.88	18	15	\$ 6,475.92	\$ 431.73
NEWDC	15	36	\$ 12,201.19	40	\$ 14,078.79	\$ 351.97	46	79	\$ 24,907.35	\$ 315.28
PORDC	84	109	\$ 40,715.68	125	\$ 49,591.76	\$ 396.73	211	264	\$ 115,592.66	\$ 437.85
PORSC	0	0		0			3	4	\$ 3,259.52	\$ 814.88
PREDC	14	28	\$ 8,967.60	35	\$ 9,717.00	\$ 277.63	41	74	\$ 27,723.20	\$ 374.64
RODC	10	28	\$ 15,851.76	33	\$ 20,194.10	\$ 611.94	42	62	\$ 33,028.40	\$ 532.72
ROCSC	0	1	\$ 186.00	1	\$ 186.00	\$ 186.00	2	4	\$ 732.00	\$ 183.00
RUMDC	3	21	\$ 16,404.44	34	\$ 29,086.96	\$ 855.50	16	68	\$ 53,681.08	\$ 789.43
SKODC	39	61	\$ 34,943.82	73	\$ 37,636.54	\$ 515.57	88	166	\$ 79,949.66	\$ 481.62
SKOSC	0	0		0			2	0		
SOUNDC	8	10	\$ 5,985.00	12	\$ 8,288.12	\$ 690.68	16	40	\$ 23,231.32	\$ 580.78
SOUNSC	0	0		0			0	0		
SPRDC	24	33	\$ 19,501.20	43	\$ 26,637.86	\$ 619.49	83	109	\$ 62,156.84	\$ 570.25
Law Ct	1	3	\$ 2,066.84	2	\$ 1,910.84	\$ 955.42	9	26	\$ 41,396.41	\$ 1,592.17
YORCD	165	142	\$ 76,543.32	203	\$ 106,549.33	\$ 524.87	530	395	\$ 202,589.21	\$ 512.88
AROCD	158	103	\$ 39,791.13	115	\$ 45,709.52	\$ 397.47	453	302	\$ 114,000.63	\$ 377.49
ANDCD	241	121	\$ 44,796.92	153	\$ 52,767.16	\$ 344.88	769	442	\$ 135,304.00	\$ 306.12
KENCD	225	151	\$ 69,887.14	185	\$ 83,529.84	\$ 451.51	565	364	\$ 163,130.01	\$ 448.16
PENCD	251	262	\$ 109,332.11	272	\$ 110,408.16	\$ 405.91	727	458	\$ 196,889.69	\$ 429.89
SAGCD	47	48	\$ 25,392.60	53	\$ 25,155.60	\$ 474.63	116	98	\$ 41,509.40	\$ 423.57
WALCD	84	54	\$ 19,546.62	56	\$ 18,626.64	\$ 332.62	193	121	\$ 47,828.68	\$ 395.28
PISCD	36	17	\$ 4,899.69	12	\$ 3,279.88	\$ 273.32	71	39	\$ 10,948.14	\$ 280.72
HANCD	60	68	\$ 25,776.00	79	\$ 27,579.00	\$ 349.10	144	131	\$ 51,742.82	\$ 394.98
FRACD	47	36	\$ 13,527.08	42	\$ 14,682.68	\$ 349.59	168	130	\$ 40,286.36	\$ 309.90
WASCD	55	49	\$ 14,872.54	54	\$ 17,155.84	\$ 317.70	176	105	\$ 39,805.40	\$ 379.10
CUMCD	455	284	\$ 124,754.94	398	\$ 171,046.04	\$ 429.76	1,184	779	\$ 382,578.09	\$ 491.11
KNOCD	84	42	\$ 17,928.76	54	\$ 23,064.88	\$ 427.13	225	126	\$ 53,882.12	\$ 427.64
SOMCD	118	62	\$ 14,457.40	78	\$ 17,619.80	\$ 225.89	285	187	\$ 43,049.38	\$ 230.21
OXFCD	99	93	\$ 31,943.12	104	\$ 35,960.12	\$ 345.77	366	293	\$ 87,543.26	\$ 298.78
LINCD	40	37	\$ 11,778.32	46	\$ 14,734.40	\$ 320.31	141	106	\$ 35,681.71	\$ 336.62
WATDC	33	40	\$ 23,046.67	45	\$ 23,125.59	\$ 513.90	79	107	\$ 50,863.35	\$ 475.36
WESDC	13	33	\$ 14,627.03	39	\$ 17,963.51	\$ 460.60	64	83	\$ 32,786.87	\$ 395.02
WISDC	4	9	\$ 5,102.72	10	\$ 5,846.72	\$ 584.67	31	40	\$ 21,824.80	\$ 545.62
WISSC	0	0		0			1	0		
YORDC	13	5	\$ 4,572.00	11	\$ 7,691.28	\$ 699.21	21	28	\$ 15,069.28	\$ 538.19
TOTAL	2,739	2,474	\$ 1,124,285.34	3,016	\$ 1,349,945.62	\$ 447.59	7,825	6,649	\$ 2,968,494.41	\$ 446.46

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

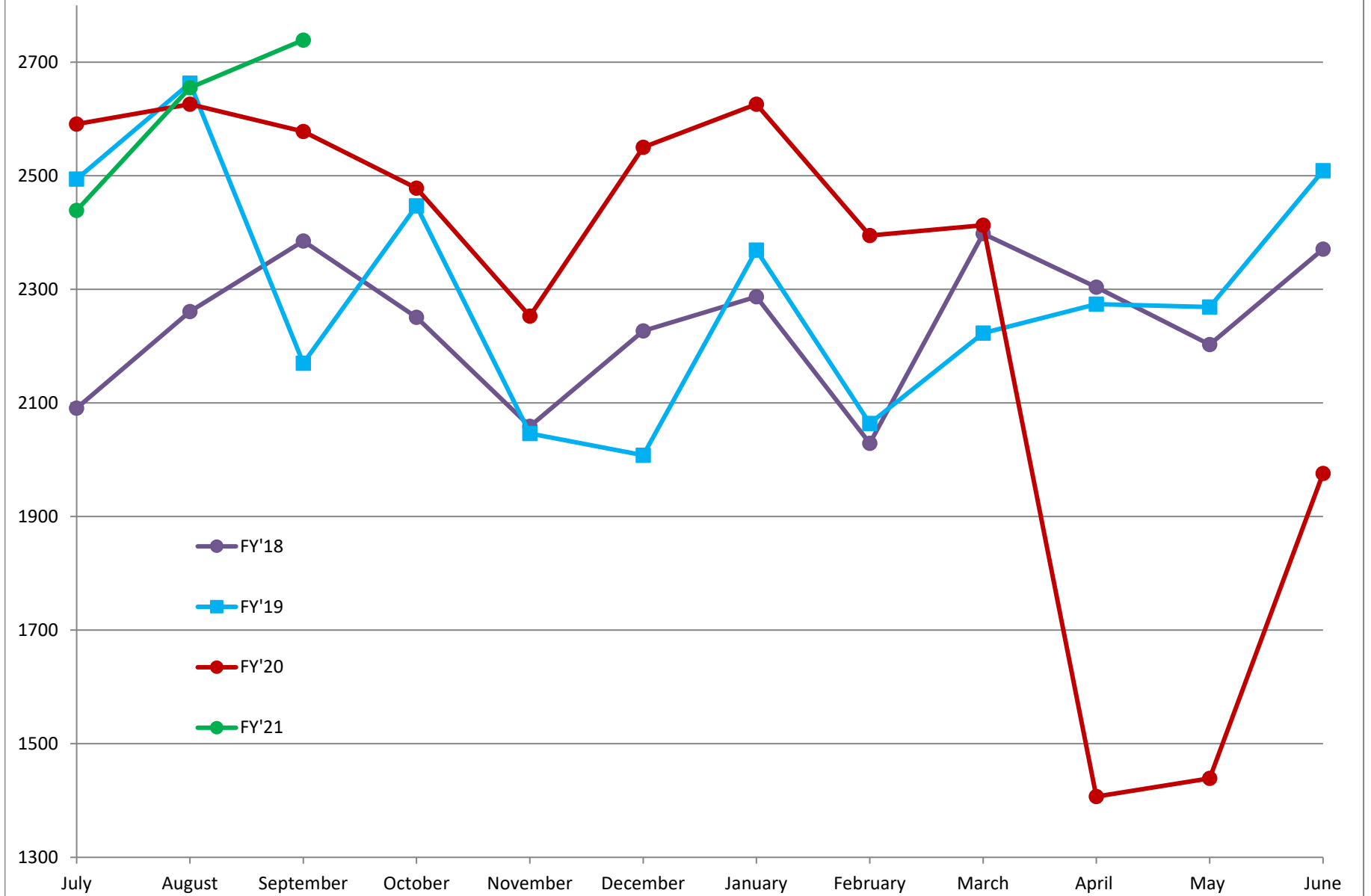
Number of Attorneys Rostered by Court

09/30/2020

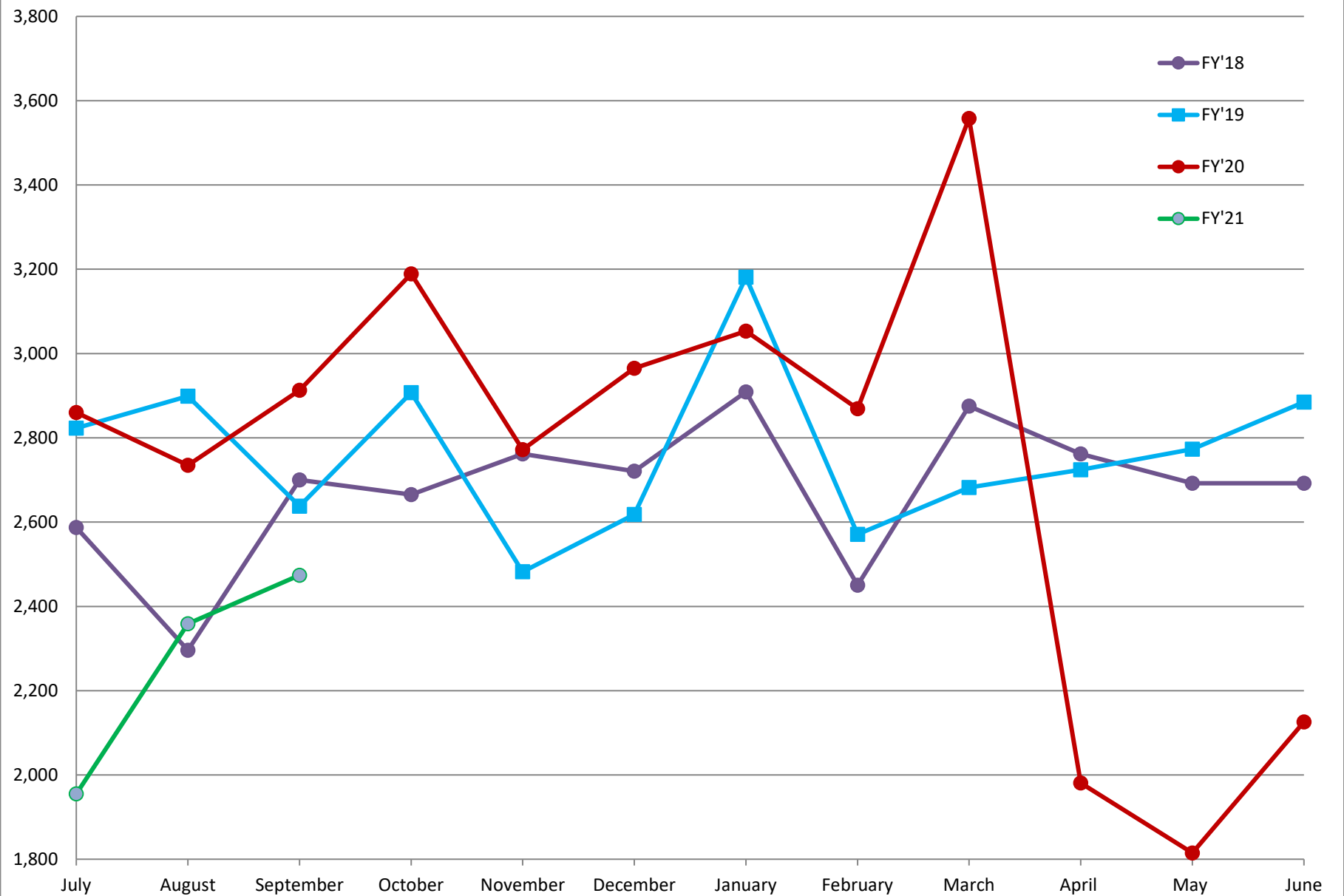
Court	Rostered Attorneys
Augusta District Court	69
Bangor District Court	39
Belfast District Court	36
Biddeford District Court	112
Bridgton District Court	69
Calais District Court	8
Caribou District Court	15
Dover-Foxcroft District Court	23
Ellsworth District Court	31
Farmington District Court	33
Fort Kent District Court	10
Houlton District Court	12
Lewiston District Court	105
Lincoln District Court	21
Machias District Court	12
Madawaska District Court	11
Millinocket District Court	14
Newport District Court	27
Portland District Court	131
Presque Isle District Court	13
Rockland District Court	28
Rumford District Court	22
Skowhegan District Court	20

Court	Rostered Attorneys
South Paris District Court	43
Springvale District Court	98
Unified Criminal Docket Alfred	95
Unified Criminal Docket Aroostook	21
Unified Criminal Docket Auburn	86
Unified Criminal Docket Augusta	68
Unified Criminal Docket Bangor	41
Unified Criminal Docket Bath	74
Unified Criminal Docket Belfast	37
Unified Criminal Docket Dover Foxcroft	22
Unified Criminal Docket Ellsworth	34
Unified Criminal Docket Farmington	34
Unified Criminal Docket Machias	14
Unified Criminal Docket Portland	127
Unified Criminal Docket Rockland	23
Unified Criminal Docket Skowhegan	17
Unified Criminal Docket South Paris	39
Unified Criminal Docket Wiscasset	43
Waterville District Court	35
West Bath District Court	87
Wiscasset District Court	50
York District Court	86

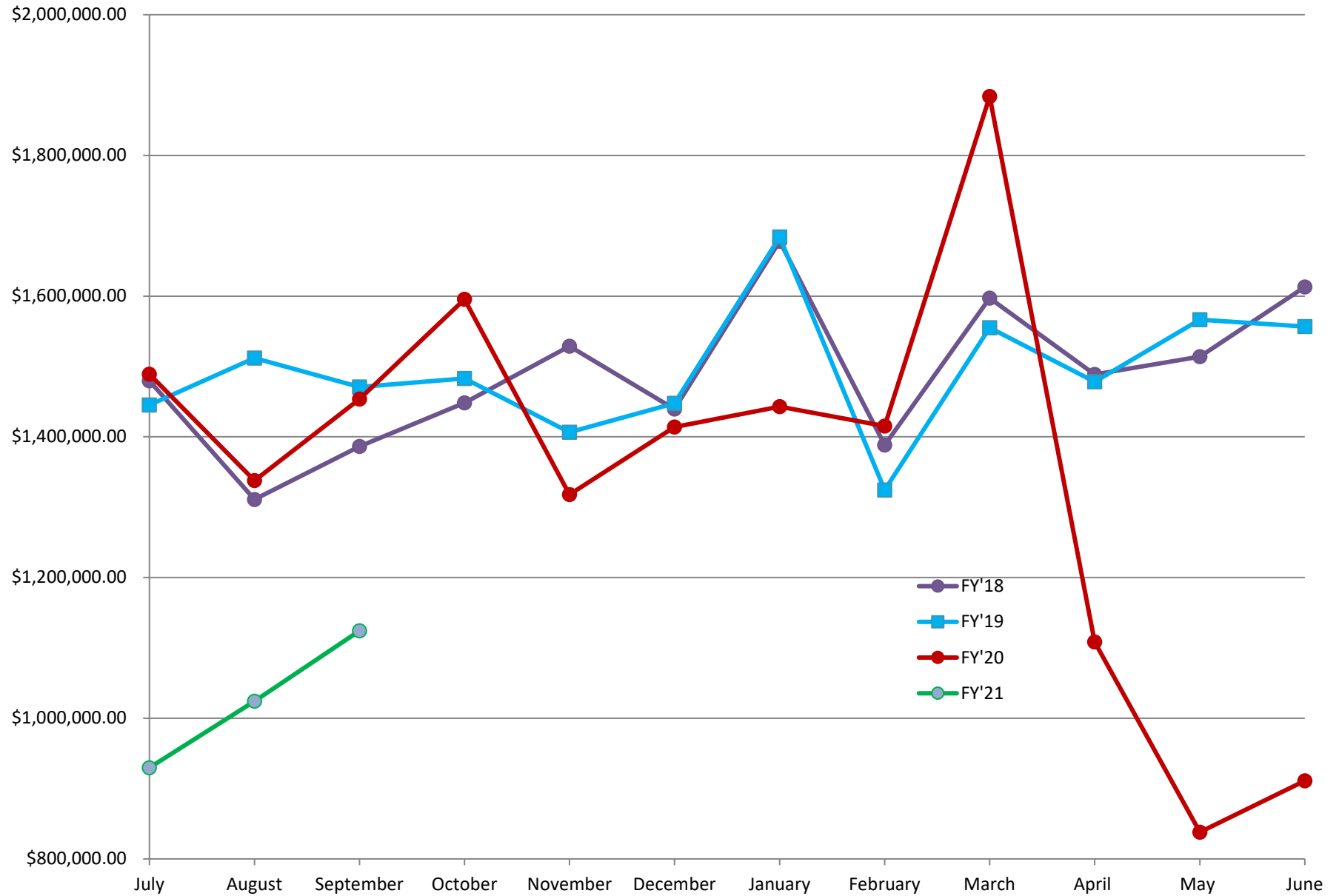
NEW CASES



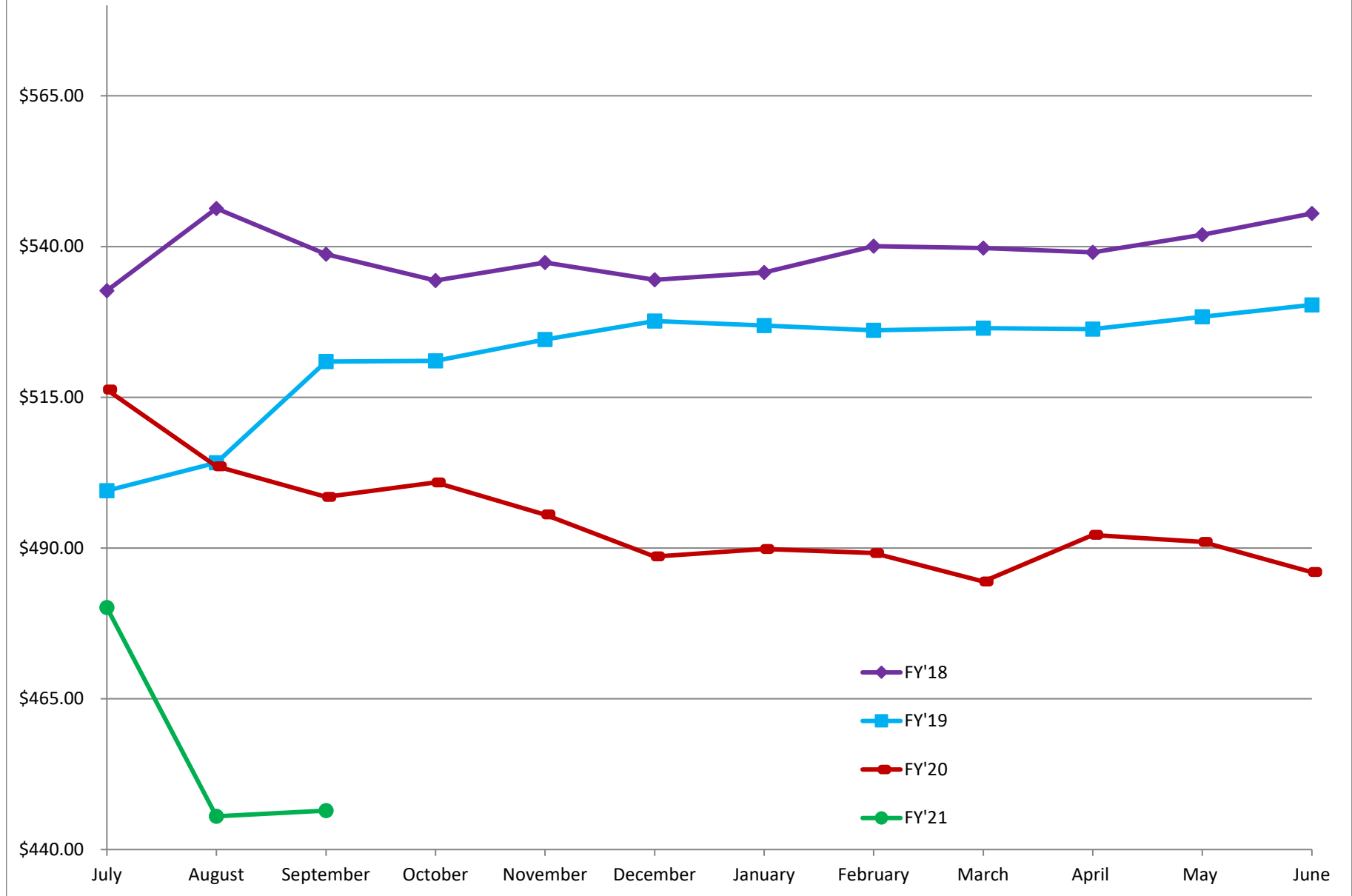
Submitted Vouchers



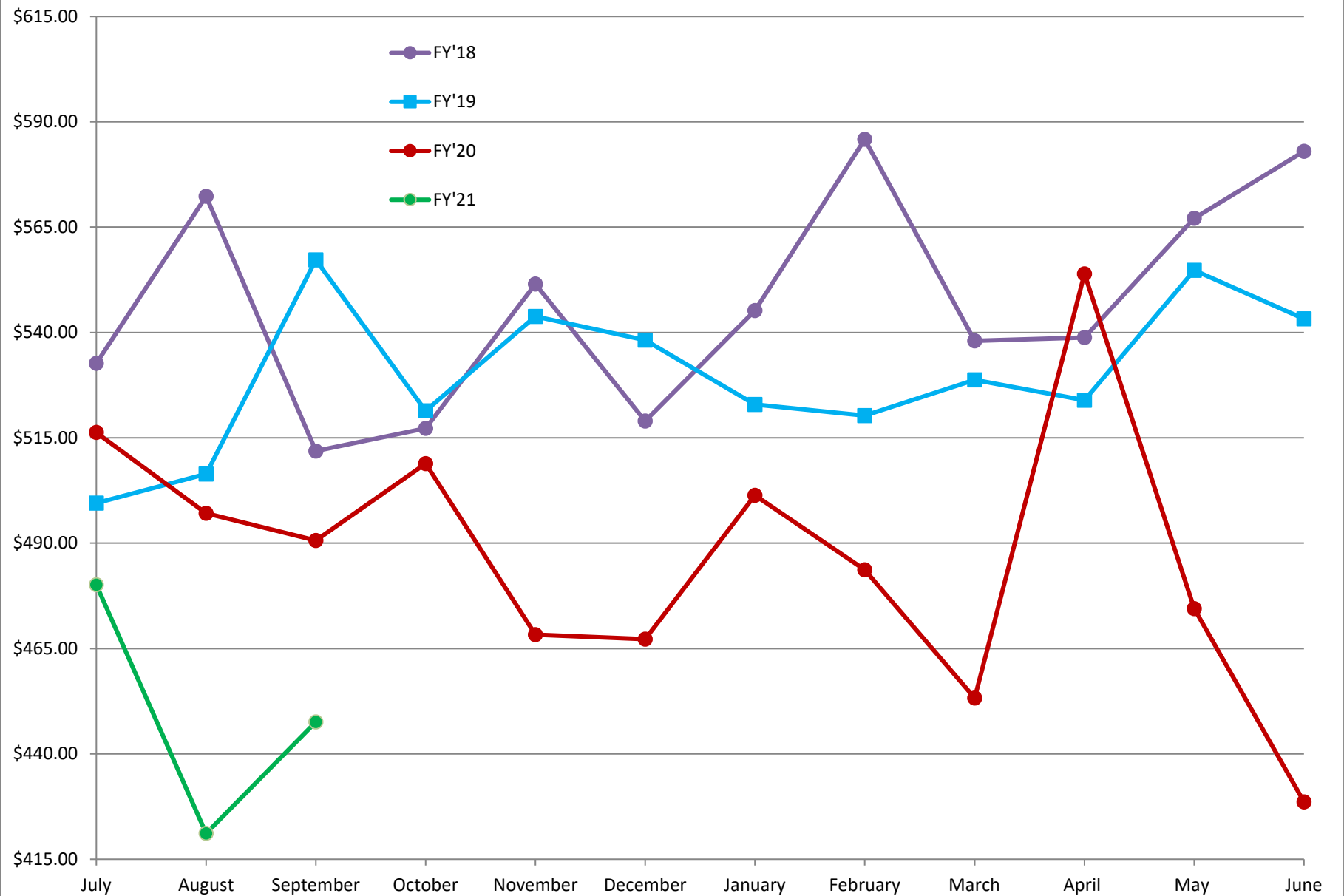
Submitted Voucher Amount



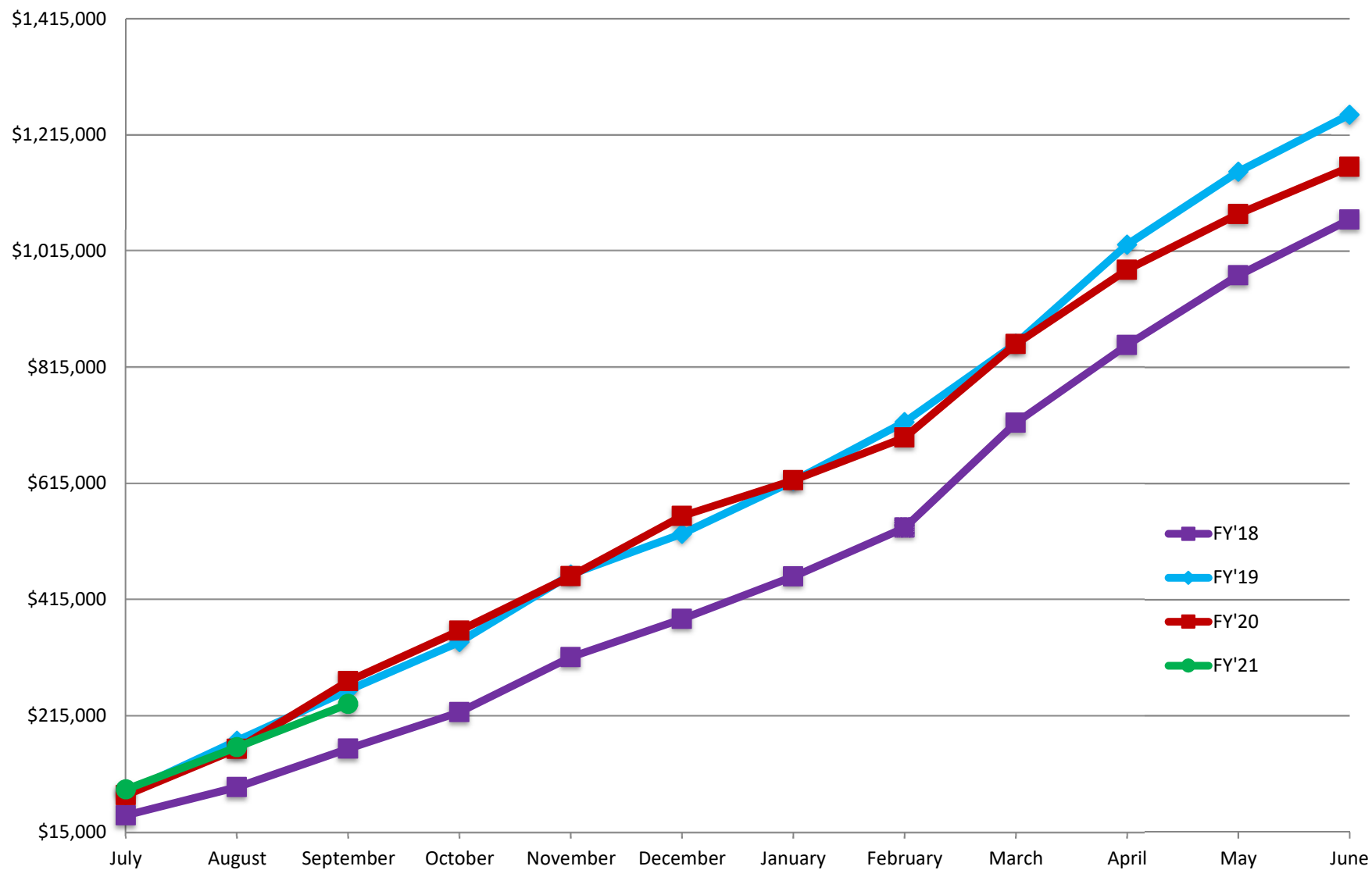
Average Voucher Price Fiscal Year to Date



Monthly Price Per Voucher



COLLECTION TOTALS FY'18 to FY'21



(3.)

Budget Discussions

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: BUDGET DISCUSSION
DATE: SEPTEMBER 30, 2020

At its meeting on September 23, 2020, the Commission engaged in a broad discussion about the contours of the Commission's biennial budget request that is due to be submitted to the Budget Office on October 29, 2020. One issue raised was the potential for a raise in the hourly rate paid to assigned counsel. I was asked to do some analysis on the cost of various fee increase alternatives. To do so, I determined the amount spent on vouchers for calendar years 2017, 2018, and 2019, periods unaffected by the pandemic, and used the average of the three years as the starting point. The calculations appear on the attached spreadsheet.

For a uniform increase in the hourly rate, the additional cost equals \$1.433 million for each \$5.00/hr. increase. The Commission also discussed a differential rate for various, generally more serious, case types. The attached spreadsheet shows the calculation for the incremental cost of a \$5.00/hr. increase in various case types. For example, for homicide cases, the increment is \$55,901.78 for each \$5.00/hr. increase over the base rate. For Serious Violent Felonies, that increment is \$25,415.96, and for Juvenile felonies, that increment is \$2,589.41.

Regarding issues of staffing and a potential Public Defender Office, reference was made at the last meeting to budget recommendations contained in the Sixth Amendment Center report. For your convenience, those portions of the report are attached hereto.

After the last meeting, Commissioner LeBrasseur asked for the number of open criminal cases carried over from 2018 to 2019 in Cumberland County. Based on data extracted from DefenderData, 1,371 cases were carried over. During both 2018 and 2019, about 4,200 new cases per year were opened in Cumberland County. We have not looked at this statistic before, but based on this limited sample, it appears that just over 30% of criminal cases opened each year are carried over into the following year.

Two additional documents are attached. During the last meeting, there was discussion about a group potentially ready to make a proposal in response to a Request for Proposals (RFP) seeking a non-profit entity to operate a Public Defender Office. The staff contacted the purchasing department to obtain guidance on how an agency can gauge interest with respect to potential RFP under consideration. The guidance we received is attached. Also attached is an email expressing public comment on the nature of a biennial budget request.

Overall	2017	2018	2019	SUM	Average
Voucher Costs	\$ 16,544,140.82	\$ 17,753,199.58	\$ 17,299,475.35	\$ 51,596,815.75	\$ 17,198,938.58
Hours Billed	275,735.68	295,886.66	288,324.59	859,946.93	286,648.98
\$5.00/hr. Increase	\$ 1,433,244.88	\$10.00/hr. Increase	\$ 2,866,489.76	\$40.00/hr. Increase	\$ 11,465,959.06

Misdemeanor	2017	2018	2019	SUM	Average
Voucher Costs	\$ 3,470,830.68	\$ 3,774,452.58	\$ 3,535,359.70	\$ 10,780,642.96	\$ 3,593,547.65
Hours Billed	57,847.18	62,907.54	58,922.66	179,677.38	59,892.46
\$5.00/hr. Increase	\$ 299,462.30	\$10.00/hr. Increase	\$ 598,924.61	\$40.00/hr. Increase	\$ 2,395,698.44

CPP & Review	2017	2018	2019	SUM	Average
Voucher Costs CPP	\$ 2,264,447.53	\$ 2,502,408.71	\$ 2,834,888.80	\$ 11,091,444.42	\$ 3,697,148.14
Voucher Costs Rev.	\$ 1,014,882.64	\$ 1,101,257.94	\$ 1,373,558.80		
Total Voucher Costs	\$ 3,279,330.17	\$ 3,603,666.65	\$ 4,208,447.60		
Hours Billed	37,740.79	41,706.81	47,248.15	184,857.41	61,619.14
\$5.00/hr. Increase	\$ 308,095.68	\$10.00/hr. Increase	\$ 616,191.36	\$40.00/hr. Increase	\$ 2,464,765.43

TPR	2017		2018		2019		SUM	Average
Voucher Costs	\$	728,509.59	\$	722,004.96	\$	706,359.95	\$ 2,156,874.50	\$ 718,958.17
Hours Billed		12,141.83		12,033.42		11,772.67	35,947.91	11,982.64
\$5.00/hr. Increase	\$	59,913.18	\$10.00/hr. Increase	\$	119,826.36	\$40.00/hr. Increase	\$ 479,305.44	

All CPP	2017		2018		2019		SUM	Average
Voucher Costs	\$	4,007,839.76	\$	4,325,671.61	\$	4,914,807.55	\$ 13,248,318.92	\$ 4,416,106.31
Hours Billed		66,797.33		72,094.53		81,913.46	220,805.32	73,601.77
\$5.00/hr. Increase	\$	368,008.86	\$10.00/hr. Increase	\$	736,017.72	\$40.00/hr. Increase	\$ 2,944,070.87	

Homicide	2017		2018		2019		SUM	Average
Voucher Costs	\$	547,768.40	\$	820,112.02	\$	644,583.69	\$ 2,012,464.11	\$ 670,821.37
Hours Billed		9,129.47		13,668.53		10,743.06	33,541.07	11,180.36
\$5.00/hr. Increase	\$	55,901.78	\$10.00/hr. Increase	\$	111,803.56	\$40.00/hr. Increase	\$ 447,214.25	

Sex Offense	2017		2018		2019		SUM	Average
Voucher Costs	\$	559,181.34	\$	637,615.16	\$	570,214.60	\$ 1,767,011.10	\$ 589,003.70
Hours Billed		9,319.69		10,626.92		9,503.58	29,450.19	9,816.73
\$5.00/hr. Increase	\$	49,083.64	\$10.00/hr. Increase	\$	98,167.28	\$40.00 hr. Increase	\$ 392,669.13	

Serious Violent Felony	2017		2018		2019		SUM	Average
Voucher Costs	\$	1,524,957.53	\$	1,577,127.31	\$	1,303,839.47	\$ 4,405,924.31	\$ 1,468,641.44
Hours Billed		25,415.96		26,285.46		21,730.66	73,432.07	24,477.36
\$5.00/hr. Increase	\$	122,386.79	\$10.00/hr. Increase	\$	244,773.57	\$40.00/hr. Increase	\$	979,094.29

Other Felony	2017		2018		2019		SUM	Average
Voucher Costs	\$	2,482,509.59	\$	2,440,971.56	\$	2,130,826.51	\$ 7,054,307.66	\$ 2,351,435.89
Hours Billed		41,375.16		40,682.86		35,513.78	117,571.79	39,190.60
\$5.00/hr. Increase	\$	195,952.99	\$5.00/hr. Increase	\$	391,905.98	\$5.00/hr. Increase	\$	1,567,623.92

Juvenile Felony	2017		2018		2019		SUM	Average
Voucher Costs	\$	155,364.51	\$	186,020.76	\$	140,271.38	\$ 481,656.65	\$ 160,552.22
Hours Billed		2,589.41		3,100.35		2,337.86	8,027.61	2,675.87
\$5.00/hr. Increase	\$	13,379.35	\$10.00/hr. Increase	\$	26,758.70	\$40.00/hr. Increase	\$	107,034.81

Juvenile Misdemeanor		2017	2018	2019		SUM	Average
Voucher Costs	\$	245,667.06	\$ 239,917.25	\$ 235,134.87	\$	720,719.18	\$ 240,239.73
Hours Billed		4,094.45	3,998.62	3,918.91		12,011.99	4,004.00
\$5.00/hr. Increase	\$	20,019.98	\$10.00/hr. Increase	\$ 40,039.95	\$40.00/hr. Increase	\$ 160,159.82	

Furthermore, the South Dakota Supreme Court set public counsel compensation hourly rates at \$67 per hour in 2000. To ensure that attorneys are perpetually paid both a reasonable fee and overhead, the court also mandated that “court-appointed attorney fees will increase annually in an amount equal to the cost of living increase that state employees receive each year from the legislature.” Assigned counsel compensation in South Dakota now stands at \$95 per hour.³²⁸ For comparison purposes, a \$95 hourly fee in South Dakota in 2019 is equivalent to a \$114.95 hourly fee in Maine in 2019.³²⁹ We recommend that the State of Maine adopt similar statutory language to ensure that Maine’s assigned counsel compensation rate stays current.

RECOMMENDATION 7: The State of Maine should authorize and fund MCILS at an appropriate level to employ state government attorneys and support staff to operate a statewide appellate defender office and a Cumberland County trial level public defender office.

MCILS does not currently have the statutory authority to establish governmentally employed public defender offices. The relevant part of the statute says: “The commission shall [d]evelop and maintain a system that uses appointed private attorneys, contracts with individual attorneys or groups of attorneys *and consider other programs* necessary to provide quality and efficient indigent legal services.”³³⁰ The statute needs to be amended to give MCILS express authority to create staffed public defender offices.

To be clear, there is no pre-existing, uniform “cookie-cutter” indigent defense services delivery model that states *must* apply. The question for Maine policymakers, in conjunction with criminal justice stakeholders and the broader citizenry of the state, is simply how best to do so given the uniqueness of the state.

The 6AC does not presume that the full-time public defender offices recommended here are the *only* jurisdictions or case types best served by public defender offices in Maine. Indeed, we were struck that, as far back as 1971, the Institute of Judicial Administration, the Supreme Judicial Court, and the Superior Court of the State of Maine recommended a “hybrid public defender/assigned counsel delivery model” with

Maine has a 24% higher cost of living than Birmingham, Alabama.

³²⁸ See Letter from Greg Sattizahn, State Court Administrator, South Dakota Unified Judicial System, to Andrew Fergel, State Bar of South Dakota, RE: 2019 Court-Appointed Attorney Fees and Mileage (Nov. 15, 2018), *available at* <https://ujs.sd.gov/uploads/docs/2019CourtAppointedAttorneyFees.pdf>.

³²⁹ For comparison purposes, the cost of living in Portland, Maine, is 21% higher than in Sioux Falls, South Dakota. *See Attorney/Lawyer Cost of Living Portland, Maine vs. Sioux Falls, South Dakota*, Payscale, <https://www.payscale.com/cost-of-living-calculator/Maine-Portland/South-Dakota-Sioux-Falls/Attorney--Lawyer> (last visited Feb. 28, 2019). Thus, a \$95 hourly wage in South Dakota is equivalent to \$114.95 in Maine.

³³⁰ ME. REV. STAT. ANN. tit. 4, § 1804(3)(a) (2018) (emphasis added).

public defender offices located in Portland, Augusta, and Bangor.³³¹ We note that both Kennebec County (Augusta) and Penobscot County (Bangor) appear to have enough adult criminal cases to justify public defender offices, but because we did not conduct site visits in those two counties we refrain from making that recommendation at this time.³³² That said, MCILS and Maine policymakers should consider expanding public defender office to these two counties once the state appellate defender and Cumberland County public defender offices are created and operating.

State appellate defender office

Many states have found it appropriate to separate the public defense appeals system from the public defense trial system to ensure that the direct appeal is a check against potentially ineffective trial representation. For example:

- *Florida*. Each of the state's 20 judicial circuits (together covering the state's 67 counties) has a public defender office, overseen by an elected chief public defender, with full-time attorneys who provide representation to indigent defendants at trial. Five independent state appellate defender offices provide representation in all appeals.
- *Louisiana*. Each of Louisiana's 42 judicial districts (together comprising the state's 64 parishes) has a local chief defender who oversees the public defender office or the contract defenders that provide representation to indigent defendants at trial. For all indigent appeals, the Louisiana Public Defender Board contracts with a non-profit that itself contracts with individual attorneys to provide representation.
- *Michigan*. The State Appellate Defender Office, overseen by the Appellate Defender Commission, provides appellate representation to indigent defendants statewide. Separately and independently, the Michigan Indigent Defense Commission oversees trial representation.
- *North Carolina*. The North Carolina Office of Indigent Defense Services oversees the provision of right to counsel services throughout the state. Staff public defenders are employed in a centralized unit to provide appellate representation, separate and apart from the trial services.

³³¹ See INSTITUTE OF JUDICIAL ADMINISTRATION, THE SUPREME JUDICIAL COURT AND THE SUPERIOR COURT OF THE STATE OF MAINE 57-58 (1971).

³³² Based on MCILS data, Penobscot County and Kennebec County had the second and third highest indigent defense caseloads after Cumberland County.

- *Oregon.* Oregon provides trial level indigent defense services entirely through contracts with private attorneys. The Office of Public Defense Services has an appellate division of full-time staff attorneys to provide representation in most direct appeals.

Appendix B sets out a budget and budget narrative for a state appellate public defender office that assumes 80% of direct appeals and post-conviction cases statewide will be represented by the new state appellate defender office (based on FY2018 caseloads). The total projected cost of the office in the first year is \$2,369,659.22, including \$55,100 in one-time capital outlay (furniture, computers, and phones).³³³

Cumberland County trial level public defender office

The American Bar Association states in its *ABA Ten Principles of a Public Defense Delivery System* that, wherever there is a “sufficiently high” caseload, the public defense delivery system should consist of “both a public defender office and the active participation of the private bar.”³³⁴ Although the ABA has never defined what it means by “sufficiently high,” there is little doubt that the number of cases arising in Cumberland County meets this threshold.

Appendix C sets out a budget and budget narrative for a Cumberland County trial level public defender office that assumes the office will provide representation in 80% of all adult criminal and juvenile crime cases (based on FY2018 caseloads). The public defender office would not handle any civil cases; those would continue to be handled by appointed private attorneys. The projected annual cost of the office is \$3,042,048. The 2018 cost for providing trial level representation in 80% of Cumberland County’s adult criminal and juvenile crime cases was \$1,921,804, so creation of a public defender office to handle these cases will cost an additional \$1,120,244 over 2018 cost.

³³³ The current cost for representation in 80% of the appellate cases is \$622,215.

³³⁴ AMERICAN BAR ASS’N, *ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM*, Principle 2 (Feb. 2002).

APPENDIX A

MCILS ADMINISTRATION

PERSONNEL	TITLE	SALARY	BENEFITS	POSITIONS	TOTAL
ATTORNEYS	Executive Director	\$101,002.17	\$54,385.78	1	\$155,387.95
	Deputy Director	\$96,906.00	\$54,267.36	1	\$151,173.36
	Training Director	\$72,418.42	\$38,994.53	1	\$111,412.95
	Family Law Resource Attorney	\$72,418.42	\$38,994.53	1	\$111,412.95
	Delinquency Resource Attorney	\$72,418.42	\$38,994.53	1	\$111,412.95
	Adult Trial Resource Attorney	\$72,418.42	\$38,994.53	1	\$111,412.95
	Mental Health Resource Atty	\$72,418.42	\$38,994.53	1	\$111,412.95
	Audit Director	\$70,675.00	\$39,578.00	1	\$110,253.00
	Training staff	\$37,408.00	\$20,948.48	2	\$116,712.96
	Auditing staff	\$37,408.00	\$20,948.48	2	\$116,712.96
Sub-Total					\$1,207,304.98

NON-PERSONNEL EXPENSES	CURRENT	PROJECTED
Risk management insurances	\$1,795.39	\$7,181.56
Mailing/postage/freight	\$4,675.71	\$18,702.84
Cellular phones service	\$1,406.69	\$5,626.76
Service center	\$3,095.00	\$12,380.00
Office supplies & equipment	\$2,062.61	\$8,250.44
Office equipment rental	\$1,274.45	\$5,097.80
Eyeglasses reimbursement	\$300.00	\$1,200.00
OIT/TELCO	\$27,774.75	\$111,099.00
Subscriptions	\$327.75	\$1,311.00
Dues	\$585.00	\$2,340.00
Annual report prorated	\$9.58	\$38.32
Annual parking permit fee	\$1,140.00	\$4,560.00
Printing/binding	\$22.00	\$88.00
InforME annual fee	\$2,640.00	\$10,560.00
Sub-Total		\$188,435.72

CAPITAL EXPENDITURES	RATE	NUMBER	TOTAL
Laptop computer	\$1,400.00	10	\$14,000.00
Furniture	\$1,200.00	10	\$12,000.00
Cell phones	\$300.00	10	\$3,000.00
Sub-Total			\$29,000.00

GRAND TOTAL	\$1,424,740.70
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BUDGET NARRATIVE

In addition to the current Director and Deputy Director, the 6AC recommends the addition of five attorney positions: Training Director, Family Law Resource Attorney, Juvenile Resource Attorney, Mental Health Resource Attorney, and Adult Trial Resource Attorney. Each of the Resource Attorneys will provide direct supervision and provide help desk assistance to attorneys in the field. The Training Director will be responsible for developing and instituting new attorney and on-going training programs, as well as periodic topic-specific trainings to be delivered regionally and remotely. The Training Director will oversee a staff of two to help with logistics and training development. MCILS should also have a dedicated professional with an auditing background to oversee all financial auditing functions, supported by two professional staff members.

With the additional staff, the 6AC recommend that the Director position be paid on par with the salary and compensation of a District Attorney (\$155,387.95)³³⁵ and that the Deputy Director be paid what the MCILS Director is currently being paid (\$151,173.36).³³⁶ The new attorney positions are paid salaries and benefits at the rate paid to assistant district attorneys (\$111,412.95).³³⁷ Although the 6AC are not experts in the prosecution function, 6AC staff has travelled all across the country and interacted with numerous prosecutors, and it is our general observation that the prosecution function in Maine is under-resourced, especially in relation to salaries and compensation. Still, we present these recommendations because the prosecution function offers the best current comparison.

The Auditing Director is projected at the salary and compensation of the current MCILS Deputy Director (\$110,253). The four training and auditing staff are compensated at the current salary and benefits package of the existing rate for the Accounting Technician (\$58,356.48).³³⁸

Non-personnel expenses reflect the current MCILS budget,³³⁹ less line items dedicated specifically for financial screeners. Each expense was prorated based on the existing three MCILS staff members (excluding financial screeners and costs associated

³³⁵ Email from Mark A. Toulouse, Division Chief – Finance & Administrative Services, Office of the Attorney General State of Maine, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 12, 2019). This amount reflects salary plus benefits calculated at approximately 35% of salary.

³³⁶ Email from John Pelletier, Director, Maine Commission on Indigent Legal Services, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 7, 2019).

³³⁷ Email from Mark A. Toulouse, Division Chief – Finance & Administrative Services, Office of the Attorney General State of Maine, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 12, 2019). This amount reflects salary plus benefits calculated at approximately 35% of salary.

³³⁸ Email from John Pelletier, Director, Maine Commission on Indigent Legal Services, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 7, 2019).

³³⁹ Email from John Pelletier, Director, Maine Commission on Indigent Legal Services, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 7, 2019).

primarily for screening) and then multiplied by the recommended staff of twelve. Capital outlay expenses for new computers, furniture, and cell phones are calculated at available retail rates.

APPENDIX B

STATE APPELLATE DEFENDER OFFICE

PERSONNEL	TITLE	SALARY	BENEFITS	POSITIONS	TOTAL
ATTORNEYS	Chief Public Defender	\$101,002.17	\$54,385.78	1	\$155,387.95
	Deputy Public Director	\$96,906.00	\$54,267.36	1	\$151,173.36
	Assistant Public Defender	\$72,418.42	\$38,994.53	11	\$1,225,542.45
	Investigator	\$43,068.00	\$24,118.08	1	\$67,186.08
	Social Worker	\$43,068.00	\$24,118.08	1	\$67,186.08
	Paralegal	\$38,500.00	\$21,560.00	3	\$180,180.00
	Office Manager	\$43,068.00	\$24,118.08	1	\$67,186.08
Sub-Total					\$1,913,842.00

NON-PERSONNEL EXPENSES	COST/STAFF	PROJECTED
Risk Management Insurances	\$598.46	\$11,370.80
Mailing/Postage/Freight	\$1,558.57	\$29,612.83
Cellular Phones	\$468.90	\$8,909.04
Service Center (payroll processing, etc.)	\$1,031.67	\$19,601.67
Office Supplies/Equip.	\$687.54	\$13,063.20
Office Equipment Rental	\$424.82	\$8,071.52
Eyeglasses reimbursement	\$100.00	\$1,900.00
OIT/TELCO	\$9,258.25	\$175,906.75
Subscriptions	\$109.25	\$2,075.75
Dues	\$195.00	\$3,705.00
Annual report prorated	\$3.19	\$60.67
Annual parking permit fee	\$380.00	\$7,220.00
Printing/Binding	\$7.33	\$7,500.00
InforME Annual Fee (webhosting, etc.)	\$880.00	\$16,720.00
Rent	\$5,000.00	\$95,000.00
Sub-Total		\$400,717.22

CAPITAL EXPENDITURES	RATE	NUMBER	TOTAL
Laptop computer	\$1,400.00	19	\$26,600.00
Furniture	\$1,200.00	19	\$22,800.00
Cell phones	\$300.00	19	\$5,700.00
Sub-Total			\$55,100.00

GRAND TOTAL	\$2,369,659.22
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BUDGET NARRATIVE

For 2018, MCILS reports that there were 235 direct appeal cases and 96 post-conviction cases statewide. Assuming 80% are handled in-house, that means a new statewide appellate office will handle approximately 265 direct appeal and post-conviction cases. The NAC standards are nationally recognized as the absolute upper limit of cases that a defense attorney can be expected to handle and still provide effective, zealous representation to each and every client. For appellate services, the NAC Standards prescribe that attorneys should handle no more than 25 appeals in a single year.³⁴⁰ Thus eleven attorneys are needed to staff the office.

National standards require one supervising attorney for every ten attorneys carrying a full caseload.³⁴¹ Therefore, in addition to a Chief Appellate Defender, a Deputy Chief Defender is required for supervision.

Although national standards require one investigator for every three staff attorneys³⁴² and one social worker for every three attorneys,³⁴³ these standards are generally seen as applying to trial practice. Therefore, we are recommending one investigator and one social worker for the appellate office to assist on the post-conviction workload. National standards also require one paralegal for every four staff attorneys.³⁴⁴

The 6AC recommends that the Director position be paid on par with the salary and compensation of a District Attorney (\$155,387.95)³⁴⁵ and that the Deputy Director be paid what the MCILS Director is currently being paid (\$151,173.36).³⁴⁶ The new attorney positions are paid salaries and benefits at the rate paid to assistant district attorneys (\$111,412.95).³⁴⁷ Again, although the 6AC are not experts in the prosecution

³⁴⁰ NATIONAL ADVISORY COMM’N ON CRIMINAL JUSTICE STANDARDS AND GOALS, REPORT OF THE TASK FORCE ON THE COURTS, ch. 13 (The Defense), Std. 13.12 (1973).

³⁴¹ NATIONAL STUDY COMM’N ON DEFENSE SERVICES, GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES 4.1 (1976) (“Proper attorney supervision in a defender office requires one full-time supervisor for every ten staff lawyers, or one part-time supervisor for every five lawyers.”).

³⁴² NATIONAL STUDY COMM’N ON DEFENSE SERVICES, GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES 4.1 (1976) (“Defender offices should employ investigators with criminal investigation training and experience. A minimum of one investigator should be employed for every three staff attorneys in an office. Every defender office should employ at least one investigator.”).

³⁴³ NATIONAL LEGAL AID & DEFENDER ASS’N, MODEL CONTRACT FOR PUBLIC DEFENSE SERVICES § VII.F, *available at* <http://www.nlada.org/defender-standards/model-contract/black-letter>

³⁴⁴ U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE PUB. NO. NCJ185632, KEEPING DEFENDER WORKLOADS MANAGEABLE (2001).

³⁴⁵ Email from Mark A. Toulouse, Division Chief – Finance & Administrative Services, Office of the Attorney General State of Maine, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 12, 2019). This amount reflects salary plus benefits calculated at approximately 35% of salary.

³⁴⁶ Email from John Pelletier, Director, Maine Commission on Indigent Legal Services, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 7, 2019).

³⁴⁷ Email from Mark A. Toulouse, Division Chief – Finance & Administrative Services, Office of the Attorney General State of Maine, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 12, 2019). This amount reflects salary plus benefits calculated at approximately 35% of salary.

function, 6AC staff has travelled all across the country and interacted with numerous prosecutors, and it is our general observation that the prosecution function in Maine is under-resourced, especially in relation to salaries and compensation. Still, we present these recommendations because the prosecution function offers the best current comparison. Support staff salaries and benefits are based on support staff compensation in the Cumberland County District Attorney Office.

Non-personnel expenses reflect the current MCILS budget, less line items dedicated specifically for financial screeners. The rent projection is based on \$25 per square foot charged against 200 square feet per staff (or \$5,000 per staff member). Capital outlay expenses for new computers, furniture, and cell phones were calculated at available retail rates.

APPENDIX C

CUMBERLAND COUNTY TRIAL LEVEL PUBLIC DEFENDER OFFICE

PERSONNEL	TITLE	SALARY	BENEFITS	POSITIONS	TOTAL
ATTORNEYS	Chief Public Defender	\$101,002.17	\$54,385.78	1	\$155,387.95
	Deputy Public Director	\$96,906.00	\$54,267.36	1	\$151,173.36
	Assistant Public Defender	\$72,418.42	\$38,994.53	12	\$1,336,955.40
	Investigator	\$43,068.00	\$24,118.08	4	\$268,744.32
	Social Worker	\$43,068.00	\$24,118.08	4	\$268,744.32
	Paralegal	\$38,500.00	\$21,560.00	3	\$180,180.00
	Office Manager	\$43,068.00	\$24,118.08	1	\$67,186.08
Sub-Total					\$2,428,371.43

NON-PERSONNEL EXPENSES	CURRENT	PROJECTED
Risk Management Insurances	\$598.46	\$15,560.05
Mailing/Postage/Freight	\$1,558.57	\$40,522.82
Cellular phones service	\$468.90	\$12,191.31
Service Center (payroll processing, etc.)	\$1,031.67	\$26,823.33
Office Supplies/Eqp.	\$687.54	\$17,875.95
Office Equipment Rental	\$424.82	\$11,045.23
Eyeglasses reimbursement	\$100.00	\$2,600.00
OIT/TELCO	\$9,258.25	\$240,714.50
Subscriptions	\$109.25	\$2,840.50
Dues	\$195.00	\$5,070.00
Annual report prorated	\$3.19	\$83.03
Annual parking permit fee	\$380.00	\$9,880.00
Printing/Binding	\$7.33	\$190.67
InforME Annual Fee (webhosting, etc.)	\$880.00	\$22,880.00
Rent	\$5,000.00	\$130,000.00
Sub-Total		\$538,277.39

CAPITAL EXPENDITURES	RATE	NUMBER	TOTAL
Laptop computer	\$1,400.00	26	\$36,400.00
Furniture	\$1,200.00	26	\$31,200.00
Cell phones	\$300.00	26	\$7,800.00
Sub-Total			\$75,400.00

GRAND TOTAL	\$3,042,048.82
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BUDGET NARRATIVE

For 2018, MCILS reports 1,232 murder, class A, B, and C cases, 2,022 class D and E cases, and 329 juvenile crime cases in Cumberland County. Assuming 80% are handled in-house, that means a new trial level public defender office would handle 985 felony cases, 1,618 misdemeanor cases, and 263 delinquency cases. The NAC standards are nationally recognized as the absolute upper limit of cases that a defense attorney can be expected to handle and still provide effective, zealous representation to each and every client. For adult trial level services, the NAC standards prescribe that attorneys should handle no more than 150 felonies in a single year, or 400 misdemeanors, or 200 delinquency cases.³⁴⁸ Thus twelve attorneys are needed to staff the office.

National standards require one supervising attorney for every ten attorneys carrying a full caseload.³⁴⁹ Therefore, in addition to a Chief Public Defender, a Deputy Chief Defender is required for supervision.

National standards require one investigator for every three staff attorneys³⁵⁰ and one social worker for every three attorneys.³⁵¹ This means that the new Cumberland County public defender office will need four investigators and four social workers. National standards also require one paralegal for every four staff attorneys,³⁵² requiring the new office to have three paralegals.

The 6AC recommend that the Director position be paid on par with the salary and compensation of a District Attorney (\$155,387.95)³⁵³ and that the Deputy Director be paid what the MCILS Director is currently being paid (\$151,173.36).³⁵⁴ The new attorney positions are paid salaries and benefits at the rate paid to assistant district

³⁴⁸ NATIONAL ADVISORY COMM'N ON CRIMINAL JUSTICE STANDARDS AND GOALS, REPORT OF THE TASK FORCE ON THE COURTS, ch. 13 (The Defense), Std. 13.12 (1973).

³⁴⁹ NATIONAL STUDY COMM'N ON DEFENSE SERVICES, GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES 4.1 (1976) ("Proper attorney supervision in a defender office requires one full-time supervisor for every ten staff lawyers, or one part-time supervisor for every five lawyers.").

³⁵⁰ NATIONAL STUDY COMM'N ON DEFENSE SERVICES, GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES 4.1 (1976) ("Defender offices should employ investigators with criminal investigation training and experience. A minimum of one investigator should be employed for every three staff attorneys in an office. Every defender office should employ at least one investigator.").

³⁵¹ NATIONAL LEGAL AID & DEFENDER ASS'N, MODEL CONTRACT FOR PUBLIC DEFENSE SERVICES § VII.F, *available at* <http://www.nlada.org/defender-standards/model-contract/black-letter>.

³⁵² U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE PUB. NO. NCJ185632, KEEPING DEFENDER WORKLOADS MANAGEABLE (2001).

³⁵³ Email from Mark A. Toulouse, Division Chief – Finance & Administrative Services, Office of the Attorney General State of Maine, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 12, 2019). This amount reflects salary plus benefits calculated at approximately 35% of salary.

³⁵⁴ Email from John Pelletier, Director, Maine Commission on Indigent Legal Services, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 7, 2019).

attorneys (\$111,412.95).³⁵⁵ Again, although the 6AC are not experts in the prosecution function, 6AC staff has travelled all across the country and interacted with numerous prosecutors, and it is our general observation that the prosecution function in Maine lacks adequate funding, especially in relation to salaries and compensation. Still, we present these recommendations because the prosecution function offers the best current comparison. Support staff salaries and benefits are based on support staff compensation in the Cumberland County District Attorney Office.

Non-personnel expenses reflect the current MCILS budget, less line items dedicated specifically for financial screeners. Each expense³⁵⁶ was prorated based on the existing three MCILS staff members and then multiplied by the recommended staff of eleven. The rent projection is based on \$25 per square foot charged against 200 square feet per staff (or \$5,000 per staff member). Capital outlay expenses for new computers, furniture and cell phones were calculated at available retail rates.

³⁵⁵ Email from Mark A. Toulouse, Division Chief – Finance & Administrative Services, Office of the Attorney General State of Maine, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 12, 2019). This amount reflects salary plus benefits calculated at approximately 35% of salary.

³⁵⁶ Email from John Pelletier, Director, Maine Commission on Indigent Legal Services, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 7, 2019).

Pelletier, John

From: Maciag, Eleanor
Sent: Thursday, September 24, 2020 7:48 AM
To: Pelletier, John
Subject: FW: RFI question

Information from Chad about using Requests for Information vs informal discussions.

From: Lewis, Chad <Chad.Lewis@maine.gov>
Sent: Thursday, September 24, 2020 7:42 AM
To: Maciag, Eleanor <Eleanor.Maciag@maine.gov>
Subject: RE: RFI question

Hi Ellie,

Easy answer is there is no requirement for an agency to issue an RFI at any time. RFIs should be used as a market research tool that can be helpful depending on the agency's needs. If you are in a situation where you may not know what, exactly, you are looking for or need information from vendors to draft a better RFP geared more specifically to that market, then an RFI may be appropriate.

As far as reaching out to vendors individually, that is something that has been done in the past by some agencies. I would caution on using this approach as no information should be disclosed that could be perceived as giving a particular vendor an advantage in a competitive process should, for example, an RFP be issued in the future. Two approaches I think you should consider is 1) conducting an informational meeting via video conference and send out invites to all potential vendors so all can attend. You could also post this opportunity on your website in case any vendor was overlooked. We could post that opportunity on our web page as well. 2) announce your intention to do marketing research on this subject for possible future solicitation and allow all vendors the opportunity to meet with you. Personally, I like the first approach as you can guarantee all of the potential bidders were given the same information.

I hope this answers your question but, please, let me know if you have any other questions or if I missed the mark with my response.

Best,
Chad

Chad Lewis, Procurement Planning Manager

Bureau of Business Management - Division of Procurement Services
State of Maine - Department of Administrative and Financial Services
9 State House Station
Augusta, Maine 04333-0009
Tel: 207-215-3169
Fax: 207-287-6578

From: Maciag, Eleanor <Eleanor.Maciag@maine.gov>
Sent: Wednesday, September 23, 2020 2:45 PM

To: Lewis, Chad <Chad.Lewis@maine.gov>

Subject: RFI question

Hi Chad,

I had a question about RFI's and when an agency is required to use one. Can members of an agency correspond/communicate with individuals on an informal basis to gauge interest in a possible proposal that might down the road lead to the issuance of an RFP? Would an RFI be required in that instance or can it be done informally?

Thanks for any guidance.

Ellie

Ellie Maciag
Deputy Director
Maine Commission on Indigent Legal Services
154 State House Station
Augusta, ME 04333
T – 207.287.3258
F – 207.287.3293

Pelletier, John

From: Marcus Wraight <marcus@wraight.law>
Sent: Tuesday, September 22, 2020 12:28 PM
To: Pelletier, John
Subject: Letter / comment to the Commission

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Commissioners:

I echo the sentiments of dismay by Commissioner Cummins, and frustration of Commissioner Schneider at the Commission's last full meeting, but not for the same reasons. Not at all.

Fundamentally, the Commission is failing to address the very core of the Sixth Amendment Center Report - the lack of oversight and adequate funding. We are months down the line discussing what's required as pointed out by the report ... and here we are.

Firstly, funding. It is high time that State of Maine realizes it can't do indigent criminal defense on the cheap and get away with it. The Sixth Amendment Center pointed that out. However, the Commission finds itself, yet again, on the back foot - pushing for its current and already grossly inadequate budget, rather than shouting from the rooftops about the need for more. Much more. If there is a shortfall, who suffers? Attorneys who subsidize the State of Maine because they don't get paid for work done. But that bill still needs to be paid. Eventually.

The system needs enough to meet the state's constitutional obligations that the 6AC said it was not. As has been pointed out, a budget cut is ridiculous. Criminal cases don't work on a budget, even when attorneys earn a woeful \$60/hr. As Lucy found, the conveyor belt won't stop because she didn't like that it went faster (and eat less cake or candy in the process).

To put Maine's funding issue in perspective, MCILS has a budget of \$15,441,725 that is being cut. By contrast, CPCS in Massachusetts is an outstanding public defender organization. For 2019 it had an annual budget of \$237,185,032. This includes operating expenses of CPCS as an organization of \$59,485,602, private counsel compensation of \$154,268,437 and fees and costs of \$23,184,600. Massachusetts has a population of around 6,893,000 and Maine's population is around 1,344,000. If CPCS's total budget was to equate to Maine, an equivalent organization would be expected to cost \$46,363,000. That puts the current meager and now threatened budget in perspective. Right now, private attorneys (most of whom want to do a good job) are left to do the best they can and remain the fall guy with over-simplistic reporting and silence or even complicity from this Commission about apparently bilking taxpayers at \$60 an hour. How politically convenient to use criminal defense attorneys as the target rather than the woefully inadequate funding the state provides. The claim of enrichment is not only laughable, but shown to be untrue. A car that has problems isn't to blame because the owner doesn't pay for repairs. But sure, be like Basil Fawlty and beat the car. It'll still be broken.

Second, oversight. I think we can agree that oversight requires people, and funds to pay for them in the form of salaries. MCILS does the best it can with two people. The Sixth Amendment Center said it needed more. This is an instant fix. It can be done now. Yet the commission is silent at and outside of its own meetings on this need and continues to denigrate the majority of attorneys who do this work, rather than use oversight to find the small number who phone it in - a far more substantive problem that's difficult for reporters to grasp. I know. I was one.

Fixing rule changes about who is eligible for what case is all very well, but what needs fixing is more. Much much more. Now. Immediately. Yet the commission is silent. Why? Because it means spending money. Rule changes cost nothing. Fair enough, and it was a criticism in the report now being addressed. We also welcome extra opportunities for training, mentoring, and the like. This is all fantastic. But it's only a part of what's required. There's still the heavy lift of meeting the state's constitutional obligations with substantially more tax dollars (it's in the report) for oversight. This is not even in sight, let alone being discussed.

Thirdly, there is more substantive longer-term reform. As I have said, CPCS in Massachusetts is outstanding. I would apply to join a Maine version in a heartbeat. Criminal defense in the UK uses the Maine model of compensating private attorneys and it is equally brilliant. That is because both are adequately funded and both have effective oversight. A PD organization is not the *sine qua non* of effective assistance. The current zealotry for one seems to imply that it is, yet it ENTIRELY MISSES the broader picture - the need for more resources and more oversight, whether in the form of a PD entity or the current system. Any change without oversight and resources is form over substance. As the 6AC report said, there's nothing inherently better about a PD entity over private attorneys doing assigned cases. In fact in the UK you will be provided with a private attorney, for free, for pre-charge questioning whatever your income and whatever hour of the day. That actually sounds better to me. Creating or contracting to a public defender entity without more tax dollars, frankly, slaps lipstick on a pig. It has the same non-substantive effect as putting up wallpaper or selecting from beautiful curtain swatches for a subsiding house. The implication that only a PD entity can provide effective assistance demeans the likes of Commissioner LeBrasseur and other fantastic defense attorneys who perform their duties with aplomb and skill. Members need to listen to what he has to say. He is an attorney who sacrifices big law dollars for the love of the work and commitment to his clients. For him and his criminal defense bar colleagues success, and job satisfaction, is measured in far greater and more noble achievements than the gauche measure of 'worth' with an extra dollar or two. But his professionalism, work ethic, and commitment (along with the vast majority of members of the criminal defense bar) come at the cost of an hourly rate that verges on insulting. And it is static.

While we're at it, Commissioner LeBrasseur is the only member of the Commission taking assigned cases. The remaining seat for another representative doing that work remains unfilled and been vacant for the many months I've been listening to or attending these meetings. That is absolutely astonishing and the delay is starting to appear suspicious, a little 'whiffy' even. Anyone who has smelled a dead mouse can spot that stink a mile away. One might even mistake it for a rat. I'm sure my suspicions are utterly unfounded and will be allayed when that seat is filled forthwith.

So may I suggest that the advocates on the commission actually advocate for the indigent defendants they claim to want to help. That means more oversight and more resources. Like Lucy, trapped on a production line (probably making minimum wage and requiring a court-appointed attorney if she ever stares down the barrel of the state's aim and attention), I guess until those substantive issues are addressed Lucy can just eat cake.

So this Commission needs more resources from the state, and more staff to oversee, and for both to buy time to figure out longer-term substantive permanent fixes that require more than 'porcine cosmetics.' Otherwise the State of Maine faces humiliation in court and a court order to fix these problems that it now has the opportunity, through the Commission, to remedy on its own.

Good luck.

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(4.)

Rulemaking Process

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: MCILS RULEMAKING PROCESS
DATE: OCTOBER 2, 2020

Attached are a number of draft rule amendments, with track changes, reflecting incorporation of the work of the Criminal Standards sub-committee into the MCILS existing rule structure. Chapter 2 and Chapter 3 are major substantive rules affecting attorney eligibility that require Legislative approval. The others are routine technical rules for which the Commission can implement changes without legislative approval.

The next steps in the process are for the Commission to review the proposed changes and settle on final language for any changes adopted. Then the draft rule amendments are submitted to the Attorney General's office for legality review and then to the Secretary of State for publication of a public hearing notice and the period for written public comment. After the hearing and closure of the public comment period, the Commission must create a response to comments received and vote to adopt the rules. For the major substantive rules, this adoption is provisional and the proposal is then submitted to the Legislature. For minor technical rules, after a vote to adopt, the rule will become effective upon submission to the Secretary of State.

Chapter 2: STANDARDS FOR QUALIFICATIONS OF ASSIGNED COUNSEL

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

SECTION 1. Application

All attorneys wishing to accept case assignments by the Commission must complete an application in the manner prescribed by the Commission. The Commission will not act on an application until it is complete. No attorney will be assigned a case until that attorney completes an application and is placed on the roster of attorneys eligible to receive assignments.

SECTION 1A. Admissions for Previously Admitted Rostered Attorneys at the Time These Amended Rules and Standards are Implemented.

The attorney shall demonstrate the necessary and sufficient experience and proficiency required to accept appointments as provided below:

1. Currently rostered counsel shall maintain their current status on rosters for the first year after the enactment of these rules and standards provided that they meet the new minimum experience, training, and other eligibility requirements. The MCILS executive director shall create an application for all currently rostered counsel to complete to demonstrate they meet all new minimum experience, training, and other eligibility requirements. After the first year following the enact of these rules and standards, rostered counsel must comply with all eligibility requirements for all the panels they are rostered on.
2. Any attorney not previously rostered to receive appointments from MCILS when these standards and rules are enacted must comply with all requirements to be rostered.

SECTION 1B. General Eligibility Requirements

1. MCILS has adopted requirements that attorneys must meet in order to become a rostered counsel. Attorneys must demonstrate their qualifications and be rostered by MCILS in order to be assigned cases and compensated. Attorney rostering is subject to ongoing legal education requirements and periodic recertification.

2. MCILS Executive Director or their designee shall develop an application process for an attorney seeking appointment(s) to demonstrate the minimum qualifications necessary to be placed on a Roster, including specialized rosters. An applicant must present additional information beyond the minimum requirements of this Chapter if requested by MCILS Executive Director or their designee.
3. The MCILS Executive Director or their designee, shall have the sole discretion to make the determination if an attorney is qualified to be placed on a roster. In addition, the MCILS Executive Director or their designee, shall have the sole discretion, to grant or deny a waiver pursuant to, and in accordance with Waiver of Eligibility Requirements
4. The MCILS Executive Director or their designee, may, in their sole discretion, remove an attorney from a roster at any time if the attorney is not meeting the minimum qualifications and standards as determined by the MCILS Executive Director or their designee. This does not exempt an attorney from satisfying the requirements of this Chapter at any time thereafter or limit the authority of the MCILS Executive Director or their designee, to remove an attorney from any roster at any time.
5. All attorneys must comply with all standards and rules of MCILS.
6. The MCILS Executive Director or their designee may deny the rostering of an attorney who meets the minimum qualifications necessary to be placed on a Roster, including specialized rosters if there are a sufficient number of rostered attorneys currently on the roster in the geographical area the applicant attorney plans to practice.
7. The MCILS Executive Director or their designee shall develop a process to manage the rosters to encourage qualified attorneys to apply, to keep the rosters at the number of attorneys appropriate for that prosecutorial district or county, encourage efficient use of MCILS resources and to keep attorneys at near maximum caseloads in a single prosecutorial district if possible. To encourage newly admitted attorneys to apply to be rostered and to grow the specialized panels.

SECTION 1C. General Policies Applicable to All Assigned Counsel

1. Rostered counsel must register with MCILS annually in a manner prescribed by MCILS. Rostered counsel must comply with all applicable MCILS rules and procedures. Rostered counsel must also comply with any MCILS investigation of complaints, billing discrepancies, audits, or other information that, in the view of the MCILS Executive Director, concerns the question of whether the attorney is fit to remain on the roster.
2. By accepting assignment of any case through MCILS, rostered counsel must comply with all MCILS policies and procedures.
3. Rostered counsel shall not knowingly make a false statement of material fact or law to the court, MCILS, or a third person.

4. Rostered counsel has no duty to execute any directive of the client which is illegal or a violation of counsel's ethical duties.
5. To provide quality representation, rostered counsel must be familiar with Maine law and procedure, including changes and developments in the law. Rostered counsel must be familiar with substantive criminal law and its application to your client's case. It is rostered counsel's obligation to remain current with changes regarding substantive criminal law, any court rule, or statutes. Where appropriate and possible, rostered counsel should also be informed of the practices of the judge before whom a case is pending.
6. Rostered counsel representing juveniles must be familiar with juvenile non custody placement options and dispositional alternatives, child development, adolescent brain development, adolescent mental health diagnosis and treatment, and adolescent competency.
7. Prior to accepting a MCILS assignment, rostered counsel should have sufficient experience or training to provide quality representation. Rostered counsel should accept the more serious and complex criminal cases only after having sufficient experience and/or training. Where appropriate, rostered counsel should consult with more experienced counsel to acquire knowledge and familiarity with all facts of criminal representation, including information about practices of prosecutors and other court personnel.
8. Rostered counsel should participate in skills training and education programs in order to maintain and enhance skills.
9. Before agreeing to act as defense counsel or accepting an assignment, rostered counsel has an obligation to make sure that they have available sufficient time, resources, knowledge and experience to offer quality representation to a defendant in a particular matter. If it later appears that rostered counsel is unable to offer quality representation in the case, rostered counsel should move to withdraw.
10. Rostered counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the client's interest in the speedy disposition of charge(s), or may lead to the breach of professional obligations.
11. Rostered counsel must be alert to all potential and actual conflicts of interest that would impair their ability to represent a client. Where appropriate, rostered counsel may be obliged to seek an advisory opinion on any potential conflict.
12. Rostered counsel must keep the Commission and the courts in which the attorney represents indigent clients apprised of the attorney's work telephone number and postal and electronic mail addresses. Rostered counsel must ensure MCILS and the court has the ability to contact the attorney by mail, email, and telephone.
13. Rostered counsel shall not accept any compensation or other consideration for assigned cases except through MCILS.
14. Rostered counsel should act with reasonable diligence and promptness in

representing a client.

15. Rostered counsel should avoid unnecessary delay in the disposition of cases. Rostered counsel should be punctual in attendance at court proceedings and in the submission of all motions, briefs and other papers. Rostered counsel should emphasize to the client and all witnesses the importance of punctuality in attendance at court.
16. Rostered counsel must treat the client in a courteous and professional manner. Romantic or sexual contact between rostered counsel and client, or between a supervising rostered attorney and supervisee rostered attorney or staff, is strictly prohibited.
17. Rostered counsel should take all reasonable steps necessary to ensure that confidential communications between rostered counsel and the client are conducted in privacy. This may include making efforts to request that the court and other officials make reasonable accommodations for private discussions between defense counsel and clients in courthouses, lockups, jails, prisons, detention centers, and other places where a client must confer with defense counsel.
18. Service as a MCILS rostered attorney is at the discretion of the MCILS executive director.
19. Rostered counsel must provide MCILS via email in PDF format a copy of all nonstandard or generic motions that are filed on assigned cases with the prosecutor or court. These motions include but are not limited to discovery motions, sanction motions, suppression motions, motions in limine, trial motions, post-trial motions and appellate briefs. These motions must be redacted to comply with all bar requirements and duties owed to a client. MCILS shall create an organized motion bank that is accessible to all rostered counsel and non-rostered defense counsel who are willing to submit copies of motions to MCILS for use in this brief bank.
20. Rostered counsel must provide MCILS via email in PDF format a copy of all transcripts (not transcripts created from discovery materials) from any MCILS assigned case. MCILS shall create an organized transcript bank that is accessible to all rostered counsel and non-rostered defense counsel who are willing to submit copies of case transcripts to MCILS for use in this transcript bank.

SECTION 2. Minimum Experience, Training, ~~A~~and Other Eligibility Requirements to be Rostered

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

- ~~1. Licensed To Practice Repealed.~~

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

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

~~The attorney must register with the Commission annually in a manner prescribed by the Commission. The attorney must comply with all applicable Commission rules and procedures. The attorney must comply with Commission monitoring and performance evaluations. The attorney must also comply with any Commission investigation of complaints, billing discrepancies, or other information that, in the view of the Executive Director, concerns the question of whether the attorney is fit to remain on the roster. Except as pertains to indigent cases assigned to the attorney, the Executive Director cannot require an attorney to disclose information that is privileged or made confidential by statute, by court rule or by court order. Repealed.~~

- 3. The executive director must be very mindful of who is rostered as an attorney. Taxpayer funds are being used to pay rostered attorneys. Merely being in good standing with Board of Overseers of the Bar is not sufficient. Rostered attorney should have the same great moral character, ethics, and background as attorneys who are hired to represent the State of Maine or work for reputable firms. If the attorney would not be hired in private practice, they should not be a rostered attorney.
- 4. The attorney must be in good standing with the Bar of Board Overseers and licensed to practice law in the State of Maine prior to being rostered.
- 5. The attorney must have completed the XX (training subcommittee to provide a name) prior to being rostered and assigned cases prior to being rostered.
- 6. Rostered counsel shall annually complete 8 hours of continuing legal education (CLE) approved by the Commission. These hours are not in addition to any other MCILS CLE requirements.
- 7. Rostered counsel must maintain an office or have the use of space that is reasonably accessible to clients and that permits the private discussion of confidential and other sensitive matters.

8. Rostered counsel must maintain a telephone number, which shall be staffed by personnel available for answering telephone calls or an answering service, an answering machine or voicemail capability that ensures client confidentiality. The attorney must be able to accept calls from correctional institutions in the counties in which they primarily practice and shall accept such calls only if rostered counsel is not charged for the call.
9. Rostered counsel must maintain a confidential working e-mail account as a means of receiving information from and providing information to MCILS the Courts, and clients.
10. Attorneys applying to be rostered and rostered attorneys must not be convicted of Murder, Manslaughter, or any felony or any crime of moral turpitude or dishonesty including but not limited to convictions for Title 17-A, chapter 9 domestic violence crimes, chapter 11 (Sexual Assaults), Chapter 12 (Sexual Exploitation of Minors), chapter 15 (Theft), 17 (Burglary and Criminal Trespass), Chapter 19 (Falsification in Official Matters), Chapter 23 (Offenses Against the Family), Chapter 25 (Bribery and Corrupt Practices), Chapter 27 (Robbery), Chapter 29 (Forgery and Related Offense), Chapter 35 (Sex Trafficking, Prostitution and Public Indecency), Chapter 37 (Fraud), or similar crimes in a different jurisdiction.
 - a. Attorneys applying to be rostered and rostered attorneys can seek a waiver of the above paragraph. The attorney application or rostered attorney, to be waived in must demonstrate they have completed any sentence that was imposed including probation and payments of fines, completed any appropriate rehabilitative treatment, have recognized the wrongfulness and seriousness of their crime, have not engaged in any professional misconduct since the criminal conviction, and notwithstanding the conviction can demonstrate the requisite honesty, integrity, and qualifications to be rostered.
11. A rostered attorney who has been convicted of a crime enumerated above while rostered cannot receive any new assignments and must reapply to become rostered. The MCILS executive director shall have the discretion to reassign any MCILS case currently assigned to the rostered attorney and mandate the rostered attorney withdraw from those case.
12. Attorneys applying to be rostered and rostered attorneys who have convictions for alcohol or drug violations, including but not limited to convictions for Title 17-A, Chapter 45 (Drugs) and Title 29-A, § 2411 (OUI) must demonstrate prior to being rostered or assigned cases that the attorney has completed a substance abuse evaluation and complied with any recommend counseling, has abstained from the use of alcohol or illegal drugs for at least one year since the conviction or is likely to continue to abstain from alcohol or other drugs and that a referral has been made to the Maine Assistance Program for Lawyers and Judges.
13. A rostered attorney who has been convicted of a Title 17-A, Chapter 45 (Drugs) and Title 29-A, § 2411 (OUI) while rostered cannot receive any new assignments until the rostered attorney has completed a substance abuse evaluation and is

engaged in any recommend counseling, has abstained from the use of alcohol or illegal drugs for at least one year since the conviction or is likely to continue to abstain from alcohol or other drugs, and that a referral has been made to the Maine Assistance Program for Lawyers and Judges.

14. Rostered attorney must not be in the execution of their sentence including not being on probation, parole or similar situation in a different jurisdiction. Nor shall rostered attorneys be on any sex offender registry while accepting assignments.

SECTION 3. Office, Telephone, and Electronic Mail

The attorney must maintain an office or have the use of space that is reasonably accessible to clients and that permits the private discussion of confidential and other sensitive matters.

The attorney must maintain a telephone number, which shall be staffed by personnel available for answering telephone calls or an answering service, an answering machine or voicemail capability that ensures client confidentiality.

The attorney must maintain a confidential working e-mail account as a means of receiving information from and providing information to the Commission.

The attorney must keep the Commission and the courts in which the attorney represents indigent clients apprised of the attorney's work telephone number and postal and electronic mail addresses. The attorney must ensure that the court has the ability to contact the attorney by mail and by telephone.

SECTION 4. Experience and Proficiency

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

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

of the area of law for which the Attorney is willing to accept assignments over the course of at least the three years prior to receiving assignments from the Commission.

SECTION 5. Training and CLE Requirements for Rostered Attorneys

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

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

1. Rostered counsel shall annually complete 8 hours of continuing legal education (CLE) approved by MCILS. These hours are not in addition to any other MCILS CLE requirements but are included in any other MCILS CLE requirements.
2. Rostered counsel shall meet any specific training requirements of any specialized panels.
3. CLE hours are counted toward the workload standards.
4. If a training fulfills the requirements for more than one panel, credit for the training will be applied to maintain certification to the associated panels, but required CLE hours payment will be calculated only for the actual CLE time (e.g., if 2 hours of training applies to maintain certification for both panel A and panel B, payment would be for the 2 hours of training, not 4 hours and only counts as two 2 hours of minimum 8 hours required).

SECTION 6. Removal or Suspension from the Roster

1. The MCILS Executive Director may remove indefinitely or suspend ~~an attorney a rostered counsel~~ from the roster completely or from the roster for certain case types and court locations for any failure to comply with ~~any MCILS~~~~this or any other Commission rule or standard or in the interest of MCILS~~. In addition, the MCILS Executive Director may remove indefinitely or suspend ~~an attorney a rostered counsel~~ from the roster completely or from the roster for certain case types and court locations if the MCILS Executive Director determines rostered counsel ~~that the attorney~~ is no longer qualified to provide quality indigent legal services ~~based on the nature of any criminal charge or on investigation by the Executive Director or the Executive Director's designee of any complaint or other information~~. The MCILS Executive Director's decision to remove or suspend an attorney from the roster shall be in writing and shall reflect the MCILS Executive Director's reasoning in a manner sufficient to inform the attorney and the public of the basis for the MCILS Executive Director's action.
2. ~~Rostered A~~attorneys removed indefinitely must re-apply to ~~the Commission~~MCILS if they wish to receive assignments in the future. A rostered

~~attorney~~Attorneys suspended from the roster need not re-apply, but must demonstrate compliance with any conditions made part of a suspension. Removal or suspension may also include a requirement that the attorney immediately identify to the Commission all open assigned cases and file a motion to withdraw in each case.

3. The provision in this section are in addition to and compliment any other policy or rule of MCILS.
4. The MCILS Executive Director's decision to remove or suspend an attorney may be appealed to the full Commission pursuant to 4 M.R.S.A. § 1804(3)(J) and Commission Rule 94-649 Chapter 201.

SECTION 7. Notice of Complaints or Potential Conflicts

Rostered counsel shall notify the MCILS Executive Director or their designee within three business days of learning of any of the following:

- a. Rostered counsel has been charged by criminal complaint or indictment. Rostered counsel has an ongoing obligation to keep the MCILS Executive Director or their designee apprised of the allegation and the outcome of said allegation;
- b. A complaint has been filed against rostered counsel before the Maine Board of Overseers of the Bar or similar institution in any jurisdiction or court;
- c. Rostered counsel is the subject of disciplinary action before any non-attorney professional licensing board or agency;
- d. Rostered counsel's license to practice law has been suspended or terminated for any reason, including for administrative reasons such as non-payment of bar dues;
- e. A court or agency has found the attorney engaged in conduct which is subject to mandatory reporting under the Maine Rules of Professional Conduct;
- f. Any condition or circumstance that exist that renders the rostered attorney unable to comply with applicable MCILS Performance Standards or Policies;
or
- g. Any conduct that constitutes a violation of any of the rostered counsel's ethical duties.

The obligations set forth above (Notice of Complaints or Potential Conflicts) apply independently of each other and without regard to either the jurisdiction in which the proceedings are instituted or take place, or whether any portion of said proceedings are otherwise considered to be private or confidential.

With regard to a complaint opened or petition for discipline filed by the Maine Board of

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

The requirements of this section shall apply regardless of whether the complaint or other disciplinary action, including the final disposition or resolution of the complaint or disciplinary action, is treated as a public or private matter by the Maine Board of Overseers of the Bar or the attorney licensing authority of any state or jurisdiction.

MCILS and its staff shall keep confidential all information involving allegations that rostered counsel has engaged in misconduct or that an attorney's physical or mental condition may adversely affect his or her ability to practice law and shall maintain information reported under this section exclusively for the performance of the MCILS's responsibilities. Such information shall not be disseminated to any person or organization for any purpose without the prior written consent of the rostered counsel or until the matter otherwise becomes public. MCILS and its staff are permitted to disclose information that is necessary to justify any actions MCILS takes toward rostered counsel.

A rostered attorney who has a negative finding made against them with regards to the obligations set forth above (Notice of Complaints or Potential Conflicts) cannot receive any new assignments and must reapply to become rostered. The MCILS executive director shall have the discretion to reassign any MCILS case currently assigned to the rostered attorney and mandate the rostered attorney withdraw from those case.

An attorney applying to be rostered who has any matters pending with regard to the obligations set forth above (Notice of Complaints or Potential Conflicts) cannot be rostered until the outcome of the proceeding is concluded. The allegations and outcome of the proceeding must be considered by the MCILS executive director in deciding if the attorney is eligible to be rostered.

SECTION 8. Appointment of Counsel and Notice of Appointment to the Rostered Attorney

5. The MCILS executive director or their designee shall be responsible to appoint counsel to defendants who qualify for appointed counsel. Notice of appointment shall be transmitted to assigned counsel via email within 24 hours of the appointment.
 - a. MCILS shall have a MCILS staff in the court for all LOD proceedings. The MCILS staff shall appoint assigned attorney according to the MCILS standards for appointing counsel with special attention given to a rostered attorneys caseload. MCILS staff shall immediately notify the defendant of the assigned rostered counsel's name, email, and phone number.
 - b. The Court shall determine if a defendant qualifies for appointed counsel. It shall be the judiciary's responsibility to ensure the financial screening of defendants.
6. (Alternative to 1) If the Court's retains the appointment of assigned counsel, the MCILS executive director or their designee shall work closely with the court to ensure notice of appointment is provided to MCILS and assigned counsel within 24 hours of the defendant's first appearance or appointment.
7. If a defendant qualifies for assigned counsel and is asking for a specific rostered counsel to be appointed that rostered attorney should be appointed if that rostered counsel is qualified to accept the appointment. If the defendant qualifies for assigned counsel and is not asking for specific rostered attorney to be appointed, then the next qualified rostered attorney shall be appointed.
8. A newly rostered attorney cannot be assigned a case until a rostered mentor has been assigned.
9. The rostered lawyer of the day who is assisting a defendant who is assigned counsel must email the assigned rostered counsel on the same day of the assignment advising rostered counsel of the assignment. The email shall include a copy of the charging instrument, the defendant's address and phone number, and date of birth. This email should also include information that is unique to the client's situation. For example, this would include mental health needs, a Title 15, section 101 evaluation was ordered or is recommended, the client needs medical attention, the client has injuries that need to be preserved for a potential defense, or unique family circumstances. The MCILS executive director or their designee should be copied on the appointment. Appointed counsel can assume they are appointment and should immediately put the case in to the MCILS billing system and begin representation of the client.
10. If the court fails to address the assignment of counsel for a defendant who request assigned counsel, the lawyer of the day should impress upon the court the need to appoint counsel that day. This should include providing defendants with an indigency affidavit, requesting them to complete it, and returning it to counsel who shall provide it to the court prior to the defendant leaving for the day. If the court does not address the assignment of counsel for a defendant who submitted

an indigency affidavit, the lawyer of the day should email the MCILS executive director or their designee who shall be responsible for confirming the defendant is eligible for counsel and appoint counsel.

11. Murder Cases: A rostered attorney appointed to a murder and non OUI manslaughter case must recommended to the MCILS executive director or their designee the name of a rostered murder and non OUI manslaughter panel attorney and an attorney who is not murder qualified to serve as co-counsel. The MCILS executive director or their designee shall appoint those attorneys or other qualified rostered counsels at the discretion of the MCILS executive director or their designee. Rostered counsel not qualified to accept murder and non OUI manslaughter cases must express in writing to the MCILS executive director a desire to be appointed co-counsel on murder and non OUI manslaughter cases to seek murder and non OUI manslaughter qualifications. The MCILS executive director or their designee shall keep this list of rostered counsel seeking murder and non OUI manslaughter qualifications and update it as necessary.
12. Sex Offenses: A rostered attorney appointed to a sex offense case must recommended to the MCILS executive director or their designee the name of an attorney who is not sex offense qualified to serve as co-counsel. The MCILS executive director or their designee shall appoint the recommended attorney or other qualified attorney at the discretion of the MCILS executive director or their designee. Rostered counsel must express in writing a desire to be appointed as co-counsel on sex offense cases to seek sex offense qualification. The MCILS executive director or their designee shall keep this list of rostered counsel seeking sex offender qualifications and update it as necessary. It is recognized that at times a sex offense may require two sex offender rostered attorneys in addition to the attorney seeking to become qualified. The MCILS executive director or their designee shall appoint a second sex offender rostered attorney upon request and for good cause shown.
13. Bind Over Hearings: Two attorneys shall be appointed to every bind over hearing. One attorney must be a bind over rostered counsel and one attorney must be on the adult murder, sex offense or major felony panel. The same attorney can meet both qualifications but there must be at least two attorneys.
14. Any MCILS rostered attorney who after a Dispositional Conference is confident that a case is proceeding to trial and the Defendant is charged with a felony should recommended to the MCILS executive director or their designee the name of a rostered attorney who is not qualified to handle the type of felony proceeding to trial or any rostered attorney who has not had at least 3 jury trials to serve as co-counsel. The MCILS executive director or their designee shall appoint the recommended rostered attorney or a different rostered attorney at the discretion of the MCILS executive director or their designee as co-counsel.
15. A rostered counsel who is having their first 2 jury or adjudicator hearings or a combination thereof must have mentor counsel appointed and the mentor counsel should be a different rostered counsel for each trial.

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

EFFECTIVE DATE:

June 25, 2010

AMENDED: (need to add amendment date)

Chapter 3: ELIGIBILITY REQUIREMENTS FOR SPECIALIZED CASE TYPES

Summary: Chapter 2 of the Commission’s Rules sets out the minimum eligibility requirements to be rostered to accept appointments from the Maine Commission on Indigent Legal Services (“MCILS”). The Rules in this Chapter are promulgated to establish the eligibility requirements to be rostered on specialty panels for specific types of cases.

SECTION 1. Definitions. For purposes of this Chapter, the following terms are defined as follows:

1. Contested Hearing. “Contested Hearing” means a hearing at which a contested issue is submitted to the court for resolution after evidence is taken or witnesses are presented.
2. Domestic Violence. “Domestic Violence” means:
 - A. Offenses denominated as Domestic Violence under 17-A M.R.S.A. §§ 207-A, 209-A, 210-B, 210-C, and 211-A;
 - B. Any class D or E offense alleged to have been committed against a family or household member or dating partner;
 - C. The class D offense of stalking under 17-A M.R.S.A. § 210-A;
 - D. Violation of a protection order under 17-A M.R.S.A. § 506-B.
 - E. “Domestic Violence” includes crimes involving substantially similar conduct in another jurisdiction.
 - F. “Domestic Violence” also includes Criminal Conspiracy under 17-A M.R.S.A. § 151, Criminal Attempt under 17-A M.R.S.A. § 152, and Criminal Solicitation under 17-A M.R.S.A. § 153 to commit any of the offenses listed above.
3. ~~Serious-Violent~~ Major Felony. “~~Serious-Violent~~ Major Felony” means:

- A. An offense under 17-A M.R.S.A. §§ 152-A (Aggravated Attempted Murder), 208 (Aggravated Assault), 208-B (Elevated Aggravated Assault), 208-C (Elevated Aggravated Assault on a Pregnant Person), 301 (Kidnapping), 401(1)(B)(1), (2), or (3) (Burglary with a Firearm, Burglary with Intent to Inflict Bodily Harm, and Burglary with a Dangerous Weapon), 651 (Robbery), 802 (Arson), 803-A (Causing a Catastrophe), 1105-A (Aggravated Trafficking of Scheduled Drugs), 1105-B (Aggravated Trafficking of Counterfeit Drugs), and 1105-C (Aggravated Furnishing of Scheduled Drugs).
 - B. “~~Serious-Violent~~Major Felony” includes crimes involving substantially similar conduct in another jurisdiction.
 - C. “~~Serious-Violent~~Major Felony” also includes Criminal Conspiracy under 17-A M.R.S.A. § 151, Criminal Attempt under 17-A M.R.S.A. § 152, and Criminal Solicitation under 17-A M.R.S.A. § 153 to commit any of the offenses listed above.
4. Sex Offense. “Sex Offense” means:
- A. An offense under 17-A M.R.S.A. §§ 251-259-A (Sexual Assaults), §§ 281-285 (Sexual Exploitation of Minors), § 556 (Incest), § 511(1)(D) (Violation of Privacy), § 852 (Aggravated Sex Trafficking), and § 855 (Patronizing Prostitution of Minor or Person with Mental Disability).
 - B. “Sex Offense” includes crimes involving substantially similar conduct in another jurisdiction.
 - C. “Sex Offense” also includes Criminal Conspiracy under 17-A M.R.S.A. § 151, Criminal Attempt under 17-A M.R.S.A. § 152, and Criminal Solicitation under 17-A M.R.S.A. § 153 to commit any of the offenses listed above.
5. Specialized Case Types. “Specialized Case Types” means those cases that are complex in nature due to the allegations against the person as well as the severity of the consequences if a conviction occurs. They include the following case types:
- A. Murder and manslaughter Homicide, including OUI manslaughter
 - B. Sex offenses
 - C. ~~Serious-violent felonies~~ Major felony
 - D. Operating under the influence
 - E. Domestic violence
 - F. Juvenile defense
 - G. Protective custody matters

H. Repealed.

I. Appellate panel

J. Post-Conviction Review

K. Bind-over Hearings

L. Felonies

M. Lawyer of the Day

6. Felony. “Felony” means any crime where the defendant could be sentenced to 1 year or more.

7. Rostered counsel means an attorney who meets all the qualifications to accept assignments from MCILS and are actually placed on a roster.

8. Newly rostered attorney means a rostered attorney who was first rostered under these standards or prior MCILS standards and were authorized to accept assignments no more than 9 months prior to enactment of this version of the standards.

SECTION 2. Powers and Duties of the Executive Director

1. The Executive Director, or his or her designee, shall develop an application process for an attorney seeking appointment(s) in Specialized Case Types to demonstrate the minimum qualifications necessary to be placed on Specialized Case Type Rosters. An applicant for a Specialized Case Type Roster must present additional information beyond the minimum requirements of this Chapter if requested by the Executive Director, or his or her designee.
2. The Executive Director, or his or her designee, shall have the sole discretion to make the determination if an attorney is qualified to be placed on a Specialized Case Type Roster. In addition, the Executive Director, or his or her designee, shall have the sole discretion, to grant or deny a waiver pursuant to, and in accordance with, Section 4.
3. The Executive Director, or his or her designee, may, in his or her sole discretion, remove an attorney from a Specialized Case Type Roster at any time if the attorney is not meeting the minimum qualifications and standards as determined by the Executive Director, or his or her designee.
4. This subsection does not exempt an attorney from satisfying the requirements of this Chapter at any time thereafter or limit the authority of the Executive Director, or his or

her designee, to remove an attorney from any Specialized Case Type Roster at any time.

SECTION 3. Minimum Eligibility Requirements for Specialized Case Types.

1. Murder and non OUI Manslaughter~~Homicide~~. In order to be rostered for ~~homicide cases~~ Murder and non OUI Manslaughter cases for adult and juvenile clients an attorney must:

- ~~A. Have at least five years of criminal law practice experience; Repealed~~
- ~~B. Have tried before a judge or jury as first chair at least five felony cases within the last ten years, at least two of which were serious violent felony, homicide, or Class C or higher sex offense cases, AND at least two of which were jury trials; Replead~~
- ~~C. Have tried as first chair a homicide case in the last fifteen years, OR have tried as second chair at least one homicide case with an experienced homicide defense attorney within the past five years; Repealed~~
- ~~D. Demonstrate a knowledge and familiarity with the evidentiary issues relevant to homicide cases, including but not limited to forensic and scientific issues relating to DNA testing and fingerprint analysis, mental health issues, and eyewitness identification; Repealed~~
- ~~E. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with homicide; and Repealed~~
- ~~F. Have submitted to the Commission three letters of reference from attorneys with whom the applicant does not practice, that assert that the applicant is qualified to represent individuals charged with homicide, including OUI manslaughter. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author. Repealed~~
- G. Have at least five years of experience as a rostered attorney;
- H. Have been co-counsel on at least 3 Murder or non OUI Manslaughter assigned counsel cases;
- I. Have been an attorney of record on at least 5 jury trials or adjudicatory hearings of which the attorney has been lead counsel on 2 of the jury trials or adjudicatory hearings;
- J. Attend and complete the minimum training standards for Murder and non OUI Manslaughter panel. If MCILS has not established a minimum training standard for

Murder and non OUI Manslaughter CLE the attorney must complete 12 CLE hours addressing one the following topics within the last 2 years: defense of homicides, forensic and scientific issues relating to DNA testing, fingerprint analysis, mental health issues, and eyewitness identification. These CLE requirements are only applicable if MCILS certified CLE classes are provided in Maine that meet these requirements or if MCILS authorizes and pays for attendance, travel, 3 meals, accommodations, and 8 hours of daily pay at the hourly rate to attend an out of state CLE that meets all these requirements when such CLEs are not offered in Maine;

- K. Provide a letter explaining your reasons for interest in and qualifications for representing individuals charged with homicide. This letter must demonstrate a knowledge and familiarity with the evidentiary issues relevant to homicide cases, must demonstrate experience in the utilization of expert witnesses and investigators, must demonstrate experience with forensic and psychiatric evidence, must demonstrate experience with litigating suppression motions, and must demonstrate training or experience with eyewitness identification;
- L. Must submitted to the MCILS director or their designee three letters of reference from attorneys with at least 10 years of experience and with whom the applicant does not practice, that assert the applicant is qualified to represent individuals charged with homicide and non OUI manslaughters.
- M. Letters of reference shall also be submitted upon the request of the MCILS Executive Director or their designee; and
- N. Must recertify every year that all requirements are met to remain on the panel. It is sufficient for recertification purposes that the rostered specialized panel attorney has meet any specialized panel CLE requirements to remained certified for the murder and non OUI manslaughter panel except the same CLE panel requirements cannot be repeated in 2 consecutive years.

1A. **OUI Manslaughter.** In order to be rostered for OUI Manslaughter cases for adult and juvenile clients an attorney must:

- A. Must qualify for the Murder and non OUI Manslaughter for adult and juvenile panel and the OUI panel; and
- B. Must recertify every year that all requirements are met to remain on the panel. It is sufficient for recertification purposes that the rostered specialized panel attorney has meet any specialized panel CLE requirements to remained certified for the OUI manslaughter panel except the same CLE panel requirements cannot be repeated in 2 consecutive years.

2. **Sex Offenses.** In order to be rostered for sex offense cases for adult or juvenile clients an attorney must:

- A. Have at least three years of criminal law practice experience; Repealed

- ~~B. Have tried before a judge or jury as first chair at least three felony cases in the last ten years, at least two of which were jury trials; Repealed~~
- ~~C. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a sex offense; and Repealed~~
- ~~D. If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting that the applicant is qualified to represent individuals charged with a sex offense. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author. Repealed~~
- ~~E. Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee. Repealed~~
- F. Have at least 4 years of experience as a rostered attorney;
- G. Have been co-counsel on at least 3 SORNA registerable criminal sex offense cases;
- H. Have completed a minimum of 50 felony assignments;
- I. Have been an attorney of record in at least 1 jury trial or adjudicatory hearing;
- J. Attend and complete the minimum training standards for Sex Offenses panel. If MCILS has not established a minimum training standard the attorney must complete 6 CLE hours addressing at least 1 of the following topics within the last 2 years: forensic and scientific issues relating to DNA testing, applicability of SORNA to criminal cases, cross-examination of the child witness, sexual assault forensic examinations, and eyewitness identification. These CLE requirements are only applicable if MCILS certified CLE classes are provided in Maine that meet these requirements or if MCILS authorizes and pays for attendance, travel, 3 meals, accommodations, and 8 hours of daily pay at the hourly rate to attend an out of state CLE that meets all these requirements when such CLEs are not offered in Maine;
- K. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a sex offense. This letter must demonstrate a knowledge and familiarity with the evidentiary issues relevant to sex offense cases, must demonstrate experience with litigating DNA issues, must demonstrate experience in the utilization of expert witnesses and investigators, must demonstrate experience with forensic and psychiatric evidence, must demonstrate experience with litigating suppression motions, and demonstrate training with eyewitness identification.
- L. Letters of reference shall also be submitted upon the request of the MCILS Executive Director or their designee; and
- M. Must recertify every year that all requirements are met to remain on the panel. It is sufficient for recertification purposes that the rostered specialized panel attorney has meet any specialized panel CLE requirements to remained certified for the sex offense panel except the same CLE panel requirements cannot be repeated in 2 consecutive years.

3. ~~Serious Violent Felonies~~Major Felonies. In order to be rostered for major felony~~serious violent felony~~ cases for adult or juvenile clients an attorney must:

- A. ~~Have at least two years of criminal law practice experience;~~ Repealed.
- B. ~~Have tried as first chair at least four criminal or civil cases in the last ten years, at least two of which were jury trials and at least two of which were criminal trials;~~ Repealed.
- C. ~~Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a serious violent felony; and~~ Repealed.
- D. ~~If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting that the applicant is qualified to represent individuals charged with a serious violent felony. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.~~ Repealed.
- E. ~~Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.~~ Repealed.
- F. Have at least 3 years of experience as a rostered attorney;
- G. Have been co-counsel on at least 5 major felony counsel cases;
- H. Have been attorney of record in at least 1 jury trial or adjudicatory hearing;
- I. Have completed a minimum of 25 felony cases.
- J. Attend and complete the minimum training standards for major felony panel. If MCILS has not established a minimum training standard the attorney must complete 6 CLE hours addressing at least 1 of the following topics within the last 2 years: cross-examination of prosecution witnesses, chain of custody evidentiary issues, admission of medical records, and eyewitness. These CLE requirements are only applicable if MCILS certified CLE classes are provided in Maine that meet these requirements or if MCILS authorizes and pays for attendance, travel, 3 meals, accommodations, and 8 hours of daily pay at the hourly rate to attend an out of state CLE that meets all these requirements when such CLEs are not offered in Maine;
- K. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a major felony. Your letter must demonstrate a knowledge and/or familiarity with the cross-examination of prosecution witnesses, chain of custody evidentiary issues, admission of medical records, and eyewitness identification.
- L. Letters of reference shall also be submitted upon the request of the MCILS Executive Director or their designee; and
- M. Must recertify every year that all requirements are met to remain on the panel. It is sufficient for recertification purposes that the rostered specialized panel attorney has meet any specialized panel CLE requirements to remained certified for the

major felony panel except the same CLE panel requirements cannot be repeated in 2 consecutive years.

4. **Operating Under the Influence.** In order to be rostered for OUI cases an attorney must:

- A. Have at least one year of criminal law practice experience; Repealed.
- B. Have tried before a judge or jury as first chair at least two criminal cases, and conducted at least two contested hearings within at least the last ten years; Repealed.
- C. Have obtained in the last three years at least four hours of CLE credit on topics relevant particularly to OUI defense; Repealed.
- D. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with an OUI; and= Repealed.
- E. If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting that the applicant is qualified to represent individuals charged with an OUI. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author. Repealed.
- F. Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee. Repealed.
- G. Have at least 1 year of experience as a rostered attorney;
- H. Have been an attorney of record in at least 1 trial or adjudicatory hearing;
- I. Attend and complete the minimum training standards for OUI panel. If MCILS has not established a minimum training standard the attorney must complete 6 CLE hours dedicated specifically to the defense of OUIs during the last 2 years. These CLE requirements are only applicable if MCILS certified CLE classes are provided in Maine that meet these requirements or if MCILS authorizes and pays for attendance, travel, 3 meals, accommodations, and 8 hours of daily pay at the hourly rate to attend an out of state CLE that meets all these requirements when such CLEs are not offered in Maine;
- J. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged OUIs. Your letter must demonstrate a knowledge and/or familiarity with the cross-examination of prosecution witnesses;
- K. Letters of reference shall also be submitted upon the request of the MCILS Executive Director or their designee; and
- L. Must recertify every year that all requirements are met to remain on the panel. It is sufficient for recertification purposes that the rostered specialized panel attorney has meet any specialized panel CLE requirements to remained certified for the OUI

panel except the same CLE panel requirements cannot be repeated in 2 consecutive years.

5. **Domestic Violence.** In order to be rostered for domestic violence cases an attorney must:

- A. Have at least one year of criminal law practice experience; Repealed.
- B. Have tried before a judge or jury as first chair at least two criminal cases and conducted at least two contested hearings within at least the last ten years; Repealed.
- C. Have obtained in the last three years at least four hours of CLE credit on topics related to domestic violence defense which included training on the collateral consequences of such convictions; Repealed.
- D. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a domestic violence crime; and Repealed.
- E. If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting that the applicant is qualified to represent individuals charged with a domestic violence crime. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author. Repealed.
- F. Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee. Repealed.
- G. Have at least 1 year of experience as a rostered attorney;
- H. Have been the attorney of record for at least 1 jury trial or adjudicatory hearing;
- I. Attend and complete the minimum training standards for domestic violence panel. If MCILS has not established a minimum training standard the attorney must complete 6 CLE hours dedicated specifically to the defense of domestic violence cases in the last 2 years. These CLE requirements are only applicable if MCILS certified CLE classes are provided in Maine that meet these requirements or if MCILS authorizes and pays for attendance, travel, 3 meals, accommodations, and 8 hours of daily pay at the hourly rate to attend an out of state CLE that meets all these requirements when such CLEs are not offered in Maine;
- J. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged Domestic Violence allegations;
- K. Letters of reference shall also be submitted upon the request of the MCILS Executive Director or their designee; and
- L. Must recertify every year that all requirements are met to remain on the panel. It

is sufficient for recertification purposes that the rostered specialized panel attorney has meet any specialized panel CLE requirements to remained certified for the domestic violence panel except the same CLE panel requirements cannot be repeated in 2 consecutive years.

6. **Juvenile Defense.** In order to be rostered ~~for felony, sex offense, and bind over juvenile defense cases~~to represent juveniles an attorney must:

A. Repealed.

~~B. For felony cases and sex offense cases: Repealed.~~

- ~~1) Have at least one year of juvenile law practice experience;~~
- ~~2) Have handled at least 10 juvenile cases to conclusion;~~
- ~~3) Have tried at least 5 contested juvenile hearings (including but not limited to: detention hearings, evidentiary hearings, adjudication hearings, and dispositional hearings);~~
- ~~4) Have attended in the last three years at least four hours of CLE credit on two or more of the following topics related to juvenile defense including training and education regarding placement options and dispositions, child development, adolescent mental health diagnosis and treatment, and the collateral consequences of juvenile adjudications;~~
- ~~5) Provide a letter explaining reasons for interest in and qualifications for representing juveniles in felony and sex offense cases; and~~
- ~~6) If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting that the applicant is qualified to represent juveniles in felony and sex offenses cases. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.~~
- ~~7) Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.~~
- ~~8) Upon notice from the State, whether formal or informal, that it may be seeking bind over in the case, the attorney must immediately notify the Executive Director.~~

C. ~~For Bind over Hearings: Repealed.~~

- ~~1) Have at least two years of juvenile law practice experience;~~
- ~~2) Have handled at least 20 juvenile cases to conclusion in the past ten years;~~
- ~~3) Have tried at least 10 contested juvenile hearings (including but not limited to: detention hearings, evidentiary hearings, adjudication hearings, and dispositional hearings in the past ten years);~~
- ~~4) Have attended in the last three years at least eight hours of CLE credit that cover all of the following topics devoted to juvenile defense including training and education regarding placement options and dispositional alternatives, child development, adolescent mental health diagnosis and treatment, issues and case law related competency, bind-over procedures, and the collateral consequences of juvenile adjudications;~~
- ~~5) Provide a letter explaining reasons for interest in and qualifications for representing juveniles in bind-over hearings; and~~
- ~~— 6) If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting that the applicant is qualified to represent juveniles in bind-over hearings. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.~~
- ~~— 7) Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.~~

D. Agree to work with a rostered mentored attorney for at least 18 months. The attorney will be provisional rostered until the 18-month period is completed;

E. The attorney will be provisionally rostered until they have been co-counsel or lead counsel for at least 5 contested juvenile hearings, including but not limited to detention hearings, evidentiary hearings, adjudication hearings, and dispositional hearings. Provisionally rostered counsel must continue working with a rostered mentored attorney until this requirement is met;

F. Prior to being provisionally rostered for juvenile assignments, the attorney must:

1. Attend and complete the minimum training standards for juvenile defense panel. If MCILS has not established a minimum training standard the attorney must complete 6 CLE hours on two or more of the following topics within the last 2 years: juvenile defense, placement options and dispositions for juveniles, child development, adolescent brain development, adolescent mental health diagnosis and treatment, and the collateral consequences of juvenile adjudications plus 1 CLE hour on ethics related to the defense of juveniles. These CLE requirements are only applicable if MCILS certified CLE classes are provided in Maine that meet these requirements or if MCILS authorizes and pays for attendance, travel, 3 meals,

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

2. Provide a letter explaining reasons for interest in and qualifications for representing juveniles; and

3. Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee; and

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

6A. Bind-over hearings

1. A rostered attorney representing a juvenile who receives notice from the State, whether formal or informal, that it may be seeking bind-over, must immediately notify the MCILS executive director or their designee. To continue representing the juvenile the rostered attorney must me the following requirements. If the rostered attorney does not meet the requirements, then the MICLS executive director or their designee shall appoint a second rostered attorney who does meet the requirements. Consistent with section 8(k) two attorneys shall be appointed to every bind over hearing. One attorney must be a bind over rostered attorney and one attorney must be on the adult murder, adult sex offense or adult violent felony panel. The same attorney can meet both qualifications but there must be at least two attorneys. The minimum requirements are:

a. Have been rostered to represent juveniles for at least 5 years;

b. Have been the rostered attorney on at least 50 juvenile cases to conclusion;

c. Have been co-counsel or lead counsel for at least 10 contested juvenile hearings, including but not limited to detention hearings, evidentiary hearings, adjudication hearings, and dispositional hearings; and

d. Attend and complete the minimum training standards for the bind-over hearings panel. If MCILS has not established a minimum training standard the attorney must have attended in the last five years at least 17 CLE hours that cover 4 of the following topics: juvenile defense, placement options and dispositional alternatives for juveniles, child development, adolescent mental health diagnosis and treatment, issues and case law related to adolescent competency, bind-over procedures, and the collateral consequences of juvenile adjudications plus 1 CLE hour on adolescent brain development. These CLE requirements are only applicable if MCILS offers CLE classes that meet these requirements or if MCILS authorizes and pays for attendance, travel, 3 meals, accommodations, and 8 hours of daily pay at the hourly rate to attend an out of state CLE that meets all these requirements when such CLEs are not offered

in Maine.

- e. Must recertify every year that all requirements are met to remain on the panel. It is sufficient for recertification purposes that the rostered specialized panel attorney has met any specialized panel CLE requirements to remain certified for the bind-over hearing panel except the same CLE panel requirements cannot be repeated in 2 consecutive years. However, the bind-over hearing panel CLE requirements must be repeated at least once every 10 years.

7. **Protective Custody Matters.** In order to be rostered to represent parents in protective custody cases an attorney must:

- A. Repealed.
- B. Have conducted at least four contested hearings in civil or criminal cases within the last five years;
- C. Have attended in the last three years at least four hours of CLE credit on topics related to the representation of parents in protective custody proceedings;
- D. Provide a letter explaining reasons for interest in and qualifications for representing parents in protective custody proceedings; and
- E. If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting that the applicant is qualified to represent parents in protective custody cases. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.
- E-1. Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.
- F. If a Petition to Terminate Parental Rights is filed and the attorney of record has not previously tried as a first or second chair a termination of parental rights hearing, or has less than 6 months of child protection experience, then the attorney of record must file a request with the MCILS for a more experienced attorney to serve as a second chair to assist the attorney of record with the termination of parental rights hearing.

8. **Repealed.**

9. **Law Court AppealsAppellate Panel.** In order to be rostered for appellate assignments for adult or juvenile clients to Law Court appeals in cases where trial counsel is not continuing on appeal, an attorney must:

- ~~A. Have provided representation to the conclusion of six cases. “Conclusion” means:~~
- ~~1) In criminal and juvenile cases, the entry of sentence or disposition either after plea or trial or the entry into a deferred disposition; —~~
 - ~~2) In child protective cases, the issuance of a jeopardy order or an order terminating parental rights; Repealed.~~
- ~~B. Applicants who have provided representation in three or more appeals, including appeals to the Law Court and Rule 80B or Rule 80C appeals to the Superior Court, must submit copies of briefs that they have filed in the three appeals most closely pre-dating the date of their application for placement on the appellate roster. Repealed.~~
- ~~C. Applicants who have not provided representation in three or more appeals must submit copies of any briefs that they have filed in an appeal, together with copies of a sufficient number of memoranda of law submitted to any court so that the submissions total three. Repealed.~~
- ~~D. Submit a letter explaining the applicant’s interest in and qualifications for providing representation on appeals; including a description of the applicant’s experience with appeals, representative examples of issues raised on appeal, and a summary of the results of those appeals; and Repealed.~~
- ~~E. If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting that the applicant is qualified to provide representation in appeal cases. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author. Repealed.~~
- ~~F. Letters of reference shall be submitted upon the request of the Executive Director, or his or her designee. Repealed.~~
- ~~G. This rule is not applicable to cases where trial counsel continues on appeal. Repealed.~~
- H. Have at least 3 years of rostered attorney experience or 1 year of law court clerkship experience;
- I. All work must be reviewed by a MCILS staff attorney or rostered mentor attorney who is on the appellate panel prior to the submission of any filings with the appellate court. The MCILS executive director or their designee shall develop a procedure to ensure sufficient time is provided for reviews;
- J. Attend and complete the minimum training standards for the appellate panel. If MCILS has not established a minimum training standard for the appellate panel the applicant must complete 6 CLE hours dedicated specifically to criminal appeals

including but not limited to brief writing, legal writing, legal research, substantive criminal law updates; standards of review; using technology to write briefs; effective oral arguments; tips for everyday appellate practice; effective sentence appeals; and ethics in an appellate practice within the last 2 years. These CLE requirements are only applicable if MCILS certified CLE classes are provided in Maine that meet these requirements or if MCILS authorizes and pays for attendance, travel, 3 meals, accommodations, and 8 hours of daily pay at the hourly rate to attend an out of state CLE that meets all these requirements when such CLEs are not offered in Maine;

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

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

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

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

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

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

10. **Post-Conviction Review.** In order to be rostered for post-conviction review assignments for adult or juvenile clients ~~eases~~ an attorney must:

~~A. Have at least three years of criminal law experience;~~ Repealed.

~~B. Have previously qualified to be placed on the trial roster for the case type applicable to the conviction being challenged on post-conviction review;~~ Repealed.

~~C. Submit a letter explaining the applicant's interest in and qualifications for providing representation in post-conviction review cases, including a description of the~~

~~applicant's criminal law experience generally and how that experience prepared the applicant to address the issues applicable to post-conviction review cases; and Repealed.~~

~~D. If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting that the applicant is qualified to provide representation in post-conviction cases. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author. Repealed.~~

~~E. Letters of reference and writing samples shall also be submitted upon the request of the Executive Director, or his or her designee. Repealed.~~

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

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

~~H. Submit a letter explaining the applicant's interest in and qualifications for providing representation in post-conviction review cases, including a description of the applicant's criminal law experience generally and how that experience prepared the applicant to address the issues applicable to post-conviction review cases;~~

~~I. Letters of reference and writing samples shall also be submitted upon the request of the Executive Director, or his or her designee; and~~

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

11. Felonies. In order to be rostered for felony cases an attorney must:

A. Have completed the mentor-mentee 10 case assignment requirement;

B. Work with 2 different mentors on your first 2 felony case assignments (1 mentor per assignment). The mentee shall be liberally appointed a mentor for future felony appointments after the first 2 appointments if such a requested is submitted in writing to the MCILS executive director or their designee. The MCILS executive director or their designee shall work with the mentee after the fifth request to determine why a mentor is requiring a mentor on future felony appointees and

require the mentee to engage in the necessary training to assist the mentee to become felony qualified.

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

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

12. **Lawyer of the Day.** In order to be rostered for Lawyer of the Day assignments an attorney must:

A. For Juvenile client Lawyer of the Day assignments:

1. Attend and complete the minimum training standards for juvenile LOD. If MCILS has not established a minimum training standard for juvenile LODs, the attorney must complete 6 CLE hours on two or more of the following topics within the last 2 years: juvenile defense, placement options and dispositions for juveniles, child development, adolescent brain development, adolescent mental health diagnosis and treatment, and the collateral consequences of juvenile adjudications plus 1 CLE hour on ethics related to the defense of juveniles. These CLE requirements are only applicable if MCILS certified CLE classes are provided in Maine that meet these requirements or if MCILS authorizes and pays for attendance, travel, 3 meals, accommodations, and 8 hours of daily pay at the hourly rate to attend an out of state CLE that meets all these requirements when such CLEs are not offered in Maine.

2. To serve as LOD for a juvenile the attorney serving as the LOD must be on the specialized panel for what the juvenile is charged with unless such attorney is not available;

3. Must have shadowed with a MCILS staff attorney or mentor attorney rostered attorney for a minimum of 3 occasions at LOD proceeding. Shadowing means the shadowing attorney must be present at all time with the MCILS staff attorney or mentor rostered attorney from the time they arrive at court until the LOD proceeding is concluded, this also includes reviewing the discovery. Attorneys doing the shadowing shall be paid for their time;

4. Must perform 5 LOD assignments with a MCILS staff attorney or the same

rostered mentor attorney shadowing for a minimum of 5 times. The MCILS staff attorney or mentor rostered staff attorney must recommend to the MCILS executive director or their designee in writing that the LOD applicant attorney should be rostered on the juvenile LOD panel. If the MCILS staff attorney or mentor rostered staff attorney cannot recommend the LOD applicant attorney to be placed on the juvenile LOD roster the MCILS staff attorney or mentor rostered staff attorney must explain in writing what areas the attorney needs to improve. The MCILS executive director or their designee will with the mentor will work with the attorney to develop the skills necessary to be placed on the roster including continued work. Once the necessary additional training is completed the attorney must perform 1 juvenile LOD assignment with a MCILS staff attorney or mentor rostered staff attorney and be recommended for placement on the juvenile LOD roster by the MCILS staff attorney or mentor rostered staff attorney before they can be a rostered LOD attorney. This process shall repeat until the MCILS staff attorney or mentor rostered staff attorney can recommend the LOD applicant attorney be rostered. The mentor rostered attorney shall be paid for all their time in performing under this subsection; and

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

B. For Adult client Lawyer of the Day assignments:

1. Attend and complete the minimum training standards for LOD. If MCILS has not established a minimum training standard for adult LOD the attorney must complete 6 CLE hours dedicated to felony defense representation, felony sentencing in Maine, sentencing alternatives, probation in Maine, collateral consequences of felony convictions or similar topics within the lasts 2 years. These CLE requirements are only applicable if MCILS certified CLE classes are provided in Maine that meet these requirements or if MCILS authorizes and pays for attendance, travel, 3 meals, accommodations, and 8 hours of daily pay at the hourly rate to attend an out of state CLE that meets all these requirements when such CLEs are not offered in Maine;
2. Must have shadowed with a MICLS staff attorney or mentor rostered attorney for a minimum of 2 occasions. Shadowing means the shadowing attorney must be present at all time with the MCILS staff attorney or mentor rostered attorney from the time they arrive at court until the LOD proceeding is concluded including the review of discovery. Attorneys doing the shadowing shall be paid for their time;
3. Must perform 3 LOD assignments with a MCILS staff attorney or the same mentor attorney rostered for a minimum of 3 times. The MCILS staff attorney or mentor rostered staff attorney must recommend to the

MCILS executive director or their designee in writing that the LOD applicant attorney should be rostered on the adult LOD panel. If the MCILS staff attorney or mentor rostered staff attorney cannot recommend the LOD applicant attorney to be placed on the LOD roster the MCILS staff attorney or mentor rostered staff attorney must explain in writing what areas the attorney needs to improve. The MCILS executive director or their designee with a mentor will work with the attorney to develop the skills necessary to be placed on the roster. Once the necessary additional training is completed the attorney must perform 1 adult LOD assignment with a MCILS staff attorney or mentor rostered staff attorney and be recommended for placement on the juvenile LOD roster by the MCILS staff attorney or mentor rostered staff attorney before they can be a rostered adult LOD attorney. This process shall repeat until the MCILS staff attorney or mentor rostered staff attorney can recommend the adult LOD applicant attorney be rostered. The mentor rostered attorney shall be paid for all their time in performing under this subsection;

4. Have concluded a minimum of 100 MCILS assigned cases. Cannot do shadowing until this provision is met;
5. Must be on the felony panel; and
6. Must recertify every year that all requirements are met to remain on the panel. It is sufficient for recertification purposes that the rostered specialized panel attorney has met any specialized panel CLE requirements to remain certified for the adult LOD panel except the same CLE panel requirements cannot be repeated in 2 consecutive years.

SECTION 4. Waiver of Certain Eligibility Requirements

- ~~1. An attorney who wishes to receive assignments for one or more of the specialized case types listed above but who does not meet both requirements of: (1) years of practice experience; and (2) trial or litigation experience, may seek a waiver of either, but not both, requirements. An attorney seeking a waiver must provide the Executive Director, or his or her designee, with written information explaining the need for a waiver and the attorney's experience and qualifications to provide representation to the indigent people whose charges or litigation matters are covered by this rule. Repealed.~~
- ~~2. An attorney may apply for a conditional waiver if additional time is needed to meet CLE requirements. Repealed.~~
- ~~3. The Executive Director, or his or her designee, may consider other litigation~~

~~experience, total years of practice, and regional conditions and needs in granting or denying a waiver to any particular attorney. Repealed.~~

1. Rostered attorneys seeking to be on a specialized panel can seek a waiver of the requirements they are not meeting. The Attorney must:
 - (1) Send a letter to the MCILS executive director identifying:
 - (a) The panel that a waiver is being sought;
 - (b) The requirements that are being sought to be waived; and
 - (c) Why the waiver is appropriate.
 - (2) Waivers shall be presumptively denied except when exceptional evidence demonstrates a waiver is appropriate:
 - (a) except when the requirement being waived is the rostered experience provisions from a different jurisdiction or private practice the waiver shall not be presumptively denied. If the applicant attorney has equivalent criminal law experience in a different jurisdiction a waiver should be granted if all other requirements are met and there is a need for more rostered attorneys in the geographical location the applicant attorney plans to practice.
 - (b) Exceptional circumstances does not include the lack of qualified attorneys on a panel or the lack of qualified attorneys in a geographical location.

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

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Chapter 102: STANDARDS OF PRACTICE FOR ATTORNEYS WHO REPRESENT ADULTS IN CRIMINAL PROCEEDINGS

Summary: This Chapter establishes standards of practice for Commission assigned counsel providing representation in adult criminal cases. These standards are intended to guide assigned counsel in the conduct of their representation and for use by the Commission in evaluating, supervising and training assigned counsel.

SECTION 1. SCOPE & PURPOSE

1. These Standards apply whenever defense counsel is assigned pursuant to the Maine Commission on Indigent Legal Services' (MCILS) jurisdiction to provide representation to adults charged with crimes who are financially unable to retain defense counsel and who are entitled to representation pursuant to the United States and Maine Constitutions.
2. These standards are intended as a guide for assigned defense counsel and for use by MCILS in evaluating, supervising and training assigned defense counsel. Although MCILS understands that not every action outlined in these standards is necessary in every case, the Commission will apply these standards, the Maine Rules of Criminal Procedure and the Maine Rules of Professional Conduct, as well as all other Commission policies and procedures when evaluating the performance or conduct of counsel.
3. The Function of Defense Counsel.
 - A. Defense counsel for the accused is an essential component of the administration of criminal justice. A court properly constituted to hear a criminal case must be viewed as a tripartite entity consisting of the judge (and jury, where appropriate), counsel for the prosecution, and counsel for the accused.
 - B. The basic duty defense counsel owes to the administration of justice as an officer of the court is to serve as the accused's counselor and advocate and to render effective, quality representation.
 - C. Defense counsel, in common with all members of the bar, is subject to standards of conduct stated in statutes, rules, decisions of court, and codes, canons, or other standards of professional conduct. Defense counsel has no duty to execute any directive of the accused hereinafter "client") which does not comport with law or such standards.

4. Defense counsel should not knowingly make a false statement of material fact or law to the court or a third person.

SECTION 1A. THE FUNCTION OF DEFENSE COUNSEL

1. Counsel's primary and most fundamental responsibility is to promote and protect the client's interest and to zealously advocate on behalf of the client at all stages of the criminal process. This includes honoring the attorney/client privilege, respecting the client at all times, and keeping the client informed of the progress of the case. If personal beliefs make it impossible for counsel to fulfill the duty of zealous representation, then counsel has a duty to refrain from representing the client.
2. Defense counsel for the accused is an essential component of the administration of criminal justice. A court properly constituted to hear a criminal case must be viewed as a tripartite entity consisting of the judge (and jury, where appropriate), counsel for the prosecution, and counsel for the accused. The basic duty defense counsel owes to the administration of justice, as an officer of the court, is to serve as the accused's counselor and advocate and to render effective, quality representation. Defense counsel shall provide to their clients 'quality representation consistent with the constitutional requirement of "effective" counsel.
3. Defense counsel, in common with all members of the bar, is subject to standards of conduct stated in statutes, rules, decisions of the court, Board of Overseers of the Bar opinions, and codes, canons, or other standards of professional conduct. Counsel must know and adhere to all applicable ethical opinions and standards and comply with the rules of the court. Where appropriate, counsel may consider a legal challenge to inappropriate rules and/or opinions. If in doubt about ethical issues in a case, counsel should seek guidance from other experienced counsel or from the Maine bar counsel. Counsel shall interpret any good-faith ambiguities in the light most favorable to the client.
4. Counsel's role in the criminal justice system is to ensure the interests and rights of the client are fully protected and advanced. Counsel's personal opinion of the client's guilt is irrelevant. The client's financial status is of no significance. Indigent clients are entitled to the same zealous representation as clients capable of paying an attorney.
5. Rostered attorneys should always be aware of their duties to their clients, the courts, the State, and other counsel. While it is not possible to provide a complete list, the basic duties are well known and should be reviewed periodically. Those duties are discussed above and throughout these standards.

SECTION 2. ATTORNEY QUALIFICATIONS

1. Education, Training and Experience of Defense Counsel.
 - A. To provide quality representation, defense counsel must be familiar with

the substantive criminal law and the law of criminal procedure and its application in the particular jurisdiction. Defense counsel has a continuing obligation to stay abreast of changes and developments in the law. Where appropriate, defense counsel should also be informed of the practice of the specific judge before whom a case is pending.

- B. Prior to handling a criminal matter, defense counsel should have sufficient experience or training to provide quality representation. Defense counsel should accept the more serious and complex criminal cases only after having had experience and/or training in less complex criminal matters. Where appropriate, defense counsel should consult with more experienced counsel to acquire knowledge and familiarity with all facts of criminal representation, including information about practices of prosecutors and other court personnel.

2. General Duties of Defense Counsel.

Before agreeing to act as defense counsel or accepting assignment, defense counsel has an obligation to make sure that he or she has available sufficient time, resources, knowledge and experience to offer quality representation to a defendant in a particular matter. If it later appears that counsel is unable to offer quality representation in the case, defense counsel should move to withdraw.

SECTION 3. SCOPE OF REPRESENTATION

1. Provision of Quality Representation.

Defense counsel shall provide to their clients quality representation equivalent to that provided by a skilled, knowledgeable and conscientious counsel to retained clients. The paramount obligation of defense counsel is to provide high quality, effective representation and diligent and zealous advocacy for the client at all stages of the representation.

2. Delays; Punctuality; Workload.

- A. Defense counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the client's interest in the speedy disposition of charge(s), or may lead to the breach of professional obligations.
- B. Defense counsel should act with reasonable diligence and promptness in representing a client.
- C. Defense counsel should avoid unnecessary delay in the disposition of cases. Defense counsel should be punctual in attendance at court proceedings and in the submission of all motions, briefs and other papers.

Defense counsel should emphasize to the client and all witnesses the importance of punctuality in attendance in court.

- D. Defense counsel should not knowingly make a false statement of fact or law to the court in order to obtain a continuance.
- E. Defense counsel should not intentionally use procedural devices for delay for which there is no legitimate basis.

3. Use of Non-Assigned Counsel

- A. It is anticipated the assigned rostered counsel will represent the client in all aspects of the client's case throughout the duration of the case. Cases are assigned to attorneys and not firms. Attorneys are prohibited from accepting assignment and assigning them to a different attorney.
- B. Rostered counsel may not delegate to other attorneys or associates the handling of contested hearings, or any part of a trial or oral argument. Delegation can only be when every aspect of the hearing is agreed to by the rostered counsel, the client, and the prosecutor. Prior to substitute counsel appearing the client must be notified that substitute counsel is covering when possible.
- C. The attorney to whom the case is delegated to must be a MICLS rostered attorney who is qualified to handle the case that is delegated.

SECTION 4. LAWYER-CLIENT RELATIONSHIP

- 1. General Duties of Defense Counsel.
 - A. Defense counsel must be alert to all potential and actual conflicts of interest that would impair defense counsel's ability to represent a client.
 - B. Upon receiving notice of an assignment, counsel should contact the client to schedule an initial meeting and should maintain regular contact with the client thereafter. Counsel should initiate contact with the client by telephone or by mail as soon as practicable and in any event within at least 7 days of being notified of the assignment. If a client is in custody, counsel should meet and interview the client within at least 7 days of being notified of the assignment. If the client is not in custody, counsel should meet with the client prior to the deadline for filing initial motions. Counsel should endeavor to establish a relationship of trust and open communication with the client and should diligently advocate the client's position within the bounds of the law and the Maine Rules of Professional Conduct.

- C. Defense counsel should take all reasonable steps necessary to ensure that confidential communications between defense counsel and the client are conducted in privacy. This may include making efforts to request that the court and other officials make reasonable accommodations for private discussions between defense counsel and clients in courthouses, lockups, jails, prisons, detention centers, and other places where a client must confer with defense counsel.

SECTION 5. INITIAL INTERVIEW

1. Purpose.

The purpose of the initial interview is to acquire information from the client concerning pretrial release (if needed), to provide the client with information concerning the case and to begin to develop knowledge of the facts of the case. Defense counsel should ensure at this and all successive interviews and proceedings that barriers to communication, such as differences in language or literacy, be overcome.

2. General Duties of Defense Counsel.

- A. Where defense counsel is unable to communicate with the client because of either language differences or mental disability, the defense counsel shall take whatever steps are necessary to insure that he/she is able to communicate with the client and that the client understands the proceedings. Such steps would include having defense counsel obtain expert assistance including an interpreter for pretrial preparation, interviews, and investigation, as well as in-court proceedings.

1. Courts are required to provide all hearing-impaired clients and all non-English speaking clients with the services of a court-certified or professional interpreter at all in-court proceedings, regardless of the language skills of counsel. It is the responsibility of assigned counsel to make sure that the court provides such interpreter services for his or her client. It is the responsibility of the court to pay for in-court interpreter services.

2. For out-of-court pre-trial preparation, including client interviews, the attorney representing the hearing-impaired or non-English-speaking client should obtain the services of a court-certified or professional interpreter, unless counsel is fluent in the client's language including dialect. The attorney shall request funds from MCILS for payment to the interpreter consistent with the Procedures Regarding Funds for Experts and Investigators.

- B. To ensure the preservation, protection and promotion of the client's rights

and interests, defense counsel must make accommodations where necessary due to a client's special circumstances, such as youth, mental or physical disability, or foreign language barrier.

3. Preparation. Prior to conducting the initial interview, defense counsel should, to the extent possible:
 - A. be familiar with the elements of the offense and the potential punishment, where the charges against the client are already known;
 - B. obtain copies of any relevant documents which are available, including copies of any charging documents, and law enforcement reports that might be available;
 - C. be familiar with the legal criteria for determining pretrial release and the procedures that will be followed in setting those conditions;
 - D. be familiar with the different types of pretrial release conditions the court may set;
 - E. be familiar with any procedures available for reviewing the trial judge's setting of bail.
4. Initial Client Interview.
 - A. The purpose of the initial interview is to acquire information from the client concerning pretrial release, to provide the client with information concerning the case and to begin to develop knowledge of the facts of the case. The scope and focus of the initial interview will vary according to the circumstances under which it occurs.
 - B. Defense counsel should conduct a client interview as soon as practicable and if the client is in custody then in no event within more than seven (7) days after receiving notice of an assignment in order to obtain information necessary to provide quality representation at the early stages of the case and to provide the client with information concerning counsel's representation and the case proceedings. If the client is not in custody, the interview should occur prior to the deadline for filing initial motions.
 - C. Defense counsel should convey the following types of information to the client:
 - (1) an explanation of the procedures that will be followed in setting the conditions of pretrial release;
 - (2) an explanation of the type of information that will be requested in any interview that may be conducted by a pretrial release agency

- and also an explanation that the client should not make statements concerning the offense;
- (3) an explanation of the attorney-client privilege and instructions not to talk to anyone about the facts of the case without first consulting with the attorney;
 - (4) a general procedural overview of the progression of the case, where possible;
 - (5) an explanation that the client has the constitutional right to plead not guilty; to be tried by a judge or a jury; to the assistance of counsel; to confront and cross-examine witnesses against him/her; to testify; and to not be compelled to incriminate him/herself.
 - (6) the nature of the allegations, what the state must prove, and the likely and maximum potential consequences;
 - (7) how and when counsel can be reached;
 - (8) when counsel will see the client next;
 - (9) realistic answers, where possible, to the client's most urgent questions;
 - (10) what arrangements will be made or attempted for the satisfaction of the client's most pressing needs, e.g., medical or mental health attention, contact with family or employers.

the D. Defense counsel should request the following types of information from client:

- (1) the facts surrounding the allegations against or affecting the client;
- (2) any possible witnesses who should be located;
- (3) any evidence of improper conduct by police or other investigative agencies, mental health departments or the prosecution which may affect the client's rights;
- (4) any evidence that should be preserved;
- (5) evidence of the client's competence to stand trial and/or mental state at the time of the offense.
- (6) the client's ties to the community, including the length of time he or she has lived at the current and former addresses, family relationships, immigration status (if applicable), employment record and history;
- (7) the client's physical and mental health, educational and armed services records;
- (8) the client's immediate medical needs;
- (9) the client's past criminal record, if any, including arrests and convictions for adult and juvenile offenses and prior record of court appearances or failure to appear in court; defense counsel should also determine whether the client has any pending charges and also whether the client is on probation or parole and the client's past or present performance under supervision;
- (10) the ability of the client to meet any financial conditions of release;

- (11) the names of individuals or other sources that counsel can contact to verify the information provided by the client; counsel should obtain the permission of the client before contacting these individuals.

5. Disposition of the Case.

- A. Defense counsel should advise the client with complete candor concerning all aspects of the case, including a candid estimate of the probable outcome.
- B. Defense counsel should not intentionally understate or overstate the risks, hazards or prospects of the case to exert undue influence on the client's decision as to his/her plea(s).

6. Advice and Service on Anticipated Unlawful Conduct.

- A. Defense counsel should not counsel a client in or knowingly assist a client to engage in conduct which defense counsel knows to be illegal or fraudulent, but defense counsel may discuss the legal consequences of any proposed course of conduct with a client.

7. Duty to Keep Client Informed.

- A. Defense counsel should maintain regular contact with the client and should keep the client informed of the progress of the case, including:
 - (1) the importance of maintaining contact with defense counsel and the need to notify defense counsel of any change of address;
 - (2) the names and contact information regarding defense counsel and staff assisting with the case;
 - (3) any court dates and significant developments in the case.
- B. Defense counsel should keep the client informed of any developments in the case and the progress of the preparation of the defense, and provide sufficient information to permit intelligent participation in decision making by the client.
- C. Defense counsel should comply with reasonable requests for information from the client and reply to client correspondence and telephone calls.

8. Preparation for Bail Hearing.

- A. If identification may be an issue, defense counsel should be aware of, and consider preventing, any identification opportunities for prosecution witnesses that may arise at arraignment.

B. If the client is detained, the focus of the initial interview and investigation will be to obtain information relevant to the determination of pretrial conditions of release. Such information should generally include:

- (1) client's residence and length of time at that residence;
- (2) family (names, addresses and phone numbers);
- (3) health (mental and physical) and employment background;
- (4) explanation of any court defaults and any other information on the record;
- (5) probation/parole status;
- (6) possible sources of bail money;
- (7) the general circumstances of the alleged offense and/or arrest, including, where relevant, any identification procedures that occurred.

Such information should be verified whenever possible.

9. Bail or Detention Hearing.

- A. Defense counsel has an obligation to vigorously attempt to secure the pretrial release of the client under conditions most desirable to the client. While favorable release conditions are the principal goal of the hearing, defense counsel should also be alert to all opportunities for obtaining discovery.
- B. Defense counsel's argument to the court should include the client's ties to the community and other factors that support a conclusion that the client, if released, will return for future court appearances. The client should not, except under the most extraordinary circumstances, speak or testify at a bail hearing. Although comments on the strength and quality of the case are appropriate and reference may be made to the general nature of the anticipated defense, the specific elements of the client's defense should not be revealed at the arraignment or bail hearing.
- C. Defense counsel should be prepared to address the special issues of "dangerousness" that are the focus of the hearings, and, where appropriate and possible, be ready to present "proffers" that address those issues.
- D. Defense counsel should consider advocating for reasonable conditions of release or recognizance pursuant to pretrial probation, such as electronic monitoring, "stay away" orders, curfews, surrender of passports or licenses (motor vehicle or firearms), etc., in addition to monetary sureties. If the client wishes for defense counsel to advocate for conditions of

release that may not be reasonable then counsel must do their best to explain the risks and or benefits of doing so to the client.

- E. Where the client is not able to obtain release under the conditions set by the court, defense counsel should advise the client of his/her right to appeal and the advantages and disadvantages of doing so. Where appropriate, defense counsel should facilitate the bail appeal procedure, including pressing for the opportunity to be heard on the same day and be prepared to represent the client at the hearing.
- F. Where the client is incarcerated and unable to obtain pretrial release, defense counsel should alert the court and the sheriff to any special needs of the client, e.g., medical problems, security needs, and request the court to direct the appropriate officials to take steps to meet such special needs.
- G. Defense counsel should be familiar with the law governing the prosecution's power to require a defendant to provide non-testimonial evidence (such as handwriting exemplars and physical specimens), the circumstances in which a defendant may refuse to do so, the extent to which counsel may participate in the proceedings, and the record of the proceedings required to be maintained.

SECTION 6. CASE REVIEW & PREPARATION

- 1. Defense counsel has a duty to conduct an independent case review regardless of the client's admissions or statements to the lawyer of facts constituting guilt. The review should be conducted as promptly as possible.
- 2. Sources of case information may include the following:
 - A. *Charging Documents* – Copies of all charging documents in the case should be obtained and examined to determine the specific charges that have been brought against the accused. The relevant statutes and precedents should be examined to identify:
 - (1) the elements of the offense(s) with which the accused is charged;
 - (2) the defenses, ordinary and affirmative, that may be available;
 - (3) any defects in the charging documents, constitutional or otherwise, such as statute of limitations, double jeopardy, or irregularities in the Grand Jury proceedings.
 - B. *The Accused* – If not previously conducted, an in-depth interview of the client should be conducted as soon as possible and appropriate after appointment of counsel. The interview with the client should be used to:
 - (1) seek information concerning the incident or events giving rise to

- the charge(s) or improper police investigative practices or prosecutorial conduct which affects the client's rights;
 - (2) explore the existence of other potential sources of information relating to the offense;
 - (3) collect information relevant to the sentencing.
- C. *Potential Witnesses* – Defense counsel should consider whether to interview the potential witnesses, including any complaining witnesses and others adverse to the accused. If defense counsel conducts such interviews of potential witnesses, he or she should do so in the presence of a third person who will be available, if necessary, to testify as a defense witness at trial. Alternatively, counsel should have an investigator conduct such interviews.
- D. *The Police and Prosecution* – Defense counsel should secure information in the possession of the prosecution or law enforcement authorities, including police reports through the use of M.R.Crim.P. 16 and 16A. Where necessary, defense counsel should pursue such efforts through formal and informal discovery unless a sound tactical reason exists for not doing so.
- E. *The Courts* – Defense counsel should request and review preliminary hearing tapes/transcripts as well as Grand Jury tapes. Where appropriate, defense counsel should review the client's prior court file(s).
- F. *Physical Evidence* – Where appropriate, defense counsel should make a prompt request to the police or investigative agency for any physical evidence or expert reports relevant to the offense or to sentencing. Defense counsel should consider viewing the physical evidence consistent with case needs.
- G. *The Scene* – Where appropriate, defense counsel (or an investigator) should view the scene of the alleged offense. This should be done under circumstances as similar as possible to those existing at the time of the alleged incident (e.g., weather, time of day, lighting conditions, and seasonal changes). Defense counsel should consider the taking of photographs and the creation of diagrams or charts of the actual scene of the offense.
- H. *Expert Assistance* – Defense counsel should secure the assistance of experts where it is necessary in order to:
 - (1) prepare a defense;
 - (2) understand the prosecution's case;
 - (3) rebut the prosecution's case;
 - (4) investigate the client's competence to proceed, mental state at the

time of the offense, and/or capacity to make a knowing and intelligent waiver of constitutional rights.

3. During case preparation and throughout trial, defense counsel should identify potential legal issues and the corresponding objections. Defense counsel should consider the tactics of whether, when, and how to raise these objections. Defense counsel should also consider how to respond to objections which could be raised by the State.
4. Relations with Prospective Witnesses.
 - A. Defense counsel, in representing a client, should not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.
 - B. Defense counsel should not compensate a witness except as provided by Commission Rule. Chapter 302: Procedures Regarding Funds for Experts and Investigators.
 - C. It is not necessary for defense counsel or defense counsel's investigator, in interviewing a prospective witness, to caution the witness concerning possible self-incrimination and the need for counsel.
 - D. Defense counsel should not discharge or obstruct communication between prospective witnesses and the prosecutor. It is unprofessional conduct to advise any person other than a client, or cause such person to be advised, to decline to give to the prosecutor or defense counsel for co-defendants information which such person has a right to give.
 - E. Unless defense counsel is prepared to forego impeachment of a witness by defense counsel's own testimony as to what the witness stated in an interview or to seek leave to withdraw from the case in order to present such impeaching testimony, defense counsel should avoid interviewing a prospective witness except in the presence of a third person.
5. Relations with Expert Witnesses.

Defense counsel who engages an expert for an opinion should respect the independence of the expert and should not seek to dictate the formation of the expert's opinion on the subject. To the extent necessary, defense counsel should explain to the expert his or her role in the trial as an impartial witness called to aid the fact finders and the manner in which the examination of witnesses is conducted.

SECTION 7. CONTROL & DIRECTION OF THE CASE

1. Theory of the Case. During investigation and trial preparation, defense counsel should develop and continually reassess a theory of the case.
2. Implementation.
 - A. Defense counsel should develop an overall theory of the case that encompasses the best interest of the client and the realities of the client's situation in order to assist counsel in evaluating choices throughout the course of the representation.
 - B. Defense counsel should allow the case theory to focus the investigation and trial preparation of the case, seeking out and developing the facts and evidence that the theory makes material, but defense counsel should not become a "prisoner" of his or her theory.
3. Certain decisions relating to the conduct of the case are ultimately for the accused and other are ultimately for defense counsel. The decisions which are to be made by the accused after full consultation with defense counsel include:
 - A. what pleas to enter;
 - B. whether to accept a plea agreement;
 - C. whether to waive jury trial;
 - D. whether to testify in his or her own behalf;
 - E. whether to appeal.
4. Strategic and tactical decisions should be made by defense counsel after consultation with the client where feasible and appropriate. Such decisions include what witnesses to call, whether and how to conduct cross-examination, what jurors to accept or strike, what trial motions should be made, and what evidence should be introduced.
5. If a disagreement on significant matters of tactics or strategy arises between defense counsel and the client, defense counsel should make a record of the circumstances, defense counsel's advice and reasons, and the conclusion reached. The record should be made in a manner which protects the confidentiality of the lawyer-client relationship.
6. Defense counsel should explain that final decisions concerning trial strategy, after full consultation with the client, and after investigation of the applicable facts and law, are ultimately to be made by defense counsel. The client should be made aware that defense counsel is primarily responsible for deciding what

motions to file, which witnesses to call, what questions to ask, and what other evidence to present. Implicit in the exercise of defense counsel's decision-making role in this regard is consideration of the client's input and full disclosure by defense counsel to the client of the factors considered by the attorney in making the decisions. Defense counsel should inform the client of an attorney's ethical obligation, informed by professional judgment, not to present frivolous matters or unfounded actions.

7. Presentment and Arraignment.

- A. Defense counsel should preserve the client's rights at the initial appearance on the charges by:
 - (1) advising the client to enter a plea of not guilty in all but the most extraordinary circumstances where a sound tactical reason exists for not doing so or unless the client insists on pleading guilty despite counsel's advice to the contrary;
 - (2) seeking a determination of whether there is probable cause to support the charges alleged and, if there is not probable cause, or other grounds exist for dismissal, requesting that the court dismiss the charge or charges.

8. The Plea Negotiation Process and the Duties of Defense Counsel.

- A. Defense counsel should explore with the client the possibility and desirability of reaching a negotiated disposition of the charges rather than proceeding to a trial and in doing so should fully explain the rights that would be waived by a decision to enter a plea and not to proceed to trial.
- B. Defense counsel should ordinarily obtain the consent of the client before entering into any plea negotiation.
- C. Defense counsel should keep the client fully informed of any continued plea discussion and negotiations and convey to the accused any offers made by the prosecution for a negotiated settlement.
- D. Defense counsel should not accept any plea agreement without the client's express authorization. The decision to enter a plea of guilty rests solely with the client, and defense counsel should not attempt to unduly influence that decision.
- E. The existence of ongoing tentative plea negotiations with the prosecution should not prevent defense counsel from taking steps necessary to preserve a defense.

9. The Decision to File Pretrial Motions.

- A. Defense counsel should consider filing an appropriate motion whenever there exists a good faith reason to believe that the applicable law may entitle the defendant to relief which the court has discretion to grant.
- B. The decision to file pretrial motions should be made after thorough investigation, and after considering the applicable law in light of the circumstances of each case. Among the issues that defense counsel should consider addressing in a pretrial motion are:
 - (1) the pretrial custody of the accused;
 - (2) the constitutionality of the implicated statute or statutes;
 - (3) the potential defects in the charging process;
 - (4) the sufficiency of the charging document;
 - (5) the propriety and prejudice of any joinder of charges or co-defendants in the charging document;
 - (6) the discovery obligations of the prosecution and the reciprocal discovery obligations of the defense;
 - (7) the suppression of evidence gathered as the result of violations of the Fourth, Fifth or Sixth Amendments to the United States Constitution, or corresponding or additional state constitutional provisions, including:
 - (a) the fruits of illegal searches or seizures;
 - (b) involuntary statements or confessions;
 - (c) statements or confessions obtained in violation of the client's right to counsel, or privilege against self-incrimination;
 - (d) unreliable identification evidence which would give rise to a substantial likelihood of irreparable misidentification.
 - (8) suppression of evidence gathered in violation of any right, duty or privilege arising out of state or local law;
 - (9) access to resources which or experts who may be denied to an accused because of his or her indigence;
 - (10) the defendant's right to a speedy trial;
 - (11) the defendant's right to a continuance in order to adequately prepare his or her case;
 - (12) matters of trial evidence which may be appropriately litigated by means of a pretrial motion in limine;
 - (13) matters of trial or courtroom procedure.
- C. Defense counsel should withdraw a motion or decide not to file a motion only after careful consideration, and only after determining whether the filing of a motion may be necessary to protect the client's rights against later claims of waiver or procedural default.

10. Filing and Arguing Pretrial Motions.

- A. Motions should be filed in a timely manner, should comport with the formal requirements of the court rules and should succinctly inform the court of the authority relied upon. In filing a pretrial motion, defense counsel should be aware of the effect it might have upon the defendant's speedy trial rights.
- B. When a hearing on a motion requires the taking of evidence, defense counsel's preparation for the evidentiary hearing should include:
 - (1) investigation, discovery and research relevant to the claim advanced;
 - (2) the subpoenaing of all helpful evidence and the subpoenaing and preparation of all helpful witnesses;
 - (3) full understanding of the burdens of proof, evidentiary principles and trial court procedures applying to the hearing, including the benefits and costs of having the client testify.

11. Subsequent Filing of Pretrial Motions.

Defense counsel should be prepared to raise during the subsequent proceedings any issue which is appropriately raised pretrial, but could not have been so raised because the facts supporting the motion were unknown or not reasonably available. Further, defense counsel should be prepared to renew a pretrial motion if new supporting information is disclosed in later proceedings.

12. Trial Motions.

Defense counsel should be aware that certain motions are generally reserved for the trial judge, e.g., motions in limine and motions to sequester.

13. Interlocutory Relief.

Where appropriate, defense counsel should consider seeking interlocutory relief, under the applicable rule or statute, after an adverse pretrial ruling. The conduct of interlocutory hearings, including the submission of briefs and oral argument, are ordinarily the responsibility of the defense counsel, whether the hearing was initiated by defense counsel or by the prosecution.

14. Bench Trial or Jury Trial.

- A. The decision to proceed to trial with or without a jury rests solely with the client after complete advice of defense counsel.
- B. Defense counsel should fully advise the client of the advantages and

disadvantages of either a jury or jury-waived trial. Defense counsel should exercise great caution before advising a jury waiver, especially without thorough discovery, including knowledge of the likely availability of prosecution witnesses, and their likely responses to cross-examination.

15. Continuing Responsibility to Raise Issue of Client's Incompetence.

- A. Defense counsel should consider the client's competence to stand trial or to enter a plea whenever defense counsel has a good faith doubt as to the client's competence to proceed in the criminal case. Defense counsel may move for evaluation over the client's objection, and if necessary, defense counsel may make known to the court those facts which raise the good faith doubt of competence to proceed in the criminal case.
- B. Where competency is at issue, defense counsel has a continuing duty to review and prepare the case for all court proceedings. Defense counsel should develop information relevant to the issue of dangerousness.

16. Entry of the Plea before the Court.

- A. Prior to the entry of the plea, defense counsel should:
 - (1) make certain that the client understands the rights he or she will waive by entering the plea and that the client's decision to waive those rights is knowing, voluntary and intelligent;
 - (2) make certain that the client fully and completely understands the conditions and limits of the plea agreement and the maximum punishment, sanctions and other consequences the client will be exposed to by entering a plea;
 - (3) explain to the client the nature of the plea hearing and prepare the client for the role he or she will play in the hearing, including answering questions of the judge and providing a statement concerning the offense.
- B. When entering a plea, defense counsel should make sure that the full content and conditions of the plea agreement are placed on the record by the court.
- C. After entry of the plea, defense counsel should be prepared to address the issue of release pending sentencing. Where the client has been released pretrial, defense counsel should be prepared to argue and persuade the court that the client's continued release is warranted and appropriate. Where the client is in custody prior to the entry of the plea, defense counsel should, where practicable, advocate for the client's release on bail pending sentencing.

- D. Subsequent to the acceptance of the plea, defense counsel should make every effort to review and explain the plea proceedings with the client and to respond to any client questions and concerns.

17. Consequences of Conviction.

Defense counsel must also advise the client of the consequences of a conviction, including:

- A. the maximum possible sentence of all offenses;
- B. mandatory minimum sentences where applicable;
- C. different or additional punishments where applicable, such as for second offenses, probation, violation or parole revocation consequences;
- D. potential liability for enhanced punishment after subsequent arrest;
- E. possible federal charges or penalty enhancements as well as the possible loss of eligibility for federal benefits;
- F. conviction consequences for non-citizens;
- G. Sex Offender Registration Act;
- H. potential civil liabilities;
- I. possible loss or suspension of driver's license under Maine or federal law;
- J. possible loss of the right to possess a firearm.

18. The Decision to Enter a Plea of Guilty.

- A. Defense counsel should inform the client of any tentative negotiated agreement reached with the prosecution, explain to the client the full content of the agreement, and explain the advantages, disadvantages and potential consequences of the agreement.
- B. The decision to enter a plea of guilty rests solely with the client, and defense counsel should not attempt to unduly influence that decision. Where defense counsel reasonably believes that acceptance of a plea offer is in the best interests of the client, defense counsel should advise the client of the benefits of this course of action.
- C. Where the client verbally rejects a fully explained and detailed plea offer, and if appropriate, defense counsel may ask the client to sign a written

rejection of plea offer statement.

SECTION 8. GENERAL TRIAL PREPARATION

1. The decision to proceed to trial with or without a jury rests solely with the client. Defense counsel should discuss the relevant strategic considerations of this decision with the client.
2. Where appropriate, defense counsel should have the following materials available at the time of trial:
 - A. copies of all relevant documents filed in the case;
 - B. relevant documents prepared by investigators;
 - C. voir dire questions;
 - D. outline or draft of opening statement;
 - E. cross-examination plans for all possible prosecution witnesses;
 - F. direct examination plans for all prospective defense witnesses;
 - G. copies of defense subpoenas;
 - H. prior statements of all prosecution witnesses (e.g., transcripts, police reports);
 - I. prior statements of all defense witnesses;
 - J. reports from defense experts;
 - K. a list of all defense exhibits, and the witnesses through whom they will be introduced;
 - L. originals and copies of all documentary exhibits;
 - M. proposed jury instructions with supporting case citations;
 - N. copies of all relevant statutes and cases;
 - O. outline or draft of closing argument.
3. Defense counsel should be fully informed as to the rules of evidence, and the law relating to all stages of the trial process, and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the trial.

4. Defense counsel should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., use of prior convictions to impeach the client) and, where appropriate, defense counsel should prepare motions and memoranda for such advance rulings.
5. Throughout the trial process, defense counsel should endeavor to establish a proper record for appellate review. As part of this effort, defense counsel should request, whenever necessary, that all trial proceedings be recorded.
6. Where appropriate, defense counsel should advise the client as to suitable courtroom dress and demeanor. If the client is incarcerated, defense counsel should be alert to the possible prejudicial effects of the client appearing before the jury in jail or other inappropriate clothing.
7. Defense counsel should plan with the client the most convenient system for conferring throughout the trial. Where necessary, defense counsel should seek a court order to have the client available for conferences.
8. Throughout preparation and trial, defense counsel should consider the potential effects that particular actions may have upon sentencing if there is a finding of guilt.
9. Defense counsel should consider all steps necessary to complete investigation, discovery, and research in advance of trial, such that defense counsel is confident that the most viable defense theory has been fully developed, pursued, and refined. This preparation should include consideration of:
 - A. summoning all potentially helpful witnesses, utilizing ex parte procedures if advisable.
 - B. summoning all potentially helpful physical or documentary evidence;
 - C. arranging for defense experts to consult and/or testify on any evidentiary issues that are potentially helpful; e.g., testing of physical evidence, opinion testimony, etc.
 - D. obtaining and reading transcripts and/or prior proceedings in the case or related proceedings;
 - E. obtaining photographs or preparing charts, maps, diagrams or other visual aids of all scenes, persons, objects or information which may aid the fact finder in understanding the defense case.

SECTION 9. VOIR DIRE AND JURY SELECTION

1. Defense counsel should be familiar with the procedures by which a jury venire is selected in the particular jurisdiction and should be alert to any potential legal challenges to the composition or selection of the venire.
2. Defense counsel should be familiar with the local practices and the individual trial judge's procedures for selecting a jury from a panel of the venire, and should be alert to any potential legal challenges to these procedures.
3. Prior to jury selection, defense counsel should review the prospective juror list and juror questionnaire.
4. Where appropriate, defense counsel should develop voir dire questions in advance of trial. Defense counsel should tailor voir dire questions to the specific case. Among the purposes voir dire questions should be designed to serve are the following:
 - A. to elicit information about the attitudes of individual jurors, which will inform about peremptory strikes and challenges for cause;
 - B. to convey to the panel certain legal principles which are critical to the defense case.
5. Defense counsel should be familiar with the law concerning discretionary voir dire inquiries so as to be able to defend any request or make a request to ask particular questions of prospective jurors.
6. Defense counsel should be familiar with the law concerning challenges for cause and peremptory strikes. Defense counsel should also be aware of any local rules concerning whether peremptory challenges need to be exhausted in order to preserve for appeal any challenges for cause which have been denied.

SECTION 10. PRESENTING THE DEFENSE CASE

1. Defense counsel should develop, in consultation with the client, an overall defense strategy. In deciding on defense strategy, defense counsel should consider whether the client's interests are best served by not putting on a defense case, and instead relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt.
2. Confronting the Prosecution's Case.
 - A. Defense counsel should attempt to anticipate weaknesses in the prosecution's proof and consider researching and preparing corresponding motions for judgment of acquittal.

- B. Defense counsel's belief or knowledge that the witness is telling the truth does not preclude cross-examination.
 - C. In preparing for cross-examination, defense counsel should be familiar with the applicable law and procedures concerning cross-examinations and impeachment of witnesses. In order to develop material for impeachment or to discover documents subject to disclosure, defense counsel should be prepared to question witnesses as to the existence of prior statements which they may have made or adopted.
 - D. In preparing for cross-examination, defense counsel should:
 - (1) consider the need to integrate cross-examination, the theory of the defense and closing argument;
 - (2) consider whether cross-examination of each individual witness is likely to generate helpful information;
 - (3) anticipate those witnesses the prosecutor might call in its case-in-chief or in rebuttal;
 - (4) consider a cross-examination plan for each of the anticipated witnesses;
 - (5) be alert to inconsistencies in witnesses' testimony;
 - (6) be alert to possible variations in witnesses' testimony;
 - (7) review all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;
 - (8) where appropriate, review relevant statutes and local police regulations for possible use in cross-examining police witnesses;
 - (9) be alert to issues relating to witness credibility, including bias and motive for testifying.
3. Presentation of Evidence.
- A. Defense counsel should not knowingly offer false evidence, whether by documents, tangible evidence, or the testimony of witnesses, or fail to take reasonable remedial measures upon discovery of its falsity.
 - B. Defense counsel should not knowingly and for the purpose of bringing inadmissible matter to the attention of the judge or jury, offer inadmissible evidence, ask legally objectionable questions, or make other impermissible comments or arguments in the presence of the judge or jury.
 - C. Defense counsel should not permit any tangible evidence to be displayed in the view of the judge or jury which would tend to prejudice fair consideration of the case by the judge or jury until such time as a good faith tender of such evidence is made.
 - D. Defense counsel should not tender tangible evidence in the presence of the

judge or jury if it would tend to prejudice fair consideration of the case, unless there is a reasonable basis for its admission in evidence. When there is any substantial doubt about the admissibility of such evidence, it should be tendered by an offer of proof and a ruling obtained.

4. Presenting the Defense Case.

- A. Defense counsel should discuss with the client all of the considerations relevant to the client's decision to testify.
- B. Defense counsel should be aware of the elements of any affirmative defense and know whether, under the applicable law of the jurisdiction, the client bears a burden of persuasion or a burden of production.
- C. In preparing for presentation of a defense case, defense counsel should, where appropriate:
 - (1) develop a plan for direct examination of each potential defense witness;
 - (2) determine the implications that the order of witnesses may have on the defense case;
 - (3) consider the possible use of character witnesses;
 - (4) consider the need for expert witnesses.
- D. In developing and presenting the defense case, defense counsel should consider the implications it may have for a rebuttal by the prosecutor.
- E. Defense counsel should prepare all witnesses for direct and possible cross-examination. Where appropriate, defense counsel should also advise witnesses of suitable courtroom dress and demeanor.
- F. Defense counsel should conduct redirect examination as appropriate.
- G. At the close of the defense case, defense counsel should renew the motion for judgment of acquittal on each charged count.

5. Jury Instructions.

- A. Defense counsel should be familiar with the local rules and the individual judges' practices concerning ruling on proposed instructions, charging the jury, use of standard charges and preserving objections to the instructions.
- B. Where appropriate, defense counsel should submit modifications of the standard jury instructions in light of the particular circumstances of the case, including the desirability of seeking a verdict on a lesser included offense. Where possible, defense counsel should provide case law in

support of the proposed instructions.

- C. Where appropriate, defense counsel should object to and argue against improper instructions proposed by the prosecution.
- D. If the court refuses to adopt instructions requested by defense counsel, or gives instructions over defense counsel's objection, defense counsel should take all steps necessary to preserve the record, including, where appropriate, filing a copy of proposed instructions or reading proposed instructions into the record.
- E. During delivery of the charge, defense counsel should be alert to any deviations from the judge's planned instructions, object to deviations unfavorable to the client, and, if necessary, request additional or curative instructions.
- F. If the court proposes giving supplemental instructions to the jury, either upon request of the jurors or upon their failure to reach a verdict, defense counsel should request that the judge state the proposed charge to defense counsel before it is delivered to the jury.

6. Post-Trial Motions.

Defense counsel's responsibility includes presenting appropriate post-trial motions to protect the defendant's rights.

7. Post-Disposition Procedures.

Defense counsel should be familiar with the procedures available to the client after disposition. Implementation is as follows:

- A. Defense counsel should be familiar with the procedures to request a new trial including the time period for filing such a motion, the effect it has upon the time to file a notice of appeal, and the grounds that can be raised.
- B. Defense counsel should inform the client of his or her right to appeal the judgment and/or the sentence or disposition of the court and the action that must be taken to perfect an appeal. In circumstances where the client wants to file an appeal but is unable to do so without the assistance of defense counsel, defense counsel should file the notice in accordance with the rules of the court and take such other steps as are necessary to preserve the client's right to appeal.
- C. Where a client indicates a desire to appeal the judgment and/or sentence or disposition of the court, defense counsel should inform the client of any right that may exist to be released pending the disposition of the appeal.

- D. Where a custodial sentence has been imposed, defense counsel should consider requesting a stay of execution of the judgment to permit the client to report directly to the place of confinement.
 - E. Defense counsel should inform the client of procedures available for requesting a discretionary review of or reduction in the sentence imposed by the trial court, including any time limitations that apply to such a request.
8. Courtroom Professionalism.
- A. As an officer of the court, defense counsel should support the authority of the court and the dignity of the trial courtroom by strict adherence to codes of professionalism and by manifesting a professional attitude toward the judge, opposing counsel, witnesses, jurors, and others in the courtroom.
 - B. Defense counsel should not engage in unauthorized ex parte discussions with or submission of material to a judge relating to a particular case which is or may come before the judge.
 - C. When the court is in session, defense counsel should address the court and should not address the prosecutor directly on all matters relating to the case.
 - D. Defense counsel should comply promptly with all orders and directives of the court, but defense counsel has a duty to have the record reflect adverse rulings or judicial conduct which defense counsel considers prejudicial to his or her client's legitimate interests. Defense counsel has a right to make respectful requests for reconsiderations of adverse rulings.

SECTION 11. OBLIGATIONS OF COUNSEL IN SENTENCING

Among defense counsel's obligations in the sentencing process are:

1. Where a defendant chooses not to proceed to trial, to ensure that a plea agreement is negotiated with consideration of the sentencing, correctional, and financial implications;
2. To ensure the client is not harmed by inaccurate information or information that is not properly before the court in determining the sentence to be imposed;
3. To ensure all reasonably available mitigating and favorable information, which is likely to benefit the client, is presented to the court;
4. To develop a plan which seeks to achieve the least restrictive and burdensome

sentencing alternative that is most acceptable to the client, and which can reasonably be obtained based on the facts and circumstances of the offense, the defendant's background, the applicable sentencing provisions, and other information pertinent to the sentencing decision;

5. To ensure all information presented to the court which may harm the client and which is not shown to be accurate and truthful or is otherwise improper is stricken from the text of the presentence investigation report before distribution of the report;
6. To consider the need for and availability of sentencing specialists, and to seek the assistance of such specialists whenever possible and warranted.

SECTION 12. SENTENCING OPTIONS, CONSEQUENCES AND PROCEDURES

1. Defense counsel should be familiar with the sentencing provisions and options applicable to the case, including:
 - A. deferred disposition, judgment without a finding, and diversionary programs;
 - B. probation or suspension of sentence and permissible conditions of probation;
 - C. restitution;
 - D. fines;
 - E. court costs;
 - F. imprisonment, including any mandatory minimum requirements;
 - G. confinement in mental institution;
 - H. forfeiture.
2. Defense counsel should be familiar with direct and collateral consequences of the sentence and judgment, including:
 - A. credit for pretrial detention;
 - B. parole eligibility and applicable parole release ranges;
 - C. effect of good-time credits on the client's release date and how those credits are earned and calculated;

- D. place of confinement and level of security and classification;
 - E. self-surrender to place of custody;
 - F. eligibility for correctional programs and furloughs;
 - G. available drug rehabilitation programs, psychiatric treatment, and health care;
 - H. deportation;
 - I. use of the conviction for sentence enhancement in future proceedings;
 - J. loss of civil rights;
 - K. impact of a fine or restitution and any resulting civil liability;
 - L. restrictions on or loss of license;
 - M. loss of the right to possess a firearm under Maine or federal law.
3. Defense counsel should be familiar with the sentencing procedures, including:
- A. the effect that plea negotiations may have upon the sentencing discretion of the court;
 - B. the procedural operation of any sentencing guideline system;
 - C. the effect of a judicial recommendation against deportation;
 - D. the practices of the officials who prepare the presentence report and the client's rights in that process;
 - E. the access to the presentence report by defense counsel and the client;
 - F. the prosecution's practice in preparing a memorandum on punishment;
 - G. the use of a sentencing memorandum by the defense;
 - H. the opportunity to challenge information presented to the court for sentencing purposes;
 - I. the availability of an evidentiary hearing to challenge information and the applicable rules of evidence and burdens of proof at such a hearing;
 - J. the participation that victims and prosecution or defense witnesses may

have in the sentencing proceedings.

4. Preparation for Sentencing.

In preparing for sentencing, defense counsel should consider the need to:

- A. inform the client of the applicable sentencing requirements, options, and alternatives, and the likely and possible consequences of the sentencing alternatives;
- B. maintain regular contact with the client prior to the sentencing hearing, and inform the client of the steps being taken in preparation for sentencing;
- C. obtain from the client relevant information concerning such subjects as his or her background and personal history, prior criminal record, employment history and skills, education, medical history and condition, and financial status, and obtain from the client sources through which the information provided can be corroborated;
- D. ensure the client has adequate time to examine the presentence report;
- E. inform the client of his or her right to speak at the sentencing proceeding and assist the client in preparing the statement, if any, to be made to the court, considering the possible consequences that any admission of guilt may have upon an appeal, subsequent retrial or trial on other offenses;
- F. prepare the client to be interviewed by the official preparing the presentence report;
- G. inform the client of the effects that admissions and other statements may have upon an appeal, retrial, parole proceedings, or other judicial proceedings, such as forfeiture or restitution proceedings;
- H. inform the client of the sentence or range of sentences defense counsel will ask the court to consider; if the client and defense counsel disagree as to the sentence or sentences to be urged upon the court, defense counsel shall inform the client of his or her right to speak personally for a particular sentence or sentences;
- I. collect documents and affidavits to support the defense position and, where relevant, prepare witnesses to testify at the sentencing hearing; where necessary, counsel should specifically request the opportunity to present tangible and testimonial evidence.

5. The Prosecution's Sentencing Position.

- A. Defense counsel should attempt to determine, unless there is a sound tactical reason for not doing so, whether the prosecution will advocate that a particular type or length of sentence be imposed.
- B. If a written sentencing memorandum is submitted by the prosecution, defense counsel should request to see the memorandum and verify that the information presented is accurate; if the memorandum contains erroneous or misleading information, defense counsel should take appropriate steps to correct the information unless there is a sound strategic reason for not doing so.
- C. If defense counsel request to see the prosecution memorandum is denied, an applicable motion to examine the document should be made to the court or a motion made to exclude consideration of the report by the court and to prevent distribution of the memorandum to parole and correctional officials.

6. The Sentencing Process.

- A. Defense counsel should be prepared at the sentencing proceeding to take the steps necessary to advocate fully for the requested sentence and to protect the client's interest.
- B. Defense counsel should be familiar with the procedures available for obtaining an evidentiary hearing before the court in connection with the imposition of sentence.
- C. In the event there will be disputed facts before the court at sentencing, defense counsel should consider requesting an evidentiary hearing. Where a sentencing hearing will be held, defense counsel should ascertain who has the burden of proving a fact unfavorable to the client, be prepared to object if the burden is placed on the defense, and be prepared to present evidence, including testimony of witnesses, to contradict erroneous or misleading information unfavorable to the client.
- D. Where information favorable to the client will be disputed or challenged, counsel should be prepared to present supporting evidence, including testimony of witnesses, to establish the facts favorable to the client.
- E. Where the court has the authority to do so, defense counsel should request specific orders or recommendations from the court concerning the place of confinement, parole eligibility, psychiatric treatment or drug rehabilitation, permission for the client to surrender directly to the place of confinement and against deportation of the defendant.

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- F. Where appropriate, defense counsel should prepare the client to personally address the court.
7. The Defense Sentencing Memorandum.
- A. Defense counsel should prepare and present to the court a defense sentencing memorandum where there is a strategic reason for doing so. Among the topics defense counsel may wish to include in the memorandum are:
- (1) challenges to incorrect or incomplete information in any prosecution sentencing memorandum;
 - (2) challenges to improperly drawn inferences and inappropriate characterizations in the official presentence report and any prosecution sentencing memorandum;
 - (3) information contrary to that before the court which is supported by affidavits, letters and public records;
 - (4) information favorable to the client concerning such matters as the offense, mitigating factors and relative culpability, prior offenses, personal background, employment record and opportunities, education background, and family and financial status;
 - (5) information which would support a sentencing disposition other than incarceration, such as the potential for rehabilitation or the nonviolent nature of the crime;
 - (6) information concerning the availability of treatment programs, community treatment facilities, and community service work opportunities;
 - (7) presentation of a sentencing proposal.
8. Motion for a New Trial.
- A. Defense counsel should be familiar with the procedures available to request a new trial including the time period for filing such a motion, the effect it has upon the time to file a notice of appeal, and the grounds that can be raised.
- B. When a judgment of guilty has been entered against the defendant after trial, defense counsel should consider whether it is appropriate to file a motion for a new trial with the trial court. In deciding whether to file such a motion, the factors defense counsel should consider include:
- (1) the likelihood of success of the motion, given the nature of the error or errors that can be raised;
 - (2) the effect that such a motion might have upon the client's appellate rights, including whether the filing of such a motion is necessary to, or will assist in, preserving the client's right to raise

on appeal the issues that might be raised in the new trial motion.

9. Bail Pending Appeal.

- A. Where a client indicates a desire to appeal the judgment and/or sentence of the court, defense counsel should inform the client of any right that may exist to be released on bail pending the disposition of the appeal.
- B. Where an appeal is taken and the client requests bail pending appeal, defense counsel should cooperate with appellate counsel (if different counsel) in providing information to pursue the request for bail.

10. Self-Surrender.

Where a custodial sentence has been imposed, defense counsel should consider requesting a stay of execution of the judgment to permit the client to report directly to the place of confinement.

11. Right to Appeal.

- A. Defense counsel should inform the client of his or her right to appeal the judgment of the court and the action that must be taken to perfect an appeal. In circumstances where the client wants to file an appeal but is unable to do so without the assistance of counsel, defense counsel should file the notice in accordance with the rules of the court and take such other steps as are necessary to preserve the client's right to appeal, such as ordering transcripts of the trial proceedings.
- B. Defense counsel's advice to the client should include an explanation of the right to appeal the judgment of guilty and, in those jurisdictions where it is permitted, the right to appeal the sentence imposed by the court.
- C. Where the client takes an appeal, defense counsel should cooperate in providing information to appellate counsel (if different counsel) concerning the proceedings in the trial court.

12. Sentence Reduction.

Defense counsel should inform the client of procedures available for requesting a discretionary review of, or reduction in, the sentence imposed by the trial court, including any time limitations that apply to such a request.

a. Appellate Panel Criminal Standards

- i. For interlocutory appeals, trial counsel shall notify the MCILS executive director or their designee of the appeal. The MCILS executive director or their designee shall appointment rostered appellate counsel. Rostered appellate counsel who is appointed

shall enter their appearance for purposes of the appeal only. Rostered appellate counsel shall be primarily responsible for the interlocutory appeal. Trial counsel shall not withdraw but shall assist rostered appellate counsel with the appeal and provided all trial file materials to appellate counsel as co-counsel. Roster appellate counsel, at the conclusion of the appeal process, shall file a motion to withdraw and trial counsel shall be responsible for the assigned case.

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

B. Case File Retention

- 1. Upon termination of representation, a lawyer shall return to the client or retain and safeguard in a retrievable format all information and data in the lawyer's possession to which the client is entitled. Unless information and data are returned to the client or as otherwise ordered by a court, the lawyer shall retain and safeguard such information and data for a minimum of eight (8) years, except for client records in the lawyer's possession that have intrinsic value in the particular version, such as original signed documents, which must be retained and safeguarded until such time as they are out of date and no longer of consequence. A lawyer may enter into a voluntary written agreement with the client for a different period. In retaining and disposing of files, a lawyer shall employ means consistent with all other duties under these rules, including the duty to preserve confidential client information. See Maine Rules of Professional Conduct, Rule 1.15(f).

STATUTORY AUTHORITY: 4 M.R.S. §1804 (2) (C), §1804 (2) (D), §1804 (2) (E), §1804 (3) (D), §1804(4) (D)

EFFECTIVE DATE: February 27, 2012.

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 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, which historically required preapproval by the Court before July 1, 2010 (e.g., investigators, interpreters, medical and psychological experts, testing, depositions, etc.) are required to be approved in advance by MCILS. Funds for third-party services will be provided by the MCILS only upon written request and a sufficient demonstration of reasonableness, relevancy, and need in accordance with the MCILS rules and procedures governing requests for funds for experts and investigators. See Chapter 302 Procedures Regarding Funds for Experts and Investigators.
7. **Witness, Subpoena, and Service Fees.** In criminal and juvenile cases, witness, subpoena, and service fees will be reimbursed only pursuant to M.R. Crim. P. 17(b). It is unnecessary for counsel to advance these costs, and they shall not be included as a voucher expense. Fees for service of process by persons other than the sheriff shall not exceed those allowed by 30-A M.R.S. § 421. The same procedure shall be followed in civil cases.

SECTION 4. MAXIMUM FEES

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

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

Effective July 1, 2015:

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

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

Effective July 1, 2015:

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

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

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

3. **Other District Court Civil**

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

Effective July 1, 2015:

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

4. **Law Court**

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

Effective July 1, 2015:

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

SECTION 5: MINIMUM FEES

Effective July 1, 2015:

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

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

SECTION 6: ADMINISTRATION

1. Vouchers for payment of counsel fees and expenses shall be submitted within ninety 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 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

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

SECTION 7. LAWYER OF THE DAY BILLING

1. LODs should bill for time spent reviewing discovery, in court, meeting with defendants, confirming appointments, and the emails sent to appointed counsel.
2. Counsel shall bill under the appropriate Lawyer of the Day field in Defender Data.
3. Bills should be broken down as follows:
 - a. Time spent review discovery and preparing for LOD;
 - b. Time spent at court as the LOD; and
 - c. Time spent sending appointment emails

SECTION 8. CLE ATTENDANCE

1. MCILS will pay attorneys for up to eight CLE (8) hours per calendar year and pay for the cost of the CLE course. Payment for required CLEs will be made only if counsel has billed at least 1000 hours for MCILS assignments in the previous calendar year and counsel is still accepting MCILS assignments. Payment will only be made for CLEs offered by MCILS unless the MCILS executive director pre-approves payment for CLEs not offered by MCILS.
2. If MCILS authorizes and pays for attendance, travel, meals, accommodations, and 8 hours of daily pay at the hourly rate for a rostered counsel to attend an out of state CLE that meets specialized panel CLE credits not offered in Maine, the attorney(s) attending the CLE must present a CLE on the same topics within 3 months of the CLE attended. If the attorney fails to present a CLE on the same topics within 3 months of the CLE attended the rostered counsel must reimburse MCILS for the monies spent by MCILS for attendance, travel, meals, accommodations, and 8 hours of daily pay at the hourly rate for a rostered attorney to attend. All payments to the rostered attorney will be diverted to MCILS if the CLE is not presented within 3 months of the CLE attended until MCILS is fully reimbursed. The MCILS executive director or their designed shall develop an application process for rostered counsel to use to obtain approval and payment for attendance at an out of state CLE.

SECTION 9. WORKLOAD STANDARDS

3. Workload standards are only applicable if MCILS adopts weekly log billing system or requirement.
4. On the weekly log the attorney must certify the total number of hours billed or worked on MCILS cases, non-MCILS cases, and time spent in CLEs.
5. MCILS shall have a system in place to flag weekly logged hours that exceed 50 hours billed or worked per week on MCILS cases, non-MCILS cases, and time spent in CLEs. MCILS shall ask the attorney for an explanation from the rostered attorney why the hours exceed 50 hours. If the MCILS executive director or their designee, in their discretion, is not satisfy with the rostered attorney's response the MCILS executive director or their designee shall order an audit be done of that attorney's hours for the week exceeding 50 hours. If a rostered attorney submits 3 consecutive weekly logs in excess of 50 hours or more than 20 total weeks exceeding 50 hours in a calendar year an audit of the attorney's hours and MCILS cases assigned to that rostered counsel shall be completed.
6. An attorney shall have 1 week to response to a request for an explanation for exceeding 50 hours in a week. If the attorney fails to response within 1 week then payments to that attorney or their firm shall be suspended until an adequate explanation is provided.
7. Weekly logs must be submitted no later than 14 days after the conclusion week for which it is being billed. Failure to submit the weekly log within the time frame required will result in a suspension of all payments until the weekly log is submitted. If a rostered counsel has any opened assigned cases they must submit a weekly log!

SECTION 10. USE OF PARALEGALS, SUPPORT OR OFFICE STAFF

1. Rostered attorneys cannot permit non-lawyer staff to engage in the practice of law.
 2. Rostered attorneys cannot use suspended rostered counsel or counsel that has been removed from a roster as a paralegal, support or office staff.
 3. Paralegal, support or office staff cannot interview clients except for obtaining a social history from the client.
 4. Only properly trained paralegal, support or office staff can conduct legal research.
 5. Paralegal, support or office staff cannot investigate a case as rostered attorneys should use MCILS approved private investigators.
 6. Rostered counsel cannot replicate and bill for the work completed by a paralegal, support or office staff but can bill for reviewing their work and altering the work.
 7. Paralegal, support or office staff should complete file set ups, draft standard client letters and pleadings, schedule client appointments and hearings, and input hours in the MCILS billing system but the attorney is ultimately responsible for the bill.
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STATUTORY AUTHORITY: 4 M.R.S. §§ 1804(2)(F), (3)(B), (3)(F) and (4)(D)

EFFECTIVE DATE:

August 21, 2011 – filing 2011-283

AMENDED:

March 19, 2013 – filing 2013-062

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

October 5, 2013 – filing 2013-228

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

June 10, 2016 – filing 2016-092

94-649 MAINE COMMISSION ON INDIGENT LEGAL SERVICES**Chapter TBD: STANDARDS OF PRACTICE FOR ADULT AND JUVENILE
LAWYERS OF THE DAY**

Summary: This Chapter establishes standards of practice for Commission assigned counsel providing representation as lawyer of the day in adult and juvenile proceedings.

SECTION 1. ADULT LAWYER OF THE DAY PERFORMANCE STANDARDS

1. The LOD should talk to everyone who does not have counsel regardless of eligibility to have counsel appointed who are willing to talk with the LOD. This is important because of the collateral consequences of convictions. For example, a class E fine only operating after suspension can lead to incarceration with future allegations of operating after suspension and to habitual motor vehicle status, a conviction will result in a 60 day loss of license by the Secretary of State and possible habitual motor vehicle status for accumulation of offense or prior habitual motor vehicle status.
2. Ratio of defendants to attorneys:
 - a. adult defendants in custody: 4 to 1;
 - b. adult defendants not in custody when discovery is provided to the LOD the day before: 8 to 1;
 - c. adult defendants not in custody when discovery is not provided to the LOD the day before: 5 to 1;
 - d. The MCILS executive director or their designee shall work with the court to develop a process where the MCILS executive director or their designee shall be provided with a list of defendants not in custody appearing for an initial appearance or arraignment and on what date and time. This list should be provided at least 1 week prior to the scheduled initial appearance or arraignment date. The MCILS executive director or their designee shall then notify rostered attorneys qualified to work as LOD for that particular LOD proceeding of their appointments and ensure the appropriate ratios are met.
 - e. The MCILS executive director or their designee shall work with the court to develop a process where rostered attorneys qualified to work as LOD for that particular LOD proceeding are timely notified of their appointment and ensure the appropriate ratios are met.
3. Vertical representation:
 - a. If a MCILS staff attorney is present for the proceeding, the LOD should confirm with MCILS staff attorney who was appointed. If there is no MCILS staff attorney, the LOD should confirm with the clerk of court who was appointed.

- b. The LOD should impress upon the court the need to appoint counsel that day. This should include providing defendants with an indigency affidavit, requesting them to completing it, and returning it to counsel who shall provide it to the court prior to the defendant leaving for the day. If the court does not appoint counsel the LOD should email the MCILS executive director or their designee who shall be responsible for confirming the defendant is eligible for counsel and appoint counsel.
- c. The LOD is to email the attorney appointed on the same day as the appointment. The email shall include a copy of the charging instrument, the defendant's address and phone, date of birth, and phone number. This email should also include information that is unique to the client's situation. For example, this would include mental health needs, a Title 15, section 101 evaluation was ordered or is recommended, the client needs medical attention, the client has injuries that need to be preserved for a potential defense, or unique family circumstances. The MCILS executive director or their designee should be copied on the appointment. Appointed counsel can assume they are appointment and should immediately put the case in Defender Date and begin representation of the client.

4. Bail Arguments

- a. It is presumed in all cases where a defendant is in custody the LOD shall argue for a bail the defendant can post and with conditions the defendant can abide by.
- b. There may be situations where arguing for bail is not appropriate. When the LOD decides not to argue for bail they must email the appointed attorney explaining why the LOD decided not to argue for bail. The MCILS executive director or their designee should be copied on this email. The LOD attorney's rationale for not arguing bail should be included in the email sent under (c)(ii)(3) above.

5. Example of the LOD Speech for LOD proceedings:

It is strongly suggested the LOD give the following speech to the client at the LOD proceeding. If the LOD declines to this speech, they must give a speech that contains the legal rights and process contained in this speech. LOD, when meeting with a client individual, needs to confirm the client understood their rights and comprehends them.

Adults - Lawyer of the Day Speech

My name is _____ I am one of the Lawyer of the Day along with _____. We are experienced defense attorneys. We do not work for any law enforcement agency, we do not work for the court, we do not work for the prosecution. We are here solely to help ensure that your rights are protected today.

You may have seen a video that explained some of your rights, but I want to talk about a few of them in more depth.

First of all, you have an absolute right to a trial, in front of either a Judge or Jury, where the state, not you, bears the burden of proving EACH ELEMENT of EACH OFFENSE that you are charged with.

At this trial you will be allowed an opportunity to present evidence, cross examine witnesses, and have the assistance of an attorney to help you.

You can ONLY be convicted, if the state is able to prove each element of each offense BEYOND A REASONABLE DOUBT to all 12 members of the Jury. All 12 members must say guilty. Think of an element as ingredients for a cake, if you don't have the eggs, you cannot make the cake. Example – you walk out of a store without paying for shampoo, but someone had put the shampoo in your bag. You past all points of sale without paying for the shampoo, but the state couldn't prove you intended to take the shampoo (or knew you were taking it), so it couldn't prove BARD each and every element of theft/shoplifting.

You would have an opportunity at this trial to testify on your own behalf, or, if you chose not to testify, the Jury can be instructed not to take any inference from your refusal to testify.

You can present relevant evidence on your own behalf including calling witnesses. If a witness refuses to come to court, you can get a court order known as a subpoena requiring them to come to court.

You can also the right to move to suppress evidence that was obtain in violation of your rights or illegally. An example of a Constitutional violations is if the police held a gun to your head and said confess to these crimes or searched you/car/house without any reason, you could file a request with the court to exclude/kick out that evidence and the state would not be able to use it – of course there are exceptions, but that is the general idea.

If you are charged with a Misdemeanor, the state will be making an offer to you today and the Judge will ask you to either plead guilty or not guilty. As I stated before, you are under no obligation whatsoever to accept this offer. If you plead “not guilty” then you will receive new court dates to come back on.

If there is a risk of jail in your case and you are financially eligible, you can apply for a court-appointed lawyer. If you are not facing Jail time, you will not be able to apply for court appointed counsel and will either have to hire your own attorney or handle your matter yourself.

If you are charge with a felony, the state will not make an offer today. This is because you have to be “indicted” before you can enter any plea. All felony charges have to be brought as indictments. This means the State must present their evidence to a Grand Jury (a panel of 13-23 people from this county), only the state presents evidence in a grand jury and the rules of evidence and procedures do not apply. If the Grand Jury decides that there is enough evidence for the case to proceed, they will issue an indictment.

A few other things you should be aware of, all criminal charges carry what are called “collateral consequences.” These are important consequences that can apply to you if you have been convicted of a crime. They **may not be included in the state's offer**, but you **MUST BE AWARE** of them as they will apply to you if you plead guilty. These include:

1. If you were born outside of the United States, ANY criminal conviction can have serious immigration consequences. If this applies to you, please, please come talk to one of us.
2. If you are charged with misdemeanor theft, often times the state will only ask for a fine if you plead guilty. You MUST BE AWARE that if you have 2 prior thefts in a 10-year period, the 3rd theft can be brought as a felony even if it is for an amount as small as a candy bar. If you are charged with theft, please come talk to us.
3. If you are charged with anything involving a domestic partner (spouse, child, parent, etc.) you may face a federal or state ban on the use or possession of firearms. If you are charged with anything involving a domestic partner, please come talk to us.
4. If you are charged with anything involving a Motor Vehicle, the state may only seek a fine or some jail time, but the Bureau of Motor Vehicles in Augusta may suspend your license. THIS IS VERY IMPORTANT.

Another aspect of allegations involving Motor Vehicles is your past driving history. If you have 3 or more major violations within a 5-year period, then the BMV will revoke your license. This means that your license will be revoked (canceled – you will need to re-apply), you will be prohibited from re-applying for at least 3 years, AND if you are caught driving while revoked, you can face significant jail time starting at 30 days for the first offense, then 6 months, then 9 months, etc.

Any drug related offense may prevent you from applying for federal student aid or some federally backed mortgages.

If you hold any kind of professional license (nurse, CDL, CPA, etc.) then your professional licensing board may take action against your license based on any criminal conviction. If you hold a professional license, please come and speak with one of us about potential consequences.

Additionally, any criminal conviction remains on your criminal record for life. It does not expire, it does not become expungable after 10 years, it is for life. This means that any employer, landlord, or anyone else who runs a background check on you can see this conviction. Any criminal conviction will make your life more challenging even if it is for a minor offense. Please think very carefully about your rights before agreeing to plead guilty. It is a decision with life-long consequences.

Finally, as lawyers of the day we are here to give you advice and answer whatever questions we can for you. We can give you our opinion about how you should proceed on this matter. For most of you this will be the only opportunity you have for free legal advice. There are no lawyers of the day at any future court dates. Please take advantage of this opportunity to speak with us.

SECTION 2. JUVENILE LAWYER OF THE DAY PERFORMANCE STANDARDS

1. Ratio of defendants to attorneys:
 - a) juvenile detention hearings: 2 to 1;
 - b) juvenile in custody: 1 to 1;

- c) juvenile not in custody: 4 to 1;
- d) The MCILS executive director or their designee shall work with the court to develop a process where rostered attorneys qualified to work as LOD for that particular LOD proceeding are timely notified of their appointment and ensure the appropriate ratios are met.

2. Vertical representation:

a) Juveniles –

- (1) the attorney who represents the juvenile at the LOD proceeding should be appointed to represent the juvenile unless a different attorney accepting case in that county previously represented the juvenile or has a previous relationship with the juvenile and the juvenile wants that attorney to represent them.
- (2) if the attorney is not on the specialized panel for which the juvenile is charged with then the LOD attorney shall remain the attorney of record until a qualified attorney can be appointed. Once a qualified attorney is appointed, previous counsel must file a motion to withdraw and forward their complete file to new counsel.

3. Juvenile not in custody LOD Process

- a) Discovery, if available, should be reviewed the day prior to the LOD hearing. If discovery is not available, counsel should arrive earlier enough to court provide the attorney with sufficient to review the discovery and address probable cause issues and to recognize the strength of the weakness of the prosecution's case. Before the docket call, identify clients and their families so you will be able to find them after the court breaks for discussion. Let everyone know that if they do not have an attorney, you will talk with them.
- b) Meet with each client, their family, and any support/therapeutic players. Make sure that you have at least sufficient time to meet in a confidential setting with your client.
- c) Explain the process step by step; make sure the youth is comfortable with your explanation. Leave time for brief questions.
 - (1) Explain where the youth will sit, where their family will sit.
 - (2) Explain that the court will ask them if they know what they are charged with and if they understand what they are charged with.
 - (3) Explain that the court will ask them if they know their rights.
- d) Obtain contact information and identification documentation from youth and parent(s).
- e) Gather useful advocacy information about your client's life:
 - (1) Place of birth and immigration status.
 - (2) Ask about their home life, their family and their peers?

- (3) Do they have a history with the system?
- (4) Have they had any hospitalizations?
- (5) Are they on medications?
- (6) School engagement and performance? Special Education? Extracurriculars?
- (7) Do they have any mental health issues?
- (8) Do they have any substance abuse issues?
- (9) Pay close attention to your client's ability to understand the process and assist you regardless of their age.

f) Determine if the youth has a JCCO. If so, check in with the JCCO and the ADA.

(1) Probe the JCCO's and ADA's knowledge of the case and their understanding of the youth's needs.

(2) Determine what their objectives are for this case.

4. Advocate for the Youth's Best Interest

- a) Consider the possibility of release without conditions.
- b) There needs to be clear and compelling reasons for any State imposed conditions on the youth's release.
- c) Any and all restrictions on a youth's release must be consistent with the purposes of the juvenile code. See "Purposes of the Juvenile Code." (15 M.R.S.A. § 3002)

<u>Juvenile Code Section</u>	<u>Stated Purpose</u>
<u>§ 3002(1)(A)</u>	<u>To secure for each juvenile subject to these provisions such care and guidance, preferably in the juvenile's own home, as will best serve the juvenile's welfare and the interests of society;</u>
<u>§ 3002(1)(B)</u>	<u>To preserve and strengthen family ties whenever possible, including improvement of home environment;</u>
<u>§ 3002(1)(C)</u>	<u>To remove a juvenile from the custody of the juvenile's parents <i>only</i> when the juvenile's welfare and safety or the protection of the public would otherwise be endangered or, when necessary, to punish a child adjudicated, pursuant to chapter 507, as having committed a juvenile crime;</u>

<u>§ 3002(1)(D)</u>	<u>To secure for any juvenile removed from the custody of the juvenile's parents the necessary treatment, care, guidance and discipline to assist that juvenile in becoming a responsible and productive member of society;</u>
<u>§ 3002(1)(E)</u>	<u>To provide procedures through which the provisions of the law are executed and enforced and that ensure that the parties receive fair hearings at which their rights as citizens are recognized and protected;</u>
<u>§ 3002(1)(F)</u>	<u>To provide consequences, which may include those of a punitive nature, for repeated serious criminal behavior or repeated violations of probation conditions.</u>
<u>§ 3002 (2)</u>	<u>To carry out these purposes provisions shall be construed liberally</u>

- d) Use your knowledge of what your client wants to negotiate for favorable conditions of release.
- e) Go over the potential conditions of release with your client to make sure there are no issues.
- f) During negotiations, you need to communicate any offers from the prosecution to your client.
- g) Regardless of whether you are talking about release or dispositional alternatives, make sure that your client has a reasonable likelihood to comply with the outcome.
- h) At this stage, the youth should not be taking a plea.

8. Prep the juvenile client for the Courtroom

- a) Your clients need to understand what is happening, the process going forward should be clearly laid out for them.
- b) Explain what the next steps will be (i.e. entering the courtroom, where to sit, who is in the courtroom, potential litigation of conditions of release).
- c) If you have an agreement with the ADA, communicate it to the youth, ensure that they understand it fully and are in agreement as well.
- d) Discuss courtroom etiquette with them.
 - (1) Discuss where they should sit, when they should stand, who will be in the courtroom, and what you believe the likely outcome will be.
 - (2) Inform the youth that the judge will speak directly to them and that they should respond formally (i.e. "Yes, Your Honor").

- e) Let them know what types of questions the judge will likely ask and practice answering them.

9. Advocate to the Judge

- a) Present the agreement, or the argument to the judge, while being attentive to the youth.
- b) This may involve periodically asking the youth if they understand or if they have any questions.
- c) Never stop fighting for your client. If you think the facts are not in your client's favor, be honest and manage their expectations. This is a chance for you to earn their respect and to earn their respect for future attorneys who interact with them.

10. After Court:

- a) Ensure the Youth Has Counsel Going Forward.
- b) Debrief with the youth and provide them with court documentation if there is any/if the clerk has it available.
- c) Do not let the youth leave the courthouse without a copy of their Conditions of Release and ensure they have an understanding of the conditions of release.
- d) If you do not resolve the case, make sure the youth has taken steps to get a lawyer, unless you will continue to represent them.
- e) Send the youth a recap letter of what happened in court and include:
 - (1) Whether the youth entered admissions or denials and any conditions of release or probation terms.
 - (2) The next court date, if applicable.

11. LOD Detention Hearing

- a) Statutory Requirements of Detention:
 - (1) A youth is entitled to a "detention hearing" within 48 business hours of the arrest. 15 M.R.S.A § 3203-A(5).
 - (2) A youth may not be detained unless the prosecution proves that the statutory requirements are met. This is a two-step analysis:
 - (i) (1) The youth meets one of six following factors:

Scope of Use: In Maine, in order for a court to detain a youth, the State must prove by a preponderance of the evidence that at least one of the below criteria necessary for detention in Table 1 has been met. If the state can prove that one of the criteria in Table 1 is met, then the youth's detention must be consistent with the purposes of the Maine juvenile code (see Attachment 3) and one of the purposes of detention found in Table 2. Make sure the prosecution meets its burden.

<u>Table 1</u>	<u>Detention of a juvenile in a detention facility may be ordered by the Juvenile Court or a juvenile community corrections officer when there is probable cause to believe the juvenile:</u>
<u>§ 3203-A(4)(D)(1)</u>	<u>Has committed an act that would be murder or a Class A, Class B or Class C crime if committed by an adult;</u>
<u>§ 3203-A(4)(D)(2)</u>	<u>Has refused to participate voluntarily in a conditional release placement or is incapacitated to the extent of being incapable of participating in a conditional release placement;</u>
<u>§ 3203-A(4)(D)(3)</u>	<u>Has intentionally or knowingly violated a condition imposed as part of conditional release on a pending offense or has committed an offense subsequent to that release that would be a crime if committed by an adult;</u>
<u>§ 3203-A(4)(D)(4)</u>	<u>Has committed the juvenile crime that would be escape if the juvenile was an adult;</u>
<u>§ 3203-A(4)(D)(5)</u>	<u>Has escaped from a facility to which the juvenile had been committed pursuant to an order of adjudication or is absent without authorization from a prior placement by a juvenile community corrections officer or the Juvenile Court; OR</u>
<u>§ 3203-A(4)(D)(6)</u>	<u>Has a prior record of failure to appear in court when so ordered or summonsed by a law enforcement officer, juvenile community corrections officer or the court or has stated the intent not to appear.</u>

(ii) (2) If 1 of the 6 above factors is met, then a finding by the court that detention is necessary to meet any of the juvenile code's detention purposes as set below:

- b) Discovery, if available, should be reviewed the day prior to the LOD hearing. If discovery is not available, counsel should arrive earlier enough to court provide the attorney with sufficient to review the discovery and address probable cause issues and to recognize the strength of the weakness of the prosecution's case. Before the docket call, identify clients and their families so you will be able to find them after the court breaks for discussion. Let everyone know that if they do not have an attorney, you will talk with them.
- c) Gather as much information as possible about the youth, including facts that can help to mitigate or explain current behavior or prior bad acts.

- (1) Positive facts include stable home life, favorable testimony from community members, involvement in extracurricular activities.
- (2) Mitigating facts: mental health issues, prescriptions, or explanations of past delinquent activities.
- (3) Informative facts: immigration status, school status, and potential stable environment the youth could be placed in.
- d) Identify the youth's JCCO and reach out to discuss the circumstances of the case and listen to what the JCCO has to say, the court values their opinion.
- e) Get a sense of prosecutor's major concerns.
- f) Meet with your client before court begins.
- g) Questions to ask:
 - (1) What were the circumstances of the arrest and what is their background?
 - (2) What are their goals or desired outcome?
 - (3) Have them tell you about the non-legal things in their life (sports, interests, family, friends, hometown, etc.)
 - (4) Where was their place of birth? If they were not born in the U.S., ask about their immigration status!
- h) If they have been detained, ask how they are doing. Listen and look for any evidence of mistreatment.
- i) Physical restraint or shackling of a child in the courtroom is PROHIBITED unless the youth's past behavior, creates a current and substantial risk to the youth's safety or the safety of others. M.R.U. Crim. P. (43)(A).
 - (1) If shackling is requested, object! Challenge the reasons that the state or court shackled the youth or moves to shackle them. Give your basis stating why it is unnecessary and does more harm to the child than good, i.e. it can be a source of trauma.
- j) If there is a new charge, Challenge Probable Cause:
 - (1) Because hearsay is admissible in a detention hearing, all information considered by judge must be "reliable."
 - (2) Judges have great discretion in deciding the existence of probable cause.
 - (3) If facts are thin, even though the court may find probable cause, it could help your release argument.

12. Challenge Detention of Status Offenders:

- a) A status offense is a noncriminal act that is considered a violation of the law only because of the youth's status as a minor.
- b) Federal regulation prohibits detention of status offenders beyond a 24-hour period unless they have violated a valid court order. 28 C.F.R. § 31.303(f)(2)(2006).
- c) If a youth violates a valid court order issued on a status offense, they still should not be detained.
 - (1) Courts should never lock up kids because of anger or frustration stemming from a youth's failure to comply with prior court orders.

13. Challenge the Necessity of Detention:

- a) The statutory presumption is a release to the community, and the state has the burden of proof. § 3203A (4)(C) .
- b) Determine the appropriateness of home setting based on your client's safety and public safety.
- c) Factors to look for when advocating for community placement:
 - (1) Child Welfare
 - (i) If there is a placement that can best serve the youth and support them in their community then advocate strongly for this.
 - (ii) Call local shelters, substance abuse counseling, or residential programs to determine if there is space.
 - (2) Safety
 - (i) Determine a community-based placement that will keep the youth safe.
 - (ii) Learn about the aspects of life that make the youth most comfortable, seek those out in your placement.

14. Advocate Alternatives to Detention:

- a) Generate as many possible alternatives to detention as you and the youth can think of including but not limited to:
 - (1) Home placement, extended or fictional family, shelters, or alternative facilities such as Day One, Preble Street Teen Center, the Opportunity Alliance network, New Beginnings, etc.
- b) Defender must contact the person who will be responsible for the supervision of the youth to ensure they are willing and able to provide shelter and care.
- c) The courts are unlikely to release a youth if there is no responsible person available to provide shelter, care, and supervision.
- d) Discuss any conditions of release with the youth and assess whether they will be able and willing to comply with them.
- e) Even if you think it's a bad set of facts, when your client directs you to argue

against detention, fight the losing battles too. Be honest and up-front with the youth about plausible outcomes and manage expectations.

15. After Court

- a) Ensure the Youth has Counsel Going Forward.
- b) Do not leave the Court without the Judge appointing an attorney, particularly if the youth continues in detention.
- c) If you will be representing the youth, get to work and actively be in touch with your client, family, and other key providers.
- d) Send the youth a letter summarizing what happened in court at the detention hearing and include:
 - (1) Date of next court date.
 - (2) Summary of the events in court that day.

16. Example of the LOD Speech for LOD proceedings:

- a) It is strongly suggested the LOD give the following speech to the client at the LOD proceeding. If the LOD declines to this speech, they must give a speech that contains the legal rights and process contained in this speech. LOD, when meeting with a client individual, needs to confirm the client understood their rights and comprehends them.

Juvenile Lawyer of the Day Speech

My name is _____ and I am the Lawyer of the Day today. I am a criminal defense attorney who specializes in representing juveniles, youth under 18 years old, charged with committing criminal offenses. I do not work for any law enforcement agency or for the Court. I am here solely to help ensure that your rights are protected today.

As the Judge informed you, I am here today to represent each of you, free of charge, regardless of your financial status. This is the only time you will have access to a “free lawyer,” unless your parent or guardian fills out the proper paperwork, you qualify and the Judge appoints an attorney for you. I will speak to each of you before you come into the courtroom individually to address your case today.

There are several important rights you have as the person charged with committing a Juvenile offense. The Judge already explained them to you but part of today’s proceedings is for the Judge to make sure you understand those rights and so I am going to highlight them for you here again. These are rights guaranteed to you by the United States and Maine Constitutions and therefore are very important.

One important part of the Juvenile Court process is that each case is confidential although there are some exceptions. Confidentiality means the public, people you know or random people you don’t can’t come to the courthouse or into the courtroom and ask about you or your case. This also means the judge can limit who comes into the courtroom with you. Generally, friends,

girlfriends or boyfriends and even family members other than a parent or guardian will not be allowed in the courtroom.

Also, in order to protect the confidentiality of Juvenile Court each of you will be called into the courtroom one at a time to discuss your case with the Judge. Your case will be called by your first name and your first initial. So, if your name is “John Smith,” you will be called “John S.”

The first constitutional right I am going to highlight is the right to remain silent – “anything you say to anyone other than your lawyer can be used against you.” Anything you say to your lawyer will be confidential, which means it will stay between you and your lawyer. Anything you say to your friends, family, law enforcement (the police), the prosecutor who is the lawyer on the other side of your case who filed the charges against you, can be used against you. That means all those people can be subpoenaed or forced to come to court to testify or to tell the judge what you told them. But your lawyer, even me as your lawyer for today only, cannot be hauled into court to testify against you or reveal anything you have told your lawyer.

Therefore, today, I will talk to the prosecutor on your behalf so you will not have to waive or give up your right to remain silent.

The right to remain silent is protected in another way. If law enforcement want to talk to you about a crime they believe you committed, a law they think you broke, then they have to get your parent’s or guardian’s permission to talk to you. Parents and Guardians, you have the right to tell the police officers that you do not want your child answering questions. If you forbid the police to talk to your child, it does not mean they will not be charged or arrested, but it ensures that the words coming out of your child’s mouth will not be used against him or her.

Another important right that you have is that you are “innocent until proven guilty.” You have the choice to exercise your right to a Trial and force the State to “prove beyond a reasonable doubt” that you are guilty – that you committed the offense charged – that you broke the law the prosecutor says you did. Although I have been using the word “guilty,” we do not use the word guilty in Juvenile Court like in adult court.

If you chose to have your Trial you are only entitled to have a judge, not a jury like on TV, listen to the evidence to decide if you are guilty or if you committed the offense you are charged with. At the Trial the judge listens to the evidence presented, the witnesses raise their right hands and swear or promise to tell the truth, and then the judge decides whether you committed the offense, broke the law.

You have the right to remain silent at the Trial too. You can sit quietly at your Trial and not say a word and the judge cannot use that silence against you. He or she cannot *think* you are guilty just because you do not say anything.

As for the Juvenile Court process, it is much slower than the procedure in an adult criminal case. What that means is that it is NOT very likely your case will be resolved or taken care of today. Instead, it is more likely your case will be continued to another day so that the Court can get to know you and your situation better. The Judge will place you on conditions of release that you must follow until the next court appearance. Generally, those conditions will include that you must reside at home or at a placement and follow the rules of your parent or Guardian or the

placement staff. You will be ordered to attend school and/or maintain employment, not use or possess alcohol or drugs, including marijuana. You also will be required to meet with a Juvenile Community Corrections Officer, a JCCO, who will monitor whether you are following the conditions of release. If you do *not* follow these conditions, you will be arrested and detained at the Long Creek Youth Development Center, Maine's jail for kids. The better you do until your next court date, the better the offer to resolve or take care of your case will be.

Another reason for you to talk to me today is to see if there are any "collateral consequences" if you admit to any charges.

For example, if you are found to have committed or admit in the courtroom to the judge any drug related offense including possession of marijuana or drug paraphernalia you may be prevented from receiving federal student aid for college. Please let me know if you are planning on going to college.

Additionally, any Juvenile adjudication remains on your "criminal record" for life. It does not expire, it does not become expungable or removed after 10 years, it is for life. This means that any employer, landlord, or anyone else who runs a background check on you can see this adjudication. There is an opportunity, though, to have your juvenile record "sealed," but it does not happen automatically. You must petition the Court, *in writing*, a request to have your record sealed so that no one, not even law enforcement or prosecutors can have access to your juvenile court files. To have your juvenile case sealed, you have to wait 3 years from the day of disposition, the date you *complete* your case. For example, if on 1/1/20 you were placed on probation for one year then you can petition the Court to seal your case after you have successfully completed your probation on 1/1/21 plus 3 more years – 1/1/24. You also have to prove to the Court you have not been in any trouble (no new offenses have been charged against you) during the three-year period. Then it will be up to the Judge to decide whether to seal you case or not.

Again, I will talk to each one of you individually with your parent or guardian. Please be patient as there are many of you here today and I want to be able to spend an appropriate amount of time with each of you.

STATUTORY AUTHORITY:

EFFECTIVE DATE:

94-649 MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Chapter TBD: Mentor Panel

Summary:

SECTION 1. Mentor Panel

a. Purpose and Goals

1. To ensure quality representation, on-going training, assist less experienced rostered attorneys with criminal law experience and to ensure the quality of LOD counsel MCILS is recommending the creation of a Mentor Panel.
2. Practically, the mentor/mentee relationship should bridge the gap between law school and the practice of law by providing guidance in the new lawyer's professional conduct and promoting a sense of pride in being a practicing lawyer.
3. Mentoring is a process that connects an experienced rostered attorney with a new rostered attorney or less experienced attorney (mentee) to help foster the mentee's professional growth and development.
4. A mentor facilitates the mentee's personal and professional growth by sharing the knowledge and insights that they learned through the years. Through the mentoring process, the mentor and mentee work together to reach specific goals and to provide each other with sufficient feedback to ensure that these goals are reached.

b. Goals of the mentor program are:

1. Program Socialization and Orientation builds a sense of connection to the values and mission of the MCILS. Mentors convey the purpose and importance of MCILS work through their words and personal example. They also share their knowledge and experience about local courts, judges, and practices. They introduce mentees to judges, court personnel, other lawyers and social service providers with whom they will interact on behalf of their clients. Finally, mentors provide valuable information about administrative and logistical issues related to MCILS, including such things as record keeping and billing practices.
2. Knowledge and Skill Building increases new attorneys' competence to represent MCILS clients. Mentors help new MCILS attorneys or less experienced rostered attorneys learn substantive law, court rules and procedures and improve their legal skills through experience, instruction and feedback.

3. Confidence Building supports new attorneys' self-esteem and self-confidence as criminal defense attorneys. Mentors also provide emotional support to new attorneys by listening to them and acknowledging the challenges inherent in criminal defense practice – both in terms of what is at stake for the clients and what is required of the attorneys.
4. Professional Development helps new attorneys identify and select legal practice goals related both to MCILS practice and their overall development as lawyers.
5. The first years of a lawyer's practice are a critical time in the development of professional habits, practices and character. This period can also be a challenging, and sometimes stressful, period as lawyers adjust to the pressures of practice management, client relations and the adversarial process. To facilitate this transition into the practice of law, the MCILS has created the Mentor-Mentee panel. The goal of the Mentor-Mentee panel is to introduce new lawyers to the high standards of integrity, professional conduct, professional competence and service to the public that are expected of MCILS rostered attorneys.

c. General Standards

1. The MCILS Executive Director or their designee shall develop an application process for an attorney seeking appointment to the mentor panel to demonstrate the minimum qualifications necessary. An applicant must present additional information beyond the minimum requirements of this Chapter if requested by MCILS Executive Director or their designee.
2. The MCILS Executive Director or their designee shall develop a written performance evaluation to be completed by the mentor to evaluate the performance of the mentee on an ongoing basis and at the conclusion of the initial mentor/mentee supervision period.
3. The MCILS Executive Director or their designee shall develop a written performance evaluation to be completed by the mentee to evaluate the performance of the mentor at the conclusion of the initial mentor/mentee supervision period.
4. The MCILS Executive Director or their designee, shall have the sole discretion to make the determination if an attorney is qualified to be placed on the mentor panel. In addition, the MCILS Executive Director or their designee, shall have the sole discretion, to grant or deny a waiver.
5. The MCILS Executive Director or their designee, may, in their sole discretion, remove an attorney from the mentor panel at any time if the attorney is not meeting the minimum qualifications and standards as determined by the MCILS Executive Director or their designee.
6. This subsection does not exempt an attorney from satisfying the

requirements of MCILS at any time thereafter or limit the authority of the MCILS Executive Director or their designee, to remove or add an attorney from the mentor panel at any time.

7. All attorneys must comply with all standards and rules even if they are listed elsewhere.
8. The relationship between mentor and mentee attorneys shall be that of co-counsel. The attorney-client relationship shall apply to both attorneys and any potential conflicts or actual conflicts are applicable to both attorneys.
9. The MCILS Executive Director or their designee shall provide oversight of the mentoring program.
10. The MCILS Executive Director or their designee shall inquire of the newly rostered attorney if there is a rostered mentor they would prefer to work with. If the newly rostered attorney does not have a preference the MCILS Executive Director or their designee shall assign a rostered mentor.
11. If the mentor and mentee are unable to continue working together after their assignment the MCILS Executive Director or their designee shall assign a new rostered mentor. The mentor and mentee must explain in writing why they are no longer able to continue working together.
12. The MCILS Executive Director or their designee may for good cause shown provide a newly rostered attorney with a waiver of the mentor/mentee requirements.

d. Process

1. The mentor/mentee relationship shall last at least 1 year. The mentor and mentee shall work on a total of 10 assigned cases from appointment to final disposition during that year. If the mentor and mentee have not handled 10 cases by the end of that year then the relationship shall continue unless the mentor files a written request to the MCILS Executive Director or their designee that the mentorship end. The MCILS Executive Director or their designee shall grant the written request if it is demonstrated that the mentee has obtained the necessary skills to fulfil all of the purposes, rules, and standards of MCILS.
2. The specific activities of a mentor will vary with the needs of the mentee while, at the same time, be guided by the written performance evaluation developed by the MCILS Executive Director or their designee in written. At a minimum, the mentor should initiate and conduct an initial face-to-face meeting with the assigned mentee at the earliest possible date.
3. For the first 3 case assignments the mentee must meet with mentor attorneys on a weekly basis to review all work completed, the future plan of the case and work to be performed and to review all billing

entries. Thereafter, they must meet at least monthly to review cases and professional development goals. Depending on need, some mentor pairs will meet more often in the beginning until the mentor is comfortable with the mentee's skill level and knowledge of the substantive area. Likewise, as mentees gain experience and confidence, mentoring pairs may decide that they can meet less than monthly.

4. Mentors and Mentees must attend all court hearings and client meetings together with direct supervision being provided by the mentor on the first 3 case assignments. Thereafter, the mentor should attend all court proceedings. However, the decision to attend client meetings or other meetings shall be left to the discretion of the mentor after the first 3 case assignments. If the mentor does not attend client meetings or other meetings the mentee must brief the mentor as to what occurred at the meeting.
5. Mentor and mentees must have full access to the client's file.
6. Mentors and mentees should meet in an office setting or other space that permits the private discussion of confidential and other sensitive matters. This should be the same space where rostered attorney meet with their clients.
7. Mentors shall provide ongoing feedback to the mentee and the MCILS Executive Director or their designee in written format.
8. At the conclusion of the tenth case worked on between the mentor and mentee or if the relationship ends earlier the mentor must certify in writing to the MCILS Executive Director or their designee the mentee has demonstrated the skill necessary to work independently of a mentor and complete the written performance evaluation developed by the MCILS Executive Director or their designee. If the mentor is unable to make such certification, they must identify the issues preventing certification and work with the mentor and the MCILS Executive Director or their designee to develop a plan to assist the mentee to become certified.
9. The mentee must advise the client in writing of the mentor's name and that the mentor's role in representation is not to represent the client but to supervise the mentee's representation of the client.

e. Compensation

1. Mentors are to be paid at the standard hourly rate for the case level they are mentoring on plus \$25 per hour.
2. Mentee are to be paid at the standard hourly for the case they are appointed.

f. Waiver by Mentees of these requirements. Newly rostered attorneys can seek a waiver of the mentor-mentee requirements. They newly rostered attorneys must:

1. Send a letter to the MCILS executive director explaining why a waiver is appropriate; and
 2. Must have at least 3 years of criminal defense experience;
-

STATUTORY AUTHORITY:

EFFECTIVE DATE:

(5.)

Training RFP Update

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: TRAINING RFP
DATE: OCTOBER 2, 2020

At its last meeting, the Commission voted to make a conditional award to the single bidder who submitted a proposal in response to our training RFP. The Commission's conditional award has been approved by the Division of Purchases, and the attached conditional award letter has been issued. The next step is to work with the selected vendor to negotiate a contract for services. That process is scheduled to begin later this month.



STATE OF MAINE
COMMISSION ON INDIGENT LEGAL SERVICES

Janet T. Mills
Governor

John D. Pelletier
Executive Director

AWARD NOTIFICATION LETTER

September 23, 2020

Jamesa J. Drake, Esq.
PO Box 56
Auburn, ME 04212

SUBJECT: Notice of Conditional Contract Award under RFP # 202002038,
Consultant for Implementation of New Lawyer Training Program

Dear Jamesa:

This letter is in regard to the subject Request for Proposals (RFP), issued by the State of Maine Commission on Indigent Legal Services for a Consultant for Implementation of New Lawyer Training Program. The Department has evaluated the proposals received using the evaluation criteria identified in the RFP, and the Department is hereby announcing its conditional contract award to the following bidder:

- Jamesa J. Drake

The bidder listed above received the evaluation team's highest ranking. The Department will be contacting the aforementioned bidder soon to negotiate a contract. As provided in the RFP, the Notice of Conditional Contract Award is subject to execution of a written contract and, as a result, this Notice does NOT constitute the formation of a contract between the Department and the apparent successful vendor. The vendor shall not acquire any legal or equitable rights relative to the contract services until a contract containing terms and conditions acceptable to the Department is executed. The Department further reserves the right to cancel this Notice of Conditional Contract Award at any time prior to the execution of a written contract.

As stated in the RFP, following announcement of this award decision, all submissions in response to the RFP are considered public records available for public inspection pursuant to the State of Maine Freedom of Access Act (FOAA). 1 M.R.S. §§ 401 et seq.; 5 M.R.S. § 1825-B (6).

This award decision is conditioned upon final approval by the State Procurement Review Committee and the successful negotiation of a contract. A Statement of Appeal Rights has been provided with this letter; see below.

Thank you for your interest in doing business with the State of Maine.

Sincerely,

A handwritten signature in dark ink, appearing to read "John D. Pelletier", written in a cursive style.

John D. Pelletier
Executive Director

STATEMENT OF APPEAL RIGHTS

Any person aggrieved by an award decision may request an appeal hearing. The request must be made to the Director of the Bureau of General Services, in writing, within 15 days of notification of the contract award as provided in 5 M.R.S. § 1825-E (2) and the Rules of the Department of Administrative and Financial Services, Bureau of General Services, Division of Purchases, Chapter 120, § (2) (2).

(6.)

**OPEGA Report
Discussion**

Executive Session Required

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: OPEGA UPDATE
DATE: OCTOBER 2, 2020

The Commission received OPEGA's report on the first phase of its evaluation of the Commission. This is part of a statutory process whereby the Commission has an opportunity to review the report and submit a response. Any response submitted will be made part of the final report submitted to the Government Oversight Committee. During this period, the report is confidential and may not be disclosed, and any discussion of the report must take place in executive session. The deadline for the Commission's response is October 30, 2020. It is anticipated that the report will be presented to the Government Oversight Committee at a meeting in November.