

**MCILS**

**September 8, 2020  
Commissioner's Meeting  
Packet**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**SEPTEMBER 8, 2020**  
**TELEPHONIC COMMISSION MEETING**  
**AGENDA**

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- 1) Approval of August 4, 2020, Commission Meeting Minutes
- 2) Operations Reports
- 3) Budget Update
- 4) Rulemaking Process
- 5) Pre-Arrestment Assignments
- 6) Samples of Complaints about Attorneys - Executive Session Required
- 7) Training RFP Discussion – Executive Session Required
- 8) Public Comment
- 9) Set Date, Time and Location of Next Regular Meeting of the Commission

**(1.)**

**August 4, 2020  
Commission Meeting  
Minutes**

**Maine Commission on Indigent Legal Services – Commissioners Meeting  
August 4, 2020**

**Minutes**

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

**MCILS Staff Present:** Ellie Maciag, John Pelletier

<b>Agenda Item</b>	<b>Discussion</b>	<b>Outcome/Action Item/Responsible Party</b>
Approval of the July 7, 2020 Commission Meeting Minutes	No discussion of meeting minutes.	Commissioner LeBrasseur moved to approve. Commissioner Schneider seconded. All voted in favor. Approved.
Operations Reports	<p><u>July 2020 Operations Report:</u> 2,439 new cases were opened in the DefenderData system in July. This was a 463 case increase over June. The number of submitted vouchers in July was 1,955, a decrease of 171 vouchers from June, totaling \$926,616, an increase of \$18,000 over June. Director Pelletier noted that new cases were rebounding slightly but that the submitted vouchers and voucher amounts are still down. Director Pelletier explained that court activity has increased but had not yet rebounded to normal. The average price per voucher was \$480.12, up \$51.49 per voucher from June. Appeal and Drug Court cases had the highest average vouchers. There were 9 vouchers exceeding \$5,000 paid in July. 87 authorizations to expend funds were issued in July, and we paid \$29,199 for experts and investigators, etc. The monthly transfer from the Judicial Branch for counsel fees for July, which reflects June’s collections, totaled \$88,434, up approximately \$8,000 from June. Two attorney complaints were received in July.</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Jail Recordings of Attorney/Client Calls – Executive Session Required	<p>Director Pelletier informed the Commissioners that AAG Hudson needed to brief the Commissioners in executive session concerning Commission ability to engage in litigation. Commissioner Carey made a motion to move into executive session to consult with counsel on pending litigation pursuant to 1 MRS section 405, subsection (6)(E). Commissioner Cummins seconded. All voted in favor. Commissioner Carey made a motion to move out of executive session and Commissioner Katz seconded. All voted in favor.</p>	
Prosecutor Interactions with Pro Se Defendants	<p>Director Pelletier went over the various courses of actions contemplated by the Commission at the last meeting. Director Pelletier presented a draft letter to send to the court’s advisory committee for Commission consideration. Director Pelletier noted that the Judiciary Committee was also working on this issue. The Sixth Amendment Center had urged the legislature to pass a statute prohibiting prosecutor contact with pro se defendants prior to being informed of their rights by a judge. Director Pelletier elicited feedback from all eight District Attorneys about their office’s policy on speaking with pro se defendants and provided the feedback for Commission review. Commissioner Cummins suggested discussing changes to the letter and stated that he would like to see the pending bill to do more. Commissioner Cummins noted that he liked DA Maloney’s response, which called for the creation of a public defender office, and suggested a conference call with each DA to discuss an overall solution that deals with the realities of having no public defender office. Commissioner Schneider urged the Commission to start thinking about a long-term solution that it could suggest to the courts, including changing the rules of evidence so pro se defendant statements cannot be used against them. Commissioner Carey supports the pending legislation but agreed with Commissioner Cummins that it does not necessarily adequately address the situation. Commissioner LeBrasseur asked whether the Region 3 pilot program could be expanded statewide to provide counsel early on in the process. Director Pelletier has initiated follow-up with the trial chiefs and advocated to expand early assignment statewide, but the court has some concerns about increased clerk workloads. Director Pelletier added that Region 3 DA Robinson has expressed his support for the program. Director Pelletier will continue</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	to follow up with the court about the possibility of statewide expansion.	
Plan for Rulemaking Process	Director Pelletier went over the rulemaking process and identified which rules should be addressed. Director Pelletier will gather the subcommittee draft standards and identify where they overlap with the current eligibility rules.	
Legislative Update	Director Pelletier reviewed two bills that were recently voted out of the Judiciary Committee: LD 182 which would move the financial screener positions to the Judicial Branch, and LD 1067 which would create a working group to look at the creation of a public defender office. Director Pelletier explained that it is still an open question whether the legislature will reconvene before the session ends in January and if it does whether these bills would be taken up. Commissioner Cummins suggested the Commission craft a proposed bill that would establish a public defender office and not await a study on the issue.	
Samples of Complaints about Attorneys	Director Pelletier relayed that staff did not have adequate time to prepare the complaint materials and will provide them at the next meeting.	
Training RFP Update	Director Pelletier gave a brief update on the training RFP and anticipates a Commission vote at the next meeting during an executive session.	
Public Comment	<p><u>Attorney Robert Ruffner</u>: Attorney Ruffner argued that DAs should not be providing legal advice to pro se defendants and that the proposed legislation provides a fix to a problem. Attorney Ruffner believes that Maine does not have an entity to look at the structural system and suggested the Commission should acknowledge whether it is such an entity. Attorney Ruffner urged the Commission to have more frequent meetings to move along the rulemaking process.</p> <p><u>District Attorney Maeghan Maloney</u>: DA Maloney agreed with Attorney Ruffner’s assessment that Maine needs a public defender’s office and pointed out that pro se</p>	

<b>Agenda Item</b>	<b>Discussion</b>	<b>Outcome/Action Item/Responsible Party</b>
	defendants have no one to talk to. DA Maloney would like to be able to give people reaching out to her office a phone number for someone else to call and discuss their case. DA Maloney expressed her support for the Region 3 pilot program and stated that this might be a perfect solution.	
Adjournment of meeting	The next meeting will be held telephonically on September 8, 2020 at 8 am.	

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# **Operations Reports**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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

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Attached you will find the August, 2020, Operations Reports for your review and our discussion at the Commission meeting on September 8, 2020. A summary of the operations reports follows:

- 2,655 new cases were opened in the DefenderData system in August. This was a 216 case increase over July. Year to date, new cases are down 1.4%, from 5,166 at this time last year to 5,092 this year.
- The number of vouchers submitted electronically in August was 2,359, an increase of 404 vouchers over July, totaling \$1,024,149.72, an increase of \$98,000 over July. Year to date, the number of submitted vouchers is down by approximately 23%, from 5,561 at this time last year to 4,293 this year, with the total amount for submitted vouchers down 37%, from \$2,780,839 at this time last year to \$1,923,874 this year.
- In August, we paid 2,131 electronic vouchers totaling \$897,409.79, representing an increase of 629 vouchers and \$176,000 compared to July. Year to date, the number of paid vouchers is down approximately 28%, from 5,094 at this time last year to 3,633 this year, and the total amount paid is down approximately 36%, from \$2,565,019 at this time last year to \$1,618,549 this year.
- We paid no paper vouchers in August.
- The average price per voucher in August was \$421.12, down \$59.00 per voucher from July. Year to date, the average price per voucher is down approximately 11.5%, from \$503.54 at this time last year to \$445.51 this year.
- Appeal and Post-Conviction Review cases had the highest average voucher in August. There were 5 vouchers exceeding \$5,000 paid in August. See attached addendum for details.
- In August, we issued 72 authorizations to expend funds: 54 for private investigators, 10 for experts, and 8 for miscellaneous services such as interpreters and transcriptionists. In August, we paid \$27,080.17 for experts and investigators, etc. Two requests for funds were modified to authorize a reduced amount.
- In August, we received two complaints about attorneys, one in the form of a letter to the court seeking new counsel and the other on a feedback form. The complaints were sent to the attorneys seeking a response. One satisfactory response was received

requiring no further action, and staff is awaiting a response regarding the second complaint.

- In August, we approved two requests for co-counsel. One case involved a Class A Arson, and the other involved an OUI charge where the co-chair is seeking experience to qualify for the OUI panel.

In our All Other Account, the total expenses for the month of August were \$940,166.23. Of that amount, just over \$15,500 was devoted to the Commission's operating expenses.

In the Personal Services Account, we had \$72,775.12 in expenses for the month of August.

In the Revenue Account, the transfer for August, reflecting July's collections, totaled \$72,369.44, a decrease of approximately \$16,000 from the previous month.

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

VOUCHERS EXCEEDING \$5,000 PAID AUGUST 2020

	Voucher Total	Case Total
Interim voucher in a Post-Conviction Review case that has been ongoing since 2013. Work to date has focused on obtaining DNA testing of evidence that was not tested prior to the trial and assessment of the results in light of other evidence (the trial transcript exceeded 3,000 pages) in the case. Final hearing set for November.	\$11,550	\$20,438 (interim voucher of \$8,888 previously paid)
Voucher in a Murder case involving issues of mental health and medical causation. Murder charge dismissed in return for a plea to Manslaughter.	\$8,980	\$8,980
Interim voucher in the appeal of a high-profile Murder conviction involving the death of a child. Appeal is pending oral argument, and voucher was submitted because counsel is re-locating to another State.	\$8,074	\$8,074
Interim voucher in a case involving separate charges of Murder and Attempted Murder. Case involves multiple crime scenes and mental health issues.	\$8,042	\$8,042
Interim voucher in a case involving a charge of Class B Unlawful Sexual Contact. Case has been prolonged due to litigation over access to relevant DHHS records.	\$8,020	\$8,020

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

**Activity Report by Case Type**

8/31/2020

DefenderData Case Type	Aug-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	5	12	\$ 18,563.67	13	\$ 19,688.98	\$ 1,514.54	10	31	\$ 50,979.08	\$ 1,644.49
Child Protection Petition	218	363	\$ 217,472.14	343	\$ 187,061.51	\$ 545.37	414	595	\$ 348,963.51	\$ 586.49
Drug Court	0	5	\$ 7,062.00	8	\$ 10,548.00	\$ 1,318.50	0	13	\$ 19,134.00	\$ 1,471.85
Emancipation	4	4	\$ 408.00	3	\$ 620.40	\$ 206.80	11	7	\$ 1,528.80	\$ 218.40
Felony	561	409	\$ 255,948.70	321	\$ 197,269.25	\$ 614.55	1,091	606	\$ 412,420.76	\$ 680.56
Involuntary Civil Commitment	94	72	\$ 15,363.00	61	\$ 13,935.00	\$ 228.44	186	138	\$ 29,396.60	\$ 213.02
Juvenile	82	74	\$ 36,647.80	62	\$ 28,976.40	\$ 467.36	121	91	\$ 42,974.04	\$ 472.24
Lawyer of the Day - Custody	257	218	\$ 53,475.90	230	\$ 56,085.06	\$ 243.85	507	416	\$ 101,267.70	\$ 243.43
Lawyer of the Day - Juvenile	28	30	\$ 7,763.22	30	\$ 8,147.56	\$ 271.59	46	39	\$ 10,844.20	\$ 278.06
Lawyer of the Day - Walk-in	216	264	\$ 57,477.88	247	\$ 54,126.69	\$ 219.14	479	362	\$ 77,100.77	\$ 212.99
Misdemeanor	970	565	\$ 172,610.24	497	\$ 151,303.55	\$ 304.43	1,811	793	\$ 242,679.10	\$ 306.03
Petition, Modified Release Treatment	2	9	\$ 4,824.42	9	\$ 4,824.42	\$ 536.05	3	10	\$ 5,328.42	\$ 532.84
Petition, Release or Discharge	1	1	\$ 682.33	1	\$ 682.33	\$ 682.33	1	1	\$ 682.33	\$ 682.33
Petition, Termination of Parental Rights	34	40	\$ 27,063.88	29	\$ 21,795.44	\$ 751.57	51	50	\$ 35,566.56	\$ 711.33
Post Conviction Review	5	4	\$ 14,931.35	7	\$ 18,863.65	\$ 2,694.81	11	10	\$ 19,919.57	\$ 1,991.96
Probate	1	1	\$ 420.00	1	\$ 420.00	\$ 420.00	1	1	\$ 420.00	\$ 420.00
Probation Violation	129	90	\$ 36,109.20	78	\$ 30,218.24	\$ 387.41	255	148	\$ 65,858.08	\$ 444.99
Represent Witness on 5th Amendment	1	0		0			1	0		
Resource Counsel Criminal	1	2	\$ 294.00	1	\$ 162.00	\$ 162.00	1	2	\$ 306.00	\$ 153.00
Resource Counsel Juvenile	0	1	\$ 216.00	1	\$ 216.00	\$ 216.00	0	1	\$ 216.00	\$ 216.00
Resource Counsel Protective Custody	0	0		0			0	0		
Review of Child Protection Order	44	195	\$ 96,806.99	189	\$ 92,465.31	\$ 489.23	89	319	\$ 152,963.27	\$ 479.51
Revocation of Administrative Release	2	0		0			3	0		
<b>DefenderData Sub-Total</b>	<b>2,655</b>	<b>2,359</b>	<b>\$ 1,024,140.72</b>	<b>2,131</b>	<b>\$ 897,409.79</b>	<b>\$ 421.12</b>	<b>5,092</b>	<b>3,633</b>	<b>\$ 1,618,548.79</b>	<b>\$ 445.51</b>
<b>Paper Voucher Sub-Total</b>	<b>0</b>	<b>0</b>	<b>\$ -</b>	<b>0</b>	<b>\$ -</b>	<b>#DIV/0!</b>	<b>0</b>	<b>0</b>	<b>\$ -</b>	<b>#DIV/0!</b>
<b>TOTAL</b>	<b>2,655</b>	<b>2,359</b>	<b>\$1,024,140.72</b>	<b>2,131</b>	<b>\$897,409.79</b>	<b>\$ 421.12</b>	<b>5,092</b>	<b>3,633</b>	<b>\$ 1,618,548.79</b>	<b>\$ 445.51</b>

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

**FY21 FUND ACCOUNTING**

AS OF 08/31/2020

<b>Account 010 95F Z112 01 (All Other)</b>	<b>Mo.</b>	<b>Q1</b>	<b>Mo.</b>	<b>Q2</b>	<b>Mo.</b>	<b>Q3</b>	<b>Mo.</b>	<b>Q4</b>	<b>FY20 Total</b>
FY21 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		\$ -		\$ -		\$ -		\$ -	
<b>Total Budget Allotments</b>		<b>\$ 4,420,000.00</b>		<b>\$ 4,360,000.00</b>		<b>\$ 4,500,000.00</b>		<b>\$ 2,161,725.00</b>	<b>\$ 15,441,725.00</b>
Total Expenses	1	\$ (765,783.81)	4	\$ -	7	\$ -	10	\$ -	
	2	\$ (940,166.23)	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
Encumbrances (Justice Works)		\$ (69,030.00)		\$ -		\$ -		\$ -	\$ (69,030.00)
Encumbrances (B Taylor)		\$ (70,720.00)		\$ -		\$ -		\$ -	\$ (70,720.00)
Encumbrances (Videographer & business cards)		\$ -		\$ -		\$ -		\$ -	\$ -
<b>TOTAL REMAINING</b>		<b>\$ 2,574,299.96</b>		<b>\$ 4,360,000.00</b>		<b>\$ 4,500,000.00</b>		<b>\$ 2,161,725.00</b>	<b>\$ 13,596,024.96</b>

**Q1 Month 2**

**INDIGENT LEGAL SERVICES**

Counsel Payments	\$ (897,409.79)
Interpreters	\$ (2,225.00)
Private Investigators	\$ (8,294.58)
Mental Health Expert	\$ (4,162.50)
Misc Prof Fees & Serv	\$ (357.00)
Transcripts	\$ (916.64)
Other Expert	\$ (10,798.33)
Process Servers	\$ (326.12)
Subpoena Witness Fees	\$ -
Out of State Witness Travel	\$ -
<b>SUB-TOTAL ILS</b>	<b>\$ (924,489.96)</b>

**OPERATING EXPENSES**

Service Center	\$ -
DefenderData	\$ (6,087.50)
Cleaning & Washing	\$ (58.27)
Mileage/Tolls/Parking	\$ (733.50)
Mailing/Postage/Freight	\$ (32.00)
West Publishing Corp	\$ (198.09)
Safety/Protective Supplies	\$ (976.74)
Office Supplies/Equip.	\$ (306.95)
Cellular Phones	\$ (149.21)
OIT/TELCO	\$ (2,616.15)
Office Equipment Rental	\$ (97.86)
Training Videographer	\$ -
Barbara Taylor monthly fees	\$ (4,420.00)
Meter Postage Cards Printing	\$ -
Training Printing Fees	\$ -
<b>SUB-TOTAL OE</b>	<b>\$ (15,676.27)</b>

**TOTAL** \$ (940,166.23)

**INDIGENT LEGAL SERVICES**

Q1 Allotment	\$ 4,420,000.00
Q1 Encumbrances for Justice Works contract	\$ (69,030.00)
Barbara Taylor Contract	\$ (70,720.00)
Videographer	\$ -
Q1 Expenses to date	\$ (1,705,950.04)
<b>Remaining Q1 Allotment</b>	<b>\$ 2,574,299.96</b>

**Non-Counsel Indigent Legal Services**

Monthly Total	\$ (27,080.17)
Total Q1	\$ 56,279.91
Total Q2	\$ -
Total Q3	\$ -
Total Q4	\$ -
<b>Fiscal Year Total</b>	<b>\$ 56,279.91</b>

**Conference Account Transactions**

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

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**  
**FY21 FUND ACCOUNTING**  
As of 08/31/2020

Account 014 95F Z112 01 (Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY20 Total
<b>Total Budget Allotments</b>		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00	\$ 1,100,000.00
Financial Order Adjustment	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Financial Order Adjustment	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Budget Order Adjustment	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
Budget Order Adjustment		\$ -		\$ -		\$ -	12	\$ -	\$ -
<b>Total Budget Allotments</b>		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00	\$ 1,100,000.00
Cash Carryover from Prior Quarter		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB	1	\$ 88,434.06	4	\$ -	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	\$ -	6	\$ -	9	\$ -	12	\$ -	
Returned Checks-stopped payments		\$ -		\$ -		\$ -		\$ -	
<b>TOTAL CASH PLUS REVENUE COLLECTED</b>		\$ 161,073.50		\$ -		\$ -		\$ -	\$ 161,073.50
Counsel Payments	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Other Expenses		\$ -		\$ -		\$ -	***	\$ -	
Counsel Payments	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Other Expenses		\$ -		\$ -		\$ -		\$ -	
Counsel Payments	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
Other Expenses	*	\$ -	**	\$ -	***	\$ -		\$ -	
<b>REMAINING ALLOTMENT</b>		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00	\$ 1,100,000.00
Overpayment Reimbursements	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
<b>REMAINING CASH Year to Date</b>		\$ 161,073.50		\$ -		\$ -		\$ -	\$ 161,073.50

<b>Collections versus Allotment</b>	
Monthly Total	\$ 72,639.44
Total Q1	\$ 161,073.50
Total Q2	\$ -
Total Q3	\$ -
Total Q4	\$ -
Allotment Expended to Date	\$ -
Fiscal Year Total	\$ 161,073.50

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**  
**FY21 FUND ACCOUNTING**  
AS OF 08/31/2020

<b>Account 010 95F Z112 01 (Personal Services)</b>	<b>Mo.</b>	<b>Q1</b>	<b>Mo.</b>	<b>Q2</b>	<b>Mo.</b>	<b>Q3</b>	<b>Mo.</b>	<b>Q4</b>	<b>FY20 Total</b>
FY21 Allotment	\$	236,986.00	\$	245,444.00	\$	216,987.00	\$	197,826.00	\$ 897,243.00
Financial Order Adjustments	\$	-	\$	-	\$	-	\$	-	
Financial Order Adjustments	\$	-	\$	-	\$	-	\$	-	
Budget Order Adjustments	\$	-	\$	-	\$	-	\$	-	
<b>Total Budget Allotments</b>	<b>\$</b>	<b>236,986.00</b>	<b>\$</b>	<b>245,444.00</b>	<b>\$</b>	<b>216,987.00</b>	<b>\$</b>	<b>197,826.00</b>	<b>\$ 897,243.00</b>
Total Expenses	1 \$	(72,711.14)	4 \$	-	7 \$	-	10 \$	-	
	2 \$	(72,775.12)	5 \$	-	8 \$	-	11 \$	-	
	3 \$	-	6 \$	-	9 \$	-	12 \$	-	
<b>TOTAL REMAINING</b>	<b>\$</b>	<b>91,499.74</b>	<b>\$</b>	<b>245,444.00</b>	<b>\$</b>	<b>216,987.00</b>	<b>\$</b>	<b>197,826.00</b>	<b>\$ 751,756.74</b>

<b>Q1 Month 2</b>	
Per Diem	\$ -
Salary	\$ (36,580.78)
Vacation Pay	\$ (1,990.65)
Holiday Pay	\$ -
Sick Pay	\$ (1,164.57)
Empl Hlth SVS/Worker Comp	\$ (166.00)
Health Insurance	\$ (11,791.24)
Dental Insurance	\$ (362.46)
Employer Retiree Health	\$ (4,311.15)
Employer Retirement	\$ (2,675.10)
Employer Group Life	\$ (465.88)
Employer Medicare	\$ (600.36)
Retiree Unfunded Liability	\$ (7,819.87)
Longevity Pay	\$ (128.00)
Perm Part Time Full Ben	\$ (4,719.06)
Premium & Standard OT	\$ -
Retro Lump Sum Pymt	\$ -
<b>TOTAL</b>	<b>\$ (72,775.12)</b>

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Court

8/31/2020

Court	Aug-20						Fiscal Year 2021			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
ALFSC	3	4	\$ 13,992.00	2	\$ 11,775.00	\$ 5,887.50	4	5	\$ 14,289.00	\$ 2,857.80
AUBSC	2	1	\$ 12.00	1	\$ 12.00	\$ 12.00	4	1	\$ 12.00	\$ 12.00
AUGDC	38	63	\$ 30,558.86	58	\$ 33,441.65	\$ 576.58	79	88	\$ 51,438.21	\$ 584.53
AUGSC	6	11	\$ 5,112.42	12	\$ 5,232.42	\$ 436.04	9	18	\$ 6,846.42	\$ 380.36
BANDC	64	81	\$ 19,960.00	78	\$ 21,794.00	\$ 279.41	129	146	\$ 39,077.00	\$ 267.65
BANSC	0	0		0			0	0		
BATSC	1	0		0			1	0		
BELDC	18	16	\$ 6,088.06	14	\$ 6,125.05	\$ 437.50	30	27	\$ 14,469.74	\$ 535.92
BELSC	0	0		0			0	0		
BIDDC	38	51	\$ 22,755.30	52	\$ 25,194.84	\$ 484.52	77	94	\$ 50,166.74	\$ 533.69
BRIDC	10	16	\$ 5,957.12	16	\$ 6,993.60	\$ 437.10	27	30	\$ 14,592.42	\$ 486.41
CALDC	7	8	\$ 3,810.00	8	\$ 4,385.20	\$ 548.15	14	14	\$ 7,973.20	\$ 569.51
CARDC	7	20	\$ 8,258.94	27	\$ 10,527.40	\$ 389.90	12	50	\$ 22,511.51	\$ 450.23
CARSC	0	0		0			0	1	\$ 360.00	\$ 360.00
DOVDC	10	16	\$ 5,717.96	7	\$ 2,100.08	\$ 300.01	11	15	\$ 8,347.04	\$ 556.47
DOVSC	0	0		0			0	0		
ELLDC	13	22	\$ 12,864.67	15	\$ 10,649.53	\$ 709.97	20	36	\$ 28,170.59	\$ 782.52
ELLSC	0	0		0			0	0		
FARDC	7	15	\$ 10,618.16	16	\$ 10,768.16	\$ 673.01	11	23	\$ 22,355.97	\$ 972.00
FARSC	0	3	\$ 2,173.35	3	\$ 2,173.35	\$ 724.45	0	3	\$ 2,173.35	\$ 724.45
FORDC	13	20	\$ 12,382.02	17	\$ 7,863.27	\$ 462.55	15	25	\$ 14,337.67	\$ 573.51
HOUDC	9	26	\$ 14,883.64	31	\$ 15,939.64	\$ 514.18	23	50	\$ 25,188.04	\$ 503.76
HOUSC	0	0		0			0	0		
LEWDC	88	83	\$ 38,911.18	78	\$ 33,546.00	\$ 430.08	141	152	\$ 63,227.84	\$ 415.97
LINDC	16	14	\$ 7,046.44	9	\$ 2,914.44	\$ 323.83	33	18	\$ 7,202.40	\$ 400.13
MACDC	1	5	\$ 5,169.40	3	\$ 1,956.00	\$ 652.00	3	8	\$ 8,049.31	\$ 1,006.16
MACSC	0	0		1	\$ 1,826.30	\$ 1,826.30	0	1	\$ 1,826.30	\$ 1,826.30
MADDC	1	1	\$ 491.36	1	\$ 491.36	\$ 491.36	1	1	\$ 491.36	\$ 491.36
MILDC	5	9	\$ 3,832.92	4	\$ 1,218.00	\$ 304.50	12	6	\$ 2,535.00	\$ 422.50
NEWDC	19	24	\$ 6,664.60	28	\$ 6,703.44	\$ 239.41	31	39	\$ 10,828.56	\$ 277.66
PORDC	79	93	\$ 49,403.98	75	\$ 38,337.90	\$ 511.17	127	139	\$ 66,000.90	\$ 474.83
PORSC	1	3	\$ 2,719.52	3	\$ 2,719.52	\$ 906.51	3	4	\$ 3,259.52	\$ 814.88
PREDC	18	24	\$ 12,207.20	25	\$ 12,099.20	\$ 483.97	29	39	\$ 18,006.20	\$ 461.70
RODC	20	16	\$ 8,937.00	17	\$ 6,315.00	\$ 371.47	36	29	\$ 12,834.30	\$ 442.56
ROCSC	1	1	\$ 174.00	1	\$ 174.00	\$ 174.00	2	3	\$ 546.00	\$ 182.00
RUMDC	3	33	\$ 24,547.64	21	\$ 12,033.12	\$ 573.01	14	34	\$ 24,594.12	\$ 723.36
SKODC	27	70	\$ 30,510.72	70	\$ 31,791.32	\$ 454.16	49	93	\$ 42,313.12	\$ 454.98
SKOSC	1	0		0			2	0		
SOUDC	1	14	\$ 9,464.60	12	\$ 8,241.48	\$ 686.79	8	28	\$ 14,943.20	\$ 533.69
SOUSC	0	0		0			0	0		
SPRDC	31	51	\$ 30,882.68	48	\$ 28,649.50	\$ 596.86	61	66	\$ 35,518.98	\$ 538.17
Law Ct	4	9	\$ 9,265.57	10	\$ 10,390.88	\$ 1,039.09	8	24	\$ 39,485.57	\$ 1,645.23
YORCD	190	171	\$ 84,015.70	128	\$ 60,062.98	\$ 469.24	360	192	\$ 96,039.88	\$ 500.21
AROCD	163	105	\$ 43,994.19	99	\$ 36,886.93	\$ 372.60	293	187	\$ 68,291.11	\$ 365.19
ANDCD	211	215	\$ 68,777.50	179	\$ 53,974.02	\$ 301.53	520	289	\$ 82,536.84	\$ 285.59
KENCD	207	121	\$ 42,232.72	93	\$ 30,941.26	\$ 332.70	340	177	\$ 79,360.17	\$ 448.36
PENCD	215	66	\$ 27,143.27	91	\$ 39,057.45	\$ 429.20	478	186	\$ 86,481.53	\$ 464.95
SAGCD	38	32	\$ 8,688.04	31	\$ 10,860.54	\$ 350.34	68	45	\$ 16,353.80	\$ 363.42
WALCD	59	28	\$ 16,034.18	53	\$ 24,822.44	\$ 468.35	107	65	\$ 29,202.04	\$ 449.26
PISCD	24	16	\$ 5,183.04	17	\$ 5,897.06	\$ 346.89	37	27	\$ 7,668.26	\$ 284.01
HANCD	38	43	\$ 13,759.50	32	\$ 18,815.82	\$ 587.99	84	52	\$ 24,163.82	\$ 464.69
FRACD	40	51	\$ 10,760.43	53	\$ 11,486.12	\$ 216.72	121	88	\$ 25,603.68	\$ 290.95
WASCD	63	27	\$ 7,338.00	30	\$ 9,060.00	\$ 302.00	121	51	\$ 22,649.56	\$ 444.11
CUMCD	431	311	\$ 152,132.73	232	\$ 110,993.34	\$ 478.42	731	381	\$ 211,532.05	\$ 555.20
KNOCD	67	49	\$ 18,580.29	46	\$ 14,474.24	\$ 314.66	138	72	\$ 30,817.24	\$ 428.02
SOMCD	92	70	\$ 16,395.14	59	\$ 14,076.94	\$ 238.59	167	109	\$ 25,429.58	\$ 233.30
OXFCD	123	99	\$ 33,514.80	111	\$ 33,289.20	\$ 299.90	266	189	\$ 51,583.14	\$ 272.93
LINCD	59	33	\$ 11,504.03	24	\$ 7,663.55	\$ 319.31	99	60	\$ 20,947.31	\$ 349.12
WATDC	23	32	\$ 16,437.08	31	\$ 14,864.08	\$ 479.49	47	62	\$ 27,737.76	\$ 447.38
WESDC	23	27	\$ 10,299.28	23	\$ 7,962.96	\$ 346.22	52	44	\$ 14,823.36	\$ 336.89
WISDC	18	19	\$ 13,091.21	21	\$ 12,131.21	\$ 577.68	27	30	\$ 15,978.08	\$ 532.60
WISSC	1	0		0			1	0		
YORDC	8	21	\$ 8,886.28	15	\$ 5,707.00	\$ 380.47	9	17	\$ 7,378.00	\$ 434.00
<b>TOTAL</b>	<b>2,655</b>	<b>2,359</b>	<b>\$ 1,024,140.72</b>	<b>2,131</b>	<b>\$ 897,409.79</b>	<b>\$ 421.12</b>	<b>5,092</b>	<b>3,633</b>	<b>\$ 1,618,548.79</b>	<b>\$ 445.51</b>

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

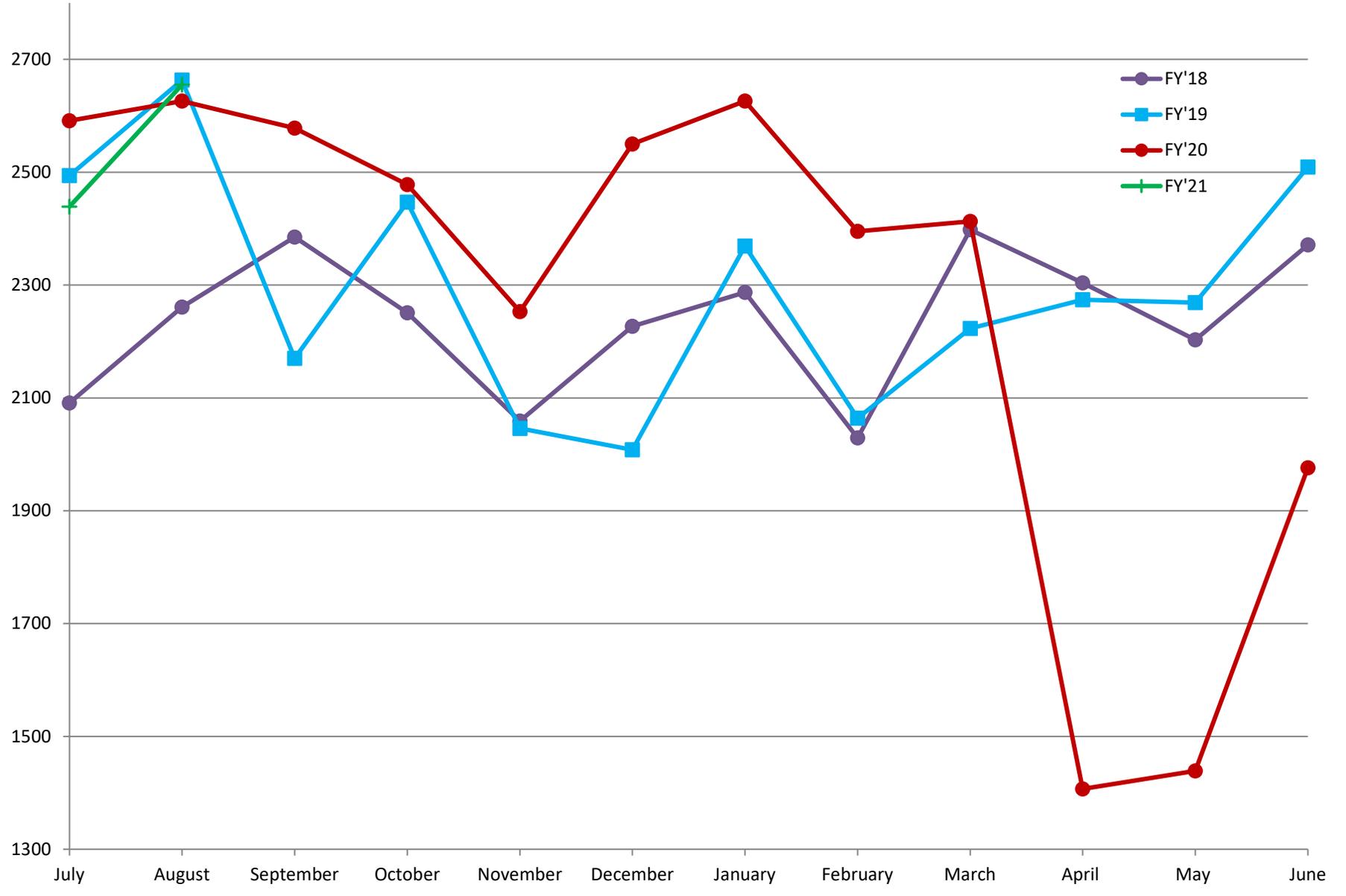
**Number of Attorneys Rostered by Court**

**08/31/2020**

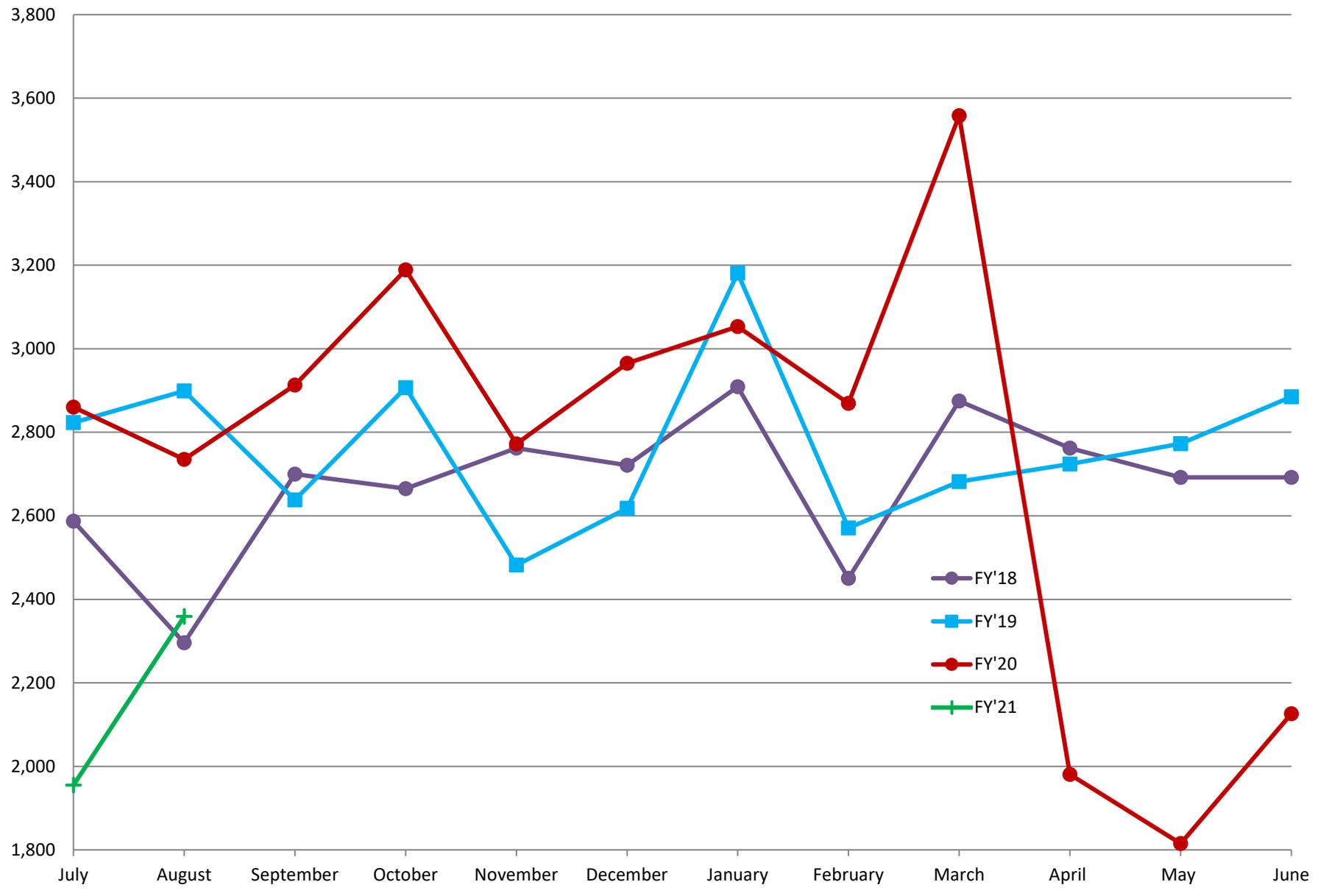
<b>Court</b>	<b>Rostered Attorneys</b>
Augusta District Court	69
Bangor District Court	39
Belfast District Court	36
Biddeford District Court	112
Bridgton District Court	69
Calais District Court	8
Caribou District Court	15
Dover-Foxcroft District Court	23
Ellsworth District Court	31
Farmington District 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

<b>Court</b>	<b>Rostered Attorneys</b>
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

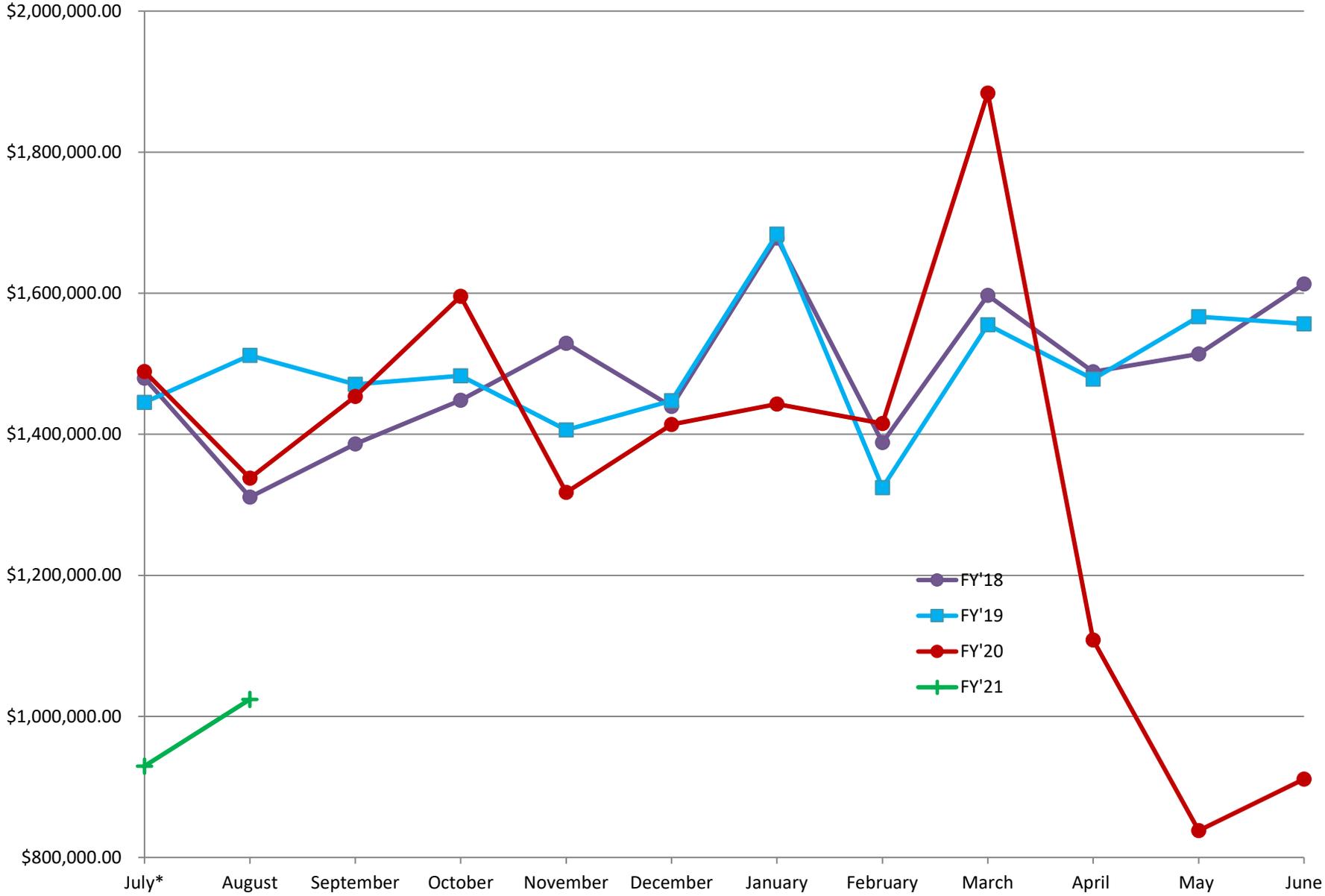
# NEW CASES



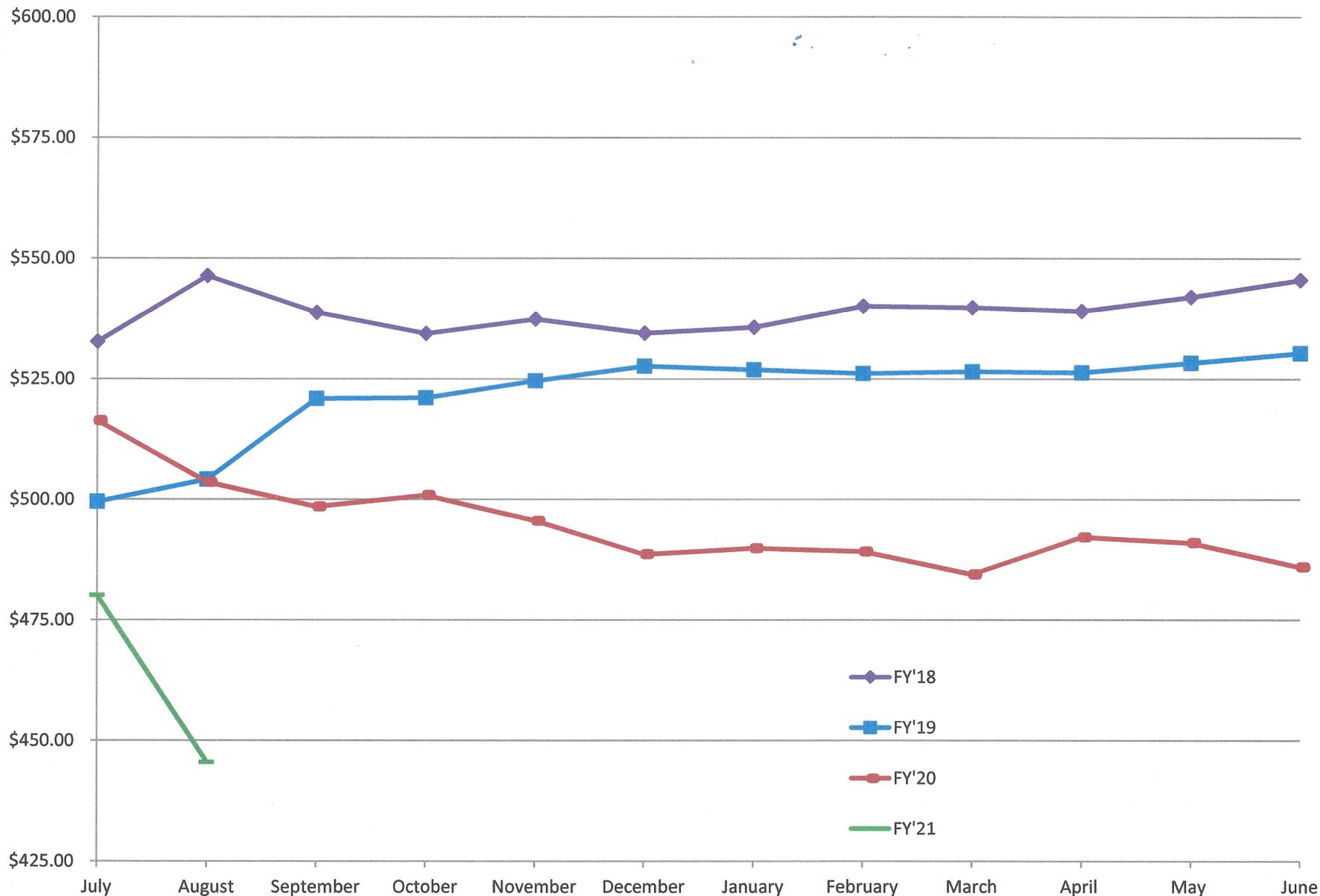
# Submitted Vouchers



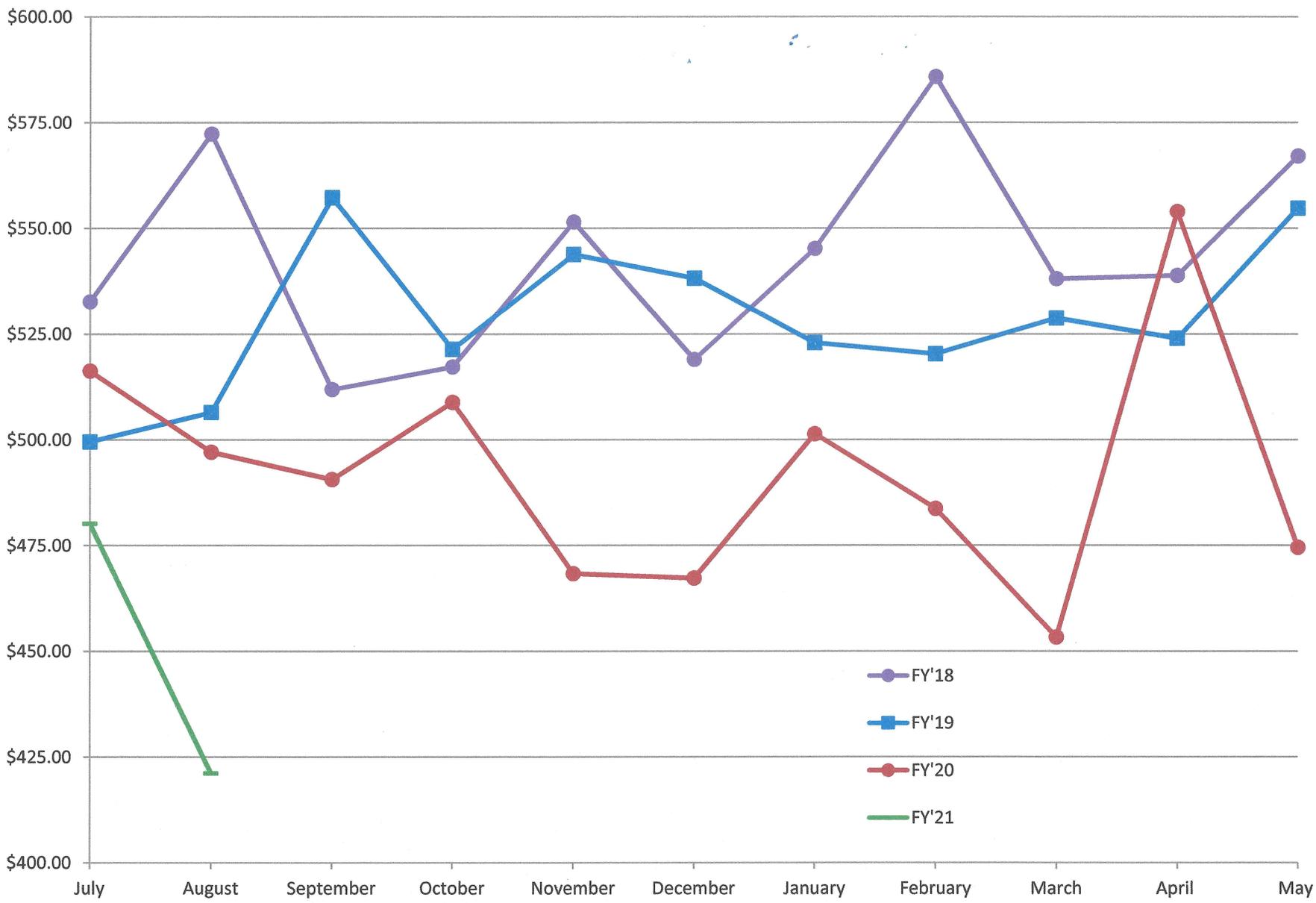
# Submitted Voucher Amount



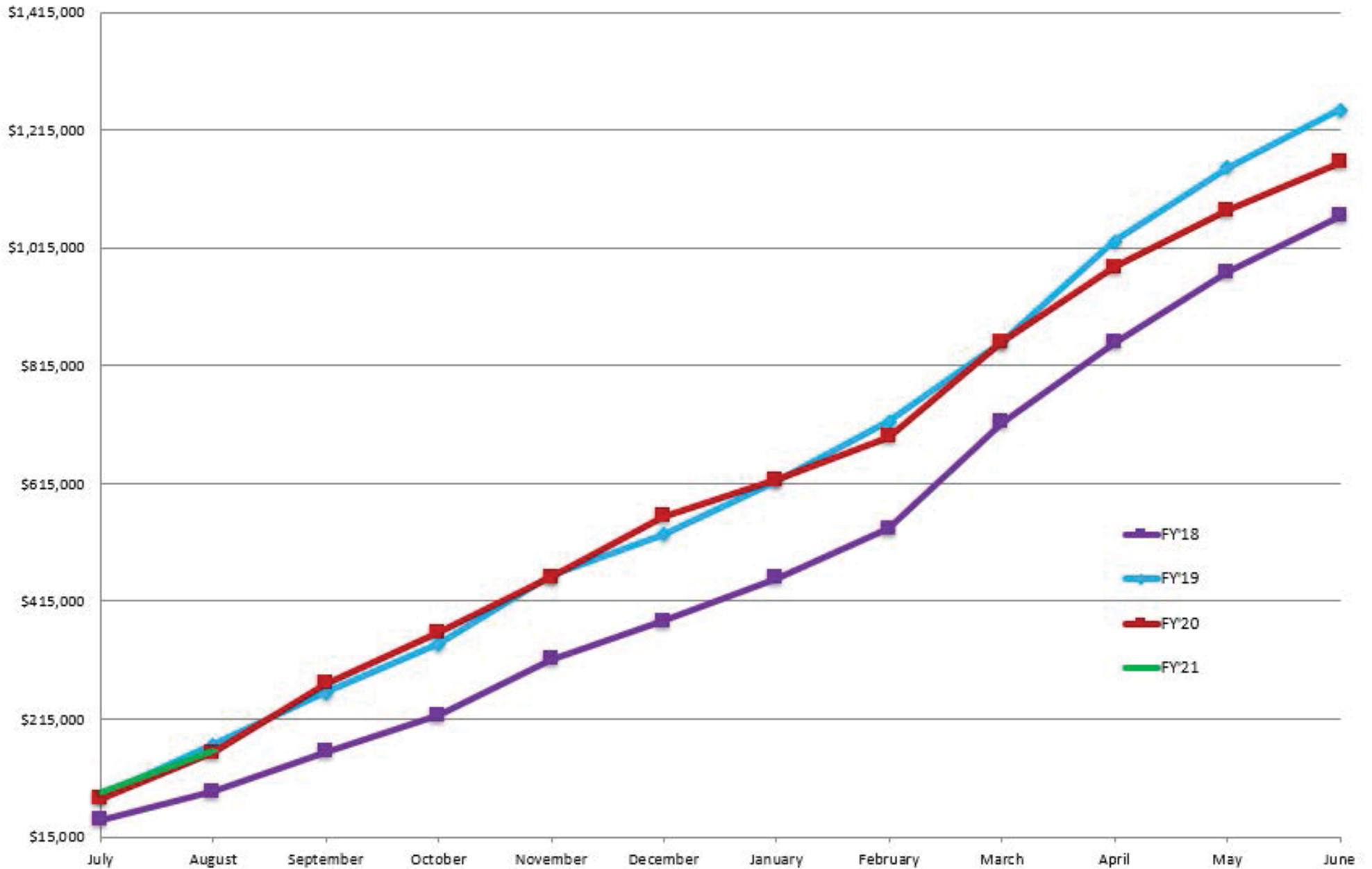
### Average Voucher Price Fiscal Year to Date



### Monthly Price Per Voucher



### COLLECTION TOTALS FY'18 to FY'21



**(3.)**

**Budget Update**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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

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On August 5, 2020 DAFS Commissioner Figueroa issued a directive that agencies submit a proposal for a 10% reduction in their general fund budget for the current year. Submissions were due August 19, 2020. Faced with this deadline, I submitted a proposal in compliance with the Commissioner's directive. Attached is a narrative that accompanied the specific entries in the State's online budget system, as well as the printout from that system.

Note that I pointed out that this was a submission by staff in compliance with the Commissioner's directive and did not reflect the position of our Commissioners.

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**TO:** KIRSTEN FIGUEROA, COMMISSIONER, DAFS  
BETH ASHCROFT, STATE BUDGET OFFICER

**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR

**SUBJECT:** FY'21 COST REDUCTION PROPOSAL

**DATE:** AUGUST 19, 2020

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In response to Commissioner Figueroa's directive that agencies propose a 10% general fund reduction for fiscal year 2020-2021 (FY'21), the Maine Commission on Indigent Legal Services proposes a reduction of **\$1,806,440** from its current General Fund All Other allotment. As explained below, the Commission's current budget situation is complicated, and this proposal is contingent on the Commission's access to a \$2.6 million unencumbered balance from FY'20. Moreover, the entire Commission budget is devoted to providing constitutionally required indigent legal services, and because these services are a constitutional obligation of the State, it is uncertain whether this proposed reduction can actually be realized.

Current Budget Posture

The Commission's current General Fund All Other budget totals \$15,441,725. As has been addressed with the budget office previously, this amount is insufficient to meet the Commission's needs in normal times. The Commission understands that this underfunding resulted from a misunderstanding as to the Commission's All Other needs that occurred in the preparation of the current biennial budget. At that time, the Commission projected an All Other need of \$18.3 million for both FY'20 and FY'21. And in March of 2020, over \$2 million was included in the supplemental budget to meet that target for FY'20.

When the pandemic hit in March, however, the closure of the courts to all but essential matters caused a significant reduction in the cost of indigent legal services during the fourth quarter of FY'20. As a result, the Commission finished FY'20 with an unspent balance of \$2,622,678, and because the Legislature had placed the Commission's operating budget for FY'20 in an Other Special Revenue account, that balance remains as an unencumbered balance forward that can be allotted to Commission operations by Financial Order. The Commission has not yet proposed such a Financial Order to the Governor, but fully intends to do so. The unencumbered balance plus the Commission's current All Other allotment totals \$18,064,403. This amount is less than the Commission's All Other target of \$18.3 million but should be sufficient to fund Commission operations given that pandemic related savings continue into the current year. It is this figure on which the 10% reduction amount is based.

### Other Considerations for the Current Year

As stated above, the Commission believes that the combination of its current allotment, plus access to the unencumbered balance for FY'20 would likely be sufficient to fund its current operation for FY'21. And as stated above, pandemic related savings continue into the current year, but as the courts gradually re-open, it is uncertain how long and to what extent these savings will continue. Taking the proposed reduction from the \$18,064,403 total leaves an All Other allotment of \$16,257,963 for FY'21. It is possible that pandemic related reductions in the cost of indigent legal services could continue throughout the fiscal year so that the Commission could operate within this budget, but that is not certain. These costs are driven by the number of cases requiring representation at state expense and the nature of those cases, not matters that are within the Commission's control. Note that the last time the State engaged in a curtailment process, the curtailment applied to the Commission was never realized because later that year additional supplemental funding, in excess of the curtailment amount, was appropriated to meet the cost of indigent legal services for that year.

In addition, the discussion to this point has been based on the Commission's current operations. At the request of the Legislature, the Sixth Amendment Center conducted a study of indigent legal services in Maine and recommended, among other things, a substantial increase in the size of the Commission's staff, the creation of a Public Defender Office in southern Maine, and an increase in the hourly rate paid to private assigned counsel. Policy-makers, stakeholders, and the Commission itself remain interested in implementing at least some of the Sixth Amendment Center's recommendations, which would increase, not lessen, costs, giving rise to additional uncertainty as to whether any reduction through the curtailment process could ultimately be realized.

Finally, Commissioner Figueroa issued her directive for cost reduction proposals on August 5, 2020, with a due date of August 19, 2020. The Commission itself has not met during this interval. Accordingly, this proposal has been prepared by staff to comply with Commissioner Figueroa's directive, but at this point, it does not reflect the Commission's policy position regarding its FY'21 budget.

**State of Maine  
Budget & Financial Management System**

Statewide Financial Order Report  
Financial Order 001152 F1

Account: 01095FZ11201

MAINE COMMISSION - INDIGENT LEGAL SVCS

Object	Month	2021				Annual Total
		1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	
All Other						
COURT APPOINTED ATTORNEYS	1				(1,806,440)	(1,806,440)
Subtotal All Other	1				(1,806,440)	(1,806,440)
Total All Other					(1,806,440)	(1,806,440)
Total					(1,806,440)	(1,806,440)

**(4.)**

## **Rulemaking Process**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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

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At the last Commission meeting, a brief discussion was held on charting a way forward with respect to rulemaking. As a backdrop was a legislative proposal to provide a limited period of time wherein rules that are otherwise “major substantive” could be adopted as “routine technical” rules without legislative approval.

In this context, I raised the issue that some of the draft rule proposals prepared by the sub-committees are captioned as practice standards, which in our current structure are routine technical rules, but that some of the proposals they contain constitute “eligibility requirements” that by statute fall into the major substantive category. I was asked to review the draft proposals to assess where they would fit in the existing structure of our statute and the existing MCILS rules.

Upon review of the draft from the Criminal Practice Standards sub-committee, most of the proposals therein fit best as modifications of existing rules, some of which are major substantive and some of which are minor technical. My recommendations follow:

Chapter 2: Standards for Qualifications of Assigned Counsel contains rules of general eligibility and is major substantive. It contains rules about 1) basic eligibility such as licensure, 2) reporting requirements regarding bar complaints and criminal charges, 3) initial training and facility requirements, and 3) requirements that counsel cooperate with Commission investigations and authority of the Executive Director to remove attorneys from the roster.

The criminal standards proposal contains numerous recommendations that address these topics. Structurally, any of these proposals adopted by the Commission should be made as amendments to existing Chapter 2. Under existing law, these modifications would be major substantive.

Chapter 3: Eligibility Requirements for Specialized Case Types contains requirements for attorneys to be eligible to receive assignments for certain case types.

The criminal standards proposal contains, in pages 14 through 24, a full recommendation for specialized case types and qualifications for those cases. The proposal also contains eligibility rules for lawyer of the day assignments. Structurally, any of these proposals adopted by the Commission should be made as amendments to existing Chapter 3. Under existing law, these modifications would be major substantive.

The criminal standards proposal also contains recommendations about how lawyers of the day should conduct LOD representation. These are practice standards and my recommendation is to adopt a new practice standards rule that addresses LOD representation specifically. This rule would be minor technical.

The criminal standards proposal also contains recommendations about keeping and billing time, as well a payment for work completed by staff and for CLE attendance. These matters are best addressed as modifications to the existing fee schedule and would be minor technical.

Finally, the criminal standards proposal contains recommendations regarding mentorship, both attorney eligibility to become mentors and requirements for newer attorneys to work with mentors. I recommend that this also be adopted in a new stand-alone rule. Such a rule would be minor technical.

The proposals of the Child Protection and Involuntary Commitment sub-committee do not create any overlap between the major substantive/routine technical divide. Their proposals are changes to the existing Child Protective practice standards and a new rule that creates practice standards for Involuntary Commitment cases, both minor technical.

The draft Criminal Standards, as well of copies of Chapter 2 and Chapter 3 are attached.

# GENERAL STANDARDS

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## GENERAL STANDARDS

### **A. 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.

### **B. 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.

### **C. Notice of Complaints or Potential Conflicts**

1. 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.

**D. Minimum Experience, Training, and Other Eligibility Requirements to be Rostered**

1. 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.
2. 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.
3. The attorney must have completed the XX (training subcommittee to provide a name) prior to being rostered and assigned cases prior to being rostered.
4. 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.
5. 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.
6. 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.

7. 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.
8. 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.
9. 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.
10. 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.
11. 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.
12. 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.

#### **E. Training and CLE requirements for Rostered Attorneys**

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. 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.
4. CLE hours are counted toward the workload standards.
5. 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).
6. 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.

#### **F. Use of Paralegals, Support or Office Staff**

1. Rostered attorneys cannot permit nonlawyer 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.

#### **G. Use of Interpreters**

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.

#### **H. Use of Non-assigned Counsel**

1. 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.
2. 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.
3. The attorney to whom the case is delegated to must be a MICALS rostered attorney who is qualified to handle the case that is delegated.

**I. 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).

**J. Removal or Suspension from the Roster**

1. The MCILS Executive Director may remove indefinitely or suspend a rostered counsel from the roster completely or from the roster for certain case types and court locations for any failure to comply any MCILS rule or standard or in the interest of MCILS. In addition, the MCILS Executive Director may remove indefinitely or suspend 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 is no longer qualified to provide quality indigent legal services. The MCISL 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 attorneys removed indefinitely must re-apply to MCILS if they wish to receive assignments in the future. A rostered attorney 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 XX.

**K. Appointment of counsel and Notice of Appointment to the Rostered Attorney**

1. 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.
2. (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.
3. 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.
4. A newly rostered attorney cannot be assigned a case until a rostered mentor has been assigned.
5. 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.
6. 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.

7. 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.
8. 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.
9. 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.
10. 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.
11. 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.

## GENERAL ELIGIBILITY REQUIREMENTS

### **L. General**

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.

### **M. Admissions for previously admitted rostered attorneys at the time these 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.

#### **N. Workload Standards**

1. Workload standards are only applicable if MICALS adopts weekly log billing system or requirement.
2. 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.
3. 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.
4. 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.
5. 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.

#### **O. Specialized Panels**

1. Murder and non OUI Manslaughter. In order to be rostered for Murder and non OUI Manslaughter cases for adult and juvenile clients an attorney must:
  - a) Have at least five years of experience as a rostered attorney;
  - b) Have been co-counsel on at least 3 Murder or non OUI Manslaughter assigned counsel cases;
  - c) 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;

- d) 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;
  - e) 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;
  - f) 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.
  - g) Letters of reference shall also be submitted upon the request of the MCILS Executive Director or their designee; and
  - h) 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.
2. 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.
3. Sex Offenses. In order to be rostered for sex offense cases for adult or juvenile clients

an attorney must:

- a) Have at least 4 years of experience as a rostered attorney;
- b) Have been co-counsel on at least 3 SORNA registerable criminal sex offense cases;
- c) Have completed a minimum of 50 felony assignments;
- d) Have been an attorney of record in at least 1 jury trial or adjudicatory hearing;
- e) 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;
- f) 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.
- g) Letters of reference shall also be submitted upon the request of the MCILS Executive Director or their designee; and
- h) 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.

4. Major Felonies. In order to be rostered for major felony cases for adult or juvenile clients an attorney must:

- a) Have at least 3 years of experience as a rostered attorney;
- b) Have been co-counsel on at least 5 major felony counsel cases;
- c) Have been attorney of record in at least 1 jury trial or adjudicatory hearing;
- d) Have completed a minimum of 25 felony cases.

- e) 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;
  - f) 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.
  - g) Letters of reference shall also be submitted upon the request of the MCILS Executive Director or their designee; and
  - h) 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.
5. Operating Under the Influence. In order to be rostered for OUI cases an attorney must:
- a) Have at least 1 year of experience as a rostered attorney;
  - b) Have been an attorney of record in at least 1 trial or adjudicatory hearing;
  - c) 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;
  - d) 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;
  - e) Letters of reference shall also be submitted upon the request of the MCILS Executive Director or their designee; and
  - f) 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.

6. Domestic Violence. In order to be rostered for domestic violence cases an attorney must:
  - a) Have at least 1 year of experience as a rostered attorney;
  - b) Have been the attorney of record for at least 1 jury trial or adjudicatory hearing;
  - c) 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;
  - d) Provide a letter explaining reasons for interest in and qualifications for representing individuals charged Domestic Violence allegations;
  - e) Letters of reference shall also be submitted upon the request of the MCILS Executive Director or their designee; and
  - f) 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.
  
7. 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 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; 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 meet any specialized panel CLE requirements to remained certified for the felony panel except the same CLE panel requirements cannot be repeated in 2 consecutive years.

8. Juvenile Defense. In order to be rostered to represent juveniles the attorney must:

- a) 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;
- b) 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 meet;
- c) Prior to being provisionally rostered for juvenile assignments, the attorney must:
  - i. 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;
  - ii. Provide a letter explaining reasons for interest in and qualifications for representing juveniles; and
  - iii. Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee; 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 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.

9. Bind-over Hearings. 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 meet the following requirements. If the rostered attorney does not meet the requirements, then the MCILS 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.
10. 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 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;
2. Must have shadowed with a MCILS 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 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. Appellate Panel. In order to be rostered for appellate assignments for adult or juvenile clients an attorney must:
- a) Have at least 3 years of rostered attorney experience or 1 year of law court clerkship experience;
  - b) 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;
  - c) 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;
  - d) 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.
  - e) 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;
  - f) Must have access to online legal research such as Westlaw, Lexus/Nexus, Casemaker, beyond the use of a search engine such as Google.
  - g) Letters of reference shall be submitted upon the request of the MCILS

Executive Director or their designee;

- h) 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 appellate panel except the same CLE panel requirements cannot be repeated in 2 consecutive years; and
- i) This panel is applicable to all appeals except those appeals regarding the setting of bail.

12. Post-Conviction Review. In order to be rostered for Post-Conviction Review assignments for adult or juvenile clients an attorney must:

- a. Be on the roster for the case type applicable to the conviction being challenged on post-conviction review;
- b. 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;
- 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;
- d. Letters of reference and writing samples shall also be submitted upon the request of the Executive Director, or his or her designee; and
- 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 adult LOD panel except the same CLE panel requirements cannot be repeated in 2 consecutive years.

13. 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;

14. Waiver to be on Specialized Panels. 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.

**P. Lawyer of the Day Program (LOD) 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) juvenile detention hearings: 2 to 1;
  - e) juvenile in custody: 1 to 1;
  - f) juvenile not in custody: 4 to 1;
  - g) 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.
  - h) 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) 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.

b) Adults

- (1) 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.
- (2) 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 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 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.
- (3) 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. Billing:
  - a) LODs should bill for time spent reviewing discovery, in court, meeting with defendants, confirming appointments, and the emails sent to appointed counsel.
  - b) Counsel shall bill under the appropriate Lawyer of the Day field in Defender Data.
  - c) Bills should be broken down as follows:
    - (1) Time spent review discovery and preparing for LOD;
    - (2) Time spent at court as the LOD; and
    - (3) Time spent sending appointment emails.
6. 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.
7. 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)

<b>Juvenile Code Section</b>	<b>Stated Purpose</b>
§ 3002(1)(A)	To secure for each juvenile subject to these provisions such care and guidance, <i>preferably in the juvenile's own home</i> , as will best serve the juvenile's welfare and the interests of society;
§ 3002(1)(B)	To preserve and strengthen family ties whenever possible, including improvement of home environment;
§ 3002(1)(C)	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;
§ 3002(1)(D)	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;

§ 3002(1)(E)	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;
§ 3002(1)(F)	To provide consequences, which may include those of a punitive nature, for <b>repeated</b> serious criminal behavior or <b>repeated</b> violations of probation conditions.
§ 3002 (2)	To carry out these purposes provisions shall be construed liberally

- 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.

<b>Table 1</b>	<b>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:</b>
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§ 3203-A(4)(D)(1)	Has committed an act that would be murder or a Class A, Class B or Class C crime if committed by an adult;
§ 3203-A(4)(D)(2)	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;
§ 3203-A(4)(D)(3)	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;
§ 3203-A(4)(D)(4)	Has committed the juvenile crime that would be escape if the juvenile was an adult;
§ 3203-A(4)(D)(5)	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
§ 3203-A(4)(D)(6)	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.

- (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.

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 REASONONABLE 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 use.
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 3<sup>rd</sup> 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.

### 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.

#### **Q. Appellate Panel Criminal Standards**

1. 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.
2. Rostered counsel who conducted the trial cannot be the appellate counsel for that case.

#### DEFINITIONS

#### **R. Definitions**

1. Domestic Violence.
  - 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.
2. Major Felony
- 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);
  - b. (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);
  - c. “Major Felony” includes crimes involving substantially similar conduct in another jurisdiction; and
  - d. “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.
3. Sex Offense:
- 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. Any offense that could lead to registration under Maine’s SORNA.
  - c. “Sex Offense” includes crimes involving substantially similar conduct in another jurisdiction.
  - d. “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.
4. Specialized Case Types.
- a. 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.
5. Felony and Felonies
- a. Any crime where the defendant could be sentenced to 1 year or more.
6. Rostered counsel
- a. Attorneys who meet all the qualifications to accept assignment from MCILS and are actually placed on a roster.

7. Newly Rostered Attorney

- a. 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 enact of this version of the standards.

**Chapter 2: STANDARDS FOR QUALIFICATIONS OF ASSIGNED COUNSEL**

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**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.

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**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 2. Minimum Experience, Training And Other Eligibility Requirements**

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.

1. Licensed To Practice
  - 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.
  - 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.
  - 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.

2. Attorney Cooperation with Procedures and Monitoring

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.

### **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**

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.

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

The Executive Director may remove indefinitely or suspend an attorney from the roster completely or from the roster for certain case types and court locations for any failure to comply with this or any other Commission rule. In addition, the Executive Director may remove indefinitely or suspend an attorney from the roster completely or from the roster for certain case types and court locations if the Executive Director determines that the attorney is no longer qualified to provide quality indigent legal services based on the nature of any criminal charge or on investigation by the Executive Director or the Executive Director's designee of any complaint or other information. The Executive Director's decision to remove or suspend an attorney from the roster shall be in writing and shall reflect the Executive Director's reasoning in a manner sufficient to inform the attorney and the public of the basis for the Executive Director's action.

Attorneys removed indefinitely must re-apply to the Commission if they wish to receive assignments in the future. 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.

The Executive Director's decision to remove or suspend an attorney may be appealed to the full Commission pursuant to 4 M.R.S.A. § 1804(3)(J) and Commission Rule 94-649 Chapter 201.

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

EFFECTIVE DATE:  
June 25, 2010

AMENDED:

**Chapter 3: ELIGIBILITY REQUIREMENTS FOR SPECIALIZED CASE TYPES**

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**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.

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**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 Felony. “Serious Violent 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 Felony” includes crimes involving substantially similar conduct in another jurisdiction.
  - C. “Serious Violent 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. Homicide, including OUI manslaughter
  - B. Sex offenses
  - C. Serious violent felonies
  - D. Operating under the influence
  - E. Domestic violence
  - F. Juvenile defense
  - G. Protective custody matters

H. Repealed.

## **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. **Homicide.** In order to be rostered for homicide cases an attorney must:
  - A. Have at least five years of criminal law practice experience;
  - 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;
  - 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;

- 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;
  - E. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with homicide; and
  - 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.
2. **Sex Offenses.** In order to be rostered for sex offense cases an attorney must:
- A. Have at least three years of criminal law practice experience;
  - 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;
  - C. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a sex offense; and
  - 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.
  - E. Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.
3. **Serious Violent Felonies.** In order to be rostered for serious violent felony cases an attorney must:
- A. Have at least two years of criminal law practice experience;
  - 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;
  - C. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a serious violent felony; and

- 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.
  - E. Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.
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;
  - 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;
  - C. Have obtained in the last three years at least four hours of CLE credit on topics relevant particularly to OUI defense;
  - D. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with an OUI; 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 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.
  - F. Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.
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;
  - 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;
  - 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;
  - D. Provide a letter explaining reasons for interest in and qualifications for

representing individuals charged with a domestic violence crime; 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 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.
  - F. Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.
6. **Juvenile Defense.** In order to be rostered for felony, sex offense, and bind-over juvenile defense cases an attorney must:
- A. Repealed.
  - B. For felony cases and sex offense cases:
    - 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:
- 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.

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 Appeals.** In order to be rostered for assignments 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;

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.

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.

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

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.

- F. Letters of reference shall be submitted upon the request of the Executive Director, or his or her designee.
  - G. This rule is not applicable to cases where trial counsel continues on appeal.
10. **Post-Conviction Review.** In order to be rostered for post-conviction review cases an attorney must:
- A. Have at least three years of criminal law experience;
  - 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;
  - 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
  - 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.
  - E. Letters of reference and writing samples shall also be submitted upon the request of the Executive Director, or his or her designee.

#### **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.

2. An attorney may apply for a conditional waiver if additional time is needed to meet CLE requirements.
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.

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

EFFECTIVE DATE:

July 8, 2011

AMENDED:

June 10, 2016 – filing 2016-091

**(5.)**

**Pre-Arraignment  
Assignments**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**TO:** MCILS COMMISSIONERS  
**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR  
**CC:** ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR  
**SUBJECT:** PRE-ARRAIGNMENT ASSIGNMENTS  
**DATE:** SEPTEMBER 2, 2020

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On August 26, 2020, I attended a meeting with the Judicial Branch Trial Chiefs and Andrew Robinson, President of the Maine Prosecutors Association and District Attorney for Androscoggin, Oxford, and Franklin Counties (Region 3). As you will recall, at the Commission's urging, the Judicial Branch had implemented a pilot project in Region 3 under which defendants were assigned counsel prior to arraignment in both risk of jail and non-risk of jail cases. The goals of the program were to provide early, effective representation to people awaiting a court date on a summons. Early assignment also addressed, to some extent, the issue of prosecutor communication with pro se defendants.

The August 26<sup>th</sup> meeting addressed how the pilot project was going and whether to make the project statewide. It was clear from the discussion that the Judicial Branch was not inclined to continue to make assignments in non-risk of jail cases. Doing so proved to be extremely time-consuming for clerk's offices, and given the State's budget situation, the court was uncomfortable making assignments in cases where representation at state expense was not required.

From the MCILS perspective, lawyers were instructed to bill for work in non-risk of jail cases using the Lawyer of the Day Walk-In case type. As a result, costs for that case type in August, \$54, 127, were more than twice the average monthly total for the last year, \$23,287, and the pilot only applied to one of 8 prosecutorial regions. It appears clear that the Commission could not sustain a statewide expansion of pre-arraignment assignments in non-risk of jail cases.

Early assignment in the risk of jail cases, however, did not seem to have a significant budget impact. The Trial Chiefs will be making a determination whether to expand the project statewide for risk of jail cases. They wanted to ensure, however, that for the non-risk of jail cases where people will appear in court for arraignment in the usual manner, the Commission would continue to provide a single Lawyer of the Day to assist with those cases.

**(6.)**

**Samples of Complaints  
about Attorneys -  
Executive Session Required**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**TO:** MCILS COMMISSIONERS  
**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR  
**CC:** ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR  
**SUBJECT:** COMPLAINT SAMPLE  
**DATE:** SEPTEMBER 3, 2020

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At its meeting in June, the Commission discussed the process for handling complaints about attorneys. To aid in determining whether changes should be implemented, the Commission requested that the staff put together a sample of complaints that have been resolved in the past, and hence, would not be generating appeals for review by the full Commission.

The sample contains information that is confidential by statute. It will be transmitted separately from the packet and discussed in executive session.

**(7.)**

**Training RFP Discussion –  
Executive Session Required**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**TO:** MCILS COMMISSIONERS  
**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR  
**CC:** ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR  
**SUBJECT:** TRAINING RFP  
**DATE:** SEPTEMBER 3, 2020

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As discussed at the last meeting, we had one submission in response to our Request for Proposals for a 5-day comprehensive training. Prior to any award being made, the proposal is confidential. It will be transmitted separately from the packet and discussed in executive session.