MCILS

August 30, 2021 Commissioner's Meeting Packet

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

AUGUST 30, 2021

COMMISSION MEETING

AGENDA

1) Approval of the corrected June 28 and July 27, 2021 Commission Meeting Minutes
2) Report of the Executive Director
    a. Operations Report
    b. Attorney Attrition and Survey Results
    c. MCILS / AOC Memorandum of Understanding (MOU)
    d. Oversight
    e. Retained Cases v. Appointed Cases
    f. Policy as to Appointments, Billing Systems, and Payment
    g. MCILS Early Counsel Intervention (no handout)
    h. Staffing – Screeners and Office Staff (no handout)
3) Budget Update
4) OPEGA Quarterly Update Discussion
5) Chapter 301 Rulemaking Discussion
6) Remote Attendance Policy Discussion
7) Collaborative Court / Case Flow Management Project
8) Strategic Planning Discussion (supplemental budget request)

9) RFP for Case Management Software Update

10) Recruitment & Retention Subcommittee Update (Mary Z's emailed update)

11) NACDL survey

12) Set Date, Time and Location of Next Regular Meeting of the Commission

13) Public Comment

14) Executive Session

Maine Commission on Indigent Legal Services – Commissioners Meeting
June 28, 2021

Minutes

Commissioners Present by Zoom: Donald Alexander, Meegan Burbank, Michael Carey, Robert Cummins, Roger Katz, Matthew Morgan, Ronald Schneider, Joshua Tardy
MCILS Staff Present: Justin Andrus, Ellie Maciag

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Approval of May 24 and June 7, 2021 Commission meeting minutes	No discussion.	Commissioner Katz moved to approve. Commissioner Carey seconded. All voted in favor. Approved.
Report of the Executive Director	Director Andrus gave an update on the case total trend, noting that cases are increasing but the average price per voucher is down slightly. Director Andrus identified an issue with the way the average voucher price is reported since it includes companion vouchers with only nominal time listed (open/close file). Director Andrus hopes to provide weighted average data for next month's meeting. Director Andrus again relayed that some courts are having difficulty staffing cases and expressed hope that the increase to the hourly rate to $80 might draw some attorneys back to the rosters. Director Andrus will be meeting with the Trial Chiefs, Chief Justice and DA's to discuss issues and will include attorney scheduling on the agenda. Commissioner Alexander noted that rostered attorneys have been disrespected by statements made by a representative from the Sixth Amendment Center at last Friday's MSBA CLE and also by statements of several Commissioners at legislative hearings. Commissioner Alexander stated that he respects and values our rostered attorneys and urged the Commission to fix the impression that may have been left by some comments. Commissioner Schneider stated that the Commission does not know	

Maine Commission on Indigent Legal Services – Commissioners Meeting
July 27, 2021

Minutes

Commissioners Present by Zoom: Donald Alexander, Meegan Burbank, Michael Carey, Robert Cummins, Roger Katz, Ronald Schneider, Joshua Tardy, Mary Zmigrodski
MCILS Staff Present: Justin Andrus, Ellie Maciag

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Approval of June 28 and July 12, 2021 Commission meeting minutes	Commissioner Alexander requested the June 28 meeting minutes be amended to correct his statement about disrespectful comments made by several Commissioners, occurring not at the MSBA CLE but at a prior legislative hearing.	Commissioner Cummins moved to approve July 12 and June 28 minutes as amended. Commissioner Katz seconded. All voted in favor. Chair Tardy absent for the vote. Approved.
Executive Director Announcement	Commissioner Carey announced that Interim Executive Director Justin Andrus has accepted the position on a permanent basis effective September 1.	
Report of the Executive Director	Director Andrus gave an update on operations and the status of the new positions authorized in the supplemental budget. Staff is waiting on HR approval before advertising the positions. Staff is also in the process of filling two financial screener vacancies. Director Andrus alerted the Commission about the new case surge he was seeing in the case data and reported that he is still working on weighted case average statistics. Commissioner Katz inquired about the percentage of retained verses appointed cases and Director Andrus will work to get that data for the next meeting. Director Andrus relayed that prosecutors	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	have been telling pro se defendants to call the Commission following the legislative prohibition on discussions between prosecutors and uncounseled defendants. Commissioner Alexander sees this legislative change as a significant issue since it cuts off early diversion programs and is a significant change in the process. Director Andrus reported that the Commission is still losing attorneys from the rosters, with a significant number of people leaving due to heavy caseloads, exacerbated by the court's discontinuation of electronic filing and return to in-person court appearances. Director Andrus noted that there have been some significant delays in appointments and that he has been passing along those issues to the Judicial Branch. He added that these huge surge in case assignments when the court clears its backlog leads to attorney caseload stress and attorneys needing to come off the rosters.	
Budget Update	The Legislature appropriated $4 million in COVID relief funds due to the case surge cause by the pandemic. The funds will be available starting in October.	
OPEGA Quarterly Update Discussion	The next Commission quarterly update for Government Oversight will be on September 8. Director Andrus noted that OPEGA is continuing its work on the financial screener function. Director Andrus has requested the assistance of external groups (prosecutors, courts, Overseers) to have formal reporting structures in place to provide information to the Commission on attorney performance issues.	
Attorney Forum/Court Discussion Update	Director Andrus reported that he had an excellent meeting with the court, prosecutors and MACDL in June and another follow up meeting with the Trial Chiefs and the Chief Justice. The Trial Chiefs requested the Commission provide specific examples of issues it was seeing. Director Andrus reported that he hosted an attorney forum to hear directly from attorneys about issues and concerns to relay to the court.	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Chapter 301 Rulemaking Discussion & Rulemaking Regulatory Agenda	Staff gave a short update on the status of Chapter 301; the emergency rule has been submitted to the Secretary of State's Office and the Commission has 12 months to adopt a permanent rule. A discussion ensued about future rulemaking priorities, including financial oversight and the process for attorney evaluation and oversight.	
Update on New Attorney Training Program	Director Andrus reported that the new attorney training set for this fall will likely be done in person and that the track system was eliminated so an attorney completing the training will be eligible for all three case types – adult criminal, juvenile criminal, and child protection.	
Remote Attendance Policy Discussion	AAG Hudson-MacRae explained 1 MRS 403(B) requires an agency to adopt a policy on remote participation by a commission member. AAG Hudson-MacRae noted that nothing prohibits remote public participation, however. She suggested providing notice akin to public notice for rulemaking. Commissioner Katz suggested adding the ability of the chair to call for a remote meeting if in their discretion public safety issues are at play. Commissioner Carey questioned whether the policy should extend to executive staff so as to not bind staff who work remotely to attend in person, suggesting instead to make it optional. Commissioner Schneider questioned whether the Commission has the technological ability to conduct remote proceedings so that a remote participant can properly hear the discussions. Director Andrus will revise the draft policy and solicit public comment.	
Strategic Planning Discussion	Director Andrus updated the Commission on the status of attorney-client jail call recording issue and indicated that he hoped the Commission would ask for some legislation on the issue for the upcoming session. Director Andrus relayed that he had received a report from an attorney that the Maine State Prison is still recording attorney-client telephone calls and that the attorney must assert privilege at the beginning of the conversation.	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
RFP for Case Management Software	Director Andrus gave an overview of the draft RFP for a case management software and requested any Commissioner feedback. Director Andrus related that he had sought feedback from current attorney users on aspects of the current system that they would like to see improved.	
Appeal	The Commission has received a notice of appeal of an attorney suspension, and Chair Tardy designated Commissioner Katz as the presiding officer and Deputy Director Maciag as the MCILS advisor.	
Public Comment	Attorney Robert Ruffner: Attorney Ruffner encouraged the Commission to maintain the option for remote participation for members of the public since otherwise the Commission would lose out on more diverse information. Attorney Ruffner urged the Commission to have a client-centered focus in all its work. Attorney Ruffner attributed some fault to the LOD for assignment delays. Attorney Cory McKenna: Attorney McKenna asked the Commission to revisit the idea of more frequent billing cycles. Attorney McKenna agreed with Attorney Ruffner's comment urging the Commission to retain remote public participation once the Commission returns to in-person meetings. Attorney McKenna cautioned that attorney caseloads are ballooning and urged the Commission to find ways to get new attorneys to the roster, including mentorship opportunities. Attorney Tina Nadeau: Attorney Nadeau urged the Commission to consider the rules former Commissioner LeBrasseur's working group drafted. Attorney Nadeau noted that the new attorney training budget was $97k and encouraged the Commission to also focus on training for existing rostered attorneys and provide it at no cost.	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	Attorney Chris Guillory: Attorney Guillory noted that virtual meetings are very useful. Attorney Guillory voiced his concern over the health of the rosters (age, morale, and fatigue) and asked whether there were any Commission initiatives to recruit some attorneys back the rosters.	
Executive Session	Commissioner Carey moved to go into executive session pursuant to 1 MRS section 405(6)(e) to discuss its legal rights and duties with counsel. Commissioner Alexander seconded. No votes taken.	
Adjournment of meeting	The next meeting will be held in person on August 30, 2021 at 9:00 am.	

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS

FROM: JUSTIN ANDRUS, (INTERIM) EXECUTIVE DIRECTOR

SUBJECT: OPERATIONS REPORTS

DATE: August 24, 2021

Attached you will find the July 2021, Operations Reports for your review and our discussion at the Commission meeting on August 30, 2021. A summary of the operations reports follows:

- 2,800 new cases were opened in the DefenderData system in July. This was a 276 case increase from June. Year to date, new cases are up 8% from 2,591 at this time last year to 2,800 this year.

- The number of vouchers submitted electronically in July was 2,599 an increase of 28 vouchers from June, totaling $1,309,611, an increase of $120,551 over June. Year to date, the number of submitted vouchers is down by approximately 9%, from 2,860 at this time last year to 2,599 this year, with the total amount for submitted vouchers down 12%, from $1,489,000 at this time last year to $1,309,611 this year.

- In July, we paid 2,205 electronic vouchers totaling $1,133,721, representing a decrease of 1,401 vouchers and a decrease of $532,059 compared to June. Year to date, the number of paid vouchers is up approximately 28%, from 1,714 at this time last year to 2,205 this year, and the total amount paid is up approximately 28%, from $884,854 this time last year to $1,133,721 this year.

- We paid no paper vouchers in July.

- The average price per voucher in July was $514.16, up $52.21 per voucher from July. Year to date, the average price per voucher is up approximately 7.1%, from $480.12 at this time last year to $514.46 this year.

- Drug Court and Post-Conviction Review cases had the highest average voucher in July. There were 15 vouchers exceeding $5,000 paid in July. See attached addendum for details.

- In July, we issued 70 authorizations to expend funds: 36 for private investigators, 27 for experts, and 7 for miscellaneous services such as interpreters and transcriptionists. In July, we paid $35,918.13 for experts and investigators, etc. One request for funds was denied.

- In July, we opened 2 attorney investigations and 5 attorneys were suspended (CLE).

- In July, we approved 3 requests for co-counsel.

In our All Other Account, the total expenses for the month of July were $1,188,459. During July, approximately $18,773 was devoted to the Commission's operating expenses.

In the Personal Services Account, we had $74,728 in expenses for the month of July.

In the Revenue Account, the transfer from the Judicial Branch for July, reflecting June's collections, totaled $100,206, an increase of approximately $23,488 from the previous month.

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

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY22 FUND ACCOUNTING
AS OF 07/31/2021

Account 010 95F Z112 01 (All Other)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY22 Total
FY22 Professional Services Allotment		$ 5,153,983.00		$ 4,940,737.00		$ 4,940,737.00		$ 423,013.00	
FY22 General Operations Allotment		$ 48,000.00		$ 48,000.00		$ 48,000.00		$ 48,000.00	
FY21 Encumbered Balance Forward		$ 128,745.00		$ -		$ -		$ -	
Budget Order Adjustment		$ -		$ -		$ -		$ -	
Supplemental Budget Allotment		$ -		$ -		$ -		$ -	
Financial Order Unencumbered Balance Fwd		$ -		$ -		$ -		$ -	
FY21 Unobligated Carry Forward		$ 495,733.30		$ -		$ -		$ -	$ 495,733.30
Total Budget Allotments		**$ 5,201,983.00**		**$ 4,988,737.00**		**$ 4,988,737.00**		**$ 471,013.00**	**$ 16,146,203.30**
Total Expenses	1	$ (1,188,459.32)	4	$ -	7	$ -	10	$ -	
	2	$ -	5	$ -	8	$ -	11	$ -	
	3	$ -	6	$ -	9	$ -	12	$ -	
Encumbrances (Justice Works)		$ (3,552.50)		$ -		$ -		$ -	$ (3,552.50)
Encumbrances (B Taylor)		$ (22,100.00)		$ -		$ -		$ -	$ (22,100.00)
Encumbrances (CTB for non attorney expenses)		$ (864,081.87)		$ -		$ -		$ -	$ (864,081.87)
Encumbrance (Jamesa Drake training contract)		$ (92,400.00)		$ -		$ -		$ -	$ (92,400.00)
TOTAL REMAINING		**$ 3,031,389.31**		**$ 4,988,737.00**		**$ 4,988,737.00**		**$ 471,013.00**	**$ 13,975,609.61**

Q1 Month 1		
INDIGENT LEGAL SERVICES		
Counsel Payments	$	(1,133,767.59)
Interpreters	$	(967.50)
Private Investigators	$	(4,351.32)
Mental Health Expert	$	(1,475.00)
Misc Prof Fees & Serv	$	-
Transcripts	$	(15,059.68)
Other Expert	$	(13,637.50)
Process Servers	$	(427.13)
Subpoena Witness Fees	$	-
Out of State Witness Travel	$	-
SUB-TOTAL ILS	**$**	**(1,169,685.72)**
OPERATING EXPENSES		
Service Center	$	(1,829.25)
DefenderData	$	(6,272.50)
Parking Permit Annual Fee	$	-
Mileage/Tolls/Parking	$	(609.30)
Mailing/Postage/Freight	$	(52.19)
West Publishing Corp	$	(211.96)
Risk Management Insurances	$	(2,193.08)
Office Supplies/Eqp.	$	(128.15)
Cellular Phones	$	(397.24)
OIT/TELCO	$	(2,334.15)
Office Equipment Rental	$	(100.78)
Training Videographer	$	-
Barbara Taylor monthly fees	$	(4,420.00)
Meter Postage Cards Printing	$	-
Dues	$	(225.00)
SUB-TOTAL OE	**$**	**(18,773.60)**
TOTAL	**$**	**(1,188,459.32)**

INDIGENT LEGAL SERVICES		
Q1 Allotment	$	5,201,983.00
Q1 Encumbrances for Justice Works contract	$	(3,552.50)
Barbara Taylor Contract	$	(22,100.00)
CTB Encumbrance for non attorney expenses	$	(864,081.87)
Q1 Jamesa Drake training contract	$	(92,400.00)
Q1 Expenses to date	$	(1,188,459.32)
Remaining Q1 Allotment	**$**	**3,031,389.31**

Non-Counsel Indigent Legal Services		
Monthly Total	$	(35,918.13)
Total Q1	$	35,918.13
Total Q2	$	-
Total Q3	$	-
Total Q4	$	-
Fiscal Year Total	**$**	**35,918.13**

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

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY22 FUND ACCOUNTING
AS OF 07/31/2021

Account 010 95F Z112 01 (Personal Services)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY20 Total
FY22 Allotment		$ 285,846.00		$ 223,990.00		$ 254,914.00		$ 162,917.00	$ 927,667.00
Financial Order Adjustments		$ -		$ -		$ -		$ -	
Financial Order Adjustments		$ -		$ -		$ -		$ -	
Budget Order Adjustments		$ -		$ -		$ -		$ -	
Total Budget Allotments		**$ 285,846.00**		**$ 223,990.00**		**$ 254,914.00**		**$ 162,917.00**	**$ 927,667.00**
Total Expenses	1	$ (74,728.63)	4	$ -	7	$ -	10	$ -	
	2	$ -	5	$ -	8	$ -	11	$ -	
	3	$ -	6	$ -	9	$ -	12	$ -	
TOTAL REMAINING		**$ 211,117.37**		**$ 223,990.00**		**$ 254,914.00**		**$ 162,917.00**	**$ 852,938.37**

Q1 Month 1	
Per Diem	$ (330.00)
Salary	$ (35,050.36)
Vacation Pay	$ (3,129.84)
Holiday Pay	$ (2,275.55)
Sick Pay	$ (1,029.46)
Empl Hlth SVS/Worker Comp	$ -
Health Insurance	$ (12,192.16)
Dental Insurance	$ (321.20)
Employer Retiree Health	$ (4,163.41)
Employer Retirement	$ (2,591.38)
Employer Group Life	$ (394.40)
Employer Medicare	$ (616.31)
Retiree Unfunded Liability	$ (8,267.20)
Longevity Pay	$ (160.00)
Perm Part Time Full Ben	$ (4,207.36)
Premium & Standard OT	$ -
Retro Lump Sum Pymt	$ -
TOTAL	**$ (74,728.63)**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY22 FUND ACCOUNTING
As of 07/31/2021

Account 014 95F Z112 01 (Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY20 Total
Total Budget Allotments		**$ 275,000.00**		**$ 275,000.00**		**$ 275,000.00**		**$ 275,000.00**	**$ 1,100,000.00**
Financial Order Adjustment	1	$ -	4	$ -	7	$ -	10	$ -	
Financial Order Adjustment	2	$ -	5	$ -	8	$ -	11		
Budget Order Adjustment	3	$ -	6	$ -	9	$ -	12	$ -	
Budget Order Adjustment		$ -		$ -		$ -		$ -	$ -
Total Budget Allotments		**$ 275,000.00**		**$ 275,000.00**		**$ 275,000.00**		**$ 275,000.00**	**$ 1,100,000.00**
Cash Carryover from Prior Quarter		$ 884,522.69		$ -		$ -		$ -	
Collected Revenue from JB	1	$ 100,206.73	4	$ -	7	$ -	10	$ -	
Collected from McIntosh Law		$ 6,000.00		$ -		$ -		$ -	
Collected for reimbursement of counsel fees		$ 2,167.00	5	$ -	8	$ -		$ -	
Asset Forfeiture		$ 3,334.00	5	$ -		$ -		$ -	
Victim Services Restitution		$ 1,020.00	5	$ -		$ -		$ -	
Collected Revenue from JB	2	$ -		$ -		$ -	11	$ -	
Collected from McIntosh Law		$ -		$ -		$ -		$ -	
Collected from McIntosh Law	3	$ -	6	$ -	9	$ -	12	$ -	
Collected for reimbursement of counsel fees		$ -		$ -		$ -		$ -	
Collected from ME Ctr Public Int Reporting		$ -		$ -		$ -		$ -	
Collected Revenue from JB		$ -		$ -		$ -		$ -	
Returned Checks-stopped payments		$ -		$ -		$ -		$ -	
TOTAL CASH PLUS REVENUE COLLECTED		**$ 112,727.73**		**$ -**		**$ -**		**$ -**	**$ 112,727.73**
Counsel Payments	1	$ -	4	$ -	7	$ -	10	$ -	
Other Expenses		$ -		$ -		$ -	***	$ -	
Counsel Payments	2	$ -	5	$ -	8	$ -	11		
Other Expenses		$ -		$ -				$ -	
Counsel Payments	3	$ -	6	$ -	9	$ -	12		
State Cap for period 11 expenses	*	**$ -**	**	**$ -**	***	**$ -**			
REMAINING ALLOTMENT		**$ 275,000.00**		**$ 275,000.00**		**$ 275,000.00**		**$ 275,000.00**	**$ 1,100,000.00**
Overpayment Reimbursements	1	$ -	4	$ -	7	$ -	10	$ -	
	2	$ -	5	$ -	8	$ -	11	$ -	
	3	$ -	6	$ -	9	$ -	12	$ -	
REMAINING CASH Year to Date		**$ 112,727.73**		**$ -**		**$ -**		**$ -**	**$ 112,727.73**

Collections versus Allotment	
Monthly Total	$ 112,727.73
Total Q1	$ 112,727.73
Total Q2	$ -
Total Q3	$ -
Total Q4	$ -
Expenses to Date	$ -
Fiscal Year Total	**$ 112,727.73**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Case Type

7/31/2021

	Jul-21						Fiscal Year 2022			
DefenderData Case Type	**New Cases**	**Vouchers Submitted**	**Submitted Amount**	**Vouchers Paid**	**Approved Amount**	**Average Amount**	**Cases Opened**	**Vouchers Paid**	**Amount Paid**	**Average Amount**
Appeal	10	13	$ 20,316.02	9	$ 10,743.13	$ 1,193.68	10	9	$ 10,743.13	$ 1,193.68
Child Protection Petition	226	395	$ 274,766.19	332	$ 238,797.86	$ 719.27	226	332	$ 238,797.86	$ 719.27
Drug Court	2	7	$ 8,432.00	8	$ 11,294.00	$ 1,411.75	2	8	$ 11,294.00	$ 1,411.75
Emancipation	4	2	$ 468.00	1	$ 52.00	$ 52.00	4	1	$ 52.00	$ 52.00
Felony	754	552	$ 401,751.60	451	$ 365,780.08	$ 811.04	754	451	$ 365,780.08	$ 811.04
Involuntary Civil Commitment	104	124	$ 25,979.54	108	$ 21,352.16	$ 197.71	104	108	$ 21,352.16	$ 197.71
Juvenile	31	50	$ 29,823.26	50	$ 30,899.26	$ 617.99	31	50	$ 30,899.26	$ 617.99
Lawyer of the Day - Custody	244	238	$ 70,275.08	246	$ 72,220.68	$ 293.58	244	246	$ 72,220.68	$ 293.58
Lawyer of the Day - Juvenile	19	28	$ 6,416.74	23	$ 5,626.74	$ 244.64	19	23	$ 5,626.74	$ 244.64
Lawyer of the Day - Walk-in	156	157	$ 45,320.22	164	$ 46,436.34	$ 283.15	156	164	$ 46,436.34	$ 283.15
Misdemeanor	1,030	705	$ 249,904.64	554	$ 194,378.87	$ 350.86	1,030	554	$ 194,378.87	$ 350.86
Petition, Modified Release Treatment	0	6	$ 2,441.62	6	$ 2,441.62	$ 406.94	0	6	$ 2,441.62	$ 406.94
Petition, Release or Discharge	0	1	$ 546.05	1	$ 546.05	$ 546.05	0	1	$ 546.05	$ 546.05
Petition,Termination of Parental Rights	22	47	$ 41,286.27	34	$ 32,372.59	$ 952.14	22	34	$ 32,372.59	$ 952.14
Post Conviction Review	10	3	$ 12,573.77	2	$ 7,794.93	$ 3,897.47	10	2	$ 7,794.93	$ 3,897.47
Probate	5	2	$ 842.00	0			5	0		
Probation Violation	139	110	$ 41,547.44	91	$ 33,730.86	$ 370.67	139	91	$ 33,730.86	$ 370.67
Represent Witness on 5th Amendment	3	4	$ 1,657.36	0			3	0		
Resource Counsel Criminal	0	2	$ 352.00	2	$ 312.00	$ 156.00	0	2	$ 312.00	$ 156.00
Resource Counsel Juvenile	0	1	$ 66.00	1	$ 66.00	$ 66.00	0	1	$ 66.00	$ 66.00
Resource Counsel Protective Custody	0	0		0			0	0		
Review of Child Protection Order	39	152	$ 74,845.98	122	$ 58,876.42	$ 482.59	39	122	$ 58,876.42	$ 482.59
Revocation of Administrative Release	2	0		0			2	0		
DefenderData Sub-Total	**2,800**	**2,599**	**$ 1,309,611.78**	**2,205**	**$ 1,133,721.59**	**$ 514.16**	**2,800**	**2,205**	**$ 1,133,721.59**	**$ 514.16**
Paper Voucher Sub-Total										
TOTAL	**2,800**	**2,599**	**$1,309,611.78**	**2,205**	**$1,133,721.59**	**$ 514.16**	**2,800**	**2,205**	**$ 1,133,721.59**	**$ 514.16**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Court

7/31/2021

	Jul-21						Fiscal Year 2022			
Court	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
ALFSC	7	4	$ 3,436.00	5	$ 3,311.00	$ 662.20	7	5	$ 3,311.00	$662.20
AUBSC	4	1	$ 352.00	1	$ 352.00	$ 352.00	4	1	$ 352.00	$352.00
AUGDC	38	50	$ 31,465.83	42	$ 28,359.83	$ 675.23	38	42	$ 28,359.83	$675.23
AUGSC	3	7	$ 2,987.67	7	$ 2,987.67	$ 426.81	3	7	$ 2,987.67	$426.81
BANDC	60	107	$ 28,584.00	82	$ 18,674.00	$ 227.73	60	82	$ 18,674.00	$227.73
BANSC	1	0		0			1	0		
BATSC	0	0		0			0	0		
BELDC	10	28	$ 20,916.54	26	$ 19,570.94	$ 752.73	10	26	$ 19,570.94	$752.73
BELSC	0	0		0			0	0		
BIDDC	41	72	$ 40,034.98	58	$ 24,382.83	$ 420.39	41	58	$ 24,382.83	$420.39
BRIDC	18	15	$ 5,885.80	12	$ 4,773.92	$ 397.83	18	12	$ 4,773.92	$397.83
CALDC	0	7	$ 2,514.00	6	$ 2,398.00	$ 399.67	0	6	$ 2,398.00	$399.67
CARDC	6	28	$ 18,579.41	25	$ 16,114.41	$ 644.58	6	25	$ 16,114.41	$644.58
CARSC	2	0		0			2	0		
DOVDC	8	11	$ 4,487.28	10	$ 3,240.72	$ 324.07	8	10	$ 3,240.72	$324.07
DOVSC	0	0		0			0	0		
ELLDC	11	32	$ 33,011.52	25	$ 29,020.00	$ 1,160.80	11	25	$ 29,020.00	$1,160.80
ELLSC	0	0		0			0	0		
FARDC	6	12	$ 5,895.86	9	$ 3,623.86	$ 402.65	6	9	$ 3,623.86	$402.65
FARSC	0	0		0			0	0		
FORDC	8	15	$ 5,586.89	8	$ 3,142.99	$ 392.87	8	8	$ 3,142.99	$392.87
HOUDC	5	14	$ 7,180.62	16	$ 8,550.90	$ 534.43	5	16	$ 8,550.90	$534.43
HOUSC	0	0		0			0	0		
LEWDC	44	81	$ 44,797.12	79	$ 40,792.12	$ 516.36	44	79	$ 40,792.12	$516.36
LINDC	9	16	$ 5,724.32	12	$ 3,649.68	$ 304.14	9	12	$ 3,649.68	$304.14
MACDC	1	5	$ 5,290.00	5	$ 5,290.00	$ 1,058.00	1	5	$ 5,290.00	$1,058.00
MACSC	0	0		0			0	0		
MADDC	0	0		0			0	0		
MILDC	4	5	$ 2,332.00	5	$ 2,332.00	$ 466.40	4	5	$ 2,332.00	$466.40
NEWDC	11	26	$ 9,610.64	23	$ 8,742.64	$ 380.11	11	23	$ 8,742.64	$380.11
PORDC	69	119	$ 68,498.51	101	$ 63,377.02	$ 627.50	69	101	$ 63,377.02	$627.50
PORSC	6	6	$ 1,910.00	5	$ 1,570.00	$ 314.00	6	5	$ 1,570.00	$314.00
PREDC	8	28	$ 16,002.25	23	$ 12,572.57	$ 546.63	8	23	$ 12,572.57	$546.63
ROCDC	20	12	$ 7,355.04	10	$ 6,805.04	$ 680.50	20	10	$ 6,805.04	$680.50
ROCSC	4	1	$ 266.56	0			4	0		
RUMDC	6	20	$ 20,988.88	18	$ 19,341.24	$ 1,074.51	6	18	$ 19,341.24	$1,074.51
SKODC	19	37	$ 21,641.33	33	$ 20,002.03	$ 606.12	19	33	$ 20,002.03	$606.12
SKOSC	4	0		0			4	0		
SOUDC	16	18	$ 31,791.19	11	$ 27,517.19	$ 2,501.56	16	11	$ 27,517.19	$2,501.56
SOUSC	0	0		0			0	0		
SPRDC	19	27	$ 14,324.26	24	$ 13,433.10	$ 559.71	19	24	$ 13,433.10	$559.71
Law Ct	6	10	$ 17,666.41	7	$ 9,613.43	$ 1,373.35	6	7	$ 9,613.43	$1,373.35
YORCD	409	231	$ 133,405.33	212	$ 115,718.95	$ 545.84	409	212	$ 115,718.95	$545.84
AROCD	113	107	$ 41,501.26	77	$ 31,394.48	$ 407.72	113	77	$ 31,394.48	$407.72
ANDCD	197	124	$ 64,763.93	110	$ 56,269.96	$ 511.55	197	110	$ 56,269.96	$511.55
KENCD	233	164	$ 79,259.55	135	$ 72,617.35	$ 537.91	233	135	$ 72,617.35	$537.91
PENCD	251	222	$ 71,188.62	175	$ 85,743.06	$ 489.96	251	175	$ 85,743.06	$489.96
SAGCD	43	34	$ 13,243.70	26	$ 10,504.70	$ 404.03	43	26	$ 10,504.70	$404.03
WALCD	86	53	$ 20,868.95	46	$ 18,239.50	$ 396.51	86	46	$ 18,239.50	$396.51
PISCD	12	12	$ 7,626.93	10	$ 7,113.88	$ 711.39	12	10	$ 7,113.88	$711.39
HANCD	43	31	$ 9,788.00	30	$ 11,538.00	$ 384.60	43	30	$ 11,538.00	$384.60
FRACD	14	29	$ 14,864.64	24	$ 12,101.36	$ 504.22	14	24	$ 12,101.36	$504.22
WASCD	27	51	$ 20,397.84	38	$ 11,565.84	$ 304.36	27	38	$ 11,565.84	$304.36
CUMCD	525	385	$ 212,371.87	340	$ 185,360.28	$ 545.18	525	340	$ 185,360.28	$545.18
KNOCD	81	75	$ 27,718.50	50	$ 19,256.35	$ 385.13	81	50	$ 19,256.35	$385.13
SOMCD	97	75	$ 25,887.10	61	$ 17,277.88	$ 283.24	97	61	$ 17,277.88	$283.24
OXFCD	88	91	$ 44,979.92	85	$ 37,044.28	$ 435.82	88	85	$ 37,044.28	$435.82
LINCD	48	35	$ 13,792.91	39	$ 14,037.99	$ 359.95	48	39	$ 14,037.99	$359.95
WATDC	19	29	$ 14,622.24	25	$ 11,669.02	$ 466.76	19	25	$ 11,669.02	$466.76
WESDC	15	21	$ 8,173.68	19	$ 7,723.68	$ 406.51	15	19	$ 7,723.68	$406.51
WISDC	7	7	$ 3,207.60	5	$ 1,931.60	$ 386.32	7	5	$ 1,931.60	$386.32
WISSC	1	0		0			1	0		
YORDC	17	9	$ 2,832.30	10	$ 3,072.30	$ 307.23	17	10	$ 3,072.30	$307.23
TOTAL	**2,800**	**2,599**	**$ 1,309,611.78**	**2,205**	**$ 1,133,721.59**	**$ 514.16**	**2,800**	**2,205**	**$1,133,721.59**	**$514.16**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Number of Attorneys Rostered by Court

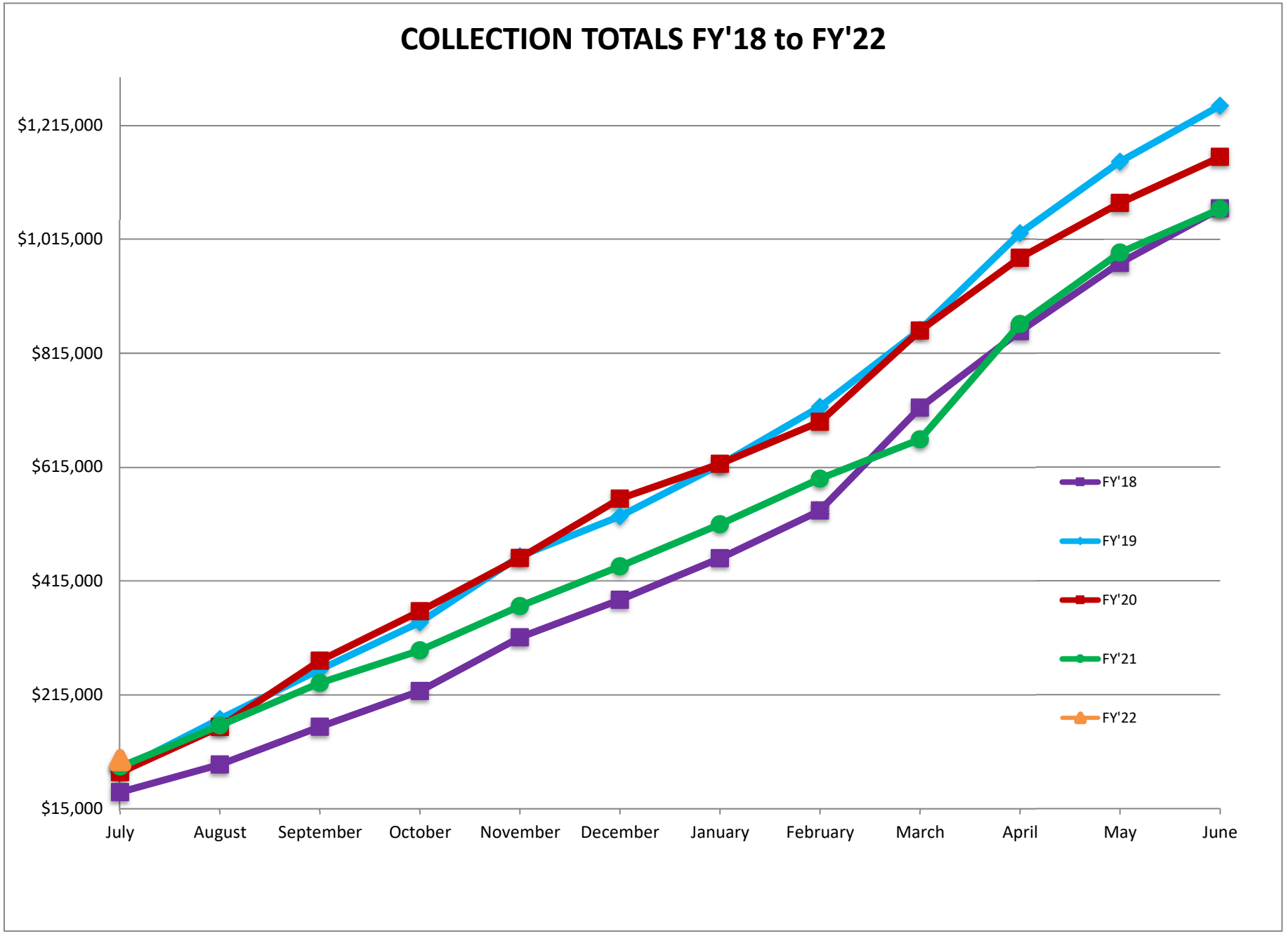
8/3/2021

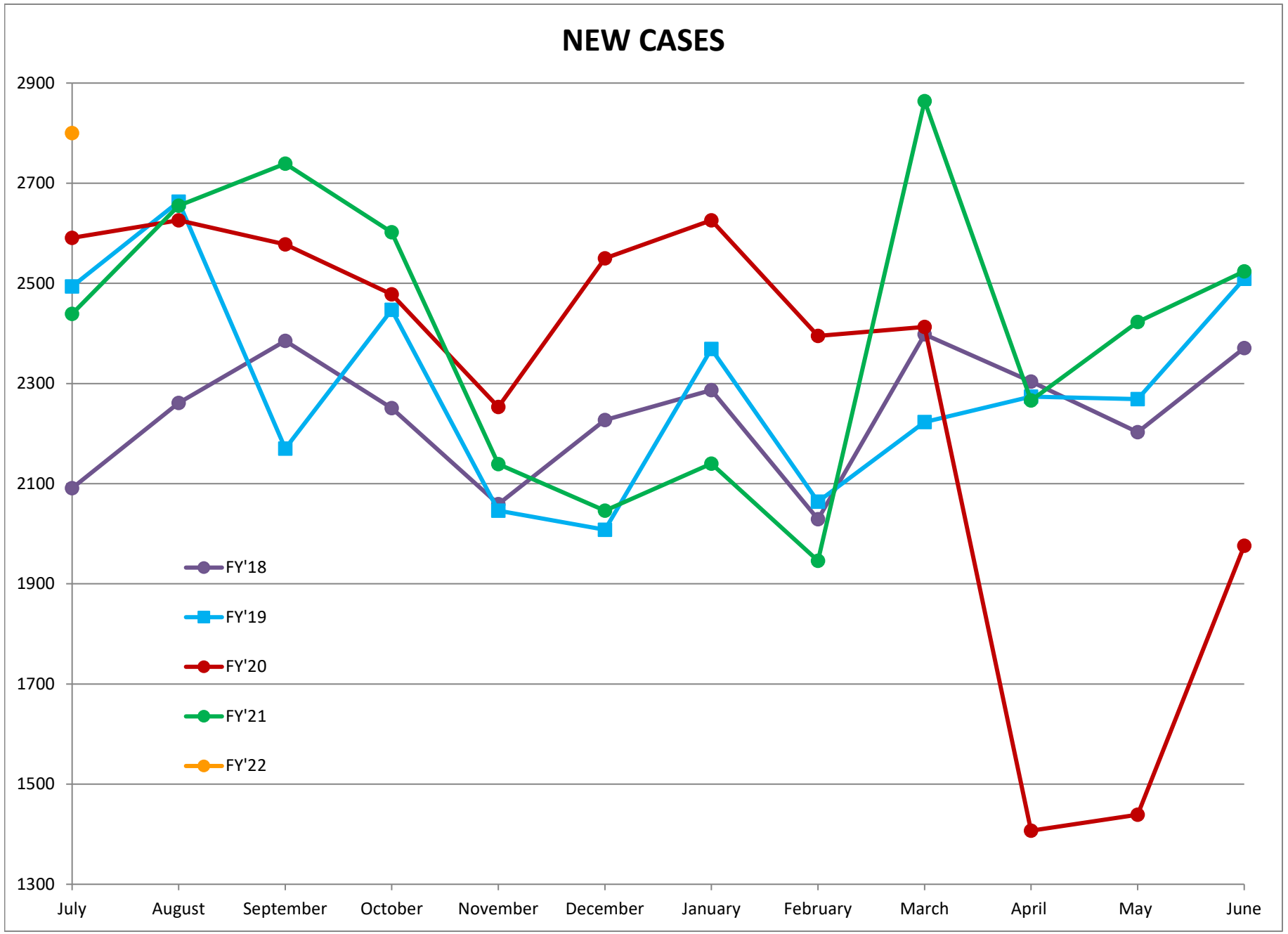
Court	Rostered Attorneys
Augusta District Court	72
Bangor District Court	37
Belfast District Court	35
Biddeford District Court	100
Bridgton District Court	62
Calais District Court	9
Caribou District Court	15
Dover-Foxcroft District Court	23
Ellsworth District Court	28
Farmington District Court	29
Fort Kent District Court	11
Houlton District Court	12
Lewiston District Court	100
Lincoln District Court	20
Machias District Court	14
Madawaska District Court	11
Millinocket District Court	14
Newport District Court	26
Portland District Court	119
Presque Isle District Court	13
Rockland District Court	28
Rumford District Court	20
Skowhegan District Court	19

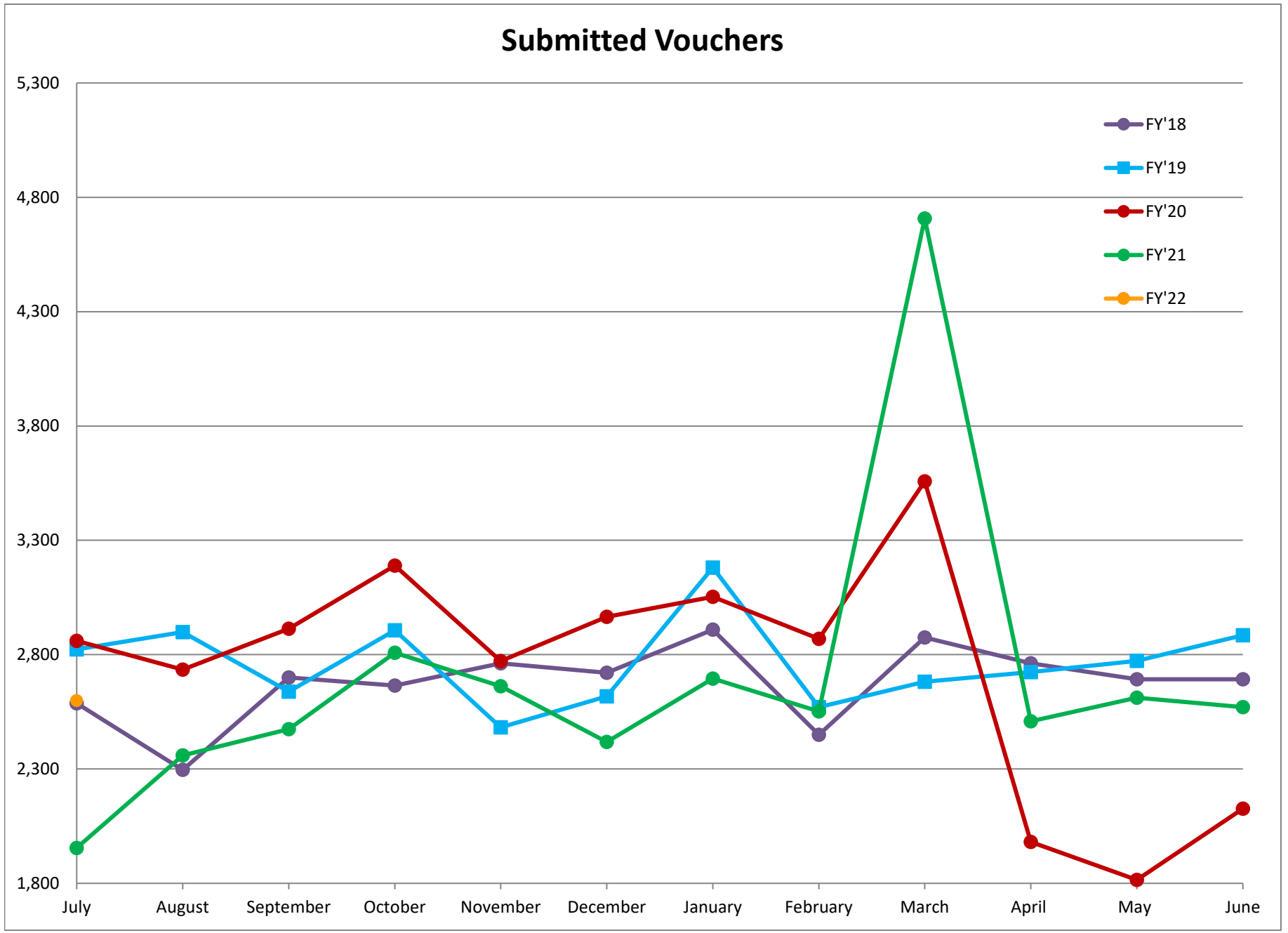
Court	Rostered Attorneys
South Paris District Court	41
Springvale District Court	85
Unified Criminal Docket Alfred	83
Unified Criminal Docket Aroostook	21
Unified Criminal Docket Auburn	81
Unified Criminal Docket Augusta	68
Unified Criminal Docket Bangor	36
Unified Criminal Docket Bath	72
Unified Criminal Docket Belfast	32
Unified Criminal DocketDover Foxcroft	20
Unified Criminal Docket Ellsworth	30
Unified Criminal Docket Farmington	32
Inified Criminal Docket Machias	15
Unified Criminal Docket Portland	118
Unified Criminal Docket Rockland	23
Unified Criminal Docket Skowhegan	20
Unified Criminal Docket South Paris	38
Unified Criminal Docket Wiscassett	44
Waterville District Court	34
West Bath District Court	83
Wiscasset District Court	49
York District Court	78

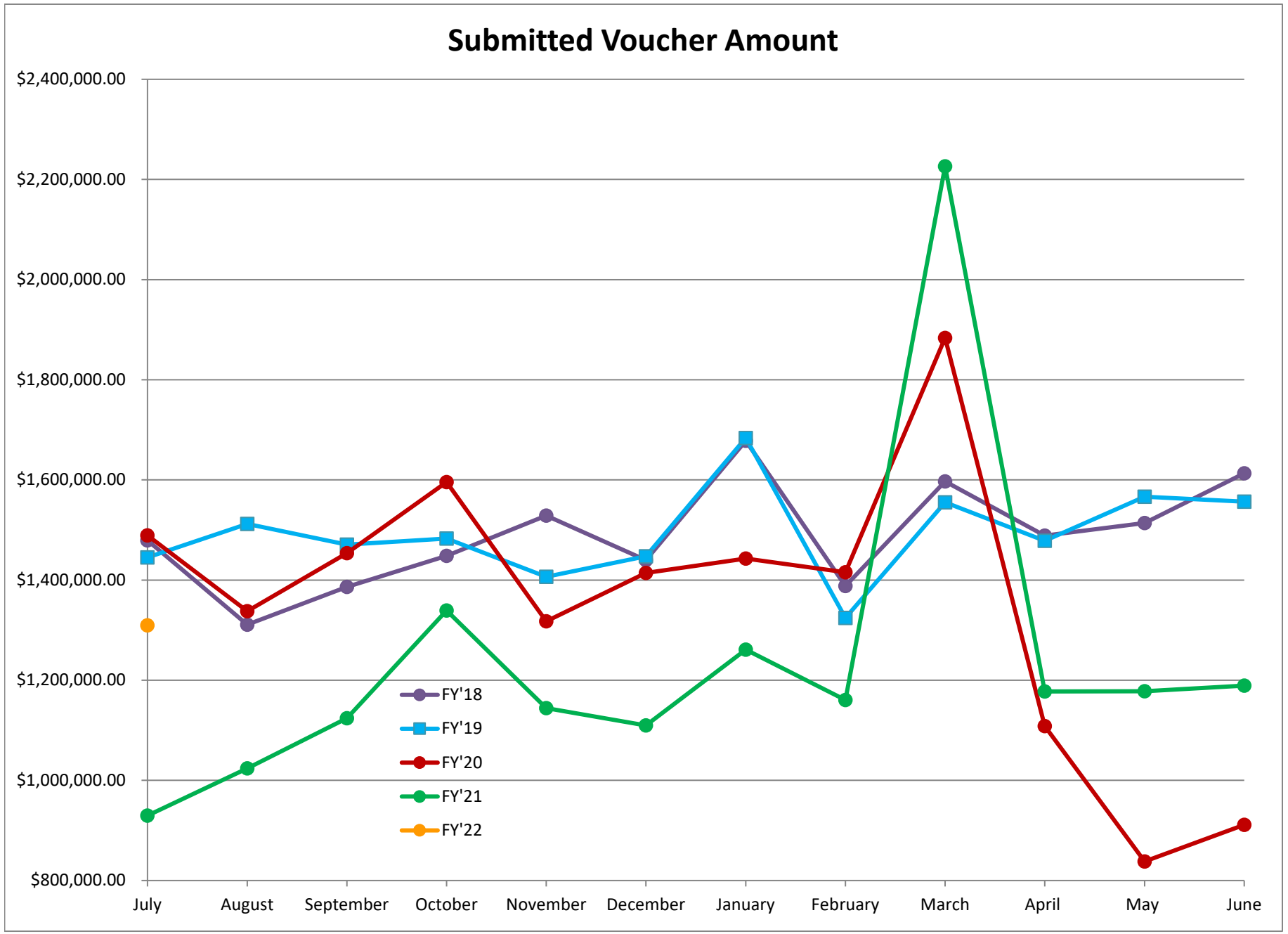
Vouchers over $5,000

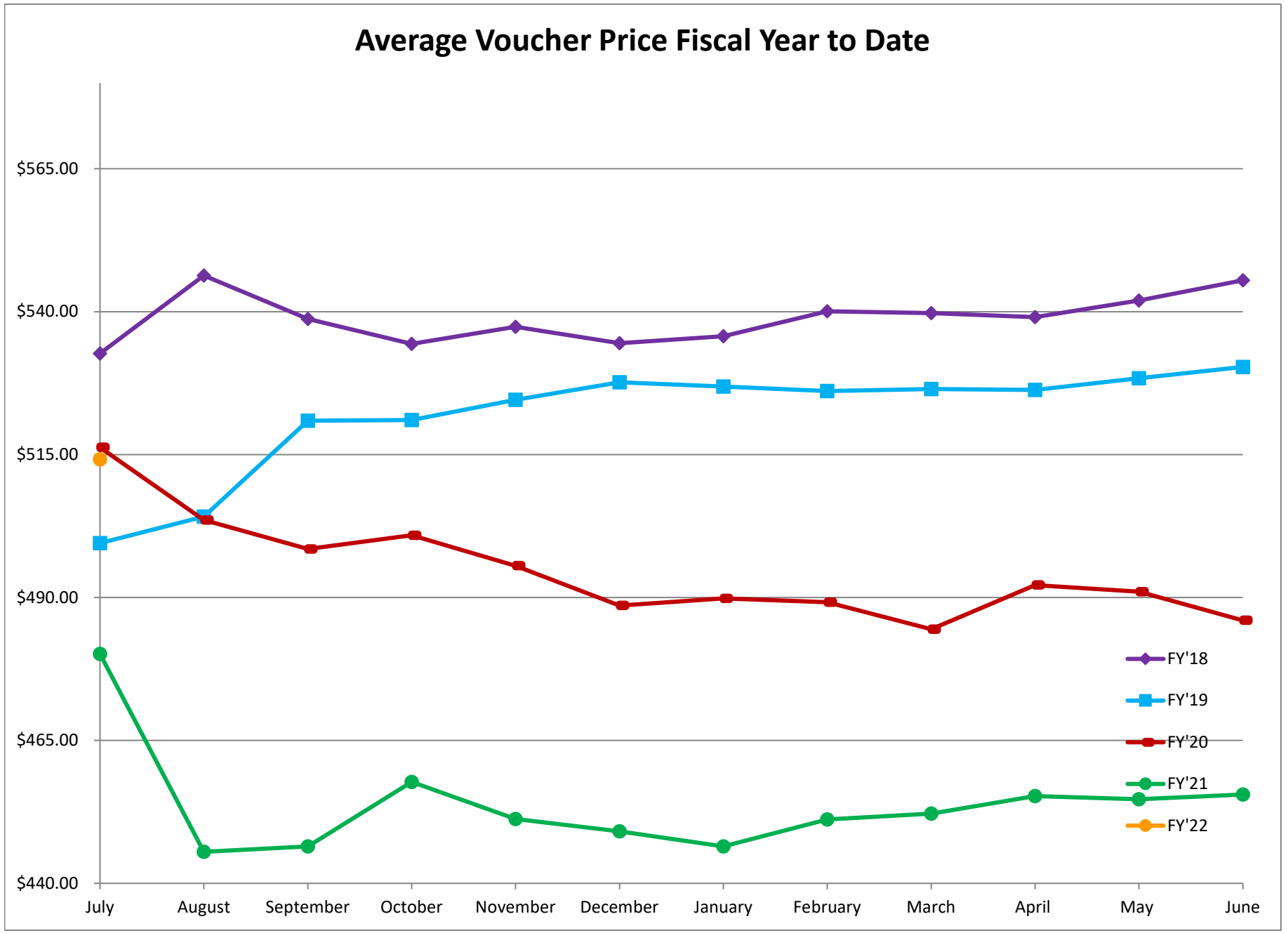
Comment	Voucher Total	Case Total
Murder	$ 22,346.97	$ 22,346.97
Unlawful Sexual Contact	$ 16,801.80	$ 24,821.88
DV Assault/DV Criminal Threatening/Agg Trafficking	$ 11,927.60	$ 11,927.60
Child Protection	$ 10,850.28	$ 10,850.28
Murder	$ 9,504.00	$ 12,258.00
JV Assault and 12 other cases	$ 8,730.00	$ 8,730.00
Manslaughter	$ 7,846.15	$ 7,846.15
Burglary	$ 7,338.93	$ 7,338.93
Child Protection	$ 6,288.00	$ 7,188.00
Murder	$ 6,055.60	$ 6,055.60
Child Protection	$ 5,544.00	$ 14,070.00
Child Protection	$ 5,388.00	$ 12,354.00
Burglary	$ 5,190.00	$ 5,190.00
Child Protection	$ 5,096.40	$ 5,987.40
Termination of Parental Rights	$ 5,036.00	$ 9,572.00

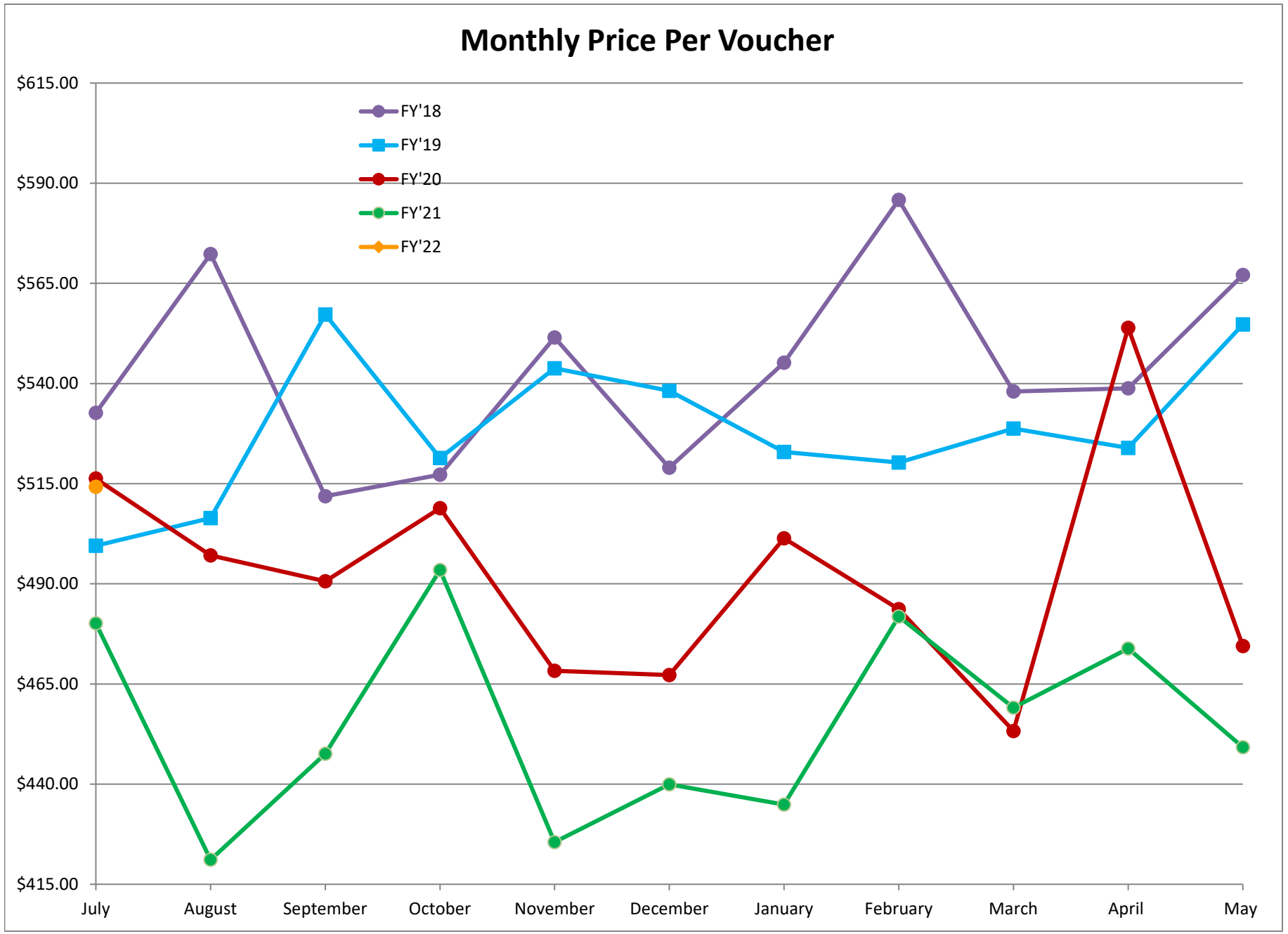

COLLECTION TOTALS FY'18 to FY'22
$1,215,000
$1,015,000
$815,000
$615,000
$415,000
$215,000
$15,000
July
August
September
October
November
December
January
February
March
April
May
June
FY'18
FY'19
FY'20
FY'21
FY'22


NEW CASES
2900
2700
2500
2300
2100
1900
1700
1500
1300
July
August
September
October
November
December
January
February
March
April
May
June
FY'18
FY'19
FY'20
FY'21
FY'22


Submitted Vouchers
5,300
4,800
4,300
3,800
3,300
2,800
2,300
1,800
July
August
September
October
November
December
January
February
March
April
May
June
FY'18
FY'19
FY'20
FY'21
FY'22


Submitted Voucher Amount
$2,400,000.00
$2,200,000.00
$2,000,000.00
$1,800,000.00
$1,600,000.00
$1,400,000.00
$1,200,000.00
$1,000,000.00
$800,000.00
July
August
September
October
November
December
January
February
March
April
May
June
FY'18
FY'19
FY'20
FY'21
FY'22


Average Voucher Price Fiscal Year to Date
$565.00
$540.00
$515.00
$490.00
$465.00
$440.00
July
August
September
October
November
December
January
February
March
April
May
June
FY'18
FY'19
FY'20
FY'21
FY'22


Monthly Price Per Voucher
$615.00
$590.00
$565.00
$540.00
$515.00
$490.00
$465.00
$440.00
$415.00
FY'18
FY'19
FY'20
FY'21
FY'22
July
August
September
October
November
December
January
February
March
April
May

MCILS ATTORNEY ATTRITION

TO: COMMISSION

FROM: JUSTIN ANDRUS, (INTERIM) EXECUTIVE DIRECTOR

SUBJECT: MCILS ATTORNEY ATTRITION

DATE: 8/27/2021

CC: GOC

MCILS has experienced two phases of attorney attrition since January 2021. The first occurred during the winter and early spring as some attorneys who preferred to not amend their practices to comport with changes to MCILS rules and enforcement dropped out, and as those dissatisfied with the payment rate withdrew. We have no indicia at this time that there continue to be lawyers leaving the service for reasons related to rule enforcement. Similarly, the increase in the hourly rate paid to MCILS counsel from $60 to $80 per hour appears to have provided some relief. Although to achieve parity with prosecutors across salary, benefits, overhead, and staff a rate of at least $100 would be necessary, the rate increase appears to have helped support counsel in remaining affiliated with MCILS.

MCILS is now in a second phase of attrition, however. Due to changes in the practice environment, and a surge in the number of new cases, our attorneys are finding that they cannot accept additional cases. They are therefore removing themselves from the rosters of attorneys willing to accept new case. This in turn is causing significant issues for MCILS in providing lists of eligible counsel adequate to permit the Court to make the necessary appointments. Recently MCILS has had to resort to contacting counsel directly to staff cases. In the recent past, this need was limited to counties in northern and eastern Maine. More recently, however, even the Court in Portland has required assistance to staff Child Protective matters.

MCILS surveyed its attorneys in August 2021. The survey responses are appended.

According to Judicial Branch data provided to MCILS on August 11th, criminal cases pending in the Unified Criminal Docket on August 6, 2021 had increased over August 6, 2020, by 23.1% for felony cases, and by 8.9% for misdemeanor cases. This overall increase is troubling from a case-staffing perspective but masks the significance of the issue for specific counties. Felony cases are up by 32.8% in Aroostook County; 45% in Piscataquis County; 60.2% in Waldo County; and, a staggering 75% in Penobscot County.

Some of this is the backlog of cases not resolved during the pandemic-related shutdown. That element is not unexpected. MCILS is also seeing a dramatic increase in the number of new cases for which it must provide counsel, however. This is unexpected.

In the six years preceding FY21, MCILS opened an average of 26,548 cases per year. The specific case counts are listed below. Despite Judicial Branch statistics that reflect a continuing decrease in the number of criminal filings, MCILS has not experienced a significant decrease. It is striking that in FY'20 MCILS saw a .7% decrease in case openings against a 30.1% decrease in filings as reported by the Judicial Branch.

FY'15	25,456
FY'16	26,181
FY'17	25,921
FY'18	26,866
FY'19	27,536
FY'20	27,332

In FY'21, MCILS opened 28,783 cases. This represented an increase of 5% over FY'20, and 8% over the historical average. At this case volume, MCILS attorneys are stretched to provide service in every case. MCILS has so far been able to provide counsel in every matter, but it has become difficult to do so.

For FY'22, MCILS projects a minimum new case count of approximately 31,000 cases, with the potential for more. May and June of 2021, the final months of FY'21, showed an increase in new cases of 12% and 11% respectively over the pre-pandemic average for each of those months. July 2021 showed an increase of 28% over the pre-pandemic average. If May through July 2021 prove predictive of the next year, MCILS would be called on to address 31,000 cases. If July proved predictive, the case count would exceed 33,000 cases. Historically, the number of cases opened in July is 2% higher than the overall average number of cases opened during the fiscal year, suggesting that MCILS may likely approach the high end of 33,000 cases. The data underlying these calculations follows:

	May	June	July
FY'15	1,999	2,189	2,122
FY'16	2,250	2,232	2,086
FY'17	2,104	2,097	2,125
FY'18	2,203	2,371	2,091
FY'19	2,269	2,509	2,494

FY'20	1,439	1,976	2,591
FY'21	2,423	2,524	2,439
FY'22			2,804
15-19 Ave	2,165	2,280	2,184
	12%	11%	28%
		May – July	7,751
		Annualized	31,004.00

The increase in case count is troubling. In the current practice environment, MCILS attorneys find themselves needing to decline cases to manage their caseloads now. With the projected 14% increase from 28,793 to 33,000 cases MCILS will not be able to provide counsel to staff all cases.

It bears note in considering these case volumes that MCILS and its attorneys are the only participants in the judicial system with no ability to control case volumes. Every case for which MCILS must provide an attorney was brought at the outset by an agent of the State. Those state agents can dismiss a matter, as may the Court in some circumstances. Where appropriate, an indigent client may have the ability to resolve a matter by agreement. MCILS counsel, however, have no ability whatsoever to reduce the case count directly. Instead, counsel must work each case to its conclusion.

In what county is your primary office?
Response
Androscoggin
Cumberland
Knox
Cumberland
Penobscot
Penobscot
Androscoggin
York
Androscoggin
Franklin
Kennebec
York
Penobscot
Androscoggin
Kennebec
Penobscot
Cumberland
Somerset
Cumberland
Kennebec
Cumberland
Cumberland
Hancock
York
Penobscot
York
Cumberland
York
Hancock
Cumberland
Kennebec
Cumberland
Cumberland
Kennebec
Cumberland
Sagadahoc
Cumberland
Cumberland
Aroostook
Androscoggin
Knox
Cumberland
Penobscot
York

Knox
Kennebec
Knox
Penobscot
Kennebec
Aroostook
York
Penobscot
Knox
Cumberland
Cumberland
Androscoggin
York
York
Hancock
Kennebec
Androscoggin
Somerset
Cumberland
Hancock
Hancock
Kennebec
Kennebec
Hancock
Androscoggin
Oxford
Cumberland
Cumberland
Lincoln
Oxford
York
Sagadahoc
Cumberland
Washington
Cumberland
Hancock
Washington
Cumberland
Androscoggin
Penobscot
York
Cumberland
Hancock
Aroostook
Androscoggin
Aroostook

Kennebec
Cumberland
Penobscot
Penobscot
Androscoggin
Penobscot
Kennebec
Sagadahoc
York
York
Cumberland
Penobscot
Sagadahoc
Aroostook
Androscoggin
Penobscot
York
Oxford
Waldo
York
Penobscot
Kennebec
York
Cumberland
Penobscot
Kennebec

If you have any additional offices, in what county or counties are they located?
Response
Cumberland
Kennebec
None of the above
None of the above
None of the above
None of the above
None of the above
Franklin
Cumberland
None of the above
None of the above
None of the above
None of the above
None of the above
None of the above
None of the above
None of the above
None of the above
None of the above
Cumberland
None of the above
None of the above
None of the above
None of the above
None of the above
Cumberland
None of the above
None of the above
None of the above
Androscoggin
None of the above
Aroostook
Kennebec
None of the above
None of the above
None of the above
None of the above

None of the above
Knox
None of the above
None of the above
Cumberland
None of the above
None of the above
None of the above
Waldo
None of the above
None of the above
None of the above
None of the above
None of the above
None of the above
Cumberland
None of the above
None of the above
None of the above
None of the above
None of the above
None of the above
Franklin
None of the above
None of the above
None of the above
None of the above
None of the above
None of the above
None of the above
None of the above
None of the above
None of the above
None of the above
None of the above
York
None of the above
None of the above
None of the above
None of the above
Hancock
Penobscot

None of the above
None of the above
None of the above
Piscataquis
None of the above
None of the above
None of the above
None of the above
None of the above
None of the above
None of the above
None of the above
None of the above
None of the above
None of the above
None of the above
None of the above
Knox
None of the above
None of the above
None of the above
None of the above
None of the above
None of the above

For how many years have you been rostered to receive case through MCILS
Open-Ended Response
11
Ten
since the rostering began
5
6?
9
15?
12
Since the beginning 10 years?
Since it began
5+
since its inception
10
approx 8
36 year - since it started
10
2
15
11
21
15
6
Since it began
From inception
8
5
7 years
12
Since 2010.
6.5
6
Less than 1
4
10
3
Since beginning . Court Appointed 39 years
5
20
Since inception of mcils
15
15+
12
4

since MCILS was established
since the inception
15
9
8
Approximately 10 years
from the beginning
7
8
8
6
since inception
8
2
3
25
29
Since you started, so however many years that is.
10
12
25 years
Less than 1
12
Since 2009
As long as there has been MCILS. Formerly, we were paid through the judicial branch. PC work since 2000.
20
since inception
11
4
as long as MCILS has existed
From its inception
6
Since 2007, before MCILS had rosters
Since MCILS existed
Since its inception
30 years, then since MCILS was hatched
3
8
10
11
5
11
15
30
3
15
11

since MCILS was established
15
3
25
since MCILS began
15
10
9
3
18
20
12
10 or more
23
Since MCILS was established
20
since it's inception
5
7
9
15
10 plus
8
1
19
4
11

Have you considered removing yourself from the MCILS rosters?
Open-Ended Response
Yes
Yes, have removed myself at least temporarily.
yes
No
Understatement of the year: YES.
I already have, just recently
I have removed myself from Kennebec and Cumberland. I am no longer retaking Lewiston PC cases. I am no longer taking probation violation cases anywhere.
Yes
Yes
?
yes
Yes
Yes
Yes, I have removed myself from a couple of rosters recently
no
No, but have cut back on criminal in Bangor court
yes
Yes
yes
Already done
No
No
No
Yes
Not at this time
Yes.
I have removed myself from most and am considering the rest.
no
No
No.
Yes.
I removed myself from all of the roasters except LOD to manage my caseload
No
Yes
From at least some courts, yes.
Yes
Yes, especially certain case types and certain courts.
no
At times
Yes
just did
Yes

Yes
Only as I reduce my practice to limited areas
yes
Yes
Yes
Yes
I have removed myself from the PC Roster
yes
Yes.
Had to. Will resume in September.
I had to remove myself from all criminal rosters in all of York County due to case load and in ability to effectively meet with incarcerated clients.
yes
Yes, except serious violent felonies
yes
No
Yes
yes (I removed myself from Sept 2020 to Aug 2021)
Absolutely
Yes
Yes, I already have.
I have currently opted out of all case types
yes
Yes
Yes
I did as of this spring.
Yes
yes
no
Yes, I just did.
not permanently
yes and I have stopped taking Court appointments since January
Not yet
Yes
Yes
Yes. I am taking fewer and fewer cases.
No - except for far-flung travel
YES!
Yes
Not currently
Yes
no
no
no
Yes, I am removing now and likely not returning to Ct appted work
Yes at times
Not really

No because I only take a few cases at a time
yes
yes
Yes
No
yes
yes
yes
Yes
yes
yes
yes
Yes, yes, yes
yes
Yes
YES!
Not recently
Yes
Yes. I am off now.
Not currently, but I am close to a point of not being able to accept new cases for a little bit
I had to. The courts and lack of attorneys have caused for a caseload that I cannot handle until some things slow down and catch up.
yes
No
yes, more and more frequently
Yes
Yes
no-just have had to pause a few times with the current volume
Yes
Yes

If you are considering removing yourself from the MCILS rosters, what would cause you to do so?
Open-Ended Response
Too much stress without sufficient support from the courts; little leeway to be flexible in allowing for accommodations during these difficult times.
Several factors. MCILS has becomes less flexible with billing timelines and there is uncertainty as to the future of this work with the push for a centralized public defender's office. Perhaps a larger issue is that there is no control over the flow of court appointed cases on any given month that you are open to appointed cases and I have other retained work that I need to belance with appointed cases. The courts are less helpful than they used to be in pushing the State to reasonable offers at dispositional conferences when cases are marginal. The courts have discontinued e-mail filing, which was very helpful for filings that sometimes need to be made in short periods of time to courts in locations that are not always convenient for hand-filing or waiting for mail.
Mainly, dealing with an unreasonable AAG...
N/A
Every day of this job is a living hell. Every. Single. Day. The clients are mercurial at best, and cruel and by-god evil at their worst. The "inefficiencies" of the system (more on that later) aggravate the situation even more and have made it untenable and almost impossible to DO my job. Think of it this way: it's a thankless job made near impossible due to the Kafka-esque nightmare that is the court system and the jails, meanwhile my staff and I are being verbally abused, harassed, and physically threatened EVERY SINGLE DAY while trying to navigate this bureaucratic morass. The threats of violence are partially induced *because* of the incompetence of the court and my staff and myself bear the brunt. As a side note, the jails are giving out MY HOME ADDRESS and I've been getting letters from inmates at my home. I've even had individuals, after threatening violence, COME TO MY HOME thinking it was my office. To make matters worse, the Bar advised that I couldn't call the police because it would involve sharing confidences. I swear to God I would love to see these ivory tower types do this job for a goddamn week. I digress. This job is hell. On another note, and I will expand on this later, but the Judiciary clearly does not comprehend the impact the heavy caseloads have on our ability to prepare for trial and to prepare our cases for court, and have been uncompromising in this regard. This has made this job practically impossible to do.
I chose to do so for a couple of reasons. First, I was getting overloaded with cases due to the massive amounts of lawyers coming off of the rosters. Second, because of the changes within MCILS, including, but not limited to, the fact that attorneys are not allowed to now bill for staff assistance. No lawyer can survive without staff help; no prosecutor is expected to work without staff help. How in the world can a busy attorney be expected to do every last administrative talk on a case and perform competently? It is not possible. MCILS has gone off its rails and the judiciary and the legislature (as well as the MCILS Commissioners), dont really care. All the focus is on criticizing and not commending the people doing this work.
I am overwhelmed by too many cases, too many conflicting court appearances, the difficulty of getting courts to take action on motions to continue in a timely manner (I filed one in Lewiston 2 weeks ago followed up multiple times with the same response “It hasn’t been acted upon.) This is common. Also the return to in court appearances for matters not requiring in person appearances. The refusal of the court system to accept electronic filings. The part time antiquated Andro Probate Court takes electric filing.
Retirement
Wasting my time in court for dispositional conferences and docket calls and occasionally for arraignments

I would consider doing so if I am required to regularly copy the contents of all my criminal files to confirm the accuracy of charges.
Non payment of fees during pandemic due to rigid oversight of MCILS invoices that firm considers as underpayment ab initio is very poor administration. i.e. client (MCILS) stiffs the attorney when bill is already too small to contest. Andrus has personality where he is inviting contest of billing. This is undesired. Misunderstanding by MCILS on how to run law office is at the base of it. MCILS = bad client ! Court appointed lawyers and system = good system but needs administration, clerks and judges to accommodate it more (lots more).
I have removed myself from other counties and limited the number of cases I take to maintain control over my caseload. The increasingly negative press has caused me concern that MCILS will be replaced by a public defender system which would require me to redirect my practice away from court appointed cases as there is no guarantee that I would be offered a position at the new public defender office. That practice would take time to build, therefore it is constantly on my mind.
Low pay, heavy caseload, inability to bill for paralegal time, increasing bureaucratic pressure from the Commission, unwarranted scrutiny resulting from improper billing practices of a small group of attorneys. The Legislature and the Commission revile us for doing something that is already mostly thankless and yet essential. In some counties, you are already at risk of violating the Sixth Amendment.
My current caseload is too high. The courts that I removed myself from have returned to in-person JRs, have inflexible judges on remote appearances or last minute requests, or have AAGs that make representing parents more difficult and time consuming.
n/a
Excessive work load
nature of practice has changed, and doing JV cases is an added complication that I may no longer really need
I work in a rural county which is underserved with regard to access to justice. I have more clients than I need. I make less than 1/3 of my normal hourly rate when I bill MCILS for appointed criminal work. From a financial perspective, the longer I stay on the list, the more money I lose.
Too much work for the summer. I'll get back on the lists at the end of August.

I removed myself for a number of reasons, some of them personal and some of them professional. The primary reason is that I had a backlog of cases due to the pandemic. Between my appointed cases and my MCILS cases the caseload was just too much without the ability to close cases. In addition, I was concerned about how the judiciary would approach the backlog of cases and did now want to be in a position where I was forced by the courts to be overworked and pressured to settle cases. While I understand this is a unprecedented situation, the general impression that was created by the courts was that once trial started again, trying criminal cases was going to take precedent over every other case and our personal lives. One judge even made a comment to the effect of "don't plan on a vacation once we reopen." I am not sure if the judge was being literal, but certainly the attitude conveyed was that there would be no continuances and we should be ready to try all of our cases. Anecdotally, I heard of an attorney up north who had a preplanned vacation to Hawaii and their motion to continue was denied. This may just be a rumor, but it set a tone. In addition, MCILS attorneys have generally been portrayed in the media and in legislative proceedings as being incompetent fraudsters, without much pushback or response from the judiciary or others who know better. Once the overall situation stabilizes I do hope to begin accepting MCILS cases again, but at the moment I really needed to take a break from it. There is also a financial reality. My private rate is more than three times the current rate. I have continued to accept MCILS cases over the years at a significant financial loss because I love the work and believe I have a responsibly as a citizen to protect others. But I cannot pay multiple staff and maintain office overhead on $60-$80 dollars an hour. This is always going to have an impact on the number of MCILS cases I can take at any given time.
Retirement
N/A
GAL billing is draconian
The lack of pay, the inability to utilize time properly due to court being behind or double booking cases, how transitions in and out of pandemic management have been communicated (or lack of communication).
The recent bump In hourly has been helpful. Now my mechanic only makes one third more per hour instead of twice as much (intending absolutely no disrespect to mechanics).
It would only be temporary, but I am being inundated with new appointments right now. The combination of a large number of arraignment being continued during the pandemic and the choice of many rostered counsel leaving the rosters has been a devastating 1 -2 punch. I may need to go off the rosters for a bit just to catchup.
Stress; poor conditions in the courts. Burned out prosecutors make for bad negotiations. When judges admit that you're right about things like the difference between $1000 cash bail and $7500 being classist and proceed to set the $7500 cash bail anyway, it's demoralizing. It often seems that the courts literally do not care that the decisions they make create conditions where conduct is only criminalized for the poor. In addition: it is exhausting to be misgendered by every single person I encounter when working in the courts.
N/a
Low pay. No staff support. Everything back to in-person for no good reason. Have to hand deliver motions. Case load is getting unwieldy. Client issues in general. Just a lot of stress that spills over into "regular" life.

I'm on a leave of absence from the MCILS rosters because of the volume of cases I was being assigned. Also, each county thinks their Docket Call/Jury Selection is the most important thing, which is incredibly stressful to manage.
Too many cases. I have already removed myself from some rosters. Travel time to court and lengthy time having to spend at court in comparison to similar cases in other counties. Low salary in comparison to other work.
Frequent rescheduling with scant prior notice.
Current practice conditions. Judges dump cases on counsel snd expect them to be ready on the case almost immediately. For example, I had a Judge say to me after being assigned an aggravated Trafficing Cade, where retained counsel exhausted $15,000 retainer and didn't resolve case but withdrew, and the assignment was five days before the dispositional conference, the Judge said '[redacted] you've had five days' you should be prepared.' She had no sense of what she had said .
If I had a better option for a job, I would take that. I love what I do, but it can become too hard to balance work and life.
na
Frustration and stress becoming too much to manage, not feeling like hard and good work is noticed or appreciated, not being able to move public policy or agency policy in a more positive direction, burnout from all of the above and burnout from repeating the same arguments over and over because the system doesn't change even though it needs to, and feeling like no one cares to have the opinions of people working in the trenches. Lastly, too many rules, expectations and guidelines that are constantly changing and taking away from focus on paid work.
The futility of litigating child protection cases in a system so biased towards the State
I had been giving serious thought to stopping this work and the recent changes (enforcement) in MCILS policy including the reapplication were a good reason to make the break. I lost money. The billing rules are extremely tedious. My staff can do some things as good and quicker than me.
Too busy with retained cases.
Being forced to physically go into court when it can be done remotely in a safer and more efficient way without having to interact with maskless people and waste time parking and waiting in the hallway
see bove
retirement. I'm on the back 9.
Being at a maximum of number of cases I can handle.
Yes - The lack of notice and the pressure form the court to get things moving, the sheer amount of cases to manage, other counties asking you to cover for them, not haveing enough time in the day to get everything done.
Inconsistent procedures between counties, lack of electronic filing, not financially viable work
The fact that there is, with the exception of an experimental new scheduling technique, no plan for addressing the needs of the attorneys to be able to be adequately prepared for contested hearings.
no longer allowing zoom and e-filing
Too many cases get assigned, at a pay rate that is below most other areas of practice, and the perception among certain people is that we're incompetent, lazy, or corrupt.
When I did, it was because I had too many files.

Case load and courts not accommodative to court appointed attorneys being heavily loaded, i.e. won't allow emergency/time sensitive motions via email even though we did that earlier this year; giving us crap for being late even though we are double, triple, quadruple booked; expecting us to just magically appear with an email notice sometimes only a day before a hearing.
too many cases
Sitting around court for hours at at a time on court appointed cases, especially for dispositional conferences, where there is no pressure put on the State to resolve cases. Judges have little tolerance for us having to be in two or three places at once. In order to make money doing court appointed cases, we have to spread ourselves out.
Case overload, poor working conditions, lack of safety in judicial hearing guidelines, loss of remote work in conjunction with high caseloads
It doesn’t pay enough
I had too many cases and needed to catch up
I am stretching myself too thin and, as a consequence, I am concerned that I may not be providing sufficiently strident representation to my clients. And it would be nice if the attacks on our commitment and competence ceased. And I'm tired.
If the extreme docket continues. The increase in pay finally gets us over the hourly overhead, which helps. Our court and judges are good about recognizing our scheduling issues. I believe the clerk told me there only 13 family lawyers, and 7 GALS here, and we all overlap. Between law partners and life partners, she has further limits for cases.
The combination of the low pay and high caseload made it difficult for me to feel like I was providing exceptional service to each client.
I have opted out of all case types at the moment for a number of reasons. Court-appointed work is difficult under any circumstances. Covid has exacerbated many issues related to client contact, court scheduling, and office management. The main reason I have opted out and may not return is that, as a court-appointed attorney, I feel that the system is increasingly taking advantage of us. We are expected to take any and all cases, we are expected to be ready immediately on cases, we have zero assistance but are expected to do everything with no resources and now we are subject to almost constant criticism. The Commission is becoming increasingly difficult to navigate and the return is generally not worth the effort. It's a difficult job that people do because they enjoy the work but there is only so much sacrifice that can be made. The number of appointments, the scheduling, difficult clients, low pay and the bureaucracy of the commission are all problematic.
dissatifaction with the way courts handle criminal defendants and their cases, obvious gender bias involved in handling criminal case by courts and prosecutors, disregard of the value of appointed counsel's time as well as disregard for court appointed counsel's bail and other legal arguments
I took myself off some of the lists because I was assigned too many cases too quickly. I put myself back on once I felt that I was caught up and had everything under control.
Excessive case load and low pay
Low pay, increasingly stringent requirements (deadlines on voucher submissions). Inability to file documents electronically and appear in different courts remotely.

1. Scheduling difficulties between three courts, pc and family dockets. 2. Changing (constantly) pandemic requirements (in person, not in person, semi-in person), 3) short hearing notice for many motion hearings and even trials at times (Lewiston mostly); 4) Emails sent only to attorneys and not staff in some cases, but not all resulting in internal scheduling issues. 5) DHHS approach to some of the families; 6) competition for time with the rest of my practice. 7) Dearth of satisfying outcomes; [please note, all that said, I know that everybody in the system is working hard to work through all of this, but there are more days than not when it seems like the time has come to let the child protective part of my practice come to an end. I do this for the love of helping these folks at a fraction of my hourly rate, for good of some families that really need help, and to help new attorneys find their way, but it is increasingly hard to justify continuing in this system.
I spend way too much time juggling courts and court dates. I have no current full time staff, and without e-filing, I have to physically drive to courts, plus by taking away the zoom conferences for 5-minute court appearances, I have to devote a half day for travel!
n/a
The pay raise from $60 to $80 per hour was too little too late, particularly given the 6th Amendment Center's recommendation of $100 per hour. The cost of running an office in Portland with employees is such that I cannot afford to work for $80 per hour. Furthermore, it is an increasingly thankless job, where the press maligns us and MCILS, the Courts, and the Legislature ask more and more of us in terms of administrative work, case load, and scrutiny while not giving us adequate resources or incentive to do this work. Lastly, I have enough other work to do between privately retained clients and federal appointments that I don't need to tolerate this any more. I sincerely hope that the resignations of me and those like me will send a message to those in power that they cannot continue to disrespect and underpay defense attorneys for the indigent, else the system will collapse.
Poor pay, long hours, ungrateful clients, uncaring system, the game is "rigged" for the state
Overwhelming appointments with little help from withdrawn counsel regarding supposed agreements with the State which clients are unaware of.
difficulty balancing work load, with changing court procedures and DHHS procedures due to covid. Case load may need to be reduced as Court and DHHS try to move to in-person, when zoom or telephone for non-contested events saves me time and money.
Difficulty in managing a schedule. I would like MCILS work to be about 30% of what I do but its hard to keep it limited and then I am giving up more lucrative work to do too much MCILS work. The lack of ability to move court appearances more easily is a constant struggle. I like the work but the scheduling battle is stressful
So many things. Too many MCILS requirements. Not worth putting up with the LOD system, even with increase in pay. Courts really do not care about private practitioners but expect us to carry the load for them. Not enough local attorneys to do all of the other cases. Private practice cases at normal rates are significantly increased due to lack of local counsel, so if something has to go it will be the appointments. Child protective cases are simply miserable, especially when judges never treat parents equally with DHHS. So many more reasons.
not applicable
Too many appointments from non-home counties; disrespect as to our time constraints, limited resources, etc from judiciary; uneven policies/treatment from court to court
I can't stand this line of work because it is futile. The decision has been made.
Change of employment
too much trouble getting paid
n/a

pay
n/a
At $60/hr my law firm could not survive COVID and my leave of absence to care for my wife. It has been a hand to mouth business for too long and there are no profit margins for a rainy day. In my 15 years of practice,, the simple truth has always been that to dedicate oneself to court appointed work in Maine means to slowly lose money.
Billing issues.
If I did consider it would be the amount of time wasted sitting in the court like it was pre-Covid
Pay rate, refusal to pay for support staff, low numbers of attorneys so expectation of courts for an attorney to take more cases and travel father, current politics challenging our work and ethics
Compensation rate is not high enough and the administrative burden is always increasing
Being assigned to too many cases and the sheer length of time it takes to close a case.
N/a
too many cases; inability to communicate with clients; logjam at courts such that cases aren't moving
Too many hoops to jump through. Unyielding prosecutors. Sense of entitlement clients have. Burn out.
Too many cases, having to be in multiple courts at the same time
Consistency of payment; bureaucracy
My workload is to a point where I am overwhelmed with new appointments, while the slow down in the court system has made it harder to close files. This is in addition to maintaining a civil practice that is important to maintaining the bottom line of the office.
Overwhelming amount of work; parents needing more help than I can provide.
insufficient hourly rate and recent changes back to in person for status proceedings and family team meetings which has unbilled time for counsel unnecessarily.
The lack of consistency between courts. Are we having dispo conferences? In person? Zoom? Last minute scheduling, the requirement to file hard copy motions that likely won't get to where they are needed via mail, yet even when they are hand delivered days or weeks in advance, we don't get an answer until the day or night before the event. Etc., etc. etc.
The difficulties in scheduling hearings and expectation that counsel be ready for a PC case to be heard, with priority over all cases, on very short notice (as quickly as one day) at any time within a two+ week period each month.
The overload and the lack of cooperation from the judiciary
The practice is not sustainable. Each court requires different things - in person, not in person, file by email, don't file by email, notices aren't sent to us by mail and the email notices are piling up, complaints are being made and the Board of Overseers isn't supporting us one bit.
The money was problematic but the recent raise has resolved that issue.
Combination of a busy civil practice, and increasing roster requirements from MCLIS that does not make financial sense to devote such a large portion of my time for 1/4 the amount I can charge privatetly
Caseload was skyrocketing and started to interfere with progressing on ANY cases, working extra hours for low pay.
If I did choose to come off it would be because my case load is too big.
The enormous case loads and relentless catch up dockets. I am finding I am working 60-80 hours per week and simply cannot catch up.

Honestly, its a cost benefit analysis. When I first started I was on the rosters for PC cases, criminal, and Juvenile. I removed myself from those lists because the hassle of jumping through hoops to submit vouchers and remain rostered wasn't worth it. I am very close to removing myself from the PC GAL appointment list for the very same reasons. I have lost out on payment for just being a handful of days late submitting a voucher, multiple times. There are also so many hoops you have to jump through even to get paid. Just this week I had 3 timely GAL vouchers rejected because I didn't create two separate invoices for time billed at $60 and at $80.
N/A
Over worked, underappreciated by court and clients and can find other legal work more lucrative
I am given more appointments that I can/wish to comfortably handle. I have managed to reduce by case load by removing myself from certain specialty lists, but as other attorneys leave the roster, my cases numbers seem to keep going up
Struggling maintaining contact with parents and then being blamed when things don't go well.
if payment is interrupted, or if the State won't pay for the work that I have done
Pay
Test

If you have experienced issues with Court that impede your ability to provide client representation, or might tend to cause you to remove yourself from the rosters, what are those issues. (Please be as specific as possible without violating client confidences)
Open-Ended Response
The ability to e-file was very helpful during the pandemic. The quick change to require in person attendance at court events, sometimes only lasting 5-10 minutes, was abrupt and has created significant scheduling challenges.
I don't have issues with any Court that would cause me to consider removal, but have had problems getting orders back from Augusta in a couple cases, and don't understand what the issue might be. I've heard they're training new clerks???
More allowed email filings would be very efficient and useful for me.
HOOO BOY. LET'S GO. Bangor SPECIFICALLY is guilty of this: last minute scheduling. They're real big in giving you a one day to one week notice about upcoming court dates. Given the fact that I'm in court every single day, last minute scheduling often results in double, triple, or even quadruple booking. Furthermore, when contacting the clients (if contact is made- difficult with such last minute notice), we're accused of obfuscation and "hiding their court dates from [them]". Client paranoia aside, it also makes it difficult to prepare for said court date when notice is so last minute. Bangor's insistence on telephone dispositional conferences also does NOTHING to combat client paranoia and if the imbeciles actually knew a damn thing about history, in their minds its paramount to clandestine meetings in the Court of the Star Chamber. Following this thread: the rapid-fire scheduling of motions, specifically motions to revoke bail and motions to revoke probation. During good times when I wasn't scheduled for 10 motions at a time, it was still difficult to properly prepare in such a short period. However, with growing caseloads and the fact that all my clients are in jail (Seriously. Why is that), it's even more difficult to do the bare bloody minimum of meeting with the client to discuss their options and their defenses, much less doing any investigative work or trial preparation if the client actually wants a hearing (and increasingly, many do). We need more motion days to spread the burden and more time between date of appointment and date of the hearing at the very minimum. I do want to note that this critique is primarily leveraged at Skowhegan; Bangor has stopped scheduling motion days and has forgone all illusions of due process. They "schedule" motions to revoke bail to be "held" during the telephone dispositional conferences. Court of the Star Chamber, indeed. Onto another issue I alluded to: no one is being given bail and I mean its literally NOBODY. I have so many people incarcerated on stupid shit, but because it's post-conviction bail standards, it's nigh impossible to get anyone out which makes my job so much harder. It's also ignoring the realities of overpacked jails and the increasing difficulties on seeing clients in the jail, as well as how phone contact is highly unadvised due to the worryingly common phenomenon of illegal recording. As an aside, and this is applicable to Skowhegan specifically. The Judges there believe that they cannot order pre-trial supervision services over State objections because of some self-serving bullshit belief that it's a violation of the balances of power. Instead, it gives the DA's office and the executive unilateral control over who gets a SCCC contract. Unsurprisingly, SCCC contracts are worth their weight in gold and ain't nobody gettin' out of jail. You're poor and are charged with a felony or anything subject to post-conviction bail standard? Enjoy your stay at Hotel
See #6
None

The court decided to abandon email filing of motions etc., without any credible explanation. The courts are declining to use Zoom for Dispositional Conferences. The courts, over the years, have paid no attention to court appointed counsel need to run an efficient practice by making us wait in court for our case to be called . As the number of experienced court appointed attorneys has declined, those left are asked to take on more cases. In Androscoggin County the Judge is now requiring back up cases for jury selection, meaning that for the last two months I have had to prepare 4 or 5 cases for trial, when only one will actually end up in a jury trial. This is frustrating and is pushing me toward not taking court appointments. In other words, the Judiciary pays little attention to defense counsels needs.
I recently attended a docket call in an extremely small courtroom. I was wearing a mask and a few defendants were wearing masks. I understood that the bailiff were wearing masks only because they were not vaccinated against Covid. I did complain to the Justice that he had hosted a"super spreader event". I will file a written complaint to AOC. If AOC does not require CDC requirements for entry into a courthouse or courtroom, then I will ask to be removed from the rosters.
It is likely that trial courts do not know that fee agreement with MCILS is so low that law office operates at a loss in increments of 1/10 of hour. It is possible to compliment retained cases with some court appointed cases. Court does not recognize that prosecutors are not trying to move court appointed cases . Court is not holding prosecutors feet to fire. In Portland 8/2021, assault while in jail was specially set for jury trial and dismissed by prosecutor at jury trial. I am curious as to the total number of hours on that one. Really ?
Caseload management and how the courts are transitioning back from COVID are critical. With PC cases, the clerks reach out before sending the appointment to confirm we are able to accept the new case. With CR cases, this does not occur. Some weeks I have 5 new appointments come in. If the courts suddenly expect counsel to appear in person for all matters and be prepared for trial on cases that have been on hold for 18 months, that will impact my ability to remain rostered for the number of cases I currently accept.
The Judges respect us. The pandemic has been a logistical nightmare, but the courts recognize our essential function and treats us well.
Lewiston's scheduling is a nightmare - it takes 4-6 months to get a date for a contested JR or TPR and then notice only arrives a week or less prior to the hearing date. There is no opportunity to request protection in Lewiston, either. Augusta & Waterville have returned to in-person JRs. This adds unnecessary travel and wait times that are not tenable with current caseload demands. Zoom JRs are much more efficient. The elimination of e-mail filing has been incredibly burdensome. My caseload isn't allowing me to plan weeks or months in advance and request continuances that far out. The mail is either not delivering or not delivering in a timely manner (this is a state and nationwide issue! How the court is not recognizing this is frustrating to say the least). We are at a severe disadvantage to accept court appointments in courts that are not in close proximity to our home or offices in case there is a need of hand delivery. There just aren't enough hours in the day! The court's overall inability to see that there are less MCILS attorneys (I do PC only), more NEW cases, unrelenting and constantly changing court schedules and expectations, and a push to work through a backlog is creating low morale, overworked attorneys, and contributing to serious mental health concerns within the bar. We are not able to be the attorneys we were meant to and want to be under the current circumstances!
n/a
No problems with the Court.
JV cases are more complicated and take more time. But I am not wholly sure that is the court's fault.

If defense attorneys are required to be physically present in Court, so should our incarcerated clients. I have had Dispositional Conferences where a DA conveys an offer for the first time, but the jail tells me I cannot speak to my client over the phone to convey the offer. Instead, I must come up to the jail to speak with him. What sense does that make?
Cumberland County tends to be obstructionist with regard to scheduling, showing no regard for attorneys who practice in other courts. I no longer take CUMB cases. Knox county has the most unpleasant prosecutor I've ever encountered so I've stopped taking cases from there as well.
See above. Also, eliminating efiling and Zoom conferences altogether was not helpful.
The modified court procedures during COVID were a challange but understandable. The differences between procedures in the different courts was telling. For example, in Portland PPO Summary Hearings were expected to be by remote - despite the PPO telling parents to appear in person and frequently the court date would be the first time that attorneys and clients met. Lewiston kept remote participation to telephonic means whereas Portland quickly went from Goole Meet to ZOOM. The differences between courts now that COVID is (hopefully) abating is extremely challanging. For example, Portland decided that beginning in June they would go to in-person for all things PC - but never communicated that to anyone. Therefore things were scheduled expecting remote access only to figure out a few days before things were scheduled in Portland that everyone would be expected to attend in-person. Lewiston largely still remains remote (telephone).
The worst is the In Custody LOD in Portland, due to the provision of Discovery that morning by "share file" that drips in to the last moment, along with the limited time to review and to video meet with defendants.
N/a
In my limited MCILS world the Courts have been accommodating.
Efiling needs to come back. It is ridiculous that we had it for the better part of a year and now it is just gone.
See above.
Managing different procedures in different counties is difficult. For example, York County remains primarily on zoom or by phone while Cumberland County is in person. Many practices that made practice much easier (ie filing by email have been discontinued. As my case load appears to be increasing in the past few weeks, email filing would make my practice far more efficient, especially as USPS continues to be slow.
Multiple cases at the same or very close times. Recent demand by DHHS for in person FTMs. Distance. Also, recent changes at MCILS make it harder to get cases approved.
In person proceedings unnecessarily. No more email filing. Dropping docket calls and schedule changes on us without consulting any attorney at all. Feels like those who make the decisions do not have respect for us as professionals.
Removing email filing felt like a slap in the face. Prosecutors have staff in the building to file motions at the drop of a hat. We were finally able to level the playing field. And requiring in-person Dispositional Conferences is maddening once you've had a taste of Zoom Dispos.

Presently, difficulty with the jails. One of the reasons I removed myself from the roster in one county was because they only permitted phone calls during the pandemic with clients, in contrast to other counties who made efforts to get video conferencing capabilities and I did not feel that I was able to provide effective representation through phone calls only. There are also limited hours available at the jails to meet with clients and this also makes it challenging, particularly for trial prep. Not directly related to the court but I think at some point the court may have to get involved particularly with trials now resuming.
I had to beg the Court to be able to meet with a client in jail before a trial. I couldn't meet for the entire Covid. 15 months . I couldn't even get phone calls to or from him because he was transferred from Cumberland County Jail to York County Jail and was then placed in solitary Covid lockup for 16 days. I asked the court repeatedly for help. Two separate meetings three and twas weeks before trial. It took an elaborate and time consuming Motion to Dismiss the week before trial to get any traction. The Court Ordered 24 hours of phone availability and actually had the guards time how long counsel spent on the phone. I was jammed with 24 hours of phone calls with the client in the week before trial. Every second was used so that the Court could say I had ample time to prepare. It was a very difficult thing to have done. It was absolutely necessary but to jam it to avoid a legitimate Motion to Dismiss and place the entire onus on counsel, hoping that it would not be used in full, exposes how appointed counsel is used irrespective of the impact on counsel.
Often times if a client is unreasonable in a position, or has failed to appear or do something, I am the target for the court's frustrations. Especially when matters are done telephonically, a Judge getting angry with me will not change my position at all, im bound by my client's actions. Also, getting angry with me for issues that are not my fault. (Eg. No responses from Evaluators, ACCCP or other individuals that lead to a delay in the case.) Finally, too many days in court. There is a pressure to move cases and all this does mean that cases are over scheduled. I have a number of cases set for dispositional conference next week that I am behind on negotiating because of Docket call this week. The D.A.s office is overworked too and they cant respond to our emails. Basically, the whole system is under tremendous pressure, and I feel like Defense counsel are the inflection point where the pressure is the most acute, and it is just simply burning us out, which has a snowball effect.
Scheduling of contested matters-notice is given too close in time for real, thorough preparation. Jeopardy hearings and TPR hearings cannot be well done with one week notice. AAG's are overworked so unavailable to solve problems or negotiate or narrow trial issues ahead of time. Cases desperately needing hearing time but that don't have a statutory deadline for an order sit in limbo for lengthy periods and families suffer.
Institutional bias of the court system in favor of the State
No but I have a GAL case where MCLIS's poor response to interpreter request caused a PPO to be continued.
None
NA
No issues. I got very used to efiling and zoom conferences, It would be nice if they could be used as often as possible.
Neighboring counties aren't taking into account each other when scheduling matters.
SCHEDULING and NOTICE (also judges who are requiring the movement of cases no matter what)
The discontinuance of electric filings, the end of pretrial appearances by video

The Court system up here has been unable to solve the problems of having a limited number of attorneys. Though the clerks are aware of the problem, Judges rely on stating that there are priorities coming out of Augusta which require the attorneys to be constantly double and triple scheduled for hearings, sometimes contested hearings, frequently in courts which are more than 30 miles from each other. This was an emergency measure which took place during COVID. it is not tenable for a practice going forward. Despite the attorneys being crystal clear about this and the clerks being aware this practice is still taking place. The attorneys are beginning to form the opinion that they are being ignored, and that they don't matter much in this process.
sitting in court for hours, only to have a 15 or 20 minute hearing, and driving time that exceeds court time
Regardless of whether we're talking about indigent or retained clients, the courts are not ensuring speedy trials for criminal defendants. The state's judges and justices seem to think that waiting 2 years for a trial is a Sixth Amendment violation unless we can show a particular prejudice to the defense, which isn't what the constitutions require. Many of my clients aren't getting timely resolutions when we have plea agreements worked out, and the backlog of contested motion hearings is huge. Some clients don't seem to mind waiting, but others call me repeatedly to complain about something that I can't control. It's hard to provide effective representation when I can't be heard in court.
I have no complaints.
The biggest thing for me is contact with clients in custody, which is not technicality a court issue but I bring it up with the judges all the time. York county is near impossible for me to meet with clients now as its only in person and during court hours, which are already so booked up for those of us with big case loads. Second to that is no ability to email motions, so things cannot be addressed in a timely fashion or the time has already passed. Its a bit unfair that we are inundated with hearing notices, orders, requests from the court to us via email, but we cannot file important motions to the court and end up in a lot of circumstances having to try to hand deliver them, taking up valuable attorney time
lack of scheduling flexibility, lack of use of zoom, lack of dispo conferences, certain prosecutors
See answer to 6.
Recently removed myself from cumberland county entirely as their scheduling practices made maintaining my caseload in york county impossible. Specifically the PC docket switched to full in person with no warning and the judges were behaving inapropriately on the bench which made hearings drag out meaning in addition to travel to court i also had to sit around and wait for each case to be called. Average was 2.5 hours per single case judicial review, and commonly cases were scheduled apart so id have to go to the courthouse twice in one day, which realistically killed my whole day for two hearings that should have been 20 minutes on zoom.
I just asked that an agreed plea in absence to resolve a two year old case be done via zoom, as is discretionary in Cumberland, but it was denied. I have another hearing an hour later. I very nearly threw my computer out the window. What complete and utter nonsense. I'm fuming.
scheduling issues always exist which makes practicing in multiple courts challenging
I am routinely receiving very short - i.e. days - notice of court proceedings. In turn, we are not allowed to respond by email or electronic filing. There is no attempt to coordinate calendars within our county, let alone coordination on a very general scale with other counties.
The Court has been good to me, as I said above.

We have had scheduling challenges such as getting pushback when we're scheduled in multiple places (pre-pandemic.). We are having very short turn-around time for certain scheduling notices (recently it was 3 weeks for a jury trial.). When I was on the roster I would receive a very high volume of appointments. I tried managing it by telling the clerks I was unavailable without completely removing myself. Then I stayed on "only for past clients" but I was continuing to receive too many appointments for my comfort.
The biggest problem is the delay in processing appointments and motions. The court system in Penobscot County is an absolute disaster. I have appointments showing up weeks later, I have motions that just never get scheduled.
dispositional conferences are generally opportunities to berate counsel for not being able to convince the defendant to accept the state's offer to plea and to entirely disregard counsel's factual and legal arguments bail is entirely out of control as to the requirement of bail for first offender with no history of any kind, see all first offense bail amounts and conditions, see restrictions on alcohol in cases where none is involved (the given rationale is that alcohol impairs judgment and although none was used in this case, the use of alcohol increases the risk of a another case), the same with prohibition of possession of guns or dangerous weapons where none are involved .... check out the number of violations of conditions of release based upon possession or use of alcohol based upon arbitrary searches without probable cause or articulable suspicion, i.e. the standard arbitrary bail checks for the early Friday night standard police shifts actvities
Poor coordination of court appearances in different counties. Also lack of e-filing for routine motions.
Inability to file documents electronically and inability to appear remotely.
1. Perception that the State, particularly workers, are afforded more credibility than is warranted by some on the bench; 2. Very, very short scheduling notices that don't allow us to subpoena witnesses; 3. inconsistent (within a court, and across courts) email notice to attorney and staff. This is my own problem but for twenty years the notices went through the front desk and got scheduled. Now I am wasting time making sure things get calendared because the notice came only to me.
While COVID was (and still is) awful, the ability to e-file and do zoom conferences were rays of sunshine in an otherwise bleak and socially vacant landscape.
none
poor client contact information at case initiation, failure to notify me regarding initial appearances of client on new charges or after being picked up on a bail violation, and scheduling all attorneys at the same time rather than in blocks. Finally, inability to file by email has made representation difficult especially for criminal matters. We need to be able to file electronically, please
Multiple Court appearances scheduled for the same time. Lack of even playing field in DHHS cases. Perceived Court bias favoring the State in all cases
Cumberland County in person requirement is ludicrous.
Some courts use trailing dockets for contested PC hearings, even jeopardy and TPR hearings. Not having specific dates makes preparing myself, my clients and witneses properly. Having court dates suddenly demanded in one court has caused scheduling issues for me in other courts.
I think just the lack of professional courtesy in realizing that we can't be in two places at the same time and that filing a written motion to continue can be difficult at times.

In August 2019 judge tried to force me to handle LOD early even though we had worked out local rules for the LOD cases years before that. Judge and DA met with client early in morning when he hit the 48 hour mark and then held him until the 1:00 arraignments and tried to make me "finish" the initial appearance that they did without me. I refused, told judge and DA that whatever illegal thing they had done to hold a person longer than 48 was not something I wanted to be a part of. Judge got mad and I got no appointments for 5 months, until I asked John to get me public info on appointments to file a complaint. Miraculously, Judge started appointing me again. I have changed my client profile since then so I will never have to be reliant on a judge who has shown that he will misuse the power of appointment to harm individual attorneys.
Loss of e-filing adding labor and expense; unecessarily requiring in-person FTM's in PC cases; in PC cases, difficulty applying civil procedure rules, particularly discovery, because 30 day etc deadlines conflict with statutory deadlines for Judicial Reviews, Petition Hearings and so fotth; in Covid -19 docket crunch, no ADA assigned to misdemeanor and lesser felony cases, always dealing with subs and stand-ins not up to speed on discovery, motions, case history.
Biggest= post-pandemic short-fused notices (via EMAIL!) that do not permit true solos time to find/notice clients or effective way to continue without judicial tongue lashing ... They act as though they do us a favor by overloading with appointments as their rosters shrink
see (8) below
Na
Rejected invoices; lost my assistant due to COVID, I have not been able to access the portal; no one could anser my questions; could not discovery what cases were paid when the payment went to my back account. NO identifying criteria when the number was reduced.
scheduling without adequate notice. scheduling disps multiple days in same month for one case at a time requiring travel (Portland)
n/a
n/a
N/a
Wait time and travel time for in court for appearances that could take 15 minutes. It's a waste of time & MONEY
n/a
Court scheduling and efiling restrictions unnecessarily chew up time that could be spent on other matters
See above
I recently had to drive an hour(each way) to file a motion to continue.
losing paperwork; several week delay between appointment and receiving paperwork; inability to get matters scheduled on a regular basis
Covid has certainly impacted the system. Clients who can't get court dates but we have agreements; mostly Penobscot UCD
The inability to use zoom to appear for relatively minor court proceedings
The slow down of the court dockets has made it more difficult to clear cases. Scheduling is always an issue, but for a while we had email filing which made it a lot easier to make sure motions were timely filed. I would like there to be a system that alerts courts when we are double or triple booked in different courts or at least a quick procedure we could follow to alert the court. I have dealt with double booking by removing myself from rosters in other counties.

return to in person status conferences (judicial reviews, cmcs) as stated above
The requirement that things like arraignments, pleas, and dispo conferences be heard in person, often with that information being changed last minute has greatly impacted where I can be an when, unnecessarily so. The requirement I file a motion to continue by hard copy, and then am calling repeatedly to find out if it was granted, often not getting a response until 4pm the night before has me pulling out my hair.
scheduling
There are too many to list. The courts closed for over a year and are now trying to blame counsel for the backlog
I do not get timely notices or the email notices are not providing enough time to schedule and prepare, motions to continue aren't being granted or are delayed which causes other scheduling issues, judges and courts expect us in person in too many different counties and the county scheduling conflicts
The Courts are trying to cope with the VOVID backlog by grossly overbooking UCD days, Docket Calls etc. It's very difficult to resolve cases when the District Attorneys are unavailable due to Court.
Same as above.
Courts don't seem to keep track of how many appointed cases attorneys have. Volume becomes an issue. Courts refuse to accept e-filings yet require attorneys to accept notice by email. Courts refuse to copy attorney support staff on notices.
confusion about how proceedings are going to occur (in person, phone, zoom etc.) - taking away e-filing.
Some courts have removed Zoom options, e-filing being stopped, lack of attorneys on the roster, jamming court dates and dockets full to catch up, courts not coordinating schedules.
The split of York County relying on Zoom and Cumberland County requiring in person appearances for Dispo Conferences is time consuming for the Portland matters. Zoom is perfectly suitable for Dispo Conferences. The time devoted to travel to Portland (for any practitioner) should be devoted to dealing with other case files as our client base has swollen due to the trial backlog.
Feel rushed, and not able to be as prepared as I would like
See #6.
I feel the court gives the Department a great amount of leeway and it is hard to get the court to decide against the Department.
Too many cases at the same time, inflexibility with certain courts (Andro, Kennebec).
Test

For those of you who serve child protective clients, if you have experienced issues with DHHS that impede your ability to provide client representation, or might tend to cause you to remove yourself from the rosters, what are those issues?
Open-Ended Response
Rapid policy changes for no reason and with no communication - i.e. going from zoom meetings to in person within the span of a week with no guidance on when remote meetings will be allowed. There are also many cases that have been impacted negatively by recent high profile child deaths, resulting in a situation where it feels like program administrators at DHHS refuse to move forward with trial home placements and overnights, etc. It is a very frustrating environment and makes it difficult to advise clients to do anything other than go to trial.
"Groundhog Day" The pull the same shenanigans over and over with proposed orders pretending the law is what it is not to clients' potential detriment, and have long pulled the same stunts w/ reunification plans. I've called them on it chronically for literally years, same issues over and over, and still the same crap from AAGs and CWs. They end up making the required changes, but persist in new cases/subsequent orders with the same misrepresentations in orders. Frankly, it's just bizarre... Tiresome and very wasteful of taxpayer dollars too.
N/A
They've decided to stop providing services all-together. Their new vibe is to instead, demand a "Level of Care Assessment" before recommending services, except y'know, the Level of Care Assessment is typically scheduled for a date conveniently after the jeopardy hearing. I've started hiring my own experts to evaluate clients for services/treatment out of my own pocket to ensure we can get recommendations for reunification services prior to jeopardy hearing and that we can have something to bring to the table. As an aside, their refusal to do anything BUT supervised visits while lacking the ability to provide supervised visitation is a riot. The AAG's office is a joke and they refuse to reign in their clients (yet I'm expected to have full control of mine?). They also like to unethically threaten litigation (like filing a TPR) if you dare to object to their jeopardy or judicial review proposals. CLASSY.
Not with DHHS
N/a
n/a
The Department utilized Zoom meetings in place of in person FTMs during COVID. This allowed me to attend more meetings than before to the benefit of my clients. On June 30th, they determined that in person meetings would resume on July 1st. As Biddeford still does not have a physical space, that would require me and my clients to travel to Springvale or Portland to attend an in person meeting. Most caseworkers have been willing to work around the rule but others are strictly enforcing it. This makes no sense and is a detriment to our clients. In addition, due to the recent deaths, the Department has become increasingly strict with parents and families making reunification more difficult than before. They have become rigid and uncommunicative. It makes for a stressful work environment.

The demand to return to in person FTMs is one of the biggest issues. My schedule does not have room for unnecessary travel. FTMs are efficient over Zoom and often allow more providers to participate in our meetings - which is helpful to all participants. Clients have transportation issues and often do not like being in a room alone with a DHHS caseworker (if they are demanded to be in person while an attorney is accommodated via Zoom). Also, DHHS is not set up to have "hybrid" meetings. If some people are in person (like my client) and the rest are on Zoom, none of the participants can hear each other well and certainly cannot see each other. Plus, there are renewed COVID concerns for demand to return to in person, especially when school aged children are about to return to in person school - we should be looking for opportunities to REDUCE in person contact to protect our children that are not able to be vaccinated! Additionally, the Department's SEVERE lack of visitation supervision services is putting parent attorneys in a difficult situation of needing to intervene more heavily in cases - both informally and formally with requests for court intervention. The Department could reduce some of the requests for contested hearings by simply meeting their duty of providing adequate contact between parents and children. Part of the backlog in needing contested hearings right now is parents requesting reasonable contact with their children and being provided little to NO contact for MONTHS sometimes. This is just unacceptable and unnecessarily slowing down the process.
The Petition should include the client's phone number, DHHS witness list should include the witnesses phone number, Discovery should be provided monthly
Untimely delivery of discovery.
NA
I don't do CP work, but I have made it clear to DHHS that I have issues with their unbridled authority on other cases.
There have alwasy been caseworkers who need a fire kept under their butts in order to have them pay attention to cases. With COVID, it was extremely difficult to keep that fire lit. Pre-COVID the supervisors could be depended on to help with this fire, but during COVID this resource no longer was effective. As an example, last week I had 9 Judicial Reviews. Of those, 8 cases did not have recently updated Discovery posted to ShareFile - despite numerous E-mails to caseworkers and supervisors by parents' attorneys and (especially) GALs. Years ago I stopped taking appointments in Biddeford due to Discovery issues - when I would ask the caseworkers for some updated Discovery invarably the response would be "what do you want for Discovery?" I cannot tell you how many hours I spent at the Biddeford DHHS office reviewing and tabbing documents in the file for the caseworker to copy and send to me . . .
Answering this might take a long time. Basically, there is the limited availability to Discovery, and the inability of DHHS to specify issues and what remedial actions to resolve a case. In Portland, the main problem is in the totally adversarial attitude of the two AAGs, unprofessional and simply rude conduct in court. It might help if the AAGs actually knew something about the cases, rather than take the attitude that all these parents need to be TPR'd.
Concealment of documents favorable to parents, condecending attutudes towards parents, belief in social engineering
DHHS failing to have an office in Biddeford is a significant issue as travel time is costly both financially and in time.
There are always challenges with the Department. Pick a decade.
I have removed myself from this roster. Constant caseworker turnover was an issue.

N/a
I have had one case where DHHS had client attend an FTM in person, while attorneys could only be on zoom.
They have a great deal of power and money, and they almost always get their way. Hopeless battles are not much fun.
N/A
N/A
N/a
I think many caseworkers do the bare minimum knowing that I cant really use their failures as a defense to a TPR. Caseworkers are also scheduling FTMs without letting me know, and it they do, it is to tell us that the FTM is at X time, (often the next day.). More fundamentally, I feel like the process is deeply flawed, and I hate the sense that I am not really a lawyer in these cases, but nothing more than a potted plant that legitimizes this unfair process. This is an issue that has been festering for years, but is made more pronounced in the the past year. At least in criminal cases ive got a possibility of winning. Child protective cases it is more like a miracle. Also, the secrecy of Child Protective cases is a barrier to fair representation. If I know that Judge A found X in a case, I cant bring that up to Judge B, even if it was helping my case. Each judge is an island, unlike criminal cases where the whole point is consistency. This balkanized system means that there was a significant difference in outcomes between judges even in the same county. I can only imagine what it is like between judges in different county. These issues are why I might leave child protective cases as an intermediate step to getting off the roster entirely.
DHHS inability to provide or link parents up with reunification services
Rigidity with moving cases forward, unacceptably low expectations about how often parents and kids should visit one another, over supervision of visits even when unnecessary for safety.
Incompetence, inexperience and dishonesty of caseworkers, rigidity of AAG, cultural bias against low income clients and the problems associated with poverty
No but I have a GAL case where MCLIS's poor response to interpreter request caused a PPO to be continued.
DHHS insisting that the client be physically present for family team meetings, causing me to choose between attending by zoom and not being there with my client, or being in a windowless room with maskless people. I should not have to sacrifice the safety of myself and my children to ensure that I am meeting my professional duties. Zoom meetings achieved the goals of meeting safely and efficiently
I find DHHS easy to work with-although I may disagree with some of their decisions.
No issues other than occasional personality conflict with some small number of case workers.
N/a
n/a
N/a
The discovery is usually provided, even electronically, a day or so prior to potentially contested hearings, or the morning of the same.
n/A

N/A
Just the same old things from DHHS. With the judges, there is a lot of push back on the attorneys who virtuously defend clients. For example, if you put on a strong defense or strongly advocate for a position, you often get a lot of push back from the judges or are marginalized and ignored. When motions or hearings get set, they are set so far out It doesn't even matter by the time we get to them, the damage has already been done. It leads to a lot of frustration that makes you question why you are even doing this or if it even really matters.
complete lack of transparency, no accountability, late discovery, no resources. transportation and housing, maringalization of mental health concerns and clients
N/A
DHHS is implementing unofficial policies, ending zoom FTM's with no written policy to back that up.
none
Supervisors should stop imposing their solutions on the parties when they have not been participating in the family team meetings or other relevant proceedings. It is a colossal waste of my time to work on these cases only to have the supervisor show up at court and "veto" what we have spent months working out.
DHHS dislikes providing timely discovery. Additionally, this new Citrix ShareFile is beyond cumbersome. It is not user friendly.
when I took PC cases (which admittedly was years ago) discovery was almost always late and provided too close to hearings to be meaningful. Or would require after hours preparation to get through it all.
N/A
Not applicable
1) Lack of poverty training or understanding of the value systems and cultural norms of our clients. 2) discovery; 3) constant worker turn-over; 4) one size fits all approach to services; 5) socio-economic prejudice.
I already removed myself from the rosters, but have taken a couple of specially assigned cases, specifically because of the double standard and double talk with DHHS caseworkers. They are allowed not to abide by the rules, but God forbid if a client misses a visit or shows up late... they are damned forevermore.
n/a
very frustrated with caseworkers who will not open the door to more child contact and use the excuse "not enough staff". If there is not enough staff for a full supervised visits, need to be able to push forward to check ins, etc. more quickly unless a true safety risk exists. This is holding up cases all over. Caseworkers using excuses that they are overloaded. This is not a valid excuse, if the Dept is going to continue to infringe upon a parent's constitutional rights, they need to fix this issue - this may include more services cases!

Fascists with god on their side won't act in good faith. There is zero accountability for mistakes, even deliberate malfeasance. Supervisors give lip service to rights of parents when DHHS actions show dictatorial practices are favored. There is always a "discovery dump" right before Court, not allowing adequate time for investigation and review. There is an absolute command and control mentality that is couched in "politically correct" speech, not that I want to "disrespect" anyone in particular. The Judges sure seem to be scared to rule against DHHS. The Law Court says DHHS can f**k up three ways from Sunday and parents still lose their kids.
Forcing Family Team Meetings to go back to in-person is my current issue. Using Zoom, has saved me a lot of time, mileage and the State's money. My office is 40 minutes from the two DHHS offices my cases most frequently involve. That is one way. Spending nearly 1 1/2 driving for a FTM when a Zoom meeting is possible is a poor use of my time. Especially as clients often fail to attend, so my drive time ends up being for nought.
Not getting client contact information along with the appointment paperwork.
Judge is almost a rubber stamp for them, more focused on moving cases than in giving parents full access to court and fair hearings. GAL on most cases is former Child Protective AG so she works hand in hand with DHHS instead of remaining neutral. DHHS knows there are no consequences to their actions in this county, so they do not even pretend to care about what they do.
Lack of transparency and resources to provide services required by 22 MRS 4041 such as supervised visits and housing assistance; recent requirement of attendance in person at FTM's; discovery supposedly provided from an allegedly complete DHHS file, or available informally on request except when one asks for something, or by thru MRCvP Discovery Rules disregarded by AAG's & DHHS workers and with unworkable time-frames and deadlines given frequent PC hearings etc with short statutory deadlines.
Overall, no complaints in this region
DHHS personnel tend to be overworked and undereducated. They tend to keep careful track of my child protective clients' misdeeds but are not quick or certain to fill me in about them so I can advise my client. I hear about things my client has done wrong weeks or months after the fact. The government seems alternately scatterbrained and vengeful.
Na
DHHS does not impede my ability to provide client representation.
Not always providing discovery in timely fashion.
lack of reunification services being provided based on what they claim is funding - ie adequate visitation facilities and/or supervisors, limited drug screening facilities and hours, discovery issues on at least 60% of cases, ridiculous turnover of workers with the loss of experienced and "good" workers thus being replaced by new ones who are then also completely overworked to the point where communication with them by clients or myself are often very delayed, lack of transparency for policies and services available to clients, lack of housing support for clients, *** DHHS interviewing and getting admissions from clients when they know they are filing a petition and the client is forced to talk at the threat of losing their children - all without any mention that they have a right to an attorney.
only recently went on CP roster. No issues yet w/ DHHS
NA

DHHS is too powerful and there are no consequences for their actions. The cases are very time consuming and heart wrenching. Nothing happens unless you demand a hearing and then, usually one day before the hearing, after the attorney has spent hours preparing for trial, they suddenly provide a reasonable proposal.
NA
na
not an issue
n/a
n/a, too much anxiety when I did them. I couldn't keep it up.
DHHS makes up its mind at the beginning of a case, and then spends the rest of the case proving they were right. So even when clients change, DHHS can't see it. Reunification is so rare because most caseworkers don't really want it to happen. DHHS is overly protective and sees no problem with uprooting children from their homes.
in person participation mandate to ftms vs. zoom participation
n/a
Lack of communication at the beginning of a case as to contact info for parents. Lack of follow through from caseworkers on setting up meetings, referrals, evals, etc. or general lack of knowledge about procedure or resources. Lack of necessary resources such as visitation.
DHHS is simply not providing reunification services and saying it is because they don't have staff for visit supervision, etc. DHHS is not working creatively causing our role to be diminished and now is requiring in person FTMs which means attorneys cannot possibly attend them with clients.
don't do those cases
N/a
Demanding in person FTMs but not having an office to provide a space to meet in.
NA
Lack of communication from the Department
n/a
Case workers who dont' follow up, who implement inconsisent ftm policies, who make decisions behind the client's back despite deciding things as a team, i.e., kinship placement over foster placement, when kinship is not always the best choice. The idea that it is a policy, but it is not a policy set in stone
test

What do you need from MCILS to allow you to continue to serve indigent clients?
Open-Ended Response
Flexibility with voucher submissions (maybe 3 free passes per year on late submissions?) Events aimed at increasing morale/promoting self care
Flexibility and advocating for making indigient representation more practical.
Maybe to voice these issues to someone who will kindly instruct certain people to stop wasting my and my clients' time with their repeated misrepresentations of the law and clients' rights???
A roster of pre-approved private investigators and experts.
I barely have enough time to do my job much less bill. I've woken up at 11 PM in a panic, realizing I have to bill something by midnight or else I'm going to lose out on money. A grace period for billing would be appreciated. I'd like to get the wage part of the wage slavery bit out of this deal. On another note: stop playing games with paying and approving LODs. C'mon, I don't do this for my mental health. Lastly: let up on how many hours we can work a day. I understand it's sus if someone is working 27 hours in a 24 hour day, however with the increasing workloads, the prospect of multiple trials to prepare for, jail visits/jail travel, AND the addition of travel times now that court is back in-person, I'm now working 9-12 hour days regularly. Often, there's at least one day a week, I work more than 15. I'm worried about being dragged on the carpet Amy Fairfield-style when I'm working myself to death. I repeat: I'd at least like the wage part of the wage slavery.
Allow us to bill for administrative help under the attorney's name, but within the same general billing limits already in place (although those are too low as well).
Make the courts accredit electronic filings and grant motions to continue and motions to withdraw without hassles. Allow video appearances I spent a 1/2 day in Cumberland on a dispo for 1 case. In person not necessary for that or at least be efficient and get me in and out.
Same support
I think MCILS has done an outstanding job in working with the criminal defense attorneys. But, the Commission has no power to push its agenda with the Judiciary or Legislature. Thus, it is powerless to effect change.
MCILS should take a stand on Covid protocol for appearance at court hearings. Perhaps MCILS should coordinate with the MSBA on establishing a protocol.
n/a
Advocacy for the defense bar when courts push to resume in person proceedings and trials. Scheduling conflicts of the defense bar is usually the court's last consideration therefore we need someone to advocate for us.
An hourly rate that gives us parity with the financial power of the D.A.’s Office, and an administrative system at the Commission that does not presume malfeasance on our part.

Increase in pay. I cannot have appropriate staff support (even built into an overhead cost if I'm not allowed to bill directly for staff time) at the current rates. The low rates also increase my need to have a high caseload in order to make ends meet. MCILS should also be looking more closely at attorneys that should not be on the lists or should at least be limiting their own caseloads. There are plenty of us that are overloaded and are still meeting our duties on cases. There are others that are not close to meeting their duties and are still signing up to take new cases. It is frustrating to see those attorneys taking cases that they will eventually be fired (or removed) from and knowing that those of us that are trying and barely meeting our obligations will have to then take over the case and "clean up" the messes created by the counsel that took the case initially when they shouldn't have. Need a more efficient way to enter time/vouchers to MCILS. I keep time in my case management system and then end up having to take additional time to enter all of that data as a duplicate into DD (and I cannot bill for having myself or staff enter that time in DD and there isn't room in the current rate to call that "overhead")
Mandate that attorneys who withdraw in PC cases, must contact the new attorney immediately
Nothing.
I have had no issues with MCILS, and have felt supported. Vouchers are paid. And the reimbursement rate went up which is awesome.
If I am going to stay on this list, the State needs to figure out some way to help offset the money I lose by staying on the roster. The only reason I am still on the list is because I want the government to do its job. I want people to believe in the criminal justice system, to be heard, and to have their constitutional rights protected. One option would be to give MCILS attorneys a deduction on income for tax purposes. The fiscal note would be minimal compared to raising the hourly rate.
I feel like I get pretty decent support from MCILS.
I think that the Courts should publish the trial scheduleds as far out in advance as possible and allow parties to file motions to specially set their cases on dates certain. This would avoid the uncertainty of showing up to docket call each month with multiple cases that "might" go to trial and greatly reduce the amount of wasted time and stress associated with the current approach. This would allow parties to set dates for their most serious cases on dates that are predictable. Granted, attorney's can do this now, but it is not a widespread practice. We should be encouraged to do so. Reinstating efiling would also be extremely helpful, as would continuing Zoom dispo conferences.
Pay Vouchers in a timely manner - which does happen now. I do not care whether the Vouchers are processed weekly, biweekly or monthly - it is just helpful to be able to predict when the money will be coming in.
I think that MCILS is doing a good job. I am not able to comment about how other attorneys are treated. I liked the CLE seminars, but understand that these require lots of staff work. Thanks for the raise in the hourly rate! Thanks for the many times of your prompt responses to my questions!
Get GAL billing online
Less administrative responsibilities and barriers to the practice. Defender data is horrible, billing timelines are impractical at times, trainings should occur NOT during administrative week.
Fair compensation. I know this is “low end law” to some but I believe it has value. Haven’t done adult criminal for approximately 15 years but very much sympathize with those who do. Crushing workloads, imperious courts intent on generating numbers, not a lot of respect for the work.
I do not have any issues or needs from MCILS at this time.
Administrative support. A billing system that allows for importation of csv files. To not have to use my dead name on the rosters anymore.

Flexibility; saying "how can we make this work for you". One problem is the inability to control how cases come in and how quickly they can be resolved. We are not asked if we can take a case. We are just sent it. We don't know when cases will arrive or how many will show up. It is very difficult to manage a proper case load. If you are assigned a particular case you may not be paid for your work for a year or two. Many attorneys are stressed about not having enough work in the future and are stressed by having too much work in the present.
A little more time to submit vouchers or leniency if vouchers are occasionally submitted late would be helpful.
Occasional funds for private investigators, willingness to finance longer drives when needed, such as Kennebec County to York or Aroostook County if required.
Allow a staff rate to bill (i.e. $40 per hour). Flesh out and make resource counsel a real resource. Push Judiciary re: scheduling via Zoom and email filing (continue to push, I should say). Continue to work with the Legislature to pass bills and funding measures. Monitor case loads of attorneys so people aren't getting slammed.
1. Keep advocating for an equal seat at the table when it comes to decision making; 2. MCILS needs to streamline the process to allow new lawyers to get on the rosters faster. While potential lawyers wait for their bar exam results they should be given the opportunity to start the shadowing/training. Provide more frequent training so new lawyer don't have to wait very long to complete the trainings; 3. specifically announce to courts when new lawyers (and where they practice) are added to the lower level lists so those cases can be more evenly dispersed instead of all going to familiar faces; 4. continue to fight to increase the pay; 5. use a pay scale for more serious cases (i.e. a sex case gets paid more than an OAS).
More communication, easier access to staff, more training, practice materials such as a motion bank and other pooled recourses.
If MCILS was able to provide access to a legal research program as a benefit to being a MCILS rostered attorney that would be helpful. Advocating for better access to clients at jail. Advocating for email filing, particularly with attorneys practicing in multiple counties who do not have quick access to the courthouse. More training opportunities above and beyond minimum training required for specialty cases. Continue advocating for pay increase. $80 is good but still not enough to cover costs of overhead to run a law practice, including an assistant.
N/A
Application needs updating. Consider flat fees for cases. MCILS should keep rostered attorneys updated on things related to its operations. Take a more cooperative approach when dealing with Rostered attorneys. Something like a Bar-like organization of Rostered attorneys would likely improve morale. Be creative. Bureaucratic solutions to systematic issues should be the solution of last resort.
MCLIS is not to problem. Judges treating counsel like draft animals to pull under the whip is.
$100 an hour. $80 was an improvement, but not a game changer. $100 would let me hire an associate, which would relieve the pressure on the system. Other than that, not too much, other than support for Email filing, (which I think you are already doing, but I am not 100% sure because I am too busy to really follow it.)

Do more advocacy in public forums about the good work being done by indigent defense attorneys (we are constantly hammered in the press and legislature and even the commission itself for a few bad apples which should be weeded out). There are so many skilled trial attorneys on the roster, better than many in the big highly paid firms. You would not know that if you aren't in courtrooms watching. Have clearer communication with attorneys that is not done through numerous emails (we have to print the newest instructions and remember they exist or find them buried in emails if we need to remember what the instructions are months later, plus they seem to change a lot). Have a policy manual or blog or something we can look to instead of so many emails. Focus equally on criminal and child protective work (most commission meetings are entirely focused on issues related to criminal cases). The issues are different, the work is different, the necessary skills are different, but they are both equally important. Shine a light on that. Be a support to busy attorneys by advocating for fewer burdensome requirements, hire someone to send us law court case summaries to help us stay up to date on the latest cases, send statutory changes or summaries of new laws that impact our work (assuming MCILS gets the staff/budget needed to do these things).
???? Not sure there is anything MCILS can do about these problems
allow staff to do some tasks, allow reasonable lumped together tasks for billing.
No issues for me.
To advocate for flexibility with in-person meetings with DHHS and appearances with Court as Delta continues to spread and children remain unvaccinated
Less jumping through hoops re addition credits and requirements each year-especially for attorneys in practice 20 +years serving indigent clients.
The wage increased certainly helped, and hopefully the case caps will be adjusted as well. Continue to keep us advised of CLE opportunities . Maybe a better forms bank ..
A higher hourly rate, access to Westlaw or Lexis, an ability for staff to directly bill MCILS, a higher hourly rate for private investigators, and simpler billing procedures (The email system to MCILS is cumbersome & time consuming).
Just more support that we are over worked, under paid, and that we are doing the best we can in the situation
Get out of my way. Accept bills when submitted.
Continued support advocating for the attorneys who continue to do this type of work.
zoom is the future, along with e-filing
Recruitment of new attorneys to the court-appointment rosters, reimbursement for certain occasional expenses that aren't currently covered but shouldn't be considered overhead costs (like postage for packages or flash drives to provide clients with discovery), and increases in the presumptive voucher caps.
Satisfied with the way that things are going.
Getting the jail on board with better client access is top of the list. Hours that are outside of court hours, phone calls, video calls with share screen capability. These are not even difficult thing to do and it blows my mind that they are not done. Some jail have it, some have nothing. Maybe suing them as an organization would get an injunction or ruling that certain things must be changed. Also, having the rules changed to allow for a paralegal at some appropriate rate for the lawyers who do court appointed work as the vast majority or exclusive practice. That would allow better representation and allow for attorneys to take more cases on.
more attorneys, better pc training.
MCILS has been receptive to our requests for experts and funds. The problem is not with MCILS. They criminal system is set up in such a way that makes it difficult for us to serve our clients.

caseload limitations, i feel like if i drop off the roster the court is so overloaded they keep appointing me cases anyway, and if i stay on i get too many new cases to effectively process in a busy week. Generally speaking in any given week i feel like im drowning in work and burning out at the same time, if i had a viable alternative to doing this work i would almost certainly take it.
Advocacy state-wide, like this. It is ridiculous that the time savings and efficiencies if we he COVID era are being abandoned or adopted ad hoc by county. It's a mess.
A raise to at least $150 hour and elimination of caps — they are regressive and do not encourage attorneys to present an adequate defense
more free CLE
More attorneys. We need to share the caseload. And for those of us who are handling the murder cases, sex offenses, probation cases and other intensely demanding work, you should be paying an even higher wage than $80./hr. This will encourage others (perhaps for the wrong reason but I don't care) to start carrying more of the load. An don't tell us that hiring more compliance personnel is going to help at all. It's only going to drive more people out.
A warm heart, and continued fight for the $100 per hour that fancy Commission recommended was necessary. The only thing that was adopted was eliminating the Somerset County private public defender office. They alleged a rush to judgements by plea bargains as the reason. That truly was BS As the complaint justice around here, I see many of the affidavits for probable cause, and 90%+ conqtain admissions! Somerser's criminals are amazingly honest when confronted, and admit their action. Hard for any lawyer to do more than negotiate the best plea possible.
I need MCILS to allow staff to bill time (even at a lower paralegal rate.). It is unrealistic to carry an indigent client caseload without support, and it is unaffordable to pay support staff at the current billing rate. Indigent clients are usually high needs. If MCILS had direct access to case management services for our clients that may alleviate some of the legwork that we do. A lot of our clients need their basic needs met before we can help them with their legal struggles. We do the best we can, but having direct access to someone specifically trained for that would help. We need MCILS to advocate for more mental health beds, more substance abuse beds and more access to resources while in jail. I know that providing mental health and substance use treatment is beyond the scope of legal services, however, MCILS may hold some sway if MCILS advocated for those resources to be allocated. We would have fewer "repeat" clients if we had access to these services. Commissioners need to stop telling us to "suck it up" and acknowledge that we are doing difficult, emotionally draining and important work. It would be nice to feel supported as we do that instead of feeling like an impediment to a "better" system. I would like MCILS to provide more opportunities for advanced training for attorneys who are already qualified. I would like MCILS to provide more incentive to supervise newer attorneys so it makes sense to hire and train newer attorneys. I would like MCILS to vigorously object to new legislation that creates crimes, enhances classes, adds mandatory minimums etc.
The ability to set some kind of limit on appointments. Hiring/paying experts/PIs could be improved. Approving appointments should be removed. The caps should be raised on misdemeanors.
MCILS has been great .... continue to approve PI requests and occasional polygraph examination requests .... make us justify those requests on a case by case basis ..... we may have to consider approving privately funded Title 15 examination if courts continue to deny impoundment requests for regular Title 15 evaluations until a NCR or NG due to mental disease or defect plea is entered
Pursuade the courts to allow email filings.

A rule or statute change that allows for more time to file vouchers; continued recognition of the burn-out factor in child protective work.
Understanding. Responsiveness. And fix that annoying high defender data program so that if/when you add a .2 to an already high usage day, we don't have to go through them all - again - to find the culprit. And, I must clarify ... Justin is doing a FANTASTIC job listening and responding to our concerns. But he can't do it alone.
flexible "rules"
I would need a rate of pay of at least $100 per hour to consider getting back on the roster. Also, the State should provide a health insurance benefit for MCILS attorneys.
MCILS has made great strides. More outreach regarding the amazing work MCILS attorneys do would be great, because it does seem that a lot of attys are still working hard but feeling very undervalued.
Nothing you can do.
I guess an assurance the commission will remain and many of us won't become obsolete as the State introduces a Public Defender system?
Working with rostered attorneys to help intercede with the Courts and DHHS on issues identified as requiring solutions. Continued lobbying or reporting to legislature of need for more funds for MCILS and proper compensation for the rostered attorneys. $80 is better, but the rate should be $120 per hour.
It would be great to be able to manage the amount of cases being received more easily. I would also like to see MCILS create a system that allows associate or newer attorneys to work in collaboration with more experienced attorneys on cases. MCILS should also create a lower rate for paralegal work and allow for certain tasks to be billed by staff.
I don't think there is much you can do. I will continue to accept cases where there is a conflict, multiple defendants, former clients, or other on a case by case basis, but I am not interest in getting back in to the normal rotation.
training, more available resource counsel for consultation in CRM and PC cases,
Win the e-file battle (at least for time-sensitive motions, etc) OR require 30-day minimum notice of hearing (unless parties agree to sooner) ... In general, time/deadline compression is killing the true solo
I don't expect MCILS to be able to do any magic. If the legislature won't fund DHHS enough to get reasonable caseloads for the caseworkers, they'll probably continue to be overburdened and difficult to deal with.
MCILS is doing a fine job
Directions on how to submit the vouchers...
Extend the 90 day deadline to allow a few exceptions per year.
1. continue to streamline mcils functions to increase efficiency 2. Advocate for no public defender office. 3. Figure out how to certify rostered attorneys for student loan forgiveness. 4. Continue to advocate for increased funding and hourly rates for rostered attorneys.
not sure
If the raise to $80/ hr had been a year earlier, we might have made it. But now I don't have the capital to start again. I love the work, it's about money.
The morons criticizing us to come spend a week with me so they actually see how hard we work, how thankless the job can be, the quality of work we do, and how cases are actually handled.
I'm happy with this process and MCILS. I am overwhelmed with the number of cases.
More support/respect, better pay, some pay for support staff time.
More money and fewer administrative burdens

More attorneys to take on indigent defendants.
More mentoring opportunities. With the “older” attorneys retiring, it would be nice to sit second chair on a few “serious violent felony” or homicide cases to get that experience. Also, get rid of defenderdata. It is antiquated, duplicates admin., and inflexible. Also, maintain a flexible provisional voucher approval process.
Keep doing what you're doing---I feel very supported by MCILS. If there was a way to be able to speak with incarceerated clients via Zoom or phone that didn't cost too much money, that would be great.
Yearly requirements for experienced attorneys should be relaxed.
Advocate for increased use of zoom
Adjust budget caps, pay quicker
It feels like MCILS is doing what it can, but if there is any sway over judicial branch procedures, especially with scheduling or even letting us set limits to how many case we take or how many of a specific case type we can take, that might be a good thing.
I need to be able to file motions, at least some of them, electronically and I need to be able to do some proceedings, including but not limited to dispo conferences, status conferences, and pleas electronically. It would also be very helpful if a court was permitted to appoint an attorney who is on the MCILS in some capacity to a client they recently represented, even if that attorney is not specifically on the right list at that time.
Counsel should be provided an address, email address, and phone number for all clients upon appointment. The MCILS CLE requirements are burdensome; we should not need that many specialized credits each year.
I have had few issues with MCILS, although we should be able to bill before case is finished (perhaps every 3 to 6 months). Your advocacy on our behalf with the courts and legislature is much appreciated. Keep it up.
SUPPORT and ASSISTANCE. We need an advocate (perhaps a new position?) that can support attorneys in this role before the legislature and with the courts.
Just keep doing what you do.
More liberal waivers as to specific CLE and trial experience to recognize the realties of practice.
I needed a break. I will re-up if the Court will have me.
Clear rules for all counties as to how proceedings will be conducted that is more uniform. I think COVID has allowed us to expand our practices some because we are not driving as much. If everyone demands at once for us to be in person there is just no way to accomodate everything. A mechanism to efile documents.
Higher rates so I can drop my private caseloads and focus on criminal matters and the higher caseloads needs. Lobbying the judiciary to allow Zoom and e-filing.
Higher pay, better advocacy to the Courts to work with us and that we are overwhelmed currently
More rostered lawyers. It may also make sense for the Courts to have a limit on the number of cases (scaled for type) it assigns in any given period (e.g., a month)
Nothing, it is issues with everyone else
Payment for legal staff!
Test

What do you need from the Court to allow you to continue to serve indigent clients?
Open-Ended Response
E-filing to come back!
E-mail filing for motions was very helpful and this was discontinued. Especially, if Courts want Counsel to take cases in various locations where there may be less local Counsel available.
See above.
Court notices of new appointments should include client phone numbers and email addresses when known.
Skowhegan: more motion days to spread out the workload and more time between appointment and initial court date. This will never happen: but judicial discretion over who gets a pretrial supervision contract. We can't keep holding everyone on an unattainable bail. I'm tired of spending most of my days juggling court dates and jail visits, and traveling all over the state of Maine (it's not even pretty!). Bangor: No more last minute court dates, no more telephone dispositional conferences (Zoom for attorneys is fine, especially those in multiple courts), and in a drastic contrast to Skowhegan: actually scheduling court dates for motions to revoke bail and motions to revoke probation. Let's, at the very least, bring back the illusion of due process. At this juncture, people are being held without bail pending a motion to revoke probation with no court date in sight. For criminal docket calls and trial scheduling: give an indication of what cases are priority in order for Counsel to direct their energy efficiently. You cannot possibly prepare for trial for 16 individual cases for one docket call- it's impossible. Furthermore, in this vein, having Back-Ups going as far as #2 and #3 on trial days is ALSO really goddamn stupid and disrespectful. Lastly: EMAIL FILING. EMAIL FILING. EMAIL FILING.
Support with all of the legislative issues going on and the lack of public support.
Great flexibility, Grant continues quickly unless there is a compelling reason not to do so. Grant protection requests automatically. Accept electronic filings.
Would be an improvement to stagger hearings, rather than wait for long call of list
More thought about the needs of defense attorneys. The use of Zoom for certain hearings or conferences. Until E filing is in place, allowing defense counsel to file motions etc. by email. We are strapped with a number of Judges with little or no experience in criminal cases, meaning they do not know how to mediate a dispute between defense counsel and the prosecutor as to an appropriate sentence. In my county, the prosecutors' offers are unreasonable; I know this as I have done scores of trials and sentencing hearings over the years. This means I push most of my cases toward jury selection and/or trials. I have no idea how to cure this but the experienced defense attorneys un my county are doing the same thing, meaning the backlog of cases continues. I might add, I do not have to take court appointments for financial reasons. I continue taking a select number of serious felony cases as I believe I need to serve the 6th amendment to protect citizens from overreaching governmental action and because I very much like jury trials-the greatest system of ensuring justice for those accuse of crimes.
See responses above re Covid.
n/a
Support and an understanding that some things implemented during COVID were an improvement to the system. IE, zoom dispositional conferences and efilings. They have already revoked the efilings and have discussed resuming in person dispositional conferences as well.
Nothing.

Input on scheduling. Let us tell you when we "just can't" have another hearing scheduled this week/month. Let us request protection and have it be granted (I've had the court simply ignore my protection requests regularly and schedule over other events that I made them aware of). Allow e-mail filing or expedite Odyssey so we can stop worrying about whether we have to factor hand deliveries or late requests into the mix. The postal service is in a crisis and cannot be relied on, even for overnight deliveries anymore. Zoom or remote appearances AS THE DEFAULT for ALL non-evidentiary hearings. CONSISTENCY in expectations at least within regions, if not state-wide.
more hearing dates for expedited judicial reviews, you may have to wait a month or two or more to have your visitation or placement issue or parent services issue resolved
Continued flexibility with using video conferencing/ teleconferencing.
NA
Most of the Judges are ex prosecutors, and it shows. It would be nice if the judiciary occasionally started pointing out how unreasonable some of the State's offers are. I had a client get 6 months on his first probation violation because he left the sober living house he was assigned to upon release. All of his roommates were using drugs in the house. He told his PO several times, but she did nothing. He left one night after his roommates got into a fistfight in the parking lot, over drugs. He told his PO the next day that he was living at his mother's house because he wanted to maintain his sobriety (he's been clean for 5 years). His Probation Officer moved to revoke his probation because he "changed his address without obtaining permission first." The prosecutor never offered lower than 6 months, and once my client agreed to admit to the PV (and roll the dice at sentencing), the State raised its offer to 18 months, and refused to provide a reason for the increase. How is that justice? How did they expect me to explain that to my client? How are you supposed to negotiate with someone that says, "What's mine is mine; what's yours is negotiable"??
More convenience: filing, universal scheduling so I don't need to spend so much of my time untangling schedule conflicts across multiple courts.
Some controlled approach to trying all of our cases that does not result in attorney's needing to repetitively prepare multiple cases for trial each month. One example of how hectic this can be is that recently in Kennebec we received the trial list for August on July 22nd. The request for protections were due on July 30th. July selection was August 5th and 6th, and the trial period was August 16th through September 3rd. It is crazy to me that the Court expects us to get notice, subpoena witnesses in all of our cases, and do the prep work for trials on less then two weeks notice. In my view it is inappropriate to be given such short notice.
Respect and communication. If procedural changes are being made - communicate ahead of time those changes (in the example given above when Portland went from remote to in-person, the often heard rationale was "well we were sending out ZOOM links the week prior to the court events, so when you did not receive the ZOOM link you should have known the event would be held in-person!"
Treat defense attorneys with the same level of concern (communication) that is given to the DA and DHHS, recognizing that most defense attorneys are solo practitioners without associates or staff to meet unexpected court dates. The Portland Courts and Clerk are pretty good in responding to needs, so this is not a big complaint.
Get GAL billing online
The ability to efile motions to continue or participate by phone/video.
A level of respect equal to that of insurance defense.
Efiling would help.

Awareness about the disparate impact of cash bail on indigent clients. A willingness to look beyond punitive justice and to focus on what will actually solve the underlying issues (thereby reducing caseloads for everyone). If a client is already in residential treatment or has a bed available, the Court should know it will be more beneficial for EVERYONE that the client gets help. Stop using process to undermine justice. Also: please stop misgendering me and using my dead name.
The courts I work with understand that we are trying to serve the public need and are usually very accommodating. However, because the clerks do not have the time to respect lawyer's case needs, you either have to be in or out. You can't say - only give me 5 cases a month, for example.
Some more routine proceedings on zoom. Email filing!!!
Understanding when an appearance must be made by zoom or a case rescheduled.
Patience. Respect. Flexibility. Including us in conversations regarding decisions that affect both us and our clients. No more last minute docket calls and scheduling nightmares. Make Zoom the default for everything except testimonial hearings and trials. Allow email filing of motions up to a certain length or type. So much more could be done.
Recognize the struggle and be flexible. Bring back email filing. Use Zoom in every situation possible. Take into account the backlog and let people out of jail.
To always provide a copy of the charging instrument and contact info for clients. It is inconsistent with contact info. Yes, I can get it from the court but then MCILS has to pay for that phone call or letter to request it, when it could be provided in the initial appointment email. This information is usually provided in the motion for appointment of counsel but that is not always provided. Docket records do not include phone numbers and often times the address is not correct. Be patient with scheduling conflicts. To allow filing by email.
More recognition of the stresses on counsel and, more importantly, on the clients and the businesses that employ them, when the courts abruptly reschedule events.
The support of the MCILS
Respect.
A cap on days in court. (Including telephonic phone calls). In the last 5 weeks, I have had 22 days in court, out of a possible 25 business days. (One of the off days was a last minute continuance that was not planned.) We do not need to touch every file every month or every 2 months. Ask me when it should happen. I dont think that they realize that we dont get paid if the case drags on, and most MCILS lawyers dont have time or money play games. Also a realization that lecturing me about attending court on time, or being unreasonable in negotiations is not helping advance the case. Lecture the client. I feel as if some jurists believe that badgering Defense counsel will advance the case. The last thing I want to do is delay a case. (Also, treat each side equally. If the state has an objectively unreasonable position, they should be lectured as well. They aren't bound by their client's decisions. Also, some of the clerk's offices need to be improved. I am not getting appointments in a timely manner, nor are motions to withdraw or amend bail addressed in a timely manner. (Some courts are excellent though, such as Houlton, Caribou and Fort Kent/ Madawaska.)
Better scheduling practices. Quicker processing of motions. Quicker mailing of orders to attorneys. More Judge time so hearings are less delayed.
An opportunity for a fair hearing without consequences to clients for simply exercising their right to be heard
nothing

Lets keep the use of Zoom/virtual technology for certain Hearings, motions, docket calls, filing reports/motions. Keep what is working as a result of pandemic adjustments.
Continued willingness to give us scheduling leeway .
Better efficiency (e-filing, more zoom, more specially set trials, more coordination between counties, and more universal state wide rules)
back to normal scheduling and noticing - too many e-mails to keep track of from the court, too many fake court dates -no predictability for clients in jail. Cases that were just charged are getting court dates sooner then older cases. Not enough pressure on the DA to be reasonable.
Leadership. We have none. This state isn't 16 different jurisdictions. Let's have some uniformity in procedures. Kennebec can just unilaterally suspend rule on dispo conferences? Who's running this show?
The courts need to stop scheduling any contested PC cases during the same terms as jury selection and jury trials. It is simply not tenable to have contested hearings on Jeopardy, Permanency Planning or TPR hearings the same week you are expected to try a jury trial. However, I have been in numerous conversations where I have had Judges try to pressure me to try a DV Assault or Felony Jury case either the day immediately before or after some type of contested PC hearing.
saa
Pressure on prosecutors to make good plea offers on weak cases, at least during this backlog period, and recognition of the right to a speedy trial with dismissals when year-plus delays are caused by either neutral factors or actions of the State.
Money.
More court time to be honest. We can't get done what needs to be done in a timely matter with the current court schedule. I know it sounds like a joke, but something like night court or extended court hours would go along way to getting the court capacity up to what it needs to be. It would also help alleviate conflicts. In addition, the court having a centralized system that shows what attorneys are where on a given date would be lovely, so scheduling conflicts can be mitigated and/or the court isn't frantically calling or emailing asking where we are when we are simply in another court room or zoom and we've tried our best to communicate that. Also, judges being a bit more real with prosecutors that their case is junk so they have to pick and chose what is worth their time, not loading up the jury selection with a bunch of stupid cases.
zoom.zoom. zoom. also not trying to do 1.5 years worth of work at the same time in every court. Counsel is stretched way too thin and tge courts are overloading us
See 9. When dispositional conferences first started, Judges were putting pressure on the prosecutors. Now, it seems like it is us that the Judiciary seems to blame for not resolving cases.
I need the courts to understand the pressures we are under and treat us as peers in the system and not employees. Keeping virtual hearings where possible to give us more time to manage our cases from our desks would be great. Bringing back efilings so we can file motions expediently would be great too. With the mail so slow i often hand deliver motions because i know if i dont it might be weeks before i get a motion to amend bail scheduled.
Allow easy solutions to problems of scheduling like allowing a plea in absence to be done by Zoom. Allow more hearings by zoom.
More judges from a criminal defense/public defender background
greater scheduling flexibility and an easier way to address scheduling issues
Flexibility. Let us participate by phone or Zoom without filing a motion. Let us just call the clerk's office and say we have a conflict and put us through for the judicial review, dispo conference, or other less substantive events.

They have been great. The problem is not with the Court in SkowVegas, but it is the state government. Their habit of low-bidder wins even tech contracts is a good exple of utter failure.
I need the Court to recognize that defense attorneys are equal players in the system. When changes are made, or schedules are discussed, we are either completely left out of the conversations or treated like we don't matter. I need the Court to hold the prosecutors accountable equally. If scheduling orders and deadlines are not followed those violations need to be dealt with. It is extremely difficult to see a case through from start to finish when the State isn't accountable to their actions, but any "slip" on the part of defense attorneys is held up to high scrutiny. We also need the court to treat our clients with respect. Many of the decisions made during the pandemic left a feeling amongst defense attorneys that the health and safety of our clients was not a priority, and our own health and safety was not a priority.
The Court needs to have more regard for accommodating attorney schedules. Notices of appointment shouldn't be delayed. Motions should be promptly acted upon. Clients should be allowed to participate by phone/video for all court events except hearings and trials. Judges should be more considerate on granting motions to continue/recall warrants etc. The system should not be making it harder to get cases resolved.
a level playing field, fair consideration of bail, factual, and legal arguments, courts should not be the second prosecutor in the case, current knowledge of the law in suppression and other constitutional issue cases,
Better coordination of court schedules for those of us who practice in multiple counties.
To be able to file documents electronically and to be able to perform simple hearings remotely. Blowing half a day driving to the next county over for a simple arraignment is not practicable or reasonable.
Consistency in scheduling procedures and expectations.
e-filing. Zoom. timely docket lists.
understanding of huge workload
The problem lies with the Legislature, not with the Court. So, I suppose the Court should use the power of its podium to communicate the direness of this situation to the Legislature.
ability to file electronically reasonable notice of court events without frequent rescheduling even within a day notice when a person who is represented gets a new charge or is brought in on a bail violation/probation violation etc very promptly
Actual honesty and integrity in deciding DHHS cases. Not all parents are s**t and not all DHHS caseworkers are truthful saints. It would be nice to see a Maine jurist actually say that. A little healthy skepticism toward the State's case wouldn't hurt either.
A little accommodation. Client's are simply happy I call them back. I am literally going into hearings sandbagged.
Consistent scheduling of court dates, no use of trailing dockets. I want specific scheduled dates for contest hearings.
I think that Clerks should be allowed some limited authority to move cases around to accommodate attorneys schedules. There was a time Portland would allow the clerk to move a dispo conference time within the same day without a motion. I recognize that timing in often a substantive issue in a case but there should be some ability to manage schedules without as much hassle.
I need the court to understand that we are not their employees and that we do not work for the court. As such, the court needs to follow the rules that they set long ago for scheduling LOD and processing appointments. A little more respect for the defense bar and an equal seat at the table would be nice too.

E-filing, more judges, trial and hearing time
Empathy ... Reasonableness ... Minimum 30 day notices ... A commitment to not put weight of pandemic recovery on our backs!
The court is doing a fine job
Nothing.
e-filing for all cases
Hybrid system that incorporates Zoom. Hold parties accountable for discovery concerns. Personally speaking, the PC Judges in my geographic areas are to be commended all around for their part in PC cases.
consideration in scheduling
For all the judges to speak to our critics and explain how things really work. Explain to the doubters how cases are really placed, how lawyers are chosen, how cases are handled and how good matters are handled over all.
Patience regarding scheduling.
have cases called for dispos or court appearances in groups by attorneys so you only have to be there 1 day for 1 list rather than multiple different days or times. do ZOOM as much as possible.
Honestly, the Judiciary in Aroostook is fairly new and has been great so far, but prior issues were scheduling conflicts.
better scheduling process and use of technology to facilitate court appearances and filings
It's is not the court that is the problem. COVID-19 caused such a delay in processing cases, that it will likely take years to dig out from under it.
Zoom dispo conferences, initial appearances, and/or arraignments; and arraignment/ initial appearance waivers.
flexibility to do things that can be done by email, Zoom or other means, just to move cases along
I have an extremely busy practice outside of court appointments. If I file a Motion to Continue or need protection on the trailing docket I should get it without question and over objection. I don't need to accept appointments. The courts I practice in would be strapped if I stopped.
Increased use of zoom
Better scheduling of pleas
I cannot stress how much more efficient email filing made everything, or some sort of interactive scheduling (that's the dream).
continue telephonic proceedings on procedural and uncontested matters
See paragraph 9
More judge time.
More respect and cooperation between courts so we don't have to do unnecessary motions when they double or triple book us.
Do not stop using Zoom for dispositional conferences, pleas, judicial reviews, etc. It makes sense to use Zoom whenever possible.
Slow down
Zoom conferences
Copy support staff on notices. Accept e-filings.
More trial time. I had two PPOs that month that couldn't be heard until September. Clarity on what is in person and not. Although from what I hear york county is doing a million times better than other counties in working on this.

Zoom for most appearances. E-filing being instituted. Coordination between courts so there isn't absolutely insane multiple appearance days. Understand we are not catching up and the schedules they are creating are unmanageable.
Email filings Zoom dispo conferences as a 1st resort
See # 9
Fewer appointments.
To be more open minded that DHHS policies are not always the best policies
Understanding of scheduling challenges
Test

If you serve clients in child protective matters, what do you need from DHHS and/or the Office of the AG to allow you to continue to serve indigent clients?
Open-Ended Response
Some kind of consistent and transparent criteria for how a parent moves from one stage to another. Higher ups have refused to share the models they use to determine whether to move to unsupervised visits or trial home placement and this makes no sense to me.
Please see above.
N/A
I think that every single AAG in the State of Maine needs to take Patrick Downey as a prime example of how an AAG should conduct him or herself in these types of cases. He is respectful and fair and does a fantastic job of controlling his client to ensure that parents actually get a fair shot and that the right result occurs. He is good to work with, professional, respectful and is, overall, one of the best AAG's I have worked with in any case type, especially PC matters. I believe he sets the standard for all other AAG's in the entire state. What I just described is not the reputation of most AAG's handling PC cases. Parents are not treated with respect and dignity by many AAGs.
I do not have any complaints with DHHS or the AAG's I deal with.
N/a
n/a
I need them to maintain Zoom FTMs. I need them to come to the table with an open mind on toward these families. I need them to offer consistent and increased visits to these families. Changing the contract agency that provides supervised visitation always results in lost visits. Doing this during a global epidemic was short sighted and ultimately insensitive to the needs of the families they are meant to serve. After one year, the "new" contract agency in York County is still only able to offer one visit per week for a parent. That is not enough.
Remote FTMs the default - FOR ALL PARTICIPANTS. Visitation services to actually meet the needs of cases - whether that's by adding an additional agency or case aids Assist with finding ways to make mental health and substance abuse services ACTUALLY available to parent. The waitlists are ridiculous and don't serve DHHS or parents or children and don't allow for proper reunification services. More caseworkers with smaller caseloads - they are overworked and dropping the ball regularly. This is also leading to quick burnout for workers that would otherwise be doing the job well. Regular discovery! Some caseworkers are doing far better with the addition of ShareFile, others are not. We need discovery AT LEAST 3 weeks prior to any court date but it would be better if we were getting it monthly.
more visits for children and parents, more housing assistance
DHHS - receiving discovery in a more timely manner. Not day before or date of a conference/hearing, etc.
NA

From DHHS - pay attention to the cases. From AAGs - know that the caseworkers make mistakes - and some more than others. One of the problems that I ahve with one AAG is that her caseworkers never do anything wrong - it is always either myself or my clients who are at fault. There is no communication allowed about any issues with caseworkers.
1. Be clear about PC case goals, and the specific issues in the case, rather than general and shifting arguments; 2. Provide Discovery in a timely and coherent manner, as often we do not receive Discovery until just before a Hearing in a huge and disorganized manner, and the share file system is hard to navigate; 3. Replace the current AAG's in Portland with counsel interested in effecting the goals of Title 22, rather than just beating-up on parents and counsel.
Get GAL billing online
Communication and consistency. There are too many differences between the neighboring jurisdictions that can greatly impact a parents ability to reunify based on zip code alone.
Resources. Competent administrators. Have watched the pendulum swing back and forth for over 35 years. Current swing is not to the positive. Can't really blame the constant churn of 20 something line workers trained to believe they have all the answers.
N/a
This is a very difficult area to practice in. The turn over of DHHS workers is ridiculous. In the course of one case over a year to 18 months, your client may have 3-6 different case workers. Being kind to new caseworkers becomes too much when you invest energy in helping them learn their job and then they are gone. No one at DHHS answers their phones or responds to email. The AAGs are overwhelmed and always in court and don't respond. If you don't stay on top of your client's case constantly - they will be ignored and abandoned by the system. You have to stomp and yell just to get timely discovery. There are no services for your clients. The whole system is broken. And every time a child dies DHHS takes more kids into custody without having the ability to fairly serve the parents. DHHS has become comfortable with the idea that so long as kids are not with their parents they are safe.
Fairness. Reports delivered soon enough to be useable in court. Keeping to agreements made with parents, even if they do not "like" the way parents raise their children.
N/A
N/A
N/A
NA
Better caseworkers. More supports for clients. More approvals for Guardianships. I have a half dozen cases that could be guardianships but the department refuses for any number of reasons. Those cases could have safe children but the obsession with Terminations only places stress on my clients, and therefore on me, and forces us to dig in out heels and litigate things out.

DHHS needs to allow caseworkers to be more available and involved with parents. DHHS needs to be truly invested in reunification for parents, not just filing TPRs as soon as possible. Why should Parents attorneys have to fight so hard to get the services required by reunification plans and which the Dept is required to help provide for our clients? It's true that there aren' t enough service providers, but if DHHS upper management made it a priority to develop and encourage more service providers they could make it happen.
Dialogue, a seat at the table for policy discussions, more AAG free time so we can accomplish things outside of court/avoid so many hearings.
The impossible - for petty tyrants to stop abusing their power
Keep case updates on a timely basis via email. In general, Caseworker's are doling a good job in this area.
The AG's I deal with are top notch . Great people . There is a feeling that to a certain extent, we are all in this together.
N/a
n/a
N/a
To have discovery provided in a more timely fashion.
na
N/A
In a PPO, having a form that they would fill out with the client's phone number and email address would make a world of difference. They have to serve them personally, so they can do it. But all we get is an address and by the time the PPO comes around (usually 10 days from service) we often have not had enough time to prepare, if we get to contact them at all.
timely discovery, no hiding the ball, reasoned approach, proposed orders in a timely manner, make some of the GALs actually do their jobs, no more one page reports that say nothing
n/a
keeping virtual FTM's is essential, honestly im really nervous to meet alot of my PC clients in person, they largely aren't safe or usually even willing to acknowledge covid and its risks which makes me very nervous for the safety of myself and my family especially as delta is becoming more widely studied and breakthrough infections more common
Nothing
Less staff turnover!!! A computer service that works (there is that low bidder again), and a discovery process that works easily.
NA
Not applicable

Worker consistency; workers who have some training in working with clients who live in poverty, and cultural norms that come with that; discovery in a timely fashion; follow-through;
NA (I've already stopped).
n/a
increased access to services for parents and children and ability to make accommodations to move a case along in a different way if those services are not going to be available.
Nothing...I'm getting out.
As noted above. meetings by Zoom, unless client asks me otherwise. Lists of resources available to parents. I usually have to ask other sources to learn of resources, if the individual caseworker does not have the knowledge. I've noted that if a caseworker ends up working with my client who lives outside of their normal service, they frequently have no knowledge of resources outside of their area. A comprehensive list of service providers of all types statewide would be valuable for both attorneys, GALs and caseworkers.
It would be great if the forms included contact info for parties, and for the caseworkers including an email address
Less arrogance. More work on cases between court dates instead of doing everything in the 3 days before a court date is set. Provide regular discovery instead of 100s of pages within 48 hours of a hearing.
See 8 above
I am satisfied with my counties' efforts
More frequently updated reunification plans. Quicker notice when my clients need to mend their ways or redouble their efforts. A better sense, particularly from the AAG, of how my clients should navigate what seem to be conflicting mandates.
Na
Nothing.
Make sure discovery is provided in timely fashion and give clients struggling with substance abuse more consideration before filing TPR
Solutions to the following: lack of reunification services being provided based on what they claim is funding ie adequate visitation facilities and/or supervisors, limited drug screening facilities and hours, discovery issues on at least 60% of cases, ridiculous turnover of workers with the loss of experienced and "good" workers thus being replaced by new ones who are then also completely overworked to the point where communication with them by clients or myself are often very delayed - DHHS really should be held to a standard that limits the number of cases per worker to ensure the department is actually focused on reunification and not just pushing paper, lack of transparency for policies and services available to clients, lack of housing support for clients, *** DHHS interviewing and getting admissions from clients when they know they are filing a petition and the client is forced to talk at the threat of losing their children - all without any mention that they have a right to an attorney.
need to be provided with dates of birth and contact information for appointed clients at outset of case
Thes seem to go ok
more efforts to avoid removal of children
More supervision and consequences

NA
na
Discovery early on and updated regularly
n/a
Accountability and consistency. There are no consequences when DHHS withholds discovery for months at a time
n/a
zoom participation in meetings
n/a
Knowledgeable caseworkers. Ability to have FTMs via Zoom (because many clients refuse vaccination and travel is unnecessary in most cases).
DHHS cannot mandate that attorneys attend FTMs in person. It doesn't make sense.
don't do them
NA
Zoom FTMs. Phone numbers for clients in petitions. Email contact information for caseworkers in petitions. An office space for Biddeford DHHS. Other options for supervised visit agencies. Community Care doesnt have adequate staff to serve our clients OR DHHS needs to hire more case aids to supervise visits.
n/a
Stop being so black and white. Just because it is a polciy doesn't mean it is a good policy. Think outside the box. When asked for the policy to follow up and provide it. Not after having to repeatedly ask for it
Test

What else do you need us to know?
Open-Ended Response
I am trying so hard to keep it together and get everything done but balls inevitably drop from time to time. When clients are always in crisis and reach out day and night, weekday and weekend, it is often the administrative tasks that get left behind. It would be great if there could be a process to allow for an exception with the 90 day rule and/or other mistakes in administration tasks when those things come up.
I very much enjoy helping my clients, and seeing the ones that succeed thrive. I am sick and tired of fighting the same stupid battles w/ a particular AAG who seems very invested in chronically misrepresenting PC law. She almost always concedes particular points, but will pull the same stunts in subsequent orders. Again, it's plain
MCILS should sponsor a "Lawyer for the Second Day" program to provide limited representation to unrepresented, previously-arraigned defendants who have returned to court for post-arraignment proceedings.
This job is hell. My name is [redacted] and I approve this message.
Attorneys handling court appointed cases are willing to not work for much. We do this work because of the need, not because we want to. We are willing to take a lot of grief, etc., however, when we are told we cant have administrative help, that is, flatly put, offensive and is a slap in the face. Who can practice without administrative help, no one. The judges have help, the prosecutors and AAG's have help. Why in the world should we be
No thing that I can think of.
On line filing; internet access to dockets and remote hearings greatly improve efficiencies
I think I have covered everything.
I believe the press releases have not been favorable to those of us who provide extremely cheap services to those who need them and our work. I suggest that the administration reach out to those who can better advise the organization re communicating to the public and the legislators our work and accomplishments. We have a few hard working attorneys who seem to be the only ones doing that. It needs to also come from the executive office.
n/a
The defense bar is stressed out and there are constant conversations amongst them of how and when to leave. The system will shut down if a mass exodus occurs.
We're tired. We're TRYING. We don't want the system to fail - we believe in the work that we do. But we cannot keep going with the way that things are. We're feeling the CRISIS level on a daily basis with no end in sight. We're breaking under the pressure. We want to participate in helping to make things better - but that means that we have to think outside the box and work together on all sides. Parent attorneys, at least, are ready, willing, and
Attorneys have too many cases. They don't get back to me in a timely manner, miss court dates, don't communicate with their client's enough, don't always provide all the discovery to their clients, most of the attorneys are very capable but have too many cases
Nothing else.
Appreciate all the work MCILS does.
This work can be very disheartening. That feeling is only enhanced by the idea that most of the people who hold the purse-strings have never seen the front lines with their own eyes.
I think this is a good start.
You are doing well in a difficult transitional time. Thank you - it is appreciated.
Again, I think that your office is doing a good job in a difficult system. If indigent legal services were funded and staff at the same level of prosecution and State offices, the handling of these matters would be easier. Having practiced in a State with a long-standing Public Defenders Office, I can not say that it worked better, so I hope that the current system can be maintained and improved.
N/a

I’m tired. I’m overworked. As some of the only attorneys that have been working full-time through the pandemic
Will defer to others more articulate.
Nothing. Thank you.
I’m unlikely to come back anytime soon. I’m fed up with trying to solve scalpel problems with a sledgehammer. But if there were some measure to reduce frustration (easier billing? Less transphobia? A willingness to acknowledge that the Court plays a huge role in the massive overload of cases?) I might consider it.
With more and more people coming off lists, even temporarily, those of us who are left are slammed. Allowing us a staff billing rate could help us delegate some administrative responsibilities to others, giving us more time to devote to the meat of our cases--the numbers of which continue to rise. Helping develop a motions/brief/resource bank for rostered counsel would be huge. Providing us free trainings to meet MCILS
These times are hard for everyone. Be kind.
Thank you for asking these questions and your diligent efforts to improve the system.
N/A
NA
The inability to meet with clients has utterly altered the ability to help them, understand them , control them and develop trust. Cops and PO’s have had no problem going into the jail whenever they want to do interviews but we even at this moment cannot in Cumberland County.
I get everyone is trying their best in an awful situation. But the morale amongst my colleagues is as bad as ive seen it. Many of us are talking about leaving rosters in a way that we hadn't before. Its not just a bad day venting, but more of a profound stress. Each person who leaves the roster just makes us more overworked and thereby makes us more likely to leave. I truly believe this system is a good system, but the breaking point is out there, and I just dont know where it is yet. I love my job. But at a certain point, I will be too overworked, and too underpaid to justify this job. I am not there yet, but for the first time, it is clearly on the horizon, and I can see
It feels like a few bad apples are causing policy changes at all levels (courts, mcils, DHHS) as a reaction, as opposed to having proactive, long-term engagement with all stakeholders to direct changes.
I think that's about it
The thought that DHHS is represented by a large fairly well funded agency and a parents attorney is expected to do everything down to licking the envelope is problematic. I have significant expenses at my office as do many parents attorneys. A caseworker serves most of the subpoenas, yet we have to send out to the sheriff because of
Many of us are doing criminal, child protective, MH, PCR, GAL, as well civil work. Keeping up with credit requirements (CLE) appears to be increasing each year without consideration of the years of practical experience an individual atty may have, "one size fits all" approach.
Thanks . Wr do appreciate you .
Prosecutor Chris Fernald in Knox County is atrocious and he makes or acting their dreadful. If he were gone, the number of attorneys accepting court appointed cases there would dramatically increase.
this is not sustainable long term and I am working too many hours. Privately retained clients are suffering.
N/a
The raise to $80.00 per hour is a good start. However, it's not enough to recruit new talent to this area without
doing a good job so far

You're doing well. I'd love to see some writing devoted to the evils of the Public Defender concept
Help get more attorneys. I know its a big political thing on how much to pay us, but in my view this is a labor demand issue. We can't attract attorneys even with $80 now. It was too low to begin with, but wages are up so much across the board the past several months it's basically useless. You're stuck with only the truest of the true believers right now because of the money and all the bad press over the years. Being able to set a rate in the ballpark of the federal rate ($155) would definitely attract high quality attorneys to this work - it does for the feds. And some marketing/public relations. We need to rehabilitate the image publicly so lawyers don't see this
times are tough. moral is very low. we are taken advantage of by the judiciary. we have the smallest voice when it comes to input to the court. the court thus acts like the state is more than us and not on equal footing
personally im not past covid, i have young children that cant be vaccinated and im not willing to risk their health and welfare because the courts feel like a feeling of "back to normal is important". Virtual hearings and team meetings are much more efficient than the old ways we did things and i think if anyone in the system expects the dwindling number of attorneys on the roster to not flame out they need to let us work smarter wherever possible
The system is stacked against criminal defendants and we need to change the culture and the court system
I have been speaking with many of my fellow defense attorneys. We want to serve our clients and help them as best we can. We know the system needs us as well. I have almost 30 years in and I believe in what we are doing more today than when I started. I hope MCILS is sincerely trying to preserve and improve our one-of-a-kind system and not simply managing its demise. Without more lawyers in the system I don't know how we survive. Using electronics more will be helpful and appreciated but caseloads are soaring and the MCILS roster continues to decrease. In my humble opinion, unless we make a concerted effort to bring in more numbers all else will simply be delaying the inevitable. And hiring more compliance personnel just adds insult to injury. Please put
Age is clearly becoming an issue. I know that I am the old guy nowadays (how did that happen?), but I see many of the "youngsters" are graying. The low pay will not help rural Maine attract our replacements!
The rate increase only addresses a portion of the systemic challenges, and only addresses a portion of that portion. Caseloads are too high, attorneys are getting burned out and practicing indigent defense is not healthy right now. We need support from MCILS in confirming that "the grind" is not an acceptable long term way for us to practice. Attorneys need access to mental health, physical health and substance use resources. We need MCILS to advocate for access to group plans that attorneys can afford, or access to state services so that attorneys can take care of themselves. There is almost a "badge of honor" that this is the way it is to be a defense attorney, and especially a court appointed defense attorney. That culture needs to change and it
The new protocols on administration are helpful but I have found Lynne Nash's emails to be unprofessional. The more requirements implemented by the commission the harder it becomes for lawyers to do a percentage of commission work. The big problem the commission is having with finding lawyers is not the lawyer that does 95% appointed work, it is the person that used to do 50% or 30% appointed work. People aren't leaving the practice of law, they're finding other work that doesn't expect them to walk over hot coals for cents on the dollar. We are over-worked, over-burdened, disrespected and made to do everything on our own and the reality is that there are other ways to make money as a lawyer. The disrespect issue is very real. The Bob Cummins and Ron Schneiders of the world are high on my list of reasons why I'm not taking appointments. Ron seems to think CA lawyers are bottom of the barrel. Again, most of us can do other things. It is compounded when our own

clients drive the cases, we don't! we think that clients have a right to disagree with the state and should not be bullied by prosecutors .... how is it a fair disposition of a case always changes when a defendant disagrees with the state and it's characterized as a defendant is not accepting responsibility for his actions just because he or she disagrees with the state which is always helped by the court telling counsel "be sure to remind your client that the sentence can be significantly greater after a guilty finding" .... what exactly is the prosecutor saying when "all
Pay is still inadequate. But you already know that.
Over time, in part due to the pandemic, in larger part due to the opiate/meth/trafficking prevalence in our case loads, in part due to housing issues, in part due to lack of employment opportunities for our clients, this work has fewer happy outcomes than it once did. That takes a toll if you care at all about the people you represent. Also, and this should have been somewhere up above, a mechanism to get services for people who are working. I have seen to many people asked to choose between their kids and being employed. The State of Maine holds the purse strings for 80% of the counselors in this state, they should be required, as a matter of contract, to have off hours counseling sessions, drug screens, FTMs, etc. We want people to work to sustain themselves and their kids, we want them to have stable housing. We need them to be able to reunify and work at the same time. Thanks for
Anything that we bill, it's supposed to be "attorney" work, not something that a staff member can do. So while we are having to juggle court dates (because we can't physically BE in more than one court at a time), we have to prep all of the motions and cover letters ourselves, and deliver them to the Courts now because we can't trust the mail. Plus, I'd like to be able to charge for postage, and now I send thumb drives to clients with discovery.
despite the media reports, the quality of indigent defense in Maine is excellent under the current system
There is a significant problem with the availability of training for new attorneys. For example, if an experienced MCILS attorney wants to hire an associate who just graduated law school, that associate will not be able to bill hours on MCILS cases until he or she is trained and rostered; but the limited availability of trainings has been such that those associates would have to wait several months. This dissuades experienced lawyers from bringing on young associates because they have to bear the financial burden for months before the associate can start to bill MCILS hours. Minimum standard trainings should be available on, at least, a quarterly basis, at least in the form a
What is going on!
n/a
I appreciate being asked for feedback and I think the communication from MCLIS has been excellent lately.
Washington County is not doing great. We have one local attorney in the LOD rotation and he may be quitting soon. Most of our appointments are being farmed out to lawyers in other counties. The result of that is that local indigent client are getting much less access to their appointed attorneys. An example of that is a felony plea done recently after counsel from away met with his client exactly one time 15 minutes before the plea. That's
My practice consists almost entirely of MCILS cases, CR, PC along with GAL work. I find it really rewarding & satisfying. It would be financiall suicide if not for Social Security and Medicare. Compared with a state employee public defender system, the MCILS system provides me with more control over my caseload and discretion to do
We need e-filing back! Also, a little favorable press about those of us taking multiple hits for the team would be nice ... A full-court guilt press on the grey-flannel-too good-for-lowly -MCILS firms is long overdue ...
I'm glad MCILS cares about this. I know it's hard to find lawyers to fill these roles.
That there is no one that seems to be able to answer the questions I have. No "accounting" provided of payments. No ability to see submitted invoices. That creates a problem when my assitant leaves and I have no one that can answer the questions that I have.
The raise was appreciated.

The reimbursement/payment software and submission process is cumbersome... fingers crossed that the new promised software will help. Very difficult at this time to access monthly or year end data totals.
DV cases are becoming more difficult to defend due to overzealous prosecutors (but then again, what else is
We that do indigent cases would like our critics to see hands on exactly what we do each day. I would welcome the critics to spend a week with me, go to court with me, go To the jails with me, meet clients with me, do Billings with me on weekends cause we are all busy during the week. Visit people at the prison worh me. Come
Making lawyers run around to 4 different courts in 1 day is a waste. We also end up having to file multiple motions to continue because 1 court doesn't know what the other court is doing. And NO MORE e-filing and the mails take FOREVER. So it's a cluster to say the least. Court appointed lawyers feel like they are taken advantage
I love this work.
The new leadership has been great! I'm happy at the direction things are going. There is transparency, accountability, and good communication.
I think it might be best to hold off on electronic docket filing in criminal matters for awhile. I do civil in Penobscot and it is a mess. To throw that in the mix now would be a huge mistake.
I am mostly in Penobscot, although I do accept some cases in Aroostook and Piscataquis. Judges need to recognize that we/I can't be in two counties at once and need to be accomodating.
Statements such as calling weekly payment of vouchers "aspirational" are not helpful
Those of us who have stayed on the rosters are getting clobbered with new appointments and it will break us eventually too. It's not a matter of making more money, it's a matter of not having enough time to do a good job.
My stress is off the charts right now and I feel obligated to stay on the list because I feel so bad for the poor
It would be easier to do this job if more respect were given to attorneys. We are not money hungry or incompetent. It's insulting that the MCILS CLE for PC work was trial practice; almost all PC attorneys have more trial practice than any other group of attorneys. Don't expect me to waste my time on that when I could just quit
I am seriously considering removing myself from the roster at a time when I am being asked by courts from Waterville to York to take child protection cases because they don't have enough lawyers to handle the caseload
Im old and tired
NA
We have great judges and clerks in PEN for the most part. I think both prosecutors and defense attorneys like
Personally I take on more than just court appointed cases so sometimes my case load is just too large/busy to take on PC cases at a certain time. I have never officially come off the list but will decline cases if I dont have the time. I hope other attorneys will do the same so our level of work can remain exemplary. We need more attorneys on the roster so attorneys dont feel pressured to continue to take on cases. MCILS needs to continue to implement the rules to ensure that all rostered attorneys are doing their job appropriately.
Near a breaking point, but still prepared to soldier on for now.

Please consider flat fee for cases. The amount of paperwork and secretarial work is an impediment to getting things done and getting paid. I would happily take the average for a flat fee for misdemeanor cases that resolve at dispo. Bet there would be a lot fewer continuances too.
Test

MCILS / AOC MOU

TO: COMMISSION

FROM: JUSTIN ANDRUS, (INTERIM) EXECUTIVE DIRECTOR

SUBJECT: MCILS / AOC MOU

DATE: 8/27/2021

CC: GOC

Historically, MCILS has interacted with the AOC under the terms of a Memorandum of Understanding outlining that relationship. The most recent iteration of the MOU expired 12/31/2015. A copy of that MOU is attached to this memorandum.

On August 9th, State Court Administrator Glessner requested a meeting to go through the various provisions of the MOU so we could discuss the implementation of the changes required from the AOC perspective. On August 12th, I met with Administrator Glessner and Director of Court Operations Maddaus to discuss the MOU.

We have not yet reached resolution with AOC. We look forward to our next meeting.

1. MEJIS Access

Administrator Glessner explained that AOC intends to eliminate MEJIS access by agencies outside the Court. MCILS has no standing to demand access to MEJIS, though MCILS should have access equal to any agency or entity outside of AOC that is in any way related to its practice areas.

The elimination of MEJIS access poses operational challenges to MCILS. MCILS interrogates MEJIS frequently. Screeners address MEJIS on many cases to determine what charges are pending, and what limits to set on collection, for example. When we lose MEJIS access we would need to transition to a process of emailing the clerks in each case in which there is a partial indigency order to obtain a copy of the docket record. Our central office staff uses MEJIS to determine appointment and case status for purposes ranging from connecting clients with counsel, to determining whether attorneys who are suspended or die have outstanding cases. These queries would need to become emails to the clerks as well.

In addition, we are seeing a surge in calls from unrepresented defendants due to the new legislation that prevents the district attorneys from talking with those defendants. MCILS supports the legislation because defendants need to be counselled before engaging the state, but all those people are now directed to us. Most of the calls turn out to be inquiries about whether a case is pending; whether there is a warrant; or when an appearance is scheduled. Without MEJIS access we will need to refer those people to the court for each of those questions.

2. Collection of Counsel Fees

During the meeting Administrator Glessner explained that the Courts had never expected to be responsible for MCILS collections on a permanent basis. The MOU reflects the expectations of both MCILS and AOC that responsibility for collections would have been transferred to MCILS as early as 2010. This did not occur because MCILS did not have the capacity to assume the collections tasks.

Administrator Glessner explained that the time for the Court to exit the collections function is arriving. He was very clear to communicate that there is no deadline yet, and that AOC would like to work with MCILS to accomplish the transition.

As the conversation proceeded, Administrator Glessner and Director Maddaus clarified that the Court would continue to collect first-party bail, subject to some restrictions clarified in an email of August 27th.

There are two separate issues related to the collection of counsel fees that need resolution:

a. Collection of Direct Payment from Clients

Certain clients assigned counsel under the MCILS program are found to be only partially indigent. These clients are assigned counsel, subject to a periodic repayment requirement. Today, those periodic repayments are collected by the clerks on behalf of MCILS. As I understand it, this is the activity the Court will cease performing.

MCILS has two issues. First, the collection of direct payments from clients may tend to put MCILS in conflict with the people to whom it is responsible for the provision of services. Second, MCILS has no practical ability to engage in the collection process with its current resources.

Naturally, MCILS does not suggest that the Court is obligated to perform our functions. When the Court is ready to cease the collection of direct repayments, that function will stop overall.

If MCILS is to engage in the collection of direct repayments, then we will require additional staff, space, and computing resources to receive, process, and account for those payments. Partially indigent clients are presently able to make their payments through any courthouse. MCILS does not have fulltime staff in any courthouse and has no staff in many courthouses. To permit walk-in payments, MCILS would require staff in the field.

It may be possible to transition to mailed-in and electronic payments. This could eliminate the issue of field staff. I estimate that we would require two full time staff members to perform the collection function.

This issue will require legislative action to fund an internal collection apparatus before MCILS can fulfill the direct-collection imperative. MCILS is developing data to permit an assessment of cost-efficiency. Based on a very high-level review, it may be that the cost of collections staff for MCILS would exceed their utility.

b. Collection of Bail

I understand that the Courts are willing to continue collecting MCILS fees through the bail offset statute. There is an issue of timing between MCILS and AOC, however. Under current the current MCILS rules an MCILS attorney must submit a voucher for payment within 90 days of the completion of a case. Director Maddaus has explained that the clerks need to know the amount of a counsel voucher within 21 days in order to complete the bail set off and return any remaining bail to the defendant within 30 days.

Pursuant to 15 M.R.S.A. §1074(3): When a defendant has deposited cash or other property owned by the defendant as bail or has offered real estate owned by the defendant and subject to a bail lien as bail and the cash, other property or real estate has not been forfeited, the court, before ordering the cash or other property returned to the defendant or discharging the real estate bail lien, shall determine whether the cash, other property or real estate or any portion of the cash, other property or real estate is subject to setoff as authorized by this section.

The issue is that while MCILS can respond to an inquiry from the clerks as to the existence of a claim against bail within the 21-day window, MCILS may not be able to provide the amount of that claim within the window.

This is an instance in with the operational needs and ability of MCILS and AOC conflict, and may thus require legislative resolution.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
MEMORANDUM OF UNDERSTANDING

Pursuant to P.L. 2009, ch. 419, a Memorandum of Understanding (MOU) was entered into effective July 1, 2010 between Maine's Judicial Branch and the Maine Commission on Indigent Legal Services ("the Commission") in order to establish guidelines and procedures for interim and enduring interactions between the Judicial Branch and the Commission. In September of 2010 an amendment was prepared revising the July 1, 2010 Memorandum of Understanding. In July of 2011 an amendment was prepared revising the September 2010, Memorandum of Understanding. In July 2012 an amendment was prepared revising the July 1, 2011 Memorandum of Understanding. This Memorandum of Understanding replaces those agreements in their entirety and is effective August 1, 2014.

1. Access to MEJIS

The Judicial Branch does not normally permit outside access to the MEJIS system. However, the Judicial Branch recognizes that the Commission requires access to the Judicial Branch's computer system, MEJIS, for the purposes of coordinating the determination of partial indigency, the payment of counsel fees and bail information for potential offset for outstanding counsel fees. For the purpose of this MOU, the Judicial Branch will permit the Commission to have access limited to the following information: case name & docket number, defendant's name or parent's name in PC case, name of assigned counsel, and payment information.

The Commission cannot access the MEJIS system for other purposes unless the Judicial Branch authorizes it in writing. Commission employees cannot change, alter or amend any information contained in the MEJIS system unless specifically required to process counsel fee reimbursements, the procedures for which are being determined by the Collection of Fees working group. The Commission designates people employed by the Commission, listed in

Exhibit A, to access the MEJIS system for the purposes stated above.

The foregoing limited access is granted until the earlier of the following: (a) the implementation of an electronic interface that will permit the electronic transfer of appropriate data from MEJIS to the Commission, (b) the termination or expiration of this MOU, or (c) a determination by the Judicial Branch that such access should no longer be permitted.

2. Collection of Counsel Fees

The Judicial Branch has historically collected counsel fees owed by those indigent persons who have been assigned counsel and determined to be partially indigent and, therefore, capable of sharing the cost of their assigned counsel. Since the date of the transfer of Financial Screener positions from the Judicial Branch to the Commission, over 90% of such partial fees are regularly collected in courts having financial screeners.

When the Judicial Branch and the Commission entered into the initial MOU, the Judicial Branch anticipated that, following the transfer of the Screener positions, sole responsibility for the collection of assigned counsel fees would be transferred to the Commission on or about July 1, 2010, when sufficient funds for paying attorney fees and hiring staff were expected to be placed in the Commission's budget. It was also anticipated that technology would be implemented by July 1, 2011, to electronically share data between the Commission and the Judicial Branch for this purpose. To date, these anticipated events have not occurred. At present, the Commission has concerns about its capacity to collect these funds without this electronic data exchange providing the necessary information to effectively and efficiently collect attorney fee reimbursements.

Thus, the Judicial Branch and the Commission now agree that

- Judges will continue to execute orders of payment as they presently do requiring partially indigent people to pay counsel fees determined at or around the time they

are assigned counsel.

- The Collection of Fees working group created by the Judicial Branch and the Commission will continue to develop policies and procedures related to the collection of counsel fees.
- The ongoing progress of the working group will continue to be evaluated by the State Court Administrator and the Commission.
- The working group will design and propose a plan for the transfer of sole responsibility to the Commission for the efficient and effective collection of counsel fee reimbursements.

3. Notification of Assignments by the Clerks

Before the Commission was established, the Clerks of the Courts would provide notice of the assignment of counsel, in hand or by mail, to both the indigent person and the assigned lawyer. The court continues to assign counsel in much the same way now, except that the court's assignment is considered an initial assignment that must be approved by the Commission, and the assignments are made from a roster of attorneys established and approved by the Commission. The clerks currently provide notice of the court's initial assignment to the Commission contemporaneously with written notification to the indigent person and assigned counsel.

4. Screener Access to the Clerk's Office

Typically, individuals who are not employed by the Judicial Branch are not permitted access to the clerks' offices. However, the Judicial Branch recognizes that the Commission's financial screeners require limited access to the clerks' offices in order to perform their responsibilities. Therefore, it is agreed that the Commission's financial screeners may continue to have access to the clerks' offices during regular public hours for such limited purpose. Any information gathered by screeners from court files must be used for internal Commission

purposes and cannot be shared with the general public.

5. Custody of Documents

The Judicial Branch is the custodian of all payment and court records related to the provision of court-appointed counsel prior to July 1, 2010. The Judicial Branch continues to retain custody of those documents pursuant to the Judicial Branch's record retention schedule. Requests for any of those documents shall be directed to the Administrative Office of the Courts and handled by the Judicial Branch.

6. Complaints Regarding Assigned Counsel

Before the establishment of the Commission all complaints regarding court-appointed counsel were handled by the Judicial Branch. Copies of all complaints about assigned counsel received by the clerks' offices are now forwarded to the Commission, which is solely responsible for any and all actions with respect to such complaints.

7. Assignment of Counsel of Lawyers Not on the Commission Roster

Judges do not assign a lawyer to a case unless that lawyer is on a Commission Roster provided to the court. In the event a judge wishes to assign a case to a lawyer not on a Commission Roster, that judge must first cause the lawyer to complete an application and become rostered with the Commission before appointing the lawyer to that case. Judges have the absolute discretion to select and initially assign rostered counsel to cases in the manner Judges deem appropriate. For example, Judges are not required to select and assign rostered lawyers to cases in the order in which the lawyers' names appear on the Commission's Roster.

8. Confidentiality

All Commission employees who are given access to MEJIS and court files must sign a statement of confidentiality provided by the Judicial Branch.

9. Expiration of MOU

This Memorandum of Understanding is in effect until December 31, 2015.

MAINE JUDICIAL BRANCH

DATED: 10/9/14

By: James T. Glessner, State Court Administrator

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

DATED: 10/7/14

By: John Pelletier, Executive Director

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
MEMORANDUM OF UNDERSTANDING

EXHIBIT A

MCILS Employees with access to MEJIS:

Deputy Executive Director

Eleanor J. Brogan, Esq.
Tel: 287-3258
(207) 287-3293 Fax
Email: Ellie.Brogan@maine.gov

Financial Screeners:

Paula Hebert
(207) 215-1822
Email: paula.d.hebert@maine.gov
Courts Covered: Alfred Superior, Biddeford District, Springvale District, and York District.

Pamela Slye
(207) 215-1826
Email: pamela.e.slye@maine.gov
Courts Covered: Cumberland County Unified Criminal Docket and Portland District.

Bruce Stahl
(207) 215-1825
Email: bruce.a.stahl@maine.gov
Courts Covered: Auburn Superior, Lewiston District, Oxford County Superior Court, South Paris District.

Moira Paddock
(207) 215-1824
Email: moira.paddock@maine.gov
Courts Covered: Bath Superior, West Bath District, Wiscasset Superior, Wiscasset District, Rockland Superior, Rockland District, Belfast Superior and Belfast District.

Jeffrey McClellan
(207) 215-1823
Email: jeffrey.s.mcclellan@maine.gov
Courts Covered: Augusta Superior, Augusta District and Waterville District.

Michelle Weirich
(207) 215-1827
Email: michelle.weirich@maine.gov
Courts Covered: Bangor District Court and Penobscot County Unified Criminal Docket.

Jeffrey Neal
(207) 592-5310
Email: jeffery.neal@maine.gov
Courts Covered: Houlton Superior, Houlton District, Caribou Superior, Caribou District.

John Craig
(207) 592-5308
Email: john.w.craig@maine.gov
Courts Covered: Hancock County Unified Criminal Docket, Ellsworth District

Andrus, Justin

From: Andrus, Justin
Sent: Wednesday, August 25, 2021 11:55 AM
To: Glessner, James T.; Maddaus, Elizabeth
Cc: Maciag, Eleanor
Subject: Follow up AOC / MCILS

Good morning.

I thought it might be helpful to have a follow up meeting to discuss some of what we addressed in our last meeting, and to introduce come additional topics. I am available this afternoon; tomorrow except the 3:00 hour; and, Friday except the 1:00 hour. My agenda items follow. I am open to yours as well, of course.

1. Collections – I have been asked by GOC for an update on collections and screening issues at MCILS. It appears GOC was under the belief that the screeners were transferred to the Judicial Branch, so this will likely be a ground up discussion of where things are. I will report on the decision to eliminate JB collection activities, other than through bail. It would be helpful to be able to provide GOC with a timeline. I anticipate that we will need to hire many people to duplicate the geographic diversity and infrastructure the court brings to collections process now, and need to start preparing the legislature for that increased cost.

2. MEJIS – I understand that the JB may decide to eliminate MCILS access to MEJIS, and recognize its prerogative to do that. I think it is important to discuss the procedures we would implement to address the loss of that access. MCILS interrogates MEJIS frequently. Screeners address MEJIS on many cases to determine what charges are pending, and what limits to set on collection, for example. When we lose MEJIS access we would need to transition to a process of emailing the clerks in each case in which there is a partial indigency order to obtain a copy of the docket record. Our central office staff uses MEJIS to determine appointment and case status for purposes ranging from connecting clients with counsel, to determining whether attorneys who are suspended or die have outstanding cases. These queries would need to become emails to the clerks as well.

   In addition, we are seeing a surge in calls from unrepresented defendants due to the new legislation that prevents the district attorneys from talking with those defendants. MCILS supports the legislation because defendants need to be counselled before engaging the state, but all of those people are now directed to us. Most of the calls turn out to be inquiries about whether a case is actually pending; whether there is a warrant; or, when an appearance is scheduled. Without MEJIS access we will need to refer those people to the court for each of those questions. I think we should discuss how and where those inquiries should land. MCILS is not now able to take the question from the defendant, query a clerk, and return the information to the defendant (though we hope to add that capability in the future).

3. Appointments – As caseload continues to increase during a period in which MCILS has fewer attorneys willing to offer their services, identifying counsel for appointments is becoming challenging. MCILS anticipates turning to a protocol of ensuring that the information available to the clerks through Defender Data is accurate in real time, and eliminating the published rosters because they become inaccurate very quickly. I think it might be helpful to discuss what we intend to do with you, so that we can learn whether there are any tweaks to our protocol that we might be able to make to support the convenience of the clerks.

I look forward to hearing from you.

JWA

___
Justin W. Andrus
(Interim) Executive Director
Maine Commission on Indigent Legal Services
(207) 287-3254
Justin.andrus@maine.gov

Andrus, Justin

From: Andrus, Justin
Sent: Thursday, August 26, 2021 12:22 PM
To: beth[redacted]
Cc: Glessner, James T.; MCILS
Subject: RE: Scope of Referrals to MCILS

OK, thank you.

___
Justin W. Andrus
(Interim) Executive Director
Maine Commission on Indigent Legal Services
(207) 287-3254
Justin.andrus@maine.gov

From: beth.[redacted]
Sent: Thursday, August 26, 2021 12:19 PM
To: Andrus, Justin <Justin.Andrus@maine.gov>
Cc: Glessner, James T.[redacted]; MCILS <MCILS@maine.gov>
Subject: Re: Scope of Referrals to MCILS

Ted and I will look for a time and I will be back in touch with you.

On Thu, Aug 26, 2021 at 12:15 PM Andrus, Justin <Justin.Andrus@maine.gov> wrote:

> Good afternoon, Beth. Thanks for this. We should include this on the agenda for our next conversation. Things are not quite as simple as the email from the DA's office suggests.
>
> I am not sure how to triage requests for information going forward. For, "No complaints," I understand the clerk cannot give more information than the fact that there is no case. For other things, we will need to refer back to the clerk.
>
> When is a good time for us to reconvene?
>
> ___
>
> Justin W. Andrus
>
> (Interim) Executive Director

Maine Commission on Indigent Legal Services

(207) 287-3254

Justin.andrus@maine.gov

From: beth.[redacted]
Sent: Thursday, August 26, 2021 12:06 PM
To: Andrus, Justin <Justin.Andrus@maine.gov>
Cc: Glessner, James T. [redacted]; MCILS <MCILS@maine.gov>
Subject: Re: Scope of Referrals to MCILS

Justin,

The clerks were operating on instructions that came from the DA's office (see attached email).

In this situation the defendant had a summons for a certain date, there was no complaint filed with the clerk's office and the defendant was not on the docket. Prior to the new instruction, the clerks would have referred the defendant to the DAs office but that is no longer an option. Perhaps in a situation like that, someone from MCLIS could contact the DAs office to find out the status of the case? I am looking forward to developing some uniform instruction on these sorts of issues prior to the new legislation going into effect, although it seems that most of the DAs offices are already following the new statute.

Beth

On Thu, Aug 26, 2021 at 8:08 AM Andrus, Justin <Justin.Andrus@maine.gov> wrote:

> Good morning. We are starting to see a surge in calls and emails like the one below. Some clerks are directing defendants to MCILS for procedural status information, rather than substantive advice. I do not have MEJIS access, and so I cannot help answer these questions. For that reason, I simply refer these back to the clerks. Going forward, MCILS is the appropriate place to refer a Defendant for substantive legal advice, but is not a good referral for cases status, warrant status, or appearance date information. I'd appreciate it if you would discuss this with your clerks. Thanks!
>
> JWA

___

Justin W. Andrus

(Interim) Executive Director

Maine Commission on Indigent Legal Services

(207) 287-3254

Justin.andrus@maine.gov

From: [redacted]
Sent: Thursday, August 26, 2021 7:26 AM
To: MCILS <MCILS@maine.gov>
Subject: Question

Good Morning,

On Monday, August 23, 2021 my son [redacted] appeared in court at 8:30 am as directed by his summons from the Gardiner Police Department (Officer [redacted]). He was told his case was not on the docket and to go and see the clerk in the lobby. She gave him the telephone number and email address of your office so that he could find out what was going on. He tried calling the number (287-3257) and was told he would need to speak with Justin. He left a message and had a return call on Wednesday, 8/25. Justin stated that he did not know why [redacted] had been given his number because his job was to refer people to a lawyer for help.

Would someone please tell us what is going on with this summons. We have no idea who to contact to find out the status of his case, nor do we have anything other than his summons for information. Has this case been dismissed? Is there something that Shane is supposed to do now? Please reach out to [redacted] or myself to give us a status update to the charge. It would be greatly appreciated.

Thank you.

[redacted]

[redacted]

ATTORNEY OVERSIGHT

TO: COMMISSION

FROM: JUSTIN ANDRUS, (INTERIM) EXECUTIVE DIRECTOR

SUBJECT: ATTORNEY OVERSIGHT

DATE: 8/27/2021

CC: GOC

MCILS continues to improve its oversight of attorney performance and fiscal responsibility within the constraints imposed by its current staffing level. MCILS has not yet been authorized to hire for any of the attorney positions the legislature authorized. We therefore remain limited in our abilities, particularly with respect to assessing performance in the field.

1. Attorney Qualifications

MCILS has effectively implemented its existing attorney qualification structure and is effective in ensuring that only counsel who have been qualified are designated eligible to receive appointments under Rule 44. Similarly, MCILS has been effective in approving only eligible counsel who receive appointed cases. Because the Court makes appointments, there is occasionally a matter that must be reassigned rather than approved. In those instances, counsel are directed to withdraw and arrange for substitute counsel through the Court. These instances are infrequent at this point. We appreciate the Court's work to adhere to our eligibility designations.

The MCILS attorney qualification structure bears reconsideration. We anticipate overhauling our structure over the remainder of the fiscal year.

2. Attorney Performance

Issues of attorney performance remain difficult for MCILS to assess. We receive occasional information about performance issues and follow up on those, but MCILS needs to develop and implement a formal performance assessment and reporting structure. That structure depends on the availability of staff at some point in the future.

We have received some reports of attorney performance problems, and the occasional report of exceptional performance. In the last 30 days we received one report from a clerk, and one report from a District Attorney, for example. We also occasionally become aware of an issue through a published decision.

We have asked both the Court and the Maine Prosecutor's Association to assist us by providing a feedback structure. Both the Court and the MPA indicated that each would raise this subject at an organizational meeting, but we have not received any substantive feedback. I have reminded both

groups that I hope to develop a process with them. I am looking forward to working with each group when it is ready to work with me.

The MCILS contract with Justice Works to provide Defender Data as our billing and case management system will conclude this fiscal year. We have drafted a Request for Proposals to obtain a new system. We anticipate that system to foster greater oversight through better data tools. We have submitted the RFP to Maine IT for review, and we are waiting for their reply as a prerequisite to publishing it.

3. Auditing and Attorney Financial Compliance

MCILS has not yet been able to develop and implement a formal audit procedure because we have not yet been authorized to hire the attorney staff we will need for that process.

MCILS is not seeing evidence of ongoing financial irregularities in billing or non-counsel costs. Voucher review is performed weekly to the standard possible under the existing staff level. Lynne Nash continues to perform a detailed analysis of each non-counsel invoice we receive to identify and address issues. She also evaluates every Lawyer of the Day assignment.

4. Investigations

Since January 19, 2021, MCILS has begun 30 investigations into issues related to counsel. 20 have been cleared and closed. There have been a total of eight suspensions. Four of those suspensions have then resulted in reinstatement when administrative deficiencies were corrected. Four attorneys remain suspended from MCILS. Three investigations are presently active.

As MCILS overhauls its rules, I anticipate implementing more defined investigative and adjudicator functions. I also anticipate implementing rules and policies to define the use of the MCILS subpoena power.

Andrus, Justin

From: Andrus, Justin
Sent: Thursday, August 26, 2021 8:17 AM
To: Maeghan Maloney
Cc: Andy Robinson; Maciag, Eleanor
Subject: Follow up / RE: MCILS attorneys charged with crimes

Good morning! I am following up on this thread from last spring. Was there any willingness to assist in this regard?

___
Justin W. Andrus
(Interim) Executive Director
Maine Commission on Indigent Legal Services
(207) 287-3254
Justin.andrus@maine.gov

From: Andy Robinson <[redacted]
Sent: Thursday, May 20, 2021 3:46 PM
To: Andrus, Justin <Justin.Andrus@maine.gov>
Cc: mmaloney <[redacted]
Subject: Re: MCILS attorneys charged with crimes

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

Hi Justin,
It is good to hear from you and your timing is good. The MPA Board (DA's and AG) are set to meet on June 4th. I will ask our esteemed President, DA Maloney, to put this on our agenda for discussion. I am sure the MPA will get back to you with feedback.

Sincerely,

Andy

Andrew S. Robinson

District Attorney for District 3
[redacted]

From: Andrus, Justin <Justin.Andrus@maine.gov>
Sent: Thursday, May 20, 2021 3:40 PM
To: Andy Robinson <[redacted]>

Cc: MCILS <MCILS@maine.gov>
Subject: MCILS attorneys charged with crimes

Good afternoon!

Today I am addressing an issue in which an MCILS attorney was charged with a crime. In the course of that process, I came to realize that there is no effective feedback loop for me to be sure that I know about these instances. I have asked the trial chiefs to work with me to develop protocols so that the Court provides us with notice. I am hoping that you will consider asking the prosecutors to do the same, much as they do for the Board of Overseers. We do not necessary suspend attorneys on mere allegations, but diligence in my role requires me to at least investigate.

JWA

___
Justin W. Andrus
(Interim) Executive Director
Maine Commission on Indigent Legal Services
(207) 287-3254
Justin.andrus@maine.gov

Andrus, Justin

From: Andrus, Justin
Sent: Thursday, August 26, 2021 8:15 AM
To: Mullen, Robert E; French, Jed; Lawrence, Rick E.
Cc: MCILS
Subject: Follow up / MCILS Attorney Feedback

Good morning – I don't recall seeing anything in follow up to this, so I am following up. I think it is important for MCILS to receive feedback from the Court when the Court observes issues, or becomes aware of a criminal charge against a lawyer. Is this something the Court is willing to do? It is difficult to oversee quality and performance without insight.

JWA

___
Justin W. Andrus
(Interim) Executive Director
Maine Commission on Indigent Legal Services
(207) 287-3254
Justin.andrus@maine.gov

From: Andrew Mead <[redacted]
Sent: Monday, June 7, 2021 3:20 PM
To: Mullen, Robert E <[redacted]
Cc: Andrus, Justin <Justin.Andrus@maine.gov>; French, Jed <[redacted]>; MCILS <MCILS@maine.gov>
Subject: Re: MCILS Attorneys / Charged

Ted -
If this isn't already on a Chiefs Agenda, please add it.

AMM

On Thu, May 20, 2021 at 2:48 PM Robert Mullen <[redacted]> wrote:

> The Chief is in a meeting. I will ask to put this question on our next agenda. Thanks.
>
> On Thu, May 20, 2021 at 2:29 PM Andrus, Justin <Justin.Andrus@maine.gov> wrote:
>
> > Good afternoon. Today I am addressing an issue with an MCILS rostered attorney who was charged with a crime. MCILS rostered attorneys have an obligation to report to us, but don't always. Would the Court consider implementing the practice of advising the Commission of these instances?
> >
> > ___
> >
> > Justin W. Andrus

(Interim) Executive Director

Maine Commission on Indigent Legal Services

(207) 287-3254

Justin.andrus@maine.gov

--
Robert E. Mullen, Chief Justice
Maine Superior Court

--
A. Mead

Hon. Andrew M. Mead
Acting Chief Justice; Senior Associate Justice
Maine Supreme Judicial Court
Penobscot Judicial Center
78 Exchange Street
Bangor, ME 04401

Andrus, Justin

From: Andrus, Justin
Sent: Monday, August 23, 2021 4:10 PM
To: IT Procurement DAFS; Maciag, Eleanor
Subject: RE: RFP to review ITPROC-802 Maine Commission on Indigent Legal Services Case Management ITPROC-802

Fantastic! Thanks.

___
Justin W. Andrus
(Interim) Executive Director
Maine Commission on Indigent Legal Services
(207) 287-3254
Justin.andrus@maine.gov

From: IT Procurement DAFS <ITProcurement@maine.gov>
Sent: Monday, August 23, 2021 4:09 PM
To: Andrus, Justin <Justin.Andrus@maine.gov>; Maciag, Eleanor <Eleanor.Maciag@maine.gov>
Cc: IT Procurement DAFS <ITProcurement@maine.gov>
Subject: RE: RFP to review ITPROC-802 Maine Commission on Indigent Legal Services Case Management ITPROC-802

Certainly. Our queue is not too long at the moment so we hope to begin review on your request this week.

Regards
~ *Jeannine*

Jeannine A Spears, Systems Analyst, IT Procurement
Department of Administrative and Financial Services
[redacted]

From: Andrus, Justin <Justin.Andrus@maine.gov>
Sent: Monday, August 23, 2021 4:04 PM
To: IT Procurement DAFS <ITProcurement@maine.gov>; Maciag, Eleanor <Eleanor.Maciag@maine.gov>
Subject: RE: RFP to review ITPROC-802 Maine Commission on Indigent Legal Services Case Management ITPROC-802

Thank you – may I tell the Oversight committee how long the queue is?

___
Justin W. Andrus
(Interim) Executive Director
Maine Commission on Indigent Legal Services
(207) 287-3254
Justin.andrus@maine.gov

From: IT Procurement DAFS <ITProcurement@maine.gov>
Sent: Monday, August 23, 2021 4:03 PM
To: Andrus, Justin <Justin.Andrus@maine.gov>; Maciag, Eleanor <Eleanor.Maciag@maine.gov>

Cc: IT Procurement DAFS <ITProcurement@maine.gov>
Subject: RE: RFP to review ITPROC-802 Maine Commission on Indigent Legal Services Case Management ITPROC-802

Good afternoon, thank you for reaching out.
Your request is in our work queue and is pending review. Once our review is complete, we will email you with feedback or any questions that we may have.

Regards
~ Jeannine

Jeannine A Spears, Systems Analyst, IT Procurement
Department of Administrative and Financial Services
[redacted]

From: Andrus, Justin <Justin.Andrus@maine.gov>
Sent: Monday, August 23, 2021 2:11 PM
To: IT Procurement DAFS <ITProcurement@maine.gov>; Maciag, Eleanor <Eleanor.Maciag@maine.gov>
Subject: RE: RFP to review ITPROC-802 Maine Commission on Indigent Legal Services Case Management

Good afternoon. I am preparing our report to the Commission for next Monday, and then report to Government Oversight the next Wednesday on MCILS operations. Each will ask me for a report on this project. May I please have an update to share with them?

___
Justin W. Andrus
(Interim) Executive Director
Maine Commission on Indigent Legal Services
(207) 287-3254
Justin.andrus@maine.gov

From: IT Procurement DAFS <ITProcurement@maine.gov>
Sent: Thursday, August 12, 2021 1:17 PM
To: Maciag, Eleanor <Eleanor.Maciag@maine.gov>; IT Procurement DAFS <ITProcurement@maine.gov>
Cc: Andrus, Justin <Justin.Andrus@maine.gov>
Subject: RE: RFP to review ITPROC-802 Maine Commission on Indigent Legal Services Case Management

Eleanor,
We have received your request and added it to our work queue.
Sincerely,

Brigid Palmer
Systems Analyst, IT Procurement
State of Maine, Division of Procurement Services
[redacted]

From: Maciag, Eleanor <Eleanor.Maciag@maine.gov>
Sent: Thursday, August 12, 2021 12:53 PM
To: IT Procurement DAFS <ITProcurement@maine.gov>

Cc: Andrus, Justin <Justin.Andrus@maine.gov>
Subject: RFP to review

Good afternoon,

Please review the attached RFP for computer services.

Thanks,
Ellie

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

RETAINED CASES V APPOINTED CASES

TO: COMMISSION

FROM: JUSTIN ANDRUS, (INTERIM) EXECUTIVE DIRECTOR

SUBJECT: RETAINED CASES AND APPOINTED CASES

DATE: 8/27/2021

CC: GOC

At our last meeting, a Commissioner asked for data on the ratio of appointed cases to retained cases. That data follows, with out thanks to the AOC.

TOTAL CR	Original Adult CR Filings (excludes Class T, V & X)	# of Filings with Retained Counsel	# of Filings with Court-Appointed Counsel	# of Filings without Counsel
FY19	44,319	6,378	14,095	23,846
FY20	39,084	5,585	14,488	19,011
FY21	35,615	4,493	12,792	18,330

TOTAL CR	Original Adult CR Filings (excludes Class T, V & X)	% of Filings with Retained Counsel	% of Filings with Court-Appointed Counsel	% of Filings without Counsel
FY19	44,319	14.4%	31.8%	53.8%
FY20	39,084	14.3%	37.1%	48.6%
FY21	35,615	12.6%	35.9%	51.5%

These numbers exclude traffic, civil violations and non-charged based filings such as post-conviction reviews and bail review hearings.

MCILS POLICY AS TO APPOINTMENTS, BILLING SYSTEMS, AND PAYMENT

TO: MCILS ELIGIBLE COUNSEL

FROM: JUSTIN W. ANDRUS

SUBJECT: MCILS POLICY AS TO APPOINTMENTS, BILLING SYSTEMS, AND PAYMENT

DATE: 8/20/2021

CC: COMMISSION

MCILS adopts the following policy as to appointments, its billing system, and payments, effective DATE, except to the extent that a later date is specified for specific provisions.

Summary: Through this policy, MCILS restates that indigent clients are assigned to specific appointed counsel, and that those counsel bear individual responsibility for those clients from both a professional responsibility perspective, and from a fiscal perspective. MCILS redefines its financial relationships to the attorneys who are appointed to represent indigent defendants and to any law office or firm for whom any attorney works. MCILS clarifies the permissible use of its billing system.

I. Appointments are made to individual attorneys

The Maine Commission on Indigent Legal Services approves and administers the appointment of individual attorneys to represent indigent clients. In criminal cases, appointments are made by the Court under Rule 44. Rule 44 contemplates the assignment of counsel as individuals. For civil cases, Rule 88 adopts the provisions of criminal Rule 44. The attorney appointed by the Court to represent an indigent client is responsible to MCILS for all services rendered to that client and for all billing claimed for those services during the period of the appointment.

The attorney appointed by the Court to represent an indigent client shall personally provide direct representation to the client at all substantive appearances and shall personally ensure the adequacy of all phases of representation.

An attorney may delegate tasks related to the representation of an assigned client to another attorney to the extent consistent with the appointed attorney's duties to the client under the Constitutions of the United States and the State of Maine, the Maine Rules of Professional Responsibility, and to the extent consistent with this policy. The assigned attorney is nevertheless responsible to MCILS

and to the client individually for all services provided by any attorney during the period of the appointment, and for all billing claimed.

An appointed attorney may not delegate substantive appearances to another attorney. The appointed attorney shall appear personally for all substantive appearances including, without limitation: bail hearings; motions hearings; dispositional conferences; adjudicatory hearings; jury selection; trial; sentencing; hearings on preliminary protective orders; jeopardy hearings; judicial reviews; and hearings on petitions for termination of parental rights. The appointed attorney shall personally ensure that clients and all witnesses have notice of and are prepared for each proceeding.

II. The financial relationship between MCILS and appointed counsel

MCILS shall be responsible for ensuring that payment for services rendered to an assigned client are made to the appointed attorney, or to the person or entity designated by the appointed attorney. It shall be the responsibility of the appointed attorney to account for and allocate payment made for services rendered to an assigned client during the period of the appointment to any other person or entity to whom the appointed attorney may have any responsibility. Effective October 1, 2021, MCILS shall not be responsible to any attorney or firm, other than the designated person or entity, for the allocation of fees, except to the extent set out in this document.

The person or entity designated to receive payment from MCILS may be either the individual attorney or that attorney's single member entity; or, may be a firm or individual by whom the attorney is employed or in which the attorney is a member, partner, or shareholder. If an attorney designates an individual or entity other than that attorney to receive payment, and subsequently designates another individual or entity to receive payment, MCILS will direct payment to the designated individual or entity immediately on receipt and acknowledgment of the change. Issues of allocation of those payments, and any recourse related thereto, shall be strictly the responsibility of the attorneys and/or entities involved.

Beginning October 1, 2021, MCILS shall pay all fees claimed for any services provided to any assigned client to the most recent person or entity designated by the individual attorney appointed to represent that client. MCILS will presume that each individual attorney has designated that attorney as the person to be paid, except that for those attorneys who have designated another person or entity to receive payment prior to the publication date of this memorandum, that designated vendor will continue to receive payments on behalf of the individual attorney until the individual attorney designates a new vendor to receive payment.

MCILS will direct payment when a voucher is submitted based on the identity of the attorney appointed to represent the client in the matter in question, and the designation made by that attorney. It is the responsibility of assigned counsel to ensure that a voucher is submitted in each case prior to any substitution of counsel.

Attorneys shall designate the person or entity to receive payment for services provided to any assigned client during the period of the appointment by completing the form appended to this memorandum and then filing the form with MCILS. Any change in designation shall become effective on the date MCILS receives the form and acknowledges the change. MCILS counsel are advised that mail and faxes reach MCILS late and sometimes infrequently. Counsel are advised to use email to ensure timely application of any change. MCILS will not be responsible for payments made to the last designated person or entity prior to receipt and acknowledgment of a change. Counsel are further advised that MCILS anticipates a change to require filings through email only. If a policy requiring email filings is adopted, this paragraph shall not be construed to permit alternative means of filing.

Any attorney or firm that has relied on any previous policy, protocol, or practice of MCILS with respect to the allocation of fees shall take such steps as are necessary to realize the benefit of that reliance before 11:59:59 p.m. on September 30, 2021. These steps may include submitting an interim voucher. No attorney or firm shall rely on any previous policy, protocol, or practice of MCILS with respect to attorney payments on or after October 1, 2021.

III. Access to Defender Data / Subsequent billing and case management systems

Each attorney who is or becomes eligible to receive appointments from the Court, and to be approved to represent an assigned client through MCILS, will be provided with the use of an account through Defender Data, or through a subsequent MCILS billing and case management system. The attorney will not develop a property interest in that account.

Each attorney shall be personally and exclusively responsible for the account assigned to that attorney. Each attorney shall personally maintain access to the that account. No attorney may permit any other person to use the account, nor may any attorney provide any other person with that attorney's login credentials.

Each person who is subject to the rules of MCILS shall access the MCILS billing and case management system only through an account in the name of that person. This provision applies to both attorneys and staff.

A staff person may be assigned an account in the name of that staff person at the direction of an MCILS eligible attorney. Each staff person shall be personally and exclusively responsible for the account assigned to that staff person. Each staff person shall personally maintain access to the that account. No staff person may permit any other person to use the account, nor may any staff person provide any other person with that staff person's login credentials.

IV. Responsibility for information related to appointed cases

Beginning October 1, 2021, the attorney appointed to represent a client is responsible to MCILS for all information recorded in, or submitted through, the MCILS billing and case management system related to that appointed matter. It is the responsibility of the appointed attorney to confirm the accuracy of the information submitted to MCILS for each case, irrespective of who performs a specific task for the client, enters time information, or submits a voucher.

Beginning October 1, 2021, each attorney appointed to represent a client is responsible for ensuring the creation, maintenance, and production of information related to that matter, irrespective of who performs a specific task for the client, enters time information, or submits a voucher.

Beginning October 1, 2021, both the attorney appointed to represent a client, and the individual or entity who receives payment for services rendered to an appointed client, shall be jointly and severally liable to MCILS for any overpayment in any appointed case. Issues of allocation, contribution, and subrogation shall lie strictly between the attorney appointed to represent the client and the individual or entity who received payment.

V. Transition

During the period beginning on the publication date of this memorandum, and ending at 11:59:59 p.m. on September 30, 2021, MCILS will protect the expectation of payment to an individual or entity who has been designated by an MCILS attorney to receive that payment where an attorney has designated a new individual or entity to receive payment on the following limited basis:

1. The protection provided in this Section V, "Transition," is limited as set forth herein.

2. This protection extends to the expectation of payment for services rendered to an appointed client by an attorney designated as eligible to participate in that case type, or otherwise specially approved by MCILS to participate in the specific case, on or before the date on which the attorney to whom the client was appointed advises MCILS that the attorney is no longer employed, partnered, or otherwise associated with individual or entity holding the expectation.

3. During the transition period, MCILS will not change the designation of the person or entity to whom payment should be directed with respect to time entered into the MCILS billing and case management system for billing events that occurred prior to the date on which the attorney to whom the client was appointed advises MCILS that the attorney is no longer employed, partnered, or otherwise associated with individual or entity holding the expectation.

4. MCILS may, however, create a mechanism, including, but not limited to, creating a second account in the MCILS billing and case management system to permit an attorney to designate an individual or entity to receive payment for billing events that occurred on or after the date on which the attorney to whom the client was appointed advises MCILS that the attorney is no longer employed, partnered, or otherwise associated with individual or entity holding the expectation.

5. Any expectation any individual or entity may hold terminates at 11:59:59 p.m. on September 30, 2021. Any individual or entity who wishes to perfect payment of any expectancy related to an attorney who is no longer employed, partnered, or otherwise associated with the individual or entity holding the expectation shall perfect that payment by submitting an interim voucher prior to that deadline.

MCILS BUDTGET / AUGUST 2021

TO: COMMISSION

FROM: JUSTIN ANDRUS, (INTERIM) EXECUTIVE DIRECTOR

SUBJECT: MCILS BUDGET STATUS / AUGUST 2021

DATE: 8/27/2021

CC: GOC

For FY22, MCILS has a working budget of $27,467,561.30, of which $24,043,939.56 was unobligated as of August 23, 2021. The working budget consists of $17,549,392 appropriated through the biennial budget; $9,918,169,30 appropriated through the supplemental budget, and $844,522.69 carried forward.

We expected a carry forward of approximately $2.6 million and are working with the Budget Office to identify and secure money that should be available to the Commission.

In addition, MCILS has been awarded $4 million in COVID relief funds to help ensure that counsel fees generated because of pandemic related delays may be timely paid. That money will be available to MCILS in October 2021 and is earmarked for those fees.

MCILS also holds $16,232.70 in unobligated cash in an account dedicated to paying the costs associated with presenting training for rostered counsel.

The MCILS budget is presently encumbered in the amount of $128,745 to protect two outstanding contracts. The first contract is for the outside development and implementation of a week-long training program for counsel. The second is for a specialist immigration attorney to provide immigration law support to MCILS clients.

Between July 1 and August 23, 2021, MCILS paid vouchers totaling $2,721,233. Most of the time recorded on the vouchers paid since July 1st reflected work performed under the $60 / hour rate. The current rate of expenditure would annualize to $20,214,873.71 in fees, but that calculation does not include the increased rate. We project that as vouchers evolve to reflect the rate of $80 / hour for work performed after July 1st, the cost of attorney fees will be approximately $25 million at the current work tempo.

Non-counsel costs have been below the historical average for the past year. We attribute this to the lull in courthouse activity, which has meant that trial related costs have been avoided. We project that non-counsel costs will return to approximately $900,000 for FY22.

Based on the foregoing, MCILS would be able to meet its fiscal obligations. We have observed a surge in new cases, however. We have no way to determine whether the surge will continue, or whether we are seeing a backlog of cases that were on hold now being filed by the State. As always, MCILS cannot control the number of cases it is called on the staff. Every case that MCILS becomes responsible for was initiated by the State.

For the period FY15 through FY19, representing the five most recent years before the pandemic, MCILS opened an average of 26,392 cases. In FY20, MCILS opened 27,332 cases. In FY21, MCILS opened 28,783 cases. We have faced questions at times about the MCILS budget in the light of a decrease in criminal filings. While the total number of filings may have decreased, MCILS has seen an increase in workload over time. It is striking that in FY20 MCILS saw a .7% decrease in case openings when compared to FY19, against a 30.1% decrease in filings as reported by the Judicial Branch.

For FY22, MCILS projects a minimum new case count of approximately 31,000 cases, with the potential for more. May and June of 2021, the final months of FY21, showed an increase in new cases of 12% and 11% respectively over the pre-pandemic average for each of those months. July 2021 showed an increase of 28% over the pre-pandemic average. If May through July 2021 prove predictive of the next year, MCILS would be called on to address 31,000 cases. If July proved predictive, the case count would exceed 33,000 cases. Historically, the number of cases opened in July is 2% higher than the overall average number of cases opened during the fiscal year, suggesting that MCILS may likely approach the high end of 33,000 cases.

At 33,000, projected attorney fees would scale to $28,650,000. MCILS would likely remain able to meet its fiscal obligations by drawing on the COVID funds. There is a risk however, that if the tempo remains high MCILS may have a deficit in FY23.

We are also observing a change in services attorneys are billing for. The Courts have largely eliminated remote appearances and have eliminated e-mail filing. As a result, counsel have returned to spending a lot of time driving. Because MCILS matters are arrears billed, we do not yet have a good projection of the total cost of the increased travel but anticipate that it will be significant.

Outside the costs of direct client services, there has been little change. We have not yet been authorized to hire the new staff members the Legislature authorized, and so have not incurred the costs that will be associated with those hires.

94-649 MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Chapter 301: FEE SCHEDULE AND ADMINISTRATIVE PROCEDURES FOR PAYMENT OF COMMISSION ASSIGNED COUNSEL

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

SECTION 1. DEFINITIONS

1. Attorney. “Attorney” means an attorney licensed to practice law in the State of Maine.

2. MCILS or Commission. “MCILS” or "Commission" means the Commissioners of the Maine Commission on Indigent Legal Services.

3. Executive Director. "Executive Director" means the Executive Director of MCILS or the Executive Director’s decision making designee.

SECTION 2. HOURLY RATE OF PAYMENT

Effective July 1, 2021:

A rate of Eighty Dollars ($80.00) per hour is authorized for time spent on an assigned case on or after July 1, 2021. A rate of Sixty Dollars ($60.00) per hour remains authorized for time spent on an assigned case between July 1, 2015 and June 30, 2021.

SECTION 3. EXPENSES

1. **Routine Office Expenses.** Routine Office expenses are considered to be included in the hourly rate. Routine office expenses, including but not limited to postage, express postage, regular telephone, cell telephone, fax, office overhead, utilities, secretarial services, routine copying (under 100 pages), local phone calls, parking (except as stated below), and office supplies, etc., will not be reimbursed.

2. **Itemized Non-Routine Expenses.** Itemized non-routine expenses, such as discovery from the State or other agency, long distance calls (only if billed for long distance calls by your phone carrier), collect phone calls, extensive copying (over 100 pages), printing/copying/ binding of legal appeal brief(s), relevant in-state mileage (as outlined below), tolls (as outlined below), and fees paid to third parties. Necessary parking fees associated with multi-day trials and hearings will be reimbursed, but must be approved in advance by the Executive Director.

3. **Travel Reimbursement.** Mileage reimbursement shall not exceed the applicable State rate. Mileage reimbursement will be paid for travel to and from courts other than an attorney's home district and superior court. Mileage reimbursement will not be paid for travel to and from an attorney's home district and superior courts. Tolls will be reimbursed, except that tolls will not be reimbursed for travel to and from attorney's home district and superior court. All out-of-state travel or any overnight travel must be approved by the MCILS in writing prior to incurring the expense. Use of the telephone, video equipment, and email in lieu of travel is encouraged as appropriate.

4. **Itemization of Claims.** Claims for all expenses must be itemized.

5. **Discovery Materials.** The MCILS will reimburse only for one set of discovery materials. If counsel is permitted to withdraw, appropriate copies of discovery materials must be forwarded to new counsel forthwith.

6. **Expert and Investigator Expenses.** Other non-routine expenses for payment to third parties, which historically required preapproval by the Court before July 1, 2010 (e.g., investigators, interpreters, medical and psychological experts, testing, depositions, etc.) are required to be approved in advance by MCILS. Funds for third-party services will be provided by the MCILS only upon written request and a sufficient demonstration of reasonableness, relevancy, and need in accordance with the MCILS rules and procedures governing requests for funds for experts and investigators. *See Chapter 302 Procedures Regarding Funds for Experts and Investigators.*

7. **Witness, Subpoena, and Service Fees.** In criminal and juvenile cases, witness, subpoena, and service fees will be reimbursed only pursuant to M.R. Crim. P. 17(b). It is unnecessary for counsel to advance these costs, and they shall not be included as a voucher expense. Fees for service of process by persons other than the sheriff shall not exceed those allowed by 30-A M.R.S. §421. The same procedure shall be followed in civil cases.

SECTION 4. MAXIMUM FEES

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

1. **Trial Court Criminal Fees**

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

Effective July 1, 2015:

   1) **Murder.** Fee to be set by the Executive Director on a case by case basis.

   2) **Class A.** $3,000

   3) **Class B and C (against person).** $2,250

4) **Class B and C (against property).** $1,500

5) **Class D and E (Superior or Unified Criminal Court).** $750

6) **Class D and E (District Court).** $540

7) **Post-Conviction Review.** $1,200

8) **Probation Revocation.** $540

9) **Miscellaneous (i.e. witness representation on 5th Amendment grounds, etc.).** $540

10) **Juvenile.** $540

B. In cases involving multiple counts against a single defendant, the maximum fee shall be that which applies to the most serious count. In cases where a defendant is charged with a number of unrelated offenses, Counsel is expected to coordinate and consolidate services as much as possible.

C. Criminal and juvenile cases will include all proceedings through disposition as defined in Section 5.1.A below. Any subsequent proceedings, such as probation revocation, will require new application and appointment.

D. When doing so will not adversely affect the attorney-client relationship, Commission-assigned counsel are urged to limit travel and waiting time by cooperating with each other to stand in at routine, non-dispositive matters by having one attorney appear at such things as arraignments and routine non-testimonial motions, instead of having all Commission-assigned counsel in an area appear.

E. Upon written request to MCILS, assistant counsel may be appointed in a murder case or other complicated cases:

1) the duties of each attorney must be clearly and specifically defined and counsel must avoid unnecessary duplication of effort;

2) each attorney must submit a voucher to MCILS. Counsel should coordinate the submission of voucher so that they can be reviewed together. Co-counsel who practice in the same firm may submit a single voucher that reflects the work done by each attorney.

2. **District Court Child Protection**

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

Effective July 1, 2015:

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

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

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

3. **Other District Court Civil**

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

Effective July 1, 2015:

1) **Application for Involuntary Commitment.** $420

2) **Petition for Emancipation.** $420

3) **Petition for Modified Release Treatment.** $420

4) **Petition for Release or Discharge.** $420

4. **Law Court**

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

Effective July 1, 2015:

1) **Appellate work following the grant of petition for certificate of probable cause**. $1,200

B. Expenses shall be reimbursed for printing costs and mileage to oral argument at the applicable state rate. Vouchers for payment of counsel fees and expenses must be submitted, including an itemization of time spent.

SECTION 5: MINIMUM FEES

Effective July 1, 2015:

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

minimum fee may be charged regardless of the number of clients consulted at the request of the court.

SECTION 6: ADMINISTRATION

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

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

      1) entry of judgment (sentencing, acquittal, dismissal, or filing);

      2) upon entry of a deferred disposition;

      3) upon issuance of a warrant of arrest for failure to appear;

      4) upon granting of leave to withdraw;

      5) upon decision of any post-trial motions;

      6) upon completion of the services the attorney was assigned to provide (e.g., mental health hearings, "lawyer of the day," bail hearings, etc.); or

      7) specific authorization of the Executive Director to submit an interim voucher.

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

      1) Order after Summary Preliminary hearing or Agreement

      2) Order after Jeopardy Hearing

      3) Order after each Judicial Review

      4) Order after a Cease Reunification Hearing

      5) Order after Permanency Hearing

      6) Order after Termination of Parental Rights Hearing

      7) Law Court Appeal

2. Unless otherwise authorized in advance, all vouchers must be submitted using the MCILS electronic case management program and comply with all instructions for use of the system.

3. All time on vouchers shall be detailed and accounted for in .10 of an hour increments. The purpose for each time entry must be self-evident or specifically stated. Use of the comment section is recommended.

4. All expenses claimed for reimbursement must be fully itemized on the voucher. Copies of receipts for payments to third parties shall be retained and supplied upon request.

5. Legal services provided in the district court for cases subsequently transferred to the superior court shall be included in the voucher submitted to the MCILS at disposition of the case.

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

EFFECTIVE DATE:
August 21, 2011 – filing 2011-283

AMENDED:
March 19, 2013 – filing 2013-062
July 1, 2013 – filing 2013-150 (EMERGENCY)
October 5, 2013 – filing 2013-228
July 1, 2015 – filing 2015-121 (EMERGENCY major substantive)
June 10, 2016 – filing 2016-092 (Final adoption, major substantive)
July 21, 2021 – filing 2021-149 (EMERGENCY major substantive)

Commission Member Remote Participation Policy

POLICY: In accordance with 1 M.R.S. § 403-B, it is the policy of the Maine Commission on Indigent Legal Services ("Commission") to allow Commission members to participate in Commission meetings remotely using synchronous telephonic or video technology allowing simultaneous reception and exchange of information.

1. It is the expectation that all members of the Commission will be physically present for public proceedings conducted by the Commission except when being physically present is not practicable.

2. Circumstances in which the physical presence of one or more of the members of the Commission is not practicable include:

A. The existence of an emergency or urgent issue that requires the Commission to meet by remote methods. The existence of an emergency or urgent issue under this subsection shall be determined by the Commission Chair, or if the Chair is unavailable, by the Executive Director. An "emergency" or "urgent issue" includes but is not limited to:

1. A declaration of emergency issued by the Governor of the State of Maine or the President of the United States; and

2. An immediate operational need that must be addressed more quickly than may be permitted by in-person scheduling.

B. The need for a Commission member to provide direct care to a family or household member, including, without limitation, childcare.

C. Illness or other physical condition as determined by the individual Commission member that causes the member to face significant difficulties to travel to or attend the public Commission proceeding.

D. Temporary absence from the State that would cause the Commission member to face significant difficulties traveling to and attending the public Commission proceeding in person as determined by the individual Commission member.

E. Whenever a member of the Commission must travel a significant distance to be physically present at the public Commission proceeding. "Significant distance" means any distance that is more than 100 miles from the Commission's offices in Augusta, Maine.

F. Whenever there are geographic characteristics or meteorological conditions that impede safety or slow travel, including but not limited to islands not connected by bridges or significant weather events such as hurricanes, snowstorms, ice storms or nor'easters. The existence of geographic characteristics or meteorological conditions that impede safety or slow travel under this subsection shall be determined by the Commission Chair, or if the Chair is unavailable, by the Executive Director.

3. The Commission shall provide members of the public a meaningful opportunity to attend a public proceeding of the Commission by remote means whenever members of the Commission participate by remote methods or when necessary to provide reasonable accommodation and access to individuals with disabilities. Any member of the public needing and requesting accommodation to access a public Commission proceeding should contact Commission staff at: mcils@maine.gov.

4. Whenever the Commission is scheduled to allow or required to provide an opportunity for public input during a public Commission proceeding, the Commission shall provide an effective means of communication between the members of the Commission and the public.

5. Whenever a member of the Commission will be participating remotely, the Commission's notice of the public Commission proceeding will include the means by which members of the public may access the proceeding remotely and identify a physical location for members of the public to attend in person. The Commission may not limit the public's ability to attend a public proceeding in person except during the existence of an emergency or urgent issue or there are geographic characteristics or meteorological conditions that impede safety or slow travel that requires the Commission to meet by remote methods.

6. A member of the Commission who participates remotely in a public Commission proceeding is present for purposes of a quorum and voting.

7. All votes taken by the Commission during a public Commission proceeding using remote methods for participation by any Commission member must be taken by roll call vote that can be seen and heard if using video technology, and heard if using audio only technology, by the other members of the Commission and the public.

8. The Commission shall make all non-confidential documents and other materials, electronic or otherwise, considered by it during a public proceeding available to the public who attend by remote means to the same extent customarily available to members of the public who attend Commission public proceedings in person so long as no additional costs are incurred by the Commission.

9. Staff may participate remotely in Commission meetings in a manner consistent with this policy and subject to the State's personnel policies and procedures at the discretion of the Chair, with respect to the Executive Director's participation, and the discretion of the Executive Director, with respect to the participation of other staff.

EFFECTIVE DATE:

Exploring Person-Centered Justice for Individuals with Behavioral Health Needs

A New Model for Collaborative Court and Community Caseflow Management

June 21, 2021

An Interim Report

BACKGROUND AND OVERVIEW

Traditional criminal case processes are not meeting the needs of the individuals we serve, and a new comprehensive, collaborative approach is necessary to create fair and effective criminal justice and caseflow management systems that meet the challenges of individuals with behavioral health needs. The Criminal Justice Work Group is committed to redesign systems to meet the needs of the estimated 70% of the individuals seen in our criminal courts today, rather than the 30% of those without substance use disorders, behavioral health needs and/or co-occurring disorders. Currently, state courts generally do not have systems in place to help those with substance use and behavioral health challenges.

Our task is made more urgent given the pandemic and crises across the nation with case backlogs resulting in individuals incarcerated for long periods of time without access to treatment and the lack of access to community-based treatment and inpatient facilities. The Centers for Disease Control and Prevention (CDC) has estimated at least a 36% increase in the demand for mental disorders (i.e., anxiety and depression) during the pandemic, resulting in increased substance use and other harms. Moreover suicidal ideation doubled from 2018 (10.7% in 2020 from 4.3% in 2018). Reducing barriers to access care within community-based clinics for mental health and substance use will prevent further negative interactions with law enforcement that lead to cases filed with the courts.

Justice . Safety . Health .

ning Collaborative Court and Community Responses for Individuals with Behavioral Health

NEW MODEL DEVELOPED

This NEW MODEL was developed to strengthen the collaborative court and community response to individuals with behavioral health needs. This work is informed by extensive research, including the Effective Criminal Case Management (ECCM) project. The ECCM project set forth the key elements of effective criminal caseflow management addressing leadership and governance, predictable and productive court events, goals and information and communication and collaboration. ECCM collected data on over 1.2 million criminal cases from 136 courts in 91 jurisdictions in 21 states. While the national Model Time Standards adopted by CCJ, COSCA and others in 2011 suggest that 75% of felony cases should be resolved in 90 days, only 30% were resolved in that time period during the ECCM study; that 90% should be

This report was developed and approved by the Criminal Justice Work Group of the National Judicial Task Force to Examine State Courts' Response to Mental Illness in June 2021 and is pending action by the Task Force Executive Committee. Reactions, comments and suggestions to the report are welcome. It is anticipated that a final version of this report and related recommendations will be adopted and published by the Task Force prior to the Annual Meeting of the Conference of Chief Justices and Conference of State Court Administrators in August 2022.

resolved in 180 days, yet only 57% were resolved in that time period; and that 98% should be resolved in 365 days, and only 83% were resolved in 365 days.[1] While the ECCM project did not specifically study cases involving those with behavioral health conditions, the collective experience of the Work Group is that these cases often take even longer than the study found, and individuals are detained longer in jails, with no data available on improved treatment outcomes or public safety. Research[2] has also shown significant cost savings for effective treatment and recovery programs over the use of jails.

This NEW MODEL is also informed by the American Bar Association Criminal Justice Standards on Mental Health which were adopted August 8, 2016 to supplant the Third Edition (August 1984) of the ABA Criminal Justice Mental Health Standards. These Standards provide guidance toward: responding to individuals with mental disorders in the criminal justice system, roles of mental health professionals in the criminal justice system, roles of the attorney representing a defendant with a mental disorder, role of the judge and prosecutor in cases involving defendants with mental disorders, joint professional obligations for improving the administration of justice in criminal cases involving individuals with mental disorders, education and training, and many other standards of relevance to effective collaborative court and community caseflow management.

Guiding Principles

Guiding Principles were developed by the Work Group to direct our efforts to strengthen community responses and minimize criminal justice involvement, to promote early intervention and effective management of court cases, to institutionalize alternative pathways to treatment and recovery and improve outcomes, and to manage post adjudication events and transitions effectively.

Learning Communities and Focus Groups

An initial strategies brief was developed based on a community of practice involving nine jurisdictions during the pandemic; we believe these strategies must be further tested and evaluated. A Pandemic Resource for Courts developed in collaboration with the CCJ-COSCA Rapid Response Team identified diversion and caseflow management strategies to improve outcomes for individuals with behavioral health needs and informs our further work. The community of practice also identified opportunities for improvement at different stages of caseflow management. An additional Pandemic Resource for Courts identified ways to reduce jail populations during the pandemic, and provided lessons learned for post-pandemic planning.

A second virtual learning community is planned to offer a virtual Community of Practice for up to five interdisciplinary teams seeking to implement effective criminal case management of individuals with behavioral health needs and to provide opportunities for peer learning and sharing. This community of practice will further test and evaluate the strategies identified as part of the NEW MODEL of collaborative court and community caseflow management.

Focus Groups are also planned to gather additional input from prosecutors, defense counsel and those with lived experience. These focus groups will identify barriers, challenges and opportunities as we shift to a much needed "end user" focused justice system design for courts to implement. The Criminal Justice Work Group will further develop and provide state courts nationwide with a roadmap, tools, and resources to use this NEW MODEL to improve responses to individuals with behavioral health needs.

GUIDING PRINCIPLES TO EXPLORE PERSON-CENTERED JUSTICE:
A New Model of Collaborative Court and Community Caseflow Management

The following Guiding Principles serve as the foundation of our ongoing work to re-examine and redefine caseflow management practices for individuals with behavioral health needs.

In all of our work, we intend to:

1. **Encourage all judges** to use their leadership role as convenors to foster collaborative community and court strategies to promote community safety and improve outcomes for individuals with behavioral health needs.[3]
2. **Develop new caseflow management systems** through a multidisciplinary, non-adversarial team approach to address the complex social and behavioral problems presented to the courts and communities.
3. **Facilitate evidence-based practices** across community, court, and behavioral health systems.

4. **Identify, measure, and proactively address issues** of explicit and implicit bias, disproportionate access to resources, and systemic racism.

5. **Adhere to the principles** of due process, procedural fairness, transparency, and equal access to justice at all times.

6. **Develop trauma informed, person-centered, responsive practices** that focus on individuals with behavioral health needs for all case types and provide multiple pathways to treatment and recovery and diversion.

7. **Promote individual attention to each case and each person**, and treat all cases and individuals proportionally, demonstrated by judicial control of the process and procedural justice.

8. **Treat all individuals with respect and neutrality** and grant all individuals a voice, engendering trust in the justice system.

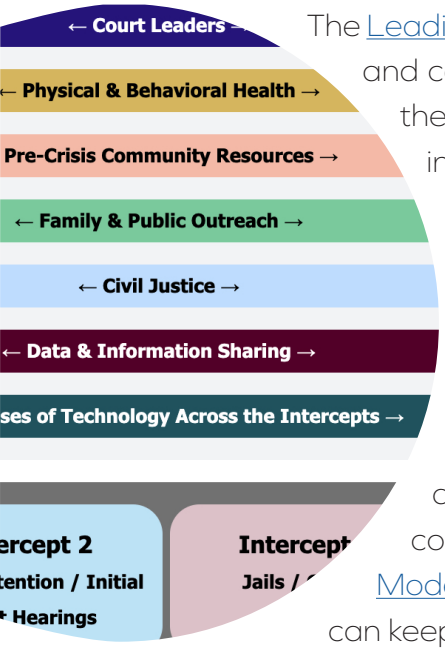
9. **Listen to and gather input** from individuals with lived experience, and their families.

10. **Ensure that our new models** of collaborative court and community caseflow management provide for accountability, public safety, and improved treatment outcomes by adhering to defined performance measures.

11. **Design and foster timely and efficient court and community procedures** to improve the justice experience of the individual with behavioral health needs.

12. **Leverage and share resources** across community, court, and public and behavioral health systems.

The Leading Change Model and Behavioral Health Resources Hub



The Leading Change Model serves as the foundation for developing a coordinated court and community response to caseflow management that will more holistically meet the needs of the individuals we serve and will better ensure public safety. Additional information can be found in the Leading Change Guide and on the Behavioral Health Resources Hub. "The Hub" is a repository of continually updated resource links and information highlighting best practices to help courts and communities provide effective responses and supports for individuals with mental health and co-occurring disorders.

To address behavioral health needs in each community, certain court and community responses must be developed early on. The most effective approach is to design responses that are regularly engaged in by community collaborators. The resources on "the Hub" build on the Sequential Intercept Model (SIM), which identifies appropriate responses at particular intercepts that can keep an individual from continuing to penetrate the criminal justice system.

Meaningful system change requires leadership. Courts and judges in particular are in a unique position to convene stakeholders and to lead these groups to consensus and action. Of course, each community will be at a different place in implementing these practices.

Exploring person-centered justice for individuals with behavioral health needs and managing more effective caseflow management for these individuals requires not only judicial leadership and the collaborative approach addressed in the Guiding Principles but also requires a renewed commitment to fair and timely justice, improved outcomes, and enhanced public safety.

The 4 Pillars of the New Model of Collaborative Court and Community Caseflow Management

Four Pillars have been identified as critical to an effective collaborative court and community effort to promote person-centered justice for individuals with behavioral health needs. Each of the Four Pillars include a number of essential elements that must also be addressed as part of this NEW MODEL. The Four Pillars address how to:

1. Strengthen community responses and minimize criminal justice system involvement;
2. Promote early intervention and effective management of court cases;
3. Institutionalize alternative pathways to treatment and recovery and improve outcomes; and
4. Manage post-adjudication events and transitions effectively.

The following summarizes each of the pillars and essential elements, and additional resources and practices will be developed as the focus groups and community learning opportunities continue.

Strengthen Community Responses and Minimize Criminal Justice System Involvement

Structured ongoing collaboration among community stakeholders is required to build sustainable community-based responses for individuals with behavioral health needs and to minimize justice system involvement. The courts can either convene these efforts or insure they are "at the table" and are promoting ideal behavioral health crisis systems, deflection and diversion systems, the identification of individuals who are entering and reentering the justice system and courts, as well as promoting prosecution alternatives.

A robust community behavioral health system with the key elements as identified below should be examined and implemented, as appropriate, to meet the needs of communities across the states as well as the individuals who need these services.[4] Courts must lead and can influence the strengthening of community responses.

a. Ideal Behavioral Health Crisis Systems

Moving to the 988 mental health crisis line effective July 2022 provides a tremendous opportunity for courts and communities to provide a continuum of more effective responses to individuals experiencing a mental health crisis. The Roadmap to the Ideal Crisis System includes essential elements, measurable standards, and best practices for behavioral health crisis response, and the SAMHSA publication Crisis Services: Meeting Needs, Saving Lives serve as foundational resources. A public health response rather than a criminal justice response will save criminal justice costs and promote public safety, while at the same time, connect individuals with treatment and promote recovery.

b. Deflection and Diversion

Law enforcement plays a gatekeeper role to the criminal justice system; contacts with law enforcement provide opportunities for deflection and diversion and a response that more effectively addresses mental health crises.[5] First responder training, mobile crisis teams, wrap-around services and pre-arrest and pre-booking diversion programs are highlighted in the Behavioral Health Resource Hub and provide numerous approaches to consider.

c. Stop the "Revolving Door" into the Justice System

Cross-system collaboration is critical to identify "high utilizers" and will create more effective responses. Individuals with behavioral health needs cycling through justice and behavioral health systems place a strain on limited system resources. Specifying criteria to identify those who cycle through justice and behavioral health systems can help target and inform responses tailored to these individuals and their needs. A national healthcare model called Certified Community Behavioral Health Clinics (CCBHCs) allows for health care staff to be embedded into courts at little to no cost to the justice system with the ability to immediately screen and begin to treat those with behavioral health conditions. This model and other strategies[6] can not only interrupt the cycle for individuals and affected families but can lead to significant resource savings across systems and minimize repeating court filings.

d. Prosecution Alternatives

Many prosecutors recognize that individuals with behavioral health needs are over-represented in the criminal justice system. Understanding this, and understanding behavioral needs generally, can help inform prosecutor decision making. Filing and charging decisions as well as diversion programs can be informed by this knowledge and understanding.

Promote Early Intervention and Effective Management of Court Cases

Promote Early Intervention and Effective Management of Court Cases

Early screening and identification of behavioral health needs and criminogenic risks coupled with timely criminal justice and court response to identify needed treatment and responses are essential to the new model of collaborative court and community caseflow management.

a. Screening and Assessment

Screening and assessment are critical at all points of justice system intervention. From an individual's first contact with the justice system and throughout the process, screening and assessments must be ongoing to ensure the system's response is tailored to the individual's needs, including criminogenic risks and needs. All individuals should be screened regardless of custody status for mental health and substance use disorders, criminogenic risk, and trauma using an evidence-based tool validated for the population that is screened. If indicated, an appropriate assessment should follow. If a person is not booked into jail but rather summoned to court, the court and the community should develop practices to ensure appropriate screening and assessment are conducted in a timely way to ensure that appropriate diversion and deflection alternatives are explored.

b. Behavioral Health Triage

By definition, triage is a process of determining the priority of "patient" treatments needed by the severity of their condition or likelihood of recovery, with and without treatment. Its application to court processes has already been embraced in civil[7] and family law[8] cases based upon the complexity of the case and should now be applied to criminal cases, to include cases where the individual has behavioral health

needs. Community behavioral health providers can be embedded into jails and courts to conduct screening and assessments, including criminogenic risk and needs, and can identify appropriate diversion to treatment and recovery pathways at the earliest possible stage. Ideally, a court-led triage team will collect and share the appropriate information with community or other providers for early decision making.

c. Jail Practices

Best practices in jails include universal screening using validated tools and information sharing platforms and agreements with courts, prosecutors, defense counsel, and others. The Stepping Up Initiative identifies key data to collect regarding the management in jails of those with behavioral health needs. Sheriffs and jail administrators should promote the necessary collaboration with justice and behavioral health systems to ensure continuity of care and examine early opportunities for jail diversion whenever possible.[9] Effective court case management systems require jail data to minimize days in custody and transport of individuals.

d. First Appearance and Pretrial Practices

First appearance before a judge is an important first event where the individual is arraigned on the charges, indigency and release decisions are made, counsel is assigned, and early discovery is exchanged. First appearance may also provide an opportunity for the prosecution, defense, behavioral health and court to identify next steps for an individual with behavioral health needs. Pretrial release decisions regarding those with behavioral health needs must be timely. Incarceration, even for a short period of time can have disproportionately negative impacts on individuals with behavioral health needs. Pretrial Risk assessment tools are an important component of decision making.

e. Prosecution Practices

Prosecutors should ensure that their practices, in the community and in the courthouse, allow for the needs of those with behavioral health issues to be addressed. [10] Prosecutors should promote training about mental illness within their offices, familiarize themselves with best practices for working with individuals with mental illness (including ensuring that their practices are trauma-informed for all involved in the criminal justice system), promote restorative justice, minimize misdemeanors, and end the criminalization of mental illness, among other practices.

f. Effective Defense Representation

Defense counsel have an important role in understanding the behavioral health needs of clients and advocating effectively for their clients. As they are the professionals most proximate to the community members struggling with mental illness, defense counsel has the opportunity to provide leadership in the community and in the courthouse to address the needs of those with behavioral health issues. Defense attorneys and

defender offices should have training and expertise in identifying mental illness, working with clients with mental illness, and in developing diverse and client-centered treatment plans for clients. Some offices have specialized units or training on mental health and/or social workers who work alongside the attorneys to connect clients to appropriate treatment and services based on their needs.

g. Effective Court Caseflow Management

Courts must control case progress and court events through judicial leadership and control of their dockets. Courts must be accountable and hold attorneys and community providers accountable in ensuring that the court process and treatment modalities meet the specific needs of the individual. Individuals with behavioral health needs must have available to them multiple pathways to treatment and recovery. Other key elements of effective court caseflow management include monitoring the progress of criminal cases, tracking the time between intermediate case events, and ensuring each court event is meaningful. The ECCM project found that the primary drivers of case processing time are the number of continuances per case and the number of hearings per case with the amount of time between hearings.

Institutionalize Alternative Pathways to Treatment and Recovery and Improve Outcomes

ESSENTIAL ELEMENTS

- Diversions
- Civil Alternatives
- Competency
- Specialized Behavioral Health Dockets
- Courtroom Practices
- Problem-Solving Courts and Treatment Courts
- Other Pathways and Strategies to Treatment and Recovery

Institutionalize Alternative Pathways to Treatment and Recovery and Improve Outcomes

Implementation of court-led, team-based, problem-solving approaches to address individuals with behavioral health needs must effectively divert these individuals away from traditional case management processes and toward treatment and recovery interventions. Diversion is an essential pillar of this new collaborative model. The information about the individual obtained during the early intervention, including screening and assessment, as well as effective management of the court case in the initial phase must be used to make informed decisions about the most appropriate pathway to treatment and recovery. The criminogenic risk and needs, coupled with behavioral health screens and assessments, and court case characteristics and history, will inform the decisions about the alternative pathway to use to improve outcomes.

a. Diversions

A continuum of diversion options and access to treatment and recovery must be developed and available in every jurisdiction. These options must consider expanded access to treatment and supportive services. The preferred approach is early deflection and diversion before a case is filed. However, if a criminal charge is filed, all judges must have access to a continuum of diversion options, programs and practices which address the defendant's clinical needs and criminogenic risk and needs. Crucial to this effort are the resources to conduct screenings and assessments.

b. Civil Alternatives

The civil system provides an alternative to the criminal justice system for many individuals depending upon their clinical and criminogenic needs. Individuals who require little or no criminal

justice oversight should be redirected to the civil system for assisted outpatient treatment, a civil commitment proceeding, or other civil alternatives and responses.

c. Competency

The Criminal Justice Work Group has adopted numerous recommendations to reform all aspects of the competency to stand trial process. If the court is proceeding with competency evaluations, restoration, and trial, the court must, to the extent possible, manage the progress of the case to avoid an individual languishing in jail and decompensating at any point in the process. Creating specialized dockets that facilitate access to appropriate diversion and restoration resources for these complex cases is one approach to consider.

d. Specialized Behavioral Health Dockets

Specialized Behavioral Health Dockets and Calendars are another tool for the effective management of cases involving individuals with behavioral health needs. Judges can manage cases in diversion programs and when the defendant successfully completes the program requirements, the case can be dismissed, or an alternate disposition can be made depending on the case. Specialized dockets can also consolidate other cases involving the same individual and may segregate individuals by criminogenic risk. The frequency of court appearances should be based upon the criminogenic needs of the individual.

e. Courtroom Practices

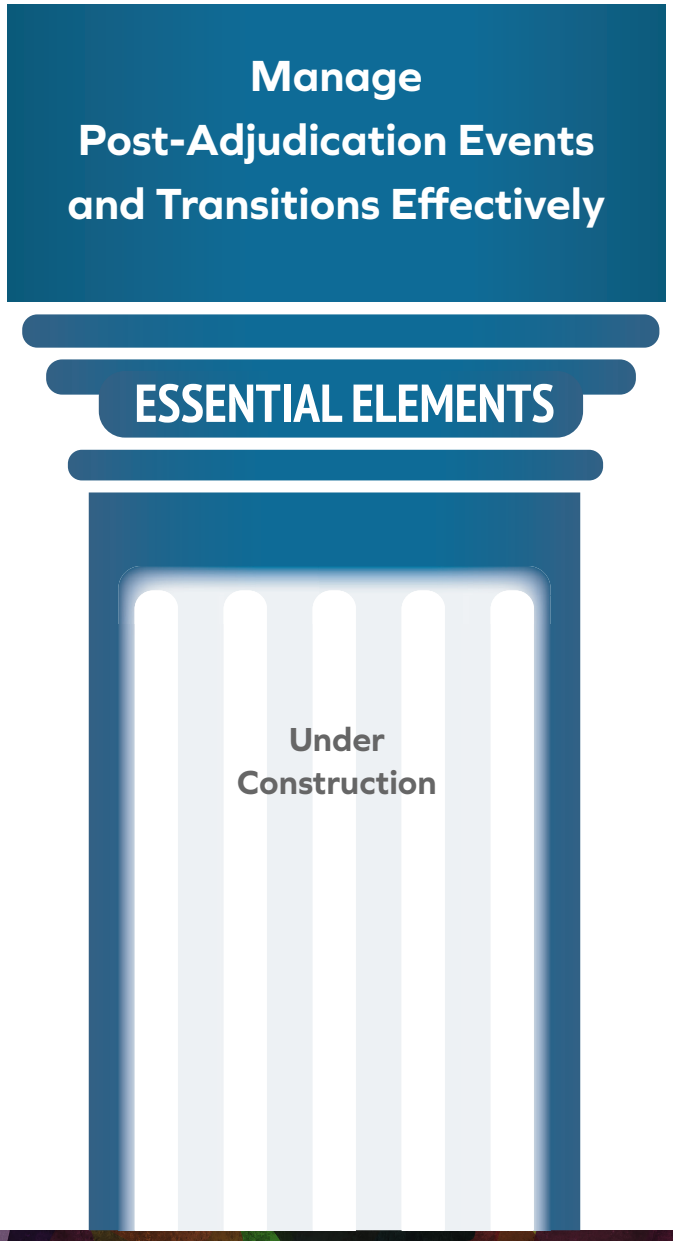
Judges and court personnel require training and education on trauma informed practices as well as effective practices for interacting with individuals with behavioral health needs. Bench cards have been produced by the Judges and Psychiatrists Leadership Initiative (JPLI) and others [11] to guide these interactions. Key components of procedural fairness are also important and include Voice (allowing litigants to be heard), Neutrality, Respectful Treatment, and Trust (the perception the judge is sincere). Research confirms that implementing procedural fairness techniques leads to better compliance with court orders and reduces recidivism, including for individuals with behavioral health needs.[12]

f. Problem-Solving Courts and Treatment Courts

Problem-solving and treatment courts are a proven, effective intervention for high risk, high need individuals but for others with significant behavioral health needs alternative tracks or approaches are needed. The Criminal Justice Workgroup will be developing recommendations to strengthen mental health and other problem-solving courts later in 2021.

g. Other Pathways and Strategies to Treatment and Recovery

Courts are employing a number of pathways and strategies to improve access to treatment and recovery. These strategies include court employees or embedded community behavioral health providers who serve as Navigators or Court Liaisons to identify and connect individuals to treatment and supports. Court and Community teams, similar to problem-solving court or treatment teams, can also promote treatment and recovery for individuals who are not high risk, high need but would benefit from alternative pathways and strategies to promote treatment and recovery. The use of tele-health and remote hearings that have expanded during the pandemic are also proving effective to promote person-centered justice. Another option is moving away from high volume dockets to a more individualized appointment process tailored to the individual needs of an individual.



Manage Post-Adjudication Events and Transitions Effectively

The Fourth Pillar of managing post-adjudication events and transitions effectively will be addressed as the work progresses following the community of practice and the focus groups described earlier. Proactive caseflow management and community-based responses to promote positive behavioral health outcomes continue to be essential during this phase of collaborative caseflow management. This Pillar will describe effective practices regarding Community Supervision, Transition Plans and Aftercare, Reentry Practices, and the Court's responsibility to manage the progress of the case and role in ensuring positive outcomes for the individual.

ACKNOWLEDGMENTS

Task Force Members

Hon. Chief Justice Paula Carey, Chair
Hon. Justice John Stegner
Terrance Cheung
Hon. Jonathan Shamis
Gary Raney

Liaison Members

Donald Jacobson
Brett Beckerson
Hallie Fader-Towe
Khea Pollard

Others too numerous to mention were invited to contribute to the work of the Subcommittee, and we are grateful for all who participated.

ENDNOTES

1 The ECCM timeliness data was calculated using total time to disposition, as there were significant data quality issues around counts of inactive days across sites.

2 Miami-Dade County 11th Judicial Circuit Criminal Mental Health Project Criminal Justice/Mental Health Statistics and Project Outcomes, https://perma.cc/BT65-A2GX

3 CCJ COSCA Resolution 11 (2006): In Support of the Judicial Criminal Justice/Mental Health Leadership Initiative. https://www.ncsc.org/__data/assets/pdf_file/0015/23721/01182006-in-support-of-the-judicial-criminal-justice-mental-health-leadership-initiative.pdf

4 https://wellbeingtrust.org/news/unifiedvision/

5 https://bja.ojp.gov/program/pmhc

6 https://csgjusticecenter.org/publications/how-to-reduce-repeat-encounters/

7 The Civil Justice Initiative: https://www.ncsc.org/cji

8 The Cady Initiative for Family Justice Reform: https://www.ncsc.org/fji

9 Growing research shows evidence of the harmful effects of jail over time: https://www.safetyandjusticechallenge.org/wp-content/uploads/2019/04/Justice-Denied-Evidence-Brief.pdf Research also indicates that jail sanctions produce diminishing returns after approximately three to five days (Carey et al., 2012; Hawken & Kleiman, 2009).

10 https://fairandjustprosecution.org/wp-content/uploads/2018/12/FJP_21Principles_Interactive-w-destinations.pdf

11 The American Psychiatric Association; The Council of State Governments Justice Center; The National Judicial College; Policy Research Associates

12 http://www.amjudges.org/publications/courtrv/cr53-4/PJ-Bench-Card-Full-Final.pdf

From: Mary Zmigrodski
To: Maciag, Eleanor
Date: Wednesday, August 25, 2021 9:39:37 AM

Hi Ellie - please include the following summary in the meeting packet for discussion by the Commission. Thanks MZ

On 8/5/21, the Recruitment/Retention Committee held a meeting via Zoom. There was a cross section of attorneys from around the state. It was clear that issues in retaining and recruiting attorneys to MCILS remain the same, although the attorneys are happy about the increase in the hourly rate. There is still strong support by the attorneys for the $100 per hour rate due to the costs of student loans, operating an office and hiring support staff.

Attorneys report a shortage of MCILS attorneys across the state and also an increase in cases in both criminal and child protection. It is difficult to see how cases can continue to be staffed going forward, especially in outlying areas. Attorneys are removing their names from the list due to too many cases. These attorneys do sometimes return to the MCILS list, however, some attorneys are dropping off the lists permanently. Justin Andrus can speak to some of those statistics although they remain fluid. These problems are especially critical in the outlying areas of the state.

The attorneys indicate that the ability to receive student loan forgiveness for representing indigent clients would be a significant incentive for new attorneys to sign onto MCILS and would help the existing attorneys to be able to continue this work. MCILS is not set up in a format that would allow public service loan forgiveness like the attorney general's office or the DA's office.

Chris Northrup had previously indicated that Maine Law was looking into a clinic in the northern part of the state. While Mr. Northrup was not present at this meeting, another attorney indicated there may be some issues with this clinic coming to fruition.

The MCILS attorneys also express significant frustration about assignment of cases, Trailing Docket Calls and the resulting trial schedules in both criminal and child protection cases. The attorneys generally describe being assigned multiple cases and back up cases for trial and being told to be prepared for all those cases. This is happening in multiple courts, and it is not possible to do what is being scheduled. The attorneys expressed that the expectations of the courts are overwhelming to the attorneys. The attorneys also stated that Zoom court appearances for some events such as case management are efficient and save time and attorney fees. The attorneys would like e-filing of documents to remain in place, which saves attorney time. The MCILS attorneys would like consistency across the courts and also interaction with the judicial branch regarding their concerns. The attorneys indicate they have high caseloads and the executive director indicated they have a responsibility to manage their cases and not take more than they can handle. The attorneys report significant pressure from the courts to take cases. It was suggested that attorneys have meetings or some contact with their local courts to facilitate a dialogue such as a bench/bar meeting. The MCILS attorneys are looking for continued support from MCILS going forward to try and resolve some of these issues.

CHAPTER 37

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

§1801. Maine Commission on Indigent Legal Services; established

The Maine Commission on Indigent Legal Services, established by Title 5, section 12004-G, subsection 25-A, is an independent commission whose purpose is to provide efficient, high-quality representation to indigent criminal defendants, juvenile defendants and children and parents in child protective cases, consistent with federal and state constitutional and statutory obligations. The commission shall work to ensure the delivery of indigent legal services by qualified and competent counsel in a manner that is fair and consistent throughout the State and to ensure adequate funding of a statewide system of indigent legal services, which must be provided and managed in a fiscally responsible manner, free from undue political interference and conflicts of interest. [PL 2009, c. 419, §2 (NEW).]

SECTION HISTORY

PL 2009, c. 419, §2 (NEW).

§1802. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2009, c. 419, §2 (NEW).]

1. Assigned counsel. "Assigned counsel" means a private attorney designated by the commission to provide indigent legal services at public expense.
[PL 2009, c. 419, §2 (NEW).]

1-A. Appellate counsel. "Appellate counsel" means an attorney who is entitled to payment under Title 15, section 2115-A, subsection 8 or 9.
[PL 2013, c. 159, §10 (NEW).]

2. Commission. "Commission" means the Maine Commission on Indigent Legal Services under section 1801.
[PL 2009, c. 419, §2 (NEW).]

3. Contract counsel. "Contract counsel" means a private attorney under contract with the commission to provide indigent legal services.
[PL 2009, c. 419, §2 (NEW).]

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

A. An indigent defendant in a criminal case in which the United States Constitution or the Constitution of Maine or federal or state law requires that the State provide representation; [PL 2009, c. 419, §2 (NEW).]

B. An indigent party in a civil case in which the United States Constitution or the Constitution of Maine or federal or state law requires that the State provide representation; [PL 2019, c. 427, §1 (AMD).]

C. Juvenile defendants; and [PL 2019, c. 427, §1 (AMD).]

D. An indigent defendant or party or a juvenile for the purpose of filing, on behalf of that indigent defendant or party or juvenile, a petition for certiorari to the Supreme Court of the United States from an adverse decision of the Law Court on a case for which services were previously provided to that defendant or party or juvenile pursuant to paragraph A, B or C. [PL 2019, c. 427, §2 (NEW).]

"Indigent legal services" does not include the services of a guardian ad litem appointed pursuant to Title 22, section 4105, subsection 1.
[PL 2019, c. 427, §§1, 2 (AMD).]

SECTION HISTORY

PL 2009, c. 419, §2 (NEW). PL 2013, c. 159, §10 (AMD). PL 2019, c. 427, §§1, 2 (AMD).

§1803. Commission structure

1. Members; appointment; chair. The commission consists of 9 members appointed by the Governor and subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary matters and confirmation by the Legislature. The Governor shall designate one member to serve as chair of the commission. The membership consists of the following:

A. One member from a list of qualified potential appointees, provided by the President of the Senate; [PL 2017, c. 430, §1 (NEW).]

B. One member from a list of qualified potential appointees, provided by the Speaker of the House of Representatives; [PL 2017, c. 430, §1 (NEW).]

C. Three members from a list of qualified potential appointees, provided by the Chief Justice of the Supreme Judicial Court; [PL 2017, c. 430, §1 (NEW).]

D. One member with experience in administration and finance; [PL 2017, c. 430, §1 (NEW).]

E. One member with experience providing representation in child protection proceedings; [PL 2017, c. 430, §1 (NEW).]

F. One member from a list of qualified potential appointees who are attorneys engaged in the active practice of law and provide indigent legal services, provided by the president of the Maine State Bar Association. This member is a nonvoting member of the commission; and [PL 2017, c. 430, §1 (NEW).]

G. One member from a list of qualified potential appointees who are attorneys engaged in the active practice of law and provide indigent legal services, provided by the president of a statewide organization, other than the Maine State Bar Association, that represents criminal defense attorneys. This member is a nonvoting member of the commission. [PL 2017, c. 430, §1 (NEW).]

In determining the appointments and recommendations under this subsection, the Governor, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Judicial Court, the president of the Maine State Bar Association and the president of the statewide organization that represents criminal defense attorneys shall consider input from individuals and organizations with an interest in the delivery of indigent legal services. Recommendations provided by the president of the Maine State Bar Association and the president of the statewide organization representing criminal defense attorneys must consist of attorneys providing indigent legal services as a majority of their law practices.
[PL 2017, c. 430, §1 (RPR).]

2. Qualifications. Individuals appointed to the commission must have demonstrated a commitment to quality representation for persons who are indigent and have the knowledge required to ensure that quality of representation is provided in each area of law. No more than 7 members may be attorneys engaged in the active practice of law. A person who is a sitting judge, prosecutor or law enforcement official, or an employee of such a person, may not be appointed to the commission. A voting member and the immediate family members living in the same household as the member may not receive compensation from the commission, other than that authorized in Title 5, section 12004-G, subsection 25-A, while the member is serving on the commission.

The limitations on members receiving compensation from the commission do not apply to any member serving on the commission as of April 1, 2018 for the duration of the member's term.
[PL 2017, c. 430, §2 (AMD).]

3. Terms. Members of the commission are appointed for terms of 3 years each, except that of those first appointed the Governor shall designate 2 whose terms are only one year, 2 whose terms are only 2 years and one whose term is 3 years. A member may not serve more than 2 consecutive 3-year terms plus any initial term of less than 3 years.

A member of the commission appointed to fill a vacancy occurring otherwise than by expiration of term is appointed only for the unexpired term of the member succeeded.
[PL 2009, c. 419, §2 (NEW).]

4. Quorum. A quorum is a majority of the current voting members of the commission . A vacancy in the commission does not impair the power of the remaining members to exercise all the powers of the commission.
[PL 2017, c. 430, §2 (AMD).]

5. Compensation. Each member of the commission is eligible to be compensated as provided in Title 5, chapter 379.
[PL 2009, c. 419, §2 (NEW).]

SECTION HISTORY

PL 2009, c. 419, §2 (NEW). PL 2017, c. 430, §§1, 2 (AMD).

§1804. Commission responsibilities

1. Executive director. The commission shall hire an executive director. The executive director must have experience in the legal field, including, but not limited to, the provision of indigent legal services.
[PL 2009, c. 419, §2 (NEW).]

2. Standards. The commission shall develop standards governing the delivery of indigent legal services, including:

A. Standards governing eligibility for indigent legal services. The eligibility standards must take into account the possibility of a defendant's or civil party's ability to make periodic installment payments toward counsel fees; [PL 2017, c. 284, Pt. UUUU, §1 (AMD).]

B. Standards prescribing minimum experience, training and other qualifications for contract counsel and assigned counsel; [PL 2009, c. 419, §2 (NEW).]

C. Standards for assigned counsel and contract counsel case loads; [PL 2009, c. 419, §2 (NEW).]

D. Standards for the evaluation of assigned counsel and contract counsel. The commission shall review the standards developed pursuant to this paragraph every 5 years or upon the earlier recommendation of the executive director; [PL 2017, c. 284, Pt. UUUU, §2 (AMD).]

E. Standards for independent, quality and efficient representation of clients whose cases present conflicts of interest; [PL 2009, c. 419, §2 (NEW).]

F. Standards for the reimbursement of expenses incurred by assigned counsel and contract counsel; and [PL 2009, c. 419, §2 (NEW).]

G. Other standards considered necessary and appropriate to ensure the delivery of adequate indigent legal services. [PL 2009, c. 419, §2 (NEW).]
[PL 2017, c. 284, Pt. UUUU, §§1, 2 (AMD).]

3. Duties. The commission shall:

A. Develop and maintain a system that uses appointed private attorneys, contracts with individual attorneys or groups of attorneys and consider other programs necessary to provide quality and efficient indigent legal services; [PL 2009, c. 419, §2 (NEW).]

B. Develop and maintain an assigned counsel voucher review and payment authorization system that includes disposition information; [PL 2017, c. 284, Pt. UUUU, §3 (AMD).]

C. Establish processes and procedures consistent with commission standards to ensure that office and contract personnel use information technology and case load management systems so that detailed expenditure and case load data are accurately collected, recorded and reported; [PL 2011, c. 420, Pt. C, §1 (AMD).]

D. Develop criminal defense, child protective and involuntary commitment representation training and evaluation programs for attorneys throughout the State to ensure an adequate pool of qualified attorneys; [PL 2009, c. 419, §2 (NEW).]

E. Establish minimum qualifications to ensure that attorneys are qualified and capable of providing quality representation in the case types to which they are assigned, recognizing that quality representation in each of these types of cases requires counsel with experience and specialized training in that field; [PL 2009, c. 419, §2 (NEW).]

F. Establish rates of compensation for assigned counsel; [PL 2009, c. 419, §2 (NEW).]

G. Establish a method for accurately tracking and monitoring case loads of assigned counsel and contract counsel; [PL 2009, c. 419, §2 (NEW).]

H. By January 15th of each year, submit to the Legislature, the Chief Justice of the Supreme Judicial Court and the Governor an annual report on the operation, needs and costs of the indigent legal services system. The report must include:

(1) An evaluation of: contracts; services provided by contract counsel and assigned counsel; any contracted professional services; and cost containment measures; and

(2) An explanation of the relevant law changes to the indigent legal services covered by the commission and the effect of the changes on the quality of representation and costs.

The joint standing committee of the Legislature having jurisdiction over judiciary matters may report out legislation on matters related to the report; [PL 2017, c. 284, Pt. UUUU, §4 (AMD).]

I. Approve and submit a biennial budget request to the Department of Administrative and Financial Services, Bureau of the Budget, including supplemental budget requests as necessary; [PL 2013, c. 159, §11 (AMD).]

J. Develop an administrative review and appeal process for attorneys who are aggrieved by a decision of the executive director, or the executive director's designee, determining:

(1) Whether an attorney meets the minimum eligibility requirements to receive assignments or to receive assignments in specialized case types pursuant to any commission rule setting forth eligibility requirements;

(2) Whether an attorney previously found eligible is no longer eligible to receive assignments or to receive assignments in specialized case types pursuant to any commission rule setting forth eligibility requirements; and

(3) Whether to grant or withhold a waiver of the eligibility requirements set forth in any commission rule.

All decisions of the commission, including decisions on appeals under subparagraphs (1), (2) and (3), constitute final agency action. All decisions of the executive director, or the executive

director's designee, other than decisions appealable under subparagraphs (1), (2) and (3), constitute final agency action; [PL 2017, c. 284, Pt. UUUU, §5 (AMD).]

K. Pay appellate counsel; [PL 2017, c. 284, Pt. UUUU, §6 (AMD).]

L. Establish processes and procedures to acquire investigative and expert services that may be necessary for a case, including contracting for such services; [PL 2019, c. 427, §3 (AMD).]

M. Establish procedures for handling complaints about the performance of counsel providing indigent legal services; and [PL 2019, c. 427, §3 (AMD).]

N. Develop a procedure for approving requests by counsel for authorization to file a petition as described in section 1802, subsection 4, paragraph D. [PL 2019, c. 427, §4 (NEW).]

[PL 2019, c. 427, §§3, 4 (AMD).]

4. Powers. The commission may:

A. Establish and maintain a principal office and other offices within the State as it considers necessary; [PL 2009, c. 419, §2 (NEW).]

B. Meet and conduct business at any place within the State; [PL 2009, c. 419, §2 (NEW).]

C. Use voluntary and uncompensated services of private individuals and organizations as may from time to time be offered and needed; [PL 2009, c. 419, §2 (NEW).]

D. Adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that rules adopted to establish standards under subsection 2, paragraph B and rates of compensation for assigned counsel and contract counsel under subsection 2, paragraph F are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A; and [PL 2013, c. 368, Pt. RRR, §1 (AMD); PL 2013, c. 368, Pt. RRR, §4 (AFF).]

E. Appear in court and before other administrative bodies represented by its own attorneys. [PL 2009, c. 419, §2 (NEW).]

[PL 2013, c. 368, Pt. RRR, §1 (AMD); PL 2013, c. 368, Pt. RRR, §4 (AFF).]

SECTION HISTORY

PL 2009, c. 419, §2 (NEW). PL 2011, c. 141, §1 (AMD). PL 2011, c. 420, Pt. C, §1 (AMD). PL 2013, c. 159, §§11-13 (AMD). PL 2013, c. 368, Pt. RRR, §1 (AMD). PL 2013, c. 368, Pt. RRR, §4 (AFF). PL 2017, c. 284, Pt. UUUU, §§1-7 (AMD). PL 2019, c. 427, §§3, 4 (AMD).

§1805. Executive director

The executive director of the commission hired pursuant to section 1804, subsection 1 shall: [PL 2009, c. 419, §2 (NEW).]

1. Compliance with standards. Ensure that the provision of indigent legal services complies with all constitutional, statutory and ethical standards;
[PL 2009, c. 419, §2 (NEW).]

2. Development of standards. Assist the commission in developing standards for the delivery of adequate indigent legal services;
[PL 2009, c. 419, §2 (NEW).]

3. Delivery and supervision. Administer and coordinate delivery of indigent legal services and supervise compliance with commission standards;
[PL 2009, c. 419, §2 (NEW).]

4. Most effective method of delivery. Recommend to the commission the most effective method of the delivery of indigent legal services in furtherance of the commission's purposes;
[PL 2009, c. 419, §2 (NEW).]

5. Training for counsel. Conduct regular training programs for counsel providing indigent legal services;
[PL 2009, c. 419, §2 (NEW).]

6. Personnel. Subject to policies and procedures established by the commission, hire or contract professional, technical and support personnel, including attorneys, considered reasonably necessary for the efficient delivery of indigent legal services;
[PL 2017, c. 284, Pt. UUUU, §8 (AMD).]

7. Submissions to commission. Prepare and submit to the commission:

A. A proposed biennial budget for the provision of indigent legal services, including supplemental budget requests as necessary; [PL 2009, c. 419, §2 (NEW).]

A-1. A monthly report on the amount of revenue collected from counsel fee collections, including counsel expenses recouped each month and for the year to date; [PL 2017, c. 284, Pt. UUUU, §9 (NEW).]

B. An annual report containing pertinent data on the operation, needs and costs of the indigent legal services system; [PL 2017, c. 284, Pt. UUUU, §10 (AMD).]

B-1. A monthly report on the number of cases opened, the number of vouchers submitted, the amount of vouchers paid, the amount of payments to contract counsel, the number of requests for professional services, the amount of payments for professional services and information on any complaints made against assigned or contract counsel; and [PL 2017, c. 475, Pt. A, §2 (AMD).]

C. Any other information as the commission may require; [PL 2009, c. 419, §2 (NEW).]
[PL 2017, c. 475, Pt. A, §2 (AMD).]

8. Develop and implement. Coordinate the development and implementation of rules, policies, procedures, regulations and standards adopted by the commission to carry out the provisions of this chapter and comply with all applicable laws and standards;
[PL 2009, c. 419, §2 (NEW).]

9. Records. Maintain proper records of all financial transactions related to the operation of the commission;
[PL 2009, c. 419, §2 (NEW).]

10. Other funds. Apply for and accept on behalf of the commission funds that may become available from any source, including government, nonprofit or private grants, gifts or bequests. These non-General Fund funds do not lapse at the end of the fiscal year but must be carried forward to be used for the purpose originally intended;
[PL 2017, c. 284, Pt. UUUU, §12 (AMD).]

10-A. Reimbursement of expenses. Administer and improve reimbursement of expenses incurred by assigned counsel and contract counsel as described in section 1805-A;
[PL 2017, c. 284, Pt. UUUU, §13 (NEW).]

11. Meetings of commission. Attend all commission meetings, except those meetings or portions of the meetings that address the question of appointment or removal of the executive director; and
[PL 2009, c. 419, §2 (NEW).]

12. Other assigned duties. Perform other duties as the commission may assign.
[PL 2009, c. 419, §2 (NEW).]

SECTION HISTORY

PL 2009, c. 419, §2 (NEW). PL 2017, c. 284, Pt. UUUU, §§8-13 (AMD). PL 2017, c. 475, Pt. A, §2 (AMD).

§1805-A. Indigency determinations; redeterminations; verifications; collections

1. Duties. The executive director shall administer and improve reimbursement of expenses incurred by assigned counsel and contract counsel by:

A. Establishing procedures to ensure that the eligibility of defendants and civil parties is verified and reviewed randomly and when circumstances have changed, information has changed, additional information is provided or as otherwise needed; [PL 2017, c. 284, Pt. UUUU, §14 (NEW).]

B. Petitioning the court to reassess the indigency of a defendant or civil party if the executive director determines that indigency should be reassessed; [PL 2017, c. 284, Pt. UUUU, §14 (NEW).]

C. Providing to the commission recommendations to improve reimbursement of expenses; [PL 2017, c. 284, Pt. UUUU, §14 (NEW).]

D. Requiring that the amount of time spent on each case by assigned counsel or contract counsel is recorded separately for each case; and [PL 2017, c. 284, Pt. UUUU, §14 (NEW).]

E. Receiving from the courts collections for the costs of representation from defendants or civil parties who are found to be partially indigent or who have otherwise been determined to be able to reimburse the commission for expenses incurred by assigned counsel or contract counsel. [PL 2017, c. 284, Pt. UUUU, §14 (NEW).]

[PL 2017, c. 284, Pt. UUUU, §14 (NEW).]

2. Determination of defendant's or civil party's eligibility. The executive director shall provide the court having jurisdiction over a proceeding information used to determine indigency for guidance to the court in determining a defendant's or civil party's financial ability to obtain private counsel. [PL 2017, c. 284, Pt. UUUU, §14 (NEW).]

3. Partial indigency and reimbursement. This subsection applies to partial indigency and reimbursement of expenses incurred by assigned counsel or contract counsel.

A. If the court determines that a defendant or civil party is unable to pay to obtain private counsel but is able to contribute to payment of assigned counsel or contract counsel, the court shall order the defendant or civil party to make installment payments up to the full cost of representation or to pay a fixed contribution. The court shall remit payments received to the commission. [PL 2017, c. 284, Pt. UUUU, §14 (NEW).]

B. A defendant or civil party may not be required to pay for legal services in an amount greater than the expenses actually incurred. [PL 2017, c. 284, Pt. UUUU, §14 (NEW).]

C. Upon petition of a defendant or civil party who is incarcerated, the court may suspend an order for reimbursement issued pursuant to this subsection until the time of the defendant's or civil party's release. [PL 2017, c. 284, Pt. UUUU, §14 (NEW).]

D. The executive director may enter into contracts to secure the reimbursement of fees and expenses paid by the commission as provided for in this section. [PL 2017, c. 284, Pt. UUUU, §14 (NEW).]

[PL 2017, c. 284, Pt. UUUU, §14 (NEW).]

SECTION HISTORY

PL 2017, c. 284, Pt. UUUU, §14 (NEW).

§1806. Information not public record

Disclosure of information and records in the possession of the commission is governed by this section. [PL 2011, c. 260, §1 (NEW).]

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Individual client information" means name, date of birth, social security number, gender, ethnicity, home address, home telephone number, home facsimile number, home e-mail address, personal cellular telephone number, personal pager number and any information protected under the attorney-client relationship. [PL 2011, c. 260, §1 (NEW).]

B. "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address, personal cellular telephone number, personal pager number, date of birth and social security number. [PL 2011, c. 260, §1 (NEW).]

C. "Request for funds for expert or investigative assistance" means a request submitted to the commission by an indigent party or by an attorney on behalf of an indigent client seeking authorization to expend funds for expert or investigative assistance, which includes, but is not limited to, the assistance of a private investigator, interpreter or translator, psychiatrist, psychologist or other mental health expert, medical expert and scientific expert. [PL 2011, c. 260, §1 (NEW).]

D. "Case information" means:

(1) The court in which a case is brought;

(2) Any criminal charges or juvenile crime charges and the type, but not the contents, of any petition giving rise to a case;

(3) The docket number;

(4) The identity of assigned counsel and the date of assignment;

(5) The withdrawal of assigned counsel and the date of withdrawal; and

(6) Any order for reimbursement of assigned counsel fees. [PL 2011, c. 547, §1 (NEW).] [PL 2011, c. 547, §1 (AMD).]

2. Confidential information. The following information and records in the possession of the commission are not open to public inspection and do not constitute public records as defined in Title 1, section 402, subsection 3.

A. Individual client information that is submitted by a commission-rostered attorney or a court is confidential, except that the names of criminal defendants and the names of juvenile defendants charged with offenses that if committed by an adult would constitute murder or a Class A, Class B or Class C crime are not confidential. [PL 2011, c. 260, §1 (NEW).]

B. Information subject to the lawyer-client privilege set forth in the Maine Rules of Evidence, Rule 502 or that constitutes a confidence or secret under the Maine Rules of Professional Conduct, Rule 1.6 is confidential. [PL 2011, c. 260, §1 (NEW).]

C. Personal contact information of a commission-rostered attorney is confidential. [PL 2011, c. 260, §1 (NEW).]

D. Personal contact information of a member of the commission or a commission staff member is confidential. [PL 2011, c. 260, §1 (NEW).]

E. A request for funds for expert or investigative assistance that is submitted by an indigent party or by an attorney on behalf of an indigent client is confidential. The decision of the executive director of the commission hired pursuant to section 1804, subsection 1, or the executive director's designee, to grant or deny such a request is not confidential after a case has been completed. A case is completed when the judgment is affirmed on appeal or the period for appeal has expired. [PL 2011, c. 260, §1 (NEW).]

F. Any information obtained or gathered by the commission when performing an evaluation or investigation of an attorney is confidential, except that it may be disclosed to the attorney being evaluated or investigated. [PL 2015, c. 290, §1 (AMD).]

[PL 2015, c. 290, §1 (AMD).]

3. Confidential information disclosed by the Judicial Department. The Judicial Department may disclose to the commission confidential information necessary for the commission to carry out its functions, including the collection of amounts owed to reimburse the State for the cost of assigned counsel, as follows:

A. Case information and individual client information with respect to court proceedings that are confidential by statute or court rule in which one or more parties are represented by assigned counsel; and [PL 2011, c. 547, §2 (NEW).]

B. The name, address, date of birth and social security number of any person ordered by the court to reimburse the State for some or all of the cost of assigned counsel. [PL 2011, c. 547, §2 (NEW).]

This information remains confidential in the possession of the commission and is not open to public inspection, except that the names of criminal defendants and the names of juvenile defendants charged with offenses that if committed by an adult would constitute murder or a Class A, Class B or Class C crime are not confidential.

[PL 2011, c. 547, §2 (NEW).]

SECTION HISTORY

PL 2011, c. 260, §1 (NEW). PL 2011, c. 547, §§1, 2 (AMD). PL 2015, c. 290, §1 (AMD).

94-649 MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Chapter 2: STANDARDS FOR QUALIFICATIONS OF ASSIGNED COUNSEL

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

SECTION 1. Application

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

SECTION 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:

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

94-649 MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Chapter 3: ELIGIBILITY REQUIREMENTS FOR SPECIALIZED CASE TYPES

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

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

1. Contested Hearing. "Contested Hearing" means a hearing at which a contested issue is submitted to the court for resolution after evidence is taken or witnesses are presented.

2. Domestic Violence. "Domestic Violence" means:

   A. Offenses denominated as Domestic Violence under 17-A M.R.S.A. §§ 207-A, 209-A, 210-B, 210-C, and 211-A;
   B. Any class D or E offense alleged to have been committed against a family or household member or dating partner;
   C. The class D offense of stalking under 17-A M.R.S.A. § 210-A;
   D. Violation of a protection order under 17-A M.R.S.A. § 506-B.
   E. "Domestic Violence" includes crimes involving substantially similar conduct in another jurisdiction.
   F. "Domestic Violence" also includes Criminal Conspiracy under 17-A M.R.S.A. § 151, Criminal Attempt under 17-A M.R.S.A. § 152, and Criminal Solicitation under 17-A M.R.S.A. § 153 to commit any of the offenses listed above.

3. Serious Violent 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 under17-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

94-649 MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Chapter 101: STANDARDS OF PRACTICE FOR ATTORNEYS WHO REPRESENT JUVENILES IN JUVENILE COURT PROCEEDINGS

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

SECTION 1. SCOPE & PURPOSE

1. These Standards apply whenever defense counsel is assigned pursuant to the Maine Commission on Indigent Legal Services' (MCILS) jurisdiction to provide representation to juveniles charged with juvenile or adult crimes who are financially unable to retain defense counsel and who are entitled to representation pursuant to the United States and Maine Constitutions.

2. These standards are intended as a guide for assigned defense counsel and for use by MCILS in evaluating, supervising and training assigned counsel. Although MCILS understands that not every action outlined in these standards is necessary in every case, the Commission will apply these standards, the Maine Rules of Criminal Procedure, the Maine Juvenile Code, and the Maine Rules of Professional Conduct, as well as all other Commission policies and procedures in evaluating the performance or conduct of counsel.

3. Role of defense counsel for the juvenile. The paramount obligation of defense counsel for the juvenile is to provide zealous and quality representation to the juvenile at all stages of the process. Defense counsel's personal opinion of the juvenile's guilt is not relevant to the defense of the case.

4. Expressed Preferences of the Juvenile.

   A. Defense counsel should represent the juvenile's expressed preferences and follow the juvenile's direction throughout the course of litigation. Defense counsel should refrain from the waiving of substantial rights or the substitution of their own view or the parents' wishes for the position of the juvenile. In addition, defense counsel has a responsibility to advise the juvenile as to potential outcomes of various courses of action.

   B. Defense counsel should advise the juvenile, present the juvenile with comprehensible choices, help the juvenile reach his or her own decisions and advocate the juvenile's viewpoint and wishes to the Court.

   C. Defense counsel may request the appointment of a guardian *ad litem* if there are concerns for the juvenile's safety, well-being, or physical, mental, or emotional

health and defense counsel believes a guardian *ad litem* is necessary to advocate for the best interest of the juvenile.

5. Scope of Representation.

A. Certain decisions relating to the conduct of the case are ultimately for the juvenile and other decisions are ultimately for defense counsel. The decisions which are to be made by the juvenile after full consultation with defense counsel are:

(1) What pleas to enter;
(2) Whether to accept a plea agreement;
(3) Whether to participate in a program;
(4) Whether to testify in his or her own behalf; and
(5) Whether to appeal.

B. Defense counsel should explain that final decisions concerning trial strategy, after full consultation with the juvenile and after investigation of the applicable facts and law, are ultimately to be made by defense counsel. The juvenile should be made aware that defense counsel is primarily responsible for deciding what motions to file, which witnesses to call, what questions to ask, and what other evidence to present. Implicit in the exercise of defense counsel's decision-making role in this regard is consideration of the juvenile's input and full disclosure by defense counsel to the juvenile of the factors considered by defense counsel in making the decisions.

SECTION 2. GENERAL AUTHORITY AND DUTIES

1. Basic Competency of Defense Counsel in Juvenile Proceedings.

A. Before agreeing to defend a juvenile, defense counsel has an obligation to make sure that they have sufficient time, resources, knowledge and experience to offer quality representation to the juvenile. Before defending a juvenile, defense counsel should observe juvenile court, including every stage of a juvenile proceeding, and have a working knowledge of juvenile law and practice.

B. Defense counsel should accept the more serious and complex cases only after having had experience and/or training in less complex juvenile matters. Where appropriate, defense counsel should consult with more experienced counsel to acquire knowledge and familiarity with all facets of juvenile representation, including information about the practices of judges, prosecutors, juvenile community corrections officers, and other court personnel.

C. There are special hearings for a juvenile, such as a bind-over hearing, in which defense counsel may not have the necessary skills and resources to represent the juvenile. In those proceedings defense counsel may need to consult with or seek co-counsel with adequate experience in these matters.

2**.** Prior to representing a juvenile, at a minimum, defense counsel should receive training or be knowledgeable in the following areas:

A. Information about relevant federal and state statutes, court decisions and Maine court rules, including but not limited to:

(1) Maine Juvenile Code;
(2) Maine Rules of Criminal Procedure; and
(3) Maine Rules of Evidence;

B. Placement options for detention and disposition; and

C. Adolescent development, needs, and abilities.

3. Defense counsel representing juveniles should annually complete Continuing Legal Education relevant to the representation of juveniles. Additional legal education may include, but is not limited to:

A. Adolescent mental health diagnoses and treatment including the use of psychotropic medications;

B. How to read a psychological or psychiatric evaluation and how to use these in motions including but not limited to those involving issues of consent and competency relating to Miranda, search and waivers;

C. Normal childhood development (including brain development), developmental delays and mental retardation;

D. Information on the multidisciplinary input required in child-related cases, including information on local experts who can provide consultation and testimony;

E. Information on educational rights including special educational rights and services and how to access and interpret school records and how to use them in motions including but not limited to those related to consent and competency issues;

F. School suspension and expulsion procedures;

G. Use and application of the current assessment tool(s) used in your jurisdiction and possible challenges that can be used to protect the juvenile clients;

H. Immigration issues regarding juveniles; and

I. Cultural competence.

2. Basic Obligations of the Attorney.

A. Defense counsel should:

(1) Obtain copies of all pleadings, discovery, and relevant notices;
(2) Participate in all proceedings, negotiations, pretrial conferences, and hearings;
(3) Advise the juvenile concerning the subject matter of the litigation, the

juvenile's rights, the court system, the proceedings, defense counsel's role, and what to expect throughout the process; and

(4) Develop a theory and strategy of the case to implement at hearings.

3. Conflicts of Interest.

A. Defense counsel must be alert to all potential and actual conflicts of interest that would impair their ability to represent a juvenile. Loyalty and independent judgment are essential elements in defense counsel's relationship to a juvenile. Conflicts of interest can arise from defense counsel's responsibilities to another client, a former client or a third person, or from defense counsel's own interests.

B. Joint representation of co-defendants is not a *per se* violation of the constitutional guarantee of effective assistance of counsel. However, if defense counsel must forbear from doing something on behalf of a juvenile because of responsibilities or obligations to another client, there is a conflict. Similarly, if by doing something for one client, another client is harmed, there is a conflict.

C. If a conflict arises, defense counsel should be cautious about permitting a juvenile to waive the conflict. The waiver may have collateral consequences in other motions in the case regarding the juvenile's competency to waive constitutional protections.

D. Defense counsel should not permit a parent or custodian to direct the representation or share information unless disclosure of such information has been approved by the juvenile. Especially when a parent is the alleged victim or has some other adverse interest, defense counsel needs to ensure the confidentiality of the attorney-client communication and independence of the judgment made by the juvenile.

4. Client Communications.

A. Defense counsel should keep the juvenile informed of the developments in the case, and the progress of preparing the defense and should promptly comply with all reasonable requests for information.

B. Defense counsel should communicate with the juvenile in a manner that will be effective, considering the juvenile's maturity, intellectual ability, language, educational level, special education needs, cultural background, gender, and physical, mental and emotional health. If appropriate, defense counsel should request funds pursuant to Chapter 302: Procedures Regarding Funds for Experts and Investigators for an interpreter to facilitate communication with the client and insist that the court provide necessary interpreter services at all stages of court proceedings.

5. Client Confidentiality.

A. Defense counsel should seek from the outset to establish a relationship of trust and confidence with the juvenile. Defense counsel should explain defense counsel's obligation of confidentiality thus making privileged the juvenile's disclosures relating to the case.

B. Defense counsel should ensure that communications with a juvenile in an institution including a detention center are confidential. One way to ensure confidentiality is to stamp all mail as legal and confidential.

6. Case Organization.

A. Defense counsel should maintain a juvenile case file on each active case, and when appropriate, provide the case file to successor attorneys. Defense counsel is expected to maintain all information about the case's history and future proceedings, deadlines, dates, etc., on or within the juvenile's case file so that it is readily discernible.

B. All case files must reflect the procedural history of the case, and all other information necessary to render effective representation, including copies of the charging documents, all discovery, pleadings, plea offers, notes and other communications.

C. As part of the juvenile representation, defense counsel should maintain relevant updated notes that record information such as information obtained during all interviews of the juvenile; interviews of witnesses, interviews of family members; juvenile's background and history; conversations with the prosecutor regarding discovery, dispositional issues including plea offers, trial issues; conversations with the juvenile community correction officer(s); conversations with police officers or investigators; telephone conversations regarding the case; conversations, consultation and evaluation by experts, etc.

7. Continuity of Representation.

Defense counsel should continue their representation through all stages of the proceedings. Unless otherwise ordered by the court, defense counsel should continue to represent the juvenile from the point of the initial court proceedings through disposition, and any other related proceedings until the case is closed.

8. Duty of Stand-In Counsel

Defense counsel who is requested to stand in for another assigned defense counsel at any hearing must (1) represent the juvenile zealously as if it is his or her own client; (2) ensure that the juvenile knows how to contact stand-in counsel in case he or she does not hear from the defense counsel of record; (3) immediately communicate with the defense counsel of record regarding upcoming dates/hearings, how to contact the juvenile, placement of the juvenile, nature of charges, and other timely issues that the defense counsel of record may need to know or address; and (4) immediately or within a reasonable time thereafter provide to the defense counsel of record all notes, documents, and any discovery received.

9. Caseloads.

Defense counsel should not have such a large number of cases that he or she is unable to comply with these guidelines. Before agreeing to accept assignment, defense counsel has an obligation to make sure that he or she has sufficient time, resources, knowledge, and

experience to offer quality legal services in a particular matter.

SECTION 3. INITIAL OBLIGATIONS

1. Prompt Action to Protect the Juvenile.

   Many important rights of the juvenile in juvenile court proceedings can be protected only by prompt advice and action. Defense counsel should immediately inform the client of their rights and pursue any investigatory or procedural steps necessary to protect the juvenile's interests.

2. Advocate for the Juvenile's Release from Detention.

   A. Defense counsel has an obligation to attempt to secure the pretrial release of the juvenile under the conditions most favorable and acceptable to the juvenile unless contrary to the expressed wishes of the juvenile.

   B. Defense counsel should be prepared to present to the juvenile judge a statement of the factual circumstances and the legal criteria supporting release including challenges to probable cause and to make a proposal concerning conditions of release.

   C. Defense counsel should determine whether a parent or other adult is able and willing to assume custody of the juvenile. Defense counsel should be aware that most juvenile courts will not release a juvenile without a responsible adult in court willing to take custody. Every effort should be made to locate and contact such a responsible adult.

   D. Defense counsel should arrange to have witnesses to support release and have anyone the juvenile wishes to have present at any hearing.

   E. If the juvenile is released, defense counsel should fully explain the conditions of release to the juvenile and the juvenile's custodian and advise both of the potential consequences of a violation of those conditions.

   F. Following the detention hearing, defense counsel should continue to advocate for release of a juvenile or expeditious placement.

   G. Whenever a juvenile is held in some form of detention, defense counsel should periodically visit the client.

   H. Whenever a juvenile is held in some form of detention, defense counsel should be prepared for an expedited adjudicatory hearing.

3. Meet with Juvenile.

   A. Defense counsel should conduct a client interview as soon as possible after being assigned by the court/MCILS in order to obtain the information necessary to provide quality representation at the early stages of the case and to provide the juvenile with information concerning the representation and the case

proceedings. Any meeting should be held sufficiently before any court proceeding so as to be prepared for that proceeding.

B. Prior to conducting the initial interview defense counsel should, where possible:

(1) Be familiar with the elements of the offense and the potential punishment where the charges against the juvenile are already known; and
(2) Obtain copies of any relevant documents which are available, including copies of any charging documents, recommendations and reports made by the Department of Correction, and law enforcement reports that might be available.

4. Defense counsel should specifically:

A. Ascertain:

(1) The juvenile's current living arrangements, family relationships, and ties to the community, including the length of time his or her family has lived at the current, as well as the juvenile's supervision when at home;
(2) The immigration status of the juvenile and his or her family members, if applicable;
(3) The juvenile's educational history, including current grade level, attendance and any disciplinary history;
(4) The juvenile's work history, if any:
(5) The juvenile's physical and mental health, including any impairing conditions such as substance abuse or learning disabilities, and any prescribed medications and other immediate needs;
(6) The juvenile's record, if any, including arrests, detentions, diversions, adjudications, and failures to appear in court;
(7) Whether there are any other pending charges against the juvenile and the identity of any other appointed or retained counsel;

B. Explain the nature of the attorney-client relationship to the juvenile including the requirements of confidentiality;

C. Explain the attorney-client privilege and instruct the juvenile not to talk to anyone about the facts of the case without first consulting with defense counsel;

D. Explain the nature of the allegations, what the prosecution must prove, and the likely and maximum potential consequences;

E. Explain a general procedural overview of the progression of the case;

F. Explain how and when to contact defense counsel;

G. Explain the role of each player in the system;

H. Obtain a signed release(s) authorizing defense counsel and/or his/her agent to obtain official records related to the juvenile including medical and mental health records, school records, employment records, etc;

I. Discuss arrangements to address the juvenile's most critical needs; e.g., medical or mental health, or contact with family or employers; and

J. Assess whether the juvenile is competent to proceed or has a disability that would impact a possible defense or mitigation.

5. At the initial meeting and thereafter as appropriate, defense counsel should gather information relevant to the preparation of the defense. Such information may include, but is not limited to:

A. The facts surrounding the charges against the juvenile;

B. Any evidence of improper police investigative practices or prosecutorial conduct which affects the juvenile's rights;

C. Any possible witnesses or other potential sources of information; and

D. Where appropriate, evidence of the juvenile's competence to stand trial and/or mental state at the time of the offense.

6. Throughout the process, defense counsel should take the time to:

A. Keep the juvenile informed of the nature and status of the proceedings on an ongoing basis;

B. Maintain regular contact with the juvenile during the course of the case, and especially before court hearings;

C. Review all discovery with the juvenile as part of the case theory development;

D. Promptly respond to telephone calls and other types of contact from the juvenile, where possible, within one business day or a within reasonable time thereafter; and

E. Counsel the juvenile on the options available and the consequences of each, as well as decisions that need to be made by the juvenile.

SECTION 4. PRE-ADJUDICATION

1. Diversion/Informal Adjustment.

Defense counsel should be familiar with diversionary programs and alternative solutions available in the community. Such programs may include diversion, mediation, or other alternatives that could result in a juvenile's case being dismissed or handled informally. When appropriate and available, defense counsel should advocate for the use of informal mechanisms that could divert the juvenile's case from the formal court process.

2. Mental Health Examinations.

Preserve Rights in Mental Health Examinations. Throughout a juvenile proceeding, the judge may order a mental health examination of the juvenile. Admissions made during

such examinations are not protected from disclosure. Defense counsel should ensure the juvenile understands the consequences of admissions during such examinations and advise the juvenile on the lack of confidentiality and that personal information about the juvenile or the juvenile's family will be revealed to the court or other personnel.

3. Competency and Insanity.

A. Competency:

(1) Defense counsel should be familiar with procedures for a determination of mental incompetence under the Maine Juvenile Code and Maine Rules of Criminal Procedure;
(2) Although the juvenile's expressed interests ordinarily control, defense counsel may question capacity to proceed without the juvenile's approval or over the juvenile's objection, if necessary;
(3) If at any time, the juvenile's behavior or mental ability indicates that he or she may be incompetent, or may be mentally retarded, defense counsel should request the court issue an order for a juvenile to be examined for competency to stand trial through State Forensics. Prior to the evaluation by the expert, defense counsel should request from the child and provide to the experts all relevant documents including but not limited to prior psychological/psychiatric evaluations, school records and any other important medical records; and
(4) Defense counsel should prepare for and participate fully in the competency hearing.

B. Defense of Insanity:

(1) Defense counsel should be familiar with the substantive law and procedures governing the insanity defense in Maine;
(2) If defense counsel believes that the juvenile did not appreciate the wrongfulness of his/her actions at the time of the offense, the attorney should discuss with the juvenile the possibility of an insanity defense;
(3) Before raising the issue of insanity in open court, defense counsel should consider retaining their own mental health professional to evaluate whether the juvenile appreciated the wrongfulness of his or her actions at the time of the offense. Prior to the evaluation by the expert, defense counsel should request from the child and provide to the experts all relevant documents including but not limited prior psychological/psychiatric evaluations, school records and any other important medical records;
(4) Defense counsel must fully prepare the witnesses to testify on the juvenile's behalf in regard to the juvenile's sanity at the time of the offense;
(5) Defense counsel must advise the juvenile of the potential dispositions available to the Court if he/she is found not guilty by reason of insanity; and
(6) Defense counsel must be prepared to advocate on behalf of the juvenile against involuntary commitment and provide other treatment options such as outpatient counseling or services.

4. Initial Appearance/Arraignment.

   A. If appointed prior to the juvenile's initial appearance, defense counsel should preserve the juvenile's rights at the initial appearance on the charges by reviewing discovery materials to determine probable cause, preserving the right to file motions, and entering a "no answer" to the charges in all but the most extraordinary circumstances where a sound tactical reason exists for not doing so.

   B. However, there may be reasons to enter a plea at arraignment such as to benefit from a concurrent sentence or a unique opportunity for a favorable disposition. Defense counsel is required to explain to the juvenile the consequences of waiving counsel and the collateral consequences of a plea entered.

5. Bind-over.

   A. Defense counsel must be familiar with the substantive law and procedures governing bind-over under the Maine Juvenile Code;

   B. Defense counsel must advise the juvenile of the consequences of bind-over and of the maximum possible sentence to which the juvenile would be exposed if tried as an adult;

   C. Defense counsel must investigate the circumstances of the alleged conduct and the circumstances of the juvenile to identify specific evidence relevant to the issue of bind-over;

   D. Defense counsel must identify and prepare witnesses, including expert mental health witnesses, to testify on behalf of the juvenile at any hearing on bind-over; and

   E. Defense counsel must prepare for and participate fully in any bind-over hearing.

6. Investigation. Defense investigation is an essential aspect of competent representation. Defense counsel should:

   A. Review the court file and any prior court records of the juvenile, and other relevant records;

   B. Examine all charging documents to determine the specific charges that have been brought against the juvenile. The relevant statutes and precedents should be examined to identify: the elements of the offense(s) with which the juvenile is charged; both the ordinary and affirmative defenses that may be available; any lesser included offenses that may be available; and any defects in the charging documents, constitutional or otherwise, such as statute of limitations or double jeopardy;

   C. Identify and interview any potential defense witness;

   D. Interview any state witnesses;

E. Where appropriate, visit and investigate the scene of the alleged act. Defense counsel should consider obtaining photographs, maps and measurements of the area; and

F. Seek investigators and experts, as needed, to assist defense counsel in the preparation of a defense, in the understanding of the prosecution's case or in the rebuttal of the prosecution's case.

6. Participate in Discovery.

Defense counsel should pursue discovery pursuant to the Maine Rules of Criminal Procedure in all cases and review the response to this quickly to determine what additional investigation or discovery needs to be conducted or obtained.

7. Develop a Theory of the Case.

During the investigation and trial preparation, defense counsel should develop and continually reassess a theory of the case. A theory of the case is one central theory that organizes the facts, emotions, and legal basis for a finding of not guilty or adjudication of a lesser offense, while also telling the juvenile's story of innocence, reduced culpability, or unfairness. The theory of the case furnishes the basic position from which defense counsel determines all actions in a case.

8. File Motions.

A. Defense counsel should file motions, or objections as necessary to zealously represent the juvenile. Defense counsel should file motions as soon as possible due to 21 day time constraints for filing pre-trial motions as set out in Maine Rules of Criminal Procedure.

B. Motions should be filed in a timely manner, should comport with the formal requirements of the court rules and should succinctly inform the court of the authority relied upon in the case. When a hearing on a motion requires the taking of evidence, defense counsel's preparation for the evidentiary hearing should include: investigation, discovery and research relevant to the claim advanced; the subpoenaing of all helpful evidence and the subpoenaing and preparation of all helpful witnesses; and full understanding of the burdens of proof, evidentiary principles and trial court procedures applying to the hearing, including the benefits and costs of having the juvenile testify.

C. Relief requested may include, but is not limited to:

(1) In consultation with the juvenile, a mental or physical examination of the juvenile;
(2) Relief due to mental incapacity, incompetency, mental retardation or mental illness;
(3) Relief based on the unconstitutionality of the implicated statute or statutes;
(4) Relief based on the insufficiency of the charging document;
(5) Relief based on improper or prejudicial joinder or severance of charges or defendants in the petition or adjudicatory hearing;

(6) Relief based on the failure of the state to meet its discovery obligations;
(7) The suppression of evidence gathered as the result of violations of the Fourth, Fifth or Sixth Amendments to the United States Constitution, state constitutional provisions or statutes, including:
(a) The fruits of illegal searches or seizures;
(b) Involuntary statements or confessions;
(c) Statements or confessions obtained in violation of the juvenile's right to an attorney or privilege against self-incrimination;
(d) Unreliable identification evidence which would give rise to a substantial likelihood of irreparable misidentification.
(8) Suppression of evidence gathered in violation of any right, duty or privilege arising out of state or local law;
(9) Access to resources which or experts who may be denied to the juvenile because of his or her indigence;
(10) The juvenile's right to a speedy trial;
(11) The juvenile's right to a continuance in order to adequately prepare his or her case;
(12) Matters of trial evidence which may be appropriately litigated by means of a pretrial motion in limine;
(13) Motion for judgment of dismissal; or
(14) Matters of trial or courtroom procedures, including inappropriate clothing or restraints of the juvenile.

9. Plea Negotiations.

A. Defense counsel should participate in plea negotiations to seek the best result possible for the juvenile consistent with the client's interests and directions to his or her attorney.

B. Prior to entering into any negotiations, defense counsel should have sufficient knowledge of the strengths and weaknesses of the case(s), or of the issue(s) under negotiation enabling defense counsel to advise the juvenile of the risks and benefits of settlement.

C. Defense counsel should keep the client fully informed of any continued plea discussion and negotiations and convey to the juvenile any offers made by the prosecution for a negotiated settlement. Defense counsel should not accept any plea agreement without the juvenile's consent. The decision to enter a plea rests solely with the juvenile client and defense counsel should not attempt to unduly influence that decision or let a parent or other adult unduly influence whether a juvenile enters a plea.

D. Notwithstanding the existence of ongoing tentative plea negotiations with the prosecution, defense counsel should continue to prepare and investigate the case in the same manner as if it were going to proceed to trial.

E. In preparing to enter a plea before the court, defense counsel must explain to the juvenile the nature of the plea hearing and prepare the juvenile for the role he or she will play in the hearing, including answering questions of the judge and providing a statement concerning the offense and the appropriate disposition. Specifically, defense counsel should:

(1) Be satisfied there is a factual basis for the plea or admission;
(2) Make certain that the juvenile understands the rights he or she will waive by entering the plea and that the juvenile's decision to waive those rights is knowing, voluntary and intelligent;
(3) Be satisfied that the plea is voluntary and that the juvenile understands the nature of the charges; and
(4) Make certain that the juvenile fully and completely understands the conditions and limits of the plea agreement and the maximum punishment in juvenile court, sanctions and other consequences the juvenile will be exposed to by entering a plea.

F. When the plea is against the advice of defense counsel or without adequate time to investigate, defense counsel should indicate this on the record.

SECTION 5. ADJUDICATORY HEARINGS

1. Client Explanation.

Defense counsel should explain to the juvenile, in a developmentally appropriate manner, what is expected to happen before, during and after each hearing. The attorney should advise the juvenile as to suitable courtroom dress and demeanor.

2. Materials Available. Where appropriate, defense counsel should have the following materials available at the time of trial:

A. Copies of all relevant documents filed in the case;

B. Relevant documents prepared by investigators;

C. Outline or draft of opening statement;

D. Cross-examination plans for all possible prosecution witnesses;

E. Direct examination plans for all prospective defense witnesses;

F. Copies of defense subpoenas;

G. Prior statements of all prosecution witnesses (e.g. police reports);

H. Prior statements of all defense witnesses;

I. Reports from all experts;

J. A list of all defense exhibits, and witnesses;

K. Originals and copies of all documentary exhibits;

L. Copies of all relevant statutes and cases; and

M. Outline or draft of closing argument.

3. Motions and Objections.

Defense counsel should make appropriate motions, including motions in limine and evidentiary and other objections, to advance the juvenile's position at trial or during other hearings. Defense counsel should be aware of the burdens of proof, evidentiary principles and court procedures applying to the motion hearing. Further, during all hearings, defense counsel should preserve legal issues for appeal, as appropriate.

4. Sequestration of Witnesses.

Prior to delivering an opening statement, defense counsel should ask for the rule of sequestration of witnesses to be invoked, unless a strategic reason exists for not doing so.

5. Opening Statements.

A. Defense Counsel should be familiar with the law and the individual trial judge's rules regarding the permissible content of an opening statement. Defense Counsel should consider the strategic advantages and disadvantages of disclosure of particular information during the opening statement and of deferring the opening statement until the beginning of the defense case. The objective in making an opening statement may include the following:

(1) To provide an overview of the defense case;
(2) To identify the weaknesses of the prosecution's case;
(3) To emphasize the prosecution's burden of proof;
(4) To summarize the testimony of witnesses, and the role of each in relationship to the entire case;
(5) To describe the exhibits which will be introduced and the role of each in relationship to the entire case; and
(6) To state the ultimate inferences that defense counsel wishes to draw.

B. Whenever the prosecutor oversteps the bounds of a proper opening statement, defense counsel should consider objecting or requesting a mistrial unless tactical considerations weigh against any such objections or requests.

6. Confronting the Prosecutor's Case.

Defense Counsel should attempt to anticipate weaknesses in the prosecution's proof.

7. Cross Examination.

A. In preparing for cross-examination, defense counsel should be familiar with the applicable law and procedures concerning cross-examinations and impeachment of witnesses. In order to develop material for impeachment or to discover documents subject to disclosure, defense counsel should be prepared to question witnesses as to the existence of prior statements which they may have made or adopted.

B. Defense counsel should be aware of the law of competency of witnesses in general and admission of expert testimony in particular in order to be able to

raise appropriate objections.

8. Conclusion of Prosecution's Evidence.

Upon conclusion of the state's evidence, defense counsel should motion for a judgment of acquittal, make appropriate argument, and present appropriate case law. *See Maine Rules of Criminal Procedure 29.* If the motion of acquittal is denied, defense counsel should be prepared to renew the motion for judgment of acquittal at the end of all evidence in the case.

9. Defense Strategy.

Defense counsel should develop, in consultation with the juvenile, an overall defense strategy. In deciding on a defense strategy, an attorney should consider whether the juvenile's legal interests are best served by not putting on a defense case and instead relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt. In developing and presenting the defense case, defense counsel should consider the implications it may have for a rebuttal by the prosecutor.

10. Affirmative Defenses.

Defense counsel should be aware of the elements of any affirmative defense and know whether the juvenile bears the burden of persuasion or a burden of production.

11. Direct Examination.

Defense counsel should prepare all witnesses for direct and possible cross-examination. Where appropriate, defense counsel should also advise witnesses of suitable courtroom dress and demeanor.

12. Preservation of Appellate Record.

Throughout the trial process defense counsel should endeavor to establish a proper record for appellate review.

13. Client's Right to Testify.

A. It is the juvenile's right to decide whether to testify. However, it is defense counsel's obligation to advise the juvenile on the advantages and disadvantages of testifying. This advice should include consideration of the juvenile's need or desire to testify, any repercussions of testifying, the necessity of the juvenile's direct testimony, the availability of other evidence or hearsay exceptions which may substitute for direct testimony by the juvenile, and the juvenile's developmental ability to provide direct testimony and withstand possible cross-examination.

B. Defense counsel should be familiar with his or her ethical responsibilities that may be applicable if the juvenile insists on testifying untruthfully. Defense counsel should maintain a record of the advice provided to the juvenile and the juvenile's decision concerning whether to testify.

14. Preparation of Juvenile to Testify.

Defense counsel should prepare the juvenile to testify. This should include familiarizing the juvenile with the courtroom, court procedures, and what to expect during direct and cross-examination. Often the decision whether to testify may change at trial. Thus, it is beneficial to prepare in case the juvenile chooses to testify.

15. Questioning the Juvenile.

Defense counsel should seek to ensure that questions to the juvenile are phrased in a developmentally appropriate manner. Defense counsel should object to any inappropriately phrased questions by the court or an opposing counsel.

16. Renew Motion for Judgment of Dismissal.

At the close of the defense case, defense counsel should renew the motion for judgment of acquittal on each charged count, renew all prior objections and motions and if appropriate submit further argument to the court.

17. Closing Arguments.

A. Defense counsel should be familiar with the local rules and the individual judge's practice concerning time limits and objections during closing argument and provisions for rebuttal argument by the prosecution.

B. In developing closing argument, defense counsel should consider:

(1) Highlighting the weaknesses in the prosecution's case;
(2) Describing favorable inferences to be drawn from the evidence;
(3) Helpful testimony from direct and cross-examinations; and
(4) Responses to anticipated prosecution arguments.

C. Whenever the prosecutor exceeds the scope of permissible argument, defense counsel should consider objecting and requesting a mistrial, unless tactical considerations suggest otherwise.

SECTION 6. DISPOSITION

1. In many cases, defense counsel’s most valuable service to their clients will be rendered at this stage of the proceeding. An important part of representation in a juvenile case is planning for disposition. Defense counsel should not make or agree to a specific dispositional recommendation without the juvenile’s consent.

2. Preparation. In preparation for a disposition hearing, defense counsel should prepare as for any other evidentiary hearing including the consideration of calling appropriate witnesses, the preparation of evidence in mitigation of or support of the recommended disposition. Among defense counsel’s obligations in the disposition processes are:

A. To ensure the juvenile is not harmed by inaccurate information or information that is not properly before the court in determining the disposition to be imposed;

B. To ensure all reasonably available mitigating and favorable information that is likely to benefit the juvenile is presented to the court;

C. To develop a plan which seeks to achieve the least restrictive and burdensome disposition alternative that is most acceptable to the juvenile and which can reasonably be obtained based on the facts and circumstances of the offense and the juvenile's background; and

D. To consider preparing any arguments to the judge that highlights the juvenile's strengths and the appropriateness of the disposition plan proposed by the defense.

E. In preparing for disposition, defense counsel should also:

(1) Explain to the juvenile the nature of the disposition hearing, the issues involved and the alternatives open to the court;
(2) Explain fully and candidly to the juvenile the nature, obligations, and consequences of any proposed dispositional plan, including the meaning of conditions of probation or conditional release, the characteristics of any institution to which commitment is possible, and the probable duration of the juvenile's responsibilities under the proposed dispositional plan;
(3) When psychological or psychiatric evaluations are ordered by the court or arranged by defense counsel prior to disposition, defense counsel should explain the nature of the procedure to the juvenile and the potential lack of confidentiality of disclosures to the evaluator;
(4) Obtain from the juvenile relevant information concerning such subjects as his or her background and personal history, prior criminal or delinquency record, employment history and skills, education, and medical history and condition, and obtain from the juvenile sources through which the information provided can be corroborated;
(5) Access social, psychological, psychiatric or other reports. If helpful or necessary, defense counsel should seek to secure the assistance of psychiatric, psychological, medical or other expert personnel to evaluate, consult, or testify to aid the juvenile at disposition;
(6) Inform the juvenile of his or her right to speak at the disposition hearing and assist the juvenile in preparing the statement, if any, to be made to the court, considering the possible consequences that any admission of guilt may have upon an appeal, subsequent retrial or trial on other offenses; and
(7) Collect documents and affidavits to support the defense position and, where relevant, prepare witnesses to testify at the disposition hearing.

3. Disposition Options

A. Defense counsel should be familiar with the disposition options applicable to the case, including:

(1) Diversionary programs;
(2) Filings;
(3) Probation and permissible conditions of probation;

(4) Restitution;
(5) Fines;
(6) Community Service;
(7) Commitment to the Department of Corrections Juvenile Facility;
(8) Custody to the Department of Health and Human Services; and
(9) Placement in a residential program.

4. The Prosecution's Disposition Position

Defense counsel should attempt to determine whether the state attorney will advocate that a particular type or length of disposition be imposed and persuade the state attorney to support the juvenile's requested disposition.

5. Counseling after Disposition

When a disposition order has been entered, it is defense counsel's duty to explain the nature, obligations and consequences of the disposition to the juvenile and his or her family. The juvenile should also understand the consequences of a violation of probation, commitment, conditional release, or committing new offense.

SECTION 7. APPEAL

1. Defense counsel should advise the client of the right to appeal and should implement the client's decision in that regard. If an appeal is taken, defense counsel should timely file the appropriate notice of appeal and request a transcript of the prior court proceedings.

2. Where there is an appeal, defense counsel should consider requesting a stay of execution of any sentence, particularly one of incarceration.

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

EFFECTIVE DATE: February 27, 2012.

94-649 MAINE COMMISSION ON INDIGENT LEGAL SERVICES

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

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

SECTION 1. SCOPE & PURPOSE

1. These Standards apply whenever defense counsel is assigned pursuant to the Maine Commission on Indigent Legal Services' (MCILS) jurisdiction to provide representation to adults charged with crimes who are financially unable to retain defense counsel and who are entitled to representation pursuant to the United States and Maine Constitutions.

2. These standards are intended as a guide for assigned defense counsel and for use by MCILS in evaluating, supervising and training assigned defense counsel. Although MCILS understands that not every action outlined in these standards is necessary in every case, the Commission will apply these standards, the Maine Rules of Criminal Procedure and the Maine Rules of Professional Conduct, as well as all other Commission policies and procedures when evaluating the performance or conduct of counsel.

3. The Function of Defense Counsel.

   A. Defense counsel for the accused is an essential component of the administration of criminal justice. A court properly constituted to hear a criminal case must be viewed as a tripartite entity consisting of the judge (and jury, where appropriate), counsel for the prosecution, and counsel for the accused.

   B. The basic duty defense counsel owes to the administration of justice as an officer of the court is to serve as the accused's counselor and advocate and to render effective, quality representation.

   C. Defense counsel, in common with all members of the bar, is subject to standards of conduct stated in statutes, rules, decisions of court, and codes, canons, or other standards of professional conduct. Defense counsel has no duty to execute any directive of the accused here thereafter "client") which does not comport with law or such standards.

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

SECTION 2. ATTORNEY QUALIFICATIONS

1. Education, Training and Experience of Defense Counsel.

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

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

2. General Duties of Defense Counsel.

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

SECTION 3. SCOPE OF REPRESENTATION

1. Provision of Quality Representation.

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

2. Delays; Punctuality; Workload.

A. Defense counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the client's interest in the speedy disposition of charge(s), or may lead to the breach of professional obligations.

B. Defense counsel should act with reasonable diligence and promptness in representing a client.

C. Defense counsel should avoid unnecessary delay in the disposition of cases. Defense counsel should be punctual in attendance at court proceedings and in the submission of all motions, briefs and other papers. Defense counsel should emphasize to the client and all witnesses the importance of punctuality in attendance in court.

D. Defense counsel should not knowingly make a false statement of fact or law to

the court in order to obtain a continuance.

E. Defense counsel should not intentionally use procedural devices for delay for which there is no legitimate basis.

SECTION 4. LAWYER-CLIENT RELATIONSHIP

1. General Duties of Defense Counsel.

A. Defense counsel must be alert to all potential and actual conflicts of interest that would impair defense counsel's ability to represent a client.

B. Upon receiving notice of an assignment, counsel should contact the client to schedule an initial meeting and should maintain regular contact with the client thereafter. Counsel should initiate contact with the client by telephone or by mail as soon as practicable and in any event within at least 7 days of being notified of the assignment. If a client is in custody, counsel should meet and interview the client within at least 7 days of being notified of the assignment. If the client is not in custody, counsel should meet with the client prior to the deadline for filing initial motions. Counsel should endeavor to establish a relationship of trust and open communication with the client and should diligently advocate the client's position within the bounds of the law and the Maine Rules of Professional Conduct.

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

SECTION 5. INITIAL INTERVIEW

1. Purpose.

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

2. General Duties of Defense Counsel.

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

proceedings.

B. To ensure the preservation, protection and promotion of the client's rights and interests, defense counsel must make accommodations where necessary due to a client's special circumstances, such as youth, mental or physical disability, or foreign language barrier.

3. Preparation. Prior to conducting the initial interview, defense counsel should, to the extent possible:

A. be familiar with the elements of the offense and the potential punishment, where the charges against the client are already known;

B. obtain copies of any relevant documents which are available, including copies of any charging documents, and law enforcement reports that might be available;

C. be familiar with the legal criteria for determining pretrial release and the procedures that will be followed in setting those conditions;

D. be familiar with the different types of pretrial release conditions the court may set;

E. be familiar with any procedures available for reviewing the trial judge's setting of bail.

4. Initial Client Interview.

A. The purpose of the initial interview is to acquire information from the client concerning pretrial release, to provide the client with information concerning the case and to begin to develop knowledge of the facts of the case. The scope and focus of the initial interview will vary according to the circumstances under which it occurs.

B. Defense counsel should conduct a client interview as soon as practicable and if the client is in custody then in no event within more than seven (7) days after receiving notice of an assignment in order to obtain information necessary to provide quality representation at the early stages of the case and to provide the client with information concerning counsel's representation and the case proceedings. If the client is not in custody, the interview should occur prior to the deadline for filing initial motions.

C. Defense counsel should convey the following types of information to the client:

(1) an explanation of the procedures that will be followed in setting the conditions of pretrial release;
(2) an explanation of the type of information that will be requested in any interview that may be conducted by a pretrial release agency and also an explanation that the client should not make statements concerning the offense;
(3) an explanation of the attorney-client privilege and instructions not to talk to anyone about the facts of the case without first consulting with the

attorney;

(4) a general procedural overview of the progression of the case, where possible;

(5) an explanation that the client has the constitutional right to plead not guilty; to be tried by a judge or a jury; to the assistance of counsel; to confront and cross-examine witnesses against him/her; to testify; and to not be compelled to incriminate him/herself.

(6) the nature of the allegations, what the state must prove, and the likely and maximum potential consequences;

(7) how and when counsel can be reached;

(8) when counsel will see the client next;

(9) realistic answers, where possible, to the client's most urgent questions;

(10) what arrangements will be made or attempted for the satisfaction of the client's most pressing needs, e.g., medical or mental health attention, contact with family or employers.

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

(1) the facts surrounding the allegations against or affecting the client;

(2) any possible witnesses who should be located;

(3) any evidence of improper conduct by police or other investigative agencies, mental health departments or the prosecution which may affect the client's rights;

(4) any evidence that should be preserved;

(5) evidence of the client's competence to stand trial and/or mental state at the time of the offense.

(6) the client's ties to the community, including the length of time he or she has lived at the current and former addresses, family relationships, immigration status (if applicable), employment record and history;

(7) the client's physical and mental health, educational and armed services records;

(8) the client's immediate medical needs;

(9) the client's past criminal record, if any, including arrests and convictions for adult and juvenile offenses and prior record of court appearances or failure to appear in court; defense counsel should also determine whether the client has any pending charges and also whether the client is on probation or parole and the client's past or present performance under supervision;

(10) the ability of the client to meet any financial conditions of release;

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

5. Disposition of the Case.

A. Defense counsel should advise the client with complete candor concerning all aspects of the case, including a candid estimate of the probable outcome.

B. Defense counsel should not intentionally understate or overstate the risks, hazards or prospects of the case to exert undue influence on the client's decision

as to his/her plea(s).

6. Advice and Service on Anticipated Unlawful Conduct.

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

7. Duty to Keep Client Informed.

A. Defense counsel should maintain regular contact with the client and should keep the client informed of the progress of the case, including:

(1) the importance of maintaining contact with defense counsel and the need to notify defense counsel of any change of address;
(2) the names and contact information regarding defense counsel and staff assisting with the case;
(3) any court dates and significant developments in the case.

B. Defense counsel should keep the client informed of any developments in the case and the progress of the preparation of the defense, and provide sufficient information to permit intelligent participation in decision making by the client.

C. Defense counsel should comply with reasonable requests for information from the client and reply to client correspondence and telephone calls.

8. Preparation for Bail Hearing.

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

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

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

Such information should be verified whenever possible.

9. Bail or Detention Hearing.

A. Defense counsel has an obligation to vigorously attempt to secure the pretrial release of the client under conditions most desirable to the client. While favorable release conditions are the principal goal of the hearing, defense counsel should also be alert to all opportunities for obtaining discovery.

B. Defense counsel's argument to the court should include the client's ties to the community and other factors that support a conclusion that the client, if released, will return for future court appearances. The client should not, except under the most extraordinary circumstances, speak or testify at a bail hearing. Although comments on the strength and quality of the case are appropriate and reference may be made to the general nature of the anticipated defense, the specific elements of the client's defense should not be revealed at the arraignment or bail hearing.

C. Defense counsel should be prepared to address the special issues of "dangerousness" that are the focus of the hearings, and, where appropriate and possible, be ready to present "proffers" that address those issues.

D. Defense counsel should consider advocating for reasonable conditions of release or recognizance pursuant to pretrial probation, such as electronic monitoring, "stay away" orders, curfews, surrender of passports or licenses (motor vehicle or firearms), etc., in addition to monetary sureties. If the client wishes for defense counsel to advocate for conditions of release that may not be reasonable then counsel must do their best to explain the risks and or benefits of doing so to the client.

E. Where the client is not able to obtain release under the conditions set by the court, defense counsel should advise the client of his/her right to appeal and the advantages and disadvantages of doing so. Where appropriate, defense counsel should facilitate the bail appeal procedure, including pressing for the opportunity to be heard on the same day and be prepared to represent the client at the hearing.

F. Where the client is incarcerated and unable to obtain pretrial release, defense counsel should alert the court and the sheriff to any special needs of the client, e.g., medical problems, security needs, and request the court to direct the appropriate officials to take steps to meet such special needs.

G. Defense counsel should be familiar with the law governing the prosecution's power to require a defendant to provide non-testimonial evidence (such as handwriting exemplars and physical specimens), the circumstances in which a defendant may refuse to do so, the extent to which counsel may participate in the proceedings, and the record of the proceedings required to be maintained.

SECTION 6. CASE REVIEW & PREPARATION

1. Defense counsel has a duty to conduct an independent case review regardless of the client's admissions or statements to the lawyer of facts constituting guilt. The review should be conducted as promptly as possible.

2. Sources of case information may include the following:

A. *Charging Documents* – Copies of all charging documents in the case should be obtained and examined to determine the specific charges that have been brought against the accused. The relevant statutes and precedents should be examined to identify:

(1) the elements of the offense(s) with which the accused is charged;
(2) the defenses, ordinary and affirmative, that may be available;
(3) any defects in the charging documents, constitutional or otherwise, such as statute of limitations, double jeopardy, or irregularities in the Grand Jury proceedings.

B. *The Accused* – If not previously conducted, an in-depth interview of the client should be conducted as soon as possible and appropriate after appointment of counsel. The interview with the client should be used to:

(1) seek information concerning the incident or events giving rise to the charge(s) or improper police investigative practices or prosecutorial conduct which affects the client's rights;
(2) explore the existence of other potential sources of information relating to the offense;
(3) collect information relevant to the sentencing.

C. *Potential Witnesses* – Defense counsel should consider whether to interview the potential witnesses, including any complaining witnesses and others adverse to the accused. If defense counsel conducts such interviews of potential witnesses, he or she should do so in the presence of a third person who will be available, if necessary, to testify as a defense witness at trial. Alternatively, counsel should have an investigator conduct such interviews.

D. *The Police and Prosecution* – Defense counsel should secure information in the possession of the prosecution or law enforcement authorities, including police reports through the use of M.R.Crim.P. 16 and 16A. Where necessary, defense counsel should pursue such efforts through formal and informal discovery unless a sound tactical reason exists for not doing so.

E. *The Courts* – Defense counsel should request and review preliminary hearing tapes/transcripts as well as Grand Jury tapes. Where appropriate, defense counsel should review the client's prior court file(s).

F. *Physical Evidence* – Where appropriate, defense counsel should make a prompt request to the police or investigative agency for any physical evidence or expert reports relevant to the offense or to sentencing. Defense counsel should consider viewing the physical evidence consistent with case needs.

G. *The Scene* – Where appropriate, defense counsel (or an investigator) should view the scene of the alleged offense. This should be done under circumstances as similar as possible to those existing at the time of the alleged incident (e.g., weather, time of day, lighting conditions, and seasonal changes). Defense counsel should consider the taking of photographs and the creation of diagrams

or charts of the actual scene of the offense.

H. *Expert Assistance* – Defense counsel should secure the assistance of experts where it is necessary in order to:

(1) prepare a defense;
(2) understand the prosecution's case;
(3) rebut the prosecution's case;
(4) investigate the client's competence to proceed, mental state at the time of the offense, and/or capacity to make a knowing and intelligent waiver of constitutional rights.

3. During case preparation and throughout trial, defense counsel should identify potential legal issues and the corresponding objections. Defense counsel should consider the tactics of whether, when, and how to raise these objections. Defense counsel should also consider how to respond to objections which could be raised by the State.

4. Relations with Prospective Witnesses.

A. Defense counsel, in representing a client , should not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

B. Defense counsel should not compensate a witness except as provided by Commission Rule. Chapter 302: Procedures Regarding Funds for Experts and Investigators.

C. It is not necessary for defense counsel or defense counsel's investigator, in interviewing a prospective witness, to caution the witness concerning possible self-incrimination and the need for counsel.

D. Defense counsel should not discharge or obstruct communication between prospective witnesses and the prosecutor. It is unprofessional conduct to advise any person other than a client, or cause such person to be advised, to decline to give to the prosecutor or defense counsel for co-defendants information which such person has a right to give.

E. Unless defense counsel is prepared to forego impeachment of a witness by defense counsel's own testimony as to what the witness stated in an interview or to seek leave to withdraw from the case in order to present such impeaching testimony, defense counsel should avoid interviewing a prospective witness except in the presence of a third person.

5. Relations with Expert Witnesses.

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

SECTION 7. CONTROL & DIRECTION OF THE CASE

1. Theory of the Case. During investigation and trial preparation, defense counsel should develop and continually reassess a theory of the case.

2. Implementation.

   A. Defense counsel should develop an overall theory of the case that encompasses the best interest of the client and the realities of the client's situation in order to assist counsel in evaluating choices throughout the course of the representation.

   B. Defense counsel should allow the case theory to focus the investigation and trial preparation of the case, seeking out and developing the facts and evidence that the theory makes material, but defense counsel should not become a "prisoner" of his or her theory.

3. Certain decisions relating to the conduct of the case are ultimately for the accused and other are ultimately for defense counsel. The decisions which are to be made by the accused after full consultation with defense counsel include:

   A. what pleas to enter;

   B. whether to accept a plea agreement;

   C. whether to waive jury trial;

   D. whether to testify in his or her own behalf;

   E. whether to appeal.

4. Strategic and tactical decisions should be made by defense counsel after consultation with the client where feasible and appropriate. Such decisions include what witnesses to call, whether and how to conduct cross-examination, what jurors to accept or strike, what trial motions should be made, and what evidence should be introduced.

5. If a disagreement on significant matters of tactics or strategy arises between defense counsel and the client, defense counsel should make a record of the circumstances, defense counsel's advice and reasons, and the conclusion reached. The record should be made in a manner which protects the confidentiality of the lawyer-client relationship.

6. Defense counsel should explain that final decisions concerning trial strategy, after full consultation with the client, and after investigation of the applicable facts and law, are ultimately to be made by defense counsel. The client should be made aware that defense counsel is primarily responsible for deciding what motions to file, which witnesses to call, what questions to ask, and what other evidence to present. Implicit in the exercise of defense counsel's decision-making role in this regard is consideration of the client's input and full disclosure by defense counsel to the client of the factors considered by the attorney in making the decisions. Defense counsel should inform the client of an attorney's ethical obligation, informed by professional judgment, not to present frivolous matters or unfounded actions.

7. Presentment and Arraignment.

A. Defense counsel should preserve the client's rights at the initial appearance on the charges by:

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

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

A. Defense counsel should explore with the client the possibility and desirability of reaching a negotiated disposition of the charges rather than proceeding to a trial and in doing so should fully explain the rights that would be waived by a decision to enter a plea and not to proceed to trial.

B. Defense counsel should ordinarily obtain the consent of the client before entering into any plea negotiation.

C. Defense counsel should keep the client fully informed of any continued plea discussion and negotiations and convey to the accused any offers made by the prosecution for a negotiated settlement.

D. Defense counsel should not accept any plea agreement without the client's express authorization. The decision to enter a plea of guilty rests solely with the client, and defense counsel should not attempt to unduly influence that decision.

E. The existence of ongoing tentative plea negotiations with the prosecution should not prevent defense counsel from taking steps necessary to preserve a defense.

9. The Decision to File Pretrial Motions.

A. Defense counsel should consider filing an appropriate motion whenever there exists a good faith reason to believe that the applicable law may entitle the defendant to relief which the court has discretion to grant.

B. The decision to file pretrial motions should be made after thorough investigation, and after considering the applicable law in light of the circumstances of each case. Among the issues that defense counsel should consider addressing in a pretrial motion are:

(1) the pretrial custody of the accused;
(2) the constitutionality of the implicated statute or statutes;
(3) the potential defects in the charging process;
(4) the sufficiency of the charging document;
(5) the propriety and prejudice of any joinder of charges or co-defendants in the charging document;

(6) the discovery obligations of the prosecution and the reciprocal discovery obligations of the defense;
(7) the suppression of evidence gathered as the result of violations of the Fourth, Fifth or Sixth Amendments to the United States Constitution, or corresponding or additional state constitutional provisions, including:
(a) the fruits of illegal searches or seizures;
(b) involuntary statements or confessions;
(c) statements or confessions obtained in violation of the client's right to counsel, or privilege against self-incrimination;
(d) unreliable identification evidence which would give rise to a substantial likelihood of irreparable misidentification.
(8) suppression of evidence gathered in violation of any right, duty or privilege arising out of state or local law;
(9) access to resources which or experts who may be denied to an accused because of his or her indigence;
(10) the defendant's right to a speedy trial;
(11) the defendant's right to a continuance in order to adequately prepare his or her case;
(12) matters of trial evidence which may be appropriately litigated by means of a pretrial motion in limine;
(13) matters of trial or courtroom procedure.

C. Defense counsel should withdraw a motion or decide not to file a motion only after careful consideration, and only after determining whether the filing of a motion may be necessary to protect the client's rights against later claims of waiver or procedural default.

10. Filing and Arguing Pretrial Motions.

A. Motions should be filed in a timely manner, should comport with the formal requirements of the court rules and should succinctly inform the court of the authority relied upon. In filing a pretrial motion, defense counsel should be aware of the effect it might have upon the defendant's speedy trial rights.

B. When a hearing on a motion requires the taking of evidence, defense counsel's preparation for the evidentiary hearing should include:

(1) investigation, discovery and research relevant to the claim advanced;
(2) the subpoenaing of all helpful evidence and the subpoenaing and preparation of all helpful witnesses;
(3) full understanding of the burdens of proof, evidentiary principles and trial court procedures applying to the hearing, including the benefits and costs of having the client testify.

11. Subsequent Filing of Pretrial Motions.

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

12. Trial Motions.

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

13. Interlocutory Relief.

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

14. Bench Trial or Jury Trial.

A. The decision to proceed to trial with or without a jury rests solely with the client after complete advice of defense counsel.

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

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

A. Defense counsel should consider the client's competence to stand trial or to enter a plea whenever defense counsel has a good faith doubt as to the client's competence to proceed in the criminal case. Defense counsel may move for evaluation over the client's objection, and if necessary, defense counsel may make known to the court those facts which raise the good faith doubt of competence to proceed in the criminal case.

B. Where competency is at issue, defense counsel has a continuing duty to review and prepare the case for all court proceedings. Defense counsel should develop information relevant to the issue of dangerousness.

16. Entry of the Plea before the Court.

A. Prior to the entry of the plea, defense counsel should:

(1) make certain that the client understands the rights he or she will waive by entering the plea and that the client's decision to waive those rights is knowing, voluntary and intelligent;
(2) make certain that the client fully and completely understands the conditions and limits of the plea agreement and the maximum punishment, sanctions and other consequences the client will be exposed to by entering a plea;
(3) explain to the client the nature of the plea hearing and prepare the client for the role he or she will play in the hearing, including answering

questions of the judge and providing a statement concerning the offense.

B. When entering a plea, defense counsel should make sure that the full content and conditions of the plea agreement are placed on the record by the court.

C. After entry of the plea, defense counsel should be prepared to address the issue of release pending sentencing. Where the client has been released pretrial, defense counsel should be prepared to argue and persuade the court that the client's continued release is warranted and appropriate. Where the client is in custody prior to the entry of the plea, defense counsel should, where practicable, advocate for the client's release on bail pending sentencing.

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

17. Consequences of Conviction.

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

A. the maximum possible sentence of all offenses;

B. mandatory minimum sentences where applicable;

C. different or additional punishments where applicable, such as for second offenses, probation, violation or parole revocation consequences;

D. potential liability for enhanced punishment after subsequent arrest;

E. possible federal charges or penalty enhancements as well as the possible loss of eligibility for federal benefits;

F. conviction consequences for non-citizens;

G. Sex Offender Registration Act;

H. potential civil liabilities;

I. possible loss or suspension of driver's license under Maine or federal law;

J. possible loss of the right to possess a firearm.

18. The Decision to Enter a Plea of Guilty.

A. Defense counsel should inform the client of any tentative negotiated agreement reached with the prosecution, explain to the client the full content of the agreement, and explain the advantages, disadvantages and potential consequences of the agreement.

B. The decision to enter a plea of guilty rests solely with the client, and defense

counsel should not attempt to unduly influence that decision. Where defense counsel reasonably believes that acceptance of a plea offer is in the best interests of the client, defense counsel should advise the client of the benefits of this course of action.

C. Where the client verbally rejects a fully explained and detailed plea offer, and if appropriate, defense counsel may ask the client to sign a written rejection of plea offer statement.

SECTION 8. GENERAL TRIAL PREPARATION

1. The decision to proceed to trial with or without a jury rests solely with the client. Defense counsel should discuss the relevant strategic considerations of this decision with the client.

2. Where appropriate, defense counsel should have the following materials available at the time of trial:

A. copies of all relevant documents filed in the case;

B. relevant documents prepared by investigators;

C. voir dire questions;

D. outline or draft of opening statement;

E. cross-examination plans for all possible prosecution witnesses;

F. direct examination plans for all prospective defense witnesses;

G. copies of defense subpoenas;

H. prior statements of all prosecution witnesses (e.g., transcripts, police reports);

I. prior statements of all defense witnesses;

J. reports from defense experts;

K. a list of all defense exhibits, and the witnesses through whom they will be introduced;

L. originals and copies of all documentary exhibits;

M. proposed jury instructions with supporting case citations;

N. copies of all relevant statutes and cases;

O. outline or draft of closing argument.

3. Defense counsel should be fully informed as to the rules of evidence, and the law relating to all stages of the trial process, and should be familiar with legal and evidentiary issues

that can reasonably be anticipated to arise in the trial.

4. Defense counsel should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., use of prior convictions to impeach the client) and, where appropriate, defense counsel should prepare motions and memoranda for such advance rulings.

5. Throughout the trial process, defense counsel should endeavor to establish a proper record for appellate review. As part of this effort, defense counsel should request, whenever necessary, that all trial proceedings be recorded.

6. Where appropriate, defense counsel should advise the client as to suitable courtroom dress and demeanor. If the client is incarcerated, defense counsel should be alert to the possible prejudicial effects of the client appearing before the jury in jail or other inappropriate clothing.

7. Defense counsel should plan with the client the most convenient system for conferring throughout the trial. Where necessary, defense counsel should seek a court order to have the client available for conferences.

8. Throughout preparation and trial, defense counsel should consider the potential effects that particular actions may have upon sentencing if there is a finding of guilt.

9. Defense counsel should consider all steps necessary to complete investigation, discovery, and research in advance of trial, such that defense counsel is confident that the most viable defense theory has been fully developed, pursued, and refined. This preparation should include consideration of:

   A. summonsing all potentially helpful witnesses, utilizing ex parte procedures if advisable.

   B. summonsing all potentially helpful physical or documentary evidence;

   C. arranging for defense experts to consult and/or testify on any evidentiary issues that are potentially helpful; e.g., testing of physical evidence, opinion testimony, etc.

   D. obtaining and reading transcripts and/or prior proceedings in the case or related proceedings;

   E. obtaining photographs or preparing charts, maps, diagrams or other visual aids of all scenes, persons, objects or information which may aid the fact finder in understanding the defense case.

SECTION 9. VOIR DIRE AND JURY SELECTION

1. Defense counsel should be familiar with the procedures by which a jury venire is selected in the particular jurisdiction and should be alert to any potential legal challenges to the composition or selection of the venire.

2. Defense counsel should be familiar with the local practices and the individual trial judge's procedures for selecting a jury from a panel of the venire, and should be alert to any potential legal challenges to these procedures.

3. Prior to jury selection, defense counsel should review the prospective juror list and juror questionnaire.

4. Where appropriate, defense counsel should develop voir dire questions in advance of trial. Defense counsel should tailor voir dire questions to the specific case. Among the purposes voir dire questions should be designed to serve are the following:

   A. to elicit information about the attitudes of individual jurors, which will inform about peremptory strikes and challenges for cause;

   B. to convey to the panel certain legal principles which are critical to the defense case.

5. Defense counsel should be familiar with the law concerning discretionary voir dire inquiries so as to be able to defend any request or make a request to ask particular questions of prospective jurors.

6. Defense counsel should be familiar with the law concerning challenges for cause and peremptory strikes. Defense counsel should also be aware of any local rules concerning whether peremptory challenges need to be exhausted in order to preserve for appeal any challenges for cause which have been denied.

SECTION 10. PRESENTING THE DEFENSE CASE

1. Defense counsel should develop, in consultation with the client, an overall defense strategy. In deciding on defense strategy, defense counsel should consider whether the client's interests are best served by not putting on a defense case, and instead relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt.

2. Confronting the Prosecution's Case.

   A. Defense counsel should attempt to anticipate weaknesses in the prosecution's proof and consider researching and preparing corresponding motions for judgment of acquittal.

   B. Defense counsel's belief or knowledge that the witness is telling the truth does not preclude cross-examination.

   C. In preparing for cross-examination, defense counsel should be familiar with the applicable law and procedures concerning cross-examinations and impeachment of witnesses. In order to develop material for impeachment or to discover documents subject to disclosure, defense counsel should be prepared to question witnesses as to the existence of prior statements which they may have made or adopted.

   D. In preparing for cross-examination, defense counsel should:

(1) consider the need to integrate cross-examination, the theory of the defense and closing argument;
(2) consider whether cross-examination of each individual witness is likely to generate helpful information;
(3) anticipate those witnesses the prosecutor might call in its case-in-chief or in rebuttal;
(4) consider a cross-examination plan for each of the anticipated witnesses;
(5) be alert to inconsistencies in witnesses' testimony;
(6) be alert to possible variations in witnesses' testimony;
(7) review all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;
(8) where appropriate, review relevant statutes and local police regulations for possible use in cross-examining police witnesses;
(9) be alert to issues relating to witness credibility, including bias and motive for testifying.

3. Presentation of Evidence.

A. Defense counsel should not knowingly offer false evidence, whether by documents, tangible evidence, or the testimony of witnesses, or fail to take reasonable remedial measures upon discovery of its falsity.

B. Defense counsel should not knowingly and for the purpose of bringing inadmissible matter to the attention of the judge or jury, offer inadmissible evidence, ask legally objectionable questions, or make other impermissible comments or arguments in the presence of the judge or jury.

C. Defense counsel should not permit any tangible evidence to be displayed in the view of the judge or jury which would tend to prejudice fair consideration of the case by the judge or jury until such time as a good faith tender of such evidence is made.

D. Defense counsel should not tender tangible evidence in the presence of the judge or jury if it would tend to prejudice fair consideration of the case, unless there is a reasonable basis for its admission in evidence. When there is any substantial doubt about the admissibility of such evidence, it should be tendered by an offer of proof and a ruling obtained.

4. Presenting the Defense Case.

A. Defense counsel should discuss with the client all of the considerations relevant to the client's decision to testify.

B. Defense counsel should be aware of the elements of any affirmative defense and know whether, under the applicable law of the jurisdiction, the client bears a burden of persuasion or a burden of production.

C. In preparing for presentation of a defense case, defense counsel should, where appropriate:

(1) develop a plan for direct examination of each potential defense witness;
(2) determine the implications that the order of witnesses may have on the defense case;
(3) consider the possible use of character witnesses;
(4) consider the need for expert witnesses.

D. In developing and presenting the defense case, defense counsel should consider the implications it may have for a rebuttal by the prosecutor.

E. Defense counsel should prepare all witnesses for direct and possible cross-examination. Where appropriate, defense counsel should also advise witnesses of suitable courtroom dress and demeanor.

F. Defense counsel should conduct redirect examination as appropriate.

G. At the close of the defense case, defense counsel should renew the motion for judgment of acquittal on each charged count.

5. Jury Instructions.

A. Defense counsel should be familiar with the local rules and the individual judges' practices concerning ruling on proposed instructions, charging the jury, use of standard charges and preserving objections to the instructions.

B. Where appropriate, defense counsel should submit modifications of the standard jury instructions in light of the particular circumstances of the case, including the desirability of seeking a verdict on a lesser included offense. Where possible, defense counsel should provide case law in support of the proposed instructions.

C. Where appropriate, defense counsel should object to and argue against improper instructions proposed by the prosecution.

D. If the court refuses to adopt instructions requested by defense counsel, or gives instructions over defense counsel's objection, defense counsel should take all steps necessary to preserve the record, including, where appropriate, filing a copy of proposed instructions or reading proposed instructions into the record.

E. During delivery of the charge, defense counsel should be alert to any deviations from the judge's planned instructions, object to deviations unfavorable to the client, and, if necessary, request additional or curative instructions.

F. If the court proposes giving supplemental instructions to the jury, either upon request of the jurors or upon their failure to reach a verdict, defense counsel should request that the judge state the proposed charge to defense counsel before it is delivered to the jury.

6. Post-Trial Motions.

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

7. Post-Disposition Procedures.

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

A. Defense counsel should be familiar with the procedures to request a new trial including the time period for filing such a motion, the effect it has upon the time to file a notice of appeal, and the grounds that can be raised.

B. Defense counsel should inform the client of his or her right to appeal the judgment and/or the sentence or disposition of the court and the action that must be taken to perfect an appeal. In circumstances where the client wants to file an appeal but is unable to do so without the assistance of defense counsel, defense counsel should file the notice in accordance with the rules of the court and take such other steps as are necessary to preserve the client's right to appeal.

C. Where a client indicates a desire to appeal the judgment and/or sentence or disposition of the court, defense counsel should inform the client of any right that may exist to be released pending the disposition of the appeal.

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

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

8. Courtroom Professionalism.

A. As an officer of the court, defense counsel should support the authority of the court and the dignity of the trial courtroom by strict adherence to codes of professionalism and by manifesting a professional attitude toward the judge, opposing counsel, witnesses, jurors, and others in the courtroom.

B. Defense counsel should not engage in unauthorized ex parte discussions with or submission of material to a judge relating to a particular case which is or may come before the judge.

C. When the court is in session, defense counsel should address the court and should not address the prosecutor directly on all matters relating to the case.

D. Defense counsel should comply promptly with all orders and directives of the court, but defense counsel has a duty to have the record reflect adverse rulings or judicial conduct which defense counsel considers prejudicial to his or her client's legitimate interests. Defense counsel has a right to make respectful requests for reconsiderations of adverse rulings.

SECTION 11. OBLIGATIONS OF COUNSEL IN SENTENCING

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

1. Where a defendant chooses not to proceed to trial, to ensure that a plea agreement is negotiated with consideration of the sentencing, correctional, and financial implications;

2. To ensure the client is not harmed by inaccurate information or information that is not properly before the court in determining the sentence to be imposed;

3. To ensure all reasonably available mitigating and favorable information, which is likely to benefit the client, is presented to the court;

4. To develop a plan which seeks to achieve the least restrictive and burdensome sentencing alternative that is most acceptable to the client, and which can reasonably be obtained based on the facts and circumstances of the offense, the defendant's background, the applicable sentencing provisions, and other information pertinent to the sentencing decision;

5. To ensure all information presented to the court which may harm the client and which is not shown to be accurate and truthful or is otherwise improper is stricken from the text of the presentence investigation report before distribution of the report;

6. To consider the need for and availability of sentencing specialists, and to seek the assistance of such specialists whenever possible and warranted.

SECTION 12. SENTENCING OPTIONS, CONSEQUENCES AND PROCEDURES

1. Defense counsel should be familiar with the sentencing provisions and options applicable to the case, including:

   A. deferred disposition, judgment without a finding, and diversionary programs;

   B. probation or suspension of sentence and permissible conditions of probation;

   C. restitution;

   D. fines;

   E court costs;

   F. imprisonment, including any mandatory minimum requirements;

   G. confinement in mental institution;

   H. forfeiture.

2. Defense counsel should be familiar with direct and collateral consequences of the sentence and judgment, including:

   A. credit for pretrial detention;

   B. parole eligibility and applicable parole release ranges;

C. effect of good-time credits on the client's release date and how those credits are earned and calculated;

D. place of confinement and level of security and classification;

E. self-surrender to place of custody;

F. eligibility for correctional programs and furloughs;

G. available drug rehabilitation programs, psychiatric treatment, and health care;

H. deportation;

I. use of the conviction for sentence enhancement in future proceedings;

J. loss of civil rights;

K. impact of a fine or restitution and any resulting civil liability;

L. restrictions on or loss of license;

M. loss of the right to possess a firearm under Maine or federal law.

3. Defense counsel should be familiar with the sentencing procedures, including:

A. the effect that plea negotiations may have upon the sentencing discretion of the court;

B. the procedural operation of any sentencing guideline system;

C. the effect of a judicial recommendation against deportation;

D. the practices of the officials who prepare the presentence report and the client's rights in that process;

E. the access to the presentence report by defense counsel and the client;

F. the prosecution's practice in preparing a memorandum on punishment;

G. the use of a sentencing memorandum by the defense;

H. the opportunity to challenge information presented to the court for sentencing purposes;

I. the availability of an evidentiary hearing to challenge information and the applicable rules of evidence and burdens of proof at such a hearing;

J. the participation that victims and prosecution or defense witnesses may have in the sentencing proceedings.

4. Preparation for Sentencing.

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

A. inform the client of the applicable sentencing requirements, options, and alternatives, and the likely and possible consequences of the sentencing alternatives;

B. maintain regular contact with the client prior to the sentencing hearing, and inform the client of the steps being taken in preparation for sentencing;

C. obtain from the client relevant information concerning such subjects as his or her background and personal history, prior criminal record, employment history and skills, education, medical history and condition, and financial status, and obtain from the client sources through which the information provided can be corroborated;

D. ensure the client has adequate time to examine the presentence report;

E. inform the client of his or her right to speak at the sentencing proceeding and assist the client in preparing the statement, if any, to be made to the court, considering the possible consequences that any admission of guilt may have upon an appeal, subsequent retrial or trial on other offenses;

F. prepare the client to be interviewed by the official preparing the presentence report;

G. inform the client of the effects that admissions and other statements may have upon an appeal, retrial, parole proceedings, or other judicial proceedings, such as forfeiture or restitution proceedings;

H. inform the client of the sentence or range of sentences defense counsel will ask the court to consider; if the client and defense counsel disagree as to the sentence or sentences to be urged upon the court, defense counsel shall inform the client of his or her right to speak personally for a particular sentence or sentences;

I. collect documents and affidavits to support the defense position and, where relevant, prepare witnesses to testify at the sentencing hearing; where necessary, counsel should specifically request the opportunity to present tangible and testimonial evidence.

5. The Prosecution’s Sentencing Position.

A. Defense counsel should attempt to determine, unless there is a sound tactical reason for not doing so, whether the prosecution will advocate that a particular type or length of sentence be imposed.

B. If a written sentencing memorandum is submitted by the prosecution, defense counsel should request to see the memorandum and verify that the information presented is accurate; if the memorandum contains erroneous or misleading information, defense counsel should take appropriate steps to correct the information unless there is a sound strategic reason for not doing so.

C. If defense counsel request to see the prosecution memorandum is denied, an applicable motion to examine the document should be made to the court or a motion made to exclude consideration of the report by the court and to prevent distribution of the memorandum to parole and correctional officials.

6. The Sentencing Process.

A. Defense counsel should be prepared at the sentencing proceeding to take the steps necessary to advocate fully for the requested sentence and to protect the client's interest.

B. Defense counsel should be familiar with the procedures available for obtaining an evidentiary hearing before the court in connection with the imposition of sentence.

C. In the event there will be disputed facts before the court at sentencing, defense counsel should consider requesting an evidentiary hearing. Where a sentencing hearing will be held, defense counsel should ascertain who has the burden of proving a fact unfavorable to the client, be prepared to object if the burden is placed on the defense, and be prepared to present evidence, including testimony of witnesses, to contradict erroneous or misleading information unfavorable to the client.

D. Where information favorable to the client will be disputed or challenged, counsel should be prepared to present supporting evidence, including testimony of witnesses, to establish the facts favorable to the client.

E. Where the court has the authority to do so, defense counsel should request specific orders or recommendations from the court concerning the place of confinement, parole eligibility, psychiatric treatment or drug rehabilitation, permission for the client to surrender directly to the place of confinement and against deportation of the defendant.

F. Where appropriate, defense counsel should prepare the client to personally address the court.

7. The Defense Sentencing Memorandum.

A. Defense counsel should prepare and present to the court a defense sentencing memorandum where there is a strategic reason for doing so. Among the topics defense counsel may wish to include in the memorandum are:

(1) challenges to incorrect or incomplete information in any prosecution sentencing memorandum;
(2) challenges to improperly drawn inferences and inappropriate characterizations in the official presentence report and any prosecution sentencing memorandum;
(3) information contrary to that before the court which is supported by affidavits, letters and public records;
(4) information favorable to the client concerning such matters as the

offense, mitigating factors and relative culpability, prior offenses, personal background, employment record and opportunities, education background, and family and financial status;

(5) information which would support a sentencing disposition other than incarceration, such as the potential for rehabilitation or the nonviolent nature of the crime;

(6) information concerning the availability of treatment programs, community treatment facilities, and community service work opportunities;

(7) presentation of a sentencing proposal.

8. Motion for a New Trial.

A. Defense counsel should be familiar with the procedures available to request a new trial including the time period for filing such a motion, the effect it has upon the time to file a notice of appeal, and the grounds that can be raised.

B. When a judgment of guilty has been entered against the defendant after trial, defense counsel should consider whether it is appropriate to file a motion for a new trial with the trial court. In deciding whether to file such a motion, the factors defense counsel should consider include:

(1) the likelihood of success of the motion, given the nature of the error or errors that can be raised;

(2) the effect that such a motion might have upon the client's appellate rights, including whether the filing of such a motion is necessary to, or will assist in, preserving the client's right to raise on appeal the issues that might be raised in the new trial motion.

9. Bail Pending Appeal.

A. Where a client indicates a desire to appeal the judgment and/or sentence of the court, defense counsel should inform the client of any right that may exist to be released on bail pending the disposition of the appeal.

B. Where an appeal is taken and the client requests bail pending appeal, defense counsel should cooperate with appellate counsel (if different counsel) in providing information to pursue the request for bail.

10. Self-Surrender.

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

11. Right to Appeal.

A. Defense counsel should inform the client of his or her right to appeal the judgment of the court and the action that must be taken to perfect an appeal. In circumstances where the client wants to file an appeal but is unable to do so without the assistance of counsel, defense counsel should file the notice in

accordance with the rules of the court and take such other steps as are necessary to preserve the client's right to appeal, such as ordering transcripts of the trial proceedings.

B. Defense counsel's advice to the client should include an explanation of the right to appeal the judgment of guilty and, in those jurisdictions where it is permitted, the right to appeal the sentence imposed by the court.

C. Where the client takes an appeal, defense counsel should cooperate in providing information to appellate counsel (if different counsel) concerning the proceedings in the trial court.

12. Sentence Reduction.

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

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

EFFECTIVE DATE: February 27, 2012.

94-649 MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Chapter 103: STANDARDS OF PRACTICE FOR ATTORNEYS WHO REPRESENT PARENTS IN CHILD PROTECTIVE CASES

Summary: This Chapter establishes standards of practice for Commission assigned counsel providing representation to parents in child protective proceedings. Theses standards are intended to guide assigned counsel in the conduct of their representation and for use by the Commission in evaluating, supervising and training assigned counsel.

SECTION 1. SCOPE & PURPOSE

1. These Standards apply whenever defense counsel is assigned pursuant to the Maine Commission on Indigent Legal Services' (MCILS) jurisdiction to provide representation to a client whose parental rights are at risk by State action who are financially unable to retain defense counsel and who are entitled to representation pursuant to Maine statute and/or the United States and Maine Constitutions.

2. These standards are intended as a guide for assigned defense counsel and for use by MCILS in evaluating, supervising and training assigned counsel. Although MCILS understands that not every action outlined in these standards is necessary in every case, the Commission will apply these standards, the Maine Rules of Civil Procedure and the Maine Rules of Professional Conduct, as well as all other Commission policies and procedures, in evaluating the performance or conduct of counsel.

SECTION 2. GENERAL DUTIES

1. Defense counsel should adhere to all Maine Commission on Indigent Legal Services (MCILS) training, experience, and mentoring requirements.

2. Defense counsel should acquire sufficient working knowledge of all relevant federal and Maine laws, regulations, policies, and rules. Defense counsel must be familiar with the following provisions and be able to recognize when they are relevant to a case:

   A. The Adoption and Safe Families Act (ASFA), 42 U.S.C. §§ 620-679.

   B. Child Abuse Prevention Treatment Act (CAPTA), P.L.108-36;

   C. Indian Child Welfare Act (ICWA) 25 U.S.C. §§ 1901-1963, the ICWA Regulations, 25 C.F.R. Part 23, and the Guidelines for State Courts: Indian Child Custody Proceedings, 44 Fed. Reg. 67, 584 (Nov. 26, 1979);

   D. Interstate Compact on Placement of Children (ICPC);

   E. Foster Care Independence Act of 1999 (FCIA), P.L. 106-169;

F. Individuals with Disabilities Education Act (IDEA), P.L. 91-230;

G. Health Insurance Portability and Accountability Act of 1996 (HIPPA), P. L., 104-192 § 264, 42 U.S.C. § 1320d-2 (in relevant part);

H. Immigration laws relating to child welfare and child custody;

I. Title 22 Maine Revised Statutes, Health and Welfare;

J. Title 19-A Maine Revised Statutes, Domestic Relations;

K. Maine Rules of Evidence;

L. Maine Rules of Civil Procedure;

M. Maine Rules of Appellate Procedure;

N. Maine Bar Rules;

O. Current Maine Case Law.

3. Defense counsel should understand and protect the client's rights to information and decision making. Defense counsel must explain to the client what decision making authority remains with the client and what lies with the State while the child is in the State's custody. This includes but is not limited to:

A. Seeking updates and reports from any service provider working with the child/family;

B. Helping the client obtain information about the child's safety, health, education and well-being when the client desires;

C. Assisting the client in exercising his or her rights to continue to make decisions regarding the child's medical, mental health and educational services;

D. Intervening with the State, provider agencies, medical providers and the school to ensure the client has decision-making opportunities;

E. Seeking court orders when the client has been left out of important decisions about the child's life;

F. Counseling the client and helping the parent understand his or her rights and responsibilities and trying to assist the parent in carrying them out.

4. Defense counsel should avoid continuances and work to reduce delays in court proceedings.

A. Defense counsel should not request continuances unless there is an emergency or a benefit to the client's case.

B. If continuances are necessary, defense counsel should request the continuance in writing, as far as possible in advance of the hearing, and should request the shortest delay possible, consistent with the client's interests.

C. Defense counsel must notify all counsel of the request for a continuance. Defense counsel should object to repeated or prolonged continuance requests by other parties if the continuance would harm the client.

5. Defense counsel should cooperate and communicate regularly with other professionals in the case.

A. Defense counsel should communicate with attorneys for the other parties, court appointed special advocates (CASAs) or guardians ad litem (GALs), the caseworker, foster parents and service providers to learn about the client's progress and their views of the case, as appropriate, and in compliance with rules of confidentiality (22 M.R.S.A. § 4008).

B. Defense counsel should have open lines of communication with the attorney(s) representing the client in related matters such as any criminal, protection from abuse, private custody or administrative proceedings to ensure that probation orders, protection from abuse orders, private custody orders and administrative determinations do not conflict with the client's goals in the child protection case.

SECTION 3. RELATIONSHIPS WITH CLIENT

1. Defense counsel should be an advocate for the client's goals.

A. Defense counsel must understand the client's goals and pursue them vigorously.

B. Defense counsel must explain that the defense counsel's job is to represent the client's interests and regularly inquire as to the client's goals, including ultimate case goals and interim goals.

C. Defense counsel must explain all legal aspects of the case and provide comprehensive counsel on the advantages and disadvantages of different options.

D. Defense counsel must not usurp the client's authority to decide the case goals.

2. Defense counsel should act in accordance with the duty of loyalty owed to the client.

A. Defense counsel should show respect and professionalism towards their clients.

B. Defense counsel should support their client and be sensitive to the client's individual needs.

C. Defense counsel should remember that they may be the client's only advocate in the system and should act accordingly.

3. Defense counsel should adhere to all laws and ethical obligations concerning confidentiality.

A. Defense counsel must understand confidentiality laws, as well as ethical obligations, and adhere to both with respect to information obtained from or about the client.

B. Defense counsel must fully explain to the client the advantages and disadvantages of choosing to exercise, partially waive, or waive a privilege or right to confidentiality.

C. Consistent with the client's interests and goals, defense counsel must seek to protect from disclosure confidential information concerning the client.

4. Defense counsel should provide the client with contact information in writing and establish a message system that allows regular attorney-client contact.

A. Defense counsel should ensure the client understands how to contact the defense counsel and that defense counsel wants to hear from the client on an ongoing basis.

B. Defense counsel and the client should establish a reliable communication system that meets the client's needs.

C. Interpreters should be used when defense counsel and the client are not fluent in the same language.

5. Defense counsel should meet and communicate regularly with the client well before court proceedings.

A. Defense counsel should spend time with the client to prepare the case and address questions and concerns.

(1) Defense counsel should clearly explain the allegations made against the parent, what is likely to happen before, during and after each hearing, and what steps the client can take to increase the likelihood of reuniting with the child.
(2) Defense counsel should explain any settlement options and determine whether the client wants defense counsel to pursue such options.
(3) Defense counsel should explain courtroom procedures.
(4) Defense counsel should write to the client to ensure the client understands what happened in court and what is expected of the client.
(5) Defense counsel should be available for in-person meetings or telephone calls to answer the client's questions and address the client's concerns.
(6) Defense counsel and client should work together to identify and review short and long-term goals, particularly as circumstances change during the case.
(7) Defense counsel should help the client access information about the child's developmental and other needs by speaking to service providers and reviewing the child's records. Defense counsel needs to understand these issues to make appropriate decisions for the child's care.
(8) Defense counsel and the client should identify barriers to the client engaging in services, such as employment, transportation, and financial

issues. Defense counsel should work with the client, caseworker and service provider to resolve the barriers.

(9) Defense counsel should be aware of any special issues the parents may have related to participating in the proposed case plan, such as an inability to read or language differences, and advocate with the child welfare agency and court for appropriate accommodations.

B. Defense counsel should ensure a formal interpreter is involved when defense counsel and the client are not fluent in the same language.

(1) Defense counsel should advocate for the use of an interpreter when other professionals in the case who are not fluent in the same language as the client are interviewing the client.

6. Defense counsel should work with the client to develop a case timeline and tickler system.

A. At the beginning of a case, defense counsel and client should develop timelines that reflect projected deadlines and important dates and a tickler/calendar system to remember the dates.

(1) The timeline should specify what actions defense counsel and the client will need to take and dates by which they will be completed.

(2) Defense counsel and the client should know when important dates will occur and should be focused on accomplishing the objectives in the case plan in a timely way.

(3) Defense counsel should provide the client with a timeline/calendar, outlining known and prospective court dates, deadlines, and critical points of attorney-client contact.

(4) Defense counsel should record federal and state law deadlines in the system.

7. Defense counsel should provide the client with copies of all petitions, court orders, service plans, and other relevant case documents.

A. Defense counsel should ensure the client is informed about what is happening in the case.

(1) Defense counsel should provide all written documents to the client or ensure that they are provided in a timely manner and ensure the client understands them. If the client has difficulty reading, the attorney should read the documents to the client.

(2) In all cases, defense counsel should be available to discuss and explain the documents to the client.

(3) Defense counsel must be aware of any case-related domestic violence allegations and not share confidential information about an alleged or potential victim’s location.

8. Defense counsel should be alert to and avoid potential conflicts of interest that would interfere with the competent representation of the client. Defense counsel should always avoid representing more than one parent in a case.

9. Defense counsel should act in a culturally competent manner.

   A. Defense counsel should learn about and understand the client's background, determine how that has an impact on the client's case, and always show the client respect.

   B. Defense counsel must understand how cultural and socioeconomic differences impact interaction with clients, and must interpret the client's words and actions accordingly.

10. Defense counsel should take diligent steps to locate and communicate with a missing client.

   A. Defense counsel should take diligent steps to attempt to locate and communicate with the missing client to formulate what positions defense counsel should take at hearings, and to understand what information the client wishes defense counsel to share with the State and the court.

   B. If, after diligent steps, defense counsel is unable to communicate with the client, defense counsel should assess whether the client's interests are better served by advocating for the client's last clearly articulated position, or declining to participate in further court proceedings, and should act accordingly.

   C. After a prolonged period without contact with the client, defense counsel should consider withdrawing from representation.

11. Defense counsel should be aware of the unique issues an incarcerated client faces.

   A. Defense counsel must be particularly diligent when representing an incarcerated client and be aware of the reasons for the incarceration.

      (1) If the client is incarcerated as a result of an act against the child or another child in the family, the State agency may request an order from the court that reasonable efforts toward reunification are not necessary and attempt to fast-track the case toward other permanency goals.

         (a) If this is the case, defense counsel must be prepared to argue against such a motion, if the client opposes it.
         (b) If no motion is made to waive the reasonable efforts requirement, the agency may not undertake the same reunification efforts to assist a client who is incarcerated.
         (c) Defense counsel should counsel the client as to any effects incarceration has on the agency's obligations and know the statutory and case law concerning incarceration as a basis for TPR.
         (d) Defense counsel should help the client identify potential kinship placements with relatives who can provide care for the child while the client is incarcerated.
         (e) Defense counsel must understand the implications of ASFA for

an incarcerated client who has difficulty visiting and planning for the child.

(2) Defense counsel should understand that obtaining services such as substance abuse treatment, parenting skills, or job training while in jail or prison is often difficult.

(a) Defense counsel may need to advocate for reasonable efforts to be made for the client, and assist the client and the agency caseworker in accessing services.
(b) Defense counsel must assist the client with these services. Without services, it is unlikely the client will be reunified with the child upon discharge from prison.
(c) Some incarcerated clients (e.g. women housed at Windham M.C.C.) may have access to a specialized unit that gives a client reasonable access to their child(ren). Defense counsel should advocate for such a placement.
(d) Defense counsel must learn about available resources, contact the placements and attempt to get the support of the agency.

B. Communication: Defense counsel should advise the client on the importance of maintaining regular contact with the child while incarcerated.

(1) Defense counsel should assist in developing a plan for communication and visitation by obtaining necessary court orders and working with the caseworker as well as the correctional facility's social worker.
(2) If the client cannot meet defense counsel before court hearings, defense counsel must find alternative ways to communicate. This may include visiting the client in prison or engaging in more extensive phone or mail contact than with other (non-incarcerated) clients. Defense counsel should be aware of the challenges to having a confidential conversation with the client, and attempt to resolve these challenges.
(3) Defense counsel should also communicate with the client's criminal defense attorney. There may be issues related to self-incrimination as well as concerns about delaying the abuse and neglect case to strengthen the criminal case or vice versa.

C. Appearance in Court: The client's appearance in court frequently raises issues that require the attorney's attention in advance.

(1) Defense counsel should find out from the client if the client wants to be present in court. In some prisons, inmates lose privileges if they are away from the prison, and the client may prefer to stay at the prison.
(2) If the client wants to be present in court, defense counsel should work with the court to obtain a writ of habeas corpus or other documentation necessary for the client to be transported from the prison.
(3) Defense counsel should explain to any client who is hesitant to appear that the case will proceed without the client's's presence and raise any potential consequences of that choice.
(4) If the client does not want to be present, or if having the client present is not possible, defense counsel should be educated about what means are

available to have the client participate, such as by telephone or video conference.

(5) Defense counsel should make the necessary arrangements for the client. Note that it may be particularly difficult to get a parent transported from an out-of-state prison or a federal prison.

12. Defense counsel should be aware of the client's mental health status and legal status.

A. Defense counsel must be able to determine whether a client's mental status (including mental illness and mental retardation) interferes with the client's ability to make decisions about the case.

(1) Defense counsel should be familiar with any mental health diagnosis and treatment that a client has had in the past or is presently undergoing (including any medications for such conditions). Defense counsel should get consent from the client to review mental health records and to speak with former and current mental health providers.

(2) Defense counsel should explain to the client that the information is necessary to understand the client's capacity to work with the attorney.

(3) If the client's situation seems severe, defense counsel should also explain that defense counsel may seek the assistance of a clinical social worker or some other mental health expert to evaluate the client's ability to assist the attorney because if the client does not have that capacity, defense counsel may have to ask that a guardian ad litem be appointed to the client.

(4) Since this action may have an adverse effect on the client's legal claims, defense counsel should ask for a GAL only when absolutely necessary.

(5) Defense counsel must also be able to determine, when working with a client who is a minor, whether a GAL should be appointed for the client to determine the client's best interest.

SECTION 4. INVESTIGATION

1. Defense counsel should conduct a thorough and independent investigation at every stage of the proceeding.

A. Defense counsel must take all necessary steps to prepare each case. A thorough investigation is an essential element of preparation.

B. Defense counsel cannot rely solely on what the agency caseworker reports about the parent.

C. Defense counsel should contact service providers who work with the client, relatives who can discuss the client's care of the child, the child's teacher or other people who can clarify information relevant to the case. If necessary, the attorney should request that the Commission authorize the expenditure of funds to hire an investigator pursuant to Chapter 302: Procedures Regarding Funds for Experts and Investigators.

2. Defense counsel should interview the client well before each hearing.

A. Defense counsel should meet with the client regularly throughout the case. The meetings should occur well before the hearing and not at the courthouse just minutes before the case is called before the judge.

B. Defense counsel should ask the client questions to obtain information to prepare the case, and strive to create a comfortable environment so the client can ask the attorney questions. Defense counsel should use these meetings to prepare for court as well as to advise the client concerning issues that arise during the course of the case.

C. Information obtained from the client should be used to propel the investigation.

SECTION 5. INFORMAL DISCOVERY

1. Defense counsel should request and review all discoverable material in the State agency's case file.

A. Defense counsel should request and review the agency case file as early during the course of representation as possible. The file contains useful documents that defense counsel may not yet have and that may instruct defense counsel on the agency's case theory.

(1) If the agency case file is inaccurate, defense counsel should seek to correct it.
(2) Defense counsel must request and review the case file periodically because information is continually added by the agency.

2. Defense counsel should obtain all necessary documents.

A. As part of the discovery phase, defense counsel should gather all relevant documentation regarding the case that might shed light on the allegations, the service plan and the client's strengths as a parent.

(1) Defense counsel should not limit the scope as information about past or present criminal, protection from abuse, private custody or administrative proceedings involving the client can have an impact on the abuse and neglect case.
(2) Defense counsel should also review the following kinds of documents: social service records; court records; medical records; school records; and, evaluations of all types.
(3) Defense counsel should be sure to obtain reports and records from service providers. Discovery is not limited to information regarding the client, but may include records of others such as the other parent, stepparent, child, relative and non-relative caregivers.

SECTION 6. FORMAL DISCOVERY

1. Defense counsel should, when needed, use formal discovery methods to obtain information.

A. Defense counsel should know what information is needed to prepare for the case

and understand the best methods of obtaining that information.

(1) Defense counsel should become familiar with pretrial discovery requests and motions, and use whatever tools are available to obtain necessary information. Defense counsel should be aware of the limitations on the use of a subpoena to require the release of confidential information without a court order and should have subpoenas served in a timely manner to provide time for court involvement in the production of the documents sought.
(2) Defense counsel should consider the following types of formal discovery: depositions, interrogatories (including expert interrogatories), requests for production of documents, requests for admissions, and motions for mental or physical examination of a party.
(3) Defense counsel should file timely motions for discovery and renew these motions as needed to obtain the most recent records.
(4) Defense counsel, consistent with the client's interests and goals and where appropriate, should take all necessary steps to preserve and protect the client's rights by opposing discovery requests of other parties.

SECTION 7. COURT PREPARATION

1. Defense counsel should develop a case theory and strategy to follow at hearings and negotiations.

A. Once defense counsel has completed the initial investigation and discovery, including interviews with the client, defense counsel should develop a strategy for representation. The strategy may change throughout the case, as the client makes or does not make progress, but the initial theory is important to assist defense counsel in staying focused on the client's wishes and on what is achievable.

B. The theory of the case should inform defense counsel's preparation for hearings and arguments to the court throughout the case. It should also help defense counsel decide what evidence to develop for hearings and the steps to take to move the case toward the client's ultimate goals (e.g., requesting increased visitation when a parent becomes engaged in services).

2. Defense counsel should timely file all pleadings, motions, and briefs.

A. Defense counsel must file petitions, motions, discovery requests, and responses and answers to pleadings filed by other parties that are appropriate for the case.

(1) These pleadings must be thorough, accurate and timely.
(2) When a case presents a complicated or new legal issue, defense counsel should conduct the appropriate research before appearing in court.
(3) Defense counsel must have a solid understanding of the relevant law, and be able to present it to the judge in a compelling and convincing way.
(4) Defense counsel should be prepared to distinguish case law that appears to be unfavorable. If the judge asks for memoranda of law, defense counsel will already have done the research and will be able to use it to argue the case well.

(5) If it would advance the client's case, defense counsel should present an unsolicited memorandum of law to the court.

3. Defense counsel should engage in case planning and advocate for appropriate social services.

   A. Defense counsel must advocate for the client both in and out of court.

   B. Defense counsel should know about the social, mental health, substance abuse treatment and other services that are available to clients and families in the jurisdiction in which defense counsel practices so defense counsel can advocate effectively for the client to receive these services.

   C. If the client wishes or agrees to engage in services, defense counsel must determine whether the client has access to the necessary services to overcome the issues that led to the case.

4. Defense counsel should aggressively advocate for regular visitation in a family-friendly setting.

5. Defense counsel should engage in settlement negotiations and mediation to resolve the case.

6. Defense counsel should thoroughly prepare the client to testify at the hearing.

   A. When having the client testify will benefit the case or when the client wishes to testify, defense counsel should thoroughly prepare the client.

   B. Defense counsel should discuss and practice the questions that the attorney will ask the client, as well as the types of questions the client should expect opposing counsel to ask. Defense counsel should help the client think through the best way to present information, familiarize the client with the court setting, and offer guidance on logistical issues such as how to get to court on time and appropriate court attire.

7. Defense counsel should identify, locate and prepare all witnesses.

8. Defense counsel should identify, secure, prepare and qualify expert witnesses.

   A. Defense counsel must identify, as early in your representation as possible, whether you will need an expert for consultation and/or testimony.

   B. Defense counsel must determine if an opposing party will be employing expert witnesses.

   C. Defense counsel must locate experts and seek necessary funding in a timely manner.

   D. Defense counsel must spend time preparing expert witnesses for trial.

E. Defense counsel should, when appropriate, use interrogatories, depositions and/or interviews to question opposing experts.

SECTION 8. HEARINGS

1. Defense counsel should attend and prepare for all hearings.

2. Defense counsel should prepare and make all appropriate motions and evidentiary objections.

   A. Defense counsel must file motions and evidentiary objections in advance of the hearing whenever possible.

   B. Defense counsel must file briefs in support of motions when necessary.

   C. Defense counsel must always be aware of preserving issues for appeal.

3. Defense counsel should present and cross-examine witnesses, prepare and present exhibits.

   A. Defense counsel must prepare witnesses in advance of hearings.

   B. Defense counsel must prepare cross examination of opposing witnesses

   C. Defense counsel must organize documents, photos and all other potential exhibits before hearing.

   D. Defense counsel must be aware of potential evidentiary issues regarding admissibility of testimony and exhibits.

4. Defense counsel should request the opportunity to make opening and closing arguments.

5. If requested by the court or necessary to protect the client's interests, Defense counsel should prepare proposed findings of fact, conclusions of law and orders.

SECTION 9. POST HEARINGS/APPEALS

1. Defense counsel should review court orders to ensure accuracy and clarity and review with client.

   A. If written court order does not accurately reflect verbal order, defense counsel must take appropriate steps to correct it.

   B. Defense counsel must provide the client with a copy of the final order and review it with client to ensure understanding.

C. Defense counsel must advise the client of potential consequences of failing to comply with order.

D. If the client does not agree with the court's order, defense counsel must advise the client of any appellate or other post-judgment options for relief.

2. Defense counsel should take reasonable steps to ensure the client complies with court orders.

A. Defense counsel must ensure that the client understands and has an ability to meet the client's obligations under a court order.

(1) Defense counsel should create action plan for client, listing individual obligations and actions the client will need to take to meet the obligation.

(2) Defense counsel should help the client contact and follow up with service agencies.

(3) If service agencies are not meeting their responsibilities in respect to the client, defense counsel must be prepared to bring the case back to court or take other steps to ensure appropriate services are available.

3. Defense counsel should consider and discuss the possibility of appeal with the client.

4. If the client decides to appeal, defense counsel should timely and thoroughly file the necessary post-hearing motions and paperwork related to the appeal and closely follow the Maine Rules of Appellate Procedure.

5. Defense counsel should request an expedited appeal, when feasible.

6. Defense counsel should communicate the results of the appeal and its implications to the client.

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

EFFECTIVE DATE: February 27, 2012.

94-649 MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Chapter 201: APPEALS OF DECISIONS OF THE EXECUTIVE DIRECTOR

Summary: This Chapter establishes the process for an appeal from a decision of the Executive Director to the Commissioners of the Commission on Indigent Legal Services ("Commission") pursuant to 4 M.R.S. § 1804(3)(J). It provides for the appointment by the Commission Chair of a Presiding Officer to conduct an appeal process and to prepare a recommended decision for consideration and action by the Commission.

SECTION 1. DEFINITIONS

1. Appellant. "Appellant" means a person who has filed an appeal.

2. Commission or MCILS. "Commission" or "MCILS" means the Maine Commission on Indigent Legal Services.

3. Executive Director. "Executive Director" means the Executive Director of the Maine Commission on Indigent Legal Services or the Executive Director's decision-making designee.

4. Filing. "File" or "filed" means delivery of an original document to the MCILS Central Office. Delivery may be in-hand, by regular mail, by commercial delivery service or the like. Delivery may not be by electronic means such as email or facsimile.

5. MCILS Advisor. "MCILS Advisor" means a MCILS staff member designated by the Commission Chair to act as MCILS advisor with respect to an appeal.

6. Party. "Party" means the person bringing an appeal and the MCILS Executive Director.

7. Presiding Officer. "Presiding Officer" means the individual appointed by the Commission Chair to conduct the appeal proceedings under this Chapter and make a recommended decision to the Commission.

8. Record. "Record" means those materials required by 5 M.R.S. § 9059.

9. Staff. "Staff" means an employee of MCILS.

SECTION 2. APPLICABILITY; WHO MAY APPEAL

1. Application.

   A. This rule applies to appeals to the Commission from decisions of the Executive Director on issues specifically set forth in 4 M.R.S. § 1804(3)(J).

B. A decision of the Executive Director concerning issues not specifically set forth in 4 M.R.S. § 1804(3)(J) constitutes final agency action and is not subject to appeal under this Chapter.

2. Who may Appeal. A person who has been aggrieved by a decision of the Executive Director pertaining to the issues set forth in 4 M.R.S. § 1804(3)(J) may appeal the decision to the Commission. An appellant may be represented by another person in accordance with 4 M.R.S. § 807 or may proceed without representation.

SECTION 3. BRINGING AN APPEAL

1. Decision, reconsideration. Except as stated below, a decision of the Executive Director becomes final if no appeal is filed within the time limits set forth in this section. A person aggrieved by a decision of the Executive Director may, within 10 days after receipt of the decision of the Executive Director, request that the Executive Director reconsider that decision. Such a request must be accompanied by additional materials not previously submitted with respect to the original decision. If a request for reconsideration is filed in accordance with this subsection, the running of that period is tolled, and the time for filing a Statement of Appeal shall be 30 calendar days after receipt of the decision on reconsideration.

2. Statement of Appeal. An individual who wishes to appeal a decision must file a written Statement of Appeal with MCIS within 30 calendar days after receipt of the Executive Director's decision. For purposes of this section, a statement of appeal is "filed" on the date it is received at the MCILS Central Office during normal business hours.

3. Contents of the Statement of Appeal. The Statement of Appeal shall include, but is not limited to, a copy of the Executive Director's decision, the grounds for the appeal, and a statement of the appellant's position.

4. Only issues that have previously been decided by the Executive Director can be appealed.

5. Assignment to Presiding Officer. When a statement of appeal is received, the Commission Chair shall assign the appeal to a Presiding Officer, in accordance with Section 5. Upon assignment of a Presiding Officer, MCILS staff shall notify the appellant in writing of the Presiding Officer's name and contact information and provide the appellant with a copy of this Chapter.

6. Assignment of the MCILS Advisor. When the Commission Chair assigns a Presiding Officer to the appeal, the Commission Chair shall also designate the MCILS Advisor. No person authorized to make decisions subject to the appeal process may be designated as MCILS Advisor.

SECTION 4. CHOICE OF APPEALS PROCESS

1. The Presiding Officer shall notify the appellant in writing of the option to choose one of two appeal processes:

A. Expedited Appeal. The appellant may choose to rely solely on the documentary evidence considered by the Executive Director and the Statement of Appeal.

The decision to proceed under the Expedited Appeal process is irrevocable once the expedited process has commenced.

B. Hearing on Appeal. Alternatively, the appellant may request to have a hearing pursuant to 5 M.R.S. § 9052.

2. The appellant must respond in writing to the Presiding Officer as to his or her selection of the type of appeal process within 15 calendar days after the written notice by the Presiding Officer. If the appellant does not respond within the timeframe prescribed herein, the Presiding Officer shall commence the Expedited Appeal process set forth in Section 4(1)(A).

3. If the appellant elects a hearing process, the Presiding Officer shall notify the appellant in writing of the hearing date and provide notice that if the appellant fails to appear at any hearing, the appeal may be deemed to have been abandoned in accordance with Section 7.

SECTION 5. PRESIDING OFFICER

1. Appointment. The Commission Chair shall appoint a Presiding Officer to perform the duties and exercise the powers set forth in this Chapter. The Presiding Officer must be fair, impartial, unbiased, and able to conduct a fair, efficient and effective appeal process.

2. Who Can Serve. The Commission Chair may appoint any Commissioner or other qualified person as the Presiding Officer. The fact that the Presiding Officer is a MCILS rostered attorney does not constitute, by itself, direct or indirect personal or financial interest in an appeal or its outcome.

3. Assignment: Removal: Replacement

A. An appeal will be assigned to a Presiding Officer who has no personal or financial interest, direct or indirect, in the appeal or its outcome, and who has not been involved directly or indirectly in the matter that is the subject of the appeal.

B. If a party files a timely charge of bias, prejudice or personal or financial interest, either direct or indirect, with the Presiding Officer, the Presiding Officer will promptly determine whether to recuse from the appeal and will include that determination in the record.

C. A Presiding Officer may also independently decide to recuse from the appeal if the Presiding Officer cannot be fair, impartial and unbiased.

D. When a Presiding Officer decides to recuse or cannot continue, the Commission Chair will assign the appeal to a new Presiding Officer pursuant to this Section. The Presiding Officer will continue the ongoing appeal process, unless the Presiding Officer determines that in order to avoid substantial prejudice to any party it is necessary to start the process anew.

3. Duty and powers of the Presiding Officer. The Presiding Officer has the duty to render a fair and impartial recommended decision to the Commission in accordance with Section 12 and has all the powers and duties as set forth in 5 M.R.S. § 9062. In addition, it is the duty of the Presiding Officer to disclose, upon the request of any party, the substance of the Presiding Officer's communication with the MCILS Advisor.

4. Recommended Decision of Presiding Officer.

A. If an appellant requests an Expedited Appeal pursuant to Section 4(1)(A), the Presiding Officer shall issue a recommended decision to the Commission, as set forth in Section 12, within a reasonable time period.

B. If an appellant requests a hearing pursuant to Section 4(1)(B), the Presiding Officer will conduct a hearing in accordance with the requirements of the Maine Administrative Procedure Act, 5 M.R.S. § 9051 et seq.

SECTION 6. MCILS ADVISOR

The MCILS Advisor shall:

1. Upon request of the Presiding Officer, provide information and documents to the Presiding Officer about the operations and administrative procedures of MCILS; and

2. Provide technical and administrative assistance to the Presiding Officer at any hearing.

SECTION 7. DEFAULT

1. Failure to appear. If an appellant fails to appear at a hearing, the appellant may be deemed by the Presiding Officer to have abandoned the appeal. The Presiding Officer shall immediately notify the appellant in writing of the finding of default. If within 15 calendar days after the issuance of the notice of default the appellant submits information that demonstrates, in the judgment of the Presiding Officer, that the appellant had good cause for failing to appear, the appeal will be reinstated. If the appellant does not submit such information to the Presiding Officer within the timeframe herein, the decision of the Executive Director will become final.

2. Hearing in the absence of the appellant. A hearing may be held in the absence of the appellant when the Presiding Officer chooses to proceed with the hearing as an alternative to a default.

SECTION 8. EVIDENCE

1. Admissibility. Evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs.

2. Testimony. Witnesses may provide testimony orally before the Presiding Officer or in-person by deposition, by video, or by a sworn written statement. Parties must ensure that witnesses who provide sworn written statements or testimony are available for cross-examination at the hearing, although the cross-examination of a witnesses may, at the request of a party, take place at a later date.

3. Irrelevant or repetitious evidence. Evidence that is irrelevant or unduly repetitive may be excluded.

4. Weight of evidence. The fact that evidence is admitted shall not limit the authority of the Presiding Officer to determine the weight to be given the evidence.

5. Hearsay. Hearsay evidence shall not be excluded simply because of its hearsay nature. The Presiding Officer will, in accordance with law, determine the weight to be given to hearsay evidence.

6. Rules of privilege. Rules of privilege as provided in the Maine Rules of Evidence, Article 5, shall be observed.

7. Stipulation of facts. When all parties stipulate to a fact, the Presiding Officer may make a finding of fact on the basis of the stipulation. Signed statements or on-the-record oral statements by parties are sufficient as stipulations.

8. Official notice of facts. The Presiding Officer may take official notice of a fact upon his or her own initiative or at the request of a party. Official notice may be taken of any fact of which judicial notice could be taken, and in addition, of any general or technical matter within the specialized experience or knowledge of the Presiding Officer, and of any statutes, rules and non-confidential public records. The Presiding Officer will notify the parties when official notice is taken and shall afford the parties an opportunity to contest the substance or materiality of the material noticed.

SECTION 9. SUBPOENAS

1. Request for subpoenas. Any party may request the issuance of a subpoena by presenting the request to the Presiding Officer. The request must contain:

   A. The name and address of the party requesting the subpoena; and

   B. The name and address of the person to be subpoenaed, or other place where the person to be subpoenaed may be found; and

   C. A brief statement why the testimony or evidence of the person to be subpoenaed is relevant to an issue of fact in the appeal.

2. Issuance on approval. If the Presiding Officer determines that the request pertains to testimony or evidence relevant to an issue of fact in the appeal, the Presiding Officer must submit the subpoena for approval by the Attorney General or a Deputy Attorney General who is not involved in the appeal.

3 Requirements. A subpoena shall comply with the requirements of 5 M.R.S. § 9060.

SECTION 10. HEARINGS RECORDED

1. All hearings will be recorded in a form susceptible for transcription.

SECTION 11. DISMISSAL OF APPEAL

1. At any time before receipt of notice of the Presiding Officer's recommended decision, the parties may enter into an agreement as to resolution of the issues subject to the appeal. If they reach such an agreement, they shall file with the Presiding Officer a stipulation of dismissal that outlines the agreement reached. Upon receipt, the Presiding Officer shall recommend dismissal to the Commission.

2. At any time before receipt of notice of the Presiding Officer's recommended decision, the appellant may withdraw the appeal by written notice to the Presiding Officer. Upon receipt of notice withdrawal of the appeal, the Presiding Officer shall recommend dismissal of the appeal.

3. The Commission must dismiss the appeal if the Presiding Officer recommends dismissal on the grounds set forth in subsection 1 or 2.

SECTION 12. RECOMMENDED DECISION OF THE PRESIDING OFFICER

1. Contents. Following the hearing or, if the appellant has chosen an Expedited Appeal following review of the documentary record, the Presiding Officer will prepare a recommended decision, which will include:

   A. A clear statement of the subject(s) of the appeal and of the issue(s) that must be resolved to decide the appeal;

   B. A listing of the date of hearing, place of hearing, and participants at the hearing or, if no hearing was held, the written agreement from the appellant attorney to proceed without a hearing;

   C. A listing of all evidence admitted and upon which the recommended final decision is based;

   D. Findings of fact, which must be sufficient to apprise the parties of the basis for the recommended decision;

   E. A clear statement of result resolving all issues under consideration;

   F. A clear explanation of the reasoning underlying the result, including references to applicable law, procedures, and rules.

2. Comments, modification, and delivery to the Commission

   A. The Presiding Officer will send a copy of the recommended decision to each of the parties for comment. A may submit comments regarding the recommended decision, which must be in writing and must be filed with the Presiding Officer within 10 days of receipt of the Presiding Officer's recommended decision.

   B. The Presiding Officer may, but is not required to, modify the recommended decision in response to the parties' comments. If in the judgment of the Presiding Officer the previously issued recommended decision should be substantially modified, the Presiding Officer will send the recommended decision as modified to the parties for further comment, as provided in subparagraph A.

   C. The Presiding Officer will deliver copies of the recommended decision, as originally prepared and as modified, to the Commission. The Presiding Officer will deliver the written comments made by the parties with the recommended decision. When the recommended decision is not modified, the Presiding Officer

will also deliver to the Commission its written response to the parties' written comments.

SECTION 13. ACTION BY THE COMMISSION

1. Commission Consideration. A quorum of the Commission will consider the Presiding Officer's recommended decision on a timely basis.

2. Recommended decision and record. In advance of consideration, a copy of the Presiding Officer's recommended decision must be sent to each Commissioner, with parties' comments as provided in Section 12.

3. Presiding Officer. If requested by the Commission, the Presiding Officer may be present to assist the Commission. If the Presiding Officer appointed by the Commission Chair is a Commissioner, that Commissioner shall recuse from consideration of or voting on Commission action on the recommended decision.

4. Action after consideration. After considering the recommended final decision, a quorum of the Commission shall:

   A. Adopt the Presiding Officer's recommended decision as delivered;

   B. Modify the Presiding Officer's recommended decision;

   C. Send the matter back to the Presiding Officer for the taking of further evidence or for additional consideration of issues, as set forth by the Commission; or

   D. Reject the Presiding Officer's recommended decision in whole or in part and decide the appeal itself on the basis of the existing record.

5. A decision as adopted by the Commission pursuant to this Section is the final administrative decision in the appeal.

6. If the vote of the Commission to accept or not accept the Presiding Officer's recommended decision is evenly divided, the decision of the Executive Director is affirmed.

STATUTORY AUTHORITY: 4 M.R.S. § 1804(3)(J) and (4)(D)

EFFECTIVE DATE:

94-649 MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Chapter 301: FEE SCHEDULE AND ADMINISTRATIVE PROCEDURES FOR PAYMENT OF COMMISSION ASSIGNED COUNSEL

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

SECTION 1. DEFINITIONS

1. Attorney. “Attorney” means an attorney licensed to practice law in the State of Maine.

2. MCILS or Commission. “MCILS” or "Commission" means the Commissioners of the Maine Commission on Indigent Legal Services.

3. Executive Director. "Executive Director" means the Executive Director of MCILS or the Executive Director’s decision making designee.

SECTION 2. HOURLY RATE OF PAYMENT

Effective July 1, 2021:

A rate of Eighty Dollars ($80.00) per hour is authorized for time spent on an assigned case on or after July 1, 2021. A rate of Sixty Dollars ($60.00) per hour remains authorized for time spent on an assigned case between July 1, 2015 and June 30, 2021.

SECTION 3. EXPENSES

1. **Routine Office Expenses.** Routine Office expenses are considered to be included in the hourly rate. Routine office expenses, including but not limited to postage, express postage, regular telephone, cell telephone, fax, office overhead, utilities, secretarial services, routine copying (under 100 pages), local phone calls, parking (except as stated below), and office supplies, etc., will not be reimbursed.

2. **Itemized Non-Routine Expenses.** Itemized non-routine expenses, such as discovery from the State or other agency, long distance calls (only if billed for long distance calls by your phone carrier), collect phone calls, extensive copying (over 100 pages), printing/copying/ binding of legal appeal brief(s), relevant in-state mileage (as outlined below), tolls (as outlined below), and fees paid to third parties. Necessary parking fees associated with multi-day trials and hearings will be reimbursed, but must be approved in advance by the Executive Director.

3. **Travel Reimbursement.** Mileage reimbursement shall not exceed the applicable State rate. Mileage reimbursement will be paid for travel to and from courts other than an attorney's home district and superior court. Mileage reimbursement will not be paid for travel to and from an attorney's home district and superior courts. Tolls will be reimbursed, except that tolls will not be reimbursed for travel to and from attorney's home district and superior court. All out-of-state travel or any overnight travel must be approved by the MCILS in writing prior to incurring the expense. Use of the telephone, video equipment, and email in lieu of travel is encouraged as appropriate.

4. **Itemization of Claims.** Claims for all expenses must be itemized.

5. **Discovery Materials.** The MCILS will reimburse only for one set of discovery materials. If counsel is permitted to withdraw, appropriate copies of discovery materials must be forwarded to new counsel forthwith.

6. **Expert and Investigator Expenses.** Other non-routine expenses for payment to third parties, which historically required preapproval by the Court before July 1, 2010 (e.g., investigators, interpreters, medical and psychological experts, testing, depositions, etc.) are required to be approved in advance by MCILS. Funds for third-party services will be provided by the MCILS only upon written request and a sufficient demonstration of reasonableness, relevancy, and need in accordance with the MCILS rules and procedures governing requests for funds for experts and investigators. *See Chapter 302 Procedures Regarding Funds for Experts and Investigators.*

7. **Witness, Subpoena, and Service Fees.** In criminal and juvenile cases, witness, subpoena, and service fees will be reimbursed only pursuant to M.R. Crim. P. 17(b). It is unnecessary for counsel to advance these costs, and they shall not be included as a voucher expense. Fees for service of process by persons other than the sheriff shall not exceed those allowed by 30-A M.R.S. §421. The same procedure shall be followed in civil cases.

SECTION 4. MAXIMUM FEES

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

1. **Trial Court Criminal Fees**

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

Effective July 1, 2015:

   1) **Murder.** Fee to be set by the Executive Director on a case by case basis.

   2) **Class A.** $3,000

   3) **Class B and C (against person).** $2,250

4) **Class B and C (against property).** $1,500

5) **Class D and E (Superior or Unified Criminal Court).** $750

6) **Class D and E (District Court).** $540

7) **Post-Conviction Review.** $1,200

8) **Probation Revocation.** $540

9) **Miscellaneous (i.e. witness representation on 5th Amendment grounds, etc.).** $540

10) **Juvenile.** $540

B. In cases involving multiple counts against a single defendant, the maximum fee shall be that which applies to the most serious count. In cases where a defendant is charged with a number of unrelated offenses, Counsel is expected to coordinate and consolidate services as much as possible.

C. Criminal and juvenile cases will include all proceedings through disposition as defined in Section 5.1.A below. Any subsequent proceedings, such as probation revocation, will require new application and appointment.

D. When doing so will not adversely affect the attorney-client relationship, Commission-assigned counsel are urged to limit travel and waiting time by cooperating with each other to stand in at routine, non-dispositive matters by having one attorney appear at such things as arraignments and routine non-testimonial motions, instead of having all Commission-assigned counsel in an area appear.

E. Upon written request to MCILS, assistant counsel may be appointed in a murder case or other complicated cases:

1) the duties of each attorney must be clearly and specifically defined and counsel must avoid unnecessary duplication of effort;

2) each attorney must submit a voucher to MCILS. Counsel should coordinate the submission of voucher so that they can be reviewed together. Co-counsel who practice in the same firm may submit a single voucher that reflects the work done by each attorney.

2. **District Court Child Protection**

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

Effective July 1, 2015:

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

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

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

3. **Other District Court Civil**

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

Effective July 1, 2015:

1) **Application for Involuntary Commitment.** $420

2) **Petition for Emancipation.** $420

3) **Petition for Modified Release Treatment.** $420

4) **Petition for Release or Discharge.** $420

4. **Law Court**

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

Effective July 1, 2015:

1) **Appellate work following the grant of petition for certificate of probable cause**. $1,200

B. Expenses shall be reimbursed for printing costs and mileage to oral argument at the applicable state rate. Vouchers for payment of counsel fees and expenses must be submitted, including an itemization of time spent.

SECTION 5: MINIMUM FEES

Effective July 1, 2015:

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

minimum fee may be charged regardless of the number of clients consulted at the request of the court.

SECTION 6: ADMINISTRATION

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

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

      1) entry of judgment (sentencing, acquittal, dismissal, or filing);

      2) upon entry of a deferred disposition;

      3) upon issuance of a warrant of arrest for failure to appear;

      4) upon granting of leave to withdraw;

      5) upon decision of any post-trial motions;

      6) upon completion of the services the attorney was assigned to provide (e.g., mental health hearings, "lawyer of the day," bail hearings, etc.); or

      7) specific authorization of the Executive Director to submit an interim voucher.

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

      1) Order after Summary Preliminary hearing or Agreement

      2) Order after Jeopardy Hearing

      3) Order after each Judicial Review

      4) Order after a Cease Reunification Hearing

      5) Order after Permanency Hearing

      6) Order after Termination of Parental Rights Hearing

      7) Law Court Appeal

2. Unless otherwise authorized in advance, all vouchers must be submitted using the MCILS electronic case management program and comply with all instructions for use of the system.

3. All time on vouchers shall be detailed and accounted for in .10 of an hour increments. The purpose for each time entry must be self-evident or specifically stated. Use of the comment section is recommended.

4. All expenses claimed for reimbursement must be fully itemized on the voucher. Copies of receipts for payments to third parties shall be retained and supplied upon request.

5. Legal services provided in the district court for cases subsequently transferred to the superior court shall be included in the voucher submitted to the MCILS at disposition of the case.

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

EFFECTIVE DATE:
August 21, 2011 – filing 2011-283

AMENDED:
March 19, 2013 – filing 2013-062
July 1, 2013 – filing 2013-150 (EMERGENCY)
October 5, 2013 – filing 2013-228
July 1, 2015 – filing 2015-121 (EMERGENCY major substantive)
June 10, 2016 – filing 2016-092 (Final adoption, major substantive)
July 21, 2021 – filing 2021-149 (EMERGENCY major substantive)

94-649 MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Chapter 302: PROCEDURES REGARDING FUNDS FOR EXPERTS AND INVESTIGATORS

Summary: This Chapter establishes the procedures for attorneys and pro se parties to request funds for experts and investigators from the Commission and provides that the Executive Director shall make the determination to grant or deny the request. It also establishes the procedures for payment of expert and investigator services authorized in this Chapter.

SECTION 1. DEFINITIONS

1. **Executive Director**. "Executive Director" means the Executive Director of the Maine Commission on Indigent Legal Services or the Executive Director's decision-making designee.

2. **MCILS or Commission**. "MCILS" or "Commission" means the Maine Commission on Indigent Legal Services.

SECTION 2. APPLICATION FOR FUNDS FOR EXPERT AND INVESTIGATIVE ASSISTANCE

1. **Who May Apply.** Any person who is entitled to representation at state expense under the United States Constitution or the Constitution or laws of Maine and who has been found indigent by a state court or who claims to be without sufficient funds to employ necessary expert or investigative assistance may file, on his or her own or through his or her attorney, applications to MCILS for funds to obtain expert or investigative assistance or both.

2. **Application Directed to the Executive Director.** An application for funds to obtain necessary expert or investigative assistance or both shall be directed to the Executive Director.

3. **Form and Contents of Application.** The application shall:

   A. Be in writing and include a case caption setting forth the court in which the case is pending, the docket number, and the parties;

   B. Set forth the date on which the applicant was found indigent or, if the applicant has not been found indigent, set forth the basis on which the applicant claims to be without sufficient funds. For persons not found indigent by a court, the application shall be supported by an affidavit demonstrating financial need;

   C. Describe the nature of the proceeding for which assistance is sought, and in proceedings with respect to adult or juvenile crimes, specifically identify each pending charge and class of each pending charge;

   D. Set forth a clear and concise statement of the reasons why the assistance is necessary for adequate presentation of the applicant's claim or defense; and

E. Set forth a clear and concise statement as to the work that will be done by the expert and/or investigator.

4. **Electronic Filing Permitted.** The application must be filed with MCILS according to the procedure directed by the Executive Director. Any procedure developed by the Executive Director shall be designed to protect privileged information from disclosure, and to promote the efficient handling of funds requests by Commission staff.

A. **Email**. Applications filed by email shall be directed to the Executive Director at the email address for the Executive Director listed on the MCILS website. The application shall be transmitted as an attached document and not set forth in the body of the email. Electronic documents that reflect the signature of the applicant or the applicant's attorney are preferred but are not required.

B. *Repealed.*

C. *Repealed.*

SECTION 3. DETERMINATION BY THE EXECUTIVE DIRECTOR

The Executive Director shall review the application and the grounds therefore and, in the Executive Director's sole discretion, shall either grant the funds applied for, in whole or in part, or deny the application. When granting an application in whole or in part, the Executive Director may condition the expenditure of funds as set forth in MCILS Rule Chapter 301, *Fee Schedule and Administrative Procedures for Payment of Commission Assigned Counsel*, and other MCILS procedures. The determination of the Executive Director shall be in writing and may be communicated to the applicant by electronic means.

SECTION 4. PAYMENT FOR EXPERT OR INVESTIGATIVE ASSISTANCE

Upon receipt of an invoice for services for which the expenditure of funds has previously been authorized, the applicant or the applicant's attorney shall forward the invoice to MCILS for processing and payment, together with the relevant authorization. Attorneys shall comply with any procedures established by the Executive Director. The applicant or the applicant's attorney must state that the services were satisfactory and that all applicable reports and other information have been received. The applicant or the applicant's attorney should review the invoice to verify that it conforms to MCILS requirements and that the appropriate rates for services and mileage were billed. The applicant or the applicant's attorney is not required by the Commission to advance funds to investigators or other service providers, subject to any professional conduct requirements. The applicant should make every effort to ensure that the service providers include a State of Maine Vendor Code number on each invoice.

SECTION 5. Transition

Repealed.

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

EFFECTIVE DATE:
August 21, 2011 – filing 2011-284

AMENDED:
August 1, 2021 – filing 2021-150

94-649 MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Chapter 401: GUIDELINES FOR DETERMINATION OF FINANCIAL ELIGIBILITY FOR ASSIGNED COUNSEL AND REIMBURSEMENT FOR ASSIGNED COUNSEL COSTS

Summary: This chapter establishes guidelines for determining a person's financial eligibility for assigned counsel and for determining whether eligible persons should be required to reimburse the state for some or all of the cost of assigned counsel. These guidelines govern the work of financial screeners employed by the commission and are intended to provide guidance to courts in their determination of financial eligibility and the amount, if any, of reimbursement.

SECTION 1. DETERMINATION OF FINANCIAL ELIGIBILITY

1. Definitions. The following definitions shall be used in making a determination of financial eligibility:

A. Income. Income means actual available current annual total cash receipts before taxes of all persons who are resident members of, and contribute to, the support of a family unit. Income may also include potential wages from seasonal employment when the applicant has a history of seasonal employment. Types of income include, but are not limited to: wages, income from self-employment, rents, royalties, child support, alimony, Social Security benefits, including SSDI and SSI, TANF benefits, VA benefits, general assistance, cash benefits, unemployment compensation, workers compensation, insurance or pension benefits, strike benefits, interest, dividends, and military family allotments. Income does not include in-kind assistance such as food stamps or vouchers.

B. Cash assets. Cash assets means cash on hand; money in savings, checking, IRA, certificates of deposit or other readily accessible accounts; stocks or bonds that can be sold; and cash bail unless another person has been designated as the owner of the cash pursuant to 15 M.R.S.A. §1074(1).

C. Other assets. Other assets include equity in real estate equal to an amount necessary to obtain a home equity loan; cash value of insurance policies; cash value of pension, retirement, or profit sharing plans to which the applicant has access; equity value of major personal property items such as boats, snowmobiles, and motor vehicles that are not needed for work or family transportation; valuable jewelry; antiques or collections; and any other property that could be sold, exchanged, or used to obtain a loan.

D. Necessary Monthly Expenses. Necessary monthly expenses include only expenses necessary for the following:

(1) food;
(2) shelter, including mortgage payments on a principal residence, rent and utilities;
(3) medical care, including medical insurance premiums paid by the applicant and installment payments on debts for medical expenses;
(4) employment, including loan payments on a vehicle used to get to work and uniforms required by the employer;
(5) debts, including minimum payments on credit card debt and payments on student loans and long term (longer than 6 months) personal loans.

Expenses for items not listed above should not be included in the calculation of necessary monthly expenses.

2. Procedure for determining financial eligibility and amount of reimbursement. The following procedures shall be used for determining financial eligibility and the amount of any reimbursement obligation:

A. Determine gross income and assets of the applicant and all members of the applicant's family unit.

B. If the cash assets of the applicant and the applicant's family unit exceed the amounts set forth below, the applicant is not eligible for assigned counsel. For adult criminal and juvenile cases: $1,000 in cases where the most serious charge alleges a Class D or E crime; $2,000 in cases where the most serious charge alleges a C crime; $3,000 in cases where the most serious charge alleges a B crime; $4,000 in cases where the most serious charge alleges a Class A crime; and $2,500 for child protective cases.

C. If the applicant's cash assets are less than the amounts above, it is necessary to determine whether the applicant can convert other assets into cash so that the applicant can retain an attorney. If the other assets are such that they can be used to hire an attorney, the applicant is not eligible. If the applicant is or has been converting cash assets into other assets, such as making a large down payment or substantial monthly payments on a motor vehicle or similar item, this fact can be taken into consideration in determining eligibility.

D. If the applicant's cash and convertible assets equal less than the amounts listed in Paragraph 2, the income amount should be compared to the appropriate amount on the Income Table attached as Appendix A. The Income Table is based on 110% of the federal poverty guidelines and shall be updated by the Commission annually on July 1st. If the income of the applicant and applicant's family unit is less than the

appropriate amount on the Income Table, the applicant is eligible for assigned counsel.

E. In order to determine whether the applicant can reimburse the State for the expense of assigned counsel, compare the monthly income of the applicant with the applicant's necessary monthly expenses. If income exceeds necessary monthly expenses, the applicant should be required to make periodic payments based on the amount by which income exceeds necessary expenses to reimburse the State for the cost of assigned counsel. Payments should be required up to an amount equal to the maximum fee set by the Commission for the type of case for which counsel is assigned. Maximum fees are set forth on Appendix B. Cash and convertible assets that are available but are insufficient to disqualify an applicant under subsection 2 should also be considered when determining whether an applicant can make reimbursement and the amount of reimbursement.

F. Applicants whose income exceeds 110% of the federal poverty guidelines may be eligible for assigned counsel if they have extraordinary necessary monthly expenses that render them unable to retain counsel. In such cases, an order for reimbursement should be entered unless the interests of justice demand otherwise.

G. In any case where a person represented by assigned counsel subsequently retains counsel, the court should, when granting assigned counsel leave to withdraw, order the person to reimburse the State for amounts expended for representation by assigned counsel prior to the entry of appearance of retained counsel.

SECTION 2. BAIL

1. In all cases where a criminal defendant represented by assigned counsel has posted cash bail that has not been designated the property of another pursuant to 15 M.R.S.A. §1074(1), the bail should be ordered set-off pursuant to 15 M.R.S.A. §1074(3)(c) to reimburse counsel fees and other expenses paid by the state for representation in the proceeding in which bail is posted or in any unrelated proceeding.

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

EFFECTIVE DATE:

APPENDIX A

INCOME TABLE FOR DETERMINATION OF ELIGIBILITY FOR ASSIGNED COUNSEL

Family Size	Gross Annual Income	Monthly Gross	Weekly Gross
1	$14,168	$1,180.66	$272.46
2	$19,162	$1,596.83	$368.50
3	$24,156	$2,013.00	$464.53
4	$29,150	$2,429.16	$560.57
5	$34,144	$2,845.33	$656.61
6	$39,138	$3,261.50	$752.65
7	$44,132	$3,677.66	$848.69
8	$49,126	$4,093.83	$944.73
For each additional person add	$4,994	$416.16	$96.03

Allowable Cash Assets	
Class A	$4,000
Class B	$3,000
Class C	$2,000
Class D & E	$1,000
Protective Custody	$2,500

APPENDIX B

MAXIMUM FEES FOR VARIOUS CASE TYPES

Chapter 301: FEE SCHEDULE AND ADMINISTRATIVE PROCEDURES FOR PAYMENT OF COMMISSION ASSIGNED COUNSEL

Type	Amount
Class A	$3,000.00
Class B & C (against person)	$2,250.00
Class B & C (against property)	$1,500.00
Class D & E (Superior or UCD)	$750.00
Class D & E (District Court)	$540.00
Post-Conviction Review	$1,200.00
Probation Revocation	$540.00
Miscellaneous	$540.00
Juvenile	$540.00
Child Protective	$900.00
Termination of Parental Rights (with hearing)	$1,260.00
Application for Involuntary Commitment	$420.00
Petition for Emancipation	$420.00
Petition for Modified Release Treatment	$420.00
Petition for Release or Discharge	$420.00
Criminal Direct Appeals & Appellate work	$1,200.00