INITIATIVES TO IMPROVE INDIGENT LEGAL SERVICES

TO: COMMISSION

FROM: JUSTIN W. ANDRUS, EXECUTIVE DIRECTOR

SUBJECT: INITIATIVES TO IMPROVE INDIGENT LEGAL SERVICES

DATE: 2/25/2022

CC:

We have been invited to appear before the Judiciary Committee on Tuesday, March 1, 2022, to discuss ways in which the Legislature might support improvements to the provision of indigent legal services in Maine. I anticipate that in that session we will revisit existing initiatives, including the outstanding requests for a public defense office in Kennebec County and the Appellate Defender office. I also anticipate revisiting funding overall, with an eye toward achieving parity with the prosecution function.

Several legislators have also asked for additional discrete ideas for things that will improve services. To that end, staff have identified three areas in which we believe the most improvement can be made through discrete investments. They are laid out below:

1. Flying Squad

Although MCILS has been able to staff all of the cases that have come before it, we continue to struggle to do so at times, and remain at risk of failing to do so if we unexpectedly lose members of our community. In addition, we have been invited by the Judiciary to consider whether there are ways we can contribute to reducing the backlog of cases, especially by promoting efficiency of attorney staffing and by avoiding the need for an excessive number of continuances.

To that end, staff believes that the most efficient solution to both problems lies in hiring a set of paid defenders to work as MCILS staff attorneys. These defenders would work from a central office – presumably attached to the MCILS office in Augusta – but would be able to travel to courts where services were needed. The ability to dispatch these defenders to those courts would allow us to insure against the risk that we lose the ability to staff cases as contractor participation declines.

We have begun a dialogue with the Judicial Branch around the idea that these staff attorneys could be block-scheduled in the courts they serve to promote efficiency in their work, travel, and accommodations.

We believe that the greatest efficiency in trialing a program built around this type of paid defender would be found with five attorneys. This would permit two teams of two to be in the field, with one in the office at any given time. The teams could vary from time to time. Fewer people would not make the most efficient use of the development time necessary to implement the program. More people could use the same development, but not necessary add immediate value to the system during the spin-up period.

We would recommend that at least one of these defenders be equivalent to an elected District Attorney, and that the other four would be equivalent to Assistant District Attorneys. Extensive detail about costs and caseloads is set out in the spreadsheet we are delivering with the Commission Packet this month.

The table set out below shows the proposed salaries for each position, together with the gross costs for benefits and ancillary costs:

	Salary	Gross Cost
District Defender	$ 103,919.00	$ 182,919.00
Assistant Public Defender I	$ 67,167.00	$ 137,183.00
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	Total Year One	$ 731,651.00
	Total Year Two	$ 743,547.00

These costs do not include the travel or lodging costs. Based on an expected in-the-field utilization rate of 50%, and state per diem caps on lodging we estimate an additional $100,000 for those expenses.

2. Training Budget

MCILS has hired its Training Director and Counsel, and they have begun developing and offering a renewed training curriculum. Parity with the prosecution requires that MCILS be able to provide training to its attorneys at no cost to those attorneys (though even then those attorneys will not be paid for the time spent training, while prosecutors are). MCILS requires the budget to conduct those trainings.

At this time, MCILS has approximately $16,000 in its non-lapsing "conference account." That money is earmarked for training costs but is not adequate to provide much training. Other recent private defense bar trainings incurred costs of approximately $25,000 to provide space and food for a two-day training. That cost does not include any payments to training faculty.

MCILS would like to evolve its training regime to include five two-day trainings yearly, as a first step. We would expect to have approximately twice the attendance as at the private training because the MCILS training would be free to participants and because we would draw from a larger bar. For that reason, we anticipate that we would need $250,000 to host those trainings.

In addition, we would require the ability to pay faculty, especially those coming from out of state. If we held the faculty cost to $10,000 per training, we would require an additional $50,000.

3. Contracts

Over the last six months, MCILS has explored options for providing appropriate support and education to attorneys in appellate matters and about diversion and mitigation. In addition, we have evaluated options for developing paths to entry for new counsel, and for ensuring that current counsel are properly supported in the field. Staff proposes to enter into contracts with MCILS eligible counsel to provide these services through a hybrid of direct billing on specific cases, and contract payments for unbillable services.

We propose to start with four contracts. One each specific to appellate work; diversion and mitigation; development of new counsel in child protective cases; and field supervision and support. Under each contract counsel would engage in some work that would be specific to an individual case. For that work, counsel would simply be assigned to the case on a limited basis and would bill through the MCILS case management system for those services. Each contractor would also spend a portion of time engaged in research, program development, and direct training of other lawyers. That time would be compensated at a contracted rate. Each contract would require all time that could properly be billed to a specific case to be so billed.

MCILS anticipates that the contracted work would be in line with the existing contract for our immigration specialist. That contract calls for an annual payment to that specialist of $60,000. Staff thus suggest an appropriation of $240,000 to support these contracts.