

94-649 MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Chapter 301: FEE SCHEDULE AND ADMINISTRATIVE PROCEDURES FOR PAYMENT OF COURT OR ~~COMMISSION-ASSIGNED~~COMMISSION-ASSIGNED COUNSEL

Summary: This Chapter establishes a fee schedule and administrative procedures for payment of private ~~Court-Assigned~~Court-Assigned -and/or ~~Commission-Assigned~~Commission-Assigned counsel. ~~The-This~~ Chapter sets a standard hourly rate and fee amounts that trigger presumptive review for specific case types. ~~The-This~~ Chapter also establishes rules for the payment of mileage and other expenses that are eligible for reimbursement by the Commission. Finally, this Chapter requires ~~Counsel~~ that all vouchers for attorney fees and reimbursable expenses must be submitted using the MCILS electronic case management system.

SECTION 1. DEFINITIONS

1. ~~Court-Assigned~~Court-Assigned Counsel. “~~Court-Assigned~~Court-Assigned Counsel” means private counsel licensed to practice law in Maine, designated eligible to receive an assignment to a particular case, and initially assigned by a Court to represent a particular client in a particular matter. For the purposes of this rule, “~~Court-Assigned~~Court-Assigned Counsel” does not include any employee of MCILS.
2. ~~Commission-Assigned~~ Counsel. “~~Commission-Assigned~~ Counsel” means private counsel licensed to practice in Maine, designated eligible to be assigned to provide a particular service or to represent a particular client in a particular matter, and assigned by MCILS to provide that service or represent a client. For the purposes of this rule, “~~Commission-Assigned~~Commission-Assigned Counsel” does not include any employee of MCILS.
- 2.3. Commission-Employed Counsel. “Commission-Employed Counsel” means counsel employed by the Commission to provide direct representation to indigent persons.
4. ~~Counsel~~. As used in this Chapter “Counsel” means a ~~Court-Assigned~~Court-Assigned Counsel or ~~Commission-Assigned~~Commission-Assigned Counsel, or both.

3. _____

- 4.5. MCILS or Commission. “MCILS” or “Commission” means the Commissioners of the Maine Commission on Indigent Legal Services.
6. Executive Director. “Executive Director” means the Executive Director of MCILS or the Executive Director’s decision-making designee.
7. Home Court. “Home Court” means the physical location of the court in closest proximity to Counsel’s office or reasonably accessible private meeting space as contemplated by 94-649 C.M.R. ch. 2 § 3.
8. MCILS Liaison. “MCILS Liaison” means the attorney ~~that~~who performs services for clients as part of the specialty court team but who ~~otherwise~~ has not otherwise been appointed to represent a specific client in a specific docket.
9. Interim Voucher. “Interim Voucher” means any voucher submitted in a case before counsel’s professional responsibility in a matter ends. ~~a terminal case event is docketed.~~
10. Particular Client Assignment. “Particular Client Assignment” means an assignment of Counsel to represent a particular client in a particular matter either by MCILS or the Court under Rule 44 of the Maine Rules of Unified Criminal Procedure or Rule 88 of the Maine Rules of Civil Procedure. For the purpose of this rule a “particular matter” is a matter described by a particular docket number in a Court.
11. Days. “Days” means calendar days.
~~Secretarial services mean staff support services other than paralegal services.~~
12. Paralegal. A “paralegal” is a person, qualified by education, training, or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency, or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible.
13. Paralegal services. “Paralegal services” constitute specifically delegated substantive legal work for which a lawyer is responsible.
14. Secretarial services. “Secretarial services” means ~~staff support services other than paralegal services.~~
15. Resource Counsel. Counsel designated eligible to serve as Resource Counsel pursuant to Chapter 3 of the Commission Rules.

SECTION 2. HOURLY RATE OF PAYMENT

Effective ~~July 1, 2021~~ March 1, 2023:

A rate of One Hundred Fifty Dollars (\$150) per hour is authorized for time spent by Counsel, and billed using the MCILS electronic case management system, on an assigned case on or after March 1, 2023. A rate of Eighty Dollars (\$80.00) per hour is remains authorized for time spent by Counsel, and billed using MCILS electronic case management system, on an assigned case on or after July 1, 2021. A rate of Sixty Dollars (\$60.00) per hour remains authorized for time spent by Counsel on an assigned case between July 1, 2015 and June 30, 2021. A rate of Fifty-five Dollars (\$55.00) per hour remains authorized for time spent by Counsel on an assigned case between July 1, 2014 and June 30, 2015. A rate of Fifty Dollars (\$50.00) per hour remains authorized for time spent by Counsel on an assigned case between the inception of the Commission and June 30, 2014.

SECTION 3. EXPENSES

1. **Routine Office Expenses.** Routine Office-office expenses will not be paid by MCILS. Routine office expenses include, but are not limited to,; postage other than overnight and express postage, ~~express postage~~, regular telephone, cell telephone, fax, office overhead, utilities, secretarial services, the first 100 pages of any one print or copy job, local phone calls, parking (except as stated below), and office supplies, ~~etc.~~ ~~Secretarial services mean staff support services other than paralegal services. A paralegal is a person, qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible. Paralegal services constitute specifically delegated substantive legal work for which a lawyer is responsible. Any and all requests for fees or reimbursement for Paralegal time paralegal services and secretarial services may be billed submitted to MCILS only through the non-counsel cost procedures.~~
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), overnight and express postage, collect phone calls, copy costs for print or copy jobs in excess of 100 pages, beginning with the 101st page, 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, may be paid by MCILS after review. Necessary parking fees associated with multi-day trials and hearings will be reimbursed. Parking tickets, fines, and/or fees for other violations will not be reimbursed.
3. **Travel Reimbursement.** Mileage reimbursement shall be made at the State rate applicable to confidential state employees on the date of the travel. Mileage reimbursement will be paid for travel to and from courts other than Counsel's home

~~district and superior~~ court. Mileage reimbursement will not be paid for travel to and from a Counsel's home ~~district and superior~~ courts. Tolls will be reimbursed; ~~except that tolls will not be reimbursed for travel to and from Counsel's home district and superior court.~~ All out-of-state travel or any overnight travel must be approved by MCILS in writing prior to incurring the expense. All out-of-state travel, overnight travel, and any other expense associated with such travel including but not limited to airfare, lodging, and food, must be approved by MCILS in writing prior to incurring the expense. Counsel Reimbursement will be subject limited subject to the State's per diem maximum rate policies with respect to the reimbursement of any 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 and include documentation. All expense documentation must be attached to the voucher used to seek reimbursement for the expense claimed. Claims for mileage shall be itemized and include the start and end points for the travel in question.
5. **Discovery Materials.** MCILS will reimburse only for one set of discovery materials per assignment. If counsel is permitted to withdraw, appropriate copies of discovery materials must be forwarded to new counsel within one week of notice of new counsel's assignment. Counsel may retain a copy of a file transferred to new counsel, or to a client. Counsel shall perform any scanning or make any copies necessary to retain a copy of the file at counsel's expense. The client owns the file. The original file shall be tendered to new counsel, or to the client, as directed.
6. **Expert and Investigator Expenses.** Other non-routine expenses for payment to third parties, (e.g., investigators, interpreters, medical and psychological experts, testing, depositions, etc.) shall be approved in advance by MCILS. Funds for third-party services will be provided by MCILS only upon written request and a sufficient demonstration of reasonableness, relevancy, and need in accordance with 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.** Witness, subpoena, and service fees will be reimbursed only pursuant to the Maine Rules of Court. ~~It is unnecessary for counsel to~~ Counsel should not advance these costs; ~~and t~~ these costs shall not be included as a voucher expense without prior consent from the Executive Director ~~or designee~~. 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. PRESUMPTIVE REVIEW

Vouchers submitted for amounts in excess of the applicable trigger for presumptive review will be considered for payment after review by the Executive Director ~~or designee~~. Vouchers submitted in excess of the trigger for presumptive review must be accompanied by an explanation of the time spent on the matter. The explanation shall be set forth in the notes section of a voucher or invoice.

1. Trial Court Criminal Fees

A. Triggers for presumptive review, excluding any itemized expenses, are set in accordance with this subsection. Counsel must provide MCILS with written justification for any voucher that exceeds the trigger limit.

- 1) **Murder.** All murder cases shall trigger presumptive review.
- 2) **Class A.** ~~\$5,000~~9,400
- 3) **Class B and C (against person).** ~~\$7,500~~4,000
- 4) **Class B and C (against property).** ~~\$4,700~~2,500
- 5) **Class D and E.** ~~\$4,700~~2,500
- 6) Repealed
- 7) **Post-Conviction Review.** ~~\$3,000~~5,600
- 8) **Probation Revocation.** ~~\$1,500~~2,800
- 9) **Miscellaneous (~~i.e.~~e.g., witness representation on 5th Amendment grounds, etc.)** ~~\$1,900~~1,000
- 10) **Juvenile.** ~~\$2,800~~1,500
- 11) **Bindover:** applicable criminal class trigger.

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

C. Criminal and juvenile cases will include all proceedings through a terminal case event as defined in Section 6, below. Any subsequent proceedings, such as probation revocations, will require new application and appointment.

- D. Repealed.
- E. Upon written request to MCILS, a second Counsel~~;~~ may be assigned in a murder ~~ease~~ or other complicated cases~~s~~, to provide for mentorship, or for other good cause at the discretion of the Executive Director:
 - 1) the duties of each Counsel must be clearly and specifically defined, and ~~counsel~~ Counsel must avoid unnecessary duplication of effort;
 - 2) each Counsel must submit a voucher to MCILS. Counsel should coordinate the submission of vouchers 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 Counsel.

2. District Court Child Protection

- A. Triggering fees, excluding any itemized expenses, for Commission-assigned counsel in child protective cases are ~~set in accordance with the following schedule:~~
 - 1) **Child protective cases** ~~(each stage)~~. \$1,500 10,200
 - 2) ~~Termination of Parental Rights stage (with a hearing)~~. \$ 2,500
- B. ~~Counsel must provide MCILS with written justification for any voucher that exceeds the triggering limit. Each child protective stage ends when a proceeding results in a Preliminary Protective Order, Judicial Review Order, Jeopardy Order, Order on Petition for Termination of Parental Rights, or entry of a Family Matter or other dispositional order. Each distinct stage in on-going child protective cases shall be considered a new appointment for purposes of the triggering fee for that case.~~

3. Other District Court Civil

- A. Triggering fees in District Court civil actions, excluding any itemized expenses, are set in accordance with this subsection. Counsel must provide MCILS with written justification for any voucher that exceeds the triggering fee.
 - 1) **Application for Involuntary Commitment.** \$1, 9000
 - 2) **Petition for Emancipation.** \$1,500 2,800
 - 3) **Petition for Modified Release Treatment.** \$1, 9000
 - 4) **Petition for Release or Discharge.** \$1, 9000

4. Law Court

- A. Repealed
- B. Repealed
- C. Appellate: \$~~3,7502,000~~

SECTION 55: MINIMUM FEES

Counsel may bill a minimum fee of 3 hours for appearances as Lawyer of the Day, or [MCILS Liaison](#) in specialty or diversionary courts or programs. A single minimum fee may be charged for each appearance at which the Counsel serves. If Counsel serves as Lawyer of the Day for a morning session that continues into the afternoon, that will be one appearance. If Counsel serves as Lawyer for the Day for a morning session and then a subsequent afternoon session with a second appearance time and list, that will be two appearances. Vouchers seeking the minimum fee must 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 per appearance regardless of the number of clients consulted at the request of the court.

SECTION 66: ADMINISTRATION

1. Timing

- A. Vouchers for payment of counsel fees and expenses associated with a particular client assignment shall be submitted within 90 (ninety) calendar days of a terminal case event. Lawyer of the Day ~~and~~, specialty courts, [Resource Counsel](#), and all other services rendered on behalf of the Commission and not associated with a particular client assignment shall be billed within 90 days of the service provided.
- B. The period for submitting a voucher established by subsection (1)(A) of this section shall run from the date that the terminal case event is docketed, or the date Counsel receives actual notice of the terminal case event, whichever is later. Services are rendered on Lawyer of the Day assignments on the date Counsel appears in court and ~~aetsserves~~ as Lawyer of the Day. Services in specialty courts as an MCILS liaison, [Resource Counsel](#), or as part of any other MCILS-sponsored program are rendered on the date the individual tasks were performed as indicated by the date associated with the time entry recorded to account for that time.

- C. ~~Vouchers not submitted within 90-days of a terminal case event or the timeframe otherwise established by subsection (1)(A) of this section cannot be paid~~ shall be reduced according to the schedule established by subsection (3)(C) of this section below, except on a showing by counsel that a voucher could not have been timely submitted for reasons outside the actual or constructive control of counsel.
- D. ~~Counsel are encouraged to~~ may submit interim vouchers not more often than once every ~~90 days~~ calendar month per case. ~~Counsel may request reconsideration of a voucher rejected between April 1, 2021 and the effective date of this rule if that voucher would be payable under this rule.~~
- E. Cases must be entered in the MCILS case management system within seven days upon receipt of the Notice of Appointment. If counsel has been informed that they have been assigned to a case but have not received the Notice of Appointment, counsel shall exercise due diligence in obtaining a copy of the Notice as soon as possible.

2. **Terminal Case Events**~~case events are:~~

A terminal case event is the event that signifies the final resolution of a matter from the perspective of assigned counsel such that substantive work before the court is no longer necessary. Terminal case events include:

- 1)A. The withdrawal of counsel;
- 2)B. The entry of dismissal of all charges or petitions;
- 3)C. Judgment in a case; or
- 4)D. Final resolution of post-judgment proceedings for which counsel is responsible.

~~The 90 day period for submitting a voucher shall run from the date that an Order, Judgment, or Dismissal is docketed.~~

3. **Penalty for Untimely Voucher Submission**

- A. The total penalty applied to vouchers submitted after the 90-day deadline outside the timeframe established by subsection (1)(A) of this section is calculated by multiplying the total voucher amount by the applicable percentage according to the schedule established by subsection (3)(C) of this section.
- B. The days elapsed since the relevant terminal case event are calculated in the same manner as in determining compliance with the 90-day deadline. subsection (1)(A) of this section. “Days” means calendar days.

C. Penalty Schedule:

<u>Days After Terminal Case Event</u>	<u>Penalty</u>
<u>91 – 104</u>	<u>10%</u>
<u>105 – 150</u>	<u>25%</u>
<u>151 – 180</u>	<u>50%</u>
<u>181 or more</u>	<u>75%</u>

D. Any penalty for the untimely submission of a voucher may only be applied after Counsel is provided with an opportunity to request an exception pursuant to subsection (1)(C) of this section.

4. Voucher Submission

- A. All vouchers must be submitted using MCILS electronic case management ~~program system~~ and comply with all instructions for use of the system.
- B. All time on vouchers shall be detailed and accounted for in .10 of an hour increments rounding up to the nearest .10 of an hour. The purpose for of each time entry must be self-evident or specifically stated by using the most relevant time entry category and providing a reasonably descriptive time entry comment/note for each time entry. Use of the comment section is recommended.
- B.C. Unless otherwise stated in this Chapter, Counsel may only record and seek payment for actual time spent working on Counsel's appointed or assigned cases using the MCILS electronic case management ~~program~~ system. Counsel may not record a minimum amount for any time entries notwithstanding any previous policy or practice of the Commission.
- D. All expenses claimed for reimbursement must be fully itemized on the voucher. Copies of receipts for payments to third parties shall be retained and appended to the voucher.

5. Payments & Reimbursement of Expenses for Attending Training

A. Payments to attend and reimbursement of expenses incurred incidental to attending trainings are governed by Chapter 301-A.

B. Vouchers submitted in accordance with Chapter 301-A shall be submitted within 90 calendar days of attending the training.

Notwithstanding any other provision of this Chapter or other Commission rules, untimely vouchers for payment or reimbursement of expenses governed by Chapter 301-A will not be paid.

SECTION 7. RESOURCE COUNSEL

1. Resource Counsel may bill pursuant to Section 6(4), above, for any billable tasks outlined in subsection 2 and subject to the limitations in subsection 3 of this section.
2. Billable Tasks:
 - a. Meeting with Court-Assigned, Commission-Assigned, and Commission-Employed counsel upon the request of the Executive Director.
 - b. Meetings and other communications with Court-Assigned, Commission-Assigned, and Commission-Employed counsel about the practice of law or ethical or legal issues related to assigned cases.
 - c. Assisting Court-Assigned, Commission-Assigned, and Commission-Employed counsel with drafting documents and with litigation preparation for assigned cases.
 - d. Meetings and other communications with members of the judiciary or prosecution about matters pertaining to indigent representation.
 - e. Preparing and presenting trainings at the request of the Executive Director or Training & Supervision staff.
 - f. In-court observation of Counsel if requested by the Executive Director or MCILS Training & Supervision staff.
 - g. Responding to calls, emails, and/or webform submissions from individuals who contact MCILS through the MCILS hotline and/or website. This includes:
 - i. Communication with the person who called;
 - ii. Communication with others to address the individual's matter; and
 - iii. Limited scope representation undertaken to resolve urgent issues for indigent persons concerning matters for which the person would be entitled to appointment of counsel.
 - h. Other tasks as deemed appropriate by the Executive Director and with prior written authorization of the Executive Director.
3. Limitations:
 - a. Any services rendered as Resource Counsel must be strictly limited to matters relating to assigned—not retained or pro bono—cases.
 - b. Resource Counsel may not bill for services rendered to an attorney who is not a Court-Assigned, Commission-Assigned, or Commission-Employed counsel.
 - c. If Resource Counsel serves as co-counsel on an assigned case, then Resource Counsel must enter the case in the Commission's electronic case management system and bill for it as a typical case, not as Resource Counsel.
 - d. Prior to preparing a training at the Commission's request, Resource Counsel must have prior written authorization from the Executive Director or MCILS Training & Supervision staff, which must include a cap on the maximum number of hours the Commission will pay Resource Counsel to prepare and present the training.
 - e. Resource Counsel must be licensed to practice law in Maine and eligible to accept MCILS case assignments at all times while performing Resource Counsel duties. Resource Counsel will not be paid for work done unless Resource Counsel is licensed to practice law in Maine and eligible to accept MCILS case assignments.

- f. As a condition of the opportunity to serve as Resource Counsel, Resource Counsel must maintain detailed records of the services they perform and provide copies of those records to MCILS upon request. At a minimum, those records must include:
 - i. The number of attorneys to whom Resource Counsel services are rendered; and
 - ii. A running log of the number of hours Resource Counsel spends on:
 - 1. Rendering general Resource Counsel services to attorneys;
 - 2. Rendering client-specific services; and
 - 3. Preparing and presenting trainings.
 - g. Resource Counsel will not be paid for billing more than 40 hours in one seven-day period.
 - h. Resource Counsel do not develop any property interest in the opportunity to serve in that role. There is no guarantee that MCILS will provide any number of hours to Resource Counsel.
 - i. Resource Counsel may not incur any expenses of any type on behalf of MCILS without prior written approval from the Executive Director.
- 4. Court-Assigned and Commission-Assigned Counsel may bill pursuant to Section 6(4), above, for time spent receiving the services of Resource Counsel.

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

EFFECTIVE DATE:

August 21, 2011 – filing 2011-283

AMENDED:

March 19, 2013 – filing 2013-062

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

October 5, 2013 – filing 2013-228

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

June 10, 2016 – filing 2016-092

July 21, 2021 – filing 2021-149 (EMERGENCY)

January 17, 2022 – filing 2022-007