

**94-649 MAINE COMMISSION ON INDIGENT LEGAL SERVICES****Chapter 301: FEE SCHEDULE AND ADMINISTRATIVE PROCEDURES FOR PAYMENT OF COURT OR COMMISSION ASSIGNED COUNSEL**

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**Summary:** This Chapter establishes a fee schedule and administrative procedures for payment of Court Assigned and Commission Assigned counsel. The Chapter sets a standard hourly rate and fee amounts that trigger presumptive review 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 Counsel that all vouchers must be submitted using the MCILS electronic case management system.

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**SECTION 1. DEFINITIONS**

1. Court Assigned Counsel. "Court Assigned Counsel" means 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.
2. Commission Assigned Counsel. "Commission Assigned Counsel" means 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.
3. Counsel. As used in this Chapter "Counsel" means a Court Assigned Counsel or Commission Assigned Counsel, or both.
4. MCILS or Commission. "MCILS" or "Commission" means the Commissioners of the Maine Commission on Indigent Legal Services.
5. 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 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 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 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 on an assigned case between the inception of the Commission and June 30, 2014.

**SECTION 3. EXPENSES**

1. **Routine Office Expenses.** Routine Office expenses will not be paid by MCILS. Routine office expenses include, but are not limited to, 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. Paralegal time may be billed 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), collect phone calls, copy costs for print or copy jobs in excess of 100 pages, beginning with the 101<sup>st</sup> 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.
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. 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. 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. 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

advance these costs, and they 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
- 3) **Class B and C (against person).** \$4,000
- 4) **Class B and C (against property).** \$2,500
- 5) **Class D and E.** \$2,500
- 6) Repealed
- 7) **Post-Conviction Review.** \$3,000
- 8) **Probation Revocation.** \$1,500
- 9) **Miscellaneous (i.e. witness representation on 5<sup>th</sup> Amendment grounds, etc.)** \$1,000
- 10) **Juvenile.** \$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. In cases where a defendant is charged with a number of 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 revocation, will require new application and appointment.
- D. Repealed.
- E. Upon written request to MCILS, a second Counsel, may be assigned in a murder case or other complicated cases, 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 must avoid unnecessary duplication of effort;
  - 2) each Counsel 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 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
  - 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.** \$1,000
  - 2) **Petition for Emancipation.** \$1,500
  - 3) **Petition for Modified Release Treatment.** \$1,000
  - 4) **Petition for Release or Discharge.** \$1,000

**4. Law Court**

- A. Repealed
- B. Repealed
- C. Appellate: \$2,000

**SECTION 5: MINIMUM FEES**

Counsel may bill a minimum fee of 3 hours for appearances as Lawyer of the Day, or 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 6: ADMINISTRATION**

Vouchers for payment of counsel fees and expenses shall be submitted within ninety days of a terminal case event. Lawyer of the Day and specialty courts shall be billed within 90 days of the service provided. Vouchers not submitted within 90-days of a terminal case event cannot be paid, 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. Counsel are encouraged to submit interim vouchers not more often than once every 90 days 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.

Terminal case events are:

- 1) The withdrawal of counsel
- 2) The entry of dismissal of all charges or petitions
- 3) Judgment in a case, or
- 4) 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.

1. All vouchers must be submitted using MCILS electronic case management program and comply with all instructions for use of the system.

2. 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.
3. 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.

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

EFFECTIVE DATE:

August 21, 2011 – filing 2011-283

AMENDED:

March 19, 2013 – filing 2013-062

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

October 5, 2013 – filing 2013-228

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

June 10, 2016 – filing 2016-092

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

January 17, 2022 – filing 2022-007