

**MCILS**

**December 18, 2023  
Commissioner's Meeting  
Packet**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**DECEMBER 18, 2023  
COMMISSION MEETING  
AGENDA**

- 1) Approval of the November 27, 2023 Commission Meeting Minutes
- 2) Executive session pursuant to 1 MRS § 405(6)(E) to discuss pending or contemplated litigation
- 3) Report of the Executive Director
  - a. Operations report
  - b. Case staffing status report
  - c. Hiring update
  - d. Extension of Justin Andrus contract
  - e. Annual Report / additional statutory changes
    - i. 4 MRS § 1806
    - ii. 15 MRS § 3306
- 4) Rulemaking discussion – Chapter 3
- 5) Commissioner Alexander Enduring Ethics Opinion #76 request
- 6) Set Date, Time and Location of Next Regular Meeting of the Commission
- 7) Public Comment

**Maine Commission on Indigent Legal Services – Commissioners Meeting  
November 27, 2023**

**Minutes**

**Commissioners Present:** Donald Alexander, Randall Bates, Meegan Burbank, Michael Carey, Roger Katz, David Soucy, Josh Tardy, and Kimberly Monaghan

**MCILS Staff Present:** Jim Billings and Ellie Maciag

<b>Agenda Item</b>	<b>Discussion/Outcome</b>
Approval of the September 11 (corrected) & October 11, 2023 Commission Meeting Minutes	Commissioner Alexander moved to approve the minutes and Commissioner Carey seconded.  All voted in favor. Approved.
Executive Session	Commissioner Carey moved to go into executive session pursuant 1 MRS § 405(6)(E); seconded by Commissioner Alexander. All voted in favor.  The Commission returned from executive session. Chair Tardy reported that they discussed settlement in the <i>Robbins</i> case. Commissioner Carey moved to authorize the Executive Director to move forward with the revised proposed settlement agreement; seconded by Commissioner Katz.  Chair Tardy said he will be voting in favor based upon the advice of counsel and Director Billings.  Commissioner Alexander voted in the negative. Commissioners Carey, Katz, Monaghan, Soucy, and Chair Tardy voted in the affirmative. Motion prevailed.
Report of the Executive Director	Director Billings provided the following report:  <u>Building Update:</u> In the process of hiring for the Capital Region Defender’s Office, it was discovered that at least one of the floors in the Merrill Building would not support the weight of a desk. There was a structural engineering report done in 2021, but MCILS did not receive a copy of it. In early November,

Agenda Item	Discussion/Outcome
	<p>MCILS was informed that at least half the offices cannot be used because the floors will not support the weight of a desk and a person. The whole second floor of the Merrill Building is unusable. Approximately half the offices in the Smith Building—which are already occupied—are not usable because they are not secure. The Department of Administrative and Financial Services (DAFS) and the Bureau of General Services (BGS) have no plans to fix the buildings. The soonest this could be in the construction and budget plan would be two years. Deputy Director Maciag and District Defender Tarpinian have begun looking for a new space for the Capital Region Public Defender’s Office (CRPDO). The only available state-owned space in Augusta would be in the old AMHI building, sharing space with other state agencies. There may be space available at 77 Sewall Street in Augusta. Director Billings had to send a letter of intent by last Wednesday to secure the space, so he did so subject to Commission authorization. The lease would be for a 7-year term. MCILS could leave the building after 7 years with no problem, but to leave before the end of the term, MCILS would need to find another State agency to assume the lease. The cost is \$23 per square foot with utilities and janitorial services included. BGS and MCILS staff support this. Moving the CRPDO to that address would allow MCILS staff to spread out at the Smith/Merrill Building.</p> <p>Chair Tardy asked whether there is money budgeted for this. Director Billings stated that he thinks there is money in the revenue account. Chair Tardy asked whether the rental rate and terms are consistent with market rates and terms; Director Billings confirmed that they are. Commissioner Burbank asked whether there is information about the structural integrity of the building. Chair Tardy said it is a fairly modern building. Director Billings said he is relying on BGS and has not asked for an engineering report. Commissioner Alexander asked if it was an accessible building. Deputy Director Maciag confirmed that the building is fully accessible. Commissioner Katz asked whether this is an opportunity to ask for a reduction in what is coming out of our budget and going to the State to pay for the current Smith/Merrill space; Director Billings said yes.</p> <p>Commissioner Alexander moved to authorize Director Billings to proceed with the lease negotiations and execute any necessary documents subject to Counsel’s review and approval. Commissioner Carey seconded. All voted in favor. Approved.</p> <p><u>Vouchers:</u> Vouchers continue to be on the rise, both due to the hourly rate increase to \$150 and because the average amount of hours spent on each case have increased. Staff expects that voucher amounts will</p>

Agenda Item	Discussion/Outcome
	<p>continue to increase. MCILS is spending approximately \$3 million per month on outside counsel fees. Commissioner Burbank commented that counsel fees are the best use of MCILS' budget.</p> <p><u>RFP</u>: The intent to award letters were sent out in November. DAFS has a 30-day appeal period. Justice Works received the intent to award letter.</p> <p><u>Standby Counsel Memo</u>: The issue of standby counsel arose because someone asked for second standby counsel. Staff decided to evaluate this to see whether MCILS should be providing standby counsel at all. Director Billings recommended sending the memo, but with the dates amended to December 31, 2023. Director Billings does not think MCILS should be providing counsel to someone who has waived their right to counsel, especially when there are not enough lawyers. Chair Tardy added that there is an argument that MCILS is not authorized to pay for standby counsel.</p> <p>Commissioner Alexander said we should get input from the Judicial Branch before sending the memo. There are any reasons a court may order standby counsel, not just to avoid having to deal with post-conviction reviews. Sometimes standby counsel is appointed after a person has had several lawyers or may have competency issues.</p> <p>Commissioner Soucy agreed with Commissioner Alexander that we should first check with the Judicial Branch. Commissioner Soucy also said that he wants to know how much of our budget is spent on standby counsel.</p> <p>Commissioner Carey said that as long as we are comfortable with the ethical issues, MCILS should continue paying for standby counsel.</p> <p>Chair Tardy said that the Commission will revisit this issue when more information is available.</p> <p><u>Civil Rights Report</u>: Director Billings has been asked to attend a meeting on December 14, 2023 to respond to the report. Director Billings invited commissioners to contact him with information they would like passed along.</p>

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	<p>Commissioner Alexander said this is another hostile thing meant to demean the good work attorneys do. The report starts with a false statement about Maine being the only state that relies on contract counsel. Massachusetts and Oregon rely heavily on contract counsel. The report makes a lot of statements about MCILS being poorly financed and attorneys doing a bad job; that is wrong. Most of our attorneys do a pretty good job. This report is based on a three-day hearing. The report has no recognition of the work the legislature, Executive, and MCILS have done to make improvements. The report does not recognize that the hourly rate was increased to \$150, even though the report is dated in September. The report makes no recognition of the fact that we have gotten authorization for eight new public defenders. The report references a person who is from Maine and would come back to Maine, but there is no student loan forgiveness. Back in August there were changes that allowed contract attorneys providing indigent legal services at least thirty hours per week to get student loan forgiveness. The report ignores that and continues the rhetoric from the Sixth Amendment Center report. Commissioner Alexander said that he found this report offensive because it disregarded current facts. He added that he has communicated that view to the Executive already.</p> <p>Chair Tardy said that there are parts of the report he has substantial disagreements with, but he takes it for what it's worth; it is an editorial on comments received and implores the decision-makers to continue to invest in MCILS and its mission.</p> <p><u>Case Staffing:</u> Director Billings reported that there are 50-60 attorneys accepting trial-level criminal cases and 50-60 accepting child protective cases.</p> <p><u>Hiring Update:</u> Hired two ADIs—Andrew Dawson is one of them. The other ADI is a transfer from the RDU, Hillary Knight. Director Billings will be advertising for the RDU position soon. Director Billings is waiting to hear from HR on the ADII salaries. Director Billings reported that MCILS has lost one candidate already because he had another offer and could not wait the several weeks it takes to hear back from HR on a salary proposal. Director Billings received FJAs back for the support staff positions for the CRPDO and will get back to HR so those positions can get approved and posted.</p> <p>Commissioner Soucy said northern Maine will miss Defender Knight because she did great work under challenging circumstances.</p>

Agenda Item	Discussion/Outcome
	<p><u>Budget:</u> Director Billings reported that the budget categories and been submitted and that he was waiting to hear from DAFS about whether there will be further discussions.</p> <p><u>Social Worker RFP:</u> This RFP is similar to the child protective social worker RFP but is to obtain social worker services for juveniles and defendants in adult criminal cases. These social workers will help with mitigation and obtaining services. The availability of social workers also helps reduce client complaints that they have not heard from their lawyers. Social workers can help communicate with clients and maintain regular contact with them. There is disagreement from some attorneys at the OAG about some of our proposed statutory changes regarding social workers being mandated reporters.</p>
Rulemaking Discussion	<p>Chair Tardy opened a discussion about Commissioner Alexander's memos.</p> <p>Director Billings disagreed with most of the Commissioner Alexander's memos. The one part that is germane to rulemaking is about the requirement of criminal law versus criminal defense experience. Director Billings is not sure how we would address the rest of the suggestions in the memos in rulemaking. Judges appointing attorneys would take us backward and not forward.</p> <p>Commissioner Alexander said that he wanted other Commissioners' opinions on his memos. He thinks judges should be able to deem an attorney competent to handle cases.</p> <p>Discussion ensued about the difference between attorneys who have been deemed eligible versus attorneys who are actively on the roster and accepting cases.</p> <p>Commissioner Alexander's position is that judges should be able to appoint attorneys who have not been deemed eligible for cases. Some attorneys are qualified but do not want to bother applying for eligibility because of the requirements.</p> <p>Commissioner Carey asked for clarification about whether MCILS is paying attorneys who are appointed but are not eligible. Director Billings replied that if the attorney is eligible but not rostered, MCILS pays them. If they are not eligible because they are not in the program at all or are not eligible for that case type, staff try to help them get eligible co-counsel. If the attorney is not in the program at all and have not filed a W9, that is problematic; they would need to get in the system.</p>

Agenda Item	Discussion/Outcome
	<p data-bbox="520 235 1667 267">Discussion ensued about judges appointing attorneys who are not eligible and/or rostered.</p> <p data-bbox="520 310 1837 488">Commissioner Alexander: Caseload standards are too high. Caseload standards represent only one-third to one-half the work our attorneys can do, according to our own data. The Rand study is just a figment of a bunch of lawyers sitting in a room deciding what should happen. The people who did the Rand study think all the work should be done on every case. There are a lot of cases in which there is really no dispute.</p> <p data-bbox="520 531 1837 670">Chair Tardy: It is not fair to say that there is no relationship between what has taken place on the ground and what our limits are; staff and the subcommittee looked at that. The caseload standard for appellate cases was based, in part, on data. Chair Tardy does not think the Commission should throw out all caseload standards because there is a disagreement about a standard for a particular type.</p> <p data-bbox="520 712 1837 1037">Commissioner Katz: The big issue is how many attorneys in the state are willing to take on new cases. The last number Commissioner Katz saw was 58; that is a huge problem. Commissioner Katz said he thought that problem would largely dissipate with the hourly rate increase. He thinks the reason it has not dissipated is that people feel that they do not have any control over their lives. They do not want to be swamped, so they are choosing not to be on the roster. One way to fix it is to push back on the court appointments when judges have appointed attorneys to cases they do not want to accept. Commissioner Katz thinks that has led to attorneys coming off the rosters. We do not want to send a message to the courts that it is okay because it is not. Commissioner Katz thinks that with caseload standards, attorneys will realize they won't get swamped if they go on the roster.</p> <p data-bbox="520 1079 1837 1291">Commissioner Carey: Agreed with Commissioner Katz. We are halfway there to passing the rules we need to meet our statutory charge. Commissioner Carey said that the Commission may need to revisit caseload standards at some point, but he is not convinced that looking at actual hours in the past is the basis upon which we set standards for the future. That takes quality representation out of the analysis. We should let caseload standards run for a while, particularly after the rostering rules are put into effect, and then revisit the caseload standards if needed.</p> <p data-bbox="520 1333 1837 1399">Commissioner Bates: Commissioner Bates has no doubt that the caseload standards will need to be changed, but they have never been implemented. We need to let it run its course. Commissioner Bates</p>



Agenda Item	Discussion/Outcome
	<p>agrees that attorneys are swamped and would like to see the Commission start with this long-term solution we are proposing. Commissioner Bates agreed that the Commission should not sanction rogue appointments but acknowledged that the Commission also does not have an answer.</p> <p>Chapter 3: Chair Tardy stated that the Commission will address this in the December meeting.</p> <p>Chapter 301: Commissioner Alexander moved to adopt Chapter 3 and approve the detailed basis statement and response to public comment. Commissioner Soucy seconded. All voted in favor.</p>
Thank You to Commissioner Cantera	<p>On behalf of MCILS and the entire legal community, Chair Tardy thanked Commissioner Michael Cantera for his service.</p>
Public Comment	<p><u>Rob Ruffner, Esq.:</u> It needs to be statute or rule that the District Defender has the authority to reject cases. Attorney Ruffner is curious about the percentage of rogue appointments. He has heard of attorneys being assigned off-roster without their consent and then the court is reluctant to let the attorney out of the case, even when the motion to withdraw is granted. Attorney Ruffner has seven attorneys in his office who are not on the active rosters because they are at capacity. One of those attorneys, Rob LeBrasseur is able to maintain a full caseload without going on the roster because he notifies the clerks when he is able to take more cases and the court assigns him cases. It would be irresponsible for Attorney LeBrasseur to go on the roster knowing he would receive more cases than he could handle. The rate increase has made it possible to have so many attorneys at his office. His firm has tripled in size, which was only possible due to the rate increase.</p> <p><u>Jeffrey Davidson, Esq.:</u> Attorney Davidsons stated that shadow rosters were created because there was a dispute about who would control how cases were handled. Attorney Davidson asserted that no state employee will ever control his practice. The number of attorneys taking cases is fictitious. There are a number of attorneys on the shadow rosters, and they are not getting 50 cases per month. The Commission should add attorneys on shadow rosters to the counts so there is reality to the numbers. There needs to be a way to control how many cases attorneys receive on the roster. Judges take advantage of attorneys on the roster. Attorney Davidson said that no judge will ever assign rogue appointments to him because he won't show up to court on those dates. Attorney Davidson said that we got rid of slavery and indentured servitude a long time ago.</p>

Agenda Item	Discussion/Outcome
Adjournment	Chair Tardy declared the meeting adjourned. The next meeting will be held on December 18, 2023 at 1:00PM.

## MAINE COMMISSION ON INDIGENT LEGAL SERVICES

**TO:** MCILS COMMISSIONERS

**FROM:** JIM BILLINGS, EXECUTIVE DIRECTOR

**SUBJECT:** OPERATIONS REPORTS

**DATE:** December 14, 2023

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Attached you will find the November 2023, Operations Reports for your review and our discussion at the Commission meeting on December 18, 2023. A summary of the operations reports follows:

- 2,308 new cases were opened in the DefenderData system in November. This was a 602 case decrease from October. Year to date, new cases are up 13% from last year from 12,479 at this time last year to 14,107 this year.
- The number of vouchers submitted electronically in November was 3,024, an increase of 64 vouchers from October, totaling \$3,225,767, an increase of \$158,706 from October. Year to date, the number of submitted vouchers is up by approximately 11%, from 14,113 at this time last year to 15,687 this year, with the total amount for submitted vouchers up approximately 84%, from \$8,345,318 at this time last year to \$15,402,379, this year.
- In November, we paid 2,683 electronic vouchers totaling \$2,818,099 representing a decrease of 829 vouchers and a decrease of \$733,488 compared to October. Year to date, the number of paid vouchers is up approximately 12%, from 14,086 at this time last year to 15,881 this year, and the total amount paid is up approximately 84%, from \$8,356,470 this time last year to \$15,370,198 this year.
- The average price per voucher in November was \$1,050.35 up \$39.35 per voucher from October. Year to date, the average price per voucher is up approximately 63%, from \$593.25 at this time last year to \$967.84 this year.
- Post-Conviction Review and Petition, Release or Discharge had the highest average voucher in November. There were 19 vouchers exceeding \$7,500 paid in November. See attached addendum for details.
- In November, we issued 118 authorizations to expend funds: 62 for private investigators, 41 for experts, and 15 for miscellaneous services such as interpreters and transcriptionists. In November, we paid \$116,326 for experts and investigators, etc.
- There was 1 attorney suspension in November.

- In our All Other Account, the total expenses for the month of November were \$1,504,762. During November, approximately \$36,079 was devoted to the Commission's operating expenses.
- In the Personal Services Accounts, we had \$180,836.07 in expenses for the month of November.
- In the Revenue Account, we received no transfer of collected counsel fees from the Judicial Branch. We paid \$1,465,742 in counsel payments for the month of November.
- Exceptional results – see attached addendum.
- As of December 13, 2023, there are 179 rostered attorneys of which 129 are available for trial court level work.
- Below is a table of submitted hours since FY21. For the first 5 months of this fiscal year, submitted hours are up approximately 10% over the same 5-month period last year.

<b>Submitted Hours</b>													
	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	Yearly Total
FY21	13,652	15,225	17,333	20,420	17,399	17,244	19,813	17,753	31,671	17,869	19,037	19,270	<b>226,687</b>
FY22	19,764	21,749	19,882	22,228	17,828	17,286	22,006	21,357	24,885	19,723	19,551	21,195	<b>247,454</b>
FY23	19,890	22,083	20,470	20,125	20,820	21,997	21,823	20,666	23,273	19,878	25,420	25,109	<b>261,556</b>
FY24	22,635	24,596	22,244	21,813	22,643								<b>113,931</b>

## Good Outcomes

Review Date	Attorney	Charge(s)	Disposition
11/22/2023	Brown, Maya	Child Protection Petition	Dismissal
11/22/2023	Slaton, Ashley	1 ct. Theft by Unauthorized Taking, 1 ct. Theft by Receiving Stolen Property	Dismissal after Successful Deferred Disposition
11/22/2023	Martin, Mikayla	1 ct. Domestic Violence Assault, 1 ct. Refusing to Submit to Arrest or Detention, Physical Force	Dismissal
11/22/2023	Macdonald, Bradford	Child Protection Petition	Dismissal

## Vouchers over \$7,500

Comment	Voucher Total	Case Total
Homicide	\$28,659.64	\$28,659.64
Gross Sexual Assault	\$24,727.78	\$52,271.78
Unlawful Sexual Contact	\$17,816.00	\$20,730.00
Aggravated Trafficking	\$17,602.83	\$26,521.90
OUI	\$14,079.10	\$14,079.10
Gross Sexual Assault	\$12,540.00	\$12,540.00
Child Protection Petition	\$12,120.00	\$12,120.00
Gross Sexual Assault	\$11,472.00	\$11,472.00
Unlawful Sexual Contact	\$11,432.72	\$22,275.31
Elevated Aggravated Assault	\$11,095.08	\$11,095.08
Manslaughter	\$10,725.00	\$10,725.00
PCR-Homicide	\$10,711.44	\$33,590.13
Gross Sexual Assault	\$9,489.74	\$21,803.38
Driving to Endanger	\$8,924.00	\$8,924.00
Homicide	\$8,730.00	\$14,694.00
Child Protection Petition	\$8,443.88	\$11,414.12
Arson	\$7,845.00	\$12,900.00
Gross Sexual Assault	\$7,665.00	\$7,665.00
Burglary	\$7,602.84	\$7,602.84

**Statement of Revenue and Expenses for Maine Commission of Indigent Legal Services**

**As of December 8, 2023**

<b><u>General Funds - 010-Z11201</u></b>	<b><u>QTR1</u></b>	<b><u>QTR2</u></b>	<b><u>QTR3</u></b>	<b><u>QTR4</u></b>	<b><u>TOTAL</u></b>
Personal Services Allotment	\$ 513,974	\$ 794,706	\$ 1,213,498	\$ 638,747	\$ 3,160,925
Payroll to date	(421,815)	(316,875)	-	-	(738,691)
Estimated payroll remaining	-	(72,653)	(499,665)	(434,997)	(1,007,315)
<b>Total Personal Services available</b>	<b>\$ 92,159</b>	<b>\$ 405,178</b>	<b>\$ 713,833</b>	<b>\$ 203,750</b>	<b>\$ 1,414,920</b>
All Other Allotment	\$ 6,334,259	\$ 7,766,921	\$ 4,218,630	\$ 849,379	\$ 19,169,189
Expenditures to date	(5,987,148)	(5,899,816)	-	-	(11,886,964)
Encumbrances	(347,109)	(21,014)	-	-	(368,124)
<b>Total All Other Available</b>	<b>\$ 1</b>	<b>\$ 1,846,091</b>	<b>\$ 4,218,630</b>	<b>\$ 849,379</b>	<b>\$ 6,914,101</b>

**Unencumbered balance forward 0.00**

<b><u>Other Special Revenue Funds - 014-Z11201</u></b>	<b><u>QTR1</u></b>	<b><u>QTR2</u></b>	<b><u>QTR3</u></b>	<b><u>QTR4</u></b>	<b><u>TOTAL</u></b>
Personal Services Allotment	\$ 199,948	\$ 183,210	\$ 199,948	\$ 98,063	\$ 681,169
Payroll to date	(177,188)	(129,534)	-	-	(306,722)
Estimated payroll remaining	-	(25,842)	(180,896)	(155,054)	(361,793)
<b>Total Personal Services available</b>	<b>\$ 22,760</b>	<b>\$ 27,834</b>	<b>\$ 19,052</b>	<b>\$ (56,991)</b>	<b>\$ 12,654</b>
All Other Allotment	\$ 3,050,247	\$ 9,138,920	\$ 4,991,638	\$ 4,991,638	\$ 22,172,443
Expenditures to date	(3,050,246)	(1,486,238)	-	-	(4,536,484)
Encumbrances	-	-	-	-	-
<b>Total All Other Available</b>	<b>\$ 1</b>	<b>\$ 7,652,682</b>	<b>\$ 4,991,638</b>	<b>\$ 4,991,638</b>	<b>\$ 17,635,959</b>

**CASH ON HAND 12/8/2023 \$ 7,755,227.80**

<b><u>Other Special Revenue Funds - 014-Z11202</u></b>	<b><u>QTR1</u></b>	<b><u>QTR2</u></b>	<b><u>QTR3</u></b>	<b><u>QTR4</u></b>	<b><u>TOTAL</u></b>
All Other Allotment	\$ -	\$ 30,333	\$ 13,333	\$ 13,334	\$ 57,000
Expenditures to date	-	(16,565)	-	-	(16,565)
Encumbrances	-	-	-	-	-
<b>Total All Other Available</b>	<b>\$ -</b>	<b>\$ 13,768</b>	<b>\$ 13,333</b>	<b>\$ 13,334</b>	<b>\$ 40,435</b>

**CASH ON HAND 12/8/2023 \$ 4,667.89**

<b><u>Other Special Revenue Funds - 014-Z25801</u></b>	<b><u>QTR1</u></b>	<b><u>QTR2</u></b>	<b><u>QTR3</u></b>	<b><u>QTR4</u></b>	<b><u>TOTAL</u></b>
All Other Allotment	\$ 3,250,195	\$ 9,352,463	\$ 5,204,919	\$ 5,103,035	\$ 22,910,612
Expenditures to date	-	-	-	-	-
Encumbrances	-	-	-	-	-
<b>Total All Other Available</b>	<b>\$ 3,250,195</b>	<b>\$ 9,352,463</b>	<b>\$ 5,204,919</b>	<b>\$ 5,103,035</b>	<b>\$ 22,910,612</b>

**CASH ON HAND 12/8/2023 \$ -**

<b><u>ARPA Funds - 023-Z11201</u></b>	<b><u>QTR1</u></b>	<b><u>QTR2</u></b>	<b><u>QTR3</u></b>	<b><u>QTR4</u></b>	<b><u>TOTAL</u></b>
All Other Allotment	\$ -	\$ 1,500,000	\$ -	\$ -	\$ 1,500,000
Expenditures to date	-	-	-	-	-
Encumbrances	-	-	-	-	-
<b>Total All Other Available</b>	<b>\$ -</b>	<b>\$ 1,500,000</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 1,500,000</b>

**CASH ON HAND 12/8/2023 \$ -**

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

**Activity Report by Case Type**

11/30/2023

	Nov-23						Fiscal Year 2024			
DefenderData Case Type	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
Appeal	18	18	\$87,365.25	21	\$ 63,973.03	\$3,046.33	87	82	\$ 232,195.57	\$2,831.65
Central Office Resource Counsel	0	3	\$3,557.00	2	\$ 855.00	\$427.50	5	20	\$ 28,653.00	\$1,432.65
Child Protection Petition	155	288	\$378,467.48	238	\$ 280,401.18	\$1,178.16	855	1,665	\$ 1,960,556.18	\$1,177.51
Drug Court	3	18	\$38,310.44	13	\$ 25,723.32	\$1,978.72	23	76	\$ 167,768.60	\$2,207.48
Emancipation	5	9	\$7,905.00	7	\$ 5,445.00	\$777.86	39	28	\$ 22,219.24	\$793.54
Felony	573	694	\$999,354.46	627	\$ 884,264.98	\$1,410.31	3,477	3,702	\$ 5,069,741.32	\$1,369.46
Involuntary Civil Commitment	140	72	\$40,647.58	82	\$ 46,849.82	\$571.34	525	456	\$ 265,453.03	\$582.13
Juvenile	83	86	\$100,045.56	73	\$ 99,691.93	\$1,365.64	487	378	\$ 427,190.54	\$1,130.13
Lawyer of the Day - Custody	237	234	\$151,095.50	215	\$ 147,248.86	\$684.88	1,285	1,266	\$ 840,960.92	\$664.27
Lawyer of the Day - Juvenile	17	15	\$9,453.96	12	\$ 6,866.68	\$572.22	96	95	\$ 55,925.71	\$588.69
Lawyer of the Day - Walk-in	143	136	\$90,686.08	109	\$ 72,040.69	\$660.92	726	744	\$ 499,298.77	\$671.10
MCILS Provided Training	29	60	\$159,175.58	43	\$ 115,191.64	\$2,678.88	386	354	\$ 202,795.56	\$572.87
Misdemeanor	746	1,028	\$721,580.63	925	\$ 681,395.91	\$736.64	5,095	5,233	\$ 3,478,602.96	\$664.74
Petition, Modified Release Treatment	0	4	\$3,154.64	1	\$ 649.30	\$649.30	3	15	\$ 14,355.83	\$957.06
Petition, Release or Discharge	0	3	\$9,147.35	1	\$ 7,060.00	\$7,060.00	2	4	\$ 18,046.85	\$4,511.71
Petition, Termination of Parental Rights	17	50	\$80,714.12	47	\$ 74,938.66	\$1,594.44	96	294	\$ 499,510.08	\$1,699.01
Post Conviction Review	3	8	\$31,213.21	10	\$ 43,657.16	\$4,365.72	30	46	\$ 150,971.41	\$3,281.99
Probate	4	6	\$10,606.67	5	\$ 5,627.00	\$1,125.40	10	23	\$ 37,026.05	\$1,609.83
Probation Violation	105	130	\$107,220.48	110	\$ 97,688.55	\$888.08	667	679	\$ 579,732.62	\$853.80
Represent Witness on 5th Amendment	1	0		0			13	3	\$ 2,748.50	\$916.17
Resource Counsel Criminal	1	4	\$3,270.00	3	\$ 780.00	\$260.00	4	17	\$ 5,550.00	\$326.47
Resource Counsel Juvenile	0	2	\$1,365.00	2	\$ 1,365.00	\$682.50	1	5	\$ 1,890.00	\$378.00
Resource Counsel Mental Health	0	0		1	\$ 105.00	\$105.00	1	1	\$ 105.00	\$105.00
Resource Counsel NCR	0	0		0			0	0		
Resource Counsel Protective Custody	0	3	\$3,045.00	3	\$ 5,310.00	\$1,770.00	2	14	\$ 22,624.50	\$1,616.04
Review of Child Protection Order	28	153	\$188,386.15	133	\$ 150,970.38	\$ 1,135.12	183	678	\$ 784,851.40	\$ 1,157.60
Revocation of Administrative Release	0	0		0			9	3	\$ 1,425.00	\$475.00
DefenderData Sub-Total	2,308	3,024	\$3,225,767.14	2,683	\$2,818,099.09	\$1,050.35	14,107	15,881	\$15,370,198.64	\$967.84
<b>TOTAL</b>	<b>2,308</b>	<b>3,024</b>	<b>\$3,225,767.14</b>	<b>2,683</b>	<b>\$2,818,099.09</b>	<b>\$ 1,050.35</b>	<b>14,107</b>	<b>15,881</b>	<b>\$ 15,370,198.64</b>	<b>\$ 967.84</b>



**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

**Activity Report by Court**

11/30/2023

	Nov-23						Fiscal Year 2024			
Court	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
ALFSC	0	0		0			4	7	\$ 6,216.90	\$888.13
AUBSC	1	3	\$1,366.00	2	\$ 690.00	\$345.00	2	8	\$ 7,204.00	\$900.50
AUGDC	51	69	\$95,494.32	41	\$ 58,216.92	\$1,419.92	251	311	\$ 362,030.09	\$1,164.08
AUGSC	0	7	\$12,301.99	2	\$ 7,709.30	\$3,854.65	7	19	\$ 36,497.88	\$1,920.94
BANDC	48	77	\$60,505.20	69	\$ 50,985.20	\$738.92	272	447	\$ 377,640.80	\$844.83
BANSC	0	0		1	\$ 974.50	\$974.50	0	4	\$ 2,966.16	\$741.54
BATSC	0	1	\$555.00	1	\$ 555.00	\$555.00	1	1	\$ 555.00	\$555.00
BELDC	10	11	\$20,792.29	10	\$ 16,239.68	\$1,623.97	62	93	\$ 110,370.57	\$1,186.78
BELSC	2	0		0			4	0		
BIDDC	45	47	\$62,168.76	38	\$ 31,943.00	\$840.61	232	234	\$ 245,945.59	\$1,051.05
BRIDC	8	11	\$9,819.63	7	\$ 5,248.90	\$749.84	45	38	\$ 41,388.49	\$1,089.17
CALDC	14	3	\$2,625.00	5	\$ 3,855.00	\$771.00	30	32	\$ 32,560.54	\$1,017.52
CARDC	6	7	\$5,130.00	8	\$ 5,385.00	\$673.13	28	73	\$ 75,741.88	\$1,037.56
CARSC	0	0		0			5	1	\$ 2,970.00	\$2,970.00
DOVDC	4	7	\$9,107.12	7	\$ 8,597.12	\$1,228.16	24	57	\$ 53,611.00	\$940.54
DOVSC	1	0		0			2	0		
ELLDC	10	17	\$24,761.82	20	\$ 24,821.82	\$1,241.09	53	148	\$ 179,784.96	\$1,214.76
ELLSC	0	0		0			0	0		
FARDC	13	13	\$13,404.50	12	\$ 10,938.25	\$911.52	90	89	\$ 92,280.03	\$1,036.85
FARSC	2	1	\$ 450.00	1	\$ 450.00	\$ 450.00	2	2	\$ 2,055.00	\$1,027.50
FORDC	3	6	\$13,757.28	13	\$ 14,063.88	\$1,081.84	40	57	\$ 76,001.26	\$1,333.36
HOUDC	9	15	\$22,697.69	11	\$ 15,707.69	\$1,427.97	56	87	\$ 107,748.77	\$1,238.49
HOUSC	0	1	\$ 2,863.00	1	\$ 2,863.00	\$ 2,863.00	0	1	\$ 2,863.00	\$2,863.00
LEWDC	63	67	\$95,785.55	69	\$ 90,912.42	\$1,317.57	295	410	\$ 459,487.37	\$1,120.70
LINDC	7	7	\$6,284.00	7	\$ 6,675.28	\$953.61	24	42	\$ 44,721.63	\$1,064.80
MACDC	1	4	\$2,964.10	7	\$ 6,567.30	\$938.19	24	30	\$ 34,853.61	\$1,161.79
MACSC	0	0		0			0	0		
MADDC	0	0		0			3	0		
MILDC	0	2	\$2,220.00	0			3	5	\$ 2,754.00	\$550.80
NEWDC	8	19	\$15,281.56	17	\$ 15,543.20	\$914.31	35	95	\$ 84,502.26	\$889.50
PORDC	70	66	\$75,861.25	79	\$ 87,812.26	\$1,111.55	333	441	\$ 518,083.53	\$1,174.79
PORSC	1	0		0			6	11	\$ 10,043.00	\$913.00
PREDC	8	21	\$35,270.80	10	\$ 14,266.96	\$1,426.70	47	80	\$ 121,351.53	\$1,516.89
ROCD	8	14	\$11,884.12	11	\$ 14,999.12	\$1,363.56	72	88	\$ 97,734.92	\$1,110.62
ROCSC	0	0		0			2	2	\$ 840.00	\$420.00
RUMDC	15	29	\$34,276.50	17	\$ 22,242.50	\$1,308.38	49	85	\$ 119,103.32	\$1,401.22
SKODC	32	83	\$87,656.10	74	\$ 79,854.88	\$1,079.12	135	299	\$ 327,004.01	\$1,093.66
SKOSC	0	0		0			1	2	\$ 4,826.04	\$2,413.02
SOUDC	11	22	\$24,259.52	14	\$ 17,121.00	\$1,222.93	50	71	\$ 137,678.73	\$1,939.14
SOUSC	1	0		0			3	0		
SPRDC	9	30	\$34,166.35	28	\$ 27,113.68	\$968.35	49	137	\$ 150,933.15	\$1,101.70
Law Ct	18	14	\$64,112.75	17	\$ 54,328.03	\$3,195.77	67	58	\$ 176,690.41	\$3,046.39
Training	29	66	\$166,415.08	49	\$ 120,966.64	\$2,468.71	386	379	\$ 243,578.06	\$642.69
YORCD	201	344	\$328,759.57	376	\$ 335,900.90	\$893.35	1,692	1,868	\$ 1,781,277.05	\$953.57
AROCD	131	192	\$211,010.19	138	\$ 161,657.53	\$1,171.43	948	925	\$ 998,323.79	\$1,079.27
ANDCD	211	212	\$180,371.52	209	\$ 187,201.96	\$895.70	960	1,177	\$ 1,050,314.01	\$892.37
KENCD	177	252	\$205,753.44	206	\$ 181,222.78	\$879.72	1,235	1,292	\$ 966,739.65	\$748.25
PENCD	220	208	\$215,205.68	191	\$ 207,145.83	\$1,084.53	1,455	1,362	\$ 1,204,931.37	\$884.68
SAGCD	30	43	\$39,228.31	42	\$ 42,651.26	\$1,015.51	224	240	\$ 212,072.50	\$883.64
WALCD	48	44	\$63,367.68	40	\$ 56,993.82	\$1,424.85	339	266	\$ 249,989.87	\$939.81
PISCD	12	7	\$4,092.00	10	\$ 6,672.00	\$667.20	76	92	\$ 92,658.23	\$1,007.15
HANCD	52	78	\$86,830.00	43	\$ 47,207.00	\$1,097.84	342	327	\$ 306,365.92	\$936.90
FRACD	45	71	\$52,096.99	60	\$ 52,402.15	\$873.37	240	287	\$ 217,044.64	\$756.25
WASCD	49	62	\$40,267.34	57	\$ 37,224.14	\$653.06	292	254	\$ 337,889.86	\$1,330.28
CUMCD	289	404	\$414,382.02	358	\$ 386,986.66	\$1,080.97	1,806	1,890	\$ 1,901,541.05	\$1,006.11
KN OCD	53	38	\$49,896.39	30	\$ 32,652.68	\$1,088.42	264	266	\$ 262,911.36	\$988.39
SOMCD	86	120	\$130,158.17	112	\$ 108,486.24	\$968.63	459	530	\$ 456,041.34	\$860.46
OXFCD	100	96	\$58,869.67	80	\$ 55,872.27	\$698.40	514	589	\$ 391,377.27	\$664.48
LINCD	48	30	\$22,582.60	17	\$ 11,147.48	\$655.73	248	178	\$ 153,008.71	\$859.60
WATDC	20	39	\$44,416.52	28	\$ 26,785.16	\$956.61	101	202	\$ 184,913.01	\$915.41
WESDC	17	29	\$39,073.00	27	\$ 30,667.00	\$1,135.81	78	119	\$ 134,638.69	\$1,131.42
WISDC	7	9	\$9,696.82	5	\$ 5,746.70	\$1,149.34	23	40	\$ 53,137.19	\$1,328.43
WISSC	0	1	\$30.00	0			1	0		
YORDC	3	2	\$6,559.00	4	\$ 17,653.00	\$4,413.25	9	29	\$ 53,462.56	\$1,843.54
<b>TOTAL</b>	<b>2,308</b>	<b>3,024</b>	<b>\$3,225,767.14</b>	<b>2,683</b>	<b>\$2,818,099.09</b>	<b>\$1,050.35</b>	<b>14,107</b>	<b>15,881</b>	<b>\$15,370,198.64</b>	<b>\$967.84</b>

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

**FY24 FUND ACCOUNTING**

AS OF 11/30/2023

<b>Account 010 95F Z112 01 (All Other)</b>	<b>Mo.</b>	<b>Q1</b>	<b>Mo.</b>	<b>Q2</b>	<b>Mo.</b>	<b>Q3</b>	<b>Mo.</b>	<b>Q4</b>	<b>FY24 Total</b>
FY24 Professional Services Allotment		\$ 7,783,128.77		\$ 4,923,712.00		\$ 4,923,711.00		\$ 4,923,711.00	\$ 22,554,262.77
FY24 General Operations Allotment		\$ 48,000.00		\$ 48,000.00		\$ 48,000.00		\$ 48,000.00	\$ 192,000.00
FY23 carry forward appropriation		\$ -		\$ 1,255,608.01		\$ -		\$ -	\$ 1,255,608.01
FY23 carry forward appropriation		\$ -		\$ (0.01)		\$ -		\$ -	\$ -
Budget Order Adjustment		\$ (1,496,870.00)		\$ 1,496,870.00		\$ -		\$ -	\$ (4,832,682.00)
Financial Order Adjustment		\$ -		\$ 42,731.00		\$ (753,081.00)		\$ (4,122,332.00)	\$ -
FY23 One-time reduction		\$ -		\$ -		\$ -		\$ -	\$ -
<b>Total Budget Allotments</b>		<b>\$ 6,334,258.77</b>		<b>\$ 7,766,921.00</b>		<b>\$ 4,218,630.00</b>		<b>\$ 849,379.00</b>	<b>\$ 19,169,188.78</b>
Total Expenses	1	\$ (2,941,048.40)	4	\$ (3,750,984.71)	7	\$ -	10	\$ -	
	2	\$ (2,953,206.21)	5	\$ (1,504,762.41)	8	\$ -	11	\$ -	
	3	\$ (92,893.88)	6	\$ -	9	\$ -	12	\$ -	
FY23 carry forward appropriation		\$ -		\$ -		\$ -		\$ -	\$ 1,255,608.01
FY23 carry forward encumbrances		\$ -		\$ -		\$ -		\$ -	\$ (587,542.77)
Encumbrances (Justice Works)		\$ (82,212.00)		\$ 17,205.00		\$ -		\$ -	\$ (65,007.00)
Encumbrances (B Taylor)		\$ (13,260.00)		\$ (61,880.00)		\$ -		\$ -	\$ (75,140.00)
Encumbrances (CTB for non attorney expenses)		\$ 179,235.71		\$ 13,878.37		\$ -		\$ -	\$ 193,114.08
Encumbrance (Legal Case Management Accelerator User assistance)		\$ (5,550.00)		\$ -		\$ -		\$ -	\$ (5,550.00)
Encumbrance (Justin Andrus contract for temp services)		\$ (125,693.60)		\$ 3,156.50		\$ -		\$ -	\$ (122,537.10)
Online Legal Research Services		\$ (46,979.20)		\$ 6,654.16		\$ -		\$ -	\$ (40,325.04)
Encumbrance (K. Guillory contract for website maintenance)		\$ (1,000.00)		\$ -		\$ -		\$ -	\$ (1,000.00)
FY22 CTB Balance Carry Forward		\$ (251,650.23)		\$ -		\$ -		\$ -	\$ (251,650.23)
<b>TOTAL REMAINING</b>		<b>\$ 0.96</b>		<b>\$ 2,490,187.91</b>		<b>\$ 4,218,630.00</b>		<b>\$ 849,379.00</b>	<b>\$ 7,558,197.87</b>

**Q2 Month 5**

**INDIGENT LEGAL SERVICES**

Counsel Payments	\$ (1,352,356.38)
Interpreters	\$ (2,780.95)
Private Investigators	\$ (23,620.59)
Mental Health Expert	\$ (19,662.50)
Misc Prof Fees & Serv	\$ (1,184.00)
Transcripts	\$ (3,021.00)
Other Expert	\$ (64,299.35)
Subpoena witness	\$ -
Process Servers	\$ (1,758.19)
<b>SUB-TOTAL ILS</b>	<b>\$ (1,468,682.96)</b>

**OPERATING EXPENSES**

Service Center	\$ (11,011.58)
Barbara Taylor monthly fees	\$ (4,420.00)
OIT/TELCO	\$ -
Mileage/Tolls/Parking	\$ (2,345.99)
Mailing/Postage/Freight	\$ (157.03)
West Publishing Corp	\$ (3,599.12)
Legal services for staff	\$ (225.00)
Office Supplies/Equip.	\$ (89.52)
Cellular Phones	\$ -
Periodicals/Books	\$ (150.00)
Employee/counsel lodging	\$ (214.00)
Justin Andrus contract payments	\$ -
Central fleet vehicle lease	\$ -
Legal ads	\$ -
Dues	\$ (265.00)
Registration fees	\$ (50.00)

**INDIGENT LEGAL SERVICES**

Q2 Allotment	\$ 7,766,921.00
Encumbrances for Justice Works contract	\$ 17,205.00
Barbara Taylor Contract	\$ (61,880.00)
CTB Encumbrance for non attorney expenses	\$ 13,878.37
CTB Encumbrance for non attorney expenses carry forward	\$ -
Encumbrance for Justin Andrus contract for temp services	\$ 3,156.50
Legal Case Management Accelerator User Assistance	\$ -
Online Legal Research Services	\$ 6,654.16
Encumbrance (K. Guillory contract for website maintenance)	\$ -
Expenses to date	\$ (5,255,747.12)
Remaining Q2 Allotment	\$ 2,490,187.91

**Non-Counsel Indigent Legal Services**

Monthly Total	\$ (116,326.58)
Total Q1	\$ 386,083.19
Total Q2	\$ 254,542.47
Total Q3	\$ -
Total Q4	\$ -
Fiscal Year Total	\$ 640,625.66

MAINE COMMISSION ON INDIGENT LEGAL SERVICES  
FY24 FUND ACCOUNTING  
AS OF 11/30/2023

Sales tax paid	\$	(37.36)
Envelopes	\$	-
Justice Works	\$	(8,688.00)
Website maintenance	\$	(4,770.00)
Staff meals & gratuity	\$	(21.57)
Interpreter paid with procurement card	\$	(35.28)
AAG Legal Svcs Quarterly Payment	\$	-

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**  
**FY24 FUND ACCOUNTING**  
AS OF 11/30/2023

<b>Account 010 95F Z112 01 (Personal Services)</b>	<b>Mo.</b>	<b>Q1</b>	<b>Mo.</b>	<b>Q2</b>	<b>Mo.</b>	<b>Q3</b>	<b>Mo.</b>	<b>Q4</b>	<b>FY24 Total</b>
FY24 Allotment		\$ 513,974.00		\$ 469,367.00		\$ 513,974.00		\$ 203,769.00	\$ 1,701,084.00
Financial Order Adjustments		\$ -		\$ 325,339.00		\$ 699,524.00		\$ 434,978.00	\$ 1,459,841.00
Budget Order Adjustments		\$ -		\$ -		\$ -		\$ -	\$ -
Funding for additional staff		\$ -		\$ -		\$ -		\$ -	\$ -
Projected savings-increase in attrition rate		\$ -		\$ -		\$ -		\$ -	\$ -
Carry forward Q1, Q2 & Q3 Allotment		\$ -		\$ -		\$ -		\$ -	\$ -
<b>Total Budget Allotments</b>		<b>\$ 513,974.00</b>		<b>\$ 794,706.00</b>		<b>\$ 1,213,498.00</b>		<b>\$ 638,747.00</b>	<b>\$ 3,160,925.00</b>
Total Expenses	1	\$ (125,464.57)	4	\$ (115,285.80)	7	\$ -	10	\$ -	
	2	\$ (176,263.37)	5	\$ (128,936.93)	8	\$ -	11	\$ -	
	3	\$ (120,087.49)	6	\$ -	9	\$ -	12	\$ -	
<b>TOTAL REMAINING</b>		<b>\$ 92,158.57</b>		<b>\$ 550,483.27</b>		<b>\$ 1,213,498.00</b>		<b>\$ 638,747.00</b>	<b>\$ 2,494,886.84</b>

<b>Q2 Month 5</b>	
Premium Overtime	\$ (64.62)
Permanent Regular	\$ (36,097.40)
Perm Vacation Pay	\$ (377.12)
Perm Holiday Pay	\$ (2,134.24)
Sick Pay	\$ (524.44)
Employee hlth svcs/workers comp	\$ (297.00)
Health Insurance	\$ (13,675.73)
Dental Insurance	\$ (350.40)
Employer Retiree Health	\$ (7,372.43)
Employer Retirement	\$ (5,131.14)
Employer Group Life	\$ (917.10)
Employer Medicare	\$ (1,204.29)
Retiree Unfunded Liability	\$ (13,962.14)
Longevity Pay	\$ (528.00)
Lim Perm Part Time Full Ben	\$ (4,073.39)
Limited Period Regular	\$ (37,830.44)
Limited Per Vacation Pay	\$ (904.48)
Limited Per Holiday Pay	\$ (2,322.04)
Limit Per Sick Pay	\$ (1,170.53)
Per diem	\$ -
<b>TOTAL</b>	<b>\$ (128,936.93)</b>

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**  
**FY24 FUND ACCOUNTING**  
AS OF 11/30/2023

<b>Account 014 95F Z112 01 (OSR Personal Services Revenue)</b>	<b>Mo.</b>	<b>Q1</b>	<b>Mo.</b>	<b>Q2</b>	<b>Mo.</b>	<b>Q3</b>	<b>Mo.</b>	<b>Q4</b>	<b>FY24 Total</b>
FY24 Allotment		\$ 199,948.00		\$ 183,210.00		\$ 199,948.00		\$ 98,063.00	\$ 681,169.00
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Carry Forward Q1 & Q3 Allotment		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustments		\$ -		\$ -		\$ -		\$ -	
<b>Total Budget Allotments</b>		<b>\$ 199,948.00</b>		<b>\$ 183,210.00</b>		<b>\$ 199,948.00</b>		<b>\$ 98,063.00</b>	<b>\$ 681,169.00</b>
Total Expenses	1	\$ (51,673.18)	4	\$ (51,685.02)	7	\$ -	10	\$ -	
	2	\$ (73,802.05)	5	\$ (51,899.14)	8	\$ -	11	\$ -	
	3	\$ (51,713.22)	6	\$ -	9	\$ -	12	\$ -	
<b>TOTAL REMAINING</b>		<b>\$ 22,759.55</b>		<b>\$ 79,625.84</b>		<b>\$ 199,948.00</b>		<b>\$ 98,063.00</b>	<b>\$ 400,396.39</b>

<b>Q2 Month 5</b>	
Standard Overtime	\$ -
Permanent Regular	\$ (23,310.04)
Perm Vacation Pay	\$ -
Perm Holiday Pay	\$ (1,282.24)
Perm Sick Pay	\$ (1,052.52)
Health Insurance	\$ (7,430.44)
Dental Insurance	\$ (146.00)
Employer Retiree Health	\$ (2,788.48)
Employer Retirement	\$ (2,805.74)
Employer Group Life	\$ (354.60)
Employer Medicare	\$ (447.42)
Retiree Unfunded Liability	\$ (5,280.86)
Limited Period Regular	\$ (5,686.56)
Limit Per Holiday Pay	\$ (344.64)
Limit Per Vacation Pay	\$ -
Limit Per Sick Pay	\$ (861.60)
Longevity Pay	\$ -
Employee Hlth SVS/Workers comp	\$ (108.00)
Perm Part Time Full Ben	\$ -
Retro Pay Contract	\$ -
Retro Lump Sum Pymt	\$ -
<b>TOTAL</b>	<b>\$ (51,899.14)</b>

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

**FY24 FUND ACCOUNTING**

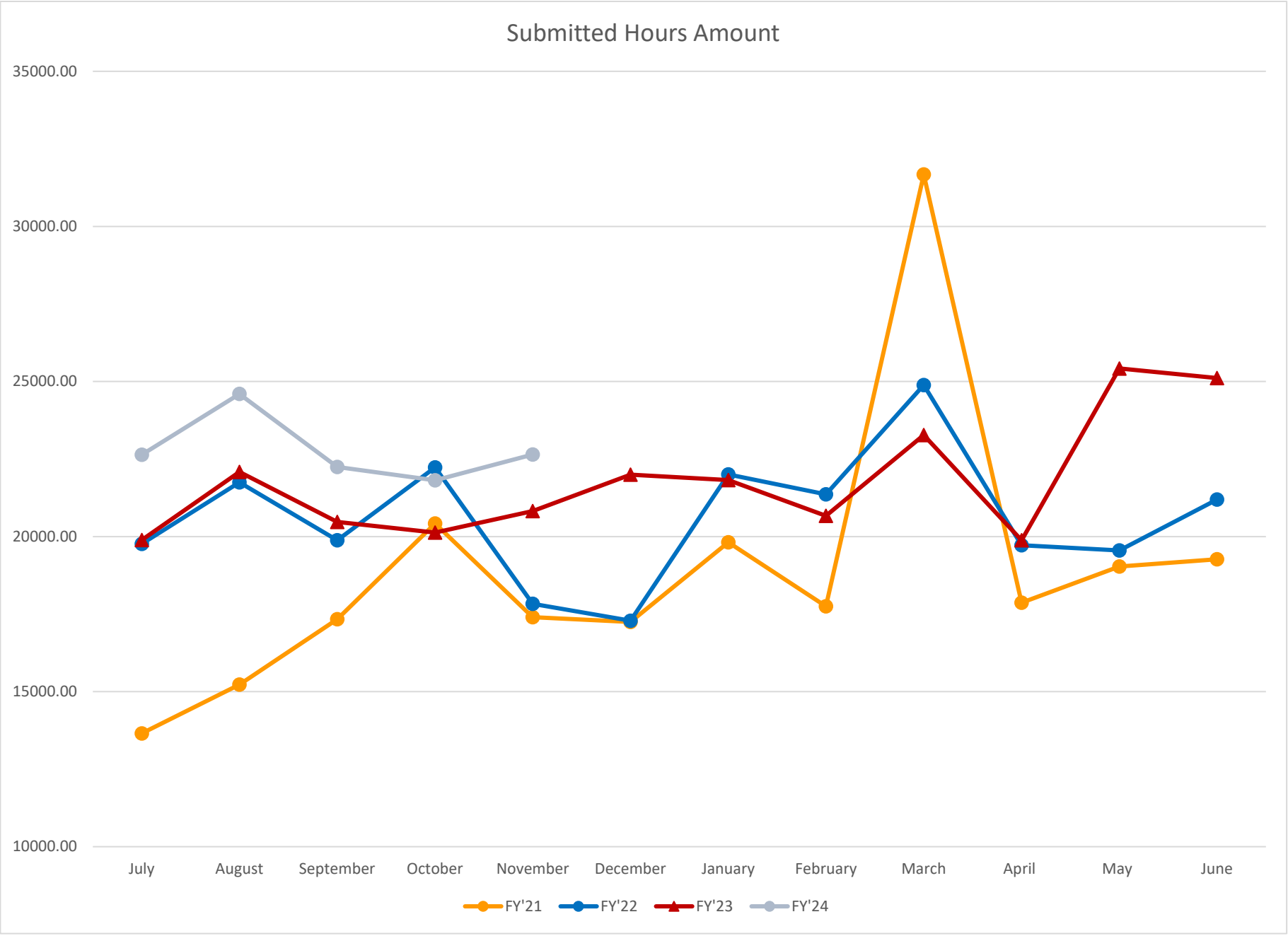
As of 11/30/2023

<b>Account 014 95F Z112 01 (Revenue)</b>	<b>Mo.</b>	<b>Q1</b>	<b>Mo.</b>	<b>Q2</b>	<b>Mo.</b>	<b>Q3</b>	<b>Mo.</b>	<b>Q4</b>	<b>FY24 Total</b>
<b>Original Total Budget Allotments</b>		<b>\$ 7,197,529.00</b>		<b>\$ 4,991,638.00</b>		<b>\$ 4,991,638.00</b>		<b>\$ 4,991,638.00</b>	<b>\$ 22,172,443.00</b>
		\$ -		\$ -		\$ -		\$ -	\$ -
Financial Order Adjustment		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustment		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustment		\$ (4,147,282.00)		\$ 4,147,282.00		\$ -		\$ -	\$ -
<b>Total Budget Allotments</b>		<b>\$ 3,050,247.00</b>		<b>\$ 9,138,920.00</b>		<b>\$ 4,991,638.00</b>		<b>\$ 4,991,638.00</b>	<b>\$ 22,172,443.00</b>
Cash Carryover from Prior Quarter		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB	1	\$ 25,340.85	4	\$ 17,141.96	7	\$ -	10	\$ -	
Collected Revenue from JB	2	\$ 40,622.70	5	\$ -	8	\$ -	11	\$ -	
Collected Revenue from JB	3	\$ 21,472.00	6	\$ -	9	\$ -	12	\$ -	
		\$ -		\$ -		\$ -		\$ -	
Collected for reimbursement of counsel fees	1	\$ -	4	\$ 1,151.20	7	\$ -	10	\$ -	
Collected for reimbursement of counsel fees	2	\$ 1,080.00	5	\$ -	8	\$ -	11	\$ -	
Collected for reimbursement of counsel fees	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
<b>TOTAL CASH PLUS REVENUE COLLECTED</b>		<b>\$ 88,515.55</b>		<b>\$ 18,293.16</b>		<b>\$ -</b>		<b>\$ -</b>	<b>\$ 106,808.71</b>
Counsel Payments	1		4	\$ -	7	\$ -	10	\$ -	
Counsel Payments	2	\$ (93,716.08)	5	\$ (1,465,742.71)	8	\$ -	11	\$ -	
Counsel Payments	3	\$ (2,914,923.00)	6	\$ -	9	\$ -	12	\$ -	
				\$ -		\$ -		\$ -	
State Cap for periods 1 - 4		\$ (41,606.93)		\$ (675.02)		\$ -		\$ -	
		\$ -		\$ -		\$ -		\$ -	
		\$ -		\$ -		\$ -		\$ -	
<b>REMAINING ALLOTMENT</b>		<b>\$ 0.99</b>		<b>\$ 7,672,502.27</b>		<b>\$ 4,991,638.00</b>		<b>\$ 4,991,638.00</b>	<b>\$ 17,655,779.26</b>

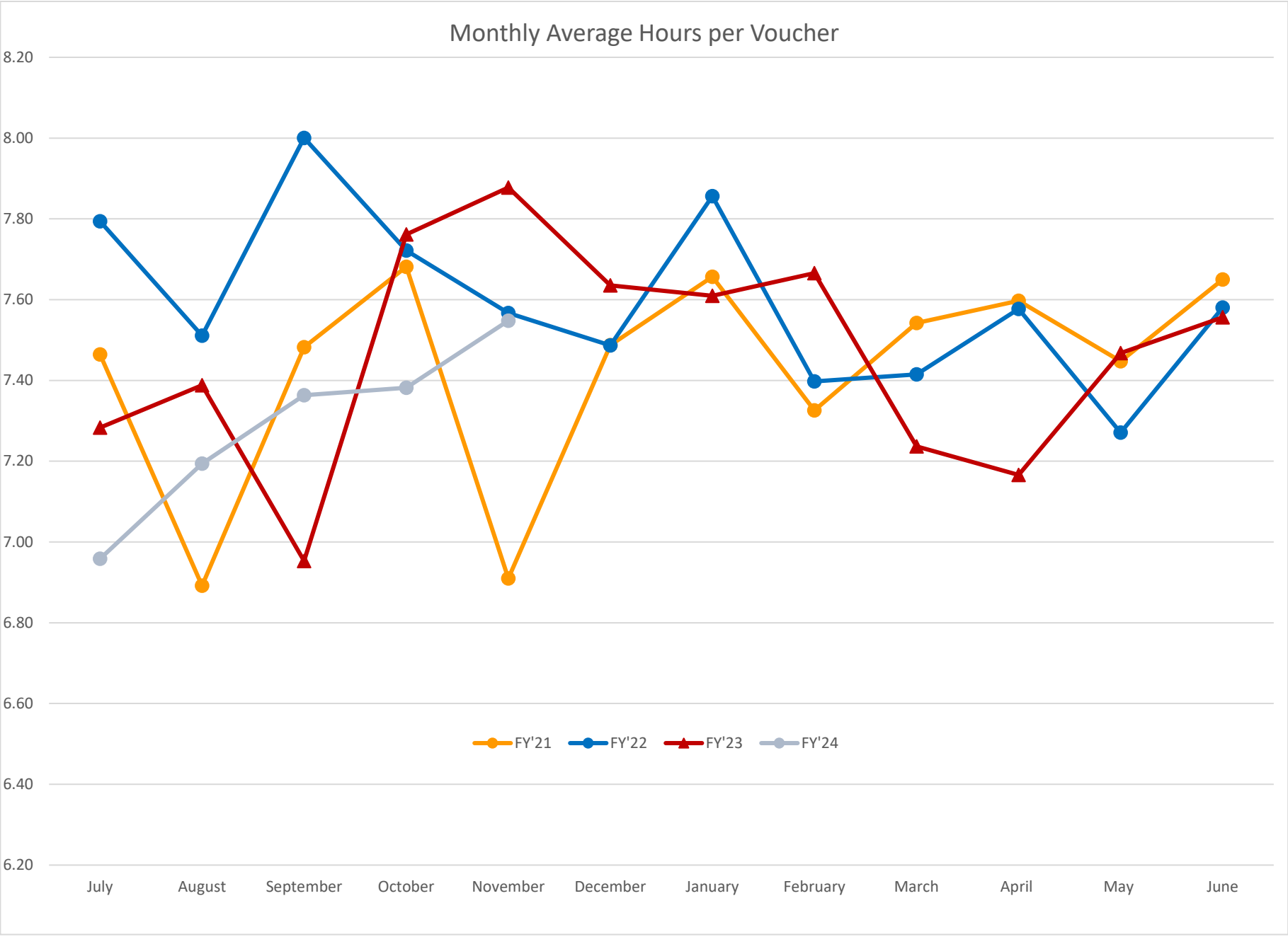
**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**  
**FY24 FUND ACCOUNTING**  
AS OF 11/30/2023

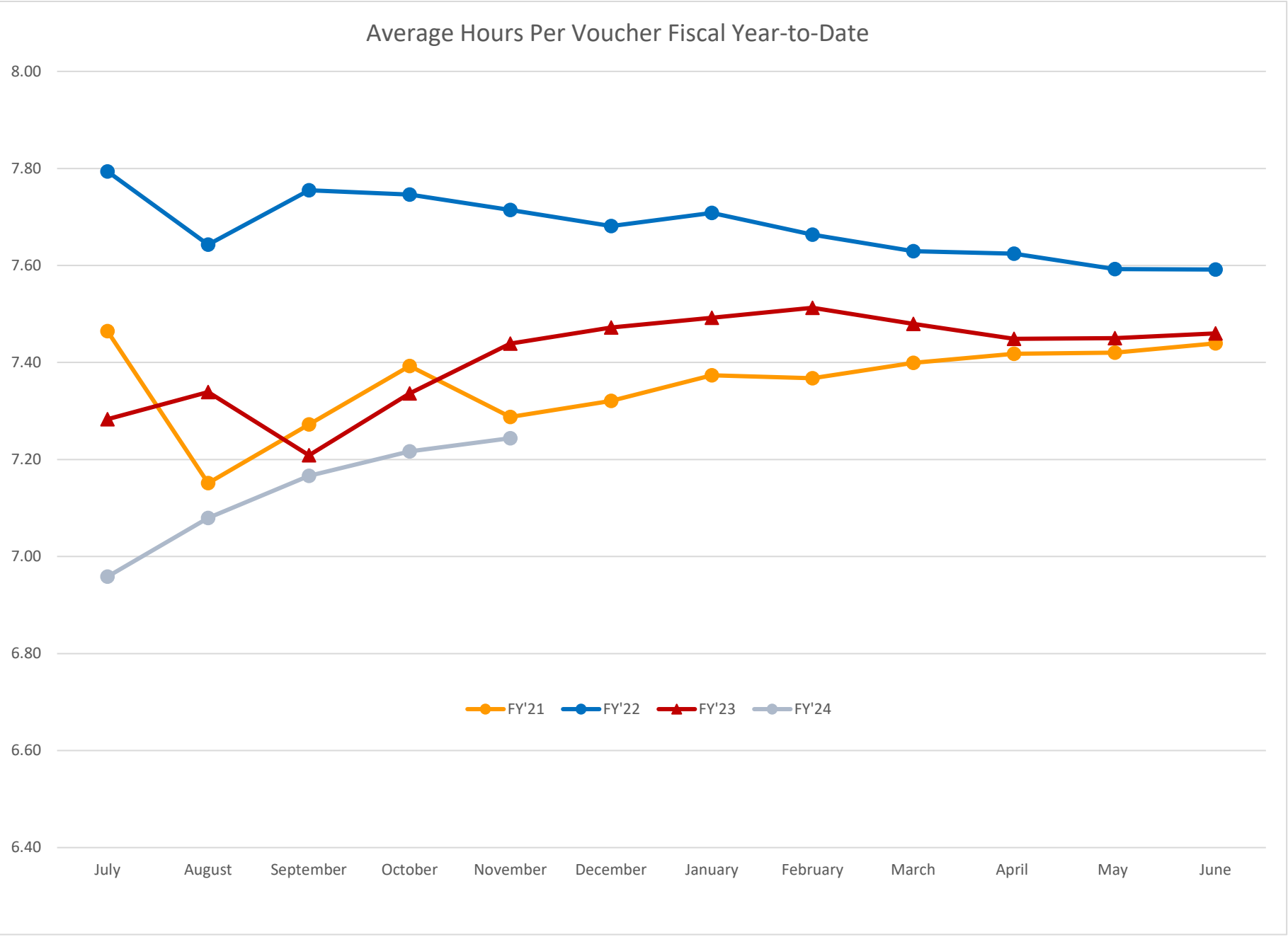
<b>Account 014 95F Z112 02 (Conference Account)</b>	<b>Mo.</b>	<b>Q1</b>	<b>Mo.</b>	<b>Q2</b>	<b>Mo.</b>	<b>Q3</b>	<b>Mo.</b>	<b>Q4</b>	<b>FY24 Total</b>
FY24 Allotment		\$ 13,333.00		\$ 17,000.00		\$ 13,333.00		\$ 13,334.00	\$ 57,000.00
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustments		\$ (13,333.00)		\$ 13,333.00		\$ -		\$ -	
Contribution from private source-JJAG		\$ -		\$ 5,000.00		\$ -		\$ -	\$ 5,000.00
<b>Total Budget Allotments</b>		<b>\$ -</b>		<b>\$ 30,333.00</b>		<b>\$ 13,333.00</b>		<b>\$ 13,334.00</b>	<b>\$ 57,000.00</b>
Total Expenses	1	\$ -	4	\$ (5,149.70)	7	\$ -	10	\$ -	
	2	\$ -	5	\$ (724.59)	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
State cap Q2		\$ -		\$ (67.26)		\$ -		\$ -	
<b>TOTAL REMAINING</b>		<b>\$ -</b>		<b>\$ 24,391.45</b>		<b>\$ 13,333.00</b>		<b>\$ 13,334.00</b>	<b>\$ 51,058.45</b>

<b>Q2 Month 5</b>		
Instructor & Speaker services	\$	(500.00)
Refreshments & Catered meals	\$	(14.37)
Sales tax	\$	(0.79)
Mileage & parking fees for staff	\$	(209.43)
<b>TOTAL</b>	<b>\$</b>	<b>(724.59)</b>

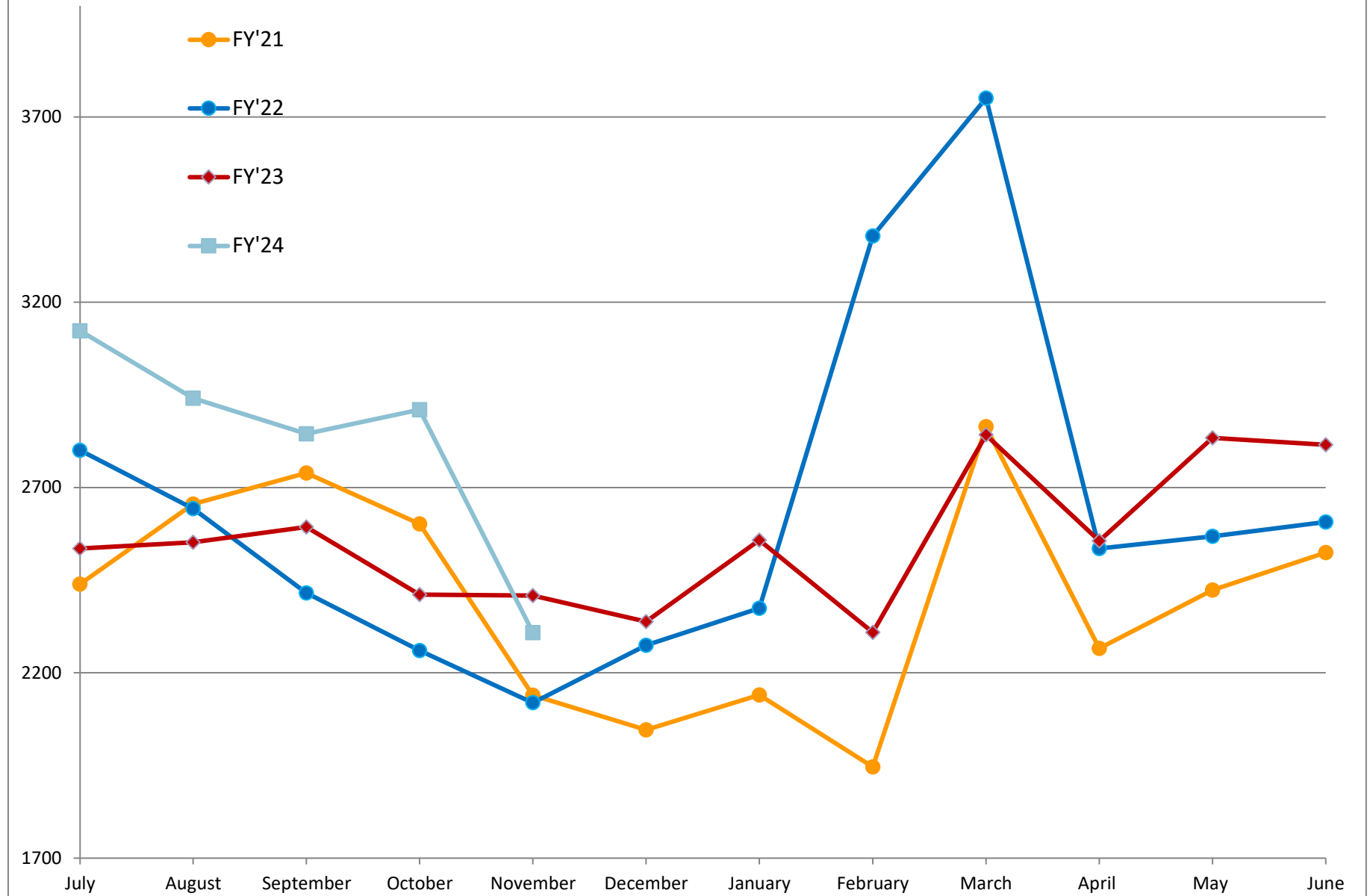


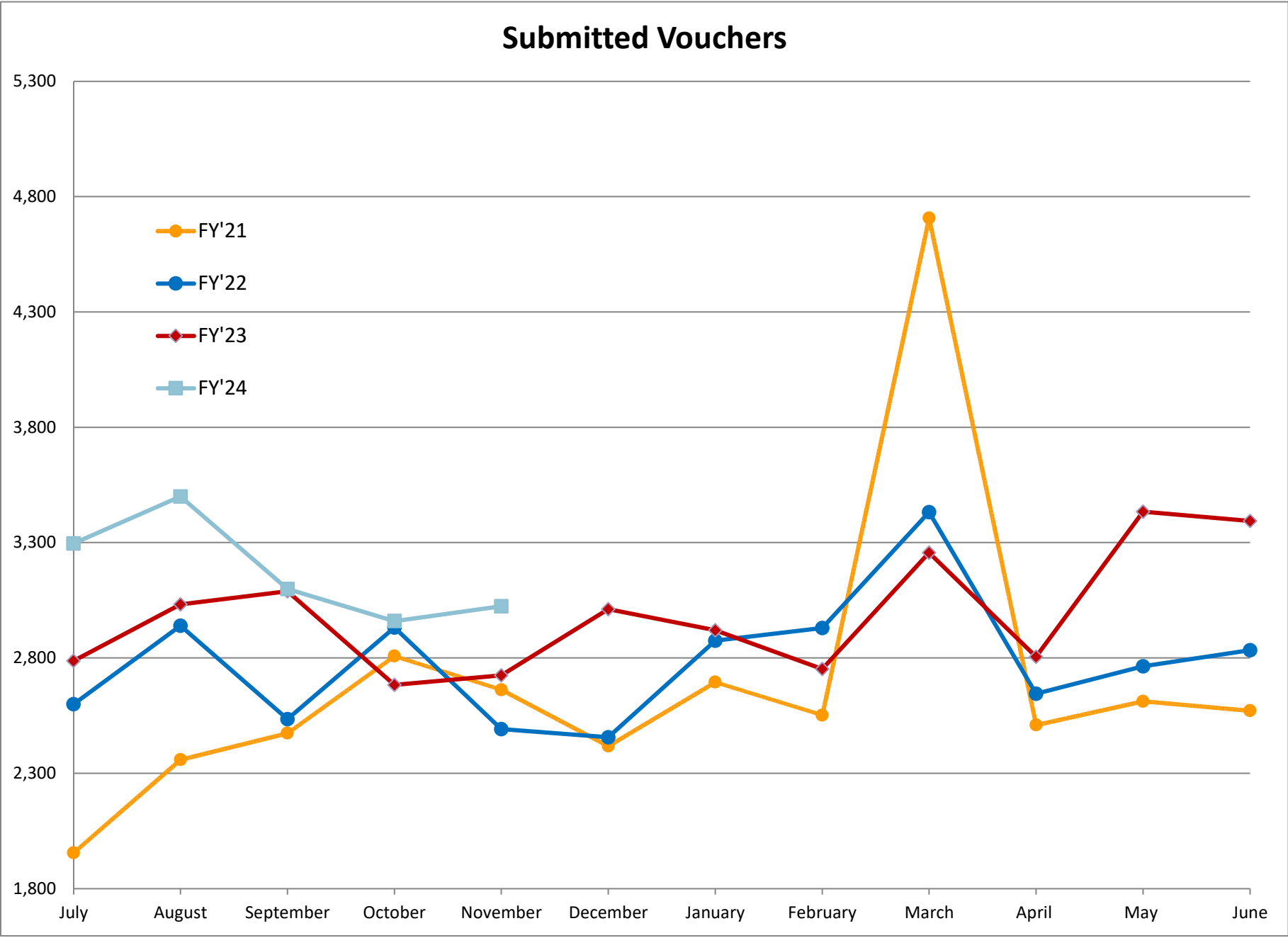


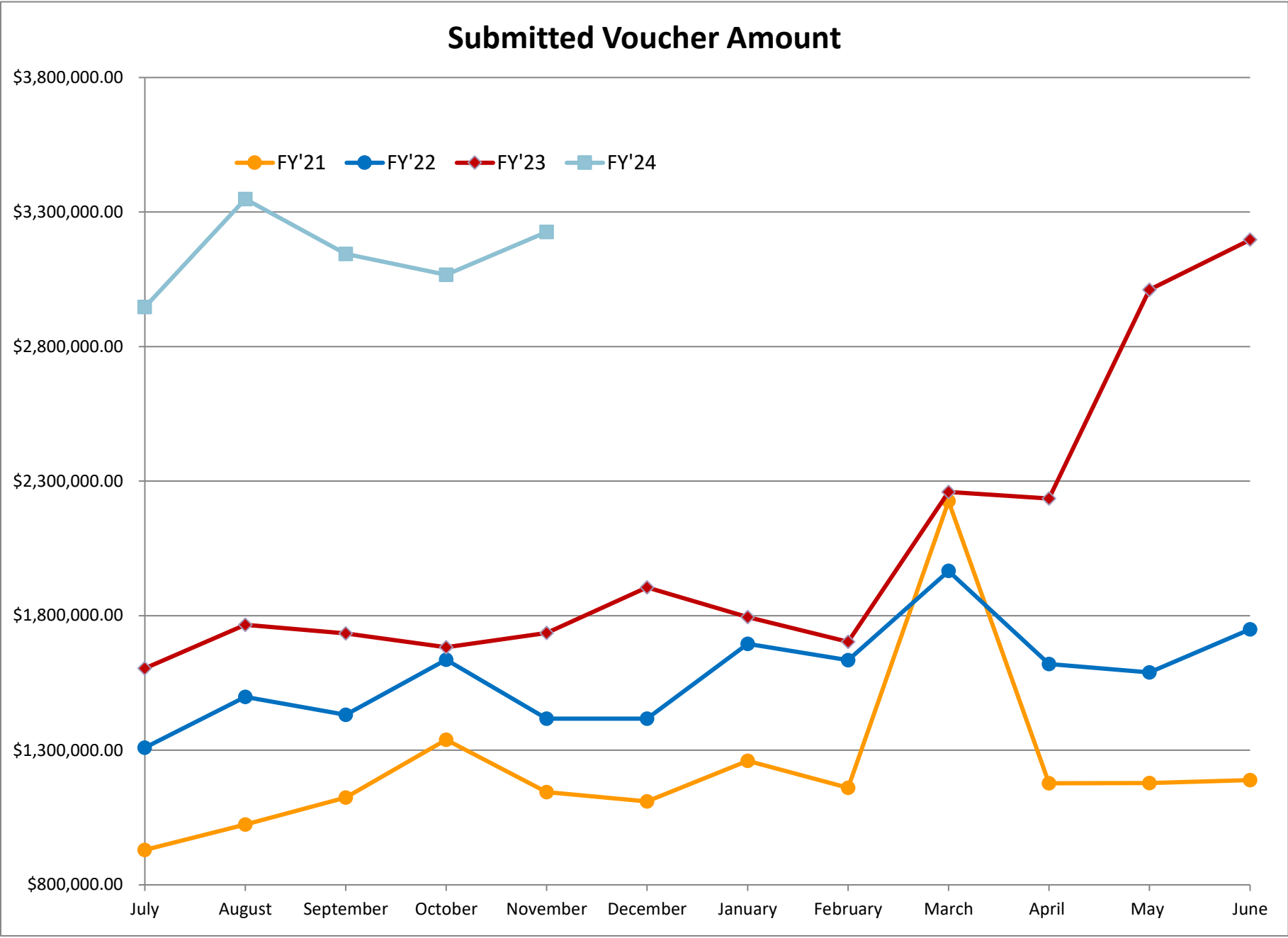




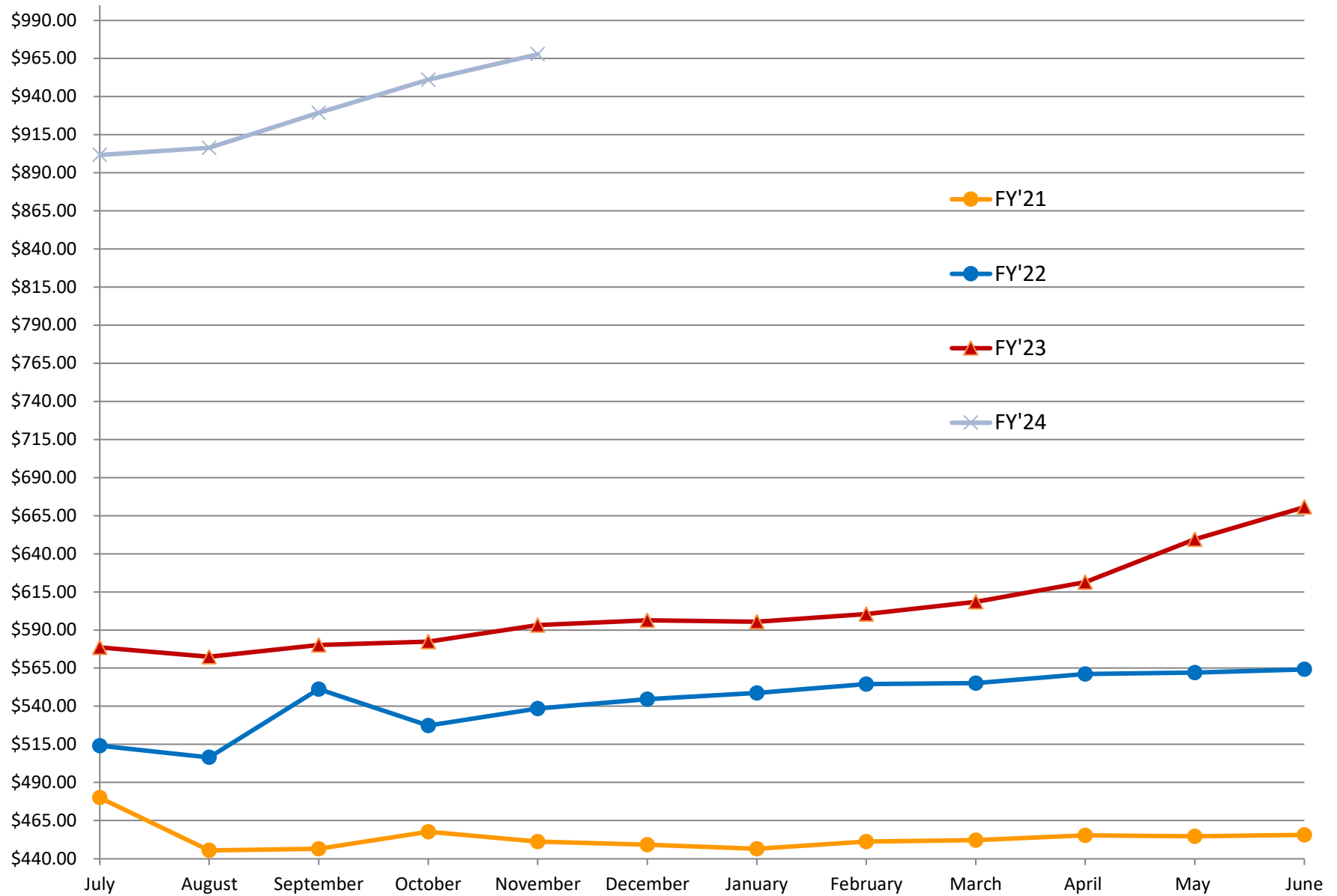
## NEW CASES

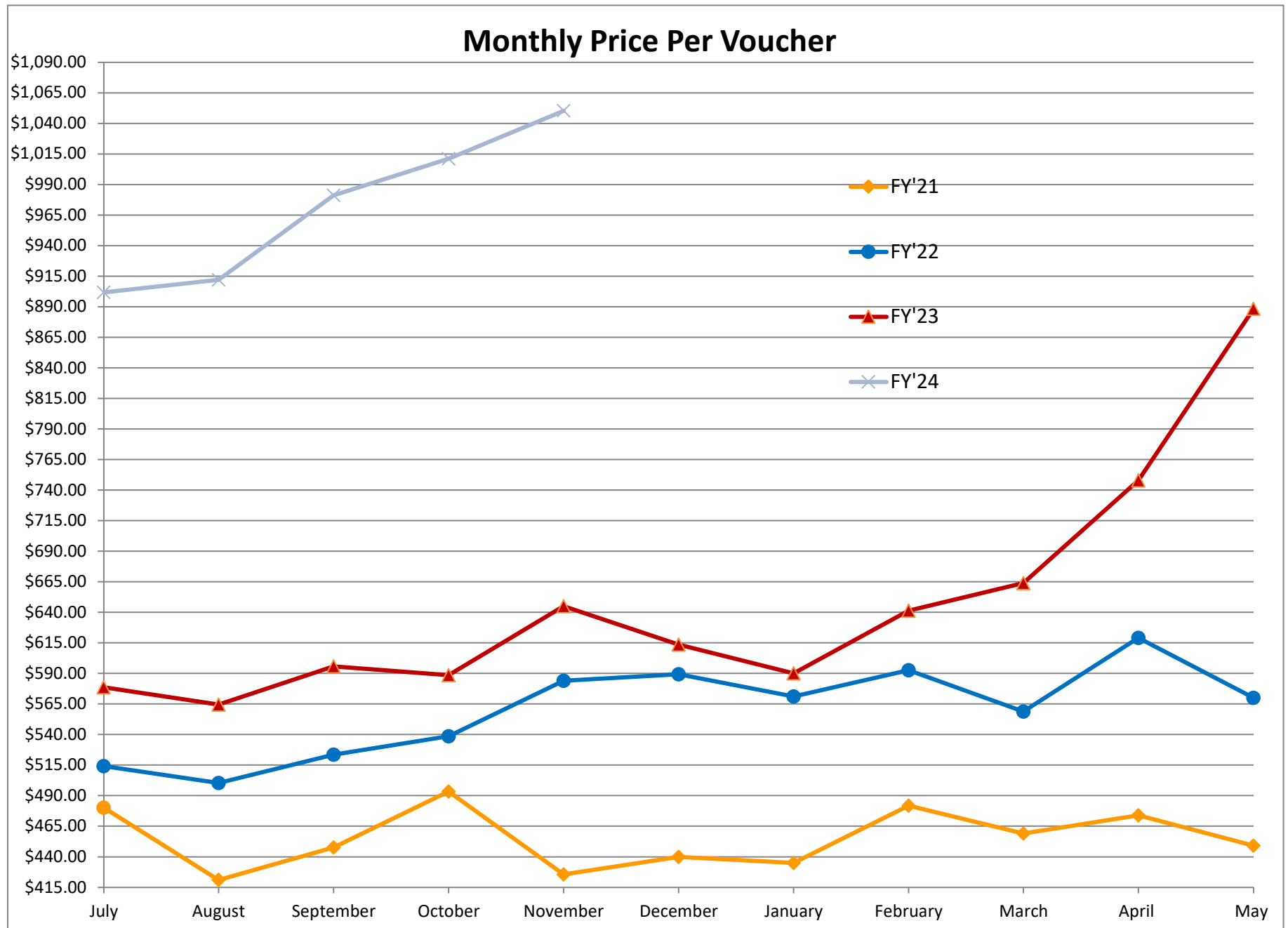






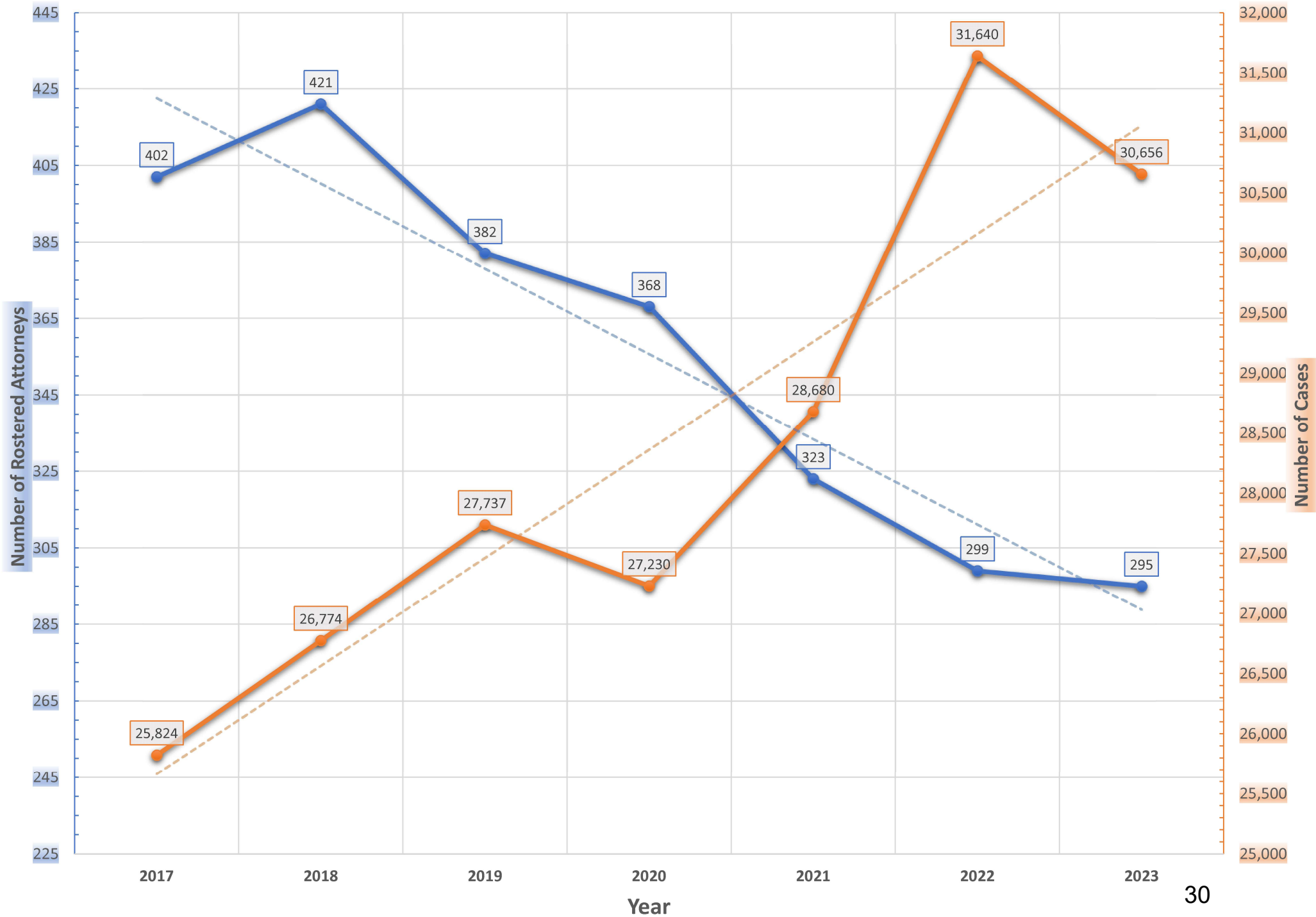
## Average Voucher Price Fiscal Year to Date





# Case Totals vs. Roster Totals

Annually Renewed Attorneys    Cases per FY    Linear (Annually Renewed Attorneys)    Linear (Cases per FY)





Pending UCD Cases as of December 8, 2023

UCD	FELONY				MISDEMEANOR				CIVIL VIOLATION			ALL CASES			
	Pending	On DD	No IA	% No IA	Pending	On DD	No IA	% No IA	Pending	No IA	% No IA	Pending	On DD	No IA	% No IA
Androscoggin	757	112	56	7.4%	1,715	310	277	16.2%	12	5	41.7%	2,484	422	338	13.6%
Aroostook	608	118	36	5.9%	989	299	221	22.3%	30	18	60.0%	1,627	417	275	16.9%
Caribou	122	23	9	7.4%	190	73	29	15.3%	9	4	44.4%	321	96	42	13.1%
Fort Kent	94	21	4	4.3%	180	66	37	20.6%	7	5	71.4%	281	87	46	16.4%
Houlton	171	32	4	2.3%	238	80	40	16.8%	4	1	25.0%	413	112	45	10.9%
Presque Isle	221	42	19	8.6%	381	80	115	30.2%	10	8	80.0%	612	122	142	23.2%
Cumberland	1,298	199	142	10.9%	3,655	501	747	20.4%	86	36	41.9%	5,039	700	925	18.4%
Bridgton	27	9	4	14.8%	288	35	75	26.0%	15	8	53.3%	330	44	87	26.4%
Portland	1,251	185	137	11.0%	2,907	356	579	19.9%	51	20	39.2%	4,209	541	736	17.5%
West Bath	20	5	1	5.0%	460	110	93	20.2%	20	8	40.0%	500	115	102	20.4%
Franklin	152	35	14	9.2%	409	108	86	21.0%	11	3	27.3%	572	143	103	18.0%
Hancock	436	34	16	3.7%	719	62	144	20.0%	37	16	43.2%	1,192	96	176	14.8%
Kennebec	620	98	62	10.0%	1,476	339	335	22.7%	23	9	39.1%	2,119	437	406	19.2%
Augusta	591	86	56	9.5%	958	223	197	20.6%	14	6	42.9%	1,563	309	259	16.6%
Waterville	29	12	6	20.7%	518	116	138	26.6%	9	3	33.3%	556	128	147	26.4%
Knox	185	46	17	9.2%	449	123	109	24.3%	10	3	30.0%	644	169	129	20.0%
Lincoln	136	31	13	9.6%	402	126	72	17.9%	8	2	25.0%	546	157	87	15.9%
Oxford	446	92	45	10.1%	1,008	182	242	24.0%	26	11	42.3%	1,480	274	298	20.1%
Bridgton	36	7	3	8.3%	82	23	7	8.5%	1	0	0.0%	119	30	10	8.4%
Rumford	159	33	11	6.9%	424	79	88	20.8%	5	5	100.0%	588	112	104	17.7%
South Paris	251	52	31	12.4%	502	80	147	29.3%	20	6	30.0%	773	132	184	23.8%
Penobscot	915	44	100	10.9%	1,692	45	553	32.7%	43	28	65.1%	2,650	89	681	25.7%
Bangor	879	43	88	10.0%	1,301	28	409	31.4%	18	13	72.2%	2,198	71	510	23.2%
Lincoln	10	0	4	40.0%	171	11	58	33.9%	10	7	70.0%	191	11	69	36.1%
Newport	26	1	8	30.8%	220	6	86	39.1%	15	8	53.3%	261	7	102	39.1%
Piscataquis	33	2	8	24.2%	102	4	38	37.3%	19	15	78.9%	154	6	61	39.6%
Sagadahoc	186	54	27	14.5%	446	163	118	26.5%	16	6	37.5%	648	217	151	23.3%
Somerset	260	46	21	8.1%	504	139	125	24.8%	13	10	76.9%	777	185	156	20.1%
Waldo	201	41	17	8.5%	335	102	64	19.1%	2	0	0.0%	538	143	81	15.1%
Washington	151	20	3	2.0%	276	52	66	23.9%	16	12	75.0%	443	72	81	18.3%
Calais	73	6	0	0.0%	120	22	15	12.5%	1	0	0.0%	194	28	15	7.7%
Machias	78	14	3	3.8%	156	30	51	32.7%	15	12	80.0%	249	44	66	26.5%
York	1,017	147	158	15.5%	3,659	792	884	24.2%	92	39	42.4%	4,768	939	1,081	22.7%
TOTAL	7,401	1,119	735	9.9%	17,836	3,347	4,081	22.9%	444	213	48.0%	25,681	4,466	5,029	19.6%

Columns

<b>Pending</b>	Number of cases having at least one charge without a disposition, and without a currently active warrant.
<b>On DD</b>	Number of pending cases with an Order of Deferred Disposition entered.
<b>No IA</b>	Number of pending cases with a complaint filed, but not having an initial appearance or arraignment held or waived.
<b>% No IA</b>	Percent of pending cases without an initial appearance/arraignment.

Cases are categorized based on the most serious offense charged. Local ordinance violations filed with the court are not included in the reported counts.

# Change in Pending UCD Cases, December 2022 to December 2023

Pending cases as of December 8 of each year

UCD	FELONY			MISDEMEANOR			CIVIL VIOLATION			ALL CASES		
	2022	2023	% Diff	2022	2023	% Diff	2022	2023	% Diff	2022	2023	% Diff
Androscoggin	697	757	8.6%	2,138	1,715	-19.8%	15	12	-20.0%	2,850	2,484	-12.8%
Aroostook	706	608	-13.9%	990	989	-0.1%	27	30	11.1%	1,723	1,627	-5.6%
Caribou	162	122	-24.7%	213	190	-10.8%	3	9	200.0%	378	321	-15.1%
Fort Kent	118	94	-20.3%	192	180	-6.3%	3	7	133.3%	313	281	-10.2%
Houlton	214	171	-20.1%	279	238	-14.7%	7	4	-42.9%	500	413	-17.4%
Presque Isle	212	221	4.2%	306	381	24.5%	14	10	-28.6%	532	612	15.0%
Cumberland	1,277	1,298	1.6%	3,730	3,655	-2.0%	72	86	19.4%	5,079	5,039	-0.8%
Bridgton	24	27	12.5%	332	288	-13.3%	13	15	15.4%	369	330	-10.6%
Portland	1,232	1,251	1.5%	2,965	2,907	-2.0%	34	51	50.0%	4,231	4,209	-0.5%
West Bath	21	20	-4.8%	433	460	6.2%	25	20	-20.0%	479	500	4.4%
Franklin	137	152	10.9%	399	409	2.5%	14	11	-21.4%	550	572	4.0%
Hancock	364	436	19.8%	704	719	2.1%	24	37	54.2%	1,092	1,192	9.2%
Kennebec	662	620	-6.3%	1,887	1,476	-21.8%	48	23	-52.1%	2,597	2,119	-18.4%
Augusta	630	591	-6.2%	1,141	958	-16.0%	41	14	-65.9%	1,812	1,563	-13.7%
Waterville	32	29	-9.4%	746	518	-30.6%	7	9	28.6%	785	556	-29.2%
Knox	215	185	-14.0%	562	449	-20.1%	17	10	-41.2%	794	644	-18.9%
Lincoln	124	136	9.7%	359	402	12.0%	8	8	0.0%	491	546	11.2%
Oxford	443	446	0.7%	1,072	1,008	-6.0%	37	26	-29.7%	1,552	1,480	-4.6%
Bridgton	42	36	-14.3%	124	82	-33.9%	3	1	-66.7%	169	119	-29.6%
Rumford	166	159	-4.2%	395	424	7.3%	10	5	-50.0%	571	588	3.0%
South Paris	235	251	6.8%	553	502	-9.2%	24	20	-16.7%	812	773	-4.8%
Penobscot	892	915	2.6%	2,126	1,692	-20.4%	49	43	-12.2%	3,067	2,650	-13.6%
Bangor	876	879	0.3%	1,681	1,301	-22.6%	22	18	-18.2%	2,579	2,198	-14.8%
Lincoln	6	10	66.7%	210	171	-18.6%	17	10	-41.2%	233	191	-18.0%
Newport	10	26	160.0%	235	220	-6.4%	10	15	50.0%	255	261	2.4%
Piscataquis	43	33	-23.3%	127	102	-19.7%	19	19	0.0%	189	154	-18.5%
Sagadahoc	182	186	2.2%	492	446	-9.3%	14	16	14.3%	688	648	-5.8%
Somerset	231	260	12.6%	587	504	-14.1%	11	13	18.2%	829	777	-6.3%
Waldo	203	201	-1.0%	364	335	-8.0%	4	2	-50.0%	571	538	-5.8%
Washington	190	151	-20.5%	375	276	-26.4%	26	16	-38.5%	591	443	-25.0%
Calais	81	73	-9.9%	145	120	-17.2%	9	1	-88.9%	235	194	-17.4%
Machias	109	78	-28.4%	230	156	-32.2%	17	15	-11.8%	356	249	-30.1%
York	1,144	1,017	-11.1%	4,252	3,659	-13.9%	127	92	-27.6%	5,523	4,768	-13.7%
TOTAL	7,510	7,401	-1.5%	20,164	17,836	-11.5%	512	444	-13.3%	28,186	25,681	-8.9%

## Columns

<b>2022</b>	Number of cases having at least one charge without a disposition, and without a currently active warrant as of December 8, 2022
<b>2023</b>	Number of cases having at least one charge without a disposition, and without a currently active warrant as of December 8, 2023
<b>% Diff</b>	Percent change in pending cases from 2022 to 2023. Red percentages represent an increase, green percentages a decrease.

Cases are categorized based on the most serious offense charged. Local ordinance violations filed with the courts are not included in the reported counts.

# Change in Pending UCD Cases, December 2019 to December 2023

Pending cases as of December 8 of each year

UCD	FELONY			MISDEMEANOR			CIVIL VIOLATION			ALL CASES		
	2019	2023	% Diff	2019	2023	% Diff	2019	2023	% Diff	2019	2023	% Diff
Androscoggin	429	757	76.5%	1,322	1,715	29.7%	27	12	-55.6%	1,778	2,484	39.7%
Aroostook	433	608	40.4%	723	989	36.8%	20	30	50.0%	1,176	1,627	38.4%
Caribou	72	122	69.4%	178	190	6.7%	0	9	0.0%	250	321	28.4%
Fort Kent	45	94	108.9%	127	180	41.7%	4	7	75.0%	176	281	59.7%
Houlton	141	171	21.3%	178	238	33.7%	10	4	-60.0%	329	413	25.5%
Presque Isle	175	221	26.3%	240	381	58.8%	6	10	66.7%	421	612	45.4%
Cumberland	920	1,298	41.1%	2,676	3,655	36.6%	96	86	-10.4%	3,692	5,039	36.5%
Bridgton	10	27	170.0%	199	288	44.7%	16	15	-6.3%	225	330	46.7%
Portland	891	1,251	40.4%	2,151	2,907	35.1%	56	51	-8.9%	3,098	4,209	35.9%
West Bath	19	20	5.3%	326	460	41.1%	24	20	-16.7%	369	500	35.5%
Franklin	80	152	90.0%	265	409	54.3%	12	11	-8.3%	357	572	60.2%
Hancock	210	436	107.6%	516	719	39.3%	38	37	-2.6%	764	1,192	56.0%
Kennebec	384	620	61.5%	1,207	1,476	22.3%	36	23	-36.1%	1,627	2,119	30.2%
Augusta	374	591	58.0%	649	958	47.6%	21	14	-33.3%	1,044	1,563	49.7%
Waterville	10	29	190.0%	558	518	-7.2%	15	9	-40.0%	583	556	-4.6%
Knox	156	185	18.6%	346	449	29.8%	6	10	66.7%	508	644	26.8%
Lincoln	96	136	41.7%	219	402	83.6%	11	8	-27.3%	326	546	67.5%
Oxford	208	446	114.4%	556	1,008	81.3%	17	26	52.9%	781	1,480	89.5%
Bridgton	26	36	38.5%	81	82	1.2%	1	1	0.0%	108	119	10.2%
Rumford	82	159	93.9%	225	424	88.4%	11	5	-54.5%	318	588	84.9%
South Paris	100	251	151.0%	250	502	100.8%	5	20	300.0%	355	773	117.7%
Penobscot	420	915	117.9%	1,269	1,692	33.3%	80	43	-46.3%	1,769	2,650	49.8%
Bangor	410	879	114.4%	1,004	1,301	29.6%	59	18	-69.5%	1,473	2,198	49.2%
Lincoln	3	10	233.3%	89	171	92.1%	6	10	66.7%	98	191	94.9%
Newport	7	26	271.4%	176	220	25.0%	15	15	0.0%	198	261	31.8%
Piscataquis	22	33	50.0%	51	102	100.0%	2	19	850.0%	75	154	105.3%
Sagadahoc	96	186	93.8%	320	446	39.4%	22	16	-27.3%	438	648	47.9%
Somerset	155	260	67.7%	474	504	6.3%	26	13	-50.0%	655	777	18.6%
Waldo	108	201	86.1%	301	335	11.3%	7	2	-71.4%	416	538	29.3%
Washington	105	151	43.8%	234	276	17.9%	20	16	-20.0%	359	443	23.4%
Calais	46	73	58.7%	91	120	31.9%	10	1	-90.0%	147	194	32.0%
Machias	59	78	32.2%	143	156	9.1%	10	15	50.0%	212	249	17.5%
York	728	1,017	39.7%	2,692	3,659	35.9%	102	92	-9.8%	3,522	4,768	35.4%
TOTAL	4,550	7,401	62.7%	13,171	17,836	35.4%	522	444	-14.9%	18,243	25,681	40.8%

## Columns

<b>2019</b>	Number of cases having at least one charge without a disposition, and without a currently active warrant as of December 8, 2019
<b>2023</b>	Number of cases having at least one charge without a disposition, and without a currently active warrant as of December 8, 2023
<b>% Diff</b>	Percent change in pending cases from 2019 to 2023. Red percentages represent an increase, green percentages a decrease.

Cases are categorized based on the most serious offense charged. Local ordinance violations filed with the courts are not included in the reported counts.

## CHAPTER 37

## MAINE COMMISSION ON INDIGENT LEGAL SERVICES

**§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, ~~work, school or other~~ address, ~~home~~ telephone number, ~~home~~ facsimile number, ~~home~~ e-mail address, ~~personal~~ cellular telephone number, ~~personal~~ pager number and any information protected under Maine Rules of Evidence 501 – 509, Maine Rule of Professional Conduct 1.6, or otherwise the protected by an attorney-client relationship. [PL 2011, c. 260, §1 (NEW).]

B. "~~Personal contact~~Contact information" means ~~home~~any 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~~non-counsel funds" 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~~non-counsel 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 in the possession, or under the control, of the commission~~ 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 protected under Maine Rules of Evidence 501 – 509, Maine Rule of Professional Conduct 1.6, or otherwise protected by an attorney-client relationship ~~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 remains confidential. [PL 2011, c. 260, §1 (NEW).]

C. Personal contact information of ~~a commission-rostered attorney~~ assigned and contract counsel 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~~ non-counsel funds that is submitted by ~~an indigent party or by an attorney~~ on behalf of a consumer of indigent legal services, or a person otherwise seeking commission funding for non-counsel services ~~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 in or through a complaint, whether formal or informal, or when performing an evaluation or investigation of an attorney is confidential, subject to the following exceptions:

(1) ~~except that it~~ Information— that would be confidential under subsection F may be disclosed to the attorney being evaluated or investigated.

(2) The commission, through its Executive D ~~director or designee, may nevertheless disclose information that would be confidential under this paragraph~~ subsection F to the Maine Assistance Program and/or the Maine Board of Overseers of the Bar.

(3) If the attorney who was evaluated or investigated is suspended or removed from eligibility to accept MCILS case assignments and appeals that decision, information that would be confidential under subsection F is no longer confidential if the Commission holds a full public hearing on the appeal, except that information which is protected by attorney-client privilege or is confidential by statute, the Maine Rules of Evidence, or the Maine Rules of Professional Conduct remains confidential.

[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~~ confidential-information necessary for the commission to carry out its functions, including, without limitation, 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 received from the Judicial Department 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).]

**4. Confidential or Privileged Client Information in the possession of Employed Counsel.** All material created, received, obtained, maintained, or stored by, or on behalf of, any Employed Counsel, that is protected under– Maine Rules of Evidence –501 – 509, Maine Rule of Professional Conduct 1.6, or otherwise protected by an attorney-client relationship is remains confidential.

## SECTION HISTORY

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

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## Proposed text - Maine

### [15 M.R.S. § 3306. Right to counsel](#)

3. All juveniles shall be considered indigent for the purposes of appointment of counsel.
  - A. If, after counsel is appointed, a juvenile seeks to retain private counsel, appointed counsel shall file a motion to withdraw after private counsel has entered an appearance.

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#### *Other similar statutes*

- Each of these use the term “presumed” rather than “considered.”
  - In NC, the presumption is non-rebuttable.
  - In LA, it’s unclear whether presumption can be rebutted.
  - In PA, the presumption is rebuttable but the court cannot consider the resources of the family / parent / guardian to rebut.

[Louisiana](#) - presumes all children to be indigent. No language indicates whether or not this presumption is rebuttable.

#### Art. 320. Indigency determination

- A. **For purposes of the appointment of counsel, children are presumed to be indigent.**
- B. Except as provided in [Article 608](#), the determination of the indigency of any person entitled to counsel in accordance with this Code may be made by the court at any stage of the proceedings. If necessary, the person shall be allowed to summon witnesses to testify before the court concerning the person's financial ability to employ counsel.
- C.
  - (1) In determining whether a person is indigent and entitled to the appointment of counsel, the court shall consider whether the person is a needy person and the extent of the person's ability to pay.
  - (2) The court shall consider such factors as income, property owned, outstanding obligations, and the number and ages of dependents.
  - (3) Release on bail shall not alone disqualify either an adult or child for appointment of counsel.
- D. In each case, subject to the penalty of perjury, the person shall certify in writing the material factors relating to the person's ability to pay as the court prescribes.

La. Child. Code art. 320

[Pennsylvania](#) - presumes all children to be indigent. Allows this presumption to be rebutted if the court determines the child has sufficient financial resources to retain counsel, but does not allow the court to consider the resources of the child's parent, guardian, or custodian when making this determination.



§ 6337.1. Right to counsel for children in dependency and delinquency proceedings.

[...]

(b) Children in delinquency proceedings.--

- (1) **In delinquency cases, all children shall be presumed indigent.** If a child appears at any hearing without counsel, the court shall appoint counsel for the child prior to the commencement of the hearing. The **presumption** that a child is indigent **may be rebutted** if the **court ascertains** that the **child has the financial resources to retain counsel of his choice at his own expense**. The **court may not consider the financial resources of the child's parent, guardian or custodian** when ascertaining whether the child has the financial resources to retain counsel of his choice at his own expense.
- (2) Although a child alleged to be delinquent may appear with counsel at the intake conference conducted by a juvenile probation officer following the submission of a written allegation, counsel shall not be mandatory at the proceeding.
- (3) Notwithstanding paragraph (1), a child who is 14 years of age or older may waive the right to counsel if the court has determined that the waiver is knowingly, intelligently and voluntarily made after having conducted a colloquy with the child on the record, in accordance with the Pennsylvania Rules of Juvenile Court Procedure, and the hearing for which waiver is sought is not one of the following:
  - (i) An informal detention or shelter hearing under section 6332 (relating to informal hearing).
  - (ii) A hearing to consider transfer to criminal proceedings under section 6355 (relating to transfer to criminal proceedings).
  - (iii) A hearing to consider evidence on the petition or accept an admission to an alleged delinquent act under section 6341 (relating to adjudication).
  - (iv) A hearing to consider evidence as to whether the child is in need of treatment, supervision or rehabilitation under section 6341.
  - (v) A disposition hearing under section 6341 or 6352 (relating to disposition of delinquent child).
  - (vi) A hearing to modify or revoke probation or other disposition entered under section 6352.
- (4) The court may assign stand-by counsel if the child waives counsel at any hearing.
- (5) If a child waives counsel for any hearing, the waiver shall only apply to that hearing and the child may revoke the waiver of counsel at any time. At any subsequent hearing, the child shall be informed of the right to counsel.

42 PA. Cons. Stat. Ann. § 6337.1(b) (1)

[North Carolina](#) - conclusive presumption that juveniles are indigent under the juvenile code.



§ 7B-2000. Juvenile's right to counsel; presumption of indigence.

- (a) A juvenile alleged to be within the jurisdiction of the court has the right to be represented by counsel in all proceedings. **Counsel for the juvenile shall be appointed** in accordance with rules adopted by the Office of Indigent Defense Services, **unless counsel is retained for the juvenile**, in any proceeding in which the juvenile is alleged to be (i) delinquent or (ii) in contempt of court when alleged or adjudicated to be undisciplined.
- (b) **All juveniles shall be conclusively presumed to be indigent**, and it shall not be necessary for the court to receive from any juvenile an affidavit of indigency.

N.C. GEN. STAT. § 7B-2000 (2012).

## 94-649 — MAINE COMMISSION ON INDIGENT LEGAL SERVICES

### Chapter 3: ELIGIBILITY REQUIREMENTS FOR SPECIALIZED ~~CASE TYPES~~ PANELS

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

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

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. Co-counsel. "Co-counsel" means an attorney who works with another attorney on a particular case. Both attorneys must be counsel of record, professionally responsible for the case, and actively participate in the representation of the client.
3. 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.

~~Domestic Violence.~~ "Domestic Violence

~~2.4.Homicide.~~ "Homicide" 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;~~
- A. C. — All offenses contained in 17-A M.R.S.A. § 201 (Murder), § 202 (Felony Murder), § 203 (Manslaughter), § 152 (Attempted Murder), and § 152-A (Aggravated Attempted Murder);
- B. 29-A M.R.S.A. § 241(1-A)(D)(1-A) (Criminal OUI Causing Death); and

~~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.~~

~~A. 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, or to commit any crime involving substantially similar conduct.~~

C.

~~2. **Serious Violent**Major Felony. “Serious Violent”Major Felony” means:~~

~~5.~~

~~3. 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), 208-D (Domestic Violence Aggravated Assault), 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).~~

A.

~~B. B. — “Serious Violent”Major Felony” includes crimes involving substantially similar conduct ~~in another jurisdiction.~~~~

C.

~~C. “Serious Violent”Major Felony” also includes Criminal Conspiracy under 17-A M.R.S.A. § § 151, Criminal Attempt under 17-A M.R.S.A. § 152, and Criminal Solicitation under 17-A M.R.S.A. § 153 to commit any of the offenses listed above, or to commit a crime involving substantially similar conduct.~~

~~3.6.~~ Sex Offense. “Sex Offense” means:-

A. A. — An offense under 17-A M.R.S.A. §§ 251-259-A253-260 (Sexual Assaults), §§ 281-285 (Sexual Exploitation of Minors), § 556 (Incest), § 511(1)(D) (Violation of Privacy), § 852 (Aggravated Sex Trafficking), § 853 (Sex Trafficking), and § 855 (Patronizing Prostitution of Minor or Person with Mental Disability).

B. B. — “Sex Offense” includes crimes involving substantially similar conduct ~~in another jurisdiction.~~

C. C. — “Sex Offense” also includes Criminal Conspiracy under 17-A M.R.S.A. § 151, Criminal Attempt under 17-A M.R.S.A. § 152, and Criminal Solicitation under 17-A M.R.S.A. § 153 to commit any of the offenses listed above, or to commit a crime

involving substantially similar conduct.

7. Operating Under the Influence (OUI). “OUI” means:

A. All offenses under 29-A M.R.S.A. § 2411 (Criminal OUI).

B. “OUI” includes crimes involving substantially similar conduct.

C. OUI 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, or to commit a crime involving substantially similar conduct.

8. Domestic Violence (DV). “Domestic Violence” means:

A. Offenses denominated as Domestic Violence under 17-A M.R.S.A. § 207-A (Domestic Violence Assault), § 208-D (Domestic Violence Aggravated Assault), § 209-A (Domestic Violence Criminal Threatening), § 210-B (Domestic Violence Terrorizing), § 210-C (Domestic Violence Stalking), and § 211-A (Domestic Violence Reckless Conduct).

B. Any offense alleged to have been committed against a family or household member or dating partner as defined by 19-A M.R.S.A. § 4002.

C. Any offense of stalking under 17-A M.R.S.A. § 210-A (Stalking)

D. Violation of a protective order under 17-A M.R.S.A. § 506-B.

E. “Domestic Violence” includes crimes involving substantially similar conduct.

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, or to commit any crime involving substantially similar conduct.

9. Juvenile Defense. “Juvenile Defense” means any juvenile crime, as defined by 15 M.R.S.A. § 3103.

10. Child Protective. “Child Protective” means a Maine District Court proceeding in which a parent is entitled to counsel pursuant to 22 M.R.S.A. § 4005(2).

11. Child Protective Appeal. “Child Protective Appeal” means an appeal to the Maine Supreme Judicial Court of any order terminating parental rights.

12. Homicide Appeal. “Homicide Appeal” means an appeal to the Maine Supreme Judicial Court of a conviction involving a Homicide offense, as defined by Section 1(4) of this Chapter.

13. Other Criminal Appeal. “Other Criminal Appeal” means an appeal to the Maine Supreme Judicial Court of any criminal conviction other than a conviction for a Homicide offense, as defined by section 1(4) herein.

14. Lawyer of the Day (LOD). “LOD” means:

A. An attorney who has been designated by the Commission as Eligible for case assignments and is designated by a court pursuant to M.R.U. Crim. P. 5(e) for the limited purpose of representing a defendant or defendants at their arraignment or initial appearance.

15. Proceeding Type. “Proceeding Type” means the type of proceeding for which an attorney may serve as LOD. The three Proceeding Types are in-custody, walk-in, and juvenile.

A. In-Custody: arraignments or initial appearances for defendants in adult criminal cases who are incarcerated.

B. Walk-In: arraignments or initial appearances for defendants in adult criminal cases who are not incarcerated.

C. Juvenile: arraignments or initial appearances for juvenile defendants.

16. LOD Roster. “LOD Roster” means the list of attorneys designated as Eligible by the Commission to serve as LOD in a Proceeding Type for a particular court.

17. Shadow Session. “Shadow Session” means a session in which an attorney who has applied for LOD eligibility “shadows” an attorney who has been designated as Eligible for LOD for a complete session of the Proceeding Type for which the attorney is applying. The applicant must be present with the Eligible LOD for the entire LOD appearance, including in client interviews (with client consent), and in the courtroom. Rules of client confidentiality and privilege apply to all communications between the client, the LOD, and the attorney participating in a shadow session. If it is a morning LOD session that continues into the afternoon, the applicant must be present the entire time for what will be counted as one shadow session. If the shadowing attorney is Eligible to receive Commission case assignments at the time of the shadow session, the shadowing attorney is Eligible for payment in accordance with Chapter 301, Section 5 of the Commission rules.

18. Resource Counsel. “Resource Counsel” means an attorney who provides mentoring and other services to Eligible counsel as delineated in Chapter 301 of the Commission rules.

19. MCILS Liaison. “MCILS Liaison” means the attorney who performs services for clients as part of a specialty court team but who has not otherwise been appointed to represent a specific client on a specific docket.

4.20. Specialized Case Types Panels. “Specialized Case Types Panels” means those ~~cases~~ types of assignments 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~~ panels:

- A. Homicide, ~~including OUI manslaughter~~
- B. Sex ~~offenses~~ Offenses
- ~~C. — Serious violent felonies~~
- C. Major Felonies
- D. Operating ~~under~~ Under the ~~influence~~ Influence
- E. Domestic ~~violence~~ Violence
- F. Juvenile ~~defense~~ Defense
- G. Child Protective ~~custody matters~~
- ~~H. — [Repealed]~~
- H. Child Protective Appeals
- I. Homicide Appeals
- J. Other Criminal Appeals
- K. In-Custody Lawyer of the Day
- L. Walk-In Lawyer of the Day
- M. Juvenile Lawyer of the Day
- N. Resource Counsel
- O. MCILS Liaison

## 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 eligibility for a Specialized Case Types Panel~~ to demonstrate the minimum qualifications necessary to be placed on a ~~Specialized Case Type Roster Panel~~. An applicant for a ~~Specialized Case Type Roster Panel~~ must present additional information or documents 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 Panel~~. 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~~ their sole discretion, ~~suspend or~~ remove an attorney from a ~~Specialized Case Type Roster Panel~~ at any time if there is reasonable grounds to believe the attorney is not meeting the minimum ~~qualifications and standards as determined by the Executive Director, or his or her designee.~~

~~4.3. This subsection does not exempt an attorney from satisfying the eligibility 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 Panels.

~~1. 1.—~~**Homicide.** ~~In order to To~~ be rostered **Eligible** for homicide **Homicide** cases an attorney must:

- A. Have at least five years of criminal ~~law~~**defense** practice experience;-
- B. Have tried before a ~~judge or jury, individually or as first chair~~**co-counsel**, at least five felony cases within the last ten years, at least two of which were ~~serious violent felony, homicide~~**Major Felony, Homicide**, or Class C or higher ~~sex offense~~**Sex Offense** cases, AND at least two of which were jury trials;
- C. Have tried ~~as first chair before a homicide~~**jury, individually or as co-counsel**, at least **one 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~~**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~~**Homicide;**
- 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~~**Homicide**, including OUI manslaughter. The letters of reference must be submitted directly to the Executive Director, ~~or his or her designee, by the author.~~**authors; and**

**G. 2.—****Certify that they have read, understand, and agree to comply with all Commission standards of practice.**

~~2. Sex Offenses.~~ ~~In order to To~~ be rostered **Eligible** for ~~sex offense~~**Sex Offense** cases an attorney must:

- A. Have at least three years of criminal ~~law~~**defense** practice experience;

- B. Have tried before a ~~judge~~jury, individually or jury as ~~first chair~~co-counsel, at least three felony cases ~~in~~within 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~~Sex Offense; and
  - D. Certify that they have read, understand, and agree to comply with all Commission standards of practice.
  - E. If the applicant seeks a waiver of any of these eligibility requirements, 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 by the authors; and
3. **Major Felonies.** To be Eligible for Major Felony cases an attorney must:
- A. Have at least two years of criminal defense practice experience;
  - B. Have tried before a jury, individually or as co-counsel, at least four criminal cases in the last ten years; and
  - C. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a Major Felony; and
  - D. Certify that they have read, understand, and agree to comply with all Commission standards of practice.



~~D.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 ~~serious-violent felony~~ **Major Felony**. The letters of reference must be submitted directly to the Executive Director, ~~or his or her designee~~, by the ~~author~~ **authors**.

~~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~~ **To** be ~~rostered~~ **Eligible** for OUI cases an attorney must:

- A. Have at least one year of criminal ~~law~~ **defense** practice experience;
- B. Have tried before a ~~judge or jury~~, **individually or** as ~~first chair~~ **co-counsel**, 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.~~ **Certify that they have read, understand, and agree to comply with all Commission standards of practice.**

~~E.F.~~ 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~~ **authors**.

~~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~~ **To** be ~~rostered~~ **Eligible** for ~~domestic violence~~ **Domestic Violence** cases an attorney must:

- A. Have at least one year of criminal ~~law~~ **defense** practice experience;
- B. Have tried before a ~~judge or jury~~, **individually or** as ~~first chair~~ **co-counsel**, 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~~ **Domestic Violence** defense, which ~~included~~ must include specific 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~~ **Domestic Violence** crime; and
- E. Certify that they have read, understand, and agree to comply with all Commission standards of practice.**
- ~~E.F.~~ F. 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~~ **Domestic Violence** crime. The letters of reference must be submitted directly to the Executive Director, ~~or his or her designee~~, by the ~~author~~ authors.
- ~~F.~~ F. Letters of reference shall also be submitted upon the request of the Executive Director, ~~or his or her designee~~.
- 6. ~~6.~~ Juvenile Defense.** ~~In order to~~ To be rostered **Eligible** for ~~felony, sex offense, and bind-over juvenile defense~~ **Juvenile Defense** cases an attorney must:
- A. ~~/Repealed/~~.
- B. ~~B.~~ For ~~felony~~ misdemeanor cases:**
- 1) Have completed the Commission's Juvenile Law Minimum Standards Training; and ~~sex offense~~**
  - 2) Certify that they have read, understand, and agree to comply with all Commission standards of practice.**
- C. ~~For felony cases; and~~ Sex Offense cases:**
- 1) ~~1)~~ Have at least one year of juvenile ~~law~~ defense practice experience;**
  - 2) ~~2)~~ Have handled at least 10 juvenile cases to conclusion;-**
  - 3) ~~3)~~ Have tried at least 5 contested juvenile hearings (including but not limited to: detention hearings, evidentiary hearings, adjudication hearings, and dispositional hearings);, individually or as co-counsel, within the past ten years;**

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;~~

4) ~~5) Have completed the Commission's Juvenile Law Minimum Standards Training;~~

5) Provide a letter explaining reasons for interest in and qualifications for representing juveniles in felony and ~~sex offense~~ **Sex Offense** cases; and

6) ~~6) Certify that they have read, understand, and agree to comply with all Commission standards of practice.~~

7) 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~~ **Sex Offenses** cases. The letters of reference must be submitted directly to the Executive Director, ~~or his or her designee,~~ by the ~~author~~ **authors**.

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.~~

D. ~~C.~~ — For Bind-over **Over** Hearings:

1) ~~1) Have at least two years of juvenile law defense practice experience;~~

2) ~~2) Have handled at least 20 juvenile cases to conclusion ~~in~~ within the past ten years;~~

3) ~~3) Have tried, individually or as co-counsel, 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) ~~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 and adolescent brain development; adolescent mental health diagnosis and treatment; and issues and case law related to competency, bind-over~~

procedures, and the collateral consequences of juvenile adjudications;

5) ~~5)~~ Provide a letter explaining reasons for interest in and qualifications for representing juveniles in bind-over hearings; and

6) ~~6)~~ Certify that they have read, understand, and agree to comply with all Commission standards of practice.

7) 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~~ authors.

~~7) — Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.~~

E. 7.—For Bound-Over Cases:

1) If a case is bound-over, the assigned attorney must be Eligible for the adult criminal case types implicated by the charges, or have Eligible co-counsel appointed in the matter.

7. ~~Child Protective Custody Matters. In order to, To~~ be ~~restored~~ Eligible to represent parents in ~~protective custody~~ Child Protective cases an attorney must:

A. A.—~~Repealed~~.

B. B.—Satisfy one of the following litigation requirements:

1) ~~Have conducted—provided representation to parents in at least four contested hearings in civil or criminal~~ three unrelated Child Protective cases from the preliminary protective order stage through disposition of the cases within the last five ~~past ten years; or~~

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;~~

2) ~~D.~~ Serve as co-counsel with an attorney who is Eligible to receive Commission Child Protective case assignments on two or more assigned Child Protective cases for at least twelve months prior to the date of the application.

C. Complete the Commission's Child Protective Minimum Standards Training;

D. Provide a letter explaining reasons for interest in and qualifications for

representing parents in ~~protective custody~~ **Child Protective** proceedings; and

**E. E. — Certify that they have read, understand, and agree to comply with all Commission standards of practice.**

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-

F. \_\_\_\_\_ applicant is qualified to represent parents in ~~protective custody~~ **Child Protective** cases. The letters of reference must be submitted directly to the Executive Director, ~~or his or her designee~~, by the ~~author~~ **authors**.

~~E. 1. — Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.~~

~~G. 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~~ **fewer** than ~~6~~ **six** months of child protection experience, then the attorney of record must file a request with the **MCHS Commission** for a more experienced attorney to serve as ~~a second chair~~ **co-counsel** to assist ~~the attorney of record~~ **them** with the termination of parental rights hearing.

## ~~8. 8. /~~ **Repealed.**

~~9. 9. Law~~ **Maine Supreme Judicial Court Appeals.** ~~In order to be rostered for To accept assignments to Law~~ **Maine Supreme Judicial Court** ~~appeals in cases where trial counsel is not continuing on appeal~~ **Appeals**, an attorney must ~~be~~ **Eligible** for the applicable appeal type as outlined below.

**A. Child Protective Appeals.** To be **Eligible** to accept assignments **to Child Protective Appeals**, an attorney must satisfy the below requirements.

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;~~

~~1) Applicants who have provided representation in three in five or more appeals, including appeals to the Law~~ **Child Protective Appeals** ~~in the Maine Supreme Judicial Court and Rule 80B or Rule 80C appeals to the Superior Court, must submit~~, either individually or as co-counsel;

~~2) Provide copies of all briefs that they have the attorney filed, and the opinions/decisions rendered in the three appeals~~ **five** ~~most closely pre-dating recent appeals the date attorney has handled;~~

~~3) Have been deemed~~ **Eligible** ~~to accept PC case assignments pursuant to Section 3(7) of their~~ **this Chapter;**

~~B. 4) Demonstrate, through application for placement on the appellate roster and submitted briefs, exceptional legal research, writing, and analytical skills;~~

5) 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

6) Certify that they have read, understand, and agree to comply with all Commission standards of practice.

If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does

7) Applicants who have 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 by the authors.

8) An attorney is not Eligible to represent a client in a Child Protective Appeal when the attorney was trial counsel for that case. If a client wishes to appeal a Child Protective case, the trial attorney shall file a motion to withdraw as counsel simultaneously with the notice of appeal.

**B. Homicide Appeals.** If trial counsel wants to continue representation on a Homicide appeal, the attorney must either be Eligible for Homicide Appeals by the time the notice of appeal is filed, or file a motion for co-counsel or motion to withdraw simultaneously with the notice of appeal. To be Eligible to accept assignments to Homicide appeals, an attorney must:

1) Have provided representation in three seven or more appeals must submit criminal appeals in the Maine Supreme Judicial Court, either individually or as co-counsel, within the last ten years;

2) Have completed oral argument in at least two criminal appeals before the Maine Supreme Judicial Court;

3) Provide copies of any all 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: the attorney filed, and the opinions/decisions rendered in the seven most recent criminal appeals the attorney has handled;

4) Demonstrate, through application and submitted briefs, exceptional legal research, writing, and analytical skills;

5) 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

6) Certify that they have read, understand, and agree to comply with all Commission standards of practice.

- 7) 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 by the authors.

**C. Other Criminal Appeals.** If trial counsel wants to continue representation on an Other Criminal Appeal, the attorney must either be Eligible for Other Criminal Appeals by the time the notice of appeal is filed, or file a motion for co-counsel or motion to withdraw simultaneously with the notice of appeal. To be Eligible to accept assignments to Other Criminal Appeals, an attorney must:

- 1) Have provided representation in five or more criminal appeals in the Maine Supreme Judicial Court, either individually or as co-counsel, within the last ten years;
- 2) Have completed oral argument in at least one criminal appeal before the Maine Supreme Judicial Court;
- 3) Provide copies of all briefs the attorney filed, and the opinions/decisions rendered in the five most recent criminal appeals the attorney has handled;
- 4) Demonstrate, through application and submitted briefs, exceptional legal research, writing, and analytical skills;
- 5) 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
- 6) Certify that they have read, understand, and agree to comply with all Commission standards of practice.

~~E.7)~~ 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~~. authors.

~~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.~~

~~10.40.~~ **Post-Conviction Review.** ~~In order to~~ To be ~~restored~~ Eligible for post-conviction review cases an attorney must:

- A. Have at least three years of criminal ~~law~~ defense 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; ~~and~~
- E. ~~Letters of reference~~ Certify that they have read, understand, and writing agree to comply with all Commission standards of practice.
- F. Writing samples shall also be submitted upon the request of the Executive Director;.

## 11. Lawyer of the Day (LOD).

### A. LOD Specialized Panels:

- 1) **In-Custody.** To be Eligible for LOD for in-custody proceedings, an attorney must:
  - a. Complete the Commission's LOD Minimum Standards Training;
  - b. Be currently Eligible to accept Commission criminal case assignments;
  - c. Have previously been deemed Eligible for OUI and Domestic Violence cases in accordance with Chapter 3 of the Commission Rules;
  - d. Complete three full in-custody LOD shadow sessions on three separate days. The Eligible LOD(s) who were shadowed must verify in writing to the Commission that the applicant completed each shadow session; and
  - e. Certify that they have read, understand, and agree to comply with all Commission standards of practice.
- 2) **Walk-In.** To be Eligible for LOD for walk-in proceedings, an attorney must:
  - a. Complete the Commission's LOD Minimum Standards Training;
  - b. Be currently Eligible to accept Commission criminal case assignments;

- c. Have previously been deemed Eligible for OUI and Domestic Violence cases in accordance with Chapter 3 of the Commission Rules;
- d. Complete three full walk-in LOD shadow sessions on three separate days. The Eligible LOD(s) who were shadowed must verify in writing to the Commission that the applicant completed each shadow session; and
- e. Certify that they have read, understand, and agree to comply with all Commission standards of practice.

3) **Juvenile.** To be Eligible for juvenile LOD proceedings, an attorney must:

- a. Complete the LOD Minimum Standards Training prior to or ~~his~~ within three months of being Eligible for LOD assignments;
- b. Be currently Eligible to accept Commission juvenile case assignments;
- c. Have previously been deemed Eligible for juvenile felony cases in accordance with Chapter 3 of the Commission Rules;
- d. Complete three full juvenile walk-in LOD shadow sessions on three separate days. The Eligible LOD(s) who were shadowed must verify in writing that the applicant completed each shadow session;
- e. Complete three full juvenile in-custody LOD shadow sessions on three separate days. The Eligible LOD(s) who were shadowed must verify in writing that the applicant completed each shadow session; and
- f. Certify that they have read, understand, and agree to comply with all Commission LOD standards of practice.

**12. MCILS Liaison.**

A. To be Eligible to serve as a MCILS Liaison, an attorney must:

- 1) Be Eligible to accept Commission case assignments;
- 2) Have at least five years of experience practicing criminal defense;
- 3) Demonstrate a history of providing high quality legal services;
- 4) Have experience practicing law in the court(s) in which counsel is seeking to serve as the MCILS Liaison; and
- 5) Certify that they have read, understand, and agree to comply with all Commission standards of practice.

**13. Resource Counsel.**

A. To be Eligible to serve as Resource Counsel, an attorney must:

- 1) Submit three letters of reference from attorneys with whom the attorney applicant does not practice that address the attorney's ability to work with and advise other attorneys of varying experience levels;
- 2) Have at least five years' experience actively practicing in the area of law for which counsel is seeking eligibility as Resource Counsel;
- 3) Be currently **Eligible** to accept Commission case assignments;
- 4) Demonstrate a history of providing high quality legal services;
- 5) Demonstrate exceptional litigation skills and experience;
- 6) Demonstrate high ethical standards;
- 7) Have **not had a Commission investigation** or ~~her designee~~ Board of Bar Overseers **complaint** which resulted in a finding that the attorney violated any **Commission rule or Rule of Professional Responsibility** within the three years immediately preceding counsel's Resource Counsel **Application**.
- 8) **Certify that they have read, understand, and agree to comply with all Commission standards of practice.**

B. Counsel must reapply to serve as Resource Counsel on an annual basis. That application is due at the same time as the **Commission's** annual renewal.

C. Counsel serves as Resource Counsel at the discretion of the Executive Director. The Executive Director may terminate someone's eligibility to serve as Resource Counsel at any time, with or without cause.

#### **SECTION 4. Waiver of Certain Eligibility Requirements**

1. An attorney who wishes to receive assignments for one or more of the ~~specialized case types~~ **Specialized Panels** listed above but who does not meet both requirements of: ~~(1) a~~ years of practice experience; ~~and (2) or (b)~~ trial or litigation experience, may seek a waiver of either, but not both, requirements.
2. 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 **high-quality** representation to the indigent people whose charges or litigation matters are covered by this rule.
3. An attorney may apply for a conditional waiver if additional time is needed to meet CLE requirements.
4. The Executive Director, ~~or his or her designee,~~ may consider other litigation experience,

and total years of practice, ~~and regional conditions and needs~~ in granting or denying a waiver to any ~~particular~~ attorney.-

~~STATUTORY~~ **SECTION 5. Overlapping Offenses.**

1. If a case involves multiple offenses that are categorized within **Specialty Panels**, counsel must be **Eligible** for all **Specialty Panels** that are implicated to accept the case.
2. If an offense is categorized as multiple different **Specialty Panels**, the attorney must be **Eligible** for all **Specialty Panels** implicated by the offenses to accept assignment the case.

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

EFFECTIVE DATE:

       July 8, 2011 ~~— filing 2011-181 (Final adoption, major substantive)~~

AMENDED:

~~— June 10, 2016 – filing 2016-091 (Final adoption, major substantive)~~

### Detailed Basis Statement for Chapter 3

The Commission is charged with providing “...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.” 4 M.R.S. § 1801. MCILS is also statutorily obligated to develop standards for “minimum experience, training and other qualifications for contract counsel and assigned counsel...” 4 M.R.S. § 1804(B). The right to effective counsel is protected by the United States Constitution and the Constitution of Maine.

Chapter 3 is promulgated to ensure that the Commission fulfills its statutory and constitutional obligations to ensure the delivery of high-quality representation to indigent persons by setting eligibility standards for determining which attorneys are qualified to represent clients in specialized cases.

# Maine Commission on Indigent Legal Services

## Proposed Rule: Chapter 3, Eligibility Requirements for Specialized Cases

### Response to Public Comments

#### **Comment #1:**

The rostering process is unduly burdensome and is one of the barriers to getting new attorneys in the rural areas. Barriers to rostering attorneys imposes a financial burden on new lawyers or their employers. It takes too long for an attorney to complete the core trainings for rostering.

Attorney Dennis Mahar

#### **MCILS Response:**

The Commission is statutorily obligated to develop standards for “minimum experience, training and other qualifications for contract counsel and assigned counsel...” 4 M.R.S. § 1804(B). The eligibility requirements contained within the proposed Chapter 3 are designed to fulfill that obligation in a meaningful way. The proposed eligibility requirements only apply to specialized panels. Chapter 2 provides the eligibility requirements for non-specialized cases and are minimal. For an attorney to be eligible for other misdemeanors, other felonies, drug offenses, and probation violations, they only need to submit a successful application and complete a two-day minimum standards training or apply for a waiver of the training requirement. The minimum standards training is offered multiple times per year for CLE credit. An attorney who is unable to attend scheduled minimum standards training can schedule an individually moderated replay of the training. Staff conduct moderated replays of the training several times per year. The Criminal Law Minimum Standards Training has been offered approximately twelve times in 2023.

The requirements specified in the proposed Chapter 3 pertain to automatic eligibility. The proposed Rule includes a provision for an attorney to request a waiver from the litigation or years of experience requirements. Thus, an attorney who does not satisfy all the enumerated rostering requirements may nonetheless be deemed eligible for a particular panel if they obtain a waiver.

With permission from MCILS, any attorney who is eligible to receive MCILS case assignments may represent a client in a specialized case if the attorney has co-counsel who is eligible for the applicable specialized panel. Thus, Chapter 3 is not a barrier to an attorney accepting cases of any type and encourages attorneys to gain the requisite experiencing by working with eligible co-counsel.

#### **Comment #2:**

Criminal defense experience is more relevant than criminal law experience.

Attorney Rory McNamara

**MCILS Response:**

The Commission has considered this comment. There are various perspectives on this point. Those who support the contention that criminal defense experience is more relevant than criminal law experience argue that representing a person is unique and requires a different skillset than representing the State. Criminal defense attorneys must have interpersonal skills, the ability to thoroughly investigate allegations, and the ability to prioritize and advocate for a client's preferences over their own. Those who support the requirement of criminal defense experience also point out that such a requirement does not render prosecutorial experience meaningless; rather, that experience may be a factor in determining whether the applicant receives a waiver. Those who support a criminal law experience requirement argue that the skills used by prosecutors, particularly trial skills, translate into defense work. Another point that has been made is that there are attorneys who have decades of prosecutorial experience who would not be facially eligible for some of the specialized panels under the proposed Rule.

**Comment #3:**

Automatic-qualification standards should be stringent.

Attorney Rory McNamara

**MCILS Response:**

The Commission agrees with this comment. The Commission believes that the proposed requirements for automatic qualification are appropriately stringent.

**Comment #4:**

There has been discussion that these proposed standards are causing the problem of not being able to find counsel for cases. The current standards and proposed standards are doing no such thing. There are hundreds if not thousands of cases that need lawyers for other felonies and other misdemeanors, which do not require any specialized eligibility. If there were a bunch of lawyers willing to take cases but for the specialized requirements, they would have already gone on the roster. This will not exacerbate the shortage of attorneys.

Attorney Robert Ruffner

**MCILS Response:**

The Commission agrees that the proposed Chapter 3 will not exacerbate the shortage of attorneys because: Chapter 3 does not apply to other felonies, other misdemeanors, drug offenses, probation violations, civil commitments, emancipations, or guardianships; an attorney who has been deemed eligible to accept case assignments may represent a client in a specialized case with eligible co-counsel; and, the Rule provides a waiver process for attorneys who cannot meet the automatic qualification standards.

**Comment #5:**

Trial counsel should be prohibited from staying on as appellate counsel in child protective cases. In child protective cases, ineffective assistance of counsel claims can be made on direct appeal so it is important for someone with fresh eyes to look at the case.

Attorney Taylor Kilgore

MCILS Response:

The Commission agrees with this comment because ineffective assistance of counsel claims may be raised on direct appeal in child protective cases. Because ineffective assistance claims in criminal cases are raised via post-conviction review (PCR) proceedings, and new counsel is appointed to the client in the PCR, the Commission does not think that Chapter 3 must require new counsel on appeal in a criminal case. The Commission encourages trial counsel in criminal cases to evaluate whether it is prudent to seek appointment of successor counsel in cases that are appealed.

Comment 6:

22 MRS § 4006 automatically continues representation for trial counsel once an appeal has been filed. We do not have enough attorneys on the child protective appellate roster to remove trial counsel from pool of people who can handle the appeals. This proposed rule would also require trial counsel to withdraw anytime they litigate jeopardy and lost because the client could pursue ineffective assistance of counsel.

Attorney Julian Richter

MCILS Response:

22 MRS § 4006 states that, “Any attorney appointed to represent a party in a District Court proceeding under this chapter shall continue to represent that client in any appeal *unless otherwise ordered by the court.*” Emphasis added. The proposed Chapter 3 would deem trial counsel ineligible for the appeal and require them to file a motion to withdraw, which would seek an order from the court permitting them to withdraw. The Commission’s position is that the proposed Chapter 3 is not in conflict with 22 MRS § 4006, but for purposes of clarity, the Commission should seek a statutory change to reflect that new counsel must be appointed to parents whose cases are appealed. The lack of available attorneys is a crisis but is not justification for lowering the standards of eligibility for counsel to represent indigent clients. The quality of representation cannot be sacrificed merely to increase the quantity of attorneys.

The proposed rule would not require trial counsel to withdraw if the client appealed a jeopardy order. The rule limits the definition of “child protective appeal” to an appeal of a termination of parental rights order.



**From:** [Donald Alexander](#)  
**To:** [Josh Tardy \(jtardy@rudmanwinchell.com\)](#); [Josh Tardy](#); [Billings, Jim](#); [Maciag, Eleanor](#); [mcarey](#); [Mike Carey](#)  
**Subject:** Fwd: Enduring Ethics Opinion #76  
**Date:** Monday, December 11, 2023 7:04:59 AM  
**Attachments:** [0. EEP 76 12-11-23.docx](#)  
[1. Board of Overseers of the Bar Attorney Services - Ethics Opinions - Opinion.pdf](#)  
[2. MRPC 6.1 + 6.2.docx](#)  
[3. 4 MRS ch37.docx](#)  
[4. CJ Letter to Managing Partners 8-24-23.pdf](#)

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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.

Josh, Mike, Jim, Ellie:

Good morning. Following is an email with attachments I have sent to the Board of Overseers suggesting an update of Enduring Ethics Opinion # 76 in light of the current challenges the courts are facing in finding attorneys to represent indigent individuals. Best. DGA

----- Forwarded message -----

From: Donald Alexander <[donald.g.alexander@gmail.com](mailto:donald.g.alexander@gmail.com)>  
Date: Mon, Dec 11, 2023 at 6:40 AM  
Subject: Enduring Ethics Opinion #76  
To: Aria Eee <[AEee@mebaroverseers.org](mailto:AEee@mebaroverseers.org)>, Julia Sheridan <[jsheridan@mebaroverseers.org](mailto:jsheridan@mebaroverseers.org)>

Aria; Julia:

Good morning. Attached for your consideration is a memo suggesting that the Board review and update Enduring Ethics Opinion # 76, addressing attorneys' ethics obligations when requested by a court to accept an appointment to represent an indigent individual in a case before the court that involves that individual's fundamental constitutional rights. The memo has four attachments.

I hope the Board can give this matter serious consideration in light of the current difficulties in finding counsel to represent indigent clients. If you need further information, I will try to provide it promptly.

Thank you for your consideration. DGA

## **MEMORANDUM: Enduring Ethics Opinion # 76**

December 11, 2023

To: Aria Eee, Executive Director, Board of Overseers of the Bar.  
Julia Sheridan, Bar Counsel, Board of Overseers of the Bar.  
From: Donald G. Alexander, Bar # 00540.<sup>1</sup>

Re: Enduring Ethics Opinion # 76: “Refusal of Court Appointments in Criminal Cases.” Issued December 15, 1986.

The Board of Overseers presentation at the November 16, 2023 Legal Year in Review program indicated that the Board is reviewing and updating several older Enduring Ethics Opinions to assure that they continue to provide guidance addressing ethics issues that arise in today’s law practice.

Enduring Ethics Opinion # 76, Refusal of Court Appointments in Criminal Cases, may be particularly appropriate for review and updating. It issued 37 years ago. It addressed court appointments, and the extent of practicing attorneys’ obligation to accept court appointments to represent indigent criminal defendants, at a time when hourly compensation for representation was very low – I think I recall somewhere around \$30 an hour. That rate was well below going rates charged by attorneys and effectively provided no support for the overhead necessary to maintain a law practice.<sup>2</sup> As a result, accepting criminal appointments could pose a financial hardship for attorneys, particularly attorneys in diverse solo and small form practices, where court appointed work demanded commitment of time and resources that otherwise could be devoted to more lucrative representation in retained criminal cases and in civil, family, probate, and small business matters.

The challenges posed by the low hourly rate were particularly acute in places like Washington County, where the attorneys available to accept court appointments were almost all engaged in diverse solo and small firm practices. As a result of difficulties in getting attorneys to accept court appointments, I filed documents with the Board of Overseers of the Bar seeking to clarify the

<sup>1</sup> This memorandum reflects my personal views and does purport to represent the views or opinions of any organization with which I may be affiliated.

<sup>2</sup> 1986 was well before the day when some attorneys claimed that the only overhead they needed for practice was a cell phone and a computer.

ethical obligation of attorneys asked to accept appointment to represent indigent clients. Others may also have sought guidance from the Board of Overseers as to how to ethically address court appointment requests with the then very low hourly rate of compensation.

In the matter involving the Washington County attorneys, the Board issued an opinion addressing the named attorneys; it determined that no ethics violation had occurred in the circumstances regarding the attorneys' declining court requests to accept appointments to represent indigent defendants. The Board later published Enduring Ethics Opinion # 76, more comprehensively addressing ethics issues when qualified attorneys receive court requests to accept appointments to represent criminal defendants. Enduring Ethics Opinions # 76 is attachment # 1 to this memo.

Much has changed in the last 37 years that justifies review and update of Enduring Ethics Opinion # 76 to address today's challenges in identifying attorneys to represent indigent defendants in criminal cases, child protective cases, and other cases where fundamental constitutional rights of indigent individuals are at issue. Those changes are addressed in paragraphs 1 through 6 below.

**1. Adoption of the Maine Rules of Professional Conduct:** First and foremost, in 2009 the Supreme Judicial Court adopted the Maine Rules of Professional Conduct, replacing the parts of the Maine Bar Rules that previously addressed professional ethics. Part of that revision was adopting Rule 6.1 addressing Voluntary Pro Bono Publico Service, and Rule 6.2 addressing Accepting Appointments. These Rules and supporting comments addressed the ethics related to the profession's obligation and commitment to assist indigent individuals and individuals of limited means in much greater detail than the Bar Rules they replaced. In fact, the Reporter's Notes to Rule 6.2, Accepting Appointments, indicate that Rule 6.2 "has no direct Maine Bar Rule counterpart," with a reference to the replaced Bar Rule addressing lawyers' pro bono obligations.

Rule of Professional Conduct 6.2 states:

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

- (a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;
- (b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or
- (c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

Rules 6.1 and 6.2 and the Reporters' Notes and Comments addressing those Rules is attachment # 2 to this memo.

**2. Creation of MCILS with Primary Responsibility to Appoint Counsel to Represent Indigent Clients:** Effective in 2010, the Legislature enacted Title 4 M.R.S. ch. 37, creating the Maine Commission on Indigent Legal Services. That legislation shifted responsibility for appointments of counsel to represent indigent individuals in criminal, child protective, and other cases with fundamental constitutional rights at stake from the courts to MCILS. However, in practice, most appointments continued to be made by the courts in the first decade of MCILS operation. For a time in 2021, 2022, and the first half of 2023, MCILS assumed a more direct role in making many court appointments.

The legislation creating MCILS did not and could not change the constitutional obligation of the courts to assure that in proceedings where fundamental rights are at stake, reasonably competent counsel is available to assist indigent persons at each critical stage of the court proceedings, unless the right to counsel has been knowingly and voluntarily waived.

Title 4 M.R.S. ch. 37 is attachment # 3 to this memo. The key provisions relating to appointments of counsel for indigent defendants – mostly in criminal and child protective cases - are 4 M.R.S. §§ 1801, 1804(3) (2023).

**3. Impact of the Pandemic on Timely Appointment of Counsel to Represent Indigent Clients:** The great majority of Maine lawyers – those practicing generally and those doing or interested in doing indigent defense work - are competent, ethical, hard-working professionals, willing to go the extra mile, when needed, to achieve a good result for their clients. Even attorneys recently admitted to practice, with their courses in criminal law,

constitutional law, evidence, and other courses, and their legal writing, clinical, and extern work experience, can take some case assignments – as recently admitted attorneys have done for the last 50 years – if they have brief training, available mentoring, and access to the important practice books to provide guidance on the finer points of the law.

Through 2019, at a time when most court appointments for indigent clients were made by judges or trial court clerks, most appointments of counsel for indigent clients in criminal and child protective cases were made before, at, or soon after an individual's first court appearance. Appointments, generally of attorneys in the county or a neighboring county, were from the more than 200 attorneys then on MCILS rosters and available to take appointments, or from other attorneys whom the appointing judge deemed competent, and whom MCILS allowed to be appointed and paid.

In this time, there was increasing concern in Maine's more rural counties that new attorneys were not sufficiently replacing retirements or relocations from local practices. This was generally viewed as an access to justice issue, however, for the most part, appointments of counsel to represent indigent defendants continued to be made in a timely manner, and the appointed attorneys provided representation competently and efficiently.

Beginning in 2020, with the onset of the pandemic, timely appointment of counsel became more difficult, with a decreasing number of attorneys willing to accept appointments. Several factors contributed to this decline in willingness to accept MCILS appointments:

- Rigorous social distancing, by personal choice or health protection rules, limited in person hearings or meetings and deterred many, including attorneys, from wanting to personally interact with people they did not know.

- Personal distancing requirements and court scheduling limits almost immediately led to a large backlog of pending cases – a backlog that, to some extent, continues to this day. The backlog made predicting scheduling of hearings and disposition of cases difficult or impossible, causing more attorneys to avoid MCILS cases. For attorneys with diverse practices, MCILS cases often took priority for what court time there was, prioritizing attending to those cases over matters requiring attention representing private pay clients in family, civil, property, probate and business matters.

-- A 2020 OPEGA report and other studies identified significant problems with MCILS oversight of attorney time reporting and billing practices, including unduly delays, inaccurate time reporting, inconsistent practices, excessive billing, and lack of accountability for errors and mistakes. Beginning with MCILS and staff reorganization in 2021, MCILS developed more specific and consistent requirements for attorney time reporting and billing practices. The more rigorous requirements and increased oversight of attorneys' work have been successful in ending or at least reducing the problems addressed in the OPEGA report. As a result, the Executive and the Legislature have had more inclination to provide greater support to MCILS, with confidence that the funds will be used responsibly and that MCILS reporting about use of its funds and operation of its programs will be accurate. The more rigorous billing, time reporting, and oversight practices, while important to MCILS, caused some attorneys to cease participation in MCILS cases.

-- Beyond factors specific to MCILS work, other societal factors, exacerbated by the pandemic, have caused many professionals to elect to avoid work that involves live personal interaction, confrontations and disputes, and difficult judgements that others may dispute with today's perceived general decline in courtesy and personal respect. These factors have caused increased retirements and declines in persons wanting to do work, or at least do public facing work, in law, education, health care, police and first responders, and many other areas.

**4. Initiatives to Increase Availability of Attorneys for Indigent Defense Work.** In the past year and a half, there have been several important initiatives by the Legislature, the Executive, and MCILS itself to increase the availability of attorneys for indigent defense work.

**A. \$150 Hourly Rate.** Effective in March of 2023, the Legislature and the Executive approved an across the board increase in the rate paid to contract attorneys representing indigent clients for MCILS to \$150 an hour. At the time, it was the highest across the board rate in the nation paid to counsel representing indigent clients. This is very different than the very low rate paid to contract counsel that was part of the evaluation leading to Opinion # 76.

The rate of \$150 an hour resulted in a significant increase in counsel joining or returning to MCILS rosters for approximately three months after its

adoption, but by summer, the number of attorneys on MCILS rosters and willing to take cases resumed the decline that had begun in 2020. Recent reports suggest that the decline is leveling out, in part because individual judges are reaching out to attorneys they know to be competent to take indigent cases, even if the attorney is not active on an MCILS roster.

**B. Attorneys Paid to Participate in Training.** MCILS has also expanded and diversified its training and CLE programs, and is paying attorneys the MCILS hourly rate to participate in its training and CLE programs.

**C. Education Loan Relief for Contract Counsel.** MCILS, particularly through the efforts of its former Executive Director, Justin Andrus, worked with other public defender agencies to get the U.S. Department of Education to expand its public service education loan forgiveness program. The program now can provide educational loan forgiveness benefits not only to attorneys employed by public defender and other legal services providers, but also to individual contract attorneys who average 30 hours a week of indigent defense work over the course of a year.

**D. Employed Public Defenders.** The Rural Defender Unit authorized in 2022 and the Regional Public Defender Office authorized in 2023 will, when fully operational, provide 13 employed attorneys for indigent defense work, mostly criminal defense, to help fill the gaps in indigent representation caused by the decline in contract attorneys available and willing to do the work. The employed public defenders may also be able to provide mentoring and support to contract attorneys in the areas where they work.

**5. Court Efforts to Encourage Attorneys to Accept Appointments for Indigent Defense Work.** Recently, a number of trial judges have reached out to attorneys who practice in the county or area where the trial judge regularly sits and who the trial judge knows are competent to engage in indigent defense work. The judges have asked those attorneys to take one or more indigent defense cases when no rostered attorney is available and willing to take the case. Many attorneys have responded favorably to judges' requests for assistance and accepted appointment in one or more cases in what is now informally known as a "shadow roster" or some similar term. To date, MCILS has allowed most of those local judge appointments and paid the vouchers submitted by the attorneys. The context and circumstances of these

appointments is very different than that which existed when Opinion # 76 issued.

In a separate recent initiative, Chief Justice Valerie Stanfill reached out to the leaders of large law firms, recognizing the important contributions recent law graduates can make representing indigent individuals in trial and appellate work. Contributions to representing indigent individuals can be similar to the excellent indigent defense work the Chief Justice herself did when she was a recent law graduate.

In her letter, which is attachment # 4, the Chief Justice stated that: "A talented trial attorney can try any kind of case." The Chief Justice also noted that many appeals involve "largely procedural" issues or review of fact-finding and that: "Even if [recent law graduates] have never tried these cases, I believe they can more than competently handle appeals in these cases." The Chief Justice recognized that in the law firms she was writing to, mentors could be available to advise recent law graduates in their indigent defense work. Further, law school preparation, legal writing courses, moot courts, and clinical or intern experience, all provide a good background for quality brief writing for many appeals.

**6. In September, MCILS Advised the Courts that MCILS Could No Longer Assign Counsel or Assist the Courts in Designating Counsel to Represent Indigent Defendants.** The courts' constitutional obligation to assign counsel to indigent individuals whose fundamental rights are at stake in matters before the courts remains unchanged. This left the courts to find and assign indigent defense counsel essentially as the courts had done before MCILS was created. Thus, the courts must seek and appoint counsel to cases under circumstances similar to those addressed by Opinion # 76, but with the potential that MCILS could later involve itself to reject a court's selection of counsel or to decline to pay counsel for the services provided in accordance with the court's appointment order.

Although more attorneys are needed to accept appointments to MCILS cases, MCILS has published or is considering rostering requirements and caseload limits that discourage attorneys from accepting MCILS work and may even require attorneys to withdraw from cases now assigned to them. The question then may arise as to whether the obligations and ethics of the



assignment of counsel who the court deems competent and payment for the work of counsel may be affected by MCILS rostering rules and caseload limits.

For example, in her letter to law firm leaders, Chief Justice Stanfill stated, correctly, that: "A talented trial attorney can try any kind of case." The Chief Justice's statement reflects a view widely held by experienced judges and trial lawyers. Despite this view of attorney trial skills, MCILS is proposing to change its rostering requirements so that litigation experience as a prosecutor or civil trial lawyer counts for nothing - only criminal defense experience counts. Not very welcoming to former prosecutors, such as current Bar Counsel, and current, experienced civil trial lawyers, who can provide high quality representation to indigent individuals needing assistance at a time when MCILS is advising that its rostered attorneys are not able to accept additional cases.

The Chief Justice also noted that many appeals involve "largely procedural" issues or review of fact-finding and that: "Even if [recent law graduates] have never tried these cases, I believe they can more than competently handle appeals in these cases." The MCILS proposed appeal rostering rule requires that, before being qualified to be assigned appeals, an attorney must demonstrate that the attorney has previously briefed five appeals and had at least one oral argument before an attorney can be assigned MCILS appeals. In effect, to qualify to take appeals, an attorney must already have had substantial experience before he or she can get experience. And in the last four years of the pandemic and its aftermath, oral argument experience has been difficult to get.

On January 1, 2024 MCILS will begin enforcing caseload limits that it has already adopted. According to statistics on average hours spent on various case types prepared by MCILS staff, the already adopted caseload limits will restrict Maine attorneys to handling  $\frac{1}{4}$  to  $\frac{1}{3}$  to  $\frac{1}{2}$  of the cases they are actually capable of accepting and competently representing clients in during any particular time period. Similar gaps between actual hours spent and much higher hours upon which caseload limits are based are reported in other states with caseload limits. Some judges have indicated that some attorneys they work with are expressing concern that the attorneys may be removed from some cases where they are presently competently representing clients, with the court then having to find new counsel.<sup>3</sup>

<sup>3</sup> The MCILS rules allow for waiver of specific rostering and/or caseload limits in certain circumstances. In discussion of the potential for attorney specific waivers earlier this year, MCILS

The reasons for the tremendous gap between attorneys' average actual hours spent representing indigent clients on particular case-types and the hours recommended in particular caseload limit studies become apparent in reviewing the recently published *National Public Defense Workload Study* prepared by the Rand Corporation. Reading the Rand Study and participating in a 4 and ½ hour program addressing the Rand Study presented by the National Association for Public Defense indicates that the caseload limits are not based on studies or data about averages of actual hours spent, but on time estimates developed in discussions by a panel of 33 criminal defense attorneys coming to a consensus "on the average amount of time needed to provide reasonably effective assistance of counsel in an array of adult criminal cases." Rand Study, vii. To reach these numbers the panel applied the "Delphi method," "a quantitative research technique used for the evaluation of expert opinion." *Id.* Thus, the Delphi method evaluates experts' opinions, not actual case numbers or time sheets. The resulting proposed caseload limits are used by advocacy groups to argue for more funding for public defender offices.

Review of Opinion # 76 may need to consider what role, if any, MCILS restrictive rostering standards and caseload limits should play in consideration of court appointments of attorneys the court deems to have the time and the competence to represent indigent clients, where the MCILS has indicated it is unable to find attorneys necessary to provide the constitutionally required representation.

### **Conclusion**

The six factors listed are among those it may be appropriate for the Board of Overseers of the Bar to consider in evaluating whether to update Enduring Ethics Opinion # 76. Thank you for your consideration.

*Donald G. Alexander*

cc: Maine Judicial Branch, MCILS, U. Maine School of Law, MSBA.

staff indicated that a waiver could provide a basis for a post-conviction review challenge to any conviction resulting from any case handled by the attorney receiving the waiver.

## Board of Overseers of the Bar

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# Opinion #76. Refusal of Court Appointments in Criminal Cases

## Issued by the Professional Ethics Commission

Date Issued: December 15, 1986

### Question

The Commission is advised that a crisis has developed in a rural county because of the relatively small number of attorneys who are willing to accept court appointments to defend indigent criminal respondents. The Commission has been asked:

- (1) May attorneys who have an active criminal practice refuse to accept court appointments in criminal cases?
- (2) May attorneys who are not actively involved in criminal practice refuse to accept court appointments in criminal cases?
- (3) May attorneys retire from criminal practice and thereafter refuse to accept appointments in criminal cases?

### Opinion

It should be noted at the outset that the Commission has no jurisdiction to resolve some of the issues implicit in the questions which have been posed. Although the Commission can offer guidance regarding a lawyer's ethical obligations under the Maine Bar Rules with respect to accepting appointments in criminal cases, it cannot predict the outcome of a court proceeding in which an attorney is charged with contempt of court for declining to accept an appointment to defend a criminal respondent. Moreover, whether a court can constitutionally compel an attorney to act as defense counsel in a criminal case at a level of compensation which the attorney believes to be economically unreasonable is a question of law which the Commission declines to answer.

Although the Commission is unable to answer the questions presented in terms of the legal consequences of refusing to accept a court appointment, it can address some of the ethical ramifications raised by the inquiries. Quite apart from the power of a court to impose sanctions for refusing to represent an indigent criminal defendant, an attorney has an obligation to provide public interest legal services imposed by Bar Rule 3.10, adopted in 1984. The rule states that:

### 3.10 Public Interest Legal Service

A lawyer engaged in active practice in the State of Maine should render unpaid public interest legal service of a type and amount reasonable in all the circumstances. For purposes of this rule, “unpaid public interest legal service” means

- (1) the provision of professional services at no fee or a reduced fee to persons of limited means;
- (2) participation in a program under which free legal services to the indigent are provided by individual lawyers upon referral from a central agency;
- (3) the provision of professional services at no fee or a reduced fee to charitable organizations that provide services or support for the indigent; or
- (4) service in activities for improving the law, the legal system, or the legal profession.

The Advisory Committee’s notes indicate that “public interest legal services” include the performance of legal services in court-appointed cases where the attorneys’ compensation is less than he would usually charge. 467 A.2d at p. LIX. Thus it is apparent that the acceptance of court appointments in criminal cases is one of the ways in which an attorney can satisfy his generalized ethical obligations under the rule.

It should be noted, however, that even if an attorney clearly violates Rule 3.10 by refusing to perform any public interest legal services whatever, his ethical shortcomings cannot be punished through disciplinary proceedings under the Maine Bar Rules. This follows from the use of the verb “should” rather than “shall” in the first sentence of the rule. See Advisory Committee notes, p. LX. The wording was taken from Rule 6.1 of the A.B.A. Model Rules of Professional Conduct whose draftsmen rejected a mandatory statement of the rule because of doubts about its enforceability and constitutionality. *Id.* at p. LXII.

The questions which prompted this opinion also present an underlying issue of whether an attorney must undertake a criminal appointment in a case which he believes to be beyond his professional competence. Rule 3.6(a)(1) enjoins a lawyer not to accept a legal matter which he knows he is not competent to handle without first associating himself with competent co-counsel.

When asked to accept a court appointment which he honestly believes is beyond his ability, an attorney should first make his misgivings know to the court. If the judge remains unmoved, the lawyer will be confronted with the conflict between his ethical obligation under the Bar Rules and the risk of judicial censure for refusing to accept the case.<sup>[1]</sup>

It would seem unlikely that a grievance commission would discipline an attorney for undertaking a matter, even though he did so in an incompetent manner, where he was acting pursuant to a court order after disclosure of his lack of expertise. Any risk that this might occur could be minimized if the lawyer requested the judge to appoint experienced associate counsel to assist him,<sup>[2]</sup> schooled himself appropriately in the subject matter through the use of written materials or by consulting informally with more experienced practitioners, or formally associated himself with other counsel.<sup>[3]</sup>

The third question posed to the Commission is whether an attorney can “retire from criminal practice and refuse to take court appointments in criminal cases.” Obviously, an attorney is free to organize his law practice as he pleases. As Rule 3.10 makes clear, a lawyer can satisfy his obligation to provide free legal service in ways having nothing to do with criminal practice.

It does not follow, however, that an attorney who decides not to accept any more criminal cases automatically becomes incompetent to try them as court-appointed counsel. Thus the relevant ethical question in this regard is whether an attorney is still competent to handle the criminal case in question at the time he is requested to accept the court appointment whether or not he is still accepting criminal cases for paying clients.<sup>[4]</sup>

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## Footnotes

[1] See, e.g., *State v. Gasen*, 48 Ohio App.2d 191, 356 N.E.2d 505 (Hamilton Cty. Ct. of App. 1976); *Easley v. State*, 334 So.2d 630 (Fla. Dist. Ct. of App. 1976).

[2] This solution was suggested by the A.B.A. Standing Committee on Professional Ethics in Inf. Op. #1216 (1972).

[3] Compare Me. Bar R. 3.6(a)(1). See also Alaska Bar Ass’n op. #82.1 in which it was held that an inexperienced lawyer would nevertheless be expected to accept criminal appointments and would be required to retain associate counsel at his own expense if he could not otherwise become competent to undertake the matter.

[4] As pointed out above, our response is limited to the application of the Bar Rules and should not be understood as being predictive of the result which a court would reach in imposing sanctions on an attorney for refusing to accept a court appointment.

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## Enduring Ethics Opinion

### Credits

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## **PUBLIC SERVICE**

### **RULE 6.1     *VOLUNTARY PRO BONO PUBLICO SERVICE***

Every lawyer has a professional responsibility to provide legal services to those unable to pay.

#### *Aspirational Goals*

In fulfilling this responsibility, the lawyer should provide legal services without fee or expectation of fee to:

- (1) persons of limited means; or
  - (2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means;
- and
- (3) individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate; or
  - (4) activities for improving the law, the legal system or the legal profession.

In addition, a lawyer voluntarily should contribute financial support to organizations that provide legal services to persons of limited means.

#### **COMMENT**

[1] Every lawyer, regardless of professional prominence or professional work load, should provide legal services to those unable to pay. While the ABA model rule specifies an annual number of hours each lawyer should provide, Maine lawyers, have created a tradition of delivering a

nationally recognized high quantity of *pro bono* services. Because of this professional ethic, Maine attorneys understand any set standard is insufficient to meet the critical need to provide legal services to those individuals and institutions unable to afford them.

[2] Paragraphs (1) and (2) of these Aspirational Goals prioritize the critical need for legal services that exists among persons of limited means by providing legal services be rendered directly to the disadvantaged or to organizations serving the disadvantaged without fee or expectation of fee. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means. The variety of these activities should facilitate participation by government lawyers, even when restrictions exist on their engaging in the outside practice of law.

[3] Persons eligible for legal services under paragraphs (1) and (2) are those who qualify for participation in programs funded by the Legal Services Corporation and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but nevertheless, cannot afford counsel. Legal services can be rendered to individuals or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means. The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

[4] Services rendered cannot be considered *pro bono* if an anticipated fee is uncollected, but the award of statutory attorneys' fees in a case originally accepted as *pro bono* would not disqualify such services from inclusion under this section. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means.

[5] To the extent possible, a lawyer should fulfill the responsibility to perform *pro bono* services directly to the financially needy through activities described in paragraphs (1) and (2) of the Aspirational Goals. Paragraphs (3) and (4) describe other means to perform *pro bono* services, although those have a less specific impact on individuals needing legal representation. Constitutional, statutory or regulatory restrictions may prohibit or impede

government and public sector lawyers from performing the *pro bono* services outlined in paragraphs (1) and (2). Accordingly, where those restrictions apply, government and public sector lawyers may fulfill their *pro bono* responsibility by performing services outlined in paragraphs (3) and (4).

[6] Paragraph (3) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the *pro bono* lawyer to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph are First Amendment claims, Title VII claims and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.

[7] Paragraph (3) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means such as participation in judicare programs and acceptance of court appointments in which the fee is substantially below a lawyer's usual rate.

[8] Paragraph (4) recognizes the value of lawyers engaging in activities improving the law, the legal system or the legal profession, in addition to providing *pro bono* representation to individuals serving on bar association committees, serving on boards of *pro bono* or legal services programs, taking part in Law Day activities, acting as a continuing legal education instructor, mediator or arbitrator and engaging in legislative lobbying to improve the law, the legal system or the profession are a few examples of the many activities that fall within this paragraph.

[9] There may be times when it is not feasible for a lawyer to engage in *pro bono* services to individuals. At such times a lawyer may discharge the *pro bono* responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support is equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the *pro bono* responsibility collectively, as by a firm's aggregate *pro bono* activities.

[10] The efforts of individual lawyers are not enough to meet the need for legal services existing among persons of limited means. Consequently, the government and the profession instituted additional programs to provide those



services. Every lawyer should support such programs financially, as well as providing direct *pro bono* services.

[11] Although this rule does not express a minimum of *pro bono* legal hours, law firm management and practitioners must not abandon the voluntary commitment to *pro bono* public service Maine lawyers historically have demonstrated. Being in the national forefront bears with it both honor and continuing duty. Thus, law firms should enable and encourage all lawyers in the firm to provide the *pro bono* legal services called for by this Rule, and practitioners should exhort each other to satisfy unmet legal needs in direct and creative ways.

[12] The responsibility set forth in this Rule is aspirational and not to be enforced through disciplinary process.

#### **REPORTER'S NOTES:**

Model Rule 6.1 (2002) is substantively in accord with M. Bar R. 2-A, Aspirational Goals for Lawyer Professionalism. The Task Force recognized that Maine lawyers are nationally known for their outstanding commitment to providing *pro bono* legal services. As such, the Task Force recommended adoption of Model Rule 6.1, with some noted modifications.

The ABA Model Rule specifies fifty (50) hours per year as the amount each lawyer should provide. Because of the high standard for *pro bono* service Maine lawyers have established, the Task Force thought that any enumeration of hours is unnecessary, and perhaps send the wrong message that there is a specific number of hours of *pro bono* service that would sufficiently meet the critical legal services need of those individuals and institutions unable to afford them. Accordingly, the Task Force decided not to suggest a specific number of hours.

Model Rule 6.1 (2002) sets forth a staged order of preference for the types of *pro bono* services to be rendered by lawyers: it prioritizes direct *pro bono* representation of persons of limited means or *pro bono* representation to organizations that are designed primarily to address the needs of persons of limited means. The Task Force recognized the compelling need of people of limited means for legal services, but also acknowledged the importance of lawyers' *pro bono* service in furtherance of the creation of a framework to

support charitable, religious, civic, community, governmental and educational organizations. The Task Force further credited the importance of lawyers' participation in law reform activities. The Task Force believed the prioritized listing of types of *pro bono* service was important in efforts to address the critical need for legal services for persons with limited means. Thus it recommended adoption of the Model Rule, as modified.

## **RULE 6.2     *ACCEPTING APPOINTMENTS***

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

- (a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;
- (b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or
- (c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

### **COMMENT**

[1] A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer's freedom to select clients is, however, qualified. All lawyers have a responsibility to assist in providing *pro bono publico* service. See Rule 6.1. An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A lawyer may also be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.

#### *Appointed Counsel*

[2] For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the lawyer could not handle the matter competently, see Rule 1.1, or if undertaking the representation would result in an improper conflict-of-interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship

or the lawyer's ability to represent the client. A lawyer may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust.

[3] An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client-lawyer relationship, such as the obligation to refrain from assisting the client in violation of the Rules.

#### **REPORTER'S NOTES:**

Model Rule 6.2 (2002), addressing a lawyer's obligation to accept court appointments, has no direct Maine Bar Rule counterpart (but see M. Bar R. 2-A addressing lawyers' *pro bono* obligations). The obligation recognized by Rule 6.2 is generally "analyzed as a derivative of the court's inherent judicial power." (See ABA Annotated Model Rules of Professional Conduct, Fifth edition, p. 514). This Rule has been described as "protecting the court's own institutional interests as well as those of the individual litigant." (*Id.*)

Because the Task Force thought Model Rule 6.2 (2002) was a clear articulation of what has been the practice in Maine, it recommended its adoption as written.

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SUPREME JUDICIAL COURT



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Dear Counsel:

I write to you as managing partners at your firms. As I am sure all of you know, Maine is facing a crisis with respect to the availability of constitutionally required counsel in both criminal and child protective cases. Last winter the Legislature raised the hourly rate from \$80 to \$150 per hour for counsel accepting appointments through the Maine Commission on Indigent Legal Services. Despite that, the crisis is worsening. Last week there were over 100 cases pending in which a person is entitled to appointed counsel and for whom no attorney is available.

I write generally to urge you to encourage attorneys at your firm to become rostered and take cases for which they may be qualified. A talented trial attorney can try any kind of case. There are requirements for becoming rostered to take cases to ensure effective assistance of counsel, but MCILS is committed to working with attorneys such as the members of your firm to try to make the process as minimally burdensome as possible.

***I also write with a very specific request.*** You have attorneys at your firm who were law clerks to the Maine Supreme Judicial Court in the last five years. I ask that you encourage them to become rostered and take some child protective appeals. Attached is a list of those we have identified – and it does not include those who just finished clerkships and are about to join your firms!

Although the number varies, the Law Court currently hears about 90 appeals annually in child protective cases. They are generally appeals from the termination of parental rights

involving a review of factual findings for abuse of discretion. Almost all are heard on the briefs, and, frankly, most result in affirmances in a memorandum of decision. If both parents appeal, each is entitled to separate counsel. As former law clerks for the Law Court, the attorneys I have identified would have reviewed an average of five to seven of these cases, poring over every pleading, order and transcript. They identified any issues and thoroughly discussed the issues in bench memos to the court. They are smart and excellent writers. Even if they have never tried these cases, I believe they can more than competently handle appeals in these cases. I am particularly confident in that belief because I know they would have mentoring at the highest level in your firms.

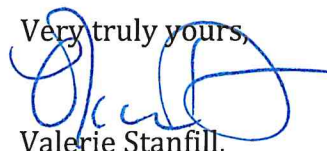
I have discussed this with the Executive Director of MCILS, Jim Billings, Esq. Ordinarily, in order to be rostered to take these appeals when appellate counsel was not trial counsel, an attorney is supposed to have provided representation to conclusion in 6 child protective cases; provide copies of 3 briefs or memoranda of law filed with courts; and submit an application, which may require up to three letters of reference from outside the firm.

In my discussions with Jim, I believe he may be prepared to waive the litigation experience and some of the specialized training. They would still have to file an application which you can find here: <https://www.maine.gov/mcils/sites/maine.gov.mcils/files/inline-files/Chapter%202%20-%20Final%20Adopted%20to%20SOS.pdf> . We are discussing trying this as a pilot for six months or so.

The need is dire; as of today we are unable to find nine attorneys to represent parents in child protection appeals.

Won't you please help?

I look forward to hearing from you soon.

Very truly yours,  
  
Valerie Stanfill,  
Chief Justice

VS:lr

CC: Jim Billings, Esq.  
Each of the attorneys listed in the attachment

<b>Last Name</b>	<b>First Name</b>	<b>Law Firm</b>
Altieri	Matthew	Pierce Atwood
Ball	Bonnie	Pierce Atwood
Brake	Elliot	Bernstein Shur
Bulges	Crystal	Preti Flaherty
Cheslak	Cyrus	Verrill
Dexter	Benjamin	Bernstein Shur
Douglass Boots	Letson (Leti)	Bernstein Shur
Englert	Eviana	Bernstein Shur
Eysenbach	Hans	Verrill
Hamilton	J. Sampson	Eaton Peabody
Harriman	Alexandra	Preti Flaherty
Janzen	Nicholas	Preti Flaherty
Jensen	Laura	Preti Flaherty
Johnson	Samuel	Norman Hanson & DeTroy
Kenlan	Peter	Pierce Atwood
LeBlond	Thomas	Preti Flaherty
Marass	Patrick	Bernstein Shur
Mavodones	Joseph	Norman Hanson & DeTroy
Murphy	Sara	Pierce Atwood
Olesen	Casey	Eaton Peabody
Pardee	Ariel	Pierce Atwood
Sedlack	Anne	Preti Flaherty
Shagoury	Joseph	Pierce Atwood
Thaxter	Langdon	Norman Hanson & DeTroy
Walton	Oliver (Mac)	Drummond Woodsum
Weidner	Susan	Drummond Woodsum