

**MCILS**

**September 11, 2023  
Commissioner's Meeting  
Packet**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**SEPTEMBER 11, 2023  
COMMISSION MEETING  
AGENDA**

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- 1) Approval of the August 21, 2023 Commission Meeting Minutes
- 2) Report of the Executive Director
  - a. Operations report
  - b. Case staffing status report
  - c. Hiring update
  - d. Changes to the Public Service Student Loan Forgiveness Program
- 3) Rulemaking discussion, Chapters 3 and 301
- 4) Discussion about proposals for statutory changes
- 5) Executive session, if needed
- 6) Set Date, Time and Location of Next Regular Meeting of the Commission
- 7) Public Comment

**Maine Commission on Indigent Legal Services – Commissioners Meeting  
August 21, 2023**

**Minutes**

**Commissioners Present:** Donald Alexander, Randall Bates, Meegan Burbank, Michael Cantara, Michael Carey, Kimberly Monaghan, David Soucy, Joshua Tardy

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

<b>Agenda Item</b>	<b>Discussion/Outcome</b>
Approval of the July 17, 2023 Commission Meeting Minutes	Commissioner Alexander moved to approve the July 17, 2023 minutes. Commissioner Cantara seconded. All voted in favor. Approved.
Report of the Executive Director	<p>Director Billings noted that vouchers are up, and the amount paid year to date is up 75% from this time last year (roughly \$3.3M vs. \$1.9M). He noted that vouchers amounts are continuing to rise, in part due to the \$150 hourly rate, as well as due to the total number of cases increasing.</p> <p>Discussion ensued regarding whether the decrease in the number of rostered attorneys is due to attorneys taking themselves off the rosters when they have met their personal limits on open cases. Director Billings pointed out that the data on case types from 2019 versus 2023 shows a decrease in civil violations of 24%, while felonies are up nearly 75%, which has led attorneys to taking more time to work through and dispose of cases. Director Billings noted that attorneys are probably hesitant to put their names on the rosters due to the near instantaneous flurry of emails from court clerks who are looking to find representation for cases. He noted that there are currently 120 cases that the courts are struggling to find attorneys for since there are no attorneys on the rosters to take them.</p> <p>The RDU is still adjusting to the reassignment of cases from the attorney who departed and interviews to fill the vacancy are ongoing. There are 186 rostered attorneys, of which roughly two-thirds of those are rostered for trial work. There are roughly 50 attorneys who are rostered for Lawyer of the Day only.</p> <p>Regarding the data exchange with the Judicial Branch, staff had a productive meeting with members of the Judicial Branch IT department. The next steps involve working with OIT to find some meaningful way of organizing and understanding the data and be able to process it.</p>

Agenda Item	Discussion/Outcome
	<p>Director Billings noted that there has continued to be good communication with the Law School and discussion has continued regarding internships and externships, specifically within a public defender's office. There has also been communication from some schools in Boston, including Suffolk Law. Discussion ensued regarding FOAA requests for client data as well as training materials. It was noted that statutory changes are being discussed to distinguish central office staff from the RDU or public defender's offices, in order to make clear that client files are confidential and not subject to FOAA. It was also noted that there is discussion taking place to explicitly recognize and protect the work products, proprietary business information, and trade secrets being used in the materials that are being collected and prepared for use in trainings.</p> <p>The RFP for the replacement case management system has been posted. There have been 4 or 5 requests for information that will now be reviewed, and responses will be drafted. The submission date is September 14<sup>th</sup>.</p>
Public Defender Office Location	<p>Director Billings requested a vote to decide if the first public defender office will be in Augusta, noting that this would be part of the Part B budget with an effective date of October 25. Director Billings expanded on the plan for setting up the new PD office, noting that the first steps include hiring the District Defender position, then the Office Manager, who will each help with the hiring on of the additional staff. Director Billings explained why staff recommended Augusta as the first location: the area has a need; there is a labor market available to fill the positions; it is within acceptable travel distance to the Law School to offer opportunities for internship and externships; and there is already a space available for the office ready to be used.</p> <p>Concern was brought up regarding the needs of the rest of the state, and if Aroostook County or Washington County might have a greater need. Director Billings acknowledged that there is a need for public defenders across the whole state, not just Aroostook and Washington, but the fastest option for getting an office up and running is Augusta. Director Billings explained that when reviewing Aroostook County for a building to lease, there were not any readily available that would be move-in ready, and the location would be further away than agreeable for potential internship or externships from the Law School.</p> <p>Commissioner Alexander put forth the suggestion to look into building space at the various colleges in the area, noting that the Universities at Presque Isle or Farmington may have office space and housing space available for use.</p>

Agenda Item	Discussion/Outcome
	<p>Director Billings turned the discussion to opening a satellite location in Aroostook County. He acknowledged the continued need for attorneys in the area, and that by opening this satellite office, it shows a commitment to the needs of the area. It will also be a landing spot for RDU staff to have access to facilities for preparation and review after driving hours to get there. Director Billings acknowledged that there is also a commitment to the Legislature to hire an RDU attorney that serves Aroostook County and being able to put a location of where they work out of is important for getting applicants that will fit the roll.</p> <p>The Chair entertained a motion to establish Augusta as a base defender office and further to authorize the director to continue to explore an Aroostook County location for a satellite office. Commissioner Cantara moved. Chair Tardy seconded. Commissioner Alexander voted against; all others voted in favor. Approved.</p>
Cloture and Supplemental budget	<p>The cloture deadline is September 29<sup>th</sup>. Director Billings requested that if Commissioners had statutory changes or clarifications that they think are needed, to reach out to staff so they can be discussed at the next meeting.</p>
Rulemaking	<p>The Chair entertained a motion to adopt the amended basis statement for Chapter 4, set forth in the packet (page 56), which is a technical change made to the basis statement that was passed at the July 21, 2023 Commission Meeting. Commissioner Cantara moved. Commissioner Monaghan seconded. All voted in favor.</p> <p>Director Billings explained that Chapter 301-A, which discusses payment for attending trainings, also talks about payment for the travel time to attend the trainings. He further explained that there is an annual cap per person of 40 hours that MCILS will pay, which includes travel and attendance time. The Chair entertained a motion to approve the proposed rule for payment for attending and reimbursement of expenses incidental to attending trainings, as well as a detailed basis statement for Chapter 301-A. Commissioner Cantara moved. Commissioner Soucy seconded. All voted in favor. Approved.</p>
Social Worker RFP	<p>Commissioner Alexander recused himself from the discussion. Director Billings explained that the draft RFP is for social work services for PC cases. Director Billings pointed out this is not for</p>

Agenda Item	Discussion/Outcome
	<p>treatment, it is for case management services, so parent attorneys would have someone they could work with to identify resources to find a satisfactory resolution of cases.</p> <p>The Chair entertained a motion to move forward with the Social Worker RFP. Commissioner Cantara moved. Chair Tardy seconded. All voted in favor. Approved.</p>
Public Comment	None.
Executive Session	<p>Commissioner Carey moved to go into executive session pursuant to 1 MRS section 405(6)(e). Commissioner Alexander seconded. All voted in favor.</p> <p>Following executive session, Commissioner Carey moved to adopt the position that authorizes Executive Director Billings to execute settlement papers to resolve the Robbins matter both personally and on behalf of the Commission on Indigent Legal Services. Commissioner Cantara seconded. Discussion ensued. One Commissioner expressed reluctant support, noting that settling litigation is always a tough call, but the settlement proposal is one that will be achievable by the Commission. One Commissioner expressed concern for statements that may have been made during the court proceedings and requested it to be further investigated. One Commissioner expressed reluctant support for the matter, noting that the whole thing feels largely performative at this point. The Commissioner also noted that there may be a misperception that the resolution of the litigation will solve the attorney shortage issue. The Commissioner also expressed concern for the attorney evaluations that will be done by MCILS and the ACLU, noting that attorneys have different styles and approaches and using rigorous metrics for evaluation may not be the best course of action.</p> <p>One Commissioner expressed their opposition to the settlement, noting that much of what the settlement asks for includes hiring on of additional office staff when what is needed is additional attorneys to take on cases. Another Commissioner expressed concern over the evaluation and supervision of attorneys, noting that it goes too far. They expressed that starting smaller and adding on would work better than taking on everything at once and not being able to walk back on any of the changes.</p> <p>A vote was taken on the motion to authorize Director Billings to execute settlement papers. Commissioner Alexander voted against; all others voted in favor. The motion passed.</p>

<b>Agenda Item</b>	<b>Discussion/Outcome</b>
Adjournment of meeting	The next meeting will be held on September 11, 2023, at 1 pm.

## MAINE COMMISSION ON INDIGENT LEGAL SERVICES

**TO:** MCILS COMMISSIONERS  
**FROM:** JIM BILLINGS, EXECUTIVE DIRECTOR  
**SUBJECT:** OPERATIONS REPORTS  
**DATE:** September 6, 2023

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Attached you will find the August 2023, Operations Reports for your review and our discussion at the Commission meeting on September 11, 2023. A summary of the operations reports follows:

- 2,941 new cases were opened in the DefenderData system in August. This was a 182 case decrease from July. Year to date, new cases are up 19% from last year from 5,084 at this time last year to 6,060 this year.
- The number of vouchers submitted electronically in August was 3,500, an increase of 204 vouchers from July, totaling \$3,348,518, an increase of \$401,636 from July. Year to date, the number of submitted vouchers is up by approximately 17%, from 5,790 at this time last year to 6,786 this year, with the total amount for submitted vouchers up approximately 86%, from \$3,353,773 at this time last year to \$6,266,124, this year.
- In August, we paid 3,029 electronic vouchers totaling \$2,762,655 representing a decrease of 656 vouchers and a decrease of \$560,278 compared to July. Year to date, the number of paid vouchers is up approximately 15%, from 5,809 at this time last year to 6,714 this year, and the total amount paid is up approximately 82%, from \$3,325,675 this time last year to \$6,085,589 this year.
- The average price per voucher in August was \$912.07 up \$10.32 per voucher from July. Year to date, the average price per voucher is up approximately 58%, from \$572.50 at this time last year to \$906.40 this year.
- Petition, Release or Discharge and Central Office Resource Counsel had the highest average voucher in August. There were 44 vouchers exceeding \$5,000 paid in August. See attached addendum for details.
- In August, we issued 123 authorizations to expend funds: 55 for private investigators, 44 for experts, and 24 for miscellaneous services such as interpreters and transcriptionists. In August, we paid \$233,409 for experts and investigators, etc. No requests for funds were denied.
- There was one attorney suspension in August.



- In our All Other Account, the total expenses for the month of August were \$2,953,206. During August, approximately \$50,857 was devoted to the Commission's operating expenses.
- In the Personal Services Accounts, we had \$250,065 in expenses for the month of August.
- In the Revenue Account, we received no transfer of collected counsel fees from the Judicial Branch for July's collections.
- Exceptional results – see attached addendum.
- As of September 6, 2023, there are 183 rostered attorneys of which 132 are available for trial court level work.

## Vouchers over \$5,000

<b>Comment</b>	<b>Voucher Total</b>	<b>Case Total</b>
Homicide	\$69,036.11	\$69,036.11
Gross Sexual Assault	\$27,544.00	\$27,544.00
Homicide	\$24,530.00	\$24,530.00
OUI, injury or death	\$12,948.85	\$12,948.85
Homicide	\$12,379.04	\$12,379.04
Kidnapping	\$10,817.95	\$10,817.95
Termination of Parental Rights	\$8,670.00	\$10,692.00
PC Resource Counsel	\$8,599.50	\$60,889.79
Child Protection Petition	\$8,596.76	\$9,448.76
Elevated Aggravated Assault	\$8,276.82	\$8,276.82
Criminal Threatening	\$8,221.36	\$8,221.36
Homicide	\$7,938.78	\$7,938.78
Post-Conviction Review	\$7,571.00	\$7,571.00
Criminal Threatening	\$7,467.00	\$7,467.00
Probation Violation	\$7,295.00	\$7,295.00
Child Protection Petition	\$7,170.00	\$10,102.34
Attempted Murder	\$7,155.00	\$7,155.00
Domestic Violence Assault	\$6,810.00	\$18,439.00
Allow Minor to Possess or Consume Liquor	\$6,695.00	\$6,695.00
Child Protection Petition	\$6,582.54	\$10,562.72
Aggravated Trafficking	\$6,450.00	\$6,450.00
Homicide	\$6,382.28	\$13,565.28
Gross Sexual Assault	\$6,313.00	\$6,313.00
Homicide Resource Counsel	\$6,235.00	\$6,235.00
Post-Conviction Review	\$6,135.24	\$10,842.59
Theft by Deception	\$6,066.92	\$6,066.92
Theft by Unauthorized Taking	\$6,049.50	\$6,049.50
Gross Sexual Assault	\$5,985.00	\$5,985.00
Unlawful Possession of Heroin	\$5,977.36	\$9,979.36
Child Protection Petition	\$5,941.00	\$5,941.00
Termination of Parental Rights	\$5,820.00	\$5,820.00
Reckless Conduct	\$5,756.38	\$5,756.38
Domestic Violence Assault	\$5,614.00	\$5,614.00
Aggravated Assault	\$5,608.21	\$5,608.21

Child Protection Petition	\$5,515.82	\$5,515.82
Child Protection Petition	\$5,498.00	\$5,498.00
Child Protection Petition	\$5,453.32	\$8,385.08
Unlawful Possession	\$5,445.00	\$5,445.00
Appeal	\$5,333.51	\$5,333.51
Dissemination of Sexually Explicit Material	\$5,233.00	\$5,233.00
Aggravated Driving to Endanger	\$5,185.72	\$5,185.72
Illegal Possession of Firearm	\$5,111.00	\$5,111.00
Arson	\$5,055.00	\$5,055.00
Gross Sexual Assault	\$5,041.00	\$5,041.00

## Good Outcomes

Review Date	Attorney	Charge(s)	Disposition
8/1/2023	Griffin, Henry	Operating After Habitual Offender Revocation	Dismissal
8/1/2023	Geller, David	1 ct. Domestic Violence Assault, 1 ct. Theft by Unauthorized Taking or Transfer	Dismissal
8/1/2023	Day, Randy	Child Protection Petition	Dismissal through PRR
8/2/2023	Bell, Nathan	Child Protection Petition	Dismissal
8/2/2023	McIntosh, Jeremiah	Child Protection Petition	Dismissal through PRR
8/2/2023	Shain, Rodney	Child Protection Petition	Dismissal
8/2/2023	White, Russell	1 ct. Operating a Vehicle without a License, 1 ct. Possession of Hypodermic Apparatus	Dismissal after Successful Deferred Disposition
8/2/2023	Bos, C. Peter	Child Protection Petition	Dismissal through PRR
8/8/2023	Deveau, Mackenzie	2 ct. DV Assault, 1 ct Criminal Threatening with Dangerous Weapon	Not Guilty after Trial
8/2/2023	Dolley, Jeffrey	Child Protection Petition	Dismissal
8/9/2023	Wraight, Marcus	Criminal Threatening	Dismissal
8/9/2023	Connolly, Thomas	2 ct. Violating Protection from Abuse Order, 1 ct. VCR	Dismissal with Pressure from Motion to Suppress
8/9/2023	Pagnozzi, Matthew	Child Protection Petition	Dismissal
8/9/2023	McIntosh, Jeremiah	3 ct. Aggravated Trafficking in Scheduled Drugs, 2 ct. Unlawful Furnishing Scheduled Drug, 1 ct. Illegal Possession of Firearm	Dismissal with Pressure from Motion to Suppress
8/9/2023	Rabasco, Edward	DV Criminal Threatening	Dismissal
8/9/2023	Pagnozzi, Matthew	Child Protection Petition	Dismissal through PRR
8/9/2023	Brown, Earl	Child Protection Petition	Dismissal
8/9/2023	Tanous, Nolan	1 ct. Theft by Unauthorized Taking, 1 ct. Unlawful Possession of Scheduled Drug, 1 ct. VCR	Dismissal
8/10/2023	Fairbanks, Lorne	Child Protection Petition	Dismissal
8/10/2023	Derstine, Tucker	Theft by Unauthorized Taking	Dismissal after Successful Deferred Disposition
8/10/2023	Capponi, Randa	1 ct. VCR, 1 ct. Operating a Vehicle without a License	Dismissal after Successful Filing
8/10/2023	VanRollins, Patricia	DVA	Dismissal
8/14/2023	Winling, Rick	DVA	Dismissal
8/14/2023	Brown, Maya	Child Protection Petition	Dismissal through PRR
8/14/2023	Phalon, Amy	1 ct. Arson, 1 ct. Failure to Control or Report a Dangerous Fire	Dismissal

## Good Outcomes

8/14/2023	Chester, Edwin	2 ct. Arson, 1 ct. Failure to Control or Report a Dangerous Fire	Dismissal
8/14/2023	Chester, Edwin	Assault	Dismissal
8/17/2023	Jensen, Angela	Criminal Speed	Dismissal after Successful Deferred Disposition
8/17/2023	Chipman, Richard	Threatening Display of a Weapon	Dismissal
8/17/2023	Chipman, Richard	1 ct. Aggravated Assault, 1 ct. Assault	Dismissal
8/17/2023	Ranger, Jason	Theft by Unauthorized Taking	Dismissal after Successful Deferred Disposition
8/17/2023	Sucy, Stephen	Operating After Habitual Offender Revocation, 2 Priors	Dismissal
8/17/2023	Cohen, Jennifer	DVA	Dismissal
8/17/2023	Edwards, Andrew	1 ct. DVA , 1 ct. DV Criminal Threatening	Dismissal
8/18/2023	Tilton, Thomas	Child Protection Petition	Dismissal
8/18/2023	Miller, Amber	Eluding an Officer	Dismissal
8/23/2023	Wommack, Sanders	Theft by Unauthorized Taking	Not Guilty after Trial
8/25/2023	Mason, James	Assault	Unconditional Discharge
8/28/2023	Nielson, Christopher	Gross Sexual Assault	Dismissal
8/28/2023	Shanoski, Henry	Operating a Vehicle without a License	Dismissal
8/28/2023	Slaton, Ashley	1 ct. VCR, 1 ct. OAS	Dismissal
8/30/2023	Maddox, William	Child Protection Petition	Dismissal
8/30/2023	Greenbaum, Annie	1 ct. Operating a Vehicle without a License, 1 ct. Operating a Defective Vehicle	Dismissal

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Case Type

8/31/2023

DefenderData Case Type	Aug-23						Fiscal Year 2024			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
Appeal	21	22	\$44,778.11	18	\$ 42,113.68	\$2,339.65	44	32	\$ 81,056.19	\$2,533.01
Central Office Resource Counsel	3	5	\$6,803.00	4	\$ 11,208.00	\$2,802.00	4	8	\$ 15,333.00	\$1,916.63
Child Protection Petition	199	343	\$416,630.76	326	\$ 371,644.96	\$1,140.02	371	747	\$ 833,327.20	\$1,115.57
Drug Court	5	14	\$28,879.88	13	\$ 26,376.00	\$2,028.92	10	32	\$ 74,501.50	\$2,328.17
Emancipation	6	3	\$1,716.00	6	\$ 3,246.00	\$541.00	17	16	\$ 13,066.24	\$816.64
Felony	688	889	\$1,270,985.35	725	\$ 976,322.81	\$1,346.65	1,461	1,565	\$ 2,034,206.80	\$1,299.81
Involuntary Civil Commitment	96	71	\$42,386.99	100	\$ 56,517.24	\$565.17	190	205	\$ 117,284.64	\$572.12
Juvenile	119	87	\$91,499.92	56	\$ 66,104.93	\$1,180.45	199	118	\$ 136,083.64	\$1,153.25
Lawyer of the Day - Custody	282	274	\$181,915.98	245	\$ 163,315.22	\$666.59	536	536	\$ 356,710.01	\$665.50
Lawyer of the Day - Juvenile	25	25	\$13,097.12	10	\$ 6,217.54	\$621.75	42	30	\$ 18,101.02	\$603.37
Lawyer of the Day - Walk-in	153	140	\$98,795.86	105	\$ 72,063.46	\$686.32	294	279	\$ 192,756.58	\$690.88
MCILS Provided Training	108	108	\$17,374.50	108	\$ 18,214.50	\$168.65	222	219	\$ 40,009.50	\$182.69
Misdemeanor	1,045	1,173	\$747,600.90	967	\$ 589,742.86	\$609.87	2,235	2,179	\$ 1,337,822.12	\$613.96
Petition, Modified Release Treatment	0	1	\$1,618.00	0			3	2	\$ 1,294.00	\$647.00
Petition, Release or Discharge	0	1	\$1,455.30	1	\$ 4,602.00	\$4,602.00	0	1	\$ 4,602.00	\$4,602.00
Petition, Termination of Parental Rights	14	48	\$75,280.79	49	\$ 61,053.51	\$1,245.99	41	119	\$ 188,107.72	\$1,580.74
Post Conviction Review	6	17	\$38,758.47	16	\$ 37,900.20	\$2,368.76	13	21	\$ 62,262.72	\$2,964.89
Probate	2	2	\$2,792.32	8	\$ 11,344.09	\$1,418.01	5	12	\$ 21,428.45	\$1,785.70
Probation Violation	120	135	\$123,686.57	121	\$ 101,880.23	\$841.99	286	295	\$ 236,488.24	\$801.66
Represent Witness on 5th Amendment	4	1	\$420.00	0			8	1	\$ 1,110.00	\$1,110.00
Resource Counsel Criminal	2	5	\$975.00	2	\$ 780.00	\$390.00	2	5	\$ 2,085.00	\$417.00
Resource Counsel Juvenile	0	1	\$120.00	1	\$ 120.00	\$120.00	0	1	\$ 120.00	\$120.00
Resource Counsel NCR	0	0		0			0	0		
Resource Counsel Protective Custody	0	3	\$3,480.00	3	\$ 2,895.00	\$965.00	1	6	\$ 14,779.50	\$2,463.25
Review of Child Protection Order	39	132	\$137,468.01	145	\$ 138,993.32	\$958.57	72	284	\$ 302,753.03	\$1,066.03
Revocation of Administrative Release	4	0		0			4	1	\$ 300.00	\$300.00
<b>DefenderData Sub-Total</b>	<b>2,941</b>	<b>3,500</b>	<b>\$3,348,518.83</b>	<b>3,029</b>	<b>\$2,762,655.55</b>	<b>\$912.07</b>	<b>6,060</b>	<b>6,714</b>	<b>\$6,085,589.10</b>	<b>\$906.40</b>
<b>TOTAL</b>	<b>2,941</b>	<b>3,500</b>	<b>\$3,348,518.83</b>	<b>3,029</b>	<b>\$2,762,655.55</b>	<b>\$ 912.07</b>	<b>6,060</b>	<b>6,714</b>	<b>\$ 6,085,589.10</b>	<b>\$ 906.40</b>

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Court

8/31/2023

Court	Aug-23						Fiscal Year 2024			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
ALFSC	0	3	\$4,289.40	3	\$ 4,289.40	\$1,429.80	1	6	\$ 5,804.40	\$967.40
AUBSC	1	1	\$349.00	1	\$ 600.00	\$600.00	1	3	\$ 3,270.00	\$1,090.00
AUGDC	65	73	\$80,068.56	64	\$ 62,788.12	\$981.06	113	140	\$ 149,936.08	\$1,070.97
AUGSC	1	4	\$8,722.50	2	\$ 5,649.00	\$2,824.50	2	5	\$ 7,324.00	\$1,464.80
BANDC	59	102	\$107,055.15	98	\$ 95,389.44	\$973.36	109	206	\$ 184,977.14	\$897.95
BANSC	0	2	\$999.66	2	\$ 1,766.66	\$883.33	0	2	\$ 1,766.66	\$883.33
BATSC	0	0		0			0	0		
BELDC	12	20	\$15,797.92	7	\$ 7,740.96	\$1,105.85	20	23	\$ 24,351.20	\$1,058.75
BELSC	0	0		0			0	0		
BIDDC	36	45	\$41,768.23	65	\$ 52,826.12	\$812.71	76	95	\$ 83,654.01	\$880.57
BRIDC	2	4	\$2,185.00	6	\$ 6,086.00	\$1,014.33	15	13	\$ 15,534.05	\$1,194.93
CALDC	4	9	\$6,996.00	6	\$ 5,245.48	\$874.25	7	11	\$ 10,291.74	\$935.61
CARDC	5	6	\$11,679.98	10	\$ 13,555.50	\$1,355.55	9	37	\$ 40,029.86	\$1,081.89
CARSC	0	0		0			5	1	\$ 2,970.00	\$2,970.00
DOVDC	5	5	\$5,076.14	6	\$ 4,543.10	\$757.18	12	27	\$ 21,716.12	\$804.30
DOVSC	1	0		0			1	0		
ELLDC	17	46	\$62,599.35	43	\$ 47,777.16	\$1,111.10	24	63	\$ 72,407.27	\$1,149.32
ELLSC	0	0		0			0	0		
FARDC	23	11	\$8,666.60	12	\$ 12,926.38	\$1,077.20	36	39	\$ 38,784.55	\$994.48
FARSC	0	1	\$ 1,605.00	0			0	0		
FORDC	7	2	\$1,966.38	6	\$ 6,975.10	\$1,162.52	13	23	\$ 36,630.58	\$1,592.63
HOUDC	18	23	\$28,015.34	12	\$ 10,344.65	\$862.05	32	33	\$ 42,539.25	\$1,289.07
HOUSC	0	0		0			0	0		
LEWDC	61	90	\$91,158.46	88	\$ 88,853.07	\$1,009.69	99	180	\$ 182,837.29	\$1,015.76
LINDC	2	9	\$5,640.20	11	\$ 12,276.04	\$1,116.00	10	20	\$ 23,355.94	\$1,167.80
MACDC	6	3	\$4,353.72	2	\$ 1,646.48	\$823.24	7	5	\$ 5,632.80	\$1,126.56
MACSC	0	0		0			0	0		
MADDC	0	0		0			0	0		
MILDC	1	1	\$124.00	2	\$ 1,010.00	\$505.00	3	4	\$ 2,630.00	\$657.50
NEWDC	8	20	\$27,629.14	24	\$ 22,349.62	\$931.23	16	44	\$ 37,033.08	\$841.66
PORDC	79	84	\$91,437.32	92	\$ 92,415.32	\$1,004.51	152	205	\$ 240,732.79	\$1,174.31
PORSC	1	1	\$2,820.00	2	\$ 3,267.00	\$1,633.50	2	4	\$ 6,455.00	\$1,613.75
PREDC	12	18	\$30,284.84	16	\$ 31,862.91	\$1,991.43	29	46	\$ 71,726.87	\$1,559.28
RODC	15	19	\$14,677.70	13	\$ 10,093.40	\$776.42	38	26	\$ 22,281.24	\$856.97
ROSC	0	0		0			0	0		
RUMDC	7	16	\$22,828.80	12	\$ 14,570.85	\$1,214.24	18	31	\$ 35,770.71	\$1,153.89
SKODC	22	45	\$50,619.34	49	\$ 53,746.70	\$1,096.87	48	123	\$ 120,491.77	\$979.61
SKOSC	0	0		0			0	1	\$ 3,297.00	\$3,297.00
SOUDC	12	19	\$24,155.02	14	\$ 21,756.75	\$1,554.05	20	23	\$ 50,322.03	\$2,187.91
SOUSC	1	0		0			1	0		
SPRDC	15	16	\$24,108.00	27	\$ 28,518.61	\$1,056.24	27	55	\$ 63,034.61	\$1,146.08
Law Ct	14	14	\$27,776.60	10	\$ 21,263.18	\$2,126.32	33	22	\$ 55,899.69	\$2,540.90
Training	109	112	\$26,757.50	111	\$ 25,392.50	\$228.76	224	227	\$ 62,859.50	\$276.91
YORCD	433	390	\$411,820.32	319	\$ 289,508.13	\$907.55	791	771	\$ 707,429.20	\$917.55
AROCD	218	255	\$273,178.07	196	\$ 208,218.48	\$1,062.34	424	384	\$ 416,543.45	\$1,084.75
ANDCD	212	330	\$272,138.04	235	\$ 194,086.84	\$825.90	411	462	\$ 400,666.66	\$867.24
KENCD	278	265	\$206,244.06	180	\$ 144,788.23	\$804.38	602	538	\$ 388,089.32	\$721.36
PENCD	272	306	\$268,647.14	282	\$ 227,669.38	\$807.34	535	618	\$ 460,241.51	\$744.73
SAGCD	30	38	\$33,448.08	49	\$ 42,701.70	\$871.46	101	117	\$ 101,277.12	\$865.62
WALCD	48	61	\$58,110.19	57	\$ 48,063.92	\$843.23	129	114	\$ 90,135.34	\$790.66
PISCD	24	25	\$37,766.44	17	\$ 14,386.42	\$846.26	28	42	\$ 30,184.46	\$718.68
HANCD	66	58	\$54,741.28	54	\$ 57,381.44	\$1,062.62	120	119	\$ 138,657.30	\$1,165.19
FRACD	37	71	\$45,176.72	58	\$ 45,280.59	\$780.70	98	119	\$ 82,326.23	\$691.82
WASCD	40	34	\$95,415.16	29	\$ 94,171.91	\$3,247.31	108	122	\$ 187,478.81	\$1,536.71
CUMCD	337	382	\$362,251.37	356	\$ 312,636.75	\$878.19	821	753	\$ 661,428.59	\$878.39
KN OCD	33	60	\$69,226.32	52	\$ 52,038.44	\$1,000.74	96	118	\$ 116,319.32	\$985.76
SOMCD	103	123	\$119,472.62	89	\$ 70,021.72	\$786.76	207	202	\$ 167,255.47	\$828.00
OXFCD	98	164	\$95,797.37	147	\$ 95,398.14	\$648.97	214	255	\$ 178,244.96	\$699.00
LINCD	43	41	\$34,228.06	31	\$ 28,635.60	\$923.73	88	78	\$ 71,282.70	\$913.88
WATDC	21	40	\$38,008.40	34	\$ 29,521.14	\$868.27	37	84	\$ 71,091.37	\$846.33
WESDC	20	23	\$28,054.30	19	\$ 29,084.14	\$1,530.74	32	49	\$ 58,524.02	\$1,194.37
WISDC	4	6	\$8,890.86	5	\$ 7,594.00	\$1,518.80	10	18	\$ 23,557.96	\$1,308.78
WISSC	1	0		0			1	0		
YORDC	2	2	\$925.10	2	\$ 1,175.00	\$587.50	3	6	\$ 5,740.00	\$956.67
<b>TOTAL</b>	<b>2,941</b>	<b>3,500</b>	<b>\$3,348,518.83</b>	<b>3,029</b>	<b>\$2,762,655.55</b>	<b>\$912.07</b>	<b>6,060</b>	<b>6,714</b>	<b>\$6,085,589.10</b>	<b>\$906.40</b>

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**  
**FY24 FUND ACCOUNTING**  
AS OF 08/31/2023

Account 010 95F Z112 01 (All Other)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY24 Total
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
Budget Order Adjustment		\$ -		\$ -		\$ -		\$ -	\$ -
Budget Order Adjustment		\$ -		\$ -		\$ -		\$ -	\$ -
Financial Order Adjustment		\$ -		\$ -		\$ -		\$ -	\$ -
<b>Total Budget Allotments</b>		<b>\$ 7,831,128.77</b>		<b>\$ 4,971,712.00</b>		<b>\$ 4,971,711.00</b>		<b>\$ 4,971,711.00</b>	<b>\$ 24,001,870.78</b>
Total Expenses	1	\$ (2,941,048.40)	4	\$ -	7	\$ -	10	\$ -	
	2	\$ (2,953,206.21)	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
FY23 carry forward appropriation		\$ -		\$ -		\$ -		\$ -	\$ 1,255,608.01
FY23 carry forward encumbrances		\$ -		\$ -		\$ -		\$ -	\$ (587,542.77)
Encumbrances (Justice Works)		\$ (90,927.00)		\$ -		\$ -		\$ -	\$ (90,927.00)
Encumbrances (B Taylor)		\$ (17,680.00)		\$ -		\$ -		\$ -	\$ (17,680.00)
Encumbrances (CTB for non attorney expenses)		\$ 168,565.56		\$ -		\$ -		\$ -	\$ 168,565.56
Encumbrance (Legal Case Management Accelerator User assistance)		\$ (5,550.00)		\$ -		\$ -		\$ -	\$ (5,550.00)
Encumbrance (Justin Andrus contract for temp services)		\$ (129,853.10)		\$ -		\$ -		\$ -	\$ (129,853.10)
Online Legal Research Services		\$ (50,306.28)		\$ -		\$ -		\$ -	\$ (50,306.28)
FY22 CTB Balance Carry Forward		\$ (251,650.23)		\$ -		\$ -		\$ -	\$ (251,650.23)
<b>TOTAL REMAINING</b>		<b>\$ 1,559,473.11</b>		<b>\$ 4,971,712.00</b>		<b>\$ 4,971,711.00</b>		<b>\$ 4,971,711.00</b>	<b>\$ 17,730,215.12</b>

Q1 Month 2	
<b>INDIGENT LEGAL SERVICES</b>	
Counsel Payments	\$ (2,668,939.47)
Interpreters	\$ (5,442.54)
Private Investigators	\$ (22,707.45)
Mental Health Expert	\$ (58,975.00)
Misc Prof Fees & Serv	\$ (1,480.00)
Transcripts	\$ (46,244.03)
Other Expert	\$ (95,788.05)
Subpoena witness	\$ -
Process Servers	\$ (2,772.65)
<b>SUB-TOTAL ILS</b>	<b>\$ (2,902,349.19)</b>
<b>OPERATING EXPENSES</b>	
Service Center	\$ (11,011.58)
Barbara Taylor monthly fees	\$ (4,420.00)
OIT/TELCO	\$ (10,116.97)
Mileage/Tolls/Parking	\$ (2,546.56)
Mailing/Postage/Freight	\$ (401.80)
West Publishing Corp	\$ (3,581.32)
Office Equipment Rental	\$ -
Office Supplies/Equip.	\$ (176.82)
Cellular Phones	\$ -
Periodicals	\$ (130.00)
Employee lodging & airfare	\$ (106.82)
Justin Andrus contract payments	\$ (2,448.50)
Central fleet vehicle lease	\$ -
Legal ads	\$ -
Dues	\$ (265.00)
Registration fees	\$ (210.00)
Tuition for CLEs	\$ -
Risk Management	\$ (6,067.85)

INDIGENT LEGAL SERVICES	
Q1 Allotment	\$ 7,831,128.77
Encumbrances for Justice Works contract	\$ (90,927.00)
Barbara Taylor Contract	\$ (17,680.00)
CTB Encumbrance for non attorney expenses	\$ 168,565.56
CTB Encumbrance for non attorney expenses carry forward	\$ (251,650.23)
Encumbrance for Justin Andrus contract for temp services	\$ (129,853.10)
Legal Case Management Accelerator User Assistance	\$ (5,550.00)
Online Legal Research Services	\$ (50,306.28)
Expenses to date	\$ (5,894,254.61)
Remaining Q1 Allotment	\$ 1,559,473.11

Non-Counsel Indigent Legal Services	
Monthly Total	\$ (233,409.72)
Total Q1	\$ 321,983.86
Total Q2	\$ -
Total Q3	\$ -
Total Q4	\$ -
Fiscal Year Total	\$ 321,983.86



MAINE COMMISSION ON INDIGENT LEGAL SERVICES  
FY24 FUND ACCOUNTING  
AS OF 08/31/2023

Justice Works	\$	(9,345.00)
Transcript on procurement card	\$	(28.80)
<b>SUB-TOTAL OE</b>	<b>\$</b>	<b>(50,857.02)</b>
<b>TOTAL</b>	<b>\$</b>	<b>(2,953,206.21)</b>

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**  
**FY24 FUND ACCOUNTING**  
AS OF 08/31/2023

<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		\$ -		\$ -		\$ -		\$ -	\$ -
Budget Order Adjustments		\$ -		\$ -		\$ -		\$ -	\$ -
Carry forward Q1, Q2 & Q3 Allotment		\$ -		\$ -		\$ -		\$ -	\$ -
<b>Total Budget Allotments</b>		<b>\$ 513,974.00</b>		<b>\$ 469,367.00</b>		<b>\$ 513,974.00</b>		<b>\$ 203,769.00</b>	<b>\$ 1,701,084.00</b>
Total Expenses	1	\$ (125,464.57)	4	\$ -	7	\$ -	10	\$ -	
	2	\$ (176,263.37)	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
<b>TOTAL REMAINING</b>		<b>\$ 212,246.06</b>		<b>\$ 469,367.00</b>		<b>\$ 513,974.00</b>		<b>\$ 203,769.00</b>	<b>\$ 1,399,356.06</b>

<b>Q1 Month 2</b>	
Retro lump sum pymt	\$ -
Permanent Regular	\$ (44,713.56)
Perm Vacation Pay	\$ (1,580.38)
Perm Holiday Pay	\$ -
Sick Pay	\$ (724.48)
Employee hlth svcs/workers comp	\$ (297.00)
Health Insurance	\$ (16,446.47)
Dental Insurance	\$ (408.80)
Employer Retiree Health	\$ (10,220.08)
Employer Retirement	\$ (7,193.15)
Employer Group Life	\$ (1,411.65)
Employer Medicare	\$ (1,676.07)
Retiree Unfunded Liability	\$ (19,355.09)
Longevity Pay	\$ (168.00)
Lim Perm Part Time Full Ben	\$ (6,870.60)
Limited Period Regular	\$ (52,282.68)
Limited Per Vacation Pay	\$ (10,100.20)
Limited Per Holiday Pay	\$ -
Limit Per Sick Pay	\$ (2,815.16)
Per diem	\$ -
<b>TOTAL</b>	<b>\$ (176,263.37)</b>

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**  
**FY24 FUND ACCOUNTING**  
AS OF 08/31/2023

<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	\$ -	7	\$ -	10	\$ -	
	2	\$ (73,802.05)	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
<b>TOTAL REMAINING</b>		<b>\$ 74,472.77</b>		<b>\$ 183,210.00</b>		<b>\$ 199,948.00</b>		<b>\$ 98,063.00</b>	<b>\$ 555,693.77</b>

<b>Q1 Month 2</b>	
Per Diem	\$ -
Permanent Regular	\$ (35,271.52)
Perm Vacation Pay	\$ (2,253.84)
Perm Holiday Pay	\$ -
Perm Sick Pay	\$ (941.85)
Health Insurance	\$ (7,219.38)
Dental Insurance	\$ (146.00)
Employer Retiree Health	\$ (4,182.73)
Employer Retirement	\$ (4,208.61)
Employer Group Life	\$ (531.90)
Employer Medicare	\$ (677.73)
Retiree Unfunded Liability	\$ (7,921.29)
Limited Period Regular	\$ (8,163.66)
Limit Per Holiday Pay	\$ -
Limit Per Vacation Pay	\$ (1,723.20)
Limit Per Sick Pay	\$ (452.34)
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>\$ (73,802.05)</b>

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

FY24 FUND ACCOUNTING

As of 08/31/2023

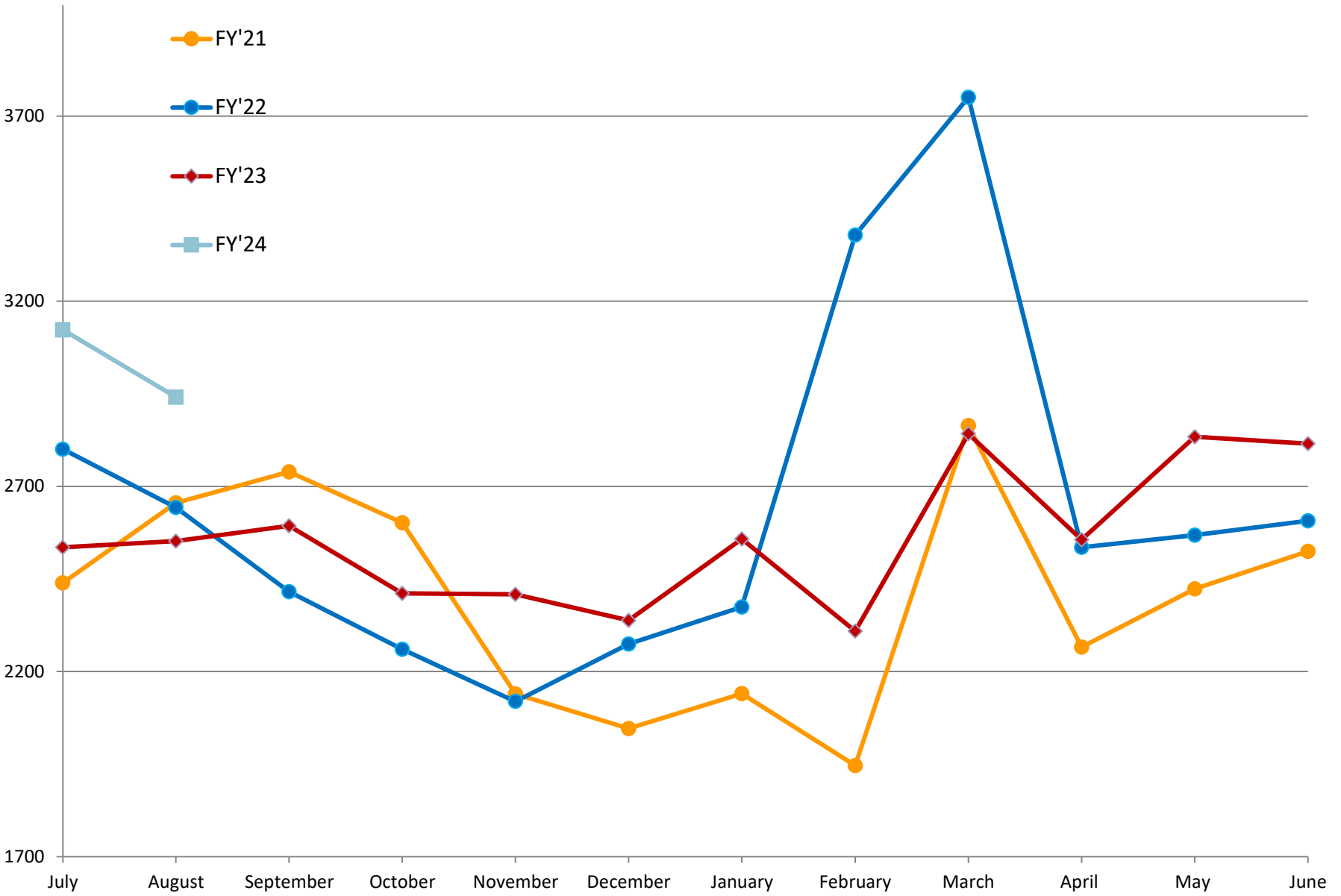
Account 014 95F Z112 01 (Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY24 Total
<b>Original Total Budget Allotments</b>		\$ 7,197,529.00		\$ 4,991,638.00		\$ 4,991,638.00		\$ 4,991,638.00	\$ 22,172,443.00
Financial Order Adjustment		\$ -		\$ -		\$ -		\$ -	\$ -
Financial Order Adjustment	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Budget Order Adjustment	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Transfer from General Fund Surplus	3	\$ -	6	\$ -	9	\$ -	12	\$ -	\$ -
<b>Total Budget Allotments</b>		\$ 7,197,529.00		\$ 4,991,638.00		\$ 4,991,638.00		\$ 4,991,638.00	\$ 22,172,443.00
Cash Carryover from Prior Quarter		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Collected Revenue from JB	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Collected Revenue from JB	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
Collected for reimbursement of counsel fees		\$ -		\$ -		\$ -		\$ -	
Collected for reimbursement of counsel fees		\$ -		\$ -		\$ -		\$ -	
Collected for reimbursement of counsel fees		\$ -		\$ -		\$ -		\$ -	
<b>TOTAL CASH PLUS REVENUE COLLECTED</b>		\$ -		\$ -		\$ -		\$ -	\$ -
Counsel Payments	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Counsel Payments	2	\$ (93,716.08)	5	\$ -	8	\$ -	11	\$ -	
Counsel Payments	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
State Cap for period 1		\$ (674.86)		\$ -		\$ -		\$ -	
State Cap for periods 4,5 & 6		\$ -		\$ -		\$ -		\$ -	
State Cap for periods 8, 9, 10, 11 & 12		\$ -		\$ -		\$ -		\$ -	
<b>REMAINING ALLOTMENT</b>		\$ 7,103,138.06		\$ 4,991,638.00		\$ 4,991,638.00		\$ 4,991,638.00	\$ 22,078,052.06
Overpayment Reimbursements	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
	2	\$ 1,080.00	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
<b>REMAINING CASH Year to Date</b>		\$ (94,390.94)		\$ -		\$ -		\$ -	\$ (94,390.94)

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**  
**FY24 FUND ACCOUNTING**  
AS OF 08/31/2023

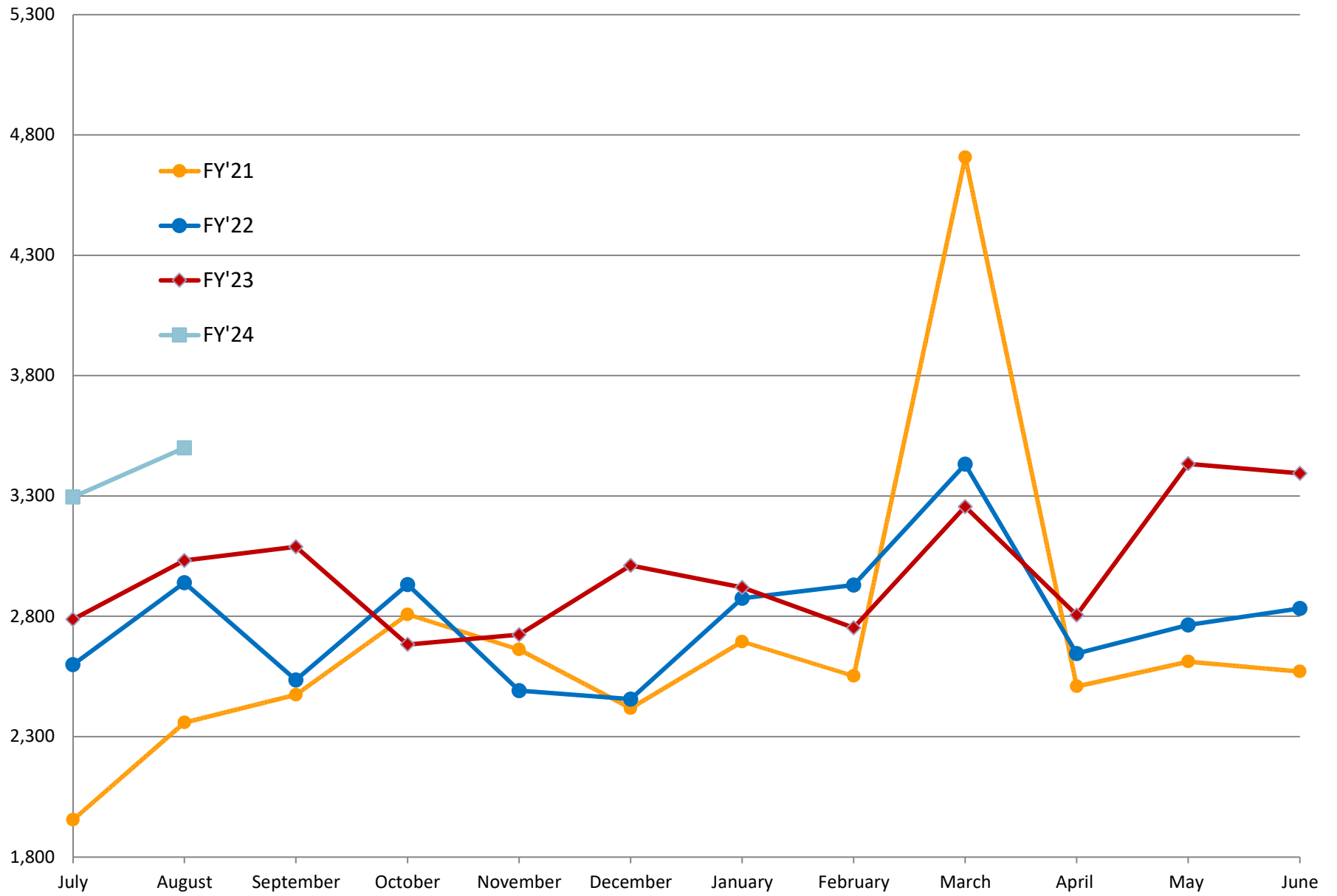
<b>Account 014 95F Z112 02 (Conference Account)</b>	<b>Mo.</b>	<b>Q1</b>	<b>Mo.</b>	<b>Q2</b>	<b>Mo.</b>	<b>Q3</b>	<b>Mo.</b>	<b>Q4</b>	<b>FY24 Total</b>
FY24 Allotment		\$ 13,333.00		\$ 17,000.00		\$ 13,333.00		\$ 13,334.00	\$ 57,000.00
Carry Forward		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustments		\$ -		\$ -		\$ -		\$ -	
<b>Total Budget Allotments</b>		<b>\$ 13,333.00</b>		<b>\$ 17,000.00</b>		<b>\$ 13,333.00</b>		<b>\$ 13,334.00</b>	<b>\$ 57,000.00</b>
Total Expenses	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
<b>TOTAL REMAINING</b>		<b>\$ 13,333.00</b>		<b>\$ 17,000.00</b>		<b>\$ 13,333.00</b>		<b>\$ 13,334.00</b>	<b>\$ 57,000.00</b>

<b>Q1 Month 2</b>	
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
<b>TOTAL</b>	<b>\$ -</b>

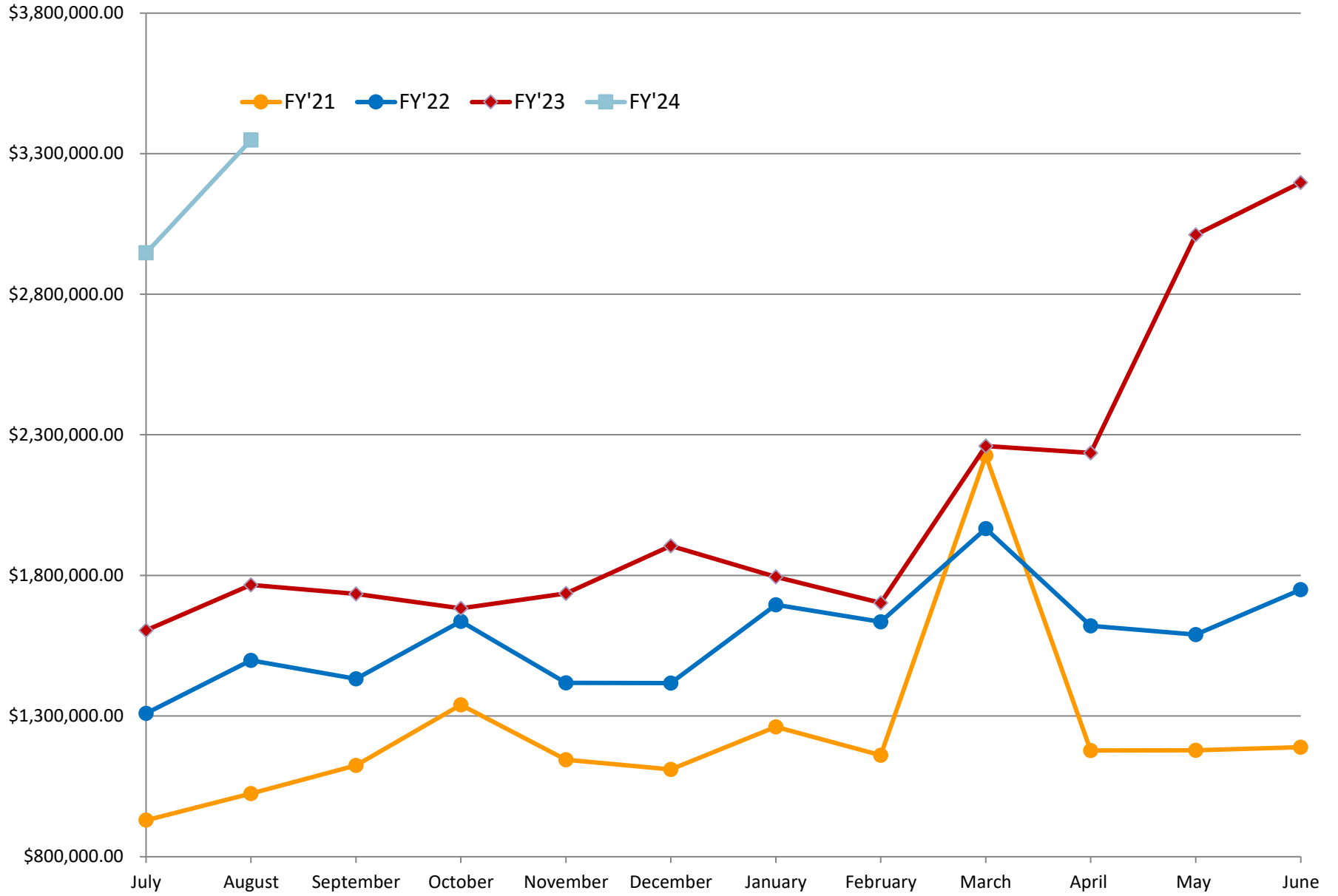
# NEW CASES



# Submitted Vouchers

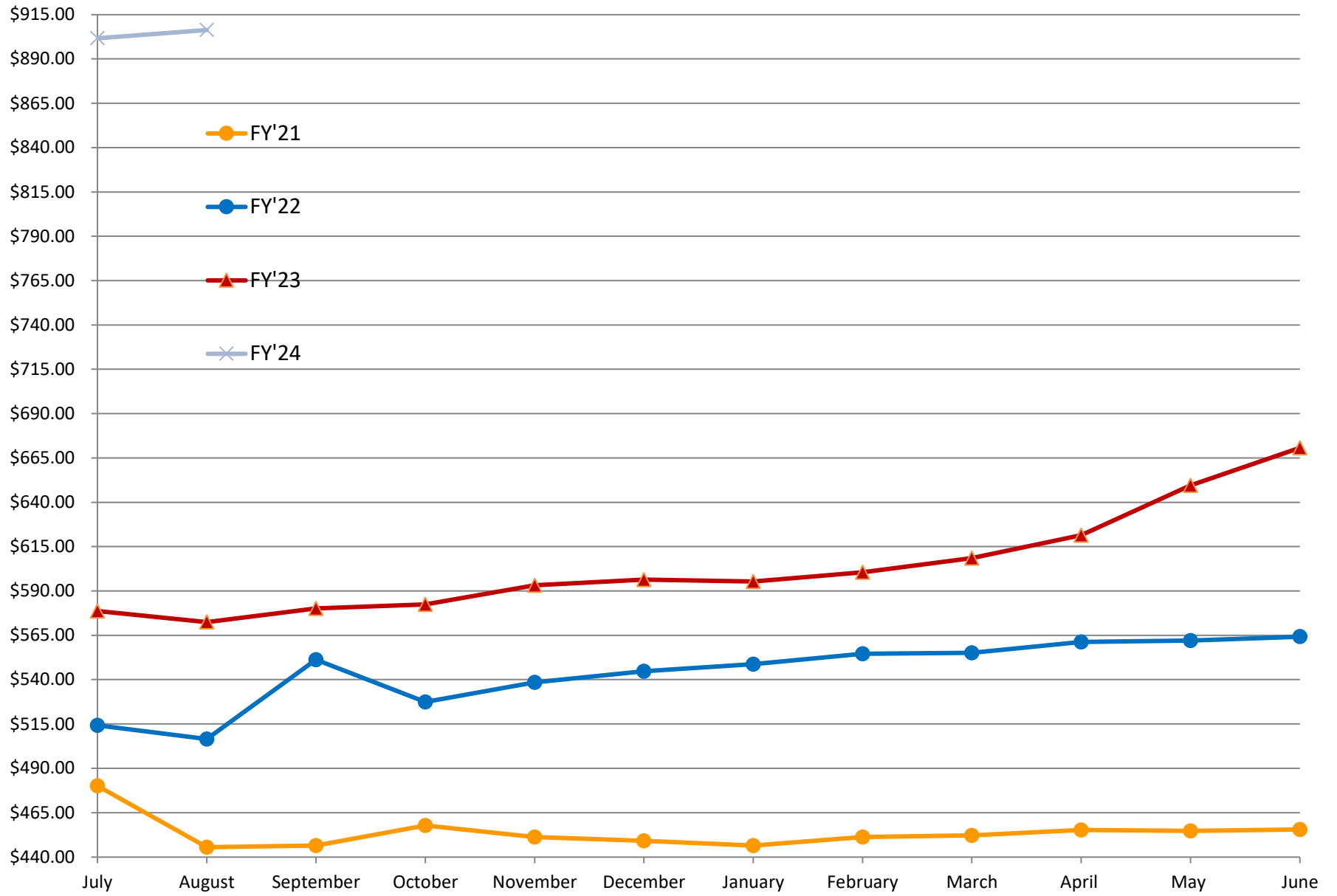


# Submitted Voucher Amount

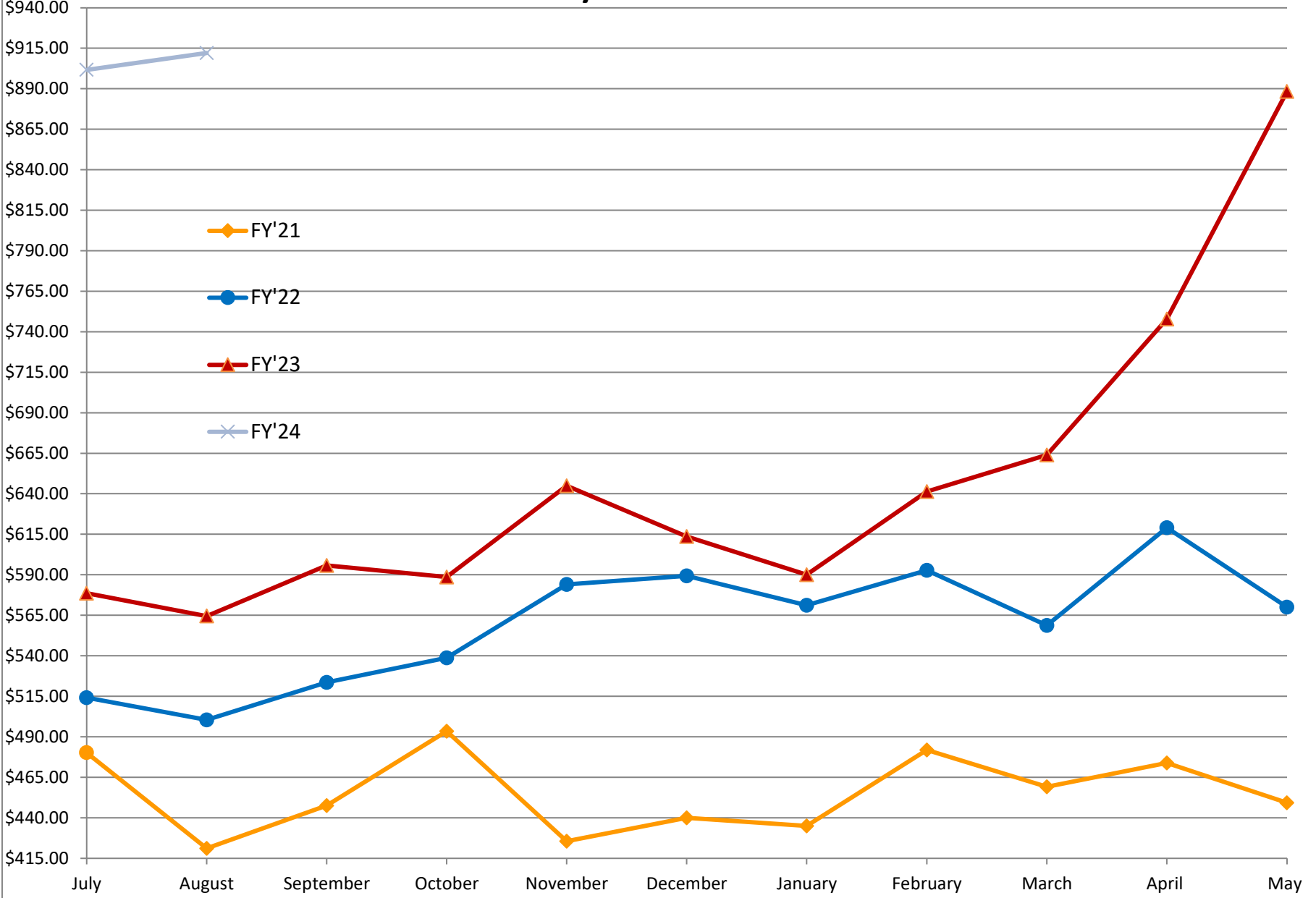




### Average Voucher Price Fiscal Year to Date



# Monthly Price Per Voucher



# PSLF CHANGES AFFECTING ASSIGNED COUNSEL

**August 2023**

The Public Service Loan Forgiveness Program (PSLF) was established in 2007 to help address a recruitment and retention crisis within public service professions. The program forgives the balance of a person's federal student loan after they have made 120 monthly payments while providing a qualifying public service. However, when borrowers began to apply to have their loans forgiven, more than 98% of their applications were denied.

In 2021, the Department of Education (ED) established a limited waiver that relaxed certain technical requirements that had prevented borrowers from accessing loan forgiveness, and some of those changes were made permanent by new regulations that became effective on July 1, 2023. These regulations also have altered the program in new ways to make it more accessible to those working in public service. More information about these changes is available at [studentaid.gov](https://studentaid.gov).

# State Law Exception for Contracted Employees

Some individuals providing public defense and other public interest law services, including attorneys appointed by courts or other entities to represent indigent clients, have been excluded from PSLF in the past because of the way that ED had previously defined “qualifying employment.” **Many of these individuals are now eligible for PSLF under the new regulations.** ED continues to consider direct employees (people who receive W-2 forms from their employer) to be eligible for PSLF. However, an **exception** has also been created that establishes eligibility for people who “who work as a *contracted employee*\* for a qualifying employer in a position or providing services which, under applicable state law, cannot be filled or provided by a direct employee of the qualifying employer.”\*\*

Qualifying employers are permitted to certify PSLF forms for borrowers if it is **their own determination** that indigent defense cannot be performed by a direct (W-2) employee of that organization. The regulation **does not** require that state law expressly prohibit qualifying services from being performed by a direct employee in order to meet the exception, only that it is a consequence of state law. Public defense delivery systems vary considerably between states and local jurisdictions, but some common situations in which contractors who are interested in PSLF may be able to certify their employment include, but are not limited to:

- ✓ An attorney who is appointed to represent indigent clients full time\*\*\* in a state in which state law or regulation has established a statewide assigned counsel (or hybrid) system or program.
- ✓ An attorney who is appointed to represent indigent clients full time in a state in which an entity created by state law or regulation (such as a public defender commission), has established an assigned counsel (or hybrid) system or program.
- ✓ An attorney who is appointed to represent indigent clients full time in a jurisdiction (e.g. a county, municipality, or court system) that has chosen to operate an assigned counsel system, where its authority or responsibility for doing so is derived from state law.

These changes generally apply retroactively. Borrowers can submit PSLF forms to certify employment for any period of full-time public service since October 2007, if that employment would qualify under the new regulations. Borrowers seeking to certify employment or apply for forgiveness should complete and submit the **PSLF Form**.

The information in this document does not, and is not intended to, constitute legal advice. This document is for general informational purposes only.

## \* Who is a Contracted Employee?

A “contracted employee” can include an individual practicing as a sole proprietorship or as a partner, owner, or employee of a partnership, group, or professional corporation. A contracted organization may also be a for-profit entity and employees may receive an IRS W-2, a 1099, and other tax forms.

## \*\* What is a Qualifying Employer?

A qualifying employer means a U.S.-based federal, state, local, or tribal government organization, such as a court; a not-for-profit organizations that are tax-exempt under Section 501(c)(3) of the Internal Revenue Code (such as a managed assigned counsel programs); or other not-for-profit organizations that devote a majority of their full-time equivalent employees to providing qualifying public services. An attorney may be appointed to cases by a qualifying employer (e.g. a court) but receive payment from another entity (such as a county, or a third-party payment company). In this case, the contracted employee should **report the EIN of the qualifying employer on their PSLF form** (not their direct employer whose EIN appears on their W-2 or 1099) and have an authorized official of the qualifying employer certify their employment.

## \*\*\* What is “full time”?

Full-time employment means working for a qualifying employer(s) for a weekly average, alone or when combined (e.g. if an attorney is working in more than one jurisdiction), equal to at least 30 hours during the period being certified. This period is a minimum of one month. Attorneys who are not compensated on an hourly basis may still qualify **if their employer determines that their caseload during the period was equivalent to at least 30 hours a week**. This does not exclude attorneys who also represent paying clients, provided they meet the minimum required hours of indigent defense.

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

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

**SECTION 1. DEFINITIONS**

1. **Court-Assigned Counsel.** “Court-Assigned Counsel” means private counsel licensed to practice law in Maine, designated eligible to receive an assignment to a particular case, and initially assigned by a Court to represent a particular client in a particular matter. For the purposes of this rule, “Court-Assigned Counsel” does not include any employee of MCILS.
2. **Commission-Assigned Counsel.** “Commission-Assigned Counsel” means private counsel licensed to practice in Maine, designated eligible to be assigned to provide a particular service or to represent a particular client in a particular matter, and assigned by MCILS to provide that service or represent a client. For the purposes of this rule, “Commission-Assigned Counsel” does not include any employee of MCILS.
3. **Counsel.** As used in this Chapter “Counsel” means a Court-Assigned Counsel or Commission-Assigned Counsel, or both.
4. **MCILS or Commission.** “MCILS” or “Commission” means the Commissioners of the Maine Commission on Indigent Legal Services.
5. **Executive Director.** “Executive Director” means the Executive Director of MCILS or the Executive Director’s decision-making designee.
6. **Commission-Employed Counsel.** “Commission-Employed Counsel” means counsel employed by the Commission to provide direct representation to indigent persons.
7. **Home Court.** “Home Court” means the physical location of the court in closest proximity to Counsel’s office or reasonably accessible private meeting space as contemplated by 94-649 C.M.R. ch. 2 § 3.
8. **MCILS Liaison.** “MCILS Liaison” means the attorney who performs services for clients as part of the specialty court team but who has not otherwise been appointed to represent a specific client in a specific docket.

9. **Interim Voucher.** “Interim Voucher” means any voucher submitted in a case before counsel’s professional responsibility in a matter ends.
10. **Particular Client Assignment.** “Particular Client Assignment” means an assignment of Counsel to represent a particular client in a particular matter either by MCILS or the Court under Rule 44 of the Maine Rules of Unified Criminal Procedure or Rule 88 of the Maine Rules of Civil Procedure. For the purpose of this rule a “particular matter” is a matter described by a particular docket number in a Court.
11. **Days.** “Days” means calendar days.
12. **Paralegal.** A “paralegal” is a person, qualified by education, training, or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency, or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible.
13. **Paralegal services.** “Paralegal services” constitute specifically delegated substantive legal work for which a lawyer is responsible.
14. **Secretarial services.** “Secretarial services” means staff support services other than paralegal services.
15. **Resource Counsel.** Counsel designated eligible to serve as Resource Counsel pursuant to Chapter 3 of the Commission Rules.
16. **Final Voucher.** Final Voucher means and includes the voucher required by Section 6 of this Chapter to be submitted within 90 days of a terminal case event.
17. **Supplemental Voucher.** Supplemental Voucher means any voucher submitted for work performed by Counsel on behalf of their indigent client after the terminal case event has occurred.
- ~~18.~~ **Case.** Case means particular client assignment as defined by this Chapter.

## SECTION 2. HOURLY RATE OF PAYMENT

Effective March 1, 2023:

A rate of One Hundred Fifty Dollars (\$150.00) per hour is authorized for time spent by Counsel, and billed using MCILS electronic case management system, on an assigned case on or after March 1, 2023. A rate of Eighty Dollars (\$80.00) per hour remains authorized for time spent on

an assigned case between July 1, 2021 and February 28, 2023. A rate of Sixty Dollars (\$60.00) per hour remains authorized for time spent on an assigned case between July 1, 2015 and June 30, 2021. A rate of Fifty-five Dollars (\$55.00) per hour remains authorized for time spent on an assigned case between July 1, 2014 and June 30, 2015. A rate of Fifty Dollars (\$50.00) per hour remains authorized for time spent on an assigned case between the inception of the Commission and June 30, 2014.

### SECTION 3. EXPENSES

- 1. Routine Office Expenses.** Routine Office expenses will not be paid by MCILS. Routine office expenses include, but are not limited to: postage other than overnight and express postage, regular telephone, cell telephone, fax, office overhead, utilities, secretarial services, the first 100 pages of any one print or copy job, local phone calls, parking (except as stated below), and office supplies, ~~etc.~~ Any and all requests for fees or reimbursement for pParalegal services and secretarial services-time may be submitted billed to MCILS only through the non-counsel cost procedures.
- 2. Itemized Non-Routine Expenses.** Itemized non-routine expenses, such as discovery from the State or other agency, long distance calls (only if billed for long distance calls by your phone carrier), overnight and express postage, collect phone calls, copy costs for print or copy jobs in excess of 100 pages, beginning with the 101<sup>st</sup> page, printing/copying/binding of legal appeal brief(s), relevant in-state mileage (as outlined below), tolls (as outlined below), and fees paid to third parties, may be paid by MCILS after review. Necessary parking fees associated with multi-day trials and hearings will be reimbursed. Parking tickets, fines, and/or fees for other violations will not be reimbursed.
- 3. Travel Reimbursement.** Mileage reimbursement shall be made at the State rate applicable to confidential state employees on the date of the travel. Mileage reimbursement will be paid for travel to and from courts other than Counsel's home ~~district and superior~~ court. Mileage reimbursement will not be paid for travel to and from a Counsel's home ~~district and superior~~ courts. Tolls will be reimbursed, ~~except that tolls will not be reimbursed for travel to and from Counsel's home district and superior court.~~ All out-of-state travel, ~~or any~~ overnight travel, and any other expense associated with such travel including but not limited to airfare, lodging, and food, must be approved by MCILS in writing prior to incurring the expense. Reimbursement will be subject to the State's per diem maximum rate policies with respect to the reimbursement of any expense must be approved by MCILS in writing prior to incurring the expense. Use of the telephone, video equipment, and email in lieu of travel is encouraged as appropriate.
- 4. Itemization of Claims.** Claims for all expenses must be itemized and include documentation. All expense documentation must be attached to the voucher used to seek reimbursement for the expense claimed. Claims for mileage shall be itemized and include the start and end points for the travel in question.
- 5. Discovery Materials.** MCILS will reimburse only for one set of discovery materials per assignment. If counsel is permitted to withdraw, appropriate copies of discovery materials must be forwarded to new counsel within one week of notice of new counsel's

assignment. Counsel may retain a copy of a file transferred to new counsel, or to a client. Counsel shall perform any scanning or make any copies necessary to retain a copy of the file at counsel's expense. The client owns the file. The original file shall be tendered to new counsel, or to the client, as directed.

6. **Expert and Investigator Expenses.** Other non-routine expenses for payment to third parties, (e.g., investigators, interpreters, medical and psychological experts, testing, depositions, etc.) shall be approved in advance by MCILS. Funds for third-party services will be provided by MCILS only upon written request and a sufficient demonstration of reasonableness, relevancy, and need in accordance with MCILS rules and procedures governing requests for funds for experts and investigators. See Chapter 302 Procedures Regarding Funds for Experts and Investigators.
7. **Witness, Subpoena, and Service Fees.** Witness, subpoena, and service fees will be reimbursed only pursuant to the Maine Rules of Court. ~~Counsel should not~~ ~~It is unnecessary for counsel to~~ advance these costs. ~~These costs and they~~ shall not be included as a voucher expense without prior consent from the Executive Director ~~or~~ ~~designee~~. Fees for service of process by persons other than the sheriff shall not exceed those allowed by 30-A M.R.S. §421. The same procedure shall be followed in civil cases.

#### SECTION 4. PRESUMPTIVE REVIEW

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

##### 1. Trial Court Criminal Fees

- A. Triggers for presumptive review, excluding any itemized expenses, are set in accordance with this subsection. Counsel must provide MCILS with written justification for any voucher that exceeds the trigger limit.
  - 1) **Murder.** All murder cases shall trigger presumptive review.
  - 2) **Class A.** ~~\$5,000~~9,400
  - 3) **Class B and C (against person).** ~~\$4,000~~7,500
  - 4) **Class B and C (against property).** ~~\$2,500~~4,700
  - 5) **Class D and E.** ~~\$2,500~~4,700
  - 6) *[Repealed]*
  - 7) **Post-Conviction Review.** ~~\$3,000~~5,600
  - 8) **Probation Revocation.** ~~\$1,500~~2,800



9) **Miscellaneous (i.e. witness representation on 5<sup>th</sup> Amendment grounds, etc.).** ~~\$1,000~~900

10) **Juvenile.** ~~\$1,500~~2,800

11) **Bindover:** applicable criminal class trigger

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

C. Criminal and juvenile cases will include all proceedings through a terminal case event as defined in Section 6<sub>2</sub> below. Any subsequent proceedings, such as probation revocations<sub>s</sub>, will require new application and appointment.

D. *[Repealed]*

E. Upon written request to MCILS, a second Counsel<sub>;</sub> may be assigned in a murder ~~case~~ or other complicated cases<sub>s</sub>, to provide for mentorship, or for other good cause at the discretion of the Executive Director:

1) the duties of each Counsel must be clearly and specifically defined, and ~~e~~Counsel must avoid unnecessary duplication of effort;

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

## 2. **District Court Child Protection**

A. Triggering fees, excluding any itemized expenses, for ~~Commission assigned~~ ~~e~~Counsel in child protective cases are ~~set in accordance with the following schedule~~:

1) **Child protective cases** ~~(each stage).~~ ~~\$1,500~~10,200

2) ~~*[Repealed]*~~ **Termination of Parental Rights stage** (with a hearing). ~~\$~~2,500

B. ~~*[Repealed]*~~ Counsel must provide MCILS with written justification for any voucher that exceeds the triggering limit. Each child protective stage ends when a proceeding results in a Preliminary Protective Order, Judicial Review Order, Jeopardy Order, Order on Petition for Termination of Parental Rights, or entry of a Family Matter or other dispositional order. Each distinct stage in on-going child protective cases shall be considered a new appointment for purposes of the triggering fee for that case.

3. **Other District Court Civil**

A. Triggering fees in District Court civil actions, excluding any itemized expenses, are set in accordance with this subsection. Counsel must provide MCILS with written justification for any voucher that exceeds the triggering fee.

1) **Application for Involuntary Commitment.** ~~\$1,000~~1,900

2) **Petition for Emancipation.** ~~\$1,500~~2,800

3) **Petition for Modified Release Treatment.** ~~\$1,000~~1,900

4) **Petition for Release or Discharge.** ~~\$1,000~~1,900

4. **Law Court**

A. *[Repealed]*

B. *[Repealed]*

C. Appellate: ~~\$2,000~~3,750

**SECTION 5: MINIMUM FEES**

Counsel may bill a minimum fee of 3 hours for appearances as Lawyer of the Day, or MCILS Liaison in specialty or diversionary courts or programs. A single minimum fee may be charged for each appearance at which the Counsel serves. If Counsel serves as Lawyer of the Day for a morning session that continues into the afternoon, that will be one appearance. If Counsel serves as Lawyer for the Day for a morning session and then a subsequent afternoon session with a second appearance time and list, that will be two appearances. Vouchers seeking the minimum fee must show the actual time expended and the size of the minimum fee adjustment rather than simply stating that the minimum fee is claimed. In addition to previously scheduled representation at initial appearance sessions, Lawyer of the Day representation includes representation of otherwise unrepresented parties at the specific request of the court on a matter that concludes the same day. Only a single minimum fee may be charged per appearance regardless of the number of clients consulted at the request of the court.

**SECTION 6: ADMINISTRATION**

1. Timing

A. Vouchers for payment of counsel fees and expenses associated with a particular client assignment shall be submitted within 90 (ninety) calendar days of a terminal case event. Lawyer of the Day, ~~and~~ specialty courts, Resource Counsel, and all other services rendered on behalf of the Commission and not associated with a particular client assignment shall be billed within 90 days of the service provided. ~~Vouchers not submitted within 90 days of a terminal case event cannot be paid, except on a showing by counsel that a voucher could not have been timely submitted for reasons outside the actual or constructive control of counsel.~~

~~Counsel are encouraged to submit interim vouchers not more often than once every 90 days per case. Counsel may request reconsideration of a voucher rejected between April 1, 2021 and the effective date of this rule if that voucher would be payable under this rule.~~

- ~~B. The period for submitting a voucher established by subsection (1)(A) of this section shall run from the date that the terminal case event is docketed. Services are rendered on Lawyer of the Day assignments on the date Counsel appears in court and serves as Lawyer of the Day. Services in specialty courts as an MCILS liaison, Resource Counsel, or as part of any other MCILS-sponsored program are rendered on the date the individual tasks were performed as indicated by the date associated with the time entry recorded to account for that time.~~
- ~~C. Vouchers not submitted within 90 days of a terminal case event or the timeframe otherwise established by this Chapter shall be reduced according to the schedule established by subsection (3)(C) of this section below, except on a showing by counsel that a voucher could not have been timely submitted for reasons outside the actual or constructive control of counsel. If an exception decision is rendered by the Executive Director's decision-making designee, counsel may submit an appeal in writing to the Executive Director on this issue only, within 10 days of the designee's decision. A decision on an exception under this section is final agency action.~~
- ~~D. Counsel may submit interim vouchers not more often than once every calendar month per case.~~
- ~~E. Cases must be entered in the MCILS case management system within seven days upon receipt of the Notice of Appointment. If counsel has been informed that they have been assigned to a case but have not received the Notice of Appointment, counsel shall exercise due diligence in obtaining a copy of the Notice as soon as possible.~~
- ~~A.F. \_\_\_\_\_~~

~~4.2. Terminal Cease Events are:~~

~~A terminal case event is the order, decision or judgment that signifies the final resolution of a particular client assignment such that substantive appearances before the court are no longer necessary to resolve the issues raised by the complaint, indictment, petition, appeal or other initial pleading that provided the impetus of the case. There can be only one terminal case event in a particular client assignment. Terminal case events exclusively include:~~

- ~~1) The withdrawal of counsel;~~
- ~~2) The entry of dismissal of all charges or petitions; or~~
- ~~3) Judgment or other final order or decision of the court in a case, or~~
- ~~4) *[Repealed]* Final resolution of post judgment proceedings for which counsel is responsible.~~

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

- ~~1. All vouchers must be submitted using MCILS electronic case management program and comply with all instructions for use of the system.~~
- ~~2. All time on vouchers shall be detailed and accounted for in .10 of an hour increments. The purpose for each time entry must be self-evident or specifically stated. Use of the comment section is recommended.~~
- ~~3. All expenses claimed for reimbursement must be fully itemized on the voucher. Copies of receipts for payments to third parties shall be retained and appended to the voucher.~~

### 3. Reduction for Untimely Voucher Submission

A. The total reduction applied to vouchers submitted after the 90-day deadline is calculated by multiplying the total voucher amount by the applicable percentage according to the schedule established by subsection (3)(C) of this section.

B. The days elapsed since the relevant terminal case event are calculated in the same manner as in determining compliance with the 90-day deadline.

C. Reduction Schedule:

<u>Days After Terminal Case Event</u>	<u>Reduction</u>
<u>91 – 104</u>	<u>10%</u>
<u>105 – 150</u>	<u>25%</u>
<u>151 – 180</u>	<u>50%</u>
<u>181 or more</u>	<u>100%</u>

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

### 4. Voucher Submission

1. All vouchers must be submitted using MCILS electronic case management system and comply with all instructions for use of the system.
2. All time on vouchers shall be detailed and accounted for in .10 of an hour increments rounding up to the nearest .10 of an hour. The purpose of each time entry must be specifically stated by using the most relevant time entry

category and providing a reasonably descriptive comment/note for each time entry.

3. Unless otherwise stated in this Chapter, Counsel may only record and seek payment for actual time spent working on Counsel's appointed or assigned cases using the MCILS electronic case management system. Counsel may not record a minimum amount for any time entries notwithstanding any previous policy or practice of the Commission.
4. All expenses claimed for reimbursement must be fully itemized on the voucher. Copies of receipts for payments to third parties shall be retained and appended to the voucher.
5. If a particular client assignment requires additional, supplemental work be performed by Counsel after the terminal case event occurs, Counsel may submit a supplemental voucher for the work performed after the final voucher is submitted. All time included on a supplemental voucher must be billed within a reasonable period of time after the task was completed. Notwithstanding any other provision of this Chapter, any time included on a supplemental voucher that is not submitted within a reasonable period of time is not payable except on a showing by counsel that the voucher could not have been timely submitted for reasons outside the actual or constructive control of counsel.
6. Time for work performed by Counsel before the terminal case event occurred may not be included on a supplemental voucher.
7. Time for work performed by Counsel after the terminal case event occurred may be included on a final voucher. If a final voucher is submitted greater than 90 days after a terminal case event, the entire voucher will be reduced according to the reduction schedule established by this Chapter including any time for work performed after the terminal case occurred.

#### **5. Payments & Reimbursement of Expenses for Attending Training**

- A. Payments to attend and reimbursement of expenses incurred incidental to attending trainings are governed by Chapter 301-A.
- B. Vouchers submitted in accordance with Chapter 301-A shall be submitted within 90 calendar days of attending the training.

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

## SECTION 7. RESOURCE COUNSEL

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

- Supervision staff, which must include a cap on the maximum number of hours the Commission will pay Resource Counsel to prepare and present the training.
- e. Resource Counsel must be licensed to practice law in Maine and eligible to accept MCILS case assignments at all times while performing Resource Counsel duties. Resource Counsel will not be paid for work done unless Resource Counsel is licensed to practice law in Maine and eligible to accept MCILS case assignments.
  - f. As a condition of the opportunity to serve as Resource Counsel, Resource Counsel must maintain detailed records of the services they perform and provide copies of those records to MCILS upon request. At a minimum, those records must include:
    - i. The number of attorneys to whom Resource Counsel services are rendered; and
    - ii. A running log of the number of hours Resource Counsel spends on:
      - 1. Rendering general Resource Counsel services to attorneys;
      - 2. Rendering client-specific services; and
      - 3. Preparing and presenting trainings.
  - g. Resource Counsel will not be paid for billing more than 40 hours in one seven-day period.
  - h. Resource Counsel do not develop any property interest in the opportunity to serve in that role. There is no guarantee that MCILS will provide any number of hours to Resource Counsel.
  - i. Resource Counsel may not incur any expenses of any type on behalf of MCILS without prior written approval from the Executive Director.
4. Court-Assigned and Commission-Assigned Counsel may bill pursuant to Section 6(4), above, for time spent receiving the services of Resource Counsel.
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STATUTORY AUTHORITY:

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

EFFECTIVE DATE:

August 21, 2011 – filing 2011-283

AMENDED:

March 19, 2013 – filing 2013-062

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

October 5, 2013 – filing 2013-228

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

June 10, 2016 – filing 2016-092

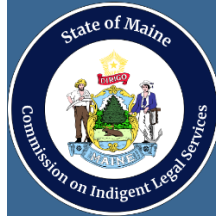
July 21, 2021 – filing 2021-149 (EMERGENCY)

January 17, 2022 – filing 2022-007

June 23, 2022 – filing 2022-100 (Final adoption, major substantive)

February 24, 2023 – filing 2023-028 (Emergency adoption)  
September 1, 2023 – filing 2023-122 (Final adoption, major substantive)





## MAINE COMMISSION ON INDIGENT LEGAL SERVICES

**TO:** COMMISSION  
**FROM:** CHAPTER 3 SUBCOMMITTEE  
**SUBJECT:** CHAPTER 3  
**DATE:** AUGUST 18, 2023

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### **Background:**

Staff prepared a draft revised Chapter 3 and provided it to the Commission in the packet for the June 20, 2023 Commission meeting. At the June 20, 2023 Commission meeting, Chair Tardy formed a subcommittee, which consisted of Commissioner Burbank, Commissioner Alexander, Commissioner Soucy, Attorney Tina Nadeau, and Commission staff. The Chapter 3 subcommittee met on July 10, 2023. After that meeting, the subcommittee provided the Commission with a working draft of the Rule and corresponding memo dated July 13, 2023. At the July 17, 2023 Commission meeting, the subcommittee requested Commission feedback on the revised draft. Commissioners indicated that they would like the subcommittee to explore whether the change from requiring criminal law experience generally to requiring criminal defense experience specifically in many of the specialized panels was necessary.

### **Report:**

The Chapter 3 subcommittee met on August 11, 2023 and August 18, 2023.

#### Criminal Law vs. Criminal Defense Experience:

The subcommittee discussed at great length whether the specialized panels should require criminal law experience or criminal defense experience. **The overwhelming consensus was that it should be criminal defense experience that is required.** In arriving at this recommendation, subcommittee members made the following points (this is not an exhaustive list):

- Although some skills gained from prosecutorial experience are transferable to defense work, representing human clients is much different from representing the State.
- Defense investigations are unique.

- If an attorney has significant prosecutorial or civil law experience, they may include that information to support a request for a waiver from the years of criminal defense experience requirement.
- An attorney who cannot satisfy the years of criminal defense experience requirement, cannot get a waiver, or is otherwise ineligible for the relevant case type may still represent clients charged with crimes of that type with eligible co-counsel.

#### Lawyer of the Day:

The subcommittee also discussed staff's recommendation that LODs be required to carry a minimum number of active assigned cases. This was proposed to support LODs in maintaining current knowledge of the law, awareness of what constitutes a good resolution to a case, and ability to assess the strengths and weaknesses of a case should it proceed to trial. This was also suggested because MCILS has a significant number of LODs who do not accept case assignments and the goal was to encourage LODs to mitigate the number of defendants who are without counsel. Because of the minimum fee for LOD assignments, serving as LOD has the potential to be much more profitable than working on cases at the hourly rate.

**The consensus of the subcommittee was to not require LODs to maintain an active caseload or be on the active rosters for case assignments.** One reason for this is that the requirement may result in attorneys removing themselves from the LOD roster, and then there may not be enough LODs. A subcommittee member also pointed out that such a requirement would be unique to the LOD panel because none of the other specialized case types include an eligibility requirement that an attorney be on the active roster for an unrelated case type.

#### Appeals:

When the subcommittee met on August 11<sup>th</sup>, it reached a consensus on most of the eligibility requirements for appeals. The subcommittee agreed that any attorney who was assigned to a Law Court appeal must be eligible for appeals cases, or have eligible co-counsel, even if the attorney was trial counsel. This is a departure from the current rule, which permits trial counsel to continue on appeal, even if they are not eligible for appeals cases. The one issue that remained was whether trial counsel should be able to continue representation of the client on appeal, even if they were eligible for appeals.

Subcommittee members recognized that there exists a clear conflict of interest if trial counsel is also appellate counsel in a child protective case because ineffective assistance of counsel claims may be brought on direct appeal in those cases. In criminal cases, the avenue for ineffective assistance of counsel claims is typically a post-conviction review petition, for which trial counsel does not represent the client. It was unclear what the consensus was from the subcommittee on this issue. Therefore, this specific part of the draft rule reflects the staff's position. Staff's position is that trial counsel should not continue representation of a client on appeal in child protective cases because of

the inherent conflict. Staff's position with regards to criminal cases is that trial counsel may continue to represent the client on appeal if they are eligible for appeals or have eligible co-counsel.

**Conclusion:**

The majority of the subcommittee has included a draft Chapter 3 for the Commission's consideration. Also included are minority memoranda authored by Commissioner Alexander.

The subcommittee thanks Chair Tardy for the opportunity to work on this important rule. Many of the subcommittee members will be available to answer questions at the August 21, 2023 Commission meeting.

**MEMORANDUM: Complexity of Current Rostering Requirements**

May 23, 2023

To: Maine Commission on Indigent Legal Services  
From: Donald G. Alexander

*DGA*

**Re: *Concerns about the complexity of rostering and anticipated MCILS supervision:***

MCILS presently has 16 different roster categories on which attorneys must qualify to accept MCILS case assignments. These roster categories were originally created when MCILS was began operations in 2010 and 2011. They have remained largely unchanged since that time, though, in the past decade, there have been major changes in criminal rules and case processing practices.

Because of the complexity of the original rostering requirements, some excellent attorneys, very experienced with criminal practice and trials, elected not to join the rosters, though they continued to represent privately retained clients, and, sometimes, accepted assignment of MCILS cases when requested by judges. After adoption, the complexity of the rostering requirements and very limited MCILS staff resulted in the rostering requirements being largely ignored in the case assignment process – a process then largely done at the individual courts by judges or court clerks who relied on their knowledge of each attorney’s perceived skill and experience to decide which cases to assign to that attorney. Often this process resulted in attorneys being assigned to cases less complex than the types of cases they were rostered to accept because they were the only, or one of the few, attorneys available to take a case at that particular court at that particular time.

Rostering requirements started to be more rigorously applied beginning about three years ago as MCILS was itself reformed to assure more review and accountability of the program it manages. MCILS has taken on more direct responsibility for assigning some attorneys to cases, and it began reviewing attorneys who, though competent, had been assigned to types of cases they were not rostered to take.

Some attorneys believe MCILS has become more rigorous in removing from cases attorneys who, though competent and qualified, were assigned to

cases for which they were not rostered. Presently, MCILS is attempting to address these concerns, working to qualify attorneys for rosters after case assignments. In addition, some of the rostering requirements are unduly complex. For example, jury trial experience requirements that are not reasonably attainable with today's dramatically reduced number of jury trials. Some attorneys are electing not to register or not renew their registration with these complex and in some cases unrealistic rostering requirements.

Some attorneys are also concerned with a proposal, not yet implemented, for MCILS staff to view attorneys' in court actions and meet with attorneys up to four times a year to review their cases and case strategies. This is a particular concern to experienced attorneys, with some indicating they may withdraw from MCILS work in anticipation of the proposed attorney supervision practices.

*Suggestions for Improvement:* The current complex rostering requirements should be simplified to no more than 6 separate rosters for trial court and related appellate work:

- A. child protective,
- B. juvenile,
- C. homicide,
- D. violence and drug felonies,
- E. property felonies, misdemeanor crimes of violence and OUIs ("crimes of violence" include all sex crimes), and
- F. "other" crimes (Title 17-A misdemeanors, Title 12 and Title 29-A non-violent crimes, and other non-violent crimes in the statutes).

Minimum eligibility requirements should be developed for each roster category. The MCILS roster qualification and attorney supervision requirements must recognize the realities of today's practice and that fact that over the years, many attorneys have represented clients in MCILS type cases very competently with not a great amount of prior in court experience. In fact, one way good attorneys gained valuable experience in the past was by taking cases in the proposed E & F categories above after they have had some training – which may have included law school clinical work. One cannot get that court experience, if, before you qualify, you must have already had that court experience.

**Commented [AJ1]:** We will need formal rule making on this issue. I am open to your proposed rules.

Proposed training expectations and standards and a revised, simplified rostering plan are addressed below.

*Simplifying Rostering Requirements and Categories.* Newly admitted attorneys – and any other qualified attorneys – should be allowed to qualify for E & F criminal cases or A child protective cases if they (a) did litigation related clinical work or externships in law school or in-court litigation work in subsequent employment, and (b) have completed the annual training for criminal or child protective work. The annual training program should be scheduled to be held after the summer bar exam results are announced. The annual training programs, at least for A, E, and F cases, might be recorded so that attorneys seeking to qualify to take such MCILS cases at other times of the year can have the benefit of the training programs.

*Mentoring Assistance.* In addition, to qualify for rostering for and assignment of A (child protective cases) and E (property felonies, violent misdemeanors, OUI) an attorney without at least two years prior litigation experience would be required to have a designated mentor, with experience in the relevant case type, to assist and advise the new attorney for the first five cases assigned to that attorney. A designated mentor would be recommended and compensated, but not required, for new attorneys accepting category F case assignments. Alternatively, a new attorney accepting an assignment and associated with a firm could accept the assignment as co-counsel with another experienced attorney in the firm – a practice quite common in the past when new attorneys from firms were urged to gain experience by taking court appointed cases with oversight by another attorney at the firm.

Also relative to mentoring, the current prior jury trial experience prerequisites are difficult or impossible to meet today. Except for homicides, the prior jury trial experience prerequisites should be eliminated. Prior to the pandemic, except for homicides, less than 1 % of criminal cases went to a jury trial. If a jury trial is in prospect late in a proceeding, and an assigned attorney for any category of cases has little or no jury trial experience, another attorney with jury trial experience should join the representation as a mentor or co-counsel.

Attorneys with substantial criminal practice experience, including a specified number of jury trials, who MCILS recognizes to have substantial experience and a good reputation, should be invited to present at MCILS

Commented [AJ2]: How will this be defined?

training programs and to mentor new MCILS attorneys for: (1) strategy and planning for pretrial practice, including consideration of motions to suppress, and/or (2) strategy, preparation for, and conduct of jury and nonjury trials. A very experienced attorney could be a mentor or a trainer, even if not a rostered attorney.

*Specific Rosters.* Once an attorney demonstrates qualification for a roster, the attorney would not need to qualify again as long as the attorney maintains an active criminal practice or child protective practice, as appropriate.

*Recognition of Attorney Education, Law School Practical Experience, and Available Resource Materials:* In considering attorney qualifications to take MCILS cases, MCILS should assume that attorneys recently graduating from law school, passing the bar exam, and being admitted to the bar: 1) took and passed courses on constitutional law, criminal law and practice, civil procedure, and evidence; 2) drafted at least one appeal type brief and engaged in other legal research and writing exercises; and 3) took and passed a trial practice course, and/or engaged in a clinical program, or an externship, that provided experience in courtroom practice and advocacy before the court or another adjudicatory forum. The occasional applicant seeking assignment to MCILS cases right out of law school who does not meet any one of these law school experience assumptions would be required to engage in a prescribed training program to make up for the missing law school experience requirement.

MCILS should also assume, and attorneys seeking to take MCILS cases might be asked to acknowledge, that attorneys are aware of and have access to – directly or through a law library or online – the relatively current Maine litigation practice books including rules, advisory notes, and commentary, on 1) civil rules and practice, 2) criminal rules and practice, 3) appellate rules and practice, 4) jury trial practice, and 5) evidence. (The evidence book, Field & Murray, *Maine Evidence* (6<sup>th</sup> ed. 2007), is dated, but can be supplemented by review of the 2015 Order restyling the Maine Rules of Evidence with advisory notes and the later amendments to the Rules of Evidence that appear on the Maine Judicial Branch website.) Other practice books, legal publications, or law review articles specifically addressing Maine court practice are available to provide the necessary practice and research guidance for counsel. An extensive list of Maine practice books and other research materials for all aspects of law practice is available through the “Maine Practice Materials Guide” hyperlink on the Cleaves Law Library website.

*Annual Training for New Attorneys and All Attorneys:* During the week in the Fall when the courts take an administrative week to accommodate the annual prosecutors conference, MCILS, in cooperation with other bar organizations (and perhaps AG/DHHS for child protective proceedings) should plan an annual training program that would include training sessions on:

*For Criminal Cases:* 1. Initial client contact and communication, explanation of rights, discussion of expectations, obtaining and review of discovery; 2. Consideration of available early diversion programs; preparation for and participation in early resolution discussions; 3. Pretrial practice, suppression motions, dispositive motions, limitation of issues; 4. Approaches to plea and sentencing preparation and discussions (i) with the client; (ii) with the prosecutor; 5. Practice points for jury or nonjury trials; 6. New developments in law and practice since the last training program.

*For Child Protective Cases:* 1. Initial client contact and communication, confidentiality of proceedings, explanation of rights, discussion of expectations, obtaining and review of discovery; 2. Difficulties in dealing with parent/client, lack of cooperation, reluctance to participate or openly communicate, evaluation of client's risk of exposure to criminal charges, relations with other parent and counsel, access to child; 3. Working with other professionals in the community (social workers, health professionals, educators, GALs etc.) to support the parent and the child or children; 4. Preliminary proceedings, jeopardy hearings, role of GALs, placement of child – relatives or foster parents, family reunification efforts; 5. Termination of parental rights proceedings, practice for such hearings; 6. New developments in law and practice since the last training program.

The training should be conducted primarily by attorneys or judges with extensive experience in criminal law and practice or child protective law and practice. Most CLE or training programs conducted by the Board of Overseers, MTLA, MSBA, and other CLE providers in Maine are presented by attorneys very experienced in the area in which the CLE is offered. Most of the Maine attorneys make these presentations without cost to the organization; they do get annual CLE credit for their presentations.



## MEMORANDUM: MCILS Drafting Subcommittee

August 9, 2023

To: Subcommittee for Drafting Qualification and Rostering Rules for MCILS  
Fr: Donald G. Alexander

I regret that because of a conflicting commitment, I will not be able to participate in the Drafting Subcommittee discussion on August 11. This memo and my memo of May 23, attached, discuss my views and recommendations on the issues before the Subcommittee.

1. The great majority of Maine lawyers are competent, ethical, hard-working professionals, willing to go the extra mile, when needed, to achieve a good result for their clients. Even attorneys newly admitted to practice, with their courses in criminal law, constitutional law, evidence, and other courses, and their clinical and extern work experience can take some case assignments – as newly admitted attorneys have done for the last 50 years – if they have brief training, available mentoring, and access to the important practice books to guide on the finer points of the law.

2. MCILS needs many good lawyers who were formerly rostered and accepting assignments to again join our rosters and accept assignments, and we need to welcome new lawyers joining the profession to join our rosters and accept cases. The \$150 hourly rate provides considerable incentive to return to or join our rosters and accept cases, but attorney workloads in the current court backlog make it difficult to accept new assignments, particularly with concerns that an expressed willingness to accept 4 or 5 assignments may result in assignments of 15 or 20 cases - driving attorneys off rosters for the good of their existing clients and their quality of practice.

3. In the circumstances, and respecting the good quality of the Maine Bar, our qualification and rostering needs to be open and welcoming to new attorneys and existing attorneys. Instead, our qualification and rostering requirements are excessively complex and demand experience that, because of COVID issues, have been unachievable now for going on four years. The complexity poses problems for competent attorneys willing to take cases, and equal problems for those making assignments - judges, court clerks, attorneys for the day, financial

screeners - to determine if an attorney can take an assignment with several charges.

The rostering and qualification requirements under consideration are not new, and drafted to meet today's challenges. Instead, they are based on criteria casually drafted in 2010 and 2011, by a very different Commission in a very different time. Experienced attorneys objected to the criteria at the time as too complex and demanding recent experience that did not reflect the reality of practice. The concern at the time disappeared when it became apparent that the complex rostering and qualification criteria were largely being ignored, except for homicide cases. Attorneys were appointed to cases for which they were perceived to be competent, and for most cases, those perceptions of competence proved to be accurate. It is only in the last two years that MCILS has started to consider removing attorneys from cases where the attorney, though competent, may not have met the technical rostering or qualification requirements. And in most of those cases, as I understand it, MCILS has worked with the attorney to qualify for the roster, rather than remove an attorney from a case.

4. Drafting, overseeing, and enforcing the overly complex qualification, rostering, and caseload standards, with attorney oversight, as contemplated in various rules drafts, will require a significant expansion of MCILS staff. This will make MCILS compete with itself for staff expansion. We urgently need more attorneys to fill RDF attorney slots and the newly approved public defender office positions, and we need more attorneys for contract counsel work across the State to represent indigent clients in criminal, protective custody, guardianship, and other cases. A large expansion of MCILS staff attorneys will necessarily take away attorneys who could otherwise staff cases for our indigent clients.

5. The experience requirements should be reduced for all cases except homicides, and a mentor should be able to be a substitute for experience. Also, prescribed experience should not be limited to criminal defense practice. As I noted at a recent bar program in Aroostook County, the United States Attorney, who was present and has 25 years criminal practice experience, would not qualify as experienced in criminal practice under our present draft rule. This hardly suggests MCILS is seeking or welcoming competent experienced attorneys.

6. As suggested in my memo dated May 23, 2023, we should reduce our rostering categories to no more than six. My views on those issues are addressed in that memo and are not repeated here.

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**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 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~~ for specialized panels ~~for specific types of cases~~.

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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.
4. Domestic Violence. ~~Domestic Violence~~ 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;~~
  - C. ~~The class D offense of stalking under 17-A M.R.S.A. § 201 (Murder), § 202 (Felony Murder), § 203 (Manslaughter), § 152 (Attempted Murder), and § 152-A (Aggravated Attempted Murder).~~
  - D. ~~Violation of a protection order under 17-A M.R.S.A. § 506-B.~~
  - E. ~~“Domestic Violence” includes crimes involving substantially similar conduct in another jurisdiction.~~
  - F. ~~“Domestic Violence”~~ Homicide 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.

~~3. Serious Violent~~Major Felony. ~~“Serious Violent”~~“Major Felony” means:

5. A. \_\_\_\_\_

DRAFT

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).-

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

#### 4.6. Sex Offense. “Sex Offense” means:-

A. A.—An offense under 17-A M.R.S.A. §§ ~~251-259-A~~253-260 (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. Child Protective. “Child Protective” means a district court proceeding in which a parent is entitled to counsel pursuant to 22 M.R.S.A. § 4005(2).
10. Child Protective Appeal. “Child Protective Appeal” means an appeal to the Maine Supreme Judicial Court of any order terminating parental rights.
11. 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) herein.
12. 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.
13. 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.
14. 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.
15. LOD Roster: the list of attorneys designated as eligible by the Commission to serve as LOD in a proceeding type for a particular court.
16. Shadow Session: an attorney applying for LOD eligibility “shadows” an eligible 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 Commission Rule 301, Section 5.
17. Resource Counsel. “Resource Counsel” means an attorney who provides mentoring and other services to rostered counsel as delineated in Chapter 301 of the Commission rules.
18. Commission Liaison. “Commission 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.
- 5.19. 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~~ 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. Commission 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 Specialized Case Types~~ eligibility for specialized panels to demonstrate the minimum qualifications necessary to be placed on ~~Specialized Case Type Rosters~~ a specialized panel. An applicant for a ~~Specialized Case Type Roster~~ specialized 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~~ specialized 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, remove an attorney from a ~~Specialized Case Type Roster~~ specialized 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. This subsection does not exempt an attorney from satisfying the requirements of this Chapter at any time thereafter or limit the authority of the Executive Director, ~~or his or her designee~~, to remove an attorney from any ~~Specialized Case Type Roster~~ specialized panel at any time.

### SECTION 3. Minimum Eligibility Requirements for Specialized Case Types Panels.

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

- A. Have at least five years of criminal law defense practice experience;-
- B. Have tried before a judge jury, individually or ~~jury as first chair~~ co-counsel, at least five felony cases within the last ten years, at least two of which were ~~serious violent~~ major felony, homicide, or Class C or higher sex offense cases, ~~AND at least two of which were jury trials~~;
- C. Have tried before a jury, individually or as ~~first chair a homicide case in the last fifteen years, OR have tried as second chair~~ co-counsel, at least one homicide case ~~with an experienced homicide defense attorney within~~ in the ~~past five~~ last fifteen years;-
- D. Demonstrate a knowledge and familiarity with the evidentiary issues relevant to homicide cases, including but not limited to forensic and scientific issues relating to DNA testing and fingerprint analysis, mental health issues, and eyewitness identification;-
- E. Provide a letter explaining reasons for interest in and qualifications for representing

individuals charged with homicide; and

- F. Have submitted to the Commission three letters of reference from attorneys with whom the applicant does not practice, that assert that the applicant is qualified to represent individuals charged with homicide, including OUI manslaughter. The letters of reference must be submitted directly to the Executive Director, ~~or his or her designee~~, by the ~~author~~authors.

2. 2.—Sex Offenses. ~~In order to~~To be rostered for 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~~authors; ~~and~~
- E. ~~Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.~~

3. 3.—Serious Violent~~Major~~ Felonies. ~~In order to~~To be rostered for ~~serious violent~~major felony cases an attorney must:

- A. Have at least two years of criminal ~~law~~defense practice experience;
- B. Have tried ~~before a jury, individually~~ or as ~~first chair~~co-counsel, 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~~major felony; and
- D. If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting that the applicant is qualified to represent individuals charged with a ~~serious violent~~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. 4-Operating Under the Influence.** ~~In order to~~ To be rostered 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. ~~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. 5-Domestic Violence.** ~~In order to~~ To be rostered for 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 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 crime; and
- E. If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting that the applicant is qualified to represent individuals charged with a domestic violence crime. The letters of reference must be submitted directly to the Executive Director, ~~or his or her designee,~~ by the ~~author~~ authors.

~~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 for felony, sex offense, and bind-over juvenile defense cases an attorney must:

A. ~~f~~Repealed~~f~~.

B. ~~B.~~—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) 6)~~ Provide a letter explaining reasons for interest in and qualifications for representing juveniles in felony and sex offense cases; and
- ~~6) 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 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.

C. ~~C.~~—For Bind-over~~er~~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)~~ 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.~~

D. 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 rostered to represent parents in child protective ~~custody~~ 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 child protective ~~custody~~ proceedings; and

E. E.—If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting that the-

applicant is qualified to represent parents in child protective ~~custody~~ 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.~~

~~F. 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 ~~MCILS~~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. — LawMaine Supreme Judicial Court Appeals. In order to be rostered for To accept assignments to LawMaine Supreme Judicial Court 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. Even if an attorney is eligible for child protective appeals, the attorney is not eligible to represent a client in ~~eases where~~a child protective appeal when the attorney was trial counsel is ~~not continuing on appeal, an attorney must~~ for that case. If a client wishes to appeal a child protective case, the attorney shall file a motion to withdraw as counsel simultaneously with the notice of appeal.~~

~~A. — Have provided representation to the conclusion of six cases. “Conclusion” means:~~

~~1) 1) In criminal and juvenile cases, the entry of sentence or disposition in five or more child protective appeals in the Maine Supreme Judicial Court, either after plea or trial or the entry into a deferred disposition; individually or as co-counsel;~~

~~2) — In child protective cases, the issuance of a jeopardy order or an order terminating parental rights;~~

~~B. — Applicants who have provided representation in three or more appeals, including appeals to the Law Court and Rule 80B or Rule 80C appeals to the Superior Court, must submit copies of briefs that they have filed in the three appeals most closely pre-dating the date of their application for placement on the appellate roster.~~

~~C. — Applicants who have not provided representation in three or more appeals must submit copies of any briefs that they have filed in an appeal, together with copies of a sufficient number of memoranda of law submitted to any court so that the submissions total three.~~

~~D. 1) — 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~~

- ~~2) Provide copies of all briefs the attorney filed, and the opinions/decisions rendered in the five most recent appeals the attorney has handled;~~
- ~~3) Have been deemed eligible to accept PC case assignments pursuant to Section 3(7) of this Chapter;~~
- ~~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~~
- ~~E.6) If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting that the applicant is qualified to 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.~~

**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 seven 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 two criminal appeals before the Maine Supreme Judicial Court;~~
- ~~3) Provide copies of all briefs 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) 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; and
  - 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
- ~~F.6) Letters~~If the applicant seeks a waiver, the applicant shall submit three letters of reference ~~shall 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 ~~upon the request of~~ directly to the Executive Director, ~~or his or her designee.~~ by the authors.

~~G. — This rule is not applicable to cases where trial counsel continues on appeal.~~

10.10. — **Post-Conviction Review.** ~~In order to~~ To be rostered 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.-
- ~~E. Letters of reference and writing~~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 rostered 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 rostered 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 rostered for juvenile LOD proceedings, an attorney must:

- a. Complete the LOD Minimum Standards Training prior to or ~~his~~within three months of being rostered 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. Commission Liaison.**

A. To be eligible to serve as a Commission 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; and
- 4) Have experience practicing law in the court(s) in which counsel is seeking to serve as the Commission Liaison.

**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; and
- E-7) Have no substantiated Commission assessments or her designee investigations or substantiated Board of Bar Overseers complaints within the three years immediately preceding counsel’s Resource Counsel application.

B. Counsel must reapply to serve as Resource Counsel on an annual basis. That application is due at the same time as the Commission 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 ~~ease types~~panels listed above but who does not meet both requirements of: ~~(1a)~~ years of practice experience; ~~and (2 or (b))~~ trial or litigation experience, may seek a waiver of either, but not both, requirements.

~~1.2.~~ 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.-

~~2.3.~~ An attorney may apply for a conditional waiver if additional time is needed to meet CLE requirements.-

~~3.4.~~ 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:

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

**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 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~~ for specialized panels ~~for specific types of cases~~.

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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.
- 1.3. 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.
- 2.4. ~~Domestic Violence.~~ 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. ~~The class D offense of stalking under 17-A M.R.S.A. § 201 (Murder), § 202 (Felony Murder), § 203 (Manslaughter), § 152 (Attempted Murder), and § 152-A (Aggravated Attempted Murder).~~ 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. § 210-A; 2411(1-A)(D)(1-A) (Criminal OUI Causing Death).~~
  - 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.~~
  - C. F. ~~“Domestic Violence”~~ Homicide 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.

~~3. Serious Violent~~Major Felony. ~~“Serious Violent”~~“Major Felony” means:

5. A. \_\_\_\_\_

DRAFT

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).-

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

#### 4.6. Sex Offense. “Sex Offense” means:-

A. A.—An offense under 17-A M.R.S.A. §§ ~~251-259-A~~253-260 (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. Child Protective. “Child Protective” means a district court proceeding in which a parent is entitled to counsel pursuant to 22 M.R.S.A. § 4005(2).
10. Child Protective Appeal. “Child Protective Appeal” means an appeal to the Maine Supreme Judicial Court of any order terminating parental rights.
11. 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) herein.
12. 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.
13. 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.
14. 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.
15. LOD Roster: the list of attorneys designated as eligible by the Commission to serve as LOD in a proceeding type for a particular court.
16. Shadow Session: an attorney applying for LOD eligibility “shadows” an eligible 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 Commission Rule 301, Section 5.

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

18. Commission Liaison. “Commission 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.

5.19. 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~~ 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. Commission 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 Specialized Case Types~~ eligibility for specialized panels to demonstrate the minimum qualifications necessary to be placed on ~~Specialized Case Type Rosters~~ a specialized panel. An applicant for a ~~Specialized Case Type Roster~~ specialized 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~~ specialized 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, remove an attorney from a ~~Specialized Case Type Roster~~ specialized 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. This subsection does not exempt an attorney from satisfying the requirements of this Chapter at any time thereafter or limit the authority of the Executive Director, ~~or his or her designee~~, to remove an attorney from any ~~Specialized Case Type Roster~~ specialized panel at any time.

### SECTION 3. Minimum Eligibility Requirements for Specialized Case Types Panels.

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

- A. Have at least five years of criminal law defense practice experience;-
- B. Have tried before a judge jury, individually or ~~jury as first chair~~ co-counsel, at least five felony cases within the last ten years, at least two of which were ~~serious violent~~ major felony, homicide, or Class C or higher sex offense cases, ~~AND at least two of which were jury trials~~;
- C. Have tried before a jury, individually or as ~~first chair a homicide case in the last fifteen years,~~ OR have tried as second chair co-counsel, at least one homicide case ~~with an experienced homicide defense attorney within~~ in the ~~past five~~ last fifteen years;-
- D. Demonstrate a knowledge and familiarity with the evidentiary issues relevant to homicide cases, including but not limited to forensic and scientific issues relating to DNA testing and fingerprint analysis, mental health issues, and eyewitness identification;-
- E. Provide a letter explaining reasons for interest in and qualifications for representing

individuals charged with homicide; and

- F. Have submitted to the Commission three letters of reference from attorneys with whom the applicant does not practice, that assert that the applicant is qualified to represent individuals charged with homicide, including OUI manslaughter. The letters of reference must be submitted directly to the Executive Director, ~~or his or her designee~~, by the ~~author~~authors.

2. 2.—Sex Offenses. ~~In order to~~To be rostered for 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~~authors; ~~and~~
- E. ~~Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.~~

3. 3.—Serious Violent~~Major~~ Felonies. ~~In order to~~To be rostered for ~~serious violent~~major felony cases an attorney must:

- A. Have at least two years of criminal ~~law~~defense practice experience;
- B. Have tried ~~before a jury, individually~~ or as ~~first chair~~co-counsel, 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~~major felony; and
- D. If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting that the applicant is qualified to represent individuals charged with a ~~serious violent~~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. 4-Operating Under the Influence.** ~~In order to~~ To be rostered 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. ~~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. 5-Domestic Violence.** ~~In order to~~ To be rostered for 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 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 crime; and
- E. If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting that the applicant is qualified to represent individuals charged with a domestic violence crime. The letters of reference must be submitted directly to the Executive Director, ~~or his or her designee,~~ by the ~~author~~ authors.

~~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 for felony, sex offense, and bind-over juvenile defense cases an attorney must:

A. ~~f~~Repealed~~g~~.

B. ~~B.~~—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) 6)~~ Provide a letter explaining reasons for interest in and qualifications for representing juveniles in felony and sex offense cases; and
- ~~6) 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 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.

C. ~~C.~~—For Bind-over~~er~~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)~~ 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.~~

D. 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 rostered to represent parents in child protective ~~custody~~ 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 child protective ~~custody~~ proceedings; and

E. E.—If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting that the-

applicant is qualified to represent parents in child protective ~~custody~~ 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.~~

~~F. 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 ~~MCILS~~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, 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. Even if an attorney is eligible for child protective appeals, the attorney is not eligible to represent a client in ~~eases where~~ a child protective appeal when the attorney was trial counsel is not continuing on appeal, an attorney must for that case. If a client wishes to appeal a child protective case, the attorney shall file a motion to withdraw as counsel simultaneously with the notice of appeal.~~

~~A. — Have provided representation to the conclusion of six cases. “Conclusion” means:~~

~~1) 1) In criminal and juvenile cases, the entry of sentence or disposition in five or more child protective appeals in the Maine Supreme Judicial Court, either after plea or trial or the entry into a deferred disposition; individually or as co-counsel;~~

~~2) — In child protective cases, the issuance of a jeopardy order or an order terminating parental rights;~~

~~B. — Applicants who have provided representation in three or more appeals, including appeals to the Law Court and Rule 80B or Rule 80C appeals to the Superior Court, must submit copies of briefs that they have filed in the three appeals most closely pre-dating the date of their application for placement on the appellate roster.~~

~~C. — Applicants who have not provided representation in three or more appeals must submit copies of any briefs that they have filed in an appeal, together with copies of a sufficient number of memoranda of law submitted to any court so that the submissions total three.~~

~~D. 1) — 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~~

- ~~2) Provide copies of all briefs the attorney filed, and the opinions/decisions rendered in the five most recent appeals the attorney has handled;~~
- ~~3) Have been deemed eligible to accept PC case assignments pursuant to Section 3(7) of this Chapter;~~
- ~~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~~
- ~~E.6) If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting that the applicant is qualified to 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.~~

**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 seven 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 two criminal appeals before the Maine Supreme Judicial Court;
- 3) Provide copies of all briefs 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) 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; and
  - 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
- F.6) Letters ~~If the applicant seeks a waiver, the applicant shall submit three letters of reference shall 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 upon the request of directly to the Executive Director, or his or her designee.~~ by the authors.

G. ~~This rule is not applicable to cases where trial counsel continues on appeal.~~

10.10. — Post-Conviction Review. ~~In order to~~ To be rostered 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.-
- E. ~~Letters of reference and writing~~ 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 rostered 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 rostered 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 rostered for juvenile LOD proceedings, an attorney must:

- a. Complete the LOD Minimum Standards Training prior to or ~~his~~within three months of being rostered 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. Commission Liaison.**

A. To be eligible to serve as a Commission 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; and
- 4) Have experience practicing law in the court(s) in which counsel is seeking to serve as the Commission Liaison.

**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; and
- E-7) Have no substantiated Commission assessments or her designee investigations or substantiated Board of Bar Overseers complaints within the three years immediately preceding counsel’s Resource Counsel application.

B. Counsel must reapply to serve as Resource Counsel on an annual basis. That application is due at the same time as the Commission 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 ~~ease types~~panels listed above but who does not meet both requirements of: ~~(1a)~~ years of practice experience; ~~and (2 or (b))~~ trial or litigation experience, may seek a waiver of either, but not both, requirements.

~~1.2.~~ 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.-

~~2.3.~~ An attorney may apply for a conditional waiver if additional time is needed to meet CLE requirements.-

~~3.4.~~ 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)~~

## Proposed Statutory Changes

1. *Amend* Title 4, Chapter 37
2. *Proposed* 17-A M.R.S.A. §1905 – Conditional Discharge
3. *Repeal* 15 M.R.S.A. 1092 – Violation of Condition of Release
4. *Amend* 22 M.R.S.A. §4001-A – Reporting of suspected abuse or neglect
5. *Amend* 22 M.R.S.A. §4015 – Privileged or confidential communications
6. *Amend* 22 M.R.S.A. §4005 – To provide new counsel on appeal / ineffective assistance
7. *Amend* 22 M.R.S.A. §4005-D – To allow MCILS to observe child protective proceedings
8. *Amend* 22 M.R.S.A. §4008 – To permit MCILS access to child protective documents
9. *Amend* 14 M.R.S.A. §8104-B – To provide immunity to employed public defenders
10. *Amend* 15 M.R.S.A. §3010 – To permit disclosure of JV information to MCILS
11. *Amend* 15 M.R.S.A. §3308 – To permit disclosure of JV information to MCILS
12. *Amend* 15 M.R.S.A. §1029 – To permit review of single-justice bail decision.

## CHAPTER 37

### MAINE COMMISSION ON INDIGENT LEGAL SERVICES

#### §1801. Maine Commission on Indigent Legal Services; established

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

#### SECTION HISTORY

PL 2009, c. 419, §2 (NEW).

#### §1802. Definitions

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

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

**1-A. Appellate counsel.** "Appellate counsel" means an attorney who is entitled to payment under Title 15, section 2115-A, subsection 8 or 9.

#### **1-B. Resource Counsel.**

#### **1-C. Central Office Resource Counsel**

[PL 2013, c. 159, §10 (NEW).]

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

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

**3-A. Employed counsel.** "Employed counsel" means a person employed by the State of Maine though the commission to provide direct client services to consumers of indigent legal services. "Employed counsel" include District Defenders, Deputy District Defenders, and Assistant Defenders. "Employed counsel" does not include those commission staff members who may be licensed attorneys but who are not employed to provide direct client services to consumers of indigent legal services.

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

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

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

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

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

"Indigent legal services" does not include the services of a guardian ad litem appointed pursuant to Title 22, section 4005, subsection 1.

[PL 2021, c. 676, Pt. A, §3 (AMD).]

#### SECTION HISTORY

PL 2009, c. 419, §2 (NEW). PL 2013, c. 159, §10 (AMD). PL 2019, c. 427, §§1, 2 (AMD). PL 2021, c. 676, Pt. A, §3 (AMD).

#### §1803. Commission structure

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

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

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

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

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

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

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

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

In determining the appointments and recommendations under this subsection, the Governor, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Judicial Court, the president of the Maine State Bar Association and the president of the statewide organization that represents criminal defense attorneys shall consider input from individuals and



organizations with an interest in the delivery of indigent legal services. Recommendations provided by the president of the Maine State Bar Association and the president of the statewide organization representing criminal defense attorneys must consist of attorneys providing indigent legal services as a majority of their law practices.

[PL 2017, c. 430, §1 (RPR).]

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

The limitations on members receiving compensation from the commission do not apply to any member serving on the commission as of April 1, 2018 for the duration of the member's term.

[PL 2017, c. 430, §2 (AMD).]

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

A member of the commission appointed to fill a vacancy occurring otherwise than by expiration of term is appointed only for the unexpired term of the member succeeded.

[PL 2009, c. 419, §2 (NEW).]

**4. Quorum.** A quorum is a majority of the current voting members of the commission. A vacancy in the commission does not impair the power of the remaining members to exercise all the powers of the commission.

[PL 2017, c. 430, §2 (AMD).]

**5. Compensation.** Each member of the commission is eligible to be compensated as provided in Title 5, chapter 379.

[PL 2009, c. 419, §2 (NEW).]

#### SECTION HISTORY

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

#### §1804. Commission responsibilities

**1. Executive director.** The commission shall hire an executive director. The executive director must have experience in the legal field, including, but not limited to, the provision of indigent legal services.

[PL 2009, c. 419, §2 (NEW).]

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

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

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

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

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

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

F. Standards for the reimbursement of expenses incurred by assigned counsel and contract counsel, including attendance at training events provided by the commission; and [PL 2021, c. 720, §1 (AMD).]

G. Other standards considered necessary and appropriate to ensure the delivery of adequate indigent legal services. [PL 2009, c. 419, §2 (NEW).]  
[PL 2021, c. 720, §1 (AMD).]

**3. Duties.** The commission shall:

A. Develop and maintain a system that may employ attorneys, use appointed private attorneys and contract with individual attorneys or groups of attorneys. The commission shall consider other programs necessary to provide quality and efficient indigent legal services; [PL 2021, c. 481, §1 (AMD).]

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

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

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

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

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

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

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

- (1) An evaluation of: contracts; services provided by contract counsel and assigned counsel; any contracted professional services; and cost containment measures; and
- (2) An explanation of the relevant law changes to the indigent legal services covered by the commission and the effect of the changes on the quality of representation and costs.

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

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

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

- (1) Whether an attorney meets the minimum eligibility requirements to receive assignments or to receive assignments in specialized case types pursuant to any commission rule setting forth eligibility requirements;
- (2) Whether an attorney previously found eligible is no longer eligible to receive assignments or to receive assignments in specialized case types pursuant to any commission rule setting forth eligibility requirements; and
- (3) Whether to grant or withhold a waiver of the eligibility requirements set forth in any commission rule.

All decisions of the commission, including decisions on appeals under subparagraphs (1), (2) and (3), constitute final agency action. All decisions of the executive director, or the executive director's designee, other than decisions appealable under subparagraphs (1), (2) and (3), constitute final agency action; [PL 2017, c. 284, Pt. UUUU, §5 (AMD).]

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

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

M. Establish procedures for handling complaints about the performance of counsel providing indigent legal services; [PL 2021, c. 481, §2 (AMD).]

N. Develop a procedure for approving requests by counsel for authorization to file a petition as described in section 1802, subsection 4, paragraph D; and [PL 2021, c. 481, §3 (AMD).]

O. Establish a system to audit financial requests and payments that includes the authority to recoup payments when necessary. The commission may summon persons and subpoena witnesses and compel their attendance, require production of evidence, administer oaths and examine any person under oath as part of an audit. Any summons or subpoena may be served by registered mail with return receipt. Subpoenas issued under this paragraph may be enforced by the Superior Court. [PL 2021, c. 481, §4 (NEW).]

[PL 2021, c. 481, §§1-4 (AMD).]

**4. Powers.** The commission may:

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

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

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

D. Adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that rules adopted to establish rates of compensation for assigned counsel and contract counsel under subsection 3, paragraph F are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A; and [PL 2021, c. 398, Pt. FFF, §1 (AMD); PL 2021, c. 481, §5 (AMD).]

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

[PL 2021, c. 398, Pt. FFF, §1 (AMD); PL 2021, c. 481, §5 (AMD).]

SECTION HISTORY

PL 2009, c. 419, §2 (NEW). PL 2011, c. 141, §1 (AMD). PL 2011, c. 420, Pt. C, §1 (AMD). PL 2013, c. 159, §§11-13 (AMD). PL 2013, c. 368, Pt. RRR, §1 (AMD). PL 2013, c. 368, Pt. RRR, §4 (AFF). PL 2017, c. 284, Pt. UUUU, §§1-7 (AMD). PL 2019, c. 427, §§3, 4 (AMD). PL 2021, c. 398, Pt. FFF, §1 (AMD). PL 2021, c. 481, §§1-5 (AMD). PL 2021, c. 720, §1 (AMD).

**§1805. Executive director**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**9. Records.** Maintain proper records of all financial transactions related to the operation of the commission;

[PL 2009, c. 419, §2 (NEW).]

**9-A. Audits; recoupment.** Conduct audits of financial requests and payments and recoup payments when necessary. The executive director may exercise the subpoena power of the commission granted under section 1804, subsection 3, paragraph O;

[PL 2021, c. 481, §6 (NEW).]

**10. Other funds.** Apply for and accept on behalf of the commission funds that may become available from any source, including government, nonprofit or private grants, gifts or bequests. These non-General Fund funds do not lapse at the end of the fiscal year but must be carried forward to be used for the purpose originally intended;

[PL 2017, c. 284, Pt. UUUU, §12 (AMD).]

**10-A. Reimbursement of expenses.** Administer and improve reimbursement of expenses incurred by assigned counsel and contract counsel as described in section 1805-A;

[PL 2017, c. 284, Pt. UUUU, §13 (NEW).]

**11. Meetings of commission.** Attend all commission meetings, except those meetings or portions of the meetings that address the question of appointment or removal of the executive director; and

[PL 2009, c. 419, §2 (NEW).]

**12. Other assigned duties.** Perform other duties as the commission may assign.

[PL 2009, c. 419, §2 (NEW).]

#### SECTION HISTORY

PL 2009, c. 419, §2 (NEW). PL 2017, c. 284, Pt. UUUU, §§8-13 (AMD). PL 2017, c. 475, Pt. A, §2 (AMD). PL 2021, c. 481, §6 (AMD).

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

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

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

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

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

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

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

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

**2. Determination of defendant's or civil party's eligibility.** The executive director shall provide the court having jurisdiction over a proceeding information used to determine indigency for guidance to the court in determining a defendant's or civil party's financial ability to obtain private counsel.

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

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

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

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

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

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

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

#### SECTION HISTORY

PL 2017, c. 284, Pt. UUUU, §14 (NEW).

#### §1806. Information not public record

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

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

A. "Individual client information" means name, date of birth, social security number, gender, ethnicity, home, ~~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 of secret under the Maine Rules of Professional Conduct, Rule 1.6~~ is confidential. [PL 2011, c. 260, §1 (NEW).]
- C. Personal contact information of a commission-rostered attorney is confidential. [PL 2011, c. 260, §1 (NEW).]
- D. Personal contact information of a member of the commission or a commission staff member is confidential. [PL 2011, c. 260, §1 (NEW).]
- E. A request for funds for ~~expert or investigative assistance~~ 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 ~~non-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, except that it may be disclosed to the attorney being evaluated or investigated. The commission, through its Executive Director or designee, may nevertheless disclose information that would be confidential under this paragraph to the Maine Assistance Program and/or the Maine Board of Overseers of the Bar. [PL 2015, c. 290, §1 (AMD).]  
[PL 2015, c. 290, §1 (AMD).]

**3. Confidential information disclosed by the Judicial Department.** The Judicial Department may disclose to the commission ~~confidential~~ information necessary for the commission to carry out its functions, including, 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).]

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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 confidential.

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#### 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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**§8104-B. Immunity notwithstanding waiver**

Notwithstanding section 8104-A, a governmental entity is not liable for any claim which results from: [PL 1987, c. 740, §4 (NEW).]

**1. Undertaking of legislative act.** Undertaking or failing to undertake any legislative or quasi-legislative act, including, but not limited to, the adoption or failure to adopt any statute, charter, ordinance, order, rule, policy, resolution or resolve; [PL 1987, c. 740, §4 (NEW).]

**2. Undertaking of judicial act.** Undertaking or failing to undertake any judicial or quasi-judicial act, including, but not limited to, the granting, granting with conditions, refusal to grant or revocation of any license, permit, order or other administrative approval or denial; [PL 1987, c. 740, §4 (NEW).]

**3. Performing discretionary function.** Performing or failing to perform a discretionary function or duty, whether or not the discretion is abused and whether or not any statute, charter, ordinance, order, resolution or policy under which the discretionary function or duty is performed is valid or invalid, except that if the discretionary function involves the operation of a motor vehicle, as defined in Title 29-A, section 101, subsection 42, this section does not provide immunity for the governmental entity for an employee's negligent operation of the motor vehicle resulting in a collision, regardless of whether the employee has immunity under this chapter; [PL 2005, c. 448, §1 (AMD).]

**4. Performing prosecutorial function.** Performing or failing to perform any prosecutorial function involving civil, criminal or administrative enforcement;

**4A. Performing public defense function.** Performing or failing to perform any defense function as an employee of the Maine Commission on Indigent Legal Services. For the purpose of this paragraph. [PL 1987, c. 740, §4 (NEW).]

**5. Activities of state military forces.** The activities of the state military forces when on duty pursuant to Title 37-B or 32 United States Code; [PL 1995, c. 196, Pt. D, §2 (AMD).]

**6. Leasing of governmental property.** The leasing of governmental property, including buildings, to other organizations; [PL 1999, c. 456, §1 (AMD).]

**7. Certain services.** A decision not to provide communications, heat, light, water, electricity or solid or liquid waste collection, disposal or treatment services; and [PL 1999, c. 456, §1 (AMD).]

**8. Failure or malfunction of computer.** The direct or indirect failure or malfunction of computer hardware, computer software or any device containing a computer processor or chip that fails to accurately or properly recognize, calculate, display, sort or otherwise process dates or times as a result of the Year 2000 problem. This provision applies to failures or malfunctions occurring before January 2, 2001.

For purposes of this section, the "Year 2000 problem" means complications associated with using a 2-digit field to represent a year and its result on the year change from 1999 to 2000. These complications may include, but are not limited to:

- A. Erroneous date calculations; [PL 1999, c. 456, §2 (NEW).]
- B. An ambiguous interpretation of the term "00"; [PL 1999, c. 456, §2 (NEW).]
- C. The failure to recognize the year 2000 as a leap year; [PL 1999, c. 456, §2 (NEW).]

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D. The use of algorithms that use the term "99" or "00" as a flag for another function; [PL 1999, c. 456, §2 (NEW).]

E. Problems arising from the use of applications, software or hardware that are date sensitive; and [PL 1999, c. 456, §2 (NEW).]

F. The inability to distinguish between centuries. [PL 1999, c. 456, §2 (NEW).]  
[PL 1999, c. 456, §2 (NEW).]

#### SECTION HISTORY

PL 1987, c. 740, §4 (NEW). PL 1995, c. 196, §D2 (AMD). PL 1999, c. 456, §§1,2 (AMD). PL 2005, c. 448, §1 (AMD).

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**§1029. Review of bail ~~under section 1027~~**

**1. Petition for review.** Any defendant in custody following a ~~Harnish~~-bail proceeding under ~~section 1027~~this chapter may petition a single Justice of the Supreme Judicial Court for review under this section and the additional procedures set forth in the Maine Rules of Unified Criminal Procedure, Rule 46(e)(1). Further review of the decision of the single Justice shall be discretionary to the Law Court upon any three Justices of that court then sitting concurring that further review is in the interests of justice or in the interests of promoting statewide uniformity in the application of this chapter.

A. [PL 2015, c. 431, §14 (RP).]

B. [PL 2015, c. 431, §14 (RP).]  
[PL 2015, c. 431, §14 (RPR).]

**2. Standard of review.** With respect to the finding of probable cause to believe that the defendant committed a formerly capital offense, the finding of the lower court shall be upheld, unless it is clearly erroneous provided there is an adequate record for purposes of review. With respect to all other issues or with respect to the issue of probable cause when the record is inadequate for review, the review shall be de novo. The parties shall cooperate to expeditiously assemble a record for review.  
[PL 1989, c. 147, §3 (AMD).]

**3. Evidence.** The evidence consists of the information of record submitted in the Harnish bail proceeding under section 1027 and any additional information the parties may choose to present.  
[RR 2009, c. 2, §31 (COR).]

~~**4. No further relief.** The review under this section is final and no further relief is available.~~  
[PL 1999, c. 731, Pt. ZZZ, §11 (NEW); PL 1999, c. 731, Pt. ZZZ, §42 (AFF).]

**SECTION HISTORY**

PL 1987, c. 758, §20 (NEW). PL 1989, c. 147, §3 (AMD). PL 1999, c. 731, §ZZZ11 (AMD).  
PL 1999, c. 731, §ZZZ42 (AFF). RR 2009, c. 2, §31 (COR). PL 2015, c. 431, §14 (AMD).

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## **§1092. Violation of condition of release**

~~1. **Violation of condition of release.**—A defendant who has been granted preconviction or postconviction bail and who, in fact, violates a condition of release is guilty of:~~

~~A. A Class E crime; or [PL 2003, c. 452, Pt. H, §3 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]~~

~~B. A Class C crime if the underlying crime was punishable by a maximum period of imprisonment of one year or more and the condition of release violated is one specified in section 1026, subsection 3, paragraph A, subparagraph (5), (8), (10 A) or (13). [PL 2005, c. 449, §2 (AMD).]  
[PL 2005, c. 449, §2 (AMD).]~~

~~2. **Affirmative defense.**—It is an affirmative defense to prosecution under subsection 1 that the violation resulted from just cause.~~

~~[PL 2003, c. 452, Pt. H, §3 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]~~

~~3. **Strict liability.**—Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4 A.~~

~~[PL 2003, c. 452, Pt. H, §3 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]~~

~~4. **Limitations on authority of bail commissioner to set bail.**—A court may, but a bail commissioner may not, set bail for a defendant granted preconviction or post-conviction bail who has been arrested for an alleged violation of this section if:~~

~~A. The condition of release alleged to be violated relates to new criminal conduct for a crime classified as Class C or above or for a Class D or Class E crime involving domestic violence, sexual assault pursuant to Title 17-A, chapter 11 or sexual exploitation of minors pursuant to Title 17-A, chapter 12; [PL 2011, c. 341, §3 (NEW).]~~

~~B. The underlying crime for which preconviction or post-conviction bail was granted is classified as Class C or above; or [PL 2013, c. 519, §3 (AMD).]~~

~~C. The underlying crime for which preconviction or post-conviction bail was granted is a crime involving domestic violence, sexual assault pursuant to Title 17-A, chapter 11 or sexual exploitation of minors pursuant to Title 17-A, chapter 12. [PL 2013, c. 519, §3 (AMD).]~~

### Repealed.

If a bail commissioner does not have sufficient information to determine whether the violation of the condition of release meets the criteria set forth under this subsection, the bail commissioner may not set bail on the violation of the condition of release.

[PL 2013, c. 519, §3 (AMD).]

### SECTION HISTORY

PL 1987, c. 758, §20 (NEW). PL 1987, c. 870, §9 (AMD). PL 1995, c. 356, §17 (AMD). PL 2003, c. 452, §H3 (RPR). PL 2003, c. 452, §X2 (AFF). PL 2005, c. 449, §2 (AMD). PL 2011, c. 341, §3 (AMD). PL 2013, c. 519, §3 (AMD).

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**§3010. Dissemination of juvenile history record information by a Maine criminal justice agency**

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

A. "Confidential juvenile history record information" means all juvenile history record information except public juvenile history record information. [PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

B. "Criminal justice agency" has the same meaning as in Title 16, section 703, subsection 4. [PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

C. "Dissemination" has the same meaning as in Title 16, section 703, subsection 6. [PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

D. "Executive order" has the same meaning as in Title 16, section 703, subsection 7. [PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

E. "Juvenile history record information" means information of record collected by a criminal justice agency or at the direction of a criminal justice agency or kept in the custody of a criminal justice agency that connects a specific, identifiable juvenile with formal involvement in the juvenile justice system either as a person accused of or adjudicated as having committed a juvenile crime. "Juvenile history record information" includes, but is not limited to, identifiable descriptions or notations of: summonses and arrests; detention; petitions charging a juvenile with a juvenile crime or any disposition stemming from such charges; post-plea or post-adjudication disposition; execution of and completion of any disposition alternatives imposed; release and discharge from involuntary commitment; any related pretrial and post-trial appeals; collateral attacks; and petitions for and warrants of pardons, commutations, reprieves and amnesties. "Juvenile history record information" does not include information of record of civil proceedings, including traffic infractions and other civil violations or juvenile intelligence and investigative record information as defined in section 3308-A, subsection 1, paragraph E. As used in this paragraph, "formal involvement in the juvenile justice system either as a person accused of or adjudicated as having committed a juvenile crime" means being within the jurisdiction of the juvenile justice system commencing with arrest, summons, referral to a juvenile community corrections officer, preliminary investigation or filing of a juvenile petition with the Juvenile Court and concluding with the completion of any informal adjustment agreement or the completion of any disposition entered by the Juvenile Court. [PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

F. "Public juvenile history record information" means information indicating that a juvenile has been adjudicated as having committed a juvenile crime that would constitute murder or a Class A, B or C crime if the juvenile adjudicated were an adult and any resulting disposition imposed. [PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]  
[PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

**2. Juvenile history record information confidential.** Except as provided in subsection 3, juvenile history record information is confidential and not open to public inspection, and does not constitute public records as defined in Title 1, section 402, subsection 3.  
[PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

**3. Juvenile history record information pertaining to adjudications.** Notwithstanding subsection 2, if a juvenile has been adjudicated as having committed a juvenile crime that would constitute murder or a Class A, B or C crime if the juvenile adjudicated were an adult, then that adjudication and any resulting disposition imposed, but no other related juvenile history record information, may be disclosed publicly.  
[PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

**4. Dissemination of juvenile history record information by Maine criminal justice agency.** A Maine criminal justice agency, whether directly or through any intermediary, may disseminate confidential juvenile history record information only to:

A. Another criminal justice agency for the purpose of the administration of juvenile justice, the administration of criminal justice or criminal justice agency employment; [PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

B. Any person for any purpose when expressly authorized by a statute, court rule, court decision or court order containing language specifically referring to confidential juvenile history record information or one or more of the types of confidential juvenile history record information; or [PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

C. A public entity for purposes of international travel, such as issuing visas and granting of citizenship. [PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

D. The Maine Commission on Indigent Legal services for the purpose of the administration of the indigent defense system.

[PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

**5. Required inquiry to State Bureau of Identification.** A Maine criminal justice agency, other than a court, shall query the Department of Public Safety, State Bureau of Identification before disseminating any confidential juvenile history record information for a noncriminal justice purpose to ensure that the most up-to-date disposition information is being used. For purposes of this subsection, "noncriminal justice purpose" means a purpose other than for the administration of juvenile justice, the administration of criminal justice or criminal justice agency employment.

[PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

**6. Unlawful dissemination of confidential juvenile history record information.** Any person who intentionally disseminates confidential juvenile history record information knowing it to be in violation of any provision of this chapter commits a civil violation for which a fine of not more than \$1,000 may be adjudged. The District Court has jurisdiction over violations under this subsection.

[PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

#### SECTION HISTORY

PL 2021, c. 365, §9 (NEW). PL 2021, c. 365, §37 (AFF).

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### **§3308-C. Confidentiality of juvenile case records**

**1. Confidentiality.** Juvenile case records are confidential and may not be disclosed, disseminated or inspected except as expressly authorized by this Part. Juvenile case records open to public inspection may be inspected only at the courthouse. The court may not disseminate any juvenile case records, including those open to public inspection, to the public in any manner, including by any paper or electronic means.

[PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

**2. Juvenile petitions open to public inspection.** Unless Juvenile Court proceedings are suspended pursuant to section 3318-A, subsection 5, the following juvenile petitions are open to public inspection:

A. Any juvenile petition alleging a violation of Title 17-A, section 201, 202 or 203 if the juvenile charged had attained 13 years of age at the time of the alleged juvenile crime, if the Juvenile Court has found there is probable cause to believe the juvenile committed a juvenile crime that would be a violation of Title 17-A, section 201, 202 or 203 if the juvenile involved were an adult.

If the juvenile had not attained 13 years of age at the time of the alleged violation of Title 17-A, section 201, 202 or 203, the Juvenile Court may allow public inspection of the juvenile petition pursuant to paragraph C; [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

B. Any juvenile petition alleging a juvenile crime that would constitute a Class A crime if committed by an adult if the juvenile charged had attained 13 years of age at the time of the alleged juvenile crime if the Juvenile Court has found there is probable cause to believe the juvenile committed a juvenile crime that would be a Class A crime if the juvenile involved were an adult.

If the juvenile had not attained 13 years of age at the time of the juvenile crime that would constitute a Class A crime if committed by an adult, the Juvenile Court may allow public inspection of the juvenile petition pursuant to paragraph C.

A petition open to public inspection under this paragraph may be made confidential and not open to public inspection if, upon written request by a person to the Juvenile Court, and after notice to the juvenile and the juvenile's parent or parents, guardian or legal custodian, the attorney for the juvenile and the office of the prosecuting attorney, and after a hearing in which the Juvenile Court considers the purposes of this Part, the juvenile's interest in privacy, the alleged victim's interest in privacy, the nature of the juvenile crime alleged and the characteristics of the juvenile and public safety concerns as outlined in section 3101, subsection 4, paragraph D, the court determines that the general public's right to information does not substantially outweigh the juvenile's interest in privacy or the alleged victim's interest in privacy; and [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

C. Any petition alleging a juvenile crime that would constitute murder or a Class A crime if committed by an adult and the juvenile charged had not attained 13 years of age at the time of the alleged juvenile crime, or any petition alleging a juvenile of any age committed a juvenile crime that would constitute a Class B or C crime if committed by an adult, if:

(1) A written request is filed by any person with the Juvenile Court requesting that the juvenile petition be open to public inspection;

(2) The Juvenile Court has found there is probable cause to believe the juvenile committed a juvenile crime that would constitute murder, a violation of Title 17-A, section 204 or a Class A, B or C crime if the juvenile involved were an adult; and

(3) After notice to the juvenile and the juvenile's parent or parents, guardian or legal custodian, the attorney for the juvenile, the office of the prosecuting attorney and the individual or entity requesting the juvenile petition be open to public inspection and a hearing in which the Juvenile



Court considers the purposes of this Part, the juvenile's interest in privacy, the alleged victim's interest in privacy, the nature of the juvenile crime alleged and the characteristics of the juvenile and public safety concerns as outlined in section 3101, subsection 4, paragraph D, the court determines that the general public's right to information substantially outweighs the juvenile's interest in privacy and the alleged victim's interest in privacy. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

D. In a juvenile petition alleging multiple juvenile crimes, the juvenile crime that would constitute the highest class of crime if the juvenile were an adult determines whether the petition is open to public inspection. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

The prosecuting attorney shall ensure that names and identifying information of any alleged victims are redacted before a petition is filed with the Juvenile Court.

If a request to allow public inspection of a petition under this subsection has been filed, the Juvenile Court shall advise the juvenile and the juvenile's parent or parents, guardian or legal custodian that the request has been made and shall advise them of the juvenile's right to be represented by counsel. The court may not allow the public to inspect a juvenile petition pursuant to paragraph C until authorized by court order.

[PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

**3. Orders of adjudication open to public inspection.** Orders of adjudication for any juvenile crime that would constitute murder or a Class A, B or C crime if the juvenile involved were an adult are open to public inspection. Orders of adjudication for all other juvenile crimes are confidential and not open to public inspection. When an order of adjudication reflects adjudications for both a juvenile crime that would constitute murder or a Class A, B or C crime if the juvenile involved were an adult and another juvenile crime or crimes not constituting murder or a Class A, B or C crime if the juvenile involved were an adult, the juvenile crime that would constitute the highest class of crime if the juvenile were an adult determines whether the order of adjudication is open to public inspection.

[PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

**4. Dissemination of information contained in juvenile case records.** The following provisions apply to the dissemination of information contained in juvenile case records.

A. For purposes of this subsection, unless the context otherwise indicates, the following terms have the following meanings.

(1) "Administration of criminal justice" has the same meaning as in Title 16, section 703, subsection 1.

(2) "Criminal justice agency" has the same meaning as in Title 16, section 703, subsection 4.

(3) "Juvenile intelligence and investigative record information" has the same meaning as in section 3308-A, subsection 1, paragraph E. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

B. Nothing in this section precludes sharing of any information contained in juvenile case records by one criminal justice agency with another criminal justice agency for the purpose of administration of criminal justice, administration of juvenile justice or criminal justice agency employment. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

C. Nothing in this section precludes dissemination of any information contained in juvenile case records if:

(1) The juvenile has been adjudicated as having committed a juvenile crime;

(2) The information is disseminated by and to persons who directly supervise or report on the health, behavior or progress of the juvenile, the superintendent of the juvenile's school and the superintendent's designees, criminal justice agencies or agencies that are or might become

responsible for the health or welfare of the juvenile as a result of a court order or by agreement with the Department of Corrections or the Department of Health and Human Services; and

(3) The information is relevant to and disseminated only for the purpose of creating or maintaining an individualized plan for the juvenile's rehabilitation, including reintegration into a school.

Any information received under this paragraph is confidential and may not be further disclosed or disseminated, except as otherwise provided by law. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

D. Nothing in this section precludes dissemination of any information in the juvenile case records in the possession of the Department of Corrections if the person concerning whom the juvenile case records are sought, the juvenile, the person's legal guardian, if any, and, if the person is a minor, the person's parent or parents, guardian or legal custodian have given informed written consent to the dissemination of the juvenile case records. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

E. Except as expressly authorized by this section, juvenile intelligence and investigative record information, juvenile community corrections officers' records and all other reports of social and clinical studies contained in juvenile case records may not be open to inspection and may not be disclosed or disseminated except with the consent of the Juvenile Court. The names and identifying information regarding any alleged victims and minors contained in the juvenile case records must be redacted prior to disclosure, dissemination or inspection.

The Juvenile Court may not order the disclosure, dissemination or inspection of juvenile case records unless the juvenile, the juvenile's parent or parents, guardian or legal custodian and either the juvenile's attorney or, if the juvenile does not have an attorney, the juvenile's attorney of record and the prosecuting attorney are given notice of the request and an opportunity to be heard regarding the request. In deciding whether to allow the disclosure, dissemination or inspection of any portion of juvenile case records under this paragraph, the Juvenile Court shall consider the purposes of this Part and the reasons for which the request is being made and may restrict the disclosure, dissemination or inspection of the juvenile case records in any manner the court determines necessary or appropriate. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

F. When a juvenile who is adjudicated as having committed a juvenile crime that if committed by an adult would be gross sexual assault under Title 17-A, section 253, subsection 1 is committed to a Department of Corrections juvenile correctional facility or placed on probation, the Department of Corrections shall provide, while the juvenile is committed or on probation, a copy of the juvenile's judgment and commitment to the Department of Health and Human Services, to all law enforcement agencies that have jurisdiction in those areas where the juvenile resides, works or attends school and to the superintendent of any school in which the juvenile attends school during the period of commitment or probation. The Department of Corrections shall provide a copy of the juvenile's judgment and commitment to all licensed day care facility operators located in the municipality where the juvenile resides, works or attends school during the period of commitment or probation. Upon request, the Department of Corrections shall also provide a copy of the juvenile's judgment and commitment to other entities that are involved in the care of children and are located in the municipality where the juvenile resides, works or attends school during the period of commitment or probation. The Department of Corrections may provide a copy of the juvenile's judgment and commitment to any other agency or person that the Department of Corrections determines is appropriate to ensure public safety. Neither the failure of the Department of Corrections to perform the requirements of this paragraph nor compliance with this paragraph subjects the Department of Corrections or its employees to liability in a civil action. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

G. Juvenile case records must be open to inspection by and, upon request, be disseminated to the juvenile, the juvenile's parent or parents, guardian or legal custodian, the juvenile's attorney, the prosecuting attorney and any agency to which legal custody of the juvenile was transferred as a result of an adjudication. Juvenile case records must also be open to inspection by and, upon request, be disseminated to the Department of Health and Human Services prior to adjudication if commitment to the Department of Health and Human Services is a proposed disposition. Juvenile case records must also be open to inspection by and, upon request, by disseminated to the Maine Commission on Indigent Legal Services as necessary to permit the commission to administer the provision of indigent legal services to juvenils. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

[PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

**5. Victim access to juvenile case records.** Notwithstanding confidentiality provisions of this section, the juvenile petition and order of adjudication may be inspected by:

A. The victim; [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

B. If the victim is a minor, the parent or parents, guardian or legal custodian of the victim; or [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

C. If the victim cannot act on the victim's own behalf due to death, age, physical or mental disease or disorder or intellectual disability or autism or other reason, an immediate family member, guardian, legal custodian or attorney representing the victim. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

Notwithstanding any provision of this section to the contrary, juvenile case records must be open to inspection by or may be disseminated to the Victims' Compensation Board established in Title 5, section 12004-J, subsection 11 if a juvenile is alleged to have committed an offense upon which an application to the board is based.

[PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

**6. Access to juvenile case records by other persons.** With the consent of the Juvenile Court and subject to reasonable limitations to protect the identity, privacy and safety of 3rd parties, including, but not limited to, victims and other accused or adjudicated juveniles, and the interests of justice, juvenile case records, excluding the names of the juvenile and the juvenile's parent or parents, guardian or legal custodian, the juvenile's attorney or any other parties, may be inspected by or disseminated to persons having a legitimate interest in the proceedings or by persons conducting pertinent research studies.

[PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

**7. Order following determination that juvenile case records are open to public inspection, disclosure or dissemination.** Following a determination that a juvenile petition, order of adjudication or other juvenile case records are open to public inspection, disclosure or dissemination under this section, the Juvenile Court shall enter an order specifying which juvenile case records may be inspected, disclosed or disseminated and identifying the individual or agency granted access to those juvenile case records. The Juvenile Court may restrict the further disclosure, dissemination or inspection of the juvenile case records in any manner the court determines necessary or appropriate.

[PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

**8. Records to Secretary of State.** Whenever a juvenile has been adjudicated as having committed a juvenile crime involving the operation of a motor vehicle, or when the Juvenile Court has ordered a disposition pursuant to section 3314, subsection 3, 3-A, or 3-B that includes suspension of the juvenile's right to operate a motor vehicle, the court shall transmit to the Secretary of State an abstract, duly certified, setting forth the name of the juvenile, the offense, the date of the offense, the date of the adjudicatory hearing and any other pertinent facts. These juvenile case records are admissible in

evidence in hearings conducted by the Secretary of State or any of the Secretary of State's deputies and are open to public inspection.

Nothing in this Part may be construed to limit the authority of the Secretary of State, pursuant to Title 29-A, to suspend a person's driver's license or permit to operate a motor vehicle, right to operate a motor vehicle or right to apply for or obtain a driver's license.

[PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

**9. Transmission of information about a committed juvenile.** Information regarding a juvenile committed to the custody of the Department of Corrections or the custody of the Department of Health and Human Services must be provided as follows.

A. The Juvenile Court shall transmit with the commitment order a copy of the petition, the order of adjudication, copies of any social studies, any clinical or educational reports and information pertinent to the care and treatment of the juvenile. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

B. The Department of Corrections or the Department of Health and Human Services shall provide the Juvenile Court with any information concerning the juvenile committed to either department's custody that the court at any time may request. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

[PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

**10. Juvenile case records sealed.** This subsection governs the sealing of juvenile case records of a person adjudicated as having committed a juvenile crime.

A. A person adjudicated as having committed a juvenile crime that, if the juvenile were an adult, would constitute murder or a Class A, B or C crime or operating under the influence as defined in Title 29-A, section 2411 may petition the Juvenile Court to seal from public inspection all juvenile case records pertaining to the juvenile crime and its disposition and any prior juvenile case records and their dispositions if:

(1) At least 3 years have passed since the person's discharge from the disposition ordered for that juvenile crime;

(2) Since the date of disposition, the person has not been adjudicated as having committed a juvenile crime and has not been convicted of committing a crime; and

(3) There are no current adjudicatory proceedings pending for a juvenile or other crime. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

B. The Juvenile Court may grant the petition filed under paragraph A if the court finds that the requirements of paragraph A are satisfied, unless the court finds that the general public's right to information substantially outweighs the juvenile's interest in privacy. The juvenile has a right to appeal the court's denial of the juvenile's petition to seal as provided in chapter 509. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

C. At the time a person adjudicated to have committed a juvenile crime other than a crime listed in paragraph A is finally discharged from the disposition imposed for that juvenile crime, the court, upon receipt of appropriate notice of the discharge, shall within 5 business days enter an order sealing from public inspection all records pertaining to the juvenile crime and its disposition. Appropriate notice that the juvenile is discharged from the disposition:

(1) Must be provided to the court by the Department of Corrections if the juvenile's disposition involved either commitment to the custody of a Department of Corrections juvenile correctional facility, a period of confinement not to exceed 30 days or any suspended disposition with a period of probation;

- (2) Must be provided to the court by the office of the prosecuting attorney if disposition included restitution, community service or a restorative justice event and the court ordered that proof of completion of the obligation be provided to the office of the prosecuting attorney; or
- (3) May be provided to the court by the juvenile or the juvenile's attorney. If the notice is provided by the juvenile or the juvenile's attorney, the juvenile or the juvenile's attorney shall serve a copy of the notice on the office of the prosecuting attorney before the court may enter the order sealing the juvenile case records. In all juvenile cases adjudicated subsequent to January 1, 2000, but prior to January 1, 2022, the Juvenile Court may grant the request of the juvenile or the juvenile's attorney for automatic sealing of all juvenile case records pertaining to the juvenile crime and its disposition when notice is provided to the court and the prosecuting attorney pursuant to this subparagraph.

When an order of adjudication includes multiple juvenile crimes, the juvenile crime that would constitute the highest class of crime if the juvenile were an adult determines whether a petition for sealing of juvenile records must be filed pursuant to paragraph A and a finding made pursuant to paragraph B before all juvenile case records pertaining to all of the juvenile crimes adjudicated may be ordered sealed.

When a juvenile petition alleges multiple juvenile crimes and the court holds separate hearings resulting in multiple orders of adjudication, the order of adjudication with the highest class of crime if the juvenile were an adult determines whether a petition for sealing of juvenile records must be filed pursuant to paragraph A and a finding made pursuant to paragraph B before all juvenile case records pertaining to all of the juvenile crimes adjudicated may be ordered sealed. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

D. Notwithstanding subsections 2 and 3, subsection 4, paragraphs C, D and F and subsections 5 and 6, a court order sealing juvenile case records pursuant to this subsection permits only the following persons to have access to the sealed juvenile case records:

- (1) The courts and criminal justice agencies as provided by this section; and
- (2) The person whose juvenile case records are sealed or that person's designee. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

E. Notice of the court's order certifying its granting of the juvenile's petition to seal juvenile case records pursuant to paragraph B or notice of the court's order of automatic sealing pursuant to paragraph C must be provided to the Department of Public Safety, Bureau of State Police, State Bureau of Identification if the adjudication is for a juvenile crime the criminal records of which are maintained by the State Bureau of Identification pursuant to Title 25, section 1541. Notice of the order may be sent by electronic transmission. The State Bureau of Identification or the appropriate agency upon receipt of the notice shall promptly update its records relating to each of the juvenile adjudications included in the notice. [PL 2021, c. 701, §1 (AMD).]

F. A person whose juvenile case records are sealed pursuant to this subsection may respond to inquiries from other than the courts and criminal justice agencies about that person's juvenile crimes, the juvenile case records of which have been sealed, as if the juvenile crimes had never occurred, without being subject to any sanctions. The sealing of a person's juvenile case records does not remove or otherwise affect the prohibition against that person's possessing a firearm pursuant to section 393. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

[PL 2021, c. 701, §1 (AMD).]

**11. Unlawful dissemination of confidential juvenile case record information.** Any person who intentionally disseminates information contained in confidential juvenile case records knowing it to be in violation of any provisions of this chapter commits a civil violation for which a fine of not more than \$1,000 may be adjudged. The District Court has jurisdiction over violations under this subsection.

[PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

#### SECTION HISTORY

PL 2021, c. 365, §19 (NEW). PL 2021, c. 365, §37 (AFF). PL 2021, c. 701, §1 (AMD).

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Conditional Discharge

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~~31-20-13. Conditional discharge order; exception.~~ 17-A M.R.S.A. §1905

~~A. A.~~ When a person who has not been previously convicted of a felony offense is found guilty of a crime for which a deferred or partially or fully suspended sentence is authorized, including after a plea of Nolo Contendre or after an Alford plea, the court may, without entering an adjudication of guilt, enter a conditional discharge order and place the person on probation on terms and conditions authorized by Sections 31-20-5 and 31-20-6 NMSA 1978. Title 17-A, Chapter 67, Subchapter 1.

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~~B. If the person successfully completes the period of probation, then the court shall dismiss the matter with prejudice.~~

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~~A. A conditional discharge order may only be made available once with respect to any person.~~

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B. If the person violates any of the conditions of probation, then after hearing as specified by 17-A M.R.S.A. §1810 et seq., the court may enter an adjudication of guilt and proceed as otherwise provided by law.

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~~C. C. The court shall not enter a conditional discharge order for a person found guilty of driving a motor vehicle while under the influence of intoxicating liquor or drugs, pursuant to the provisions of Section 66-8-102 NMSA 1978-D. A conditional discharge order may only be made available once with respect to any person.~~

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§1092. Violation of condition of release

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~~1. Violation of condition of release.~~ A defendant who has been granted preconviction or postconviction bail and who, in fact, violates a condition of release is guilty of:

~~A. A Class E crime; or [PL 2003, c. 452, Pt. H, §3 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]~~

~~B. A Class C crime if the underlying crime was punishable by a maximum period of imprisonment of one year or more and the condition of release violated is one specified in section 1026, subsection 3, paragraph A, subparagraph (5), (8), (10-A) or (13). [PL 2005, e. 449, §2 (AMD).]~~

~~[PL 2005, e. 449, §2 (AMD).]~~

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~~2. Affirmative defense.~~ It is an affirmative defense to prosecution under subsection 1 that the violation resulted from just cause.

~~[PL 2003, c. 452, Pt. H, §3 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]~~

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~~3. Strict liability.~~ Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A:

~~[PL 2003, e. 452, Pt. H, §3 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]~~

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~~4. Limitations on authority of bail commissioner to set bail. A court may, but a bail commissioner may not, set bail for a defendant granted preconviction or post-conviction bail who has been arrested for an alleged violation of this section if:~~

~~A. The condition of release alleged to be violated relates to new criminal conduct for a crime classified as Class C or above or for a Class D or Class E crime involving domestic violence, sexual assault pursuant to Title 17-A, chapter 11 or sexual exploitation of minors pursuant to Title 17-A, chapter 12; [PL 2011, c. 341, §3 (NEW).]~~

~~B. The underlying crime for which preconviction or post-conviction bail was granted is classified as Class C or above; or [PL 2013, c. 519, §3 (AMD).]~~

~~C. The underlying crime for which preconviction or post-conviction bail was granted is a crime involving domestic violence, sexual assault pursuant to Title 17-A, chapter 11 or sexual exploitation of minors pursuant to Title 17-A, chapter 12. [PL 2013, c. 519, §3 (AMD).]~~

~~If a bail commissioner does not have sufficient information to determine whether the violation of the condition of release meets the criteria set forth under this subsection, the bail commissioner may not set bail on the violation of the condition of release.~~

~~[PL 2013, c. 519, §3 (AMD).]~~

#### SECTION HISTORY

~~PL 1987, c. 758, §20 (NEW). PL 1987, c. 870, §9 (AMD). PL 1995, c. 356, §17 (AMD). PL 2003, c. 452, §H3 (RPR). PL 2003, c. 452, §X2 (AFF). PL 2005, c. 449, §2 (AMD). PL 2011, c. 341, §3 (AMD). PL 2013, c. 519, §3 (AMD).~~

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Title 22

**§4011-A. Reporting of suspected abuse or neglect**

**1. Required report to department.** The following adult persons shall immediately report or cause a report to be made to the department when the person knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected or that a suspicious child death has occurred:

**§4015. Privileged or confidential communications** The husband-wife and physician and psychotherapist-patient privileges under the Maine Rules of Evidence and the confidential quality of communication under Title 16, section 53-B; Title 20-A, sections 4008 and 6001, to the extent allowed by applicable federal law; Title 24-A, section 4224; Title 32, sections 7005 and 18393; and Title 34-B, section 1207, are abrogated in relation to required reporting, cooperating with the department or a guardian ad litem in an investigation or other child protective activity or giving evidence in a child protection proceeding. Information released to the department pursuant to this section must be kept confidential and may not be disclosed by the department except as provided in section 4008. [PL 2015, c. 429, §7 (AMD).] Statements made to a licensed mental health professional in the course of counseling, therapy or evaluation where the privilege is abrogated under this section may not be used against the client in a criminal proceeding. Nothing in this section may limit any responsibilities of the professional pursuant to this Act

#### **§4005. Parties' rights to representation; legal counsel**

**1. Child; guardian ad litem.** The following provisions shall govern guardians ad litem. The term guardian ad litem is inclusive of lay court appointed special advocates under Title 4, chapter 31.

A. The court, in every child protection proceeding except a request for a preliminary protection order under section 4034 or a petition for a medical treatment order under section 4071, but including hearings on those orders, shall appoint a guardian ad litem for the child. The guardian ad litem's reasonable costs and expenses must be paid by the District Court. The appointment must be made as soon as possible after the proceeding is initiated. Guardians ad litem appointed on or after March 1, 2000 must meet the qualifications established by the Supreme Judicial Court. [PL 1999, c. 251, §2 (AMD).]

B. The guardian ad litem shall act in pursuit of the best interests of the child. The guardian ad litem must be given access to all reports and records relevant to the case and investigate to ascertain the facts. The investigation must include, when possible and appropriate, the following:

- (1) Review of relevant mental health records and materials;
- (2) Review of relevant medical records;
- (3) Review of relevant school records and other pertinent materials;
- (4) Interviews with the child with or without other persons present; and
- (5) Interviews with parents, foster parents, teachers, caseworkers and other persons who have been involved in caring for or treating the child.

The guardian ad litem shall have face-to-face contact with the child in the child's home or foster home within 7 days of appointment by the court and at least once every 3 months thereafter or on a schedule established by the court for reasons specific to the child and family. The guardian ad litem shall report to the court and all parties in writing at 6-month intervals, or as is otherwise ordered by the court, regarding the guardian ad litem's activities on behalf of the child and recommendations concerning the manner in which the court should proceed in the best interest of the child. The court may provide an opportunity for the child to address the court personally if the child requests to do so or if the guardian ad litem believes it is in the child's best interest. [PL 1997, c. 715, Pt. A, §1 (AMD).]

C. The guardian ad litem may subpoena, examine and cross-examine witnesses and shall make a recommendation to the court. [PL 1983, c. 183 (NEW).]

D. The guardian ad litem shall make a written report of the investigation, findings and recommendations and shall provide a copy of the report to each of the parties reasonably in advance of the hearing and to the court, except that the guardian ad litem need not provide a written report prior to a hearing on a preliminary protection order. The court may admit the written report into evidence. [PL 2001, c. 696, §12 (AMD).]

E. The guardian ad litem shall make the wishes of the child known to the court if the child has expressed the child's wishes, regardless of the recommendation of the guardian ad litem. [RR 2021, c. 2, Pt. B, §180 (COR).]

F. The guardian ad litem or the child may request the court to appoint legal counsel for the child. The District Court shall pay reasonable costs and expenses of the child's legal counsel. [PL 1995, c. 405, §20 (AMD).]

G. A person serving as a guardian ad litem under this section acts as the court's agent and is entitled to quasi-judicial immunity for acts performed within the scope of the duties of the guardian ad litem. [PL 2001, c. 253, §4 (NEW).]

[RR 2021, c. 2, Pt. B, §180 (COR).]

**2. Parents.** Parents and custodians are entitled to legal counsel in child protection proceedings, except a request for a preliminary protection order under section 4034 or a petition for a medical treatment order under section 4071, but including hearings on those orders. They may request the court to appoint legal counsel for them. The court, if it finds them indigent, shall appoint and pay the reasonable costs and expenses of their legal counsel. The Court shall appoint new counsel for a parent who appeals from the decision of a court in a child protection proceeding to ensure the proper evaluation of ineffective assistance claims.

[PL 1983, c. 783, §2 (AMD).]

**3. Wishes of child.** The District Court shall consider the wishes of the child, in a manner appropriate to the age of the child, including, but not limited to, whether the child wishes to participate or be heard in court. In addition, when a child's expressed views are inconsistent with those of the guardian ad litem, the court shall consider whether to consult with the child directly, when the child's age is appropriate.

[PL 2009, c. 557, §1 (NEW).]

#### SECTION HISTORY

PL 1979, c. 733, §18 (NEW). PL 1983, c. 183 (AMD). PL 1983, c. 783, §§1,2 (AMD). PL 1985, c. 581, §2 (AMD). PL 1995, c. 405, §§18-20 (AMD). PL 1997, c. 257, §5 (AMD). PL 1997, c. 715, §§A1,2 (AMD). PL 1999, c. 251, §2 (AMD). PL 2001, c. 253, §4 (AMD). PL 2001, c. 696, §12 (AMD). PL 2009, c. 557, §1 (AMD). RR 2021, c. 2, Pt. B, §180 (COR).

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#### **§4005-D. Access to and participating in proceedings**

**1. Definitions.** For the purposes of this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Foster parent" means a person whose home is licensed by the department as a family foster home as defined in section 8101, subsection 3 and with whom a child lives pursuant to a court order or agreement of the department. [PL 2007, c. 255, §2 (AMD).]

B. "Grandparent," in addition to the meaning set forth in section 4002, subsection 5-C, includes a parent of a child's parent whose parental rights have been terminated, but only until the child is placed for adoption. [PL 2017, c. 411, §8 (AMD).]

C. "Interested person" means a person the court has determined as having a substantial relationship with a child or a substantial interest in the child's well-being, based on the type, strength and duration of the relationship or interest. A person may request interested person status in a child protection proceeding either orally or in writing. [PL 2001, c. 696, §16 (NEW).]

D. "Intervenor" means a person who is granted intervenor status in a child protective proceeding pursuant to the Maine Rules of Civil Procedure, Rule 24, as long as intervention is consistent with section 4003. [PL 2001, c. 696, §16 (NEW).]

E. "Participant" means a person who is designated as an interested person under paragraph C and who demonstrates to the court that designation as a participant is in the best interests of the child and consistent with section 4003. A person may request participant status in a child protection proceeding either orally or in writing. [PL 2001, c. 696, §16 (NEW).]

[PL 2017, c. 411, §8 (AMD).]

**2. Interested persons.** Upon request, the court shall designate a foster parent, grandparent, preadoptive parent or a relative of a child as an interested person unless the court finds good cause not to do so. The court may also grant interested person status to other individuals who have a significant relationship to the child, including, but not limited to, teachers, coaches, counselors or a person who has provided or is providing care for the child.

[PL 2017, c. 411, §9 (AMD).]

**3. Access to proceedings.** An interested person, participant or intervenor may attend and observe all court proceedings under this chapter unless the court finds good cause to exclude the person. The opportunity to attend court proceedings does not include the right to be heard or the right to present or cross-examine witnesses, present evidence or have access to pleadings or records.

**3A. Access to proceedings by the Maine Commission on Indigent Legal Services. The Executive Director of the Maine Commission on Indigent Legal Services, or designee, may attend and observe all court proceedings under this chapter for any proper purpose related to ensuring the quality of legal services provided to consumers of indigent legal services.**

[PL 2001, c. 696, §16 (NEW).]

**4. Right to be heard.** A participant or an intervenor has the right to be heard in any court proceeding under this chapter. The right to be heard does not include the right to present or cross-examine witnesses, present evidence or have access to pleadings or records.

[PL 2001, c. 696, §16 (NEW).]

**5. Intervention.** An intervenor may participate in any court proceeding under this chapter as a party as provided by the court when granting intervenor status under Maine Rules of Civil Procedure, Rule 24. An intervenor has the rights of a party as ordered by the court in granting intervenor status, including the right to present or cross-examine witnesses, present evidence and have access to pleadings and records.

[PL 2001, c. 696, §16 (NEW).]

**6. Foster parents, preadoptive parents and relatives providing care.** The foster parent of a child, if any, and any preadoptive parent or relative providing care for the child must be provided notice of and the right to be heard in any proceeding to be held with respect to the child. The right to be heard includes the right to testify but does not include the right to present other witnesses or evidence, to attend any other portion of the proceeding or to have access to pleadings or records. This subsection may not be construed to require that any foster parent, preadoptive parent or relative providing care for the child be made a party to the proceeding solely on the basis of the notice and right to be heard.

The foster parent of a child, if any, and any preadoptive parent or relative providing care for the child may attend a proceeding in its entirety under this subsection unless specifically excluded by decision of the presiding judge.

[PL 2007, c. 255, §3 (AMD).]

**7. Confidentiality and disclosure limitations.** Interested persons, participants and intervenors are subject to the confidentiality and disclosure limitations of section 4008.

[PL 2001, c. 696, §16 (NEW).]

#### SECTION HISTORY

PL 2001, c. 696, §16 (NEW). PL 2007, c. 255, §§2, 3 (AMD). PL 2017, c. 411, §§8, 9 (AMD).

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## §4006. Appeals

A party aggrieved by an order of a court entered pursuant to section 4035, 4054 or 4071 may appeal directly to the Supreme Judicial Court sitting as the Law Court and such appeals are governed by the Maine Rules of Civil Procedure, chapter 9. [PL 1997, c. 715, Pt. A, §3 (RPR).]

Appeals from any order under section 4035, 4054 or 4071 must be expedited. ~~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.~~ [PL 1997, c. 715, Pt. A, §3 (RPR).]

Orders entered under this chapter under sections other than section 4035, 4054 or 4071 are interlocutory and are not appealable. [PL 1997, c. 715, Pt. A, §3 (RPR).]

### SECTION HISTORY

PL 1979, c. 733, §18 (NEW). PL 1983, c. 772, §3 (AMD). PL 1997, c. 715, §A3 (RPR).

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## **§4008. Records; confidentiality; disclosure**

### **(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)**

**1. Confidentiality of records and information.** All department records that contain personally identifying information and are created or obtained in connection with the department's child protective activities and activities related to a child while in the care or custody of the department, and all information contained in those records, are confidential and subject to release only under the conditions of subsections 2 and 3.

Within the department, the records are available only to and may be used only by appropriate departmental personnel and legal counsel for the department in carrying out their functions.

Any person who receives department records or information from the department may use the records or information only for the purposes for which that release was intended.

[PL 2007, c. 485, §1 (AMD); PL 2007, c. 485, §2 (AFF).]

**1-A. Disclosure.** The department may determine that for the purposes of disclosure under this section records are limited to only records created by the department in connection with its duties under this chapter.

[PL 2021, c. 176, §5 (NEW).]

**2. Optional disclosure of records.** The department may disclose relevant information in the records to the following persons:

A. An agency or person investigating or participating on a team investigating a report of child abuse or neglect when the investigation or participation is authorized by law or by an agreement with the department; [PL 1987, c. 511, Pt. B, §1 (RPR).]

A-1. A law enforcement agency, to the extent necessary for reporting, investigating and prosecuting an alleged crime, the victim of which is a department employee, an employee of the Attorney General's Office, an employee of any court or court system, a person mandated to report suspected abuse or neglect, a person who has made a report to the department, a person who has provided information to the department or an attorney, guardian ad litem, party, participant, witness or prospective witness in a child protection proceeding; [PL 2005, c. 300, §3 (NEW).]

A-2. An administrator of a social media service, to the extent authorized by a court for reporting, investigating or removing a threat or serious intimidation attempt directed against an employee of the department, an employee of the Attorney General's office, a guardian ad litem or an officer of any court or court system. The information remains confidential and the social media service may not redisclose any of the information provided by the department. For the purposes of this subsection, "social media service" means an electronic medium or service through which users create, share and view user-generated content; [PL 2021, c. 148, §1 (NEW).]

B. [PL 1983, c. 327, §3 (RP).]

C. A physician treating a child who the physician reasonably suspects may be abused or neglected; [RR 2021, c. 2, Pt. B, §181 (COR).]

D. A child named in a record who is reported to be abused or neglected, or the child's parent or custodian, or the subject of the report, with protection for identity of reporters and other persons when appropriate; [PL 1987, c. 744, §3 (AMD).]

D-1. A parent, custodian or caretaker of a child when the department believes the child may be at risk of harm from the person who is the subject of the records or information, with protection for identity of reporters and other persons when appropriate; [PL 2005, c. 300, §4 (NEW).]

D-2. A party to a child protection proceeding, when the records or information is relevant to the proceeding, with protection for identity of reporters and other persons when appropriate; [PL 2005, c. 300, §4 (NEW).]

E. **(TEXT EFFECTIVE UNTIL 1/01/23)** A person having the legal responsibility or authorization to evaluate, treat, educate, care for or supervise a child, parent or custodian who is the subject of a record, or a member of a panel appointed by the department to review child deaths and serious injuries, or a member of the Domestic Abuse Homicide Review Panel established under Title 19-A, section 4013, subsection 4. This includes a member of a treatment team or group convened to plan for or treat a child or family that is the subject of a record. This may also include a member of a support team for foster parents, if that team has been reviewed and approved by the department; [PL 2005, c. 300, §5 (AMD).]

E. **(TEXT EFFECTIVE 1/01/23)** A person having the legal responsibility or authorization to evaluate, treat, educate, care for or supervise a child, parent or custodian who is the subject of a record, or a member of a panel appointed by the department to review child deaths and serious injuries, or a member of the Domestic Abuse Homicide Review Panel established under Title 19-A, section 4115, subsection 4. This includes a member of a treatment team or group convened to plan for or treat a child or family that is the subject of a record. This may also include a member of a support team for foster parents, if that team has been reviewed and approved by the department; [PL 2021, c. 647, Pt. B, §50 (AMD); PL 2021, c. 647, Pt. B, §65 (AFF).]

E-1. [PL 2007, c. 371, §3 (RP).]

F. Any person engaged in bona fide research, provided that no personally identifying information is made available, unless it is essential to the researcher and the commissioner or the commissioner's designee gives prior approval. If the researcher desires to contact a subject of a record, the subject's consent shall be obtained by the department prior to the contact; [PL 1989, c. 270, §2 (RPR).]

G. Any agency or department involved in licensing or approving homes for, or the placement of, children or dependent adults, with protection for identity of reporters and other persons when appropriate; [PL 1989, c. 270, §3 (RPR).]

H. Persons and organizations pursuant to Title 5, section 9057, subsection 6, and pursuant to chapter 857; [PL 1989, c. 270, §4 (RPR); PL 1989, c. 502, Pt. A, §76 (RPR); PL 1989, c. 878, Pt. A, §62 (RPR).]

I. The representative designated to provide child welfare services by the tribe of an Indian child as defined by the federal Indian Child Welfare Act, 25 United States Code, Section 1903, or a representative designated to provide child welfare services by an Indian tribe of Canada; [PL 2007, c. 140, §5 (AMD).]

J. A person making a report of suspected abuse or neglect. The department may only disclose that it has not accepted the report for investigation, unless other disclosure provisions of this section apply; [PL 2015, c. 194, §1 (AMD); PL 2015, c. 198, §1 (AMD).]

K. The local animal control officer or the animal welfare program of the Department of Agriculture, Conservation and Forestry established pursuant to Title 7, section 3902 when there is a reasonable suspicion of animal cruelty, abuse or neglect. For purposes of this paragraph, "cruelty, abuse or neglect" has the same meaning as provided in Title 34-B, section 1901, subsection 1, paragraph B; [PL 2015, c. 494, Pt. A, §21 (AMD).]

L. A person, organization, employer or agency for the purpose of carrying out background or employment-related screening of an individual who is or may be engaged in:

- (1) Child-related activities or employment; or



(2) Activities or employment relating to adults with intellectual disabilities, autism, related conditions as set out in 42 Code of Federal Regulations, Section 435.1010 or acquired brain injury; and [PL 2015, c. 494, Pt. A, §22 (RPR).]

M. The personal representative of the estate of a child named in a record who is reported to be abused or neglected. [PL 2015, c. 494, Pt. A, §23 (NEW).]  
[RR 2021, c. 2, Pt. B, §181 (COR).]

**3. Mandatory disclosure of records.** The department shall disclose relevant information in the records to the following persons:

A. The guardian ad litem of a child, appointed pursuant to section 4005, subsection 1; [PL 2005, c. 300, §8 (AMD).]

A-1. The court-appointed guardian ad litem or attorney of a child who is the subject of a court proceeding involving parental rights and responsibilities, grandparent visitation, custody, guardianship or involuntary commitment. The access of the guardian ad litem or attorney to the records or information under this paragraph is limited to reviewing the records in the offices of the department. Any other use of the information or records during the proceeding in which the guardian ad litem or attorney is appointed is governed by paragraph B; [PL 2009, c. 38, §1 (AMD).]

B. A court on its finding that access to those records may be necessary for the determination of any issue before the court or a court requesting a home study from the department pursuant to Title 18-C, section 9-304 or Title 19-A, section 905. Access to such a report or record is limited to counsel of record unless otherwise ordered by the court. Access to actual reports or records is limited to in camera inspection, unless the court determines that public disclosure of the information is necessary for the resolution of an issue pending before the court; [PL 2017, c. 402, Pt. C, §60 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. A grand jury on its determination that access to those records is necessary in the conduct of its official business; [PL 1983, c. 327, §4 (AMD); PL 1983, c. 470, §12 (AMD).]

D. An appropriate state executive or legislative official with responsibility for child protection services, provided that no personally identifying information may be made available unless necessary to that official's functions; [PL 2001, c. 439, Pt. X, §2 (AMD).]

E. The protection and advocacy agency for persons with disabilities, as designated pursuant to Title 5, section 19502, in connection with investigations conducted in accordance with Title 5, chapter 511. The determination of what information and records are relevant to the investigation must be made by agreement between the department and the agency; [PL 1991, c. 630, §2 (AMD).]

F. The Commissioner of Education when the information concerns teachers and other professional personnel issued certificates under Title 20-A, persons employed by schools approved pursuant to Title 20-A or any employees of schools operated by the Department of Education; [PL 2001, c. 696, §18 (AMD).]

G. The prospective adoptive parents. Prior to a child being placed for the purpose of adoption, the department shall comply with the requirements of Title 18-C, section 9-304, subsection 3 and section 8205; [PL 2017, c. 402, Pt. C, §61 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

H. Upon written request, a person having the legal authorization to evaluate or treat a child, parent or custodian who is the subject of a record. This includes a member of a treatment team or group convened to plan for or treat a child or family that is the subject of a record; [PL 2003, c. 673, Pt. Z, §3 (AMD).]

I. Any government entity that needs such information in order to carry out its responsibilities under law to protect children from abuse and neglect. For purposes of this paragraph, "government entity" means a federal entity, a state entity of any state, a local government entity of any state or locality or an agent of a federal, state or local government entity; [PL 2007, c. 371, §4 (AMD).]

J. To a juvenile court when the child who is the subject of the records has been brought before the court pursuant to Title 15, Part 6; [PL 2013, c. 293, §1 (AMD).]

K. A relative or other person whom the department is investigating for possible custody or placement of the child; [PL 2015, c. 381, §1 (AMD).]

L. To a licensing board of a mandated reporter, in the case of a mandated reporter under section 4011-A, subsection 1 who appears from the record or relevant circumstances to have failed to make a required report. Any information disclosed by the department personally identifying a licensee's client or patient remains confidential and may be used only in a proceeding as provided by Title 5, section 9057, subsection 6; and [PL 2015, c. 381, §2 (AMD).]

M. Law enforcement authorities for entry into the National Crime Information Center database of the Federal Bureau of Investigation and to a national information clearinghouse for missing and exploited children operated pursuant to 42 United States Code, Section 5773(b). Information disclosed pursuant to this paragraph is limited to information on missing or abducted children or youth that is required to be disclosed pursuant to 42 United States Code, Section 671(a)(35)(B). [PL 2015, c. 381, §3 (NEW).]

J. The Maine Commission on Indigent Legal Services to the extent necessary to ensure the quality of the provision of indigent legal service, provided that no personally identifying information may be made available unless necessary to that official's functions.

[PL 2017, c. 402, Pt. C, §§60, 61 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

**3-A. Confidentiality.** The proceedings and records of the child death and serious injury review panel created in accordance with section 4004, subsection 1, paragraph E are confidential and are not subject to subpoena, discovery or introduction into evidence in a civil or criminal action. The commissioner shall disclose conclusions of the review panel upon request and recommendations pursuant to section 4004, subsection 1, paragraph E, but may not disclose data that is otherwise classified as confidential.

[PL 2021, c. 550, §2 (AMD).]

**4. Unlawful dissemination; penalty.** A person is guilty of unlawful dissemination if the person knowingly disseminates records that are determined confidential by this section, in violation of the mandatory or optional disclosure provisions of this section. Unlawful dissemination is a Class E crime that, notwithstanding Title 17-A, section 1604, subsection 1, paragraph E, is punishable by a fine of not more than \$500 or by imprisonment for not more than 30 days.

[PL 2019, c. 113, Pt. C, §67 (AMD).]

**5. Retention of unsubstantiated child protective services records.** Except as provided in this subsection, the department shall retain unsubstantiated child protective services case records for no more than 5 years following a finding of unsubstantiation and then expunge unsubstantiated case records from all departmental files or archives unless a new referral has been received within the 5-year retention period. An expunged record or unsubstantiated record that should have been expunged under this subsection may not be used for any purpose, including admission into evidence in any administrative or judicial proceeding.

[PL 2017, c. 472, §1 (AMD).]

**6. Disclosing information; establishment of fees; rules.** The department may charge fees for searching and disclosing information in its records as provided in this subsection.

A. The department may charge fees for the services listed in paragraph B to any person except the following:

- (1) A parent in a child protection proceeding, an attorney who represents a parent in a child protection proceeding or a guardian ad litem in a child protection proceeding when the parent, attorney or guardian ad litem requests the service for the purposes of the child protection proceeding;
- (2) An adoptive parent or prospective adoptive parent who requests information in the department's records relating to the child who has been or might be adopted;
- (3) A person having the legal authorization to evaluate or treat a child, parent or custodian who is the subject of a record, including a member of a treatment team or group convened to plan for or treat a child or family that is the subject of a record; the information in the record must be requested for the purpose of evaluating or treating the child, parent or custodian who is the subject of the record;
- (4) Governmental entities of this State that are not engaged in licensing; and
- (5) Governmental entities of any county or municipality of this State that are not engaged in licensing.

An order by a court for disclosure of information in records pursuant to subsection 3, paragraph B must be deemed to have been made by the person requesting that the court order the disclosure. [PL 2015, c. 194, §4 (AMD).]

B. The department may charge fees for the following services:

- (1) Searching its records to determine whether a particular person is named in the records;
- (2) Receiving and responding to a request for disclosure of information in department records, whether or not the department grants the request; and
- (3) Disclosing information in department records. [PL 2015, c. 194, §4 (AMD).]

C. The department shall adopt rules governing requests for the services listed in paragraph B. Those rules may provide for a mechanism for making a request, the information required in making a request, the circumstances under which requests will be granted or denied and any other matter that the department determines necessary to efficiently respond to requests for disclosure of information in the records. The rules must establish a list of specified categories of activities or employment for which the department may provide information for background or employment-related screening pursuant to subsection 2, paragraph L. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [PL 2015, c. 194, §4 (AMD).]

D. The department shall establish a schedule of fees by rule. The schedule of fees may provide that certain classes of persons are exempt from the fees, and it may establish different fees for different classes of persons. All fees collected by the department must be deposited in the General Fund. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [PL 2003, c. 673, Pt. W, §1 (NEW).]

E. A governmental entity that is engaged in licensing may charge an applicant for the fees imposed on it by the department for searching and disclosing information in its records. [PL 2015, c. 194, §4 (AMD).]

F. This subsection may not be construed to permit or require the department to make a disclosure in any particular case. [PL 2003, c. 673, Pt. W, §1 (NEW).]

[PL 2015, c. 194, §4 (AMD).]

**7. Appeal of denial of disclosure of records.** A parent, legal guardian, custodian or caretaker of a child who requests disclosure of information in records under subsection 2 and whose request is denied may request an administrative hearing to contest the denial of disclosure. The request for hearing must be made in writing to the department. The department shall conduct hearings under this subsection in accordance with the requirements of Title 5, chapter 375, subchapter 4. The issues that may be determined at hearing are limited to whether the nondisclosure of some or all of the information requested is necessary to protect the child or any other person. The department shall render after hearing without undue delay a decision as to whether some or all of the information requested should be disclosed. The decision must be based on the hearing record and rules adopted by the commissioner. The decision must inform the requester that the requester may file a petition for judicial review of the decision within 30 days of the date of the decision. The department shall send a copy of the decision to the requester by regular mail to the requester's most recent address of record.

[PL 2015, c. 501, §2 (NEW).]

#### SECTION HISTORY

PL 1979, c. 733, §18 (NEW). PL 1983, c. 327, §§3-5 (AMD). PL 1983, c. 354, §§1,2 (AMD). PL 1983, c. 470, §§12,13 (AMD). PL 1983, c. 783, §4 (AMD). PL 1985, c. 495, §18 (AMD). PL 1985, c. 506, §§A43-45 (AMD). PL 1985, c. 739, §§5,6 (AMD). PL 1987, c. 511, §§A3,B1 (AMD). PL 1987, c. 714, §§5-7 (AMD). PL 1987, c. 744, §§3-7 (AMD). PL 1989, c. 118 (AMD). PL 1989, c. 270, §§2-5 (AMD). PL 1989, c. 483, §A33 (AMD). PL 1989, c. 502, §§A76,77,D18 (AMD). PL 1989, c. 700, §A89 (AMD). PL 1989, c. 857, §58 (AMD). PL 1989, c. 878, §§A62,63 (AMD). PL 1991, c. 630, §§2-4 (AMD). PL 1993, c. 294, §§3, 4 (AMD). PL 1993, c. 686, §8 (AMD). PL 1993, c. 686, §13 (AFF). PL 1995, c. 391, §2 (AMD). PL 1995, c. 694, §§D38,39 (AMD). PL 1995, c. 694, §E2 (AFF). PL 2001, c. 439, §X2 (AMD). PL 2001, c. 696, §§17-20 (AMD). PL 2003, c. 673, §§W1,Z2-4 (AMD). PL 2005, c. 300, §§2-9 (AMD). PL 2007, c. 140, §§5-7 (AMD). PL 2007, c. 335, §1-3 (AMD). PL 2007, c. 335, §5 (AFF). PL 2007, c. 371, §§3-6 (AMD). PL 2007, c. 473, §1 (AFF). PL 2007, c. 485, §1 (AMD). PL 2007, c. 485, §2 (AFF). PL 2009, c. 38, §1 (AMD). PL 2011, c. 657, Pt. W, §5 (REV). PL 2013, c. 293, §§1-3 (AMD). PL 2015, c. 194, §§1-4 (AMD). PL 2015, c. 198, §§1-3 (AMD). PL 2015, c. 381, §§1-3 (AMD). PL 2015, c. 494, Pt. A, §§21-23 (AMD). PL 2015, c. 501, §§1, 2 (AMD). PL 2017, c. 402, Pt. C, §§60, 61 (AMD). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2017, c. 472, §1 (AMD). PL 2019, c. 113, Pt. C, §67 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2021, c. 148, §1 (AMD). PL 2021, c. 176, §5 (AMD). PL 2021, c. 550, §2 (AMD). PL 2021, c. 647, Pt. B, §50 (AMD). PL 2021, c. 647, Pt. B, §65 (AFF). RR 2021, c. 2, Pt. B, §181 (COR).

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## §4011-A. Reporting of suspected abuse or neglect

**1. Required report to department.** The following adult persons shall immediately report or cause a report to be made to the department when the person knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected or that a suspicious child death has occurred, except that statements and/or information relayed to or received by attorneys providing legal assistance to a client, and the contracted or employed staff of such attorneys, including, without limitation, medical, substance abuse, mental health, or social work providers is subject to privilege and not, therefore, subject to reporting:

A. When acting in a professional capacity:

- (1) An allopathic or osteopathic physician, resident or intern;
- (2) An emergency medical services person;
- (3) A medical examiner;
- (4) A physician's assistant;
- (5) A dentist;
- (6) A dental hygienist;
- (7) A dental assistant;
- (8) A chiropractor;
- (9) A podiatrist;
- (10) A registered or licensed practical nurse;
- (11) A teacher;
- (12) A guidance counselor;
- (13) A school official;
- (14) A youth camp administrator or counselor;
- (15) A social worker;
- (16) A court-appointed special advocate or guardian ad litem for the child;
- (17) A homemaker;
- (18) A home health aide;
- (19) A medical or social service worker;
- (20) A psychologist;
- (21) Child care personnel;
- (22) A mental health professional;
- (23) A law enforcement official;
- (24) A state or municipal fire inspector;
- (25) A municipal code enforcement official;
- (26) A commercial film and photographic print processor;
- (27) A clergy member acquiring the information as a result of clerical professional work except for information received during confidential communications;
- (28) A chair of a professional licensing board that has jurisdiction over mandated reporters;

- (29) A humane agent employed by the Department of Agriculture, Conservation and Forestry;
- (30) A sexual assault counselor;
- (31) A family or domestic violence victim advocate; and
- (32) A school bus driver or school bus attendant; [PL 2009, c. 211, Pt. B, §18 (AMD); PL 2011, c. 657, Pt. W, §5 (REV).]

B. Any person who has assumed full, intermittent or occasional responsibility for the care or custody of the child, regardless of whether the person receives compensation; and [PL 2003, c. 210, §3 (AMD).]

C. Any person affiliated with a church or religious institution who serves in an administrative capacity or has otherwise assumed a position of trust or responsibility to the members of that church or religious institution, while acting in that capacity, regardless of whether the person receives compensation. [PL 2003, c. 210, §4 (NEW).]

Whenever a person is required to report in a capacity as a member of the staff of a medical or public or private institution, agency or facility, that person immediately shall notify either the person in charge of the institution, agency or facility or a designated agent who then shall cause a report to be made. The staff also may make a report directly to the department.

If a person required to report notifies either the person in charge of the institution, agency or facility or the designated agent, the notifying person shall acknowledge in writing that the institution, agency or facility has provided confirmation to the notifying person that another individual from the institution, agency or facility has made a report to the department. The confirmation must include, at a minimum, the name of the individual making the report to the department, the date and time of the report and a summary of the information conveyed. If the notifying person does not receive the confirmation from the institution, agency or facility within 24 hours of the notification, the notifying person immediately shall make a report directly to the department.

An employer may not take any action to prevent or discourage an employee from making a report. [PL 2015, c. 117, §1 (AMD).]

**1-A. Permitted reporters.** An animal control officer, as defined in Title 7, section 3907, subsection 4, may report to the department when that person knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected. [PL 2007, c. 139, §2 (NEW).]

**2. Required report to district attorney.** When, while acting in a professional capacity, any person required to report under this section knows or has reasonable cause to suspect that a child has been abused or neglected by a person not responsible for the child or that a suspicious child death has been caused by a person not responsible for the child, the person immediately shall report or cause a report to be made to the appropriate district attorney's office.

Whenever a person is required to report in a capacity as a member of the staff of a medical or public or private institution, agency or facility, that person immediately shall notify either the person in charge of the institution, agency or facility or a designated agent who then shall cause a report to be made. The staff also may make a report directly to the appropriate district attorney's office.

If a person required to report notifies either the person in charge of the institution, agency or facility or the designated agent, the notifying person shall acknowledge in writing that the institution, agency or facility has provided confirmation to the notifying person that another individual from the institution, agency or facility has made a report to the appropriate district attorney's office. The confirmation must include, at a minimum, the name of the individual making the report to the appropriate district attorney's office, the date and time of the report and a summary of the information conveyed. If the notifying person does not receive the confirmation from the institution, agency or facility within 24 hours of the

notification, the notifying person immediately shall make a report directly to the appropriate district attorney's office.

An employer may not take any action to prevent or discourage an employee from making a report. [PL 2015, c. 117, §2 (AMD).]

**3. Optional report.** Any person may make a report if that person knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected or that there has been a suspicious child death.

[PL 2007, c. 586, §12 (AMD).]

**4. Mental health treatment.** When a licensed mental health professional is required to report under subsection 1 and the knowledge or reasonable cause to suspect that a child has been or is likely to be abused or neglected or that a suspicious child death has occurred comes from treatment of a person responsible for the abuse, neglect or death, the licensed mental health professional shall report to the department in accordance with subsection 1 and under the following conditions.

A. The department shall consult with the licensed mental health professional who has made the report and shall attempt to reach agreement with the mental health professional as to how the report is to be pursued. If agreement is not reached, the licensed mental health professional may request a meeting under paragraph B. [PL 2001, c. 345, §5 (NEW).]

B. Upon the request of the licensed mental health professional who has made the report, after the department has completed its investigation of the report under section 4021 or has received a preliminary protection order under section 4034 and when the department plans to initiate or has initiated a jeopardy order under section 4035 or plans to refer or has referred the report to law enforcement officials, the department shall convene at least one meeting of the licensed mental health professional who made the report, at least one representative from the department, a licensed mental health professional with expertise in child abuse or neglect and a representative of the district attorney's office having jurisdiction over the report, unless that office indicates that prosecution is unlikely. [PL 2001, c. 345, §5 (NEW).]

C. The persons meeting under paragraph B shall make recommendations regarding treatment and prosecution of the person responsible for the abuse, neglect or death. The persons making the recommendations shall take into account the nature, extent and severity of abuse or neglect, the safety of the child and the community and needs of the child and other family members for treatment of the effects of the abuse or neglect and the willingness of the person responsible for the abuse, neglect or death to engage in treatment. The persons making the recommendations may review or revise these recommendations at their discretion. [PL 2007, c. 586, §13 (AMD).]

The intent of this subsection is to encourage offenders to seek and effectively utilize treatment and, at the same time, provide any necessary protection and treatment for the child and other family members. [PL 2007, c. 586, §13 (AMD).]

**5. Photographs of visible trauma.** Whenever a person is required to report as a staff member of a law enforcement agency or a hospital, that person shall make reasonable efforts to take, or cause to be taken, color photographs of any areas of trauma visible on a child.

A. The taking of photographs must be done with minimal trauma to the child and in a manner consistent with professional standards. The parent's or custodian's consent to the taking of photographs is not required. [PL 2001, c. 345, §5 (NEW).]

B. Photographs must be made available to the department as soon as possible. The department shall pay the reasonable costs of the photographs from funds appropriated for child welfare services. [PL 2001, c. 345, §5 (NEW).]

C. The person shall notify the department as soon as possible if that person is unable to take, or cause to be taken, these photographs. [PL 2001, c. 345, §5 (NEW).]

D. Designated agents of the department may take photographs of any subject matter when necessary and relevant to an investigation of a report of suspected abuse or neglect or to subsequent child protection proceedings. [PL 2001, c. 345, §5 (NEW).]  
[PL 2001, c. 345, §5 (NEW).]

**6. Permissive reporting of animal cruelty, abuse or neglect.** Notwithstanding any other provision of state law imposing a duty of confidentiality, a person listed in subsection 1 may report a reasonable suspicion of animal cruelty, abuse or neglect to the local animal control officer or to the animal welfare program of the Department of Agriculture, Conservation and Forestry established pursuant to Title 7, section 3902. For purposes of this subsection, the reporter shall disclose only such limited confidential information as is necessary for the local animal control officer or animal welfare program employee to identify the animal's location and status and the owner's name and address. For purposes of this subsection, "cruelty, abuse or neglect" has the same meaning as provided in Title 34-B, section 1901, subsection 1, paragraph B. A reporter under this subsection may assert immunity from civil and criminal liability under Title 34-B, chapter 1, subchapter 6.  
[PL 2007, c. 140, §8 (NEW); PL 2011, c. 657, Pt. W, §5 (REV).]

**7. Children under 6 months of age or otherwise nonambulatory.** A person required to make a report under subsection 1 shall report to the department if a child who is under 6 months of age or otherwise nonambulatory exhibits evidence of the following:

A. Fracture of a bone; [PL 2013, c. 268, §1 (NEW).]

B. Substantial bruising or multiple bruises; [PL 2013, c. 268, §1 (NEW).]

C. Subdural hematoma; [PL 2013, c. 268, §1 (NEW).]

D. Burns; [PL 2013, c. 268, §1 (NEW).]

E. Poisoning; or [PL 2013, c. 268, §1 (NEW).]

F. Injury resulting in substantial bleeding, soft tissue swelling or impairment of an organ. [PL 2013, c. 268, §1 (NEW).]

This subsection does not require the reporting of injuries occurring as a result of the delivery of a child attended by a licensed medical practitioner or the reporting of burns or other injuries occurring as a result of medical treatment following the delivery of the child while the child remains hospitalized following the delivery.

[PL 2015, c. 178, §1 (AMD).]

**8. Required report of residence with nonfamily.** A person required to make a report under subsection 1 shall report to the department if the person knows or has reasonable cause to suspect that a child is not living with the child's family. Although a report may be made at any time, a report must be made immediately if there is reason to suspect that a child has been living with someone other than the child's family for more than 6 months or if there is reason to suspect that a child has been living with someone other than the child's family for more than 12 months pursuant to a power of attorney or other nonjudicial authorization.

[PL 2015, c. 274, §7 (NEW).]

**9. Training requirement.** A person required to make a report under subsection 1 shall complete at least once every 4 years mandated reporter training approved by the department.

[PL 2015, c. 407, §1 (NEW).]

SECTION HISTORY



PL 2001, c. 345, §5 (NEW). PL 2003, c. 145, §2 (AMD). PL 2003, c. 210, §§3,4 (AMD). PL 2003, c. 510, §E3 (AMD). PL 2003, c. 510, §E4 (AFF). PL 2003, c. 599, §8 (AMD). PL 2003, c. 599, §§9,14 (AFF). PL 2007, c. 139, §2 (AMD). PL 2007, c. 140, §8 (AMD). PL 2007, c. 577, §6 (AMD). PL 2007, c. 586, §§10-13 (AMD). PL 2009, c. 41, §1 (AMD). PL 2009, c. 211, Pt. B, §18 (AMD). PL 2011, c. 657, Pt. W, §5 (REV). PL 2013, c. 268, §1 (AMD). PL 2015, c. 117, §§1, 2 (AMD). PL 2015, c. 178, §1 (AMD). PL 2015, c. 274, §7 (AMD). PL 2015, c. 407, §1 (AMD).

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## §4015. Privileged or confidential communications

A. Except as set out in paragraph B, the husband-wife and physician and psychotherapist-patient privileges under the Maine Rules of Evidence and the confidential quality of communication under Title 16, section 53-B; Title 20-A, sections 4008 and 6001, to the extent allowed by applicable federal law; Title 24-A, section 4224; Title 32, sections 7005 and 18393; and Title 34-B, section 1207, are abrogated in relation to required reporting, cooperating with the department or a guardian ad litem in an investigation or other child protective activity or giving evidence in a child protection proceeding. Information released to the department pursuant to this section must be kept confidential and may not be disclosed by the department except as provided in section 4008. [PL 2015, c. 429, §7 (AMD).]

Statements made to a licensed mental health professional in the course of counseling, therapy or evaluation where the privilege is abrogated under this section may not be used against the client in a criminal proceeding. Nothing in this section may limit any responsibilities of the professional pursuant to this Act.

B. The attorney-client privilege is not abrogated by this section. Statements and/or information relayed to or received by attorneys providing legal assistance to a client, and the contracted or employed staff of such attorneys, including, without limitation, medical substance abuse, mental health, or social work providers, is subject to privilege and not, therefore, subject to reporting.

[PL 2001, c. 696, §22 (AMD).]

### SECTION HISTORY

PL 1979, c. 733, §18 (NEW). PL 1981, c. 211, §1 (AMD). PL 1983, c. 781, §2 (AMD). PL 1985, c. 495, §21 (AMD). PL 2001, c. 696, §22 (AMD). PL 2015, c. 429, §7 (AMD).

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## MEMORANDUM: MCILS ROSTERING, SUPERVISION, CASE LIMITS

September 7, 2023

To: MCILS & AAGs Magenis, Black  
Fr: Donald G. Alexander *DGA*

This memo summarizes my views and recommendations on the regulations MCILS is considering regarding rostering, attorney experience, training and supervision mandates, and caseload limits. It necessarily references the ACLU case settlement agreement that the MCILS has publicly voted to accept. That agreement appears to require that the rostering, experience, training, and supervision mandates, and caseload limits under consideration become even more complex and rigorous, and more unwelcoming to attorneys considering joining or rejoining MCILS rosters to do vital work defending and protecting the constitutional rights of indigent individuals in Maine.

In consideration of the proposed regulations and the settlement agreement, my views and recommendations are:

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

In a recent letter to the leaders of some large law firms, our Chief Justice, Valerie Stanfill, recognized the important contributions recent law graduates can make representing indigent individuals in trial and appellate work. Contributions to representing indigent individuals similar to the excellent indigent defense work the Chief Justice herself did when she was a recent law graduate.

In her letter, the Chief Justice stated, correctly, that: "A talented trial attorney can try any kind of case." Despite this observation, MCILS is proposing to change its rostering experience requirements so litigation experience as a prosecutor of civil trial lawyer counts for nothing - only criminal defense experience counts. Not very welcoming to former prosecutors and current, experienced civil trial lawyers who can provide high quality representation to indigent individuals needing assistance.

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 larger 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. The Law Court regularly saw cases where law student interns had written briefs and occasionally presented oral argument, most often for DA's offices. The MCILS proposed appeal rostering rule requires that, before getting rostered for appeals, an attorney must demonstrate that the attorney has briefed five appeals and had at least one oral argument before one can be assigned MCILS appeals. In effect you have to have had substantial experience before you can get experience. Not very welcoming to competent attorneys.

2. MCILS needs many good lawyers who were formerly rostered and accepting assignments to again join our rosters and accept assignments, and we need to welcome new lawyers joining the profession to join our rosters and accept cases. The \$150 hourly rate provides considerable incentive to return to or join our rosters and accept cases. Court backlogs, court pressure to take more cases than an attorney may wish to take, and complication of getting on rosters has caused the number of attorneys accepting new cases to level off after an initial upswing in attorneys accepting new cases after the \$150 rate took effect. MCILS is working positively with the courts to address those issues.

My research in the spring indicated that the \$150 an hour rate was the highest across the board compensation rate for any state indigent defense program. By contrast, Massachusetts, the state that advocates urge - and the settlement requires - that we look to for guidance on how to run a competent indigent defense program, pays its attorneys \$65 an hour for most first

appearance, bail and other preliminary hearing work, and \$85 an hour for most other trial and contested hearing work, with a \$120 an hour rate only for murder cases.<sup>1</sup>

Before the pandemic, we know that Massachusetts had worse problems than Maine finding counsel for indigent cases. *See Carrasquillo v. Hampden County District Courts*, 484 Mass. 367, 142 N.E.3d 228 (2020). Some research has not indicated whether those problems have persisted through the pandemic. That the advocates in the ACLU case are urging us to look to Massachusetts for guidance on how to improve suggests that things are better in the Massachusetts indigent defense system, despite hourly compensation rates far below those paid in Maine.

The reason for Massachusetts' better performance in assuring availability of counsel in indigent cases – if their performance is better – may be in Massachusetts' system for discouraging applications for appointment of counsel. Massachusetts requires that criminal defendants, seeking appointment of counsel, first pay a \$150 application fee or, if they want to avoid the fee, agree to perform 10 hours of slave labor, called community service work, as a precondition to getting an appointed attorney. Stanislaw Krawiecki, *Forced to Play and Forced to Pay: The Indigent Counsel Fee in Massachusetts as a Cost of Being Charged with a Crime*, 18 U. Mass. L. Rev. 200 (2022).<sup>2</sup> This would seem an effective program for deterring indigent criminal defendants from seeking assistance of counsel and it would appear to help keep attorney caseloads manageable. As the *Forced to Pay* article points out, this pay for indigent counsel process exists in several states and has been widely condemned by advocates for improved services for indigent criminal defendants. MCILS should reconsider its commitment, as part of the settlement, to “give consideration to” or develop practices “analogous [to]” the Massachusetts program.

3. In the circumstances, and respecting the good quality of the Maine Bar, our qualification and rostering needs to be open and welcoming to new attorneys

<sup>1</sup> Committee for Public Counsel Services, *Assigned Counsel Manual*, at 5.37-5.38 (June 12, 2023 ed.).

<sup>2</sup> Though having a 2022 date, this publication was not available until Spring 2023, and I did not learn of it until doing research on Sept. 1, or I certainly would have brought this to MCILS attention sooner. It is surprising that those advocating that Maine look to Massachusetts for guidance on how to be a better indigent defense program did not bring this matter to our attention.

and existing attorneys. Instead, our qualification and rostering requirements are excessively complex and demand experience that, because of COVID issues, have been unachievable now for going on four years. The complexity poses problems for competent attorneys willing to take cases, and equal problems for those making assignments - judges, court clerks, attorneys for the day, financial screeners - to determine if an attorney can take an assignment with several charges.

The rostering and qualification requirements under consideration are not new, and drafted to meet today's challenges. Instead, they are based on criteria casually drafted in 2010 and 2011, by a very different Commission in a very different time. Experienced attorneys objected to the criteria at the time as too complex and demanding recent experience that did not reflect the reality of those attorneys having active, diverse, civil and criminal practices. The concern at the time disappeared when it became apparent that the complex rostering and qualification criteria were largely being ignored, except for homicide cases. Attorneys were appointed to cases for which they were perceived to be competent, and for most cases, those perceptions of competence proved to be accurate. It is only in the last two years that MCILS has started to consider removing attorneys from cases where the attorney, though competent, may not have met the technical rostering or qualification requirements. And in most of those cases, as I understand it, MCILS has worked with the attorney to qualify for the roster, rather than remove an attorney from a case.

4. Drafting, overseeing, and enforcing the overly complex qualification, rostering, and caseload standards, with attorney oversight, as contemplated in various rules drafts, will require a significant expansion of MCILS staff. This will make MCILS compete with itself for staff expansion. We urgently need more attorneys to fill RDF attorney slots and the newly approved public defender office positions, and we need more attorneys for contract counsel work across the State to represent indigent clients in criminal, protective custody, guardianship, and other cases. A large expansion of MCILS staff attorneys will necessarily take away attorneys who could otherwise staff cases for our indigent clients.

5. The numbers underlying the caseload standards need to be reconsidered to reflect the Maine experience. According to staff, those numbers were based on

numbers from national advocacy groups supporting arguments for bigger budgets for indigent defense agencies.

For one example, the national advocacy group standard for an average appeal is approximately 74 hours. In Maine for fiscal year 2023, 204 vouchers for appeals were paid, averaging \$1994.85 per voucher. Dividing the average by the \$80 an hour rate, suggests the average appeal took 24.9 hours – approximately 1/3 of the time set in the caseload standard. The 74 hour standard – allowing about 25 appeals a year – will be used to bar further appeal assignments to Maine attorneys, even though the attorney may not be up to full workload, if the attorney is doing the Maine average appeal work. And the Maine average is high for estimating hours. Some of the costs on the vouchers are for expenses – printing and mailing the brief and appendix, etc. Services performed in the last four months, 1/3 of the fiscal year, were paid at \$150 an hour. Thus, the actual average hours for a Maine MCILS supported appeal is almost certainly below 24.9 hours.

6. The experience requirements should be reduced for all cases except homicides, and a mentor should be able to be a substitute for experience. Also, prescribed experience should not be limited to criminal defense practice. And the additional complexity, experience requirements, and attorney training and supervision mandates associated with the settlement agreement should be greatly reduced or rejected. The draft rules and settlement agreement mandates are contrary to what our efforts should be to welcome more competent experienced attorneys and recently admitted attorneys to indigent defense work.

The work to welcome more attorneys to MCILS work cannot be limited to MCILS alone. A key factor to get more attorneys available is working with the courts to reduce case backlogs, make case management more efficient, and allow attorneys accepting assignments to limit those assignments to the numbers of cases the attorney deems appropriate. Right now MCILS is working with the courts – through the Chief Justice and the Chiefs of the trial courts – to achieve those changes, and there has been significant progress and hope that progress will continue.

7. As suggested in my memo dated May 23, 2023, we should reduce our rostering categories to no more than six. My views on those issues are addressed in that memo and are not repeated here.