
MAINE COMMISSION ON INDIGENT LEGAL SERVICES

**APRIL 26, 2022
COMMISSION MEETING
AGENDA**

- 1) Approval of the March 28, 2022 Commission Meeting Minutes
- 2) Report of the Executive Director
 - a. Operations Report
 - b. Case Staffing Status Report
- 3) Rule Making – Chapter 301
- 4) Remote Access
- 5) Supplemental Budget Update
- 6) Legislative Update
- 7) Forum Update
- 8) Biennial budget discussion and meeting schedule
- 9) Set Date, Time and Location of Next Regular Meeting of the Commission
- 10) Public Comment
- 11) Executive Session

**Maine Commission on Indigent Legal Services – Commissioners Meeting
March 29 2022
Zoom**

Minutes

Commissioners Present: Donald Alexander, Meegan Burbank, Michael Carey, Robert Cummins, Roger Katz, Matthew Morgan, Ronald Schneider, Joshua Tardy

MCILS Staff Present: Justin Andrus, Ellie Maciag

Agenda Item	Discussion/Outcome
Declaration of Emergency	Chair Tardy cited the increase in COVID infection rates as the emergency requiring remote participation for the meeting.
Approval of the February 28, 2022 and March 4, 2022 Commission Meeting Minutes	No discussion. Commissioner Cummins moved to approve. Commissioner Katz seconded. All voted in favor. Approved.
Report of the Executive Director	Director Andrus explained that the sharp increase in new cases was the result of a new staff policy for attorneys to enter cases into defenderData within seven days of assignment. Director Andrus relayed that the Audit division had reached out to the State Auditor but is presently unable to help review the draft documents since it is in the middle of a statewide audit. Director Andrus noted that staff welcomes any feedback on the audit proposal. Commissioner Alexander expressed some concerns about the proposal and suggested asking rostered attorneys for their input. Director Andrus suggested holding an attorney forum to discuss the audit and caseload proposals and gather attorney feedback. Director Andrus has received permission from OIT to pursue a sole source contract with Justice Works for a new case management system. Director Andrus gave a staffing update: one paralegal position and the Bangor financial screener position had been filled and that the mid-coast financial screener would be retiring soon. In response to Commissioner Burbank’s inquiry about the mid-coast

Agenda Item	Discussion/Outcome
	<p>screening function, Director Andrus stated that staff is working to fill the position and will be looking onto the concept of courthouse kiosks to interface with financial screeners working remotely. Commissioner Burbank requested that staff pursue this concept. Director Andrus informed the Commission about the Judicial Branch’s new order allowing bail to only be applied to the case in which it is posted, instead of any case in which someone was found indigent. Director Andrus explained that Commission staff does not have the capacity to address 28,000 case payment requests a year by the court.</p>
Legislative Update	<p>Director Andrus gave a brief update on legislation relevant to the Commission and on the status of the approval of the Commission’s major substantive rule Chapter 301, which the Judiciary Committee voted Ought to Pass.</p>
Budget Initiatives Update	<p>Director Andrus explained that the Commission received great support from the Judiciary Committee for its supplemental budget initiatives. Chair Tardy inquired about the state of the Commission’s affairs should all the initiatives get funded. Director Andrus believes that without these initiatives, the Commission will be in peril. Commissioner Cummins added that these initiatives still fall short of where the Commission needs to be in terms of reform. Commissioner Schneider urged the Commissioners to advocate for these funding initiatives. Chair Tardy indicated that he will spend time lobbying for our budget efforts, with other Commissioners offering to assist as well. Commissioner Alexander agreed that the Commission needs to make efforts to improve funding except for the public defender concept, noting that the Commission has made tremendous strides with correcting past poor performance. A discussion ensued about the Commissioners differing viewpoints on the scope of the problem and the best way to achieve support for the Commission’s reform efforts. Commissioner Cummins moved to convene a dialogue with the executive and legislative branches to discuss a long-range solution to our issues. Commissioner Schneider seconded. As discussion ensued and Commissioner Cummins moved to amend his motion to also endorse the supplemental budget reports to the Judiciary Committee and to further endorse a reconsideration of our previous biennial budget requests. Commissioner Schneider seconded. All voted in favor of the amended motion except Commissioner Alexander who abstained. Chair Tardy requested Director Andrus draft a letter for Commission consideration over the Chair’s signature that reflects the strong consensus of the Commission to send to executive and legislative branch officials.</p>

Agenda Item	Discussion/Outcome
Public Comment	<p data-bbox="520 272 1793 412"><u>Robert Ruffner, Esq.</u> Attorney Ruffner suggested to not spend any time on fixing the screening function. Attorney Ruffner thinks that LD 1946 (jail recording bill) is an opportunity for the Commission to really change the conversation. Attorney Ruffner is concerned that the Commission will lose attorneys due to the proposed audit practices.</p> <p data-bbox="520 456 1824 521"><u>Corey McKenna, Esq.</u> Attorney McKenna believes that the Commission is missing the forest from the trees lately and suggests taking action instead on getting attorneys to stay and join the program.</p> <p data-bbox="520 565 1829 667"><u>Taylor Kilgore, Esq.</u> Attorney Kilgore expressed concern about caseloads limits for PC cases and emphasized that the audit proposal does not allow for attorneys to be compensated for their time when participating in audits.</p> <p data-bbox="520 711 1751 776"><u>Jeff Davidson, Esq.</u> Attorney Davidson asked for guidance about caseload limits and asked for a timeframe for workload limit implementation.</p>
Executive Session	<p data-bbox="520 824 1829 922">Commission Carey moved to go into executive session pursuant to 1 MRS section 405(6)(e) to discuss the Commission’s legal rights and duties with counsel concerning pending or contemplated litigation. Commissioner Schneider seconded. No votes were taken.</p>
Adjournment of meeting	<p data-bbox="520 971 1293 1003">The next meeting will be held on Tuesday, April 26 at 1 pm.</p>

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JUSTIN ANDRUS, EXECUTIVE DIRECTOR
SUBJECT: OPERATIONS REPORTS
DATE: April 22, 2022

Attached you will find the March 2022, Operations Reports for your review and our discussion at the Commission meeting on April 26, 2022. A summary of the operations reports follows:

- 3,751 new cases were opened in the DefenderData system in March. This was a 372 case increase from February. Year to date, new cases are up by approximately 11.5% from 21,502 at this time last year to 23,983 this year.
- The number of vouchers submitted electronically in March was 3,432, an increase of 502 vouchers from February, totaling \$1,966,339, an increase of \$331,795 from February. Year to date, the number of submitted vouchers is up by approximately 1.8%, from 24,464 at this time last year to 24,912 this year, with the total amount for submitted vouchers up approximately 24%, from \$11,153,309 at this time last year to \$13,829,846 this year.
- In March we paid 3,501 electronic vouchers totaling \$1,956,211, representing an increase of 803 vouchers and an increase of \$357,162 compared to February. Year to date, the number of paid vouchers is up approximately 8%, from 22,067 at this time last year to 23,848 this year, and the total amount paid is up approximately 32.6%, from \$9,978,760 this time last year to \$13,239,366 this year.
- We paid no paper vouchers in March.
- The average price per voucher in March was \$558.76 down \$33.92 per voucher from February. Year to date, the average price per voucher is up approximately 22.7%, from \$452.20 at this time last year to \$555.16 this year.
- Drug Court and Appeal cases had the highest average voucher in March. There were 13 vouchers exceeding \$5,000 paid in March. See attached addendum for details.
- In March, we issued 138 authorizations to expend funds: 76 for private investigators, 50 for experts, and 12 for miscellaneous services such as interpreters and transcriptionists. In March, we paid \$71,556 for experts and investigators, etc. No requests for funds were denied.
- In March, we opened 10 attorney investigations and there were no attorney suspensions.

- In our All Other Account, the total expenses for the month of March were \$2,064,069. During March, approximately \$36,301 was devoted to the Commission's operating expenses.
- In the Personal Services Accounts, we had \$152,184 in expenses for the month of March.
- In the Revenue Account, the transfer from the Judicial Branch for March reflecting February's collections, totaled \$74,808.
- Exceptional results – see attached addendum.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY22 FUND ACCOUNTING
AS OF 03/31/2022

Account 010 95F Z112 01 (All Other)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY22 Total
FY22 Professional Services Allotment		\$ 5,153,983.00		\$ 4,940,737.00		\$ 4,940,737.00		\$ 423,013.00	
FY22 General Operations Allotment		\$ 48,000.00		\$ 48,000.00		\$ 48,000.00		\$ 48,000.00	
FY21 Encumbered Balance Forward		\$ 128,745.00		\$ -		\$ -		\$ -	
Budget Order Adjustment		\$ (398,351.00)		\$ 398,351.00		\$ -		\$ -	
Supplemental Budget Allotment		\$ -		\$ -		\$ -		\$ -	
Financial Order Unencumbered Balance Fwd		\$ -		\$ (1,321,857.00)		\$ 1,321,857.00		\$ -	
FY21 Unobligated Carry Forward		\$ 495,733.30		\$ -		\$ -		\$ -	\$ 495,733.30
Total Budget Allotments		\$ 4,803,632.00		\$ 4,065,231.00		\$ 6,310,594.00		\$ 471,013.00	\$ 16,146,203.30
Total Expenses	1	\$ (1,188,459.32)	4	\$ (1,531,646.43)	7	\$ (1,621,155.51)	10	\$ -	
	2	\$ (1,479,685.13)	5	\$ (1,537,062.18)	8	\$ (1,669,756.90)	11	\$ -	
	3	\$ (1,282,898.64)	6	\$ (1,194,029.95)	9	\$ (2,064,069.23)	12	\$ -	
Encumbrances (Justice Works)		\$ (70,052.50)		\$ 16,885.00		\$ 20,007.50		\$ -	\$ (33,160.00)
Encumbrances (B Taylor)		\$ (13,260.00)		\$ (13,260.00)		\$ 13,260.00		\$ -	\$ (13,260.00)
Encumbrances (CTB for non attorney expenses)		\$ (676,875.82)		\$ 193,882.84		\$ 172,540.97		\$ -	\$ (310,452.01)
Encumbrances (business cards & address stamps)		\$ -		\$ -		\$ (39.00)		\$ -	\$ (39.00)
Encumbrance (Jamesa Drake training contract)		\$ (92,400.00)		\$ -		\$ -		\$ -	\$ (92,400.00)
TOTAL REMAINING		\$ 0.59		\$ 0.28		\$ 1,161,381.83		\$ 471,013.00	\$ 2,128,129.00

Q3 Month 9

INDIGENT LEGAL SERVICES	
Counsel Payments	\$ (1,956,211.75)
Interpreters	\$ (907.50)
Private Investigators	\$ (14,118.21)
Mental Health Expert	\$ (12,176.90)
Misc Prof Fees & Serv	\$ -
Transcripts	\$ (12,832.31)
Other Expert	\$ (30,895.92)
Process Servers	\$ (625.35)
Subpoena Witness Fees	\$ -
Out of State Witness Travel	\$ -
SUB-TOTAL ILS	\$ (2,027,767.94)

INDIGENT LEGAL SERVICES	
Q3 Allotment	\$ 6,310,594.00
Q3 Encumbrances for Justice Works contract	\$ 20,007.50
Barbara Taylor Contract	\$ 13,260.00
CTB Encumbrance for non attorney expenses	\$ 172,540.97
Q3 Jamesa Drake training contract	\$ -
Q3 Encumbrances for business cards. rubber stamps, ink	\$ (39.00)
Q3 Expenses to date	\$ (5,354,981.64)
Remaining Q3 Allotment	\$ 1,161,381.83

OPERATING EXPENSES

Service Center	\$ (1,829.25)
DefenderData	\$ (14,367.50)
CLE Registration Fees	\$ (50.00)
Mileage/Tolls/Parking	\$ (744.30)
Mailing/Postage/Freight	\$ (150.62)
West Publishing Corp	\$ (226.80)
Office Equipment Rental	\$ (221.21)
Office Supplies/Equip.	\$ (224.84)
Cellular Phones	\$ (393.92)
OIT/TELCO	\$ (2,971.07)
Periodicals	\$ (110.00)
Barbara Taylor monthly fees	\$ (4,420.00)
Tuition for audit staff courses	\$ (3,220.00)
Legal Ads	\$ (1,163.24)
AAG Legal Srvcs Quarterly Paym	\$ (6,208.54)
SUB-TOTAL OE	\$ (36,301.29)

Non-Counsel Indigent Legal Services	
Monthly Total	\$ (71,556.19)
Total Q1	\$ 223,124.18
Total Q2	\$ 193,882.84
Total Q3	\$ 172,540.97
Total Q4	\$ -
Fiscal Year Total	\$ 589,547.99

Conference Account Transactions	
NSF Charges	\$ -
Training Facilities & Meals	\$ -
Printing/Binding	\$ -
Overseers of the Bar CLE fee	\$ -
Collected Registration Fees	\$ -
Current Month Total	\$ -

TOTAL	\$ (2,064,069.23)
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MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY22 FUND ACCOUNTING
AS OF 03/31/2022

Account 010 95F Z112 01 (Personal Services)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY20 Total
FY22 Allotment		\$ 285,846.00		\$ 223,990.00		\$ 254,914.00		\$ 162,917.00	\$ 927,667.00
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustments		\$ (52,078.00)		\$ 52,078.00		\$ -		\$ -	
Total Budget Allotments		\$ 233,768.00		\$ 276,068.00		\$ 254,914.00		\$ 162,917.00	\$ 927,667.00
Total Expenses	1	\$ (74,728.63)	4	\$ (55,619.74)	7	\$ (76,653.64)	10	\$ -	
	2	\$ (103,991.70)	5	\$ (85,735.69)	8	\$ (57,369.23)	11	\$ -	
	3	\$ (55,046.83)	6	\$ (64,196.13)	9	\$ (95,977.67)	12	\$ -	
TOTAL REMAINING		\$ 0.84		\$ 70,516.44		\$ 24,913.46		\$ 162,917.00	\$ 258,347.74

Q3 Month 9	
Per Diem	\$ -
Salary	\$ (42,027.67)
Vacation Pay	\$ (2,336.78)
Holiday Pay	\$ (1,707.12)
Sick Pay	\$ (1,995.80)
Empl Hlth SVS/Worker Comp	\$ -
Health Insurance	\$ (7,563.78)
Dental Insurance	\$ (197.10)
Employer Retiree Health	\$ (5,780.96)
Employer Retirement	\$ (4,320.17)
Employer Group Life	\$ (420.84)
Employer Medicare	\$ (892.26)
Retiree Unfunded Liability	\$ (11,479.21)
Longevity Pay	\$ (168.00)
Perm Part Time Full Ben	\$ (4,303.76)
Retro Pay Contract	\$ (11,128.22)
Unemployment Costs	\$ (1,656.00)
TOTAL	\$ (95,977.67)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY22 FUND ACCOUNTING
AS OF 03/31/2022

Account 014 95F Z112 01 (OSR Personal Services Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY20 Total
FY22 Allotment		\$ 127,406.00		\$ 209,674.00		\$ 211,155.00		\$ 160,423.00	\$ 708,658.00
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Total Budget Allotments		\$ 127,406.00		\$ 209,674.00		\$ 211,155.00		\$ 160,423.00	\$ 708,658.00
Total Expenses	1	\$ -	4	\$ -	7	\$ (37,604.51)	10	\$ -	
	2	\$ -	5	\$ (28,405.03)	8	\$ (37,636.99)	11	\$ -	
	3	\$ -	6	\$ (35,981.80)	9	\$ (56,207.24)	12	\$ -	
TOTAL REMAINING		\$ 127,406.00		\$ 145,287.17		\$ 79,706.26		\$ 160,423.00	\$ 512,822.43

Q3 Month 9	
Per Diem	\$ -
Salary	\$ (34,461.28)
Vacation Pay	\$ -
Holiday Pay	\$ (1,188.32)
Sick Pay	\$ -
Limited Period Regular	\$ (1,594.40)
Health Insurance	\$ (4,658.82)
Dental Insurance	\$ (87.60)
Employer Retiree Health	\$ (3,381.77)
Employer Retirement	\$ (3,230.77)
Employer Group Life	\$ (374.22)
Employer Medicare	\$ (514.97)
Retiree Unfunded Liability	\$ (6,715.09)
Longevity Pay	\$ -
Perm Part Time Full Ben	\$ -
Retro Pay Contract	\$ -
Retro Lump Sum Pymt	\$ -
TOTAL	\$ (56,207.24)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

FY22 FUND ACCOUNTING

As of 03/31/2022

Account 014 95F Z112 01 (Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY22 Total
Original Total Budget Allotments		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00	\$ 1,100,000.00
Financial Order Adjustment		\$ 5,294,080.00		\$ 3,276,305.00		\$ 7,324.00		\$ 7,324.00	\$ 8,585,033.00
Financial Order Adjustment	1	\$ (5,106,953.00)	4	\$ (3,550,675.00)	7	\$ 8,657,628.00	10	\$ -	
Budget Order Adjustment	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Budget Order Adjustment		\$ -	6	\$ -	9	\$ -	12	\$ -	
Budget Order Adjustment	3	\$ -		\$ -		\$ -		\$ -	
Total Budget Allotments		\$ 462,127.00		\$ 630.00		\$ 8,939,952.00		\$ 282,324.00	\$ 9,685,033.00
Cash Carryover from Prior Quarter		\$ 884,522.69		\$ -		\$ -		\$ -	
Collected Revenue from JB	1	\$ 100,206.73	4	\$ 106,420.57	7	\$ 65,419.07	10	\$ -	
Collected from McIntosh Law		\$ 6,000.00		\$ -		\$ -		\$ -	
Collected for reimbursement of counsel fees		\$ 2,167.00		\$ 195.00	8	\$ 81,368.52		\$ -	
Asset Forfeiture		\$ 3,334.00		\$ -		\$ -		\$ -	
Victim Services Restitution		\$ 1,020.00		\$ -		\$ -		\$ -	
Collected Revenue from JB	2	\$ -	5	\$ 108,667.18		\$ -	11	\$ -	
Collected from McIntosh Law		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB	3	\$ 149,539.64	6	\$ 87,445.18	9	\$ 75,308.05	12	\$ -	
Collected from McIntosh Law		\$ 2,142.00		\$ -		\$ -		\$ -	
Collected for reimbursement of counsel fees		\$ 286.00		\$ 426.00		\$ -		\$ -	
Refund to KENCDC for bail to be applied to fines		\$ -		\$ -		\$ (500.00)		\$ -	
Returned Checks-stopped payments		\$ -		\$ -		\$ -		\$ -	
TOTAL CASH PLUS REVENUE COLLECTED		\$ 1,149,218.06		\$ 303,153.93		\$ 221,595.64		\$ -	\$ 1,673,967.63
Counsel Payments	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Other Expenses		\$ -		\$ -		\$ -	***	\$ -	
Counsel Payments	2	\$ (457,655.45)	5	\$ -	8	\$ -	11	\$ -	
Other Expenses		\$ -		\$ -		\$ -		\$ -	
Refund to KENCDC for bail to be applied to fines	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
State Cap for period 2	*	\$ (4,471.29)	**	\$ (277.54)	***	\$ -		\$ -	
State Cap for period 3	*	\$ -	**	\$ (351.55)	***	\$ (735.12)		\$ -	
REMAINING ALLOTMENT		\$ 0.26		\$ 0.91		\$ 8,939,216.88		\$ 282,324.00	\$ 9,221,542.05
Overpayment Reimbursements	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
REMAINING CASH Year to Date		\$ 687,091.32		\$ 302,524.84		\$ 220,860.52		\$ -	\$ 1,210,476.68

** NO COLLECTED REVENUE IN AUGUST

Collections versus Allotment	
Monthly Total	\$ 75,308.05
Total Q1	\$ 264,695.37
Total Q2	\$ 303,153.93
Total Q3	\$ 221,595.64
Total Q4	\$ -
Expenses to Date	\$ (463,490.95)
Cash Carryover from Prior Year	\$ 884,522.69
Fiscal Year Total	\$ 1,210,476.68

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY22 FUND ACCOUNTING
AS OF 03/31/2022

Account 014 95F Z112 02 (Conference Account)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY20 Total
FY22 Allotment		\$ 16,000.00		\$ 41,000.00		\$ -		\$ -	\$ 57,000.00
Carry Forward		\$ 16,232.70		\$ -		\$ -		\$ -	
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Total Budget Allotments		\$ 16,000.00		\$ 41,000.00		\$ -		\$ -	\$ 57,000.00
Total Expenses	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
TOTAL REMAINING		\$ 16,000.00		\$ 41,000.00		\$ -		\$ -	\$ 57,000.00

Q3 Month 9	
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
TOTAL	\$ -

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY22 FUND ACCOUNTING
AS OF 03/31/2022

Account 023 95F Z112 02 (ARA)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY20 Total
FY22 Allotment		\$ -		\$ -		\$ 4,000,000.00		\$ -	\$ 4,000,000.00
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Total Budget Allotments		\$ -		\$ -		\$ 4,000,000.00		\$ -	\$ 4,000,000.00
Total Expenses	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
TOTAL REMAINING		\$ -		\$ -		\$ 4,000,000.00		\$ -	\$ 4,000,000.00

Q3 Month 9	
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
TOTAL	\$ -

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Case Type

3/31/2022

DefenderData Case Type	Mar-22						Fiscal Year 2022			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
Appeal	19	19	\$24,471.35	23	\$ 43,034.26	\$1,871.05	125	130	\$ 218,466.90	\$1,680.51
Child Protection Petition	292	514	\$366,864.68	517	\$ 379,338.35	\$733.73	1,924	3,491	\$ 2,418,840.68	\$692.88
Drug Court	2	9	\$18,462.00	8	\$ 15,840.00	\$1,980.00	11	74	\$ 126,890.70	\$1,714.74
Emancipation	8	3	\$1,720.00	7	\$ 2,438.00	\$348.29	70	53	\$ 19,463.20	\$367.23
Felony	885	767	\$614,240.17	760	\$ 575,307.69	\$756.98	5,777	5,139	\$ 4,141,476.67	\$805.89
Involuntary Civil Commitment	128	79	\$21,646.08	69	\$ 20,483.52	\$296.86	785	736	\$ 197,735.54	\$268.66
Juvenile	116	74	\$49,524.60	79	\$ 45,538.23	\$576.43	611	449	\$ 255,619.76	\$569.31
Lawyer of the Day - Custody	255	249	\$75,529.60	214	\$ 64,258.60	\$300.27	2,032	1,858	\$ 558,605.36	\$300.65
Lawyer of the Day - Juvenile	37	30	\$8,485.40	26	\$ 6,808.00	\$261.85	239	205	\$ 54,742.34	\$267.04
Lawyer of the Day - Walk-in	185	186	\$60,428.49	144	\$ 47,150.52	\$327.43	1,410	1,291	\$ 415,154.39	\$321.58
Misdemeanor	1,556	1,105	\$426,641.35	1,216	\$ 456,811.36	\$375.67	9,056	7,153	\$ 2,725,178.68	\$380.98
Petition, Modified Release Treatment	1	3	\$2,934.00	2	\$ 2,134.00	\$1,067.00	8	38	\$ 20,287.85	\$533.89
Petition, Release or Discharge	0	0		0			2	8	\$ 4,456.23	\$557.03
Petition, Termination of Parental Rights	19	62	\$84,398.57	86	\$ 87,715.81	\$1,019.95	267	600	\$ 519,580.36	\$865.97
Post Conviction Review	8	10	\$16,231.93	9	\$ 12,025.20	\$1,336.13	65	61	\$ 140,173.23	\$2,297.92
Probate	7	7	\$9,647.00	6	\$ 8,414.00	\$1,402.33	42	29	\$ 27,214.00	\$938.41
Probation Violation	166	129	\$66,819.91	128	\$ 60,673.21	\$474.01	1,048	975	\$ 453,191.45	\$464.81
Represent Witness on 5th Amendment	3	0		0			15	14	\$ 6,340.12	\$452.87
Resource Counsel Criminal	0	2	\$608.00	2	\$ 520.00	\$260.00	1	16	\$ 3,432.00	\$214.50
Resource Counsel Juvenile	1	2	\$464.00	2	\$ 464.00	\$232.00	2	4	\$ 570.00	\$142.50
Resource Counsel Protective Custody	0	0		0			0	3	\$ 262.00	\$87.33
Review of Child Protection Order	62	182	\$117,222.42	203	\$ 127,257.00	\$626.88	485	1,518	\$ 931,224.25	\$613.45
Revocation of Administrative Release	1	0		0			8	3	\$ 460.96	\$153.65
DefenderData Sub-Total	3,751	3,432	\$1,966,339.55	3,501	\$1,956,211.75	\$558.76	23,983	23,848	\$13,239,366.67	\$555.16
Paper Voucher Sub-Total										
TOTAL	3,751	3,432	\$1,966,339.55	3,501	\$1,956,211.75	\$ 558.76	23,983	23,848	\$ 13,239,366.67	\$ 555.16

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Court

3/31/2022

Court	Mar-22						Fiscal Year 2022			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
ALFSC	0	5	\$ 2,272.00	5	\$ 2,272.00	\$ 454.40	42	50	\$ 25,566.70	\$511.33
AUBSC	1	2	\$ 4,364.60	1	\$ 665.01	\$ 665.01	9	12	\$ 6,032.21	\$502.68
AUGDC	42	63	\$ 46,303.68	51	\$ 43,279.68	\$ 848.62	362	490	\$ 337,035.53	\$687.83
AUGSC	3	4	\$ 2,966.00	3	\$ 2,635.00	\$ 878.33	26	60	\$ 39,750.75	\$662.51
BANDC	69	88	\$ 41,871.75	115	\$ 53,398.50	\$ 464.33	491	855	\$ 345,769.83	\$404.41
BANSC	0	0		1	\$ 136.00	\$ 136.00	5	6	\$ 2,586.80	\$431.13
BATSC	1	0		0			1	2	\$ 1,532.00	\$766.00
BELDC	11	74	\$ 52,582.09	95	\$ 64,979.58	\$ 684.00	131	273	\$ 176,431.09	\$646.27
BELSC	0	0		0			2	3	\$ 2,129.00	\$709.67
BIDDC	71	83	\$ 75,278.61	90	\$ 67,075.37	\$ 745.28	426	609	\$ 382,293.62	\$627.74
BRIDC	16	14	\$ 11,602.60	13	\$ 7,037.12	\$ 541.32	118	128	\$ 64,925.10	\$507.23
CALDC	5	2	\$ 824.00	10	\$ 5,410.00	\$ 541.00	31	60	\$ 33,491.50	\$558.19
CARDC	8	19	\$ 11,633.54	21	\$ 14,681.64	\$ 699.13	50	190	\$ 111,312.00	\$585.85
CARSC	2	0		0			6	3	\$ 2,636.00	\$878.67
DOVDC	5	10	\$ 5,639.00	4	\$ 1,400.40	\$ 350.10	41	88	\$ 52,135.90	\$592.45
DOVSC	0	0		1	\$ 2,676.00	\$ 2,676.00	1	2	\$ 3,150.00	\$1,575.00
ELLDC	23	17	\$ 17,374.15	42	\$ 39,963.85	\$ 951.52	129	285	\$ 243,500.85	\$854.39
ELLSC	2	0		1	\$ 700.00	\$ 700.00	3	1	\$ 700.00	\$700.00
FARDC	12	6	\$ 1,641.60	10	\$ 3,042.45	\$ 304.25	73	100	\$ 65,311.59	\$653.12
FARSC	0	0		0			0	2	\$ 944.00	\$472.00
FORDC	4	11	\$ 13,148.59	11	\$ 4,758.00	\$ 432.55	47	108	\$ 76,687.89	\$710.07
HOUDC	10	18	\$ 13,252.00	14	\$ 7,790.00	\$ 556.43	79	145	\$ 107,409.85	\$740.76
HOUSC	1	0		0			12	8	\$ 11,570.60	\$1,446.33
LEWDC	73	106	\$ 65,752.38	79	\$ 53,219.84	\$ 673.67	532	782	\$ 470,608.95	\$601.80
LINDC	1	18	\$ 8,823.20	18	\$ 8,235.40	\$ 457.52	88	131	\$ 58,534.95	\$446.83
MACDC	2	6	\$ 4,696.00	9	\$ 6,964.50	\$ 773.83	21	46	\$ 45,326.12	\$985.35
MACSC	0	0		0			1	1	\$ 896.00	\$896.00
MADDC	1	2	\$ 592.85	1	\$ 456.50	\$ 456.50	10	10	\$ 3,955.50	\$395.55
MILDc	1	7	\$ 3,048.43	6	\$ 2,672.43	\$ 445.41	32	62	\$ 19,272.99	\$310.85
NEWDC	5	13	\$ 6,431.95	21	\$ 12,445.30	\$ 592.63	93	187	\$ 86,105.26	\$460.46
PORDC	123	119	\$ 82,712.27	124	\$ 84,326.87	\$ 680.06	697	897	\$ 573,155.11	\$638.97
PORSC	0	4	\$ 1,420.00	2	\$ 864.00	\$ 432.00	27	37	\$ 15,773.00	\$426.30
PREDC	11	29	\$ 22,356.80	24	\$ 20,635.88	\$ 859.83	91	148	\$ 90,872.47	\$614.00
ROCDc	19	66	\$ 38,392.92	68	\$ 40,410.80	\$ 594.28	128	205	\$ 121,986.87	\$595.06
ROCDc	2	2	\$ 408.00	0			14	10	\$ 4,542.74	\$454.27
RUMDC	23	22	\$ 12,373.00	19	\$ 13,997.80	\$ 736.73	116	189	\$ 158,218.69	\$837.14
SKODC	35	54	\$ 26,706.85	38	\$ 19,318.62	\$ 508.38	250	402	\$ 235,448.60	\$585.69
SKOSC	0	1	\$ 2,698.88	1	\$ 2,698.88	\$ 2,698.88	5	10	\$ 31,454.84	\$3,145.48
SOUDC	14	23	\$ 17,560.28	26	\$ 23,892.28	\$ 918.93	104	182	\$ 165,146.39	\$907.40
SOUSC	0	0		0			0	3	\$ 884.00	\$294.67
SPRDC	30	47	\$ 38,043.90	51	\$ 32,230.00	\$ 631.96	198	293	\$ 205,174.36	\$700.25
Law Ct	19	12	\$ 15,634.81	17	\$ 35,821.72	\$ 2,107.16	94	95	\$ 169,337.30	\$1,782.50
YORCD	561	381	\$ 214,155.13	377	\$ 227,334.51	\$ 603.01	3,219	2,535	\$ 1,379,676.63	\$544.25
AROCD	212	133	\$ 76,779.51	122	\$ 63,610.31	\$ 521.40	1,273	1,051	\$ 534,455.68	\$508.52
ANDCD	293	197	\$ 118,041.41	139	\$ 66,194.18	\$ 476.22	1,682	1,210	\$ 645,935.82	\$533.83
KENCD	235	219	\$ 90,689.07	251	\$ 98,856.75	\$ 393.85	1,669	1,401	\$ 710,706.53	\$507.29
PENCD	389	288	\$ 138,260.15	353	\$ 140,617.09	\$ 398.35	2,749	2,383	\$ 1,086,208.76	\$455.82
SAGCD	67	67	\$ 35,894.38	63	\$ 34,403.40	\$ 546.09	366	288	\$ 126,000.62	\$437.50
WALCD	73	46	\$ 26,930.89	62	\$ 32,799.35	\$ 529.02	522	519	\$ 259,898.58	\$500.77
PISCD	22	24	\$ 7,887.90	25	\$ 8,333.70	\$ 333.35	148	151	\$ 88,637.79	\$587.01
HANCD	93	58	\$ 31,257.63	49	\$ 31,347.63	\$ 639.75	486	409	\$ 216,927.01	\$530.38
FRACD	41	29	\$ 18,318.60	42	\$ 23,017.63	\$ 548.04	265	273	\$ 166,268.93	\$609.04
WASCD	45	54	\$ 23,074.95	40	\$ 16,585.50	\$ 414.64	341	332	\$ 133,339.78	\$401.63
CUMCD	616	562	\$ 285,652.84	562	\$ 295,788.78	\$ 526.31	3,821	3,337	\$ 1,852,635.41	\$555.18
KNOCD	81	73	\$ 41,755.70	76	\$ 35,812.63	\$ 471.22	611	593	\$ 283,124.66	\$477.44
SOMCD	114	134	\$ 68,984.04	128	\$ 55,454.25	\$ 433.24	711	728	\$ 311,684.97	\$428.14
OXFCD	143	74	\$ 41,650.11	69	\$ 39,298.44	\$ 569.54	698	524	\$ 370,414.64	\$706.90
LINCD	45	61	\$ 32,895.26	61	\$ 33,235.69	\$ 544.85	331	293	\$ 151,998.18	\$518.77
WATDC	34	40	\$ 31,971.30	42	\$ 34,560.54	\$ 822.87	231	361	\$ 216,616.40	\$600.05
WESDC	29	26	\$ 11,470.50	27	\$ 15,130.50	\$ 560.39	150	145	\$ 65,493.73	\$451.68
WISDC	9	12	\$ 12,876.75	17	\$ 14,896.75	\$ 876.28	52	76	\$ 45,862.28	\$603.45
WISSC	0	1	\$ 536.00	1	\$ 536.00	\$ 536.00	2	2	\$ 864.00	\$432.00
YORDC	4	6	\$ 8,850.70	3	\$ 8,306.70	\$ 2,768.90	70	67	\$ 43,019.32	\$642.08
TOTAL	3,751	3,432	\$ 1,966,339.55	3,501	\$ 1,956,211.75	\$ 558.76	23,983	23,848	\$13,239,366.67	\$555.16

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Number of Attorneys Rostered by Court

4/5/2022

Court	Rostered Attorneys
Augusta District Court	77
Bangor District Court	41
Belfast District Court	41
Biddeford District Court	110
Bridgton District Court	69
Calais District Court	10
Caribou District Court	16
Dover-Foxcroft District Court	25
Ellsworth District Court	29
Farmington District Court	30
Fort Kent District Court	12
Houlton District Court	15
Lewiston District Court	103
Lincoln District Court	23
Machias District Court	15
Madawaska District Court	12
Millinocket District Court	17
Newport District Court	28
Portland District Court	129
Presque Isle District Court	15
Rockland District Court	30
Rumford District Court	22
Skowhegan District Court	21

Court	Rostered Attorneys
South Paris District Court	43
Springvale District Court	94
Unified Criminal Docket Alfred	93
Unified Criminal Docket Aroostook	28
Unified Criminal Docket Auburn	85
Unified Criminal Docket Augusta	76
Unified Criminal Docket Bangor	42
Unified Criminal Docket Bath	76
Unified Criminal Docket Belfast	38
Unified Criminal Docket Dover Foxcroft	23
Unified Criminal Docket Ellsworth	33
Unified Criminal Docket Farmington	36
Unified Criminal Docket Machias	18
Unified Criminal Docket Portland	125
Unified Criminal Docket Rockland	26
Unified Criminal Docket Skowhegan	26
Unified Criminal Docket South Paris	43
Unified Criminal Docket Wiscasset	49
Waterville District Court	39
West Bath District Court	90
Wiscasset District Court	54
York District Court	87

Vouchers over \$5,000

Comment	Voucher Total	Case Total
Homicide	\$ 10,620.06	\$ 10,620.06
Domestic Violence Aggravated Assault	\$ 9,584.38	\$ 9,584.38
Robbery	\$ 8,911.80	\$ 9,811.80
Appeal	\$ 8,562.99	\$ 8,562.99
Aggravated Assault	\$ 7,170.99	\$ 7,170.99
Child Protection	\$ 7,086.70	\$ 7,086.70
Termination of Parental Rights	\$ 7,072.00	\$ 7,072.00
Elluding/Reckless Conduct/Agg Operating after HO Revocation	\$ 6,009.50	\$ 6,009.50
Appeal	\$ 5,867.41	\$ 5,867.41
Post-Conviction Review	\$ 5,580.00	\$ 5,580.00
Gross Sexual Assault	\$ 5,318.00	\$ 5,318.00
OUI/Trafficking	\$ 5,264.00	\$ 5,264.00
Homicide	\$ 5,124.80	\$ 5,124.80

Good Outcomes

Review Date	Attorney	Charge	Disposition
	Wright, Andrew	Assault on an Officer	Dismissal
Feb		Assault on an Officer	Dismissal
	Folster, Kaylee	Criminal Trespass	Dismissal
Feb		Refusing to Submit to Arrest	Dismissal
	Dube, Daniel	Aggravated Trafficking of Scheduled Drugs	Dismissal
Feb		Unlawful Furnishing of Scheduled Drugs	Dismissal
Feb	Paris, David	Murder	NCR
	Wraight, Marcus	Burglary	Dismissal
Feb		Criminal Trespass	Dismissal
3/10/2022	Paris, David	DVA	Dismissal
3/11/2022	Wraight, Marcus	Unlawful Possession of Scheduled Drugs	Dismissal
3/11/2022	Wraight, Marcus	Unlawful Possession of Scheduled Drugs	Dismissal
3/11/2022	Wraight, Marcus	Unlawful Possession of Scheduled Drugs	Dismissal
3/11/2022	Wraight, Marcus	Unlawful Possession of Scheduled Drugs	Dismissal
3/11/2022	Wraight, Marcus	VCR	Dismissal
3/11/2022	Yamartino, Gina	Burglary	Dismissal
3/11/2022	Yamartino, Gina	Burglary	Dismissal
3/11/2022	Yamartino, Gina	Theft by Unauthorized Taking or Transfer	Dismissal
3/11/2022	Yamartino, Gina	Theft by Unauthorized Taking or transfer	Dismissal
3/18/2022	Berner, Seth	Criminal Trespass	Dismissal
3/18/2022	Corey, Paul	DVA with Priors	Dismissal
3/18/2022	Corbett, Dawn	PFH Violation	Dismissal
3/18/2022	Corbett, Dawn	Criminal Mischief	Dismissal
3/18/2022	Corey, Paul	DV Terrorizing	Dismissal
3/18/2022	Clifford, John	Operating after Regis. Susp.	Dismissal
3/18/2022	Clifford, John	VCR	Dismissal
3/18/2022	Milam, Nicole	Minor Consuming Liquor	Dismissal
3/18/2022	Chester, Edwin	Criminal Mischief	Filing
3/18/2022	Snow, Gregory	Trafficking in Prison Contr.	Dismissal
3/18/2022	Geller, David	PFA Violation	Dismissal
3/18/2022	Fey, Zacharay	Unlawful Possession of Meth	Dismissal
3/18/2022	Fey, Zacharay	Unlawful Possession of Sched. Drug	Dismissal

Good Outcomes

3/18/2022	Fey, Zacharay	Unlawful Possession of Sched. Drug	Dismissal
3/18/2022	Neilson, Chris	Criminal Restraint	Filing
3/18/2022	Neilson, Chris	DVA	Filing
3/18/2022	Ferm, Jacob	DVA	Dismissal
3/18/2022	Ferm, Jacob	DV Criminal Threatening	Dismissal
3/18/2022	Ferm, Jacob	DV Terrorizing	Dismissal
3/18/2022	Ferm, Jacob	Criminal Restraint	Dismissal
3/18/2022	Whittier, Lisa	Theft by Unauthorized Taking or Transfer	Dismissal
3/18/2022	Whittier, Lisa	Criminal Mischief	Dismissal
3/24/2022	Harrow, Seth	OUI(Drugs)	NG Verdict
3/24/2022	Mastrogiacomo, Matthew	Operating Vehicle w/o License	Dismissal
3/24/2022	Mastrogiacomo, Matthew	Failure to Stop	Dismissal
3/24/2022	Wilson, Jeffrey	Witness Tampering	NG Judgment
3/24/2022	Wright, Andrew	Aggravated Trafficking of Scheduled Drugs	Dismissal
3/24/2022	Angers, Stewart	Unlawful Possession of Scheduled Drugs	Dismissal
3/24/2022	Angers, Stewart	Unlawful Possession of Scheduled Drugs	Dismissal
3/24/2022	Nadeau, Tina	Unlawful Possession of Scheduled Drugs	Dismissal
3/24/2022	Nadeau, Tina	VCR	Dismissal
3/24/2022	Paris, David	OUI(Alcohol)	Dismissal
3/24/2022	Wilson, Jeffrey	Agg. Assault, Reckless Conduct, DTE, Leaving the Scene, VCR	NG Verdict on all counts
3/24/2022	Dube, Daniel	Felony DV Assault	Dismissal
3/24/2022	Dube, Daniel	Felony DV Terrorizing	Dismissal
3/24/2022	Sideris, Marina	Sale and Use of Drug Paraphernalia	Dismissal
3/24/2022	Sideris, Marina	Unlawful Possession of Scheduled Drugs	Dismissal
3/24/2022	Rosenberg, Peter	Operating While License Suspended or Revoked, Prior	Dismissal
3/24/2022	Rosenberg, Peter	VCR	Dismissal
3/24/2022	Rosenberg, Peter	Operating ATV to Endanger	Dismissal
3/24/2022	Kaynor, Peter	PC Case	Dismissal & Divorce Judgment w/ sole PRR to client
3/24/2022	Hutchinson, Benjamin	Unlawful Possession of Fentanyl Powder	Dismissal

Good Outcomes

3/24/2022	Hutchinson, Benjamin	Unlawful Possession of Meth	Deferred- GO = Dismissal
3/25/2022	Day, Randy	PC Case	Dismissal
3/25/2022	Gray, Mary	PC Case	Dismissal
3/25/2022	Toothaker, Jeffrey	Felony DVA	NG Verdict
4/1/2022	Sucy, Stephen	Burglary	Dismissal
4/1/2022	Toothaker, Jeffrey	Murder	Reduced to Manslaughter- 12 years DOC

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY15, QUARTER 1 EXPENSE REPORT**

OPERATING EXPENSES		
Case Mgmt Software	\$	(20,007.50)
Cellular Phones	\$	(768.41)
Employee Mileage/Tolls	\$	(2,025.90)
Postage/Mailing/Freight	\$	(545.65)
Office Equipment Rental	\$	(326.92)
Office Supplies	\$	(1,910.80)
OIT Services	\$	(23,447.86)
West Law	\$	(680.40)
Periodicals	\$	(110.00)
Insurances (Risk Mgmt)	\$	-
Tuition for audit staff courses	\$	(3,220.00)
Website Maintenance	\$	(7,090.00)
Moving expenses	\$	(12,200.00)
Service Center	\$	(1,829.25)
Immigration Law Consultant	\$	(13,260.00)
Survey Monkey fees	\$	(900.00)
Criminal & MV statute books	\$	-
Dues	\$	-
Legal ads	\$	(2,068.67)
CLE Registration fees	\$	(600.00)
AAG Legal Svcs Quarterly Payment	\$	(6,208.54)
TOTAL	\$	(97,199.90)

PERSONNEL		
Retro Pay	\$	-
Dental Insurance	\$	(642.40)
Employee Salary	\$	(97,624.78)
Employer Group Life	\$	(1,019.76)
Employer Medicare	\$	(2,059.83)
Employer Retirement	\$	(8,971.52)
Health Insurance	\$	(24,003.76)
Holiday Pay	\$	(7,326.48)
Retro Pay Contract	\$	(21,836.14)
Per Diem	\$	-
Retiree Health	\$	(12,606.10)
Retiree Unf. Liability	\$	(25,031.80)
Sick Pay	\$	(4,745.74)
Vacation Pay	\$	(5,759.07)

COUNSEL PAYMENTS ALL OTHER		
Counsel Payments	\$	(5,085,240.77)
TOTAL	\$	(5,085,240.77)

NON COUNSEL PAYMENTS		
Expert Witness Payments	\$	(43,885.92)
Discovery	\$	-
Interpreter Services	\$	(5,400.20)
Lodging & Meals for Trial	\$	-
Private Investigators	\$	(30,176.63)
Process Servers	\$	(1,457.95)
Transcripts	\$	(54,164.93)
Mental Health Experts	\$	(37,121.90)
Subpoena Witness Fees	\$	(31.44)
Misc Prof Fees & Srvc	\$	(302.00)
TOTAL	\$	(172,540.97)

TOTAL INDIGENT LEGAL SERVICES		
Counsel Payments	\$	(5,085,240.77)
Non Counsel Payments	\$	(172,540.97)
TOTAL	\$	(5,257,781.74)

REVENUE		
Counsel Payments	\$	-
State Cap	\$	(735.12)
Reimbursements		
State Cap to cover Q3	\$	-
TOTAL	\$	(735.12)

OSR PERSONAL SERVICES		
Retro Pay	\$	-
Dental Insurance	\$	(262.80)
Employee Salary	\$	(78,038.18)
Employer Group Life	\$	(839.16)
Employer Medicare	\$	(1,158.77)
Employer Retirement	\$	(7,451.73)
Health Insurance	\$	(13,976.46)

ALL OTHER & REVENUE ACCOUNTS		
Q3 AO ALLOTMENT:	\$	6,310,594.00
Q3 Encumbrance for Justice Works	\$	20,007.50
Q3 Encumbrance for CTB for non	\$	172,540.97
Q3 Barbara Taylor-Immigration	\$	13,260.00
Q3 Encumbrance for business car	\$	(39.00)
Q3 AO EXPENSES	\$	(5,354,981.64)
TOTAL REMAINING:	\$	1,161,381.83

REVENUE ACCOUNT		
Q3 REV ALLOTMENT:	\$	8,939,952.00
Q3 REV COLLECTED:	\$	221,595.64
Q3 REV EXPENSES	\$	(735.12)
Cash Carry Forward from Q4	\$	-
Q3 REMAINING BAL:	\$	220,860.52

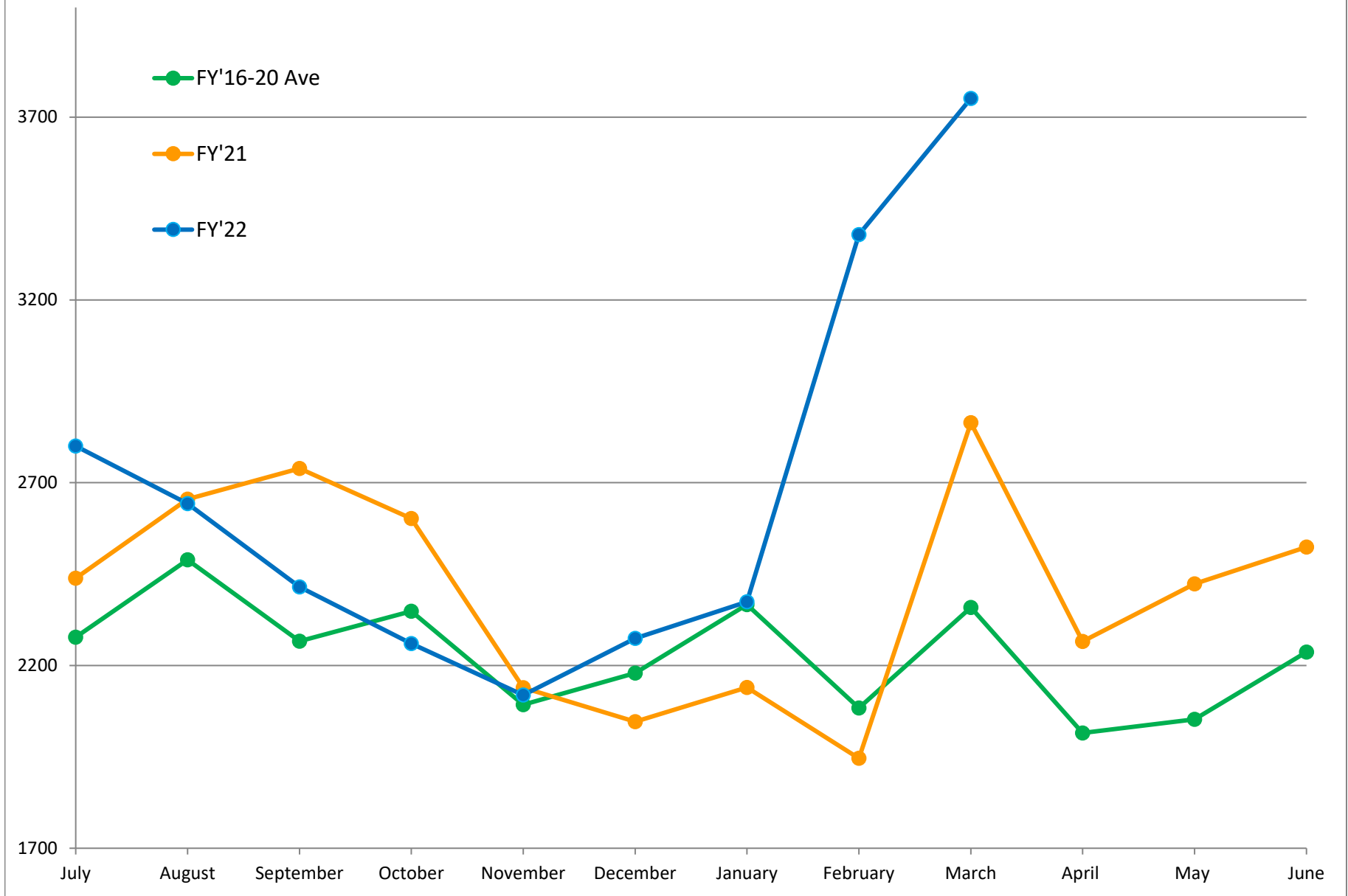
PERSONAL SERVICES		
Q3 PS ALLOTMENT:	\$	254,914.00
Q3 PS EXPENSES:	\$	(230,000.54)
Q3 REMAINING BAL:	\$	24,913.46

OSR PERSONAL SERVICES REVENUE		
Q3 OSR ALLOTMENT:	\$	211,155.00
Q3 OSR EXPENSES:	\$	(131,448.74)
Q3 REMAINING BAL:	\$	79,706.26

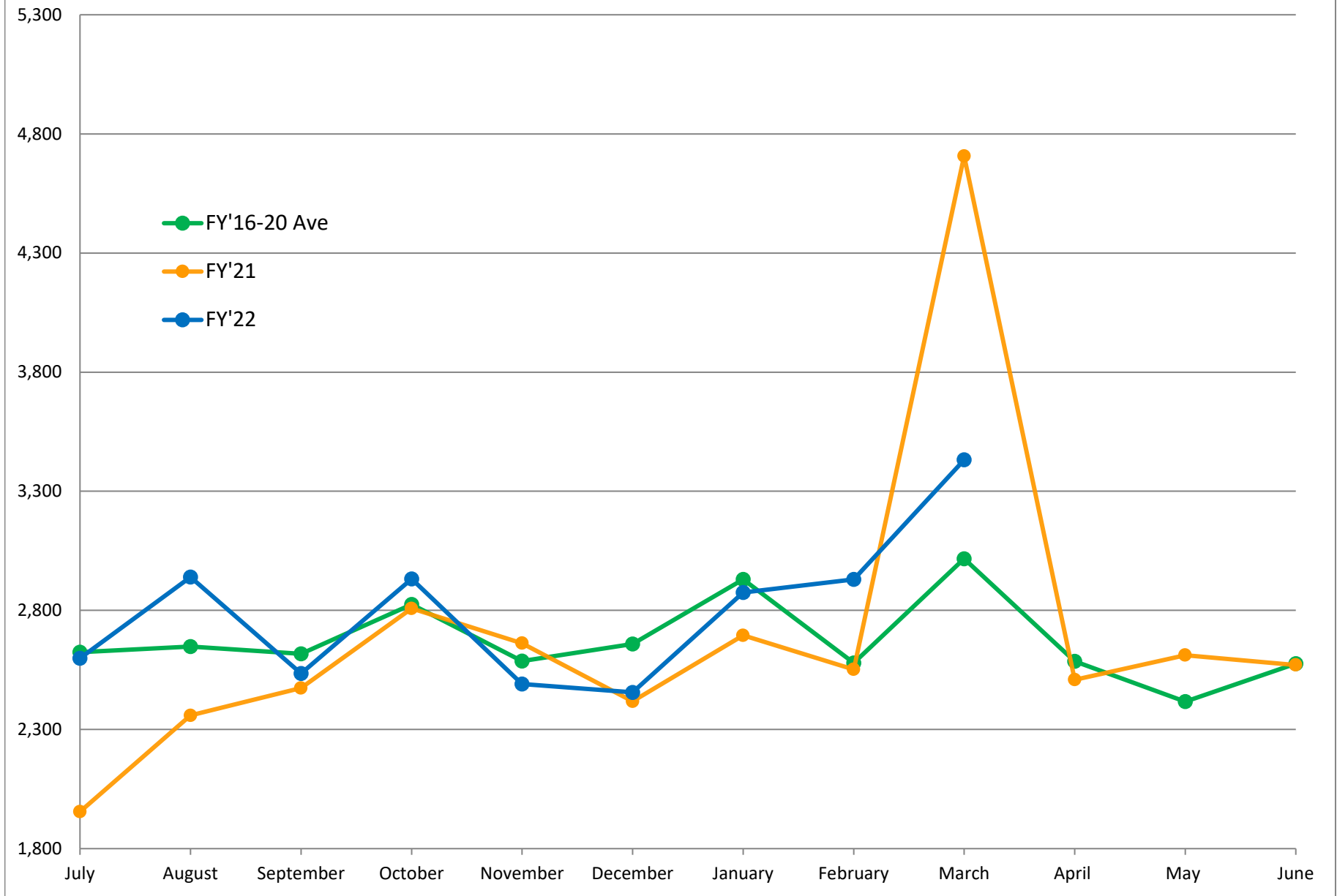
CONFERENCE ACCOUNT		
Q3 CA ALLOTMENT:	\$	-
Q3 CA EXPENSES:	\$	-
Collected Funds & Carryover	\$	16,232.70
Q3 Remaining Cash	\$	-
Q3 REMAINING BAL:	\$	16,232.70

ARA		
Q3 ALLOTMENT:	\$	4,000,000.00
Q3 EXPENSES:	\$	-
Q3 REMAINING BAL:	\$	4,000,000.00

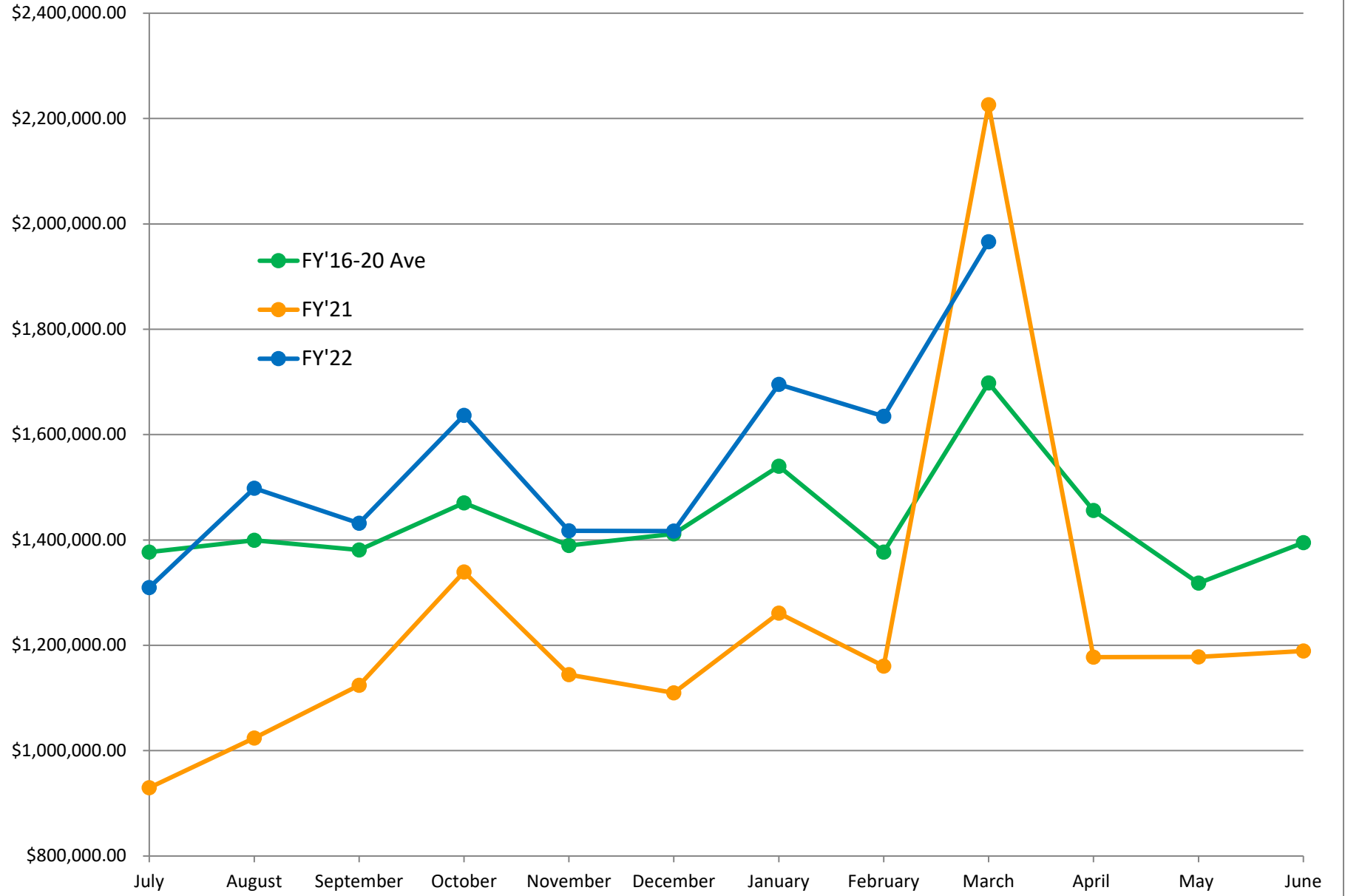
NEW CASES



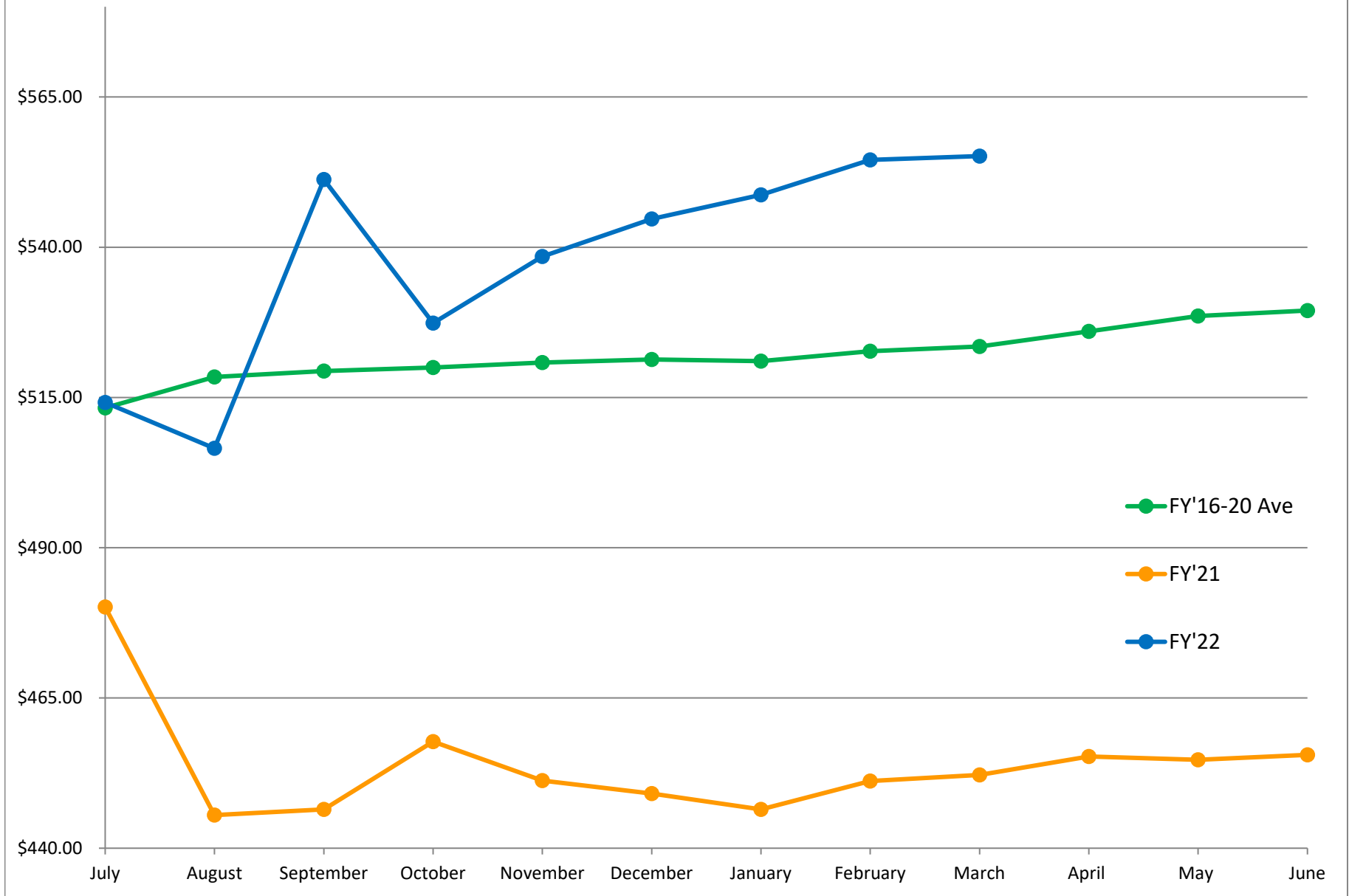
Submitted Vouchers



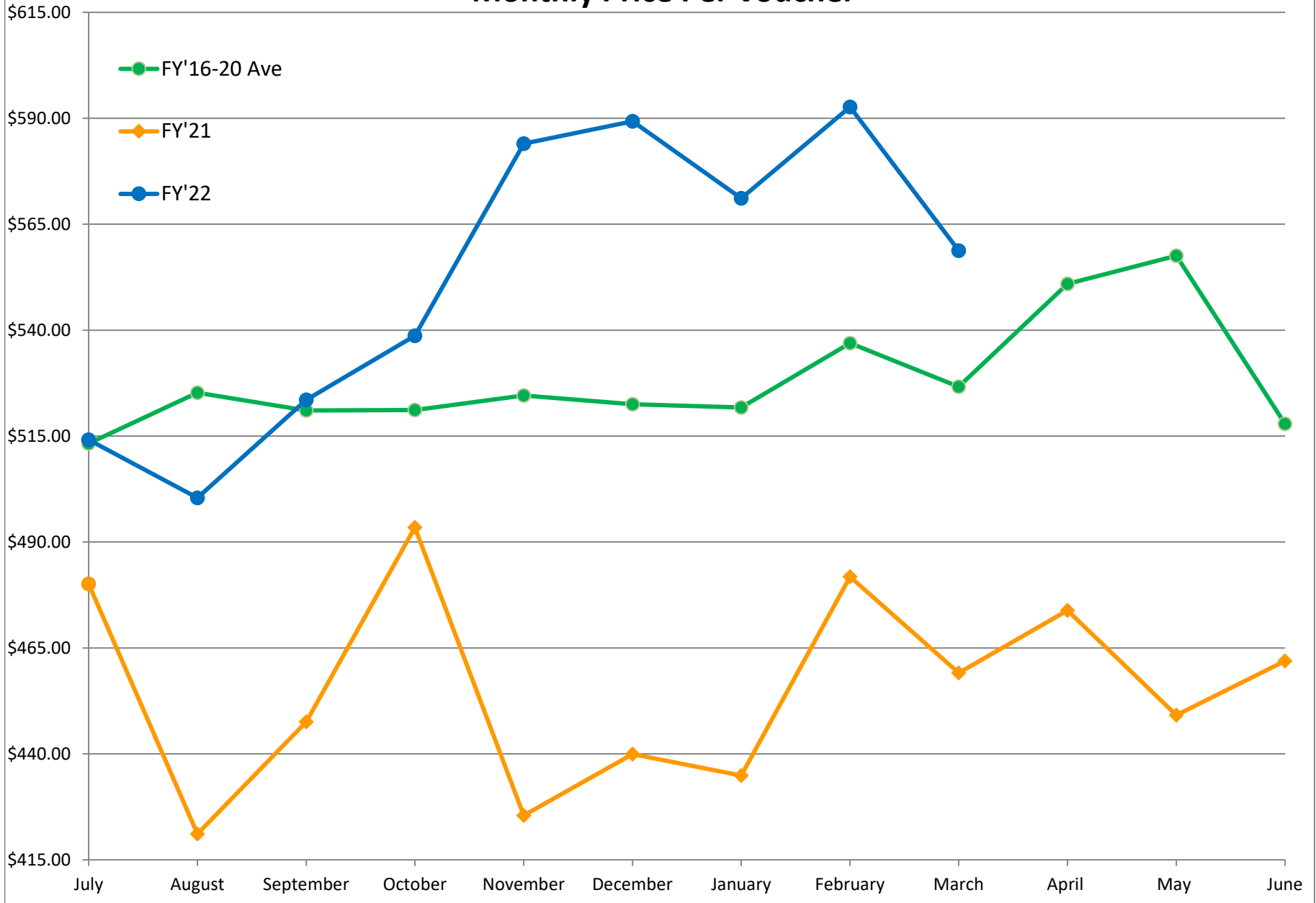
Submitted Voucher Amount



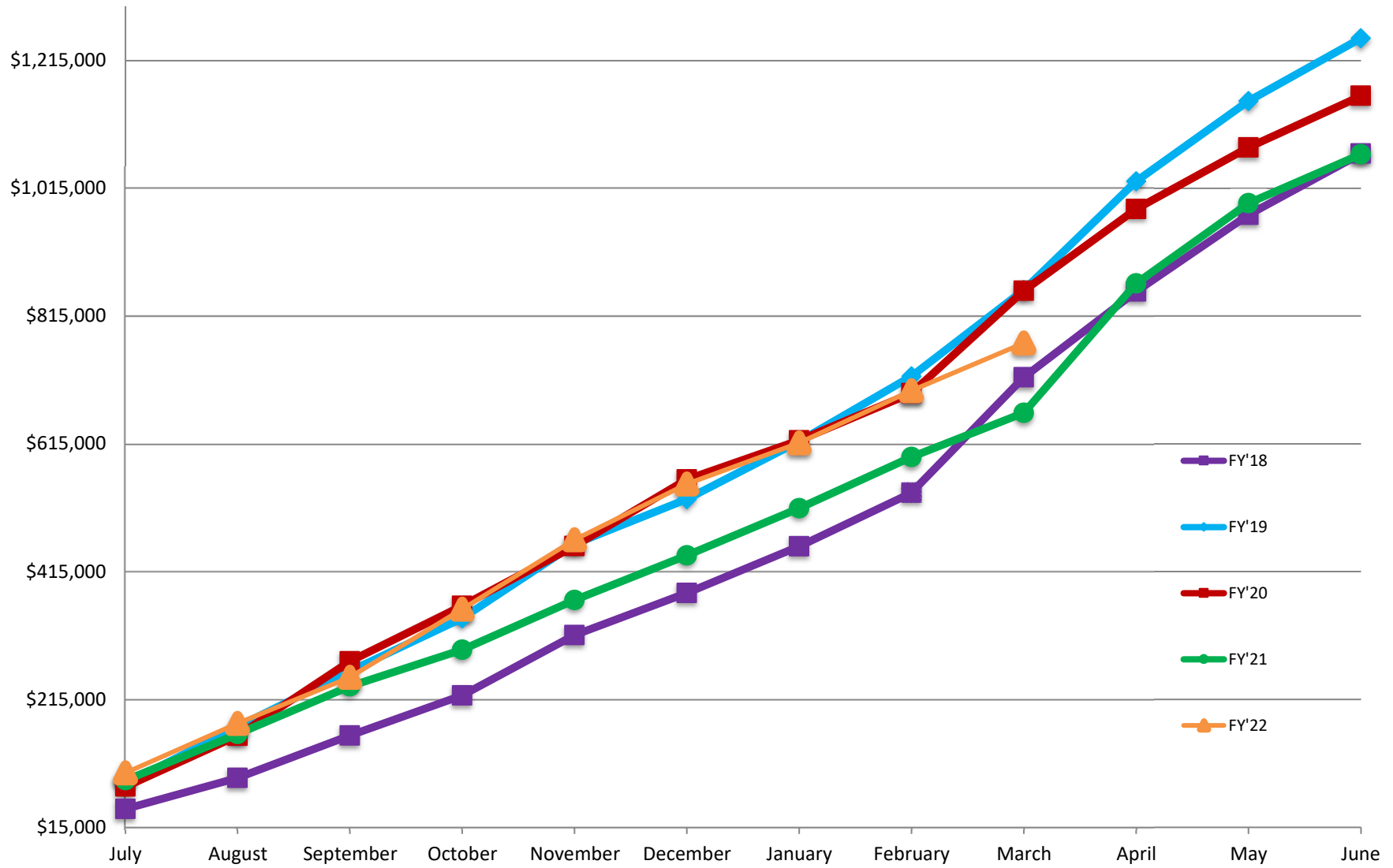
Average Voucher Price Fiscal Year to Date



Monthly Price Per Voucher



COLLECTION TOTALS FY'18 to FY'22



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 Court Assigned and Commission Assigned counsel. The Chapter sets a standard hourly rate and fee amounts that trigger presumptive review for specific case types. The Chapter also establishes rules for the payment of mileage and other expenses that are eligible for reimbursement by the Commission. Finally, this Chapter requires Counsel that all vouchers must be submitted using the MCILS electronic case management system.

SECTION 1. DEFINITIONS

1. **Court Assigned Counsel.** “Court Assigned Counsel” means counsel licensed to practice law in Maine, designated eligible to receive an assignment to a particular case, and initially assigned by a Court to represent a particular client in a particular matter.
2. **Commission Assigned Counsel.** “Commission Assigned Counsel” means counsel licensed to practice in Maine, designated eligible to be assigned to provide a particular service or to represent a particular client in a particular matter, and assigned by MCILS to provide that service or represent a client.
3. **Counsel.** As used in this Chapter “Counsel” means a Court Assigned Counsel or Commission Assigned Counsel, or both.
4. **MCILS or Commission.** “MCILS” or “Commission” means the Commissioners of the Maine Commission on Indigent Legal Services.
5. **Executive Director.** “Executive Director” means the Executive Director of MCILS or the Executive Director’s decision-making designee.

SECTION 2. HOURLY RATE OF PAYMENT

Effective July 1, 2021:

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

SECTION 3. EXPENSES

1. **Routine Office Expenses.** Routine Office expenses will not be paid by MCILS. Routine office expenses include, but are not limited to, postage, express postage, regular telephone, cell telephone, fax, office overhead, utilities, secretarial services, the first 100 pages of any one print or copy job, local phone calls, parking (except as stated below), and office supplies, etc. Paralegal time may be billed to MCILS only through the non-counsel cost procedures.
2. **Itemized Non-Routine Expenses.** Itemized non-routine expenses, such as discovery from the State or other agency, long distance calls (only if billed for long distance calls by your phone carrier), collect phone calls, copy costs for print or copy jobs in excess of 100 pages, beginning with the 101st page, printing/copying/binding of legal appeal brief(s), relevant in-state mileage (as outlined below), tolls (as outlined below), and fees paid to third parties, may be paid by MCILS after review. Necessary parking fees associated with multi-day trials and hearings will be reimbursed.
3. **Travel Reimbursement.** Mileage reimbursement shall be made at the State rate applicable to confidential state employees on the date of the travel. Mileage reimbursement will be paid for travel to and from courts other than Counsel's home district and superior court. Mileage reimbursement will not be paid for travel to and from a Counsel's home district and superior courts. Tolls will be reimbursed, except that tolls will not be reimbursed for travel to and from Counsel's home district and superior court. All out-of-state travel or any overnight travel must be approved by MCILS in writing prior to incurring the expense. Use of the telephone, video equipment, and email in lieu of travel is encouraged as appropriate.
4. **Itemization of Claims.** Claims for all expenses must be itemized and include documentation. Claims for mileage shall be itemized and include the start and end points for the travel in question.
5. **Discovery Materials.** MCILS will reimburse only for one set of discovery materials. If counsel is permitted to withdraw, appropriate copies of discovery materials must be forwarded to new counsel within one week of notice of new counsel's assignment. Counsel may retain a copy of a file transferred to new counsel, or to a client. Counsel shall perform any scanning or make any copies necessary to retain a copy of the file at counsel's expense. The client owns the file. The original file shall be tendered to new counsel, or to the client, as directed.
6. **Expert and Investigator Expenses.** Other non-routine expenses for payment to third parties, (e.g., investigators, interpreters, medical and psychological experts, testing, depositions, etc.) shall be approved in advance by MCILS. Funds for third-party services will be provided by MCILS only upon written request and a sufficient demonstration of reasonableness, relevancy, and need in accordance with MCILS rules and procedures governing requests for funds for experts and investigators. *See Chapter 302 Procedures Regarding Funds for Experts and Investigators.*
7. **Witness, Subpoena, and Service Fees.** Witness, subpoena, and service fees will be reimbursed only pursuant to the Maine Rules of Court. It is unnecessary for counsel to advance these costs, and they shall not be included as a voucher expense without prior

consent from the Executive Director or designee. Fees for service of process by persons other than the sheriff shall not exceed those allowed by 30-A M.R.S. §421. The same procedure shall be followed in civil cases.

SECTION 4. PRESUMPTIVE REVIEW

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

1. Trial Court Criminal Fees

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

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

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

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

- D. *(Repealed)*
- E. Upon written request to MCILS, a second Counsel, may be assigned in a murder case or other complicated cases, to provide for mentorship, or for other good cause at the discretion of the Executive Director:
 - 1) the duties of each Counsel must be clearly and specifically defined, and counsel must avoid unnecessary duplication of effort;
 - 2) each Counsel must submit a voucher to MCILS. Counsel should coordinate the submission of voucher so that they can be reviewed together. Co-counsel who practice in the same firm may submit a single voucher that reflects the work done by each Counsel.

2. **District Court Child Protection**

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

3. **Other District Court Civil**

- A. Triggering fees in District Court civil actions, excluding any itemized expenses, are set in accordance with this subsection. Counsel must provide MCILS with written justification for any voucher that exceeds the triggering fee.
 - 1) **Application for Involuntary Commitment.** \$1,000
 - 2) **Petition for Emancipation.** \$1,500
 - 3) **Petition for Modified Release Treatment.** \$1,000
 - 4) **Petition for Release or Discharge.** \$1,000

4. **Law Court**

- A. *(Repealed)*

- B. *(Repealed)*
- C. Appellate: \$2,000

SECTION 5: MINIMUM FEES

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

SECTION 6: ADMINISTRATION

Vouchers for payment of counsel fees and expenses shall be submitted within ninety days of a terminal case event. Lawyer of the Day and specialty courts shall be billed within 90 days of the service provided. Vouchers not submitted within 90-days of a terminal case event cannot be paid, except on a showing by counsel that a voucher could not have been timely submitted for reasons outside the actual or constructive control of counsel. Counsel are encouraged to submit interim vouchers not more often than once every 90 days per case. Counsel may request reconsideration of a voucher rejected between April 1, 2021 and the effective date of this rule if that voucher would be payable under this rule.

Terminal case events are:

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

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

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

2. All time on vouchers shall be detailed and accounted for in .10 of an hour increments. The purpose for each time entry must be self-evident or specifically stated. Use of the comment section is recommended.
 3. All expenses claimed for reimbursement must be fully itemized on the voucher. Copies of receipts for payments to third parties shall be retained and appended to the voucher.
-

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

Cut Off From the Courthouse:

*How the Digital Divide
Impacts Access to Justice
and Civic Engagement*





Next Century Cities (“NCC”) is a nonprofit, non-partisan organization that advocates for fast, affordable, and reliable broadband Internet access across the United States. NCC is made up of over 220 members across 40+ states, and they work alongside local officials and community leaders in municipalities of all sizes and political stripes to eliminate the digital divide.

Next Century Cities’ work spans the wide variety of issues affecting connectivity and municipal governments. Across their growing policy and program team, they partner with members to tackle issues including broadband access and adoption, digital inclusion, digital equity, privacy, spectrum allocation, civic engagement, and more. NCC advocates for their members before Congress, the White House, the Federal Communications Commission, and in state capitals and governor’s offices across the United States.



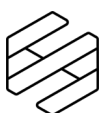
The Samuelson Law, Technology & Public Policy Clinic at UC Berkeley School of Law trains the next generation of lawyers to advance the public interest in a digital age marked by rapid technological change. The Clinic focuses its work on three main areas: protecting civil liberties, ensuring a fair criminal justice system, and promoting balanced intellectual property laws and access to information. It advances these objectives through litigation, regulatory and legislative processes, and policy analysis, including on matters of telecommunications law and policy.

Acknowledgements

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Cut Off From the Courthouse:

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Executive Summary

The COVID-19 pandemic forced an overdue assessment of state and federal broadband policies. Stark images of people sitting in parking lots to access free Wi-Fi connectivity for school, work, or medical assistance laid bare the gaps in access to affordable broadband. Those images spurred broadband deployment and affordability policies updated for a new reality where much of life takes place online. However, those images paint an incomplete picture that leaves out other significant and inequitably distributed harms faced by the un- and under-connected.

This report fills in a critical missing piece of that picture using insights from interviews with 27 public defenders, family attorneys, public servants, community organizers, and others who provide legal assistance, support community advocacy efforts, and deliver government services in communities throughout California. Those insights show how lack of access to affordable broadband compounds inequality. Lack of access leads to missed court appearances, inability to confer with counsel before life-altering legal proceedings and decisions, isolation from democratic processes, and inability to receive critical government services and safety information.

These insights also show that access and affordability are not the only drivers of this inequality. Digital literacy and access to suitable devices are just as important for meaningful and equal participation in remote proceedings as infrastructure and affordability programs.

While highlighting the digital divide's contribution to other, entrenched forms of inequality, the interviews informing this report also point toward two distinct opportunities for narrowing the digital divide. First, some California communities have become innovative and self-reliant in providing their most disadvantaged residents with affordable or even free broadband services. Second, the same interviewees who recounted how their clients and communities could not access affordable broadband or related programs also signaled their willingness to help connect people to those programs. Thus, the same service providers who regularly witness firsthand the harms inflicted by the digital divide may be key partners in redressing those harms.

After exploring the connection between broadband policy and access to courts, civic engagement, and government services, this report offers the following conclusions:

Key Findings

- 1 Lack of adequate broadband access, devices, and digital literacy skills entrenches existing inequalities that civic institutions are working to eliminate.
- 2 Remote hearings should be optional. In the courts, remote hearings can be effective for ministerial legal hearings and some substantive civil hearings. For civic institutions, remote hearings can increase access, but they can also exclude residents contending with digital access and adoption barriers.
- 3 Deficiencies in public awareness of broadband affordability programs or community broadband services ensure that they remain underutilized. Trusted legal service providers, who work with residents eligible for broadband affordability programs, could be program ambassadors as they are an overlooked touchpoint for information.
- 4 Lack of trust in government affordability programs can be just as much of a barrier to broadband affordability programs as lack of information.
- 5 Mobile Internet service and devices are not sufficient for equitable access to courts, legal services, government proceedings, and public benefits.

Recommendations

- 1 Invest in adoption as well as access.** Greater access to affordable broadband service offerings and digital skills training must accompany the push for remote judicial and administrative proceedings, civic engagement, and government services. Investments in both access and adoption will help to ensure that residents can be heard, apply for government services, and stay informed about local emergencies.
- 2 Partner with community organizations.** Government partnerships with local community organizations may help overcome trust barriers that prevent some households from enrolling in broadband affordability and access programs.
- 3 Support the full range of service providers.** To promote awareness of broadband subsidy programs and digital literacy education initiatives, it is important to partner with and provide resources for public defenders, legal aid offices, and other legal service providers. These providers can serve as program ambassadors and promote broadband adoption in low-income communities. That support should go along with robust resources for libraries, schools, senior centers, and other community anchor institutions.
- 4 Streamline enrollment.** Enrolling in broadband subsidy programs should be as easy as possible. Streamlining the application process and establishing a single application for multiple programs will reduce burdens on some residents.
- 5 Support local solutions.** Broadband funding should support innovative municipal and community-based initiatives to expand access (e.g., municipal mesh networks and hotspot programs). They expand broadband access for communities who are underserved by traditional providers and may not be able to afford broadband even with the assistance of subsidy programs. Flexible funding programs and local best practices are two strategies that can empower communities to tackle persistent digital divides.

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Introduction

A longtime legal aid lawyer and her client were frustrated that the judge could not see the client during a telephonic hearing to appeal the denial of a social security disability claim. It was simply impossible for the judge to understand the extent of the client’s intellectual and physical disabilities, and a voice over the line could not elicit the empathy that in-person participation might have.¹

Another lawyer drove eight hours to meet her clients—mostly rural farm workers in the Imperial Valley—to discuss foreclosure notices so that they wouldn’t lose their homes. The clients themselves could barely afford the full day off work or the tank of fuel it would take to travel to her office. The lack of broadband access and obstacles to adoption eliminated videoconferencing as an option in the rural regions where her clients live and work.²

And a local government official worried about the people who were no longer able to attend city council meetings once they moved online because they lacked broadband access, connected devices, or the skills to keep pace with events in their communities.³

These real-life examples illustrate why Internet connectivity is, in the words of late Congressman John Lewis, “the civil rights issue of the 21st century.”⁴ Gaps in Internet access and adoption are part of a larger issue: digital equity, or the “digital divide,” a term that has come to mean the “gap between people who can easily use or access technology and those who cannot.”⁵

Although the digital divide has been recognized and discussed for more than twenty years,⁶ the COVID-19 pandemic cast digital inequities in a new light. Renewed attention motivated federal, state, and local governments to redouble broadband access and adoption efforts. Healthcare, employment, and education have figured prominently as rationales for investing in affordable broadband. In comparison, significantly less attention has been paid to the digital divide's impact on access to justice, civic engagement, and the full range of services provided at federal, state, and local levels.

The digital divide is a civil rights divide. People deprived of affordable and reliable broadband service (i.e., high-speed Internet access), the skills to use Internet-capable devices, or both, are often unable to enforce their legal rights, defend themselves in court, participate in the political process, or receive government entitlements.

This report presents insights from interviews with 27 professionals who provide legal, civic, and government services. The interviewees work directly with the communities they serve and understand firsthand the digital divide's impact on residents. They include public defenders, staff attorneys at rural and urban legal aid associations, academics with practical and research insight into access to justice and technology issues, as well as a former judge. The interviews explored the many ways in which the digital divide manifests itself in their work and why related inequities are likely to persist. The analysis and recommendations contained herein showcase the less obvious ways that the digital divide injures a wide range of communities in the context of the legal system and civic participation.

The digital divide is largely a result of two distinct barriers. The **first barrier** relates to a household's access to high-speed digital infrastructure. For example, the high cost of deployment in sparsely populated areas and subpar speeds can interfere with baseline access. The **second barrier** relates to the inability to benefit from a broadband connection. The high cost of maintaining a subscription, not having the requisite equipment or digital literacy, or a lack of information about and trust in universal service programs prevent millions of households from making full, productive use of the Internet.

Barriers to broadband access and adoption are felt disproportionately by populations that are underrepresented in public and private decision-making roles. Factors such as disability status, age, low income, ethnicity, race, education level, and geography can reliably be used to pinpoint digital divides.⁷

By any account, millions of Americans experience the digital divide. According to the Federal Communications Commission's ("FCC") conservative estimate in 2019, twenty-one million Americans lack "access to broadband service, defined by the FCC as a download speed of 25 Mbps and upload speed of 3 Mbps."⁸ That same year, Microsoft estimated that the number is as high as 162 million people.⁹ These estimates do not account for those who may have access to broadband but find themselves on the wrong side of the digital divide due to other factors like affordability or digital literacy.¹⁰

Findings in this report reinforce the need for building public awareness of broadband affordability programs and digital resources, a vital step for narrowing the digital divide. Interviewees in public service and private sector roles emphasized that communities impacted by the digital divide are more likely to be receptive to outreach efforts by organizations that have built trust in those communities. Far too often, when the community-based organizations conducting outreach lack adequate support and eligible households lack awareness of their eligibility, the households in the greatest need suffer in silence.

Governments at all levels can help by supporting organizations that serve as key touchpoints with people who are eligible for, and in need of, affordability programs. In November 2021, Congress assigned grant funding in the Infrastructure Investment and Jobs Act ("**Infrastructure Act**") to provide the FCC with resources to support community outreach efforts.¹¹ The grant program includes funding for community organizations to promote and assist individuals in signing up for the Commission's new Internet affordability program.¹² In the meantime, it is critical that courts, legal service organizations, civic institutions, and city councils—among others—recognize that people do not have equal access to remote proceedings or government service platforms. Sensitivity to these issues will help reduce some of the resulting inequities.

The report is organized around three categories of remotely accessed venues or services, and how two sets of barriers—access/adoption and device availability/digital literacy—influence them:

1. Courts and Legal Services,
2. Civic Engagement, and
3. Government Services.

While imperfect, remote access to court and legal services has helped overcome some traditional barriers to accessing justice in person. At the same time, the stories in this report illustrate how those directly affected by the digital divide face a new set of access challenges that make justice elusive.

Specifically, **Part I** documents how the digital divide restricts access to the courts and legal service providers. Residents and service providers detail how digital inequities can hinder participation in remote court proceedings, communication with counsel, and preparation and understanding of filings. As this report reflects, the majority of our interviewees are legal service providers.

Part II shows how the digital divide restricts access to civic fora, such as remote town hall meetings and other virtual government functions. As with access to remote court proceedings and legal services, this report recognizes that the move to online platforms during the COVID-19 pandemic has had mixed results, expanding access for those who would have trouble attending in-person events while adding hurdles for those on the wrong side of the digital divide.

Finally, **Part III** shows how the digital divide restricts access to government services such as unemployment, social security, public safety alerts, and other community benefits. Also discussed are examples of municipalities that have expanded access to government services by implementing connectivity programs. The tangible benefits of these programs illustrate how widespread connectivity reinforces a supported, informed, and safe community. At the same time, realizing those benefits requires building relationships and working with trusted community organizations to connect hard-to-reach community members.

Courts and Legal Services

There is significant overlap between those who qualify for subsidized legal services and those in need of broadband service. For criminal matters, those represented by public defenders generally cannot afford legal services outside of what the state or federal government provides.¹³

The income criteria for qualifying for legal aid from the Legal Services Corporation is 125% of poverty guidelines¹⁴—10% less than the income limit for the federal Lifeline program, which subsidizes phone and broadband Internet access for low-income households.¹⁵ The Affordable Connectivity Program has raised this bar to 200% of the federal poverty limit to increase the number of eligible households that may fall just above Lifeline's cutoff.¹⁶ While the income thresholds are different, these assistance programs attempt to reach the same population, and for good reason. Many people facing legal issues cannot afford a fixed broadband subscription, let alone a lawyer.¹⁷

Our research into the digital divide's impact on remote legal proceedings and access to legal services surfaced two main drivers of inequality. The first relates to the provision of the network itself while the second relates to what happens at the edge of the network:

1. Access and Affordability. Communities who face logistical challenges accessing courts and legal services (oftentimes low-income residents, people living with disabilities, or those living in rural areas) also face barriers in accessing basic Internet connectivity. In some cases, the problem is lack of infrastructure. For others, the infrastructure is there, but individuals cannot afford the installation or service price.

2. Devices and Digital Literacy. Video hearings and remote client counseling are problematic for those who lack the tools or digital skills needed to effectively participate in government proceedings, including their own hearings.

The transition to remote legal proceedings, accelerated by the COVID-19 pandemic, is expected to remain a fixture of the modern judicial landscape. Remote proceedings can help parties overcome logistical, economic, and geographic barriers to venues where they can enforce their rights. But effective remote access to court proceedings and legal services requires sufficient bandwidth, device capability, and digital literacy to meaningfully appear and be heard.

Remote Legal Proceedings: Beneficial, Imperfect, and Here to Stay

Camille Pannu was a legal services attorney with clients spread throughout the rural Imperial Valley in southeastern California. Some days, her clients would drive six or eight hours to meet with her. She was often the only legal service provider within several hours' drive. Most of her clients lacked broadband access and cell service in vast swaths of rural California can be unreliable. Videoconferencing was simply not an option for her and her clients.

Many of Pannu's clients were agricultural workers who could not afford to take a day off work for a meeting. She frequently drove to them, knowing the grave consequences if her clients lacked counsel. One client nearly lost their family home after a single missed mortgage payment. The bank was set to take the home, until Pannu stepped in and stopped the foreclosure. Losing housing is devastating, and sometimes all someone needs to keep their home is a lawyer to clear a title or represent them in a foreclosure hearing. But if they are unable to meet with a lawyer, they are unable to access vital legal services.¹⁸

Judges, lawyers, and other courtroom professionals generally support remote proceedings, with some qualifications.¹⁹ For instance, Nathan Hecht, the chief justice of the Texas Supreme Court and co-chair of the National Center for State Courts pandemic rapid response team concluded that “[W]e’re going to be doing court business remotely forever[.]”²⁰ Chief Judge Kimberly Mueller of the federal Eastern District of California agreed, stating, “I’ve become persuaded that the videoconferencing by Zoom for the purposes of civil scheduling conferences, civil law in motion, and quite a bit of criminal pretrial work is a good enough equivalent to seeing someone in person.”²¹

Perhaps the foremost benefit of remote proceedings is their potential to increase access to legal counsel. Every legal service provider interviewed discussed the difficulty their clients experience in taking time to visit their offices, attend court hearings, visit a self-help legal center, or meet with a lawyer at a courthouse. There are various factors that can inhibit clients from physically appearing before a judge or in a lawyer's office, including inability to take time off work, inadequate transportation options, disability or age considerations making travel difficult, and geographic proximity to services.²²

Employment. As one public defender reported, some of his clients could not attend court hearings because they were afraid of losing their jobs.²³ For many, getting permission from their employer to take an entire day off work is prohibitive, even before factoring in the cost of gas and lost income.²⁴

Transportation. Lack of affordable transportation is another persistent barrier. One longtime public defender explained that his office had clients who walked a great distance to meet with their assigned attorneys.²⁵ Another public defender has clients who are as far away as a four- or five-hour drive.²⁶ A third public defender observed that “perfunctory court appearances can be extremely disruptive” to her clients who sometimes must take a full day off work to attend short administrative hearings like a status conference.²⁷

Mobility/Disability. Traveling can also be problematic for people with mobility impairments, such as seniors or people with disabilities. Travel creates additional barriers to attending court sessions or meeting with counsel. For some, this means coordinating special transportation or incurring extra costs for aides.²⁸

“Attorney Deserts.” Many rural residents live in “attorney deserts”—geographic areas where legal services are not readily available.²⁹ “It’s not feasible to deliver legal services to rural areas unless you have broadband,” said Pannu, the lone transactional legal aid attorney serving eight rural counties in California.³⁰ Geographical voids in broadband access and adoption directly impact rural residents’ ability to obtain and use legal services. These voids in broadband access coincide with voids in local legal assistance.

Remote opportunities to confer with counsel and attend court could, in theory, make participation possible for low-income residents who otherwise could not attend hearings or could attend only at great cost. For instance, a remote court option for a routine court proceeding would save litigants both travel and in-court wait time.³¹

However, the limitations of videoconferencing applications make remote hearings an imperfect substitute for in-person appearances or in-person consultation. For criminal proceedings in particular, these shortcomings can be unacceptably harmful. Even when a person has adequate bandwidth, a suitable device, and requisite digital skills, remote proceedings can impede that person’s ability to be heard and enforce their rights.

The practitioners and judge interviewed identified clear shortcomings in remote proceedings, such as the:

- inability of counsel to confer privately with their client during the proceeding,
- absence of the comfort and support a client ordinarily feels by having their lawyer standing by them, and
- difficulty connecting with the judge and jury when a screen is an intermediary in that connection.

Whatever their merits or defects, remote court proceedings are here to stay. In California, for example, state and federal courts have been authorized to continue holding certain proceedings remotely. And the Judicial Council of California has recommended that “California courts should expand and maximize remote access on a permanent basis for most proceedings and should not default to pre-pandemic levels of in-person operations.”³² Following this recommendation, the California legislature unanimously approved a bill that would permit courts to keep civil hearings remote until July 2023.³³ California Governor Gavin Newsom signed the bill into law in September 2021.³⁴

At the federal level, the CARES Act allowed the Judicial Conference—the administrative policy-making body for the federal courts—to respond to the pandemic by giving chief judges the discretion to hold certain criminal proceedings and all civil proceedings remotely through the use of videoconferencing or teleconferencing systems.³⁵ This authorization will end “30 days after the date on which the national emergency ends, or the date when the Judicial Conference finds that the federal courts are no longer materially affected, whichever is earlier.”³⁶

Courts and policymakers must recognize how the digital divide prevents equal access to remote proceedings if they hope to ensure the greatest possible benefits of remote participation. As Judge Jeremy Fogel, Executive Director of the Berkeley Judicial Institute, explained, “I think the solution . . . is not to get rid of remote proceedings but to strengthen the capability of broadband or add resources” so that people can effectively participate in remote proceedings.³⁷ An attorney representing homeless and senior clients agreed: “More access is better, while it may exacerbate inequities for the most vulnerable at some points, we can work to address that.”³⁸

Understanding both the potential benefits and inequities of remote proceedings helps policymakers better address underlying connectivity barriers. Because experts anticipate that many court functions will remain online after the pandemic ends,³⁹ insufficient bandwidth and lack of Internet access will remain grave impediments to justice.

Barriers to Meaningful Participation in Remote Court Proceedings

Sarah Reisman has spent years representing people who cannot afford their own representation and is currently the Directing Attorney of Litigation and Advocacy at Community Legal Aid SoCal which, among other things, helps clients enroll in and appeal denial of government benefits. That work demonstrates how it is often crucial for the administrative judge to see the clients:

A picture is worth a thousand words if you can see the disability—especially if the disability is developmental or something that’s cognitive or not apparent. The Administrative Law Judge being able to see that client, how they react and interact, [and] how they respond to questions, is very important.⁴⁰

Reisman knows how crucial it is that the judge see “how [the disability] has all manifested in [the client’s] body, how that impacts her mobility, impacts her ability to concentrate.”⁴¹ Even absent a visually apparent disability, individual prejudices disadvantage call-in litigants. Another attorney explained that those appearing by phone have “second-class status” in the virtual courtroom.⁴²

Having this “second-class status” in a virtual hearing can have serious consequences in federal proceedings. A 2017 U.S. Government Accountability Office report describes how an immigration judge was unable to identify a respondent’s cognitive disability over a video conference. However, at a subsequent in-person hearing, the respondent’s disability was “clearly evident.”⁴³ This disparity can significantly disadvantage litigants who may not have the capacity to understand the repercussions of appearing remotely.

Insufficient or unaffordable broadband service, unsuitable devices, or a lack of digital literacy can irreparably impair a party’s attendance or participation in a remote court proceeding. Participants without broadband access may fail to appear in a court proceeding or be unable to participate in court-ordered remediation. Lack of digital preparedness can also keep people from seeing or being seen at a remote proceeding, negatively impacting their ability to fully participate.

ACCESS AND AFFORDABILITY

Olivia Sideman, a Bay Area public defender, stated that there is no substitute for “the client hearing it himself—to hear their attorney arguing for them, fighting on their behalf, cross-examining the police officer.”⁴⁴ In her view, when a defendant

[W]hen a defendant cannot participate because of Internet access barriers, “it’s another way in which our clients’ rights are overlooked by the court, another way in which this entire system tramples on our clients’ rights

cannot participate because of Internet access barriers, “it’s another way in which our clients’ rights are overlooked by the court, another way in which this entire system tramples on our clients’

rights. I think you have a right to be present, to know what’s going on in your case.”⁴⁵ These sorts of experiences undermine faith in the justice system and civic institutions.

In some cases, missing a remote hearing can result in a default judgment against a party. In an eviction hearing, for instance, “the inability to connect to the call may not just be the loss of basic rights . . . it could also be the difference between housing and homelessness.”⁴⁶ Notably, courts have issued arrest warrants for failure to appear at remote hearings.⁴⁷

Digital inequities have also prevented criminal defendants from complying with court-ordered online remediation. For instance, online therapy sessions, alcohol or drug counseling meetings, or anger management classes are often imposed by courts. However, when a defendant cannot attend mandatory online meetings, they face potentially severe penalties. “If you don’t do your classes, you can end up back in jail,” Sideman explained. “So, if you’re supposed to do fifty-two domestic violence classes [some of which may need to be completed online]—you’ll get brought back into court over and over again if you’re not doing them, and ultimately, you’ll get brought into jail.”⁴⁸

When a client cannot participate in online remediation, they are disadvantaged from the start. Said Sideman: “It’s much more difficult for me to get the same outcomes for my clients who don’t have access to the Internet because I can’t tell the judge that my clients will do certain things.”⁴⁹

A client’s inability to access remote proceedings or remediation programs might be a consequence of geography or demographics. In rural areas, over seventeen percent of the population does not have access to broadband at home.⁵⁰ For some communities, “digital redlining”⁵¹ hinders broadband deployment. It is a result of intentional or de facto broadband investment strategies where a provider chooses not to serve an area or focuses exclusively on nearby areas with higher returns on investment.⁵²

Digital redlining often occurs on the same socio-economic lines as historic redlining, which was the “deliberate practice, carried out by both the government and the private sector, of denying loans and investment to communities of color.” It “further entrench[es] discriminatory practices against already marginalized groups”⁵³ and historically targeted low-income communities.

Similarly, low-income households often lack the services, devices, or resources necessary to access the legal system remotely. Twenty-seven percent of households who earn less than \$30,000 a year say they have a smartphone but no broadband at home.⁵⁴ Thirteen percent of households in this bracket have neither.⁵⁵ Either way, the consequence is the same. Being on the wrong side of the digital divide prejudices clients at every stage of their involvement with the legal system.

There are new efforts at the federal level to identify and remediate digital redlining. The Infrastructure Act tasks the FCC with creating rules to facilitate equal access to broadband by preventing digital discrimination on the basis of income level, race, ethnicity, color, religion, or national origin.⁵⁶ The agency is also required to identify and take necessary steps to eliminate digital discrimination.⁵⁷ Congress has given the Commission broad authority to determine the contributing factors. Accordingly, the FCC has an unprecedented opportunity to strike at the root causes of both intentional and unintentional digital redlining.

Additionally, the FCC is responsible for developing model policies and best practices that state and local governments can adopt to prevent broadband service providers from engaging in certain discriminatory practices.⁵⁸ For its part, the California Public Utilities Commission launched an investigation of digital redlining at the state level in 2021.⁵⁹ Resulting policies could serve as an additional model for states seeking similar remedies.

DEVICE ACCESS AND DIGITAL LITERACY ISSUES

Several interviewees said their clients are simply unfamiliar with computers.⁶⁰ Sometimes, it is necessary to train clients how to use videoconferencing software so that they can attend remote court proceedings.⁶¹ “For the most part,” public defender Olivia Sideman explained, “my clients can’t log onto BlueJeans; they don’t have the tools or resources to do it, and they don’t know how.”⁶² Some clients face especially steep learning curves, struggling with basic operations such as downloading and opening applications.⁶³

Remote court and administrative proceedings are often arranged on the assumption that all participants will appear via videoconference. A party appearing instead only by telephone is disadvantaged compared to video participants in the proceeding. Video participants have the advantage of seeing a “gallery” of all participants, giving them access to visual cues and reactions that a telephonic participant is not privy to. It is crucial for litigants in a videoconferencing hearing to see the judge and gauge their reaction. Inability to do so can lead to mistakes, and ultimately prejudice the judge against them.⁶⁴ Inadvertently talking over others can irk judges. It is also difficult to gauge when a court is sympathetic to a line of argument without visual cues.

Even litigants who can use video on their phone are disadvantaged when shaky video from a handheld device impairs their ability to both convey and receive information.⁶⁵ As one attorney pointed out, “the experience of appearing by phone is significantly different than appearing from a larger or more stable screen” and plainly insufficient.⁶⁶

A party appearing instead only by telephone is disadvantaged compared to video participants in the proceeding.

Seeing a party is also important for a judge to build empathy and understanding for them. “In most cases

it’s a real disadvantage if you can’t be seen,” according to Judge Fogel, who has served in municipal, state, and federal courts.⁶⁷ “Fairly or unfairly, we intuitively judge veracity based on nonverbal communication,” so when a judge cannot see facial cues and body language, it is more difficult to tell whether somebody is reliable.⁶⁸ For both the court and the litigant, not being seen is an “inferior experience.”⁶⁹

The Digital Divide as Barrier to the Attorney-Client Relationship

Olivia Sideman has been a public defender in the City of Oakland for four years. She represents indigent clients who are unable to pay for a lawyer. Some are homeless or marginally housed. There is a stark difference in the level of representation she can provide to clients who have access to email and phones compared to those who she has no consistent way to reach.

Simply put, Sideman cannot obtain the same outcomes for her un- or less-connected clients as for those who have reliable Internet and phone access. In some cases, she needs the client's consent to appear on their behalf, accept a plea deal, or enroll them in a diversion program to avoid jail time. Sideman is unable to counsel clients about these options if she cannot get in touch with them.⁷⁰ Her clients' lack of digital literacy is also a barrier to effective representation. Sideman said that it is not easy to teach these skills, and the fewer skills people have, the harder it is to teach them. She noted that if there was a way to help her clients get access to the Internet, she would. "If information was given to us, we would use it."⁷¹

The digital divide diminishes legal service providers' ability to serve their clients by creating barriers to attorney-client communication. The lack of digital literacy and devices also drains the resources of legal service providers. Furthermore, legal service providers could serve clients and the public more broadly and in new ways if they were confident people could access online resources.

ACCESSING DOCUMENTS AND REACHING COUNSEL

A range of issues hamper an attorney's ability to properly communicate with their client. Candis Mitchell, a longtime public defender, told us that it is essential that their clients **see** the documents they are reviewing. For instance, when explaining complicated federal sentencing guidelines to a client while counseling them on what to expect if they agree to a plea deal or choose to go to trial, her office uses charts to explain the process.⁷² Clients need to be able to see and process the information in those charts to make better informed choices about what to do.

Sending documents back and forth is an ongoing challenge since those without home broadband access must go outside the home to email or fax documents, compromising their ability to communicate securely, privately, and with dignity.⁷³ Olivia Sideman reported, “I don’t really want to be emailing these [sensitive] documents to a Kinko’s or to somebody’s boss” when a client doesn’t have their own email address because it can undermine confidentiality, jeopardize their employment, or embarrass them.⁷⁴

Sideman further explained, “I have cases where the case would be dismissed by now but I can’t reach the client to get them to agree to [let me] appear on their behalf. . . . I legally have an obligation to run [a plea deal or a deal to enroll in a diversionary program] by my client.”⁷⁵ Another attorney stated that, in the case of a current client who lost her phone, “We’ve potentially totally lost touch with a client who has time-sensitive legal needs that we can’t address because of the technology barriers.”⁷⁶

Additionally, clients often have limited cell phone plans, introducing an implicit, if not explicit, desire to keep conversations as brief as possible.⁷⁷ As one public defender recognized, her clients’ reliance on data plans to access the Internet meant that her thoroughness in reviewing documents with her clients over Zoom cost her clients money needed for food, transportation, and other life necessities.⁷⁸

At various points during the pandemic, COVID-19 restrictions at local libraries have interfered with reliable access to digital communications.⁷⁹ A 2020 report by the Public Library Association found that, among all services libraries make

“I don’t really want to be emailing these [sensitive] documents to a Kinko’s or to somebody’s boss” when a client doesn’t have their own email address because it can undermine confidentiality, jeopardize their employment, or embarrass them.”

available for their patrons, printing, copying, and faxing services are amongst the most ubiquitous nationwide.⁸⁰ These are also essential services for receiving and transmitting legal

correspondence. Fortunately, some libraries facilitate online legal assistance or consultation programs,⁸¹ a crucial resource for those who are unable to travel or do not have the digital access and skills required to navigate the virtual process on their own.

DIGITAL LITERACY

Attorneys and other providers stressed that lack of digital literacy was a particularly common hurdle in communicating with clients and assisting with court appearances. Kaelan Orozco, a former legal services attorney in Southern California, confirmed that some of her clients had to come into her office to attend a virtual court hearing. That was true even if they had broadband access because some simply did not know how to use the technology.⁸²

During the pandemic, videoconferencing has been necessary to meet with clients.⁸³ Client representation suffers when the client cannot access adequate broadband or suitable devices, or when they lack the requisite digital skills to use them. “It’s hard to develop a relationship with a client when they don’t even know what you look like,” one attorney observed.⁸⁴

Carmen Sanchez, a social worker in the San Francisco Public Defender’s Office, observed how clients who had recently been released from long prison sentences struggle with learning how to use the technology necessary for meeting the conditions of their parole or reengaging with society. It is a “whole new world” for them, Sanchez explained, describing how recently released clients struggle to manage basic tasks like pay bills because “everything’s online now.”⁸⁵

Spending time teaching clients basic digital skills detracts from time that could be spent advocating on a client’s behalf.⁸⁶ Digital unpreparedness can strain the already limited resources of organizations providing legal services.

Spending time teaching clients basic digital skills detracts from time that could be spent advocating on a client’s behalf

Sanchez stated that she finds herself performing tasks online for her clients because it is easier than training them. This is the case

whether the client is using a smartphone or a personal computer.⁸⁷ When the main goal is to provide someone with much-needed legal counsel, the time it takes to practice navigating a digital device comes at a premium.

The migration of legal proceedings and legal services to online platforms can benefit low-income people and others for whom in-court appearances or in-person client meetings pose a range of logistical and economic challenges. That benefit presupposes a stable Internet connection as well as the equipment and know-how to use it, which is rarely the case among low-income or rural defendants. As remote legal services become fixtures of the post-pandemic world, broadband policies must evolve to put those services in reach of all who need them.

Civic Engagement

The pandemic shifted many public meetings from in-person to remote proceedings, including city council meetings, legislative hearings, and agency proceedings. The interviews and research conducted for this report revealed that the shift to virtual options generally increases participation. However, as with remote access to court proceedings and services, those who are on the wrong side of the digital divide were unable to receive the full benefit of remote participation in hearings, meetings, and public debates that shape democracy.

Remote town halls and other civic proceedings threaten to chill civic engagement for people who lack broadband, connected devices, and digital literacy skills necessary to access the Internet. This section explores how the digital divide undermines equitable civic participation. It first discusses the ways in which remote access expands participation for those who have difficulty attending in-person meetings and hearings. It then examines the barriers to participation posed by lack of broadband access, awareness of and trust in affordability, equipment, and skills training programs necessary to participate in civic proceedings.

Remote Civic Proceedings Expand Participation for Many

As Peter Estes, a community organizer with Senior and Disability Action (“SDA”), explained, although remote hearings allow for greater participation for some of SDA’s constituents, others are alienated from online civic life because they lack the broadband access, technology, or wherewithal to participate in remote meetings.⁸⁸ SDA, a community organizing nonprofit, also provides support services to San Franciscans who are older or have disabilities. Before the COVID-19 pandemic, many of the people SDA serves had trouble attending government meetings or hearings. Meetings migrated online during the pandemic, enabling many SDA members who previously faced hurdles attending in-person meetings to participate remotely.

As the organization’s leaders explained in a 2021 op-ed, when civic functions were in person, their members struggled to travel to meetings due to their age or disability. Their “ability to participate depended on whether [they] felt well enough to attend a meeting that could go on for hours before getting to the agenda item that would deeply impact [thei]r lives.”⁸⁹ But when the pandemic hit and civic meetings went online, the organization found its constituents could participate more directly, and more often, in the democratic process.

According to SDA, “The reason so many voices could be included in those meetings is that people were able to participate safely from wherever they were—wherever they had access to the Internet or a phone.”⁹⁰ Seniors who could not easily leave the house and people with limited mobility were able to participate in government proceedings as fully as their fellow community members. Still, not all of SDA’s constituents could benefit from remote participation. Those who lacked broadband access or digital literacy were unable to participate equally in virtual proceedings.

Reports from around the country echo the SDA organizers' experience. Remote access greatly expands civic participation in many instances. The City of Boston, Massachusetts, for instance, saw the number of attendees at some public conversations, rallies, and meetings increase three- to four-fold after

After the City of Gonzales, California, distributed Wi-Fi hotspots to all residents who wanted them, they noticed increased participation in city council meetings.

going online.⁹¹ After the City of Gonzales, California, distributed Wi-Fi hotspots to all residents who wanted them, they noticed

increased participation in city council meetings.⁹² The Town of Andover, Kansas, saw a fifty percent increase in city council meeting attendance after moving online.⁹³ One Connecticut municipal utility commissioner with limited mobility was able to continue serving on the board during the pandemic only because of virtual options, stating that its "Town Hall is not designed for somebody in a wheelchair."⁹⁴

Given the benefits of remote attendance, some government officials have pushed to expand remote access to government proceedings. In California, current law, including legislation enacted in response to the pandemic, allows city councils and local agencies, boards, and commissions to convene via "teleconference" (defined to encompass both conference calls and videoconferences) to conduct the people's business while there is a state of emergency in place and a governing body has proclaimed that social distancing is required for public health.⁹⁵

California Assembly Bill 339, proposed in 2021, would have gone further to **require** that public meetings in jurisdictions with populations exceeding 250,000 retain a remote option until the end of 2023.⁹⁶ The bill proposed both that public meetings currently being made available over the Internet would continue in this form, and that the public would be offered either a telephonic or Internet-based option to attend hearings and comment on proposed legislation.⁹⁷ Governor Newsom disagreed and vetoed A.B. 339, warning that it would "set a precedent of tying public access requirements to the population of jurisdictions" as well as limit flexibility and increase costs for local jurisdictions trying to manage their meetings.⁹⁸

Even opponents of A.B. 339 recognized the importance of remote testimony. As one Los Angeles councilmember who opposed the bill recounted, "At L.A. Metro, I have heard from more bus riders and more passengers as a result of remote testimony than I ever did at all those meetings where people had to come in from all corners of the county. . . . We heard wrenching testimony from actual renters and what their fears were, not just advocates for renters."⁹⁹

Barriers to Participation in Remote Proceedings Reinforce Underrepresentation

Jeremy Haile was Chief of Staff to a member of the Berkeley City Council when the pandemic set in. Haile told us that City Council “[m]eetings affect everything from whether your road is paved to whether the chief of police is going to keep her job, to whether affordable housing is going to be built.”¹⁰⁰

Once city council meetings transitioned to videoconferencing, Haile noticed something or rather, the absence of something. Although the council used Zoom, members of the public could participate via audio only. When meetings were in person, members of Berkeley’s homeless population would show up to city council meetings and speak to issues affecting their community. But very few of them logged into virtual meetings. From time to time, a constituent would say, during a remote meeting, “I don’t usually have a phone or computer, but I was able to borrow one now. This is hurting my ability to participate.”¹⁰¹

Haile worries that the people attending city council meetings during the pandemic, via phone or videoconference, are not a representative cross-section of the city. The participants skew more white, more affluent, and more educated than pre-pandemic attendees. Residents who are already disadvantaged by digital inequities are also unable to fully participate in their local government. “It is unfortunate when all the input the council is getting tends to be from a certain echelon of the community and certain people’s voices aren’t heard,” Haile explained.

“I imagine a lot of members of the public tried to log in for the first time and couldn’t figure it out and gave up . . . And I think that this is particularly an issue for older people who aren’t as skilled with tech as young people, or for people with disabilities. I know for a fact there were several instances where people had disabilities that made them unable to participate via Zoom when they could have come to an in-person meeting,” Haile said.¹⁰²

Although remote options benefit many, those on the wrong side of the digital divide do not have access to the same benefits. According to Peter Estes of SDA, although remote proceedings expanded access for some of the seniors and people with disabilities his organization represents, “there are definitely members

“I know for a fact there were several instances where people had disabilities that made them unable to participate via Zoom when they could have come to an in-person meeting.”

who would normally be showing up to city hall in person but who are unable to navigate the public phone line or would love to use city hall’s video interface” but are “unable to

navigate the system or don’t have the technological knowledge to do so.”¹⁰³ Ted Mermin, Director of the California Low-Income Consumer Coalition, reiterated that the lack of access to broadband has been a “significant hurdle” for many “low-income consumers [seeking] the opportunity to speak directly” or even just listen to legislators and staff during the pandemic.¹⁰⁴ Mermin also observed that broadband was vital for participation in regulatory hearings and meetings convened by unions and other government-adjacent civic institutions.¹⁰⁵

Civic participation increasingly requires access to reliable broadband or telephone service and technologies. Expanding access to government functions through remote proceedings should not disadvantage those lacking broadband connectivity, adequate devices, or digital literacy. Without thoughtful broadband programs and intentional policy interventions, the digital divide can easily decrease access to social and political institutions for populations that do not have alternative fora where they can be heard.

ACCESS AND AFFORDABILITY

Factors such as digital redlining and high deployment costs contribute to the lack of infrastructure in urban, suburban, and rural areas. Although the economics of broadband deployment favor urban or suburban areas with higher population densities, low-income households and households in marginalized urban communities have lower adoption rates and slower, less reliable infrastructure.¹⁰⁶

The demographics of the digital divide in Los Angeles, California, where the city council opposed telephonic or videoconferenced public meetings, illustrate the problem. According to Los Angeles Mayor Eric Garcetti, “[i]n Los Angeles, Black and Latino households are only one-third as likely as White households to have Internet, with seniors four times less likely to be connected.”¹⁰⁷ In the historically Black Watts neighborhood, “[o]ver 30% of households lack a broadband subscription.”¹⁰⁸ Broadband subscription rates in parts of Central Los Angeles County—including Watts—were among the lowest in the state.¹⁰⁹

A 2019 study that examined fiber deployment in Los Angeles concluded that broadband providers are underinvesting in areas with a large number of low-income Black residents relative to comparable socioeconomic regions.¹¹⁰ This evidence of digital redlining speaks to a national trend where communities of color are at the greatest risk of not having their needs met to participate in civil life. As noted above, the Los Angeles City Council voted in 2021 to unanimously oppose the passage of A.B. 339, a proposal that would have required their public meetings to be remote until the end of 2023.¹¹¹ Unfortunately, the outcome of that vote was somewhat academic for the households and neighborhoods that do not have reliable and affordable broadband access and therefore could participate in only a limited fashion, if at all.

Rural California communities are also greatly affected by the lack of broadband infrastructure. Only about a third of households in rural California subscribe to Internet service, compared with seventy-eight percent in urban areas.¹¹² "Because broadband infrastructure can cost more to build in rural areas with fewer customers, it can lead to higher prices for customers[.]"¹¹³

Broadband deployment in high-cost areas suffers from patchy data and political gridlock. Rural deployment funding programs frequently prevent recipients from building in areas that the FCC's Form 477 data show already

have sufficient Internet service, despite that data's acknowledged inaccuracy.¹¹⁴ The Infrastructure Act assigns new federal funding to support broadband deployment through state governments that have a more precise

This evidence of digital redlining speaks to a national trend where communities of color are at the greatest risk of not having their needs met to participate in civil life.

view of connectivity in areas distorted by faulty maps. Further, states like Georgia, Pennsylvania, and Maine, among many others, are launching new initiatives to collect speed and coverage data, filling the gaps in existing federal maps.¹¹⁵

Still, the lack of adequate private investment and indirect prohibitions on competition in rural areas compound the problem of broadband affordability. Broadband obstacles at the local, state, and federal level have an interrelated impact on civic participation. Providing state and local governments with greater autonomy to invest federal broadband funding could improve access and adoption in highly disconnected areas.

Marisol Aguilar, director of California Rural Legal Assistance, Inc.'s community equity initiative, has seen firsthand what lack of access means in rural areas. She works with residents to advocate in their communities on a broad range of issues, from lack of clean water to transportation access. During the pandemic,

many of the public agency meetings she attended moved online. This was helpful because she could sometimes project the meeting on a screen for an interested community. Holding remote meetings in this way increased participation.

But where community members couldn't attend meetings because of lack of access, Aguilar saw something else: a lack of oversight. She was "surprised how many companies took advantage of . . . not having any community residents present during the proceedings." Access to civic proceedings as city council and boards of supervisors meetings moved online was thus a "huge issue" for Aguilar.¹¹⁶

Affordability continues to be a dispositive factor in whether a household remains on the wrong side of the digital divide, has access to government programs, and can engage in its own community. A 2021 survey by the California Emerging Technology Fund and the University of Southern California found that by far, the most common reason people give for not having Internet access is affordability.¹¹⁷ Some families cannot afford service even with the discounts offered by Internet service providers to low-income households.¹¹⁸ Nearly twenty-four percent of low-income Californians do not have broadband, according to a study by the Public Policy Institute of California.¹¹⁹

This means that a large swath of the population would not be able to enjoy the democratizing benefits of remote hearings that require a broadband connection to attend. The digital divide thus threatens to cut off from the political process people who are directly affected by it.

DEVICES AND DIGITAL LITERACY

Lack of digital literacy obstructs full civic participation. Even when broadband service is affordable and accessible, some people do not know how to use their computer or telephone to join a city council meeting or watch a legislative hearing. As the city of San Jose recognized, digital literacy programs "ensure that all residents are aware of the quality programs and services offered by the City and its partners."¹²⁰ One consumer rights advocate noted that people on their phones, or people without experience participating in video hearings, could not participate equally in remote hearings.¹²¹ A member of the Santa Monica Planning Commission remarked, "People who want to be heard on an issue shouldn't have to jump through a different and confusing set of technological hoops every time as officials scramble to improve access."¹²²

Congress recently acknowledged that digital literacy and device availability can impede broadband adoption as much as lack of infrastructure or affordable service. The Infrastructure Act provides \$600 million for a State Digital Equity Capacity Grant Program.¹²³ That program allows states to develop and fund digital equity plans to improve digital literacy and expand device access.¹²⁴ To meaningfully provide access to needed services and facilitate civic participation, states' digital equity plans must identify obstructions to digital equity, set measurable objectives and assess how they impact other social outcomes, and discuss the state's plans to collaborate with state-based organizations.

* * *

Remote options can encourage and increase participation in civic life for some people. However, the digital divide presents a significant hurdle for many low-income residents.¹²⁵ The shift toward remote options will make broadband access and digital literacy prerequisites for civic participation at all levels—from city council meetings to sessions and hearings of state and federal legislatures and regulatory agencies.

Government Services and Broadband as a Government Service

Internet access is increasingly necessary for efficient application for and receipt of critical government benefits. States and municipalities have designed web portals for unemployment benefits and housing assistance. Even receiving public safety information during emergencies may depend on access to Internet-based applications and messaging services. But, as with legal assistance, those most in need of these services face significant barriers in receiving them. Recognizing this problem, local governments are increasingly envisioning broadband as necessary civic infrastructure.

Even when municipalities and community organizations partner to provide free broadband service, access barriers persist. Informing residents of access and affordability programs and overcoming hesitation or suspicion about applying for them remain significant challenges. Publicizing these programs and fostering trust so that people will use them are essential to those programs' success. In addition to affordable broadband, residents must have access to the skills and devices necessary to reach the services and information that local and state governments provide. Without considering both access and adoption challenges, key groups may be unable to take advantage of programs that are designed to help them get online.

Government Services and Public Safety Information Have Moved Online

Broadband access plays a critical role in connecting residents with essential services and public safety information.

Government assistance and services. For seniors and people with disabilities, remote access can make it easier to obtain social security and unemployment benefits, enroll in Medicare, or contest the denial of health-related benefits.¹²⁶ When agencies at every level of government have transitioned select programs online and restricted in-person access, being able to obtain information online may be the only option.

For instance, a legal aid attorney helped clients navigate the school lunch assistance application process, which had gone completely online after the pandemic hit.¹²⁷ And during the pandemic-fueled unemployment crisis, Californians needed access to the website of the state's Employment Development Department ("**EDD**") to learn of and apply for unemployment benefits because EDD could not be reached through its overwhelmed phone lines. Local news broadcasters recommended that those in need of unemployment benefits log onto websites like YouTube, Facebook, and Reddit for unofficial support services.¹²⁸ Of course, these online sources require Internet access.

Public Safety Information. As Catherine Sandoval and Patrick Lanthier observe in their article about the digital divide and public safety, "[p]ublic safety is not just about first-responder access to communications networks. The ability to use the Internet to send and receive information, warnings, and encourage appropriate action depends on access to functional networks and devices to receive that information. Leadership drives or mitigates the digital divide."¹²⁹

Without digital infrastructure, communities are subject to "information gaps" that inevitably amplify risks from natural disasters and other hazards.¹³⁰ "Adoption or access gaps affect the [w]hole [c]ommunity, not just the person or family unconnected or underconnected to the Internet or without network access."¹³¹ For instance, "[w]hen those excluded from communications networks live in a dam's flood plain, high wildfire danger zone, or other vulnerable area, community vulnerability increases along with disaster response challenges."¹³²

City Governments Lead in Providing Broadband as a Government Service

For municipalities nationwide, COVID-19 revealed the widespread need for ubiquitous broadband to provide essential services and narrow information gaps. And in some cases, addressing that need required looking beyond commercial Internet service providers. To that end, the California cities of Gonzales and San Rafael both implemented innovative programs to help residents access government benefits and critical information.

GONZALES, CALIFORNIA'S WI-FI HOTSPOT PROGRAM

As unemployment insurance applications, educational opportunities, and other municipal benefits went online, Rene Mendez, the City Manager of Gonzales, California, realized that Internet access would be essential. Mendez thus set about deploying 2,000 Wi-Fi hotspots¹³³ to the 10,000 residents of Gonzales. Fortuitously, the hotspot-deployment effort took place right at the beginning of the COVID-19 epidemic.

Mendez observed that, thanks to the hotspots, “folks who were not likely [Internet] users pre-COVID now use and connect” to the Internet.¹³⁴ Residents who require rental assistance from the City or state can now easily apply, and even city council meetings have seen a higher viewing rate.¹³⁵ Before distributing hotspots, “young people without Wi-Fi would sit outside chambers to do homework.”¹³⁶

Before distributing hotspots, “young people without Wi-Fi would sit outside chambers to do homework.”

The City had a “mentality of being responsive to community needs,” said Carmen Gil, Gonzales’s Director of Community Outreach

and Strategic Relationships.¹³⁷ Throughout the pandemic, residents could pick up a preactivated hotspot. Mendez reiterated that making the activation process as simple as possible was vital to adoption. “Folks would have been completely lost if we hadn’t taken steps to make the hotspots ready to go.”¹³⁸

The effort to distribute thousands of hotspots and provide broadband to every resident was not without challenges. Without centralized data about digital literacy, oftentimes city officials are uncertain how to ensure those who lack the digital skills to make full use of Internet-delivered services are not left behind. To

Encouraging volunteer involvement in the process has reaped a secondary benefit of strengthening community ties

that end, the City of Gonzales enlisted a brigade of teenagers who were ready and willing to help their neighbors on the other side of the digital divide

connect.¹³⁹ In the absence of demographic information about who needs training, community members fill an important role as trusted liaisons residents can approach for support. Encouraging volunteer involvement in the process has reaped a secondary benefit of strengthening community ties.

SAN RAFAEL'S MESH NETWORK

San Rafael, a city of about 60,000 residents north of San Francisco, also envisioned broadband access as an essential bridge to government services and other benefits. Although San Rafael's Canal neighborhood is a historically underserved community, the pandemic put a spotlight on the particular difficulties faced by students: "We still had a bunch of kids . . . doing their homework on smartphones, relying on data plans and Internet at Starbucks. The crisis exacerbated [the digital divide] and highlighted it in a way that made it so clear in everyone's minds."¹⁴⁰ The City decided to tackle broadband access and affordability in the Canal neighborhood by partnering with Canal Alliance, a local nonprofit with strong community ties, to build its own wireless mesh network.¹⁴¹

Rebecca Woodbury, one of the city officials responsible for implementing the project, shared that ensuring that residents would have access to emergency information during power outages—for instance, if their television or radios weren't working or if cell towers were down—was a primary motivating factor.¹⁴² They are building resiliency into the system, making sure they have backup generators so that a core of the mesh network will continue to function even in a power outage.¹⁴³ Networks that are resilient by design can protect residents from the threat of communications outages during emergencies.¹⁴⁴

Air Gallegos, Director of Education and Career at Canal Alliance, mentioned additional motivations for establishing the network, such as education and connecting community members with social services.¹⁴⁵ And Lucia Martel-Dow, Canal Alliance's then-Director of Immigration and Social Services, observed that the mesh network would help connect the significant number of immigrants in the community with immigration services and family back home through Internet-based applications that don't require users to spend costly voice minutes or data. Martel-Dow recalled clients coming into the office, before the mesh network was set up, just to access the Internet.¹⁴⁶

Of course, challenges persist. For one, the City must promote the network in a community where about seventy-five percent of the population speaks a language other than English at home.¹⁴⁷ Clients also found some websites, such as the one used to access benefits, extremely complicated. Thus, Canal Alliance staff and volunteers spent a lot of time helping clients navigate government websites. As a result, the mesh network has increased the need for digital literacy support.¹⁴⁸ These needs will only grow more acute as more services move online.

Further, network resiliency in the face of power brownouts or natural disasters requires additional infrastructure. For example, during California's wildfire-related rolling brownouts in 2019, local officials in San Rafael had to tape posters to the

Networks that are resilient by design can protect residents from the threat of communications outages during emergencies

walls of government buildings to distribute emergency information. Putting resilient technologies and procedures in place to keep the

network operating ensures that residents will have immediate access to critical emergency response information instead of relying on word of mouth or location-specific signage for direction.

Access and Adoption Barriers Faced by Community Broadband and Community Partnerships

Governments—whether local, state, or federal—often face barriers to providing affordable broadband even when affordability or access programs exist. Aside from infrastructure and affordability barriers, lack of information and trust can prevent individuals and households from enrolling in affordability and connectivity programs designed specifically for them. Digital literacy and device availability are no less an issue when communities self-provision.

LACK OF AWARENESS AND TRUST

Millions of eligible residents nationwide do not know about affordability programs. Uniformly, interviewees mentioned that their clients were entirely, or mostly, unaware of federal or state broadband affordability programs. Very few of the legal service providers interviewed understood how those programs worked and did not actively promote them to their clients.

Of the fifteen legal or community service providers interviewed, only five were generally aware of at least one affordability program such as the Emergency Broadband Benefit Program (“EBBP”), state or federal Lifeline programs, or provider low-income plans. Of those five, only two worked to promote awareness of those programs among their clients. Several other providers said they would if they had the information themselves. One public defender estimated that “maybe one percent” of public defenders are aware of broadband subsidy programs.¹⁴⁹

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Given that information, it is not surprising that two-thirds of unconnected and “smartphone only” households are unaware of the subsidy

programs available in California.¹⁵⁰ “The offers can be difficult to access, especially for those who do not speak English.”¹⁵¹ Further, some people may not trust information coming from the government or may have negative perceptions about subsidy programs and how they access program benefits. A 2020 report by the Greenlining Institute on the digital divide in California concluded that Cal LifeLine and other affordability programs “are poorly marketed, have limited eligibility, and often provide families with slow, second-class service.”¹⁵²

One survey found that two-thirds of households who qualify for subsidies based on income were unaware of the affordable plans for low-income households and that the enrollment process is difficult,¹⁵³ particularly for non-English speakers.¹⁵⁴ At present, fewer than twenty percent of people eligible for the largest federal subsidy program, Lifeline, are actually enrolled.¹⁵⁵ Interviews with government officials, community organizers, and legal providers confirmed that, as a whole, they had little actionable knowledge of broadband affordability programs. These programs must do more to ensure that people in a position to inform potential subscribers are equipped with the knowledge and resources to do so.

Even when information about affordability programs is available, potential beneficiaries may be reluctant to enroll. In the Greenlining Report, an Oakland resident reported: "I got issues with LifeLine, I got issues with a lot of programs that are associated with, quote, 'those who are marginalized, those who are

"Crappy but cheap things. That's what our most vulnerable people get."

poor.' . . . Some of the services that are offered are delivered in a way that is rather demeaning

to people."¹⁵⁶ Rene Mendez, City Manager for the City of Gonzales, similarly noted that municipal staff and volunteers "had to jump the hurdle of building trust" to convince some residents to take a hotspot home with them.¹⁵⁷ In fact, some people initially returned the hotspots because they didn't believe the city employees who distributed them with a promise that they were completely free-of-charge.

Some of the subsidy programs are "stigmatized by the nature of their design," said one interviewee from San Rafael.¹⁵⁸ Some take the fact that these programs are designed for low-income households as evidence of undesirability or inferiority. Rebecca Woodbury, San Rafael's former Director of Digital Services & Open Government, summed it up quite plainly: "Crappy but cheap things. That's what our most vulnerable people get."¹⁵⁹

When a service is perceived as second class, people will be reluctant to sign up. "Anything that's offered to any member of the community, if it is clearly signaling 'lesser,' it's not going to be pursued, it's not going to be wanted."¹⁶⁰ An attorney who runs a nonprofit serving unhoused and older individuals similarly observed that her clients sometimes don't trust the people selling Lifeline phones, who may "look like they're not employed by anyone, collect personal information, and require a mailing address. They usually don't look official which makes it hard for clients to trust them with personal information," she explained.¹⁶¹

An onerous or document-intensive sign-up process can also deter people with limited resources who nevertheless need assistance. Even the EBBP had many “barriers to registration for folks who’ve been underserved traditionally or have disabilities.”¹⁶²

The Infrastructure Act replaced the EBBP, a temporary emergency program with a new longer-term broadband affordability program, the Affordable Connectivity Program (“**ACP**”). The ACP contains many of the same features but implements several changes, notably reducing the benefit amount from \$50 to \$30.¹⁶³ The new program also now requires participating broadband providers to work with “[s]tate agencies, public interest groups, and non-profit organizations” to create public awareness campaigns on broadband and the ACP.¹⁶⁴ The FCC’s rules

implementing the program gave providers flexibility in how they meet this requirement and encouraged them “to explore ways to support the outreach efforts of local organizations.”¹⁶⁵

Ensuring that cities are able to provide trusted community partners with the resources and information they need to assist with the sign-up process is essential for widespread participation in any broadband subsidy program.

Woodbury emphasized the importance of working with trusted organizations to inform eligible households about broadband affordability programs: “Their reach in the neighborhood is so much stronger than any government’s reach.”¹⁶⁶ Community organizations and legal service providers can help with the issues of trust that exist around signing up for broadband services.

This sentiment is felt nationwide. In a meeting with the office of FCC Chairwoman Rosenworcel community advocates from Baltimore, Maryland, shared similar concerns. During the discussion, Lydia Walther-Rodriguez, the Baltimore Regional Director for CASA de Maryland, emphasized that without trusted community partners, new federal programs may be viewed by residents as “too good to be true.”¹⁶⁷ Ensuring that cities are able to provide trusted community partners with the resources and information they need to assist with the sign-up process is essential for widespread participation in any broadband subsidy program.

DEVICE AND LITERACY BARRIERS

Beyond awareness and trust, a lack of digital literacy and appropriate devices may inhibit adoption and broadband use even when service is available and affordable.

During the pandemic, online portals were the only way for many San Rafael residents who lost their jobs to apply for unemployment benefits. However, Canal Alliance discovered that aside from providing a free mesh network to access those benefits, volunteers also needed to help residents navigate the

online application process. Many community members were not comfortable using the government's unemployment site—or the Internet generally—to apply for assistance unaided. Carmen Sanchez, a social worker in San Francisco discussed the difficulty clients faced making appointments with the DMV and applying for housing, even when they had Internet access. Some clients don't know how to sign a document electronically, or pay their bills online.¹⁶⁸

[A] social worker in San Francisco discussed the difficulty clients faced making appointments with the DMV and applying for housing, even when they had Internet access.

Some online tasks are harder to complete on a smartphone or a tablet than on a computer. That poses a problem for the fifty-seven percent of Canal

neighborhood residents who do not own a computer, compared to ten percent in the rest of San Rafael.¹⁶⁹ Only six percent of usage on the mesh network is through a personal computer, Gallegos told us.¹⁷⁰ The majority of people are using smartphones or tablets. Websites designed for computer users that do not take into consideration the high number of mobile or tablet users, are destined to be underused.

Lack of training and familiarity with devices hampered the distribution and use of hotspots in the City of Gonzales. Some residents did not accept the hotspots or returned them because they could not operate the devices on their own.¹⁷¹

Broadband access is critical for community members in need of government benefits and public safety information. Local governments like Gonzales and San Rafael recognize this and took creative approaches to ensuring their residents can connect. However, barriers to access remain, including lack of knowledge and lack of trust in existing broadband subsidy programs. By partnering with trusted community partners, such as legal service providers and nonprofit organizations, local governments can overcome these barriers.

Findings and Recommendations

The underlying research and interviews cited in this analysis uncovered a paradox in remote access to justice, civic engagement, and government services. Remote access can provide substantial benefits in communities where the impact of the digital divide is acutely felt. At the same time, the digital divide often puts those benefits out of reach of those most in need of them. While there are no easy answers to this dilemma, a few clear findings and recommendations emerge for those working to bring about greater justice, equity, and fairness, in the digital age.

Findings

- 1 Lack of adequate broadband access, devices, and digital literacy skills entrenches existing inequalities that civic institutions are working to eliminate.
- 2 Remote hearings should be optional. In the courts, remote hearings can be effective for ministerial legal hearings and some substantive civil hearings. For civic institutions, remote hearings can increase access, but they can also exclude residents contending with digital access and adoption barriers.
- 3 Deficiencies in public awareness of broadband affordability programs or community broadband services ensure that they remain underutilized. Trusted legal service providers, who work with residents eligible for broadband affordability programs, could be program ambassadors as they are an overlooked touchpoint for information.
- 4 Lack of trust in government affordability programs can be just as much of a barrier to broadband affordability programs as lack of information.
- 5 Mobile Internet service and devices are not sufficient for equitable access to courts, legal services, government proceedings, and public benefits.

Recommendations

- 1 Invest in adoption as well as access.** Greater access to affordable broadband service offerings and digital skills training must accompany the push for remote judicial and administrative proceedings, civic engagement, and government services. Investments in both access and adoption will help to ensure that residents can be heard, apply for government services, and stay informed about local emergencies.
- 2 Partner with community organizations.** Government partnerships with local community organizations may help overcome trust barriers that prevent some households from enrolling in broadband affordability and access programs.
- 3 Support the full range of service providers.** To promote awareness of broadband subsidy programs and digital literacy education initiatives, it is important to partner with and provide resources for public defenders, legal aid offices, and other legal service providers. These providers can serve as program ambassadors and promote broadband adoption in low-income communities. That support should go along with robust resources for libraries, schools, senior centers, and other community anchor institutions.
- 4 Streamline enrollment.** Enrolling in broadband subsidy programs should be as easy as possible. Streamlining the application process and establishing a single application for multiple programs will reduce burdens on some residents.
- 5 Support local solutions.** Broadband funding should support innovative municipal and community-based initiatives to expand access (e.g., municipal mesh networks and hotspot programs). They expand broadband access for communities who are underserved by traditional providers and may not be able to afford broadband even with the assistance of subsidy programs. Flexible funding programs and local best practices are two strategies that can empower communities to tackle persistent digital divides.

Endnotes

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- 131 *Id.* at 6.
- 132 *Id.*

- 133 “WiFi hotspots are Internet access points that allow you to connect to a WiFi network using your computer, smartphone or another device while away from your home or office network.” CenturyLink, *What Is a WiFi hotspot*, <https://perma.cc/AFN3-LGW3> (last visited Mar. 4, 2022).
- 134 Interview with Rene Mendez and Carmen Gil, *supra* note 92.
- 135 *Id.*
- 136 *Id.*
- 137 *Id.*
- 138 *Id.*
- 139 *Id.*
- 140 Zach Quaintance, *How One City Built a Wi-Fi Network During a Pandemic*, TechWire (June 18, 2020), <https://perma.cc/2QDQ-9UVC> (quoting San Rafael’s then-Director of Digital Services and Open Government, Rebecca Woodbury).
- 141 A mesh network is a group of interconnected devices that blanket an area with Wi-Fi coverage. Glenn Fleishman, *Wireless Mesh Networks: Everything You Need to Know*, PC World (May 5, 2020), <https://perma.cc/DS3G-8UWP>.
- 142 Interview with Rebecca Woodbury, Founder, Dep’t of Civic Things (formerly Dir. of Digit. Services & Open Gov’t, City of San Rafael) and Javier Trujillo, Chief Assistant Dir., County of Marin (Apr. 20, 2021).
- 143 Ry Marcattilio-McCracken, *How San Rafael, California Built a Neighborhood Mesh Network That Turned into Something More*, Community Networks (Sept. 3, 2020), <https://perma.cc/LJN6-2B4Y>.
- 144 For example, FCC Chair Jessica Rosenworcel has prioritized network resiliency in light of natural disasters. Chair Rosenworcel’s Statement regarding *Resilient Networks; Amendments to Part 4 of the Commission’s Rules Concerning Disruptions to Communications; New Part 4 of the Commission’s Rules Concerning Disruptions to Communications*; PS Docket Nos. 21-246 and 15-80, ET Docket. No. 04-35, Notice of Proposed Rulemaking, FCC 21-99 at 40 (Sept. 30, 2021) (“We have hurricanes in Louisiana, a snowstorm in Texas, and wildfires out West. These issues are not going away. We need to think deeply about what network resiliency means and how our policies can support it.”).
- 145 Interview with Air Gallegos and Lucia Martel-Dow, *supra* note 60.
- 146 *Id.*
- 147 Mitchell Crispell, Ctr. for Cmty. *Innovation at UC Berkeley, Canal: An Immigrant Gateway in San Rafael at Risk* 4 (2015), <https://perma.cc/YKE9-P5A5>.
- 148 Interview with Air Gallegos and Lucia Martel-Dow, *supra* note 60.
- 149 Interview with Candis Mitchell, *supra* note 27.
- 150 Cal, Emerging Tech. Fund, *Statewide Survey on Broadband Adoption—2021*, (Mar. 2021), <https://perma.cc/2YTC-Y77D>.
- 151 Mackovich, *supra* note 118.
- 152 Greenlining Inst., *supra* note 52.
- 153 Cal, Emerging Tech. Fund, *Statewide Survey on Broadband Adoption—2021*, (Mar. 21, 2021), <https://perma.cc/V8LN-LRZA>.
- 154 Mackovich, *supra* note 118.
- 155 Univ. Srvc. Admin. Co., *Program Data* (Aug. 26, 2021), <https://perma.cc/JUT6-3TD3>.
- 156 *Id.*
- 157 Interview with Rene Mendez and Carmen Gil, *supra* note 92.
- 158 Interview with Rebecca Woodbury and Javier Trujillo, *supra* note 142.
- 159 *Id.*
- 160 *Id.*

- 161 Interview with Brooke Weitzman, *supra* note 38.
- 162 *Id.*
- 163 47 U.S.C. § 1752(a)(7)(A).
- 164 47 U.S.C. § 1752(b)(8).
- 165 *Affordable Connectivity Program, Emergency Broadband Benefit Program*, WC Docket No. 21–450, Report and Order and Further Notice of Proposed Rulemaking, para. 207 (2022), <https://perma.cc/EMK2-JXEU>.
- 166 Interview with Rebecca Woodbury and Javier Trujillo, *supra* note 142.
- 167 Letter from Next Century Cities to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-445, at 3 (filed Sept. 14, 2021), <https://perma.cc/EFC6-Z8SU>.
- 168 Interview with Carmen Sanchez, *supra* note 60.
- 169 Canal Alliance, *Canal Digital Access Equity Fund*, <https://perma.cc/TLN3-UNE4> (last visited Mar. 4, 2022).
- 170 Interview with Air Gallegos and Lucia Martel-Dow, *supra* note 60.
- 171 Interview with Rene Mendez and Carmen Gil, *supra* note 92.



STATUS OF PENDING BILLS

TO: COMMISSION

FROM: JWA

SUBJECT: STATUS OF PENDING BILLS – 4/25/2022 13:25

DATE: 4/25/2022

CC: INTERESTED PARTIES

LD1824	Early assignment of counsel in PC cases.	Resolve, to Establish Commission to Develop Pilot Program to Provide Legal Representation to Families in the Child Protective System	On Special Study Table pending Final Passage
LD1905	An Act to Facilitate Communication between Prosecutors While Protected the Rights of Those Defendants	OTP	Pending enactment 4/13/2022
LD1924	An Act to Expand Access to Justice in Rural Maine through Legal Education (Aroostook Clinic)	OTP-AM 3/17/2022	Amended 4/25/2022 - Senate to House for Concurrence
LD1926	Resolve, Regarding MCILS Chapter 301 - Fee Increase		Signed by Governor 4/20/2022
LD1946	An Act to Ensure Constitutionally Adequate Contact with Counsel	Resolve, Establishing the Committee to Ensure Constitutionally Adequate Contact with Counsel	On Special Study Table pending Final Passage
LD1950	An Act to Impelment the Recommendations of the Commission to Create a Plan to Incorporate the Probate Courts into the Judicial Branch	<u>Appropriates \$1,062,500 for MCILS to cover costs of counsel despite fiscal note we calculated and presented at \$2,125,583.98.</u>	Placed on Special Appropriations Table;
LD2008	An Act to Establish a Court Process for Involuntary Substance Use Disorder Treatment	Resolve, to Establish the Committee to Study Court-ordered Treatment for Substance Use Disorder	Engrossed by Sentate 4/25/2022; pending.

Topic: MCILS Forum on Supervision

Start Time: Apr 14, 2022 03:55 PM

<https://mainestate.zoom.us/rec/share/4XsLIU9OLgNS9petFlepntSRalKTQmlugpPFXxlqt3nh3f4Mz1eo4LRXJubI4US3.kvJ7bzhQGEdkQN7V>

Topic: MCILS Forum on Caseload Standards

Start Time: Apr 18, 2022 04:10 PM

https://mainestate.zoom.us/rec/share/almtwawV4i_cKGLbpdAJYLOeZDznS-P4JCIInYO87wg54K73SNIE2o48qKnhc9pX3.ib74TjFyHWG66pSO

Topic: MCILS Forum on Audit policies

Start Time: Apr 19, 2022 04:13 PM

<https://mainestate.zoom.us/rec/share/nd9GcOsqgVC1POeuFzKAcT6ME5RK-VsyV3UEAM034Zq53l877K7GXgLvZQ7iY5cN.9wruyJngGBswUUbs>

DANIEL DUBÉ, ESQ.

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VIA E-MAIL TO JUSTIN.ANDRUS@MAINE.GOV

Thursday, April 14, 2022

Maine Commission on Indigent Legal Services
154 State House Station
Augusta, ME 04333

RE: Comments Regarding Proposed Supervision Policy

Justin:

Please share this letter with the Commissioners.

First, I would like to note that I am fresh off a jury trial in Somerset County in which my client was acquitted of two Class A counts, Aggravated Assault and Kidnapping; he had purposely admitted to the elements of a third count, Class C, Domestic Violence Assault, in his testimony, so he was convicted of that. I am most excited to have won two Class A's, and that justice was served. In this case, defense made sure that the facts fit the crime, and now is making sure that the punishment fits the facts.

I believe this is yet another example of the fine work done by the defense attorneys on appointed cases, work that is quietly done, and that does not get the same level of attention as does negative commentary in the news by persons who have little to no first-hand knowledge of how to conduct indigent defense work.

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But as I have learned from my service on various boards, and especially from municipal commissions akin to this state commission, the only useful criticism is constructive criticism, so please regard the following as appreciative suggestions:

Employee, or independent contractor? Employing one person to monitor the quality of work done by only ten defense attorneys is a low ratio considering the person is a full-time employee. I am concerned that such a role and ratio *inevitably* will lead to a blurring of the lines between employee and independent contractor. The index itself to the proposal makes clear your awareness of the need for distinction, but the difference must be factual and not simply declarative. I sought independent legal counsel for a review of the proposal, someone experienced in employment law. That attorney reviewed the proposal and provided me with a preliminary opinion that the proposal does indeed raise to him the same concerns it had raised to me regarding some of the factors that define independent contractors vs. employees. It would seem the proposal at best walks the line, and with the low ratio and full-time nature of the job, I would think mission-bleed or blurring to be inevitable. No doubt the Commission has its own legal counsel and you have considered the matter already.

Suggestions:

- a) Obtaining a second or third legal opinion regarding such a debatable, contentious, tricky, and important area;
- b) If going forward as proposed, hiring legal counsel clearly to delineate in job descriptions, policy manuals, and employee manuals exactly what is within the authority of a supervisor, and what is not, with examples;
- c) I would suggest greater reliance on written reports (such as a standard form to be submitted in each case directly following dispositional conference or jeopardy hearing, or at a specified period of days into a case, with selective follow-up supervision/audits on the basis of those written reports;

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- d) In general, I suggest a more targeted, audit-like approach as a more efficient use of limited resources, and better serving recruitment and retention.

Filling positions/qualified supervisors. It is unclear to me how one could find a sufficient number of qualified persons, i.e. experienced criminal trial attorneys. There are fewer and fewer still practicing as it is. Who would be attracted to such a position? Except at its top end, the State of Maine employee pay scale is not especially remunerative. A retiree might not want to come out of retirement for a full-time job. A former prosecutor is not likely to have a sufficient grasp of defense work and its particular challenges. Somebody with another or lesser background is going to be a functionary not respected by criminal defense counsel, and with good reason. My mind turns to such absurdities as a thirty-something with a couple trials under his or her belt supervising the likes of George Hess, over 80 and still working circles around all of us, and never shying from a trial.

Suggestions:

- a) The supervisory positions be part-time, attracting seasoned practitioners, prosecutors, even judges, who wish to be or to remain semi-retired;
- b) More selective case review, as suggested above, might limit the numbers of supervisors needed.

Payment. I do not see specified payment of counsel for certain duties, such as the monthly case reviews or the week-long trial "boot camp". Multiple counsel currently are assuming the absence of mention of payment means these are unpaid duties. I would not think any Commission member would take kindly to being unpaid for a required week of work, nor would any other member of the court system. It is one thing for a defense attorney not to be paid for a day or two of CLE, but a week is a taller order, and likewise for duties quite apparently time-consuming on a regular basis. What the government funds, it controls. But in this case, we may have control without funding.

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Reporting mechanism. An anonymous reporting mechanism as to other counsel might not be popular, but if used to trigger quality control audits, could be very useful. Being able to identify practitioners who are struggling could be very helpful to the Commission, to clients, and to counsel who would not otherwise file a bar complaint, but who may have concerns about the well-being or performance of an otherwise appreciated colleague. We currently do not have a method of sharing concerns about a colleague in a non-accusatory, non-punitive manner.

Again, why apply equal efforts across the board when one can be more targeted, thereby limiting the expenditure of scarce human resources. An attorney might have serious qualms about contacting the Overseers over a mere concern. But there might be greater comfort in reporting a concern likely to be redressed with helpful inquiry, supervision, or training.

Exemptions. Multiple attorneys are concerned about the absence of exemptions for certain things. For instance, I am attending this July a two-week, residential, immersive trial practicum, out of state, with the National College of Defense Counsel (NCDC), a premier trial bootcamp. That is unpaid time for which I am volunteering, and it is made possible by member-funded scholarships from the Maine Association of Criminal Defense Lawyers (MACDL), and a scholarship from the National Association of Criminal Defense Lawyers (NACDL). Six (currently—don't presume retention) rostered Maine defense lawyers are attending. Would we be exempted from attending an MCILS trial bootcamp? Would Jim Howaniec and Jesse James Archer, having spent a month conducting a murder trial in Alaska, be exempted from attending? Would the foremost murder trial defense counsel in the state, someone operating at a national level, be exempted if teaching instead of attending? The concern over exemption and petitions for adjustments applies not only to proposed training, but to most new proposals. I would suggest exemptions or other mechanisms for in-built flexibility rather than rules that as written only

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would allow for rigid application, and then urgently require formal amendment when coming hard up against realities like a ship against shoals.

Overall, I think a greater reliance on written reports, combined with more targeted reviews rather than across-the-board and regular reviews, might less risk blurring the lines between employee and independent contractor, and more efficiently use limited human resources by targeting those cases and those practitioners as to which or whom problems most likely are to be found. I think more targeted redress in general, and greater flexibility in implementation, will save a lot of grief down the road as we try to adjust implementation of policies to realities on the ground.

Sincerely,

A handwritten signature in blue ink that reads "Daniel Dubé". The signature is written in a cursive, flowing style.

Daniel Dubé, Esq.

VIA E-MAIL TO JUSTIN.ADRUS@MAINE.GOV

Monday, April 18, 2022

Maine Commission on Indigent Legal Services
154 State House Station
Augusta, ME 04333

RE: Comments Regarding Proposed Caseload Standards

Justin:

Please share this letter with the Commissioners.

The proposed caseload standards involve a point system. Based on my experience, the point system proposed does not bear a strong correlation to average time requirements in a given case, and, average case requirements can be quite misleading.

For instance, 6.25 points are assigned to protective custody cases. It is not all that uncommon for me to have a parent completely disengage from the process. In those cases, I conduct due diligence to locate the client and to send appropriate notices and warnings, but both the time requirements and my invoices to the state are minimal. Again, a case in which a parent is incarcerated throughout the case, and there is a cease reunification, will demand far less time than a case where the client is free to fully engage.

Therefore, I was tempted to suggest a "relief-valve", a mechanism by which we might briefly petition for a points-reduction in a case. However, I also do not find that classes of crime bear a strong correlation to time required.

For instance, some crimes are factually identical, but are classified higher merely by virtue of prior offenses. An operating after revocation (OAR), Class C, may be no more complicated than a misdemeanor operating after suspension (OAS), Class E. Albeit, an OAR may call for more negotiation to avoid a lengthy mandatory minimum jail sentence, but the extra time requirements are unlikely to be significant. As another example, a trafficking case, Class A, with no suppression issue, generally will require less time than an aggravated assault, Class A. Yet another example would be a theft or a possession, Class C, versus a Domestic Violence Assault, Class D. Generally, the DVA will take more time.

Lastly, we need to account for clients who have multiple cases. I had a client with fourteen concurrent cases. True, those fourteen cases were more work than would be two cases. But they were far less work than were I to have had fourteen separate clients with the same charges. My client kept burgling storage units, all over the state. The cases were highly similar. A global resolution was achieved. The time requirements and my invoice to the state for fourteen cases was not dissimilar from if my client had had only, let's say, two or three cases.

I could also see incentives becoming perverse. For instance, if I wanted to make enough money to get by on court appointments, I'd avoid PC cases (6.25 points each), and I'd stick to DVA's (one point each). The average DVA will take me X hours, resulting in Y dollars invoiced. PC's vary more widely, and I'd have "duds" taking up 6.25 points. I'd avoid those and stick to DVA's for the best point/earnings ratio. OUI's would be another case type with a solid point/earnings ratio, rather than other cases, which could be a gamble.

In review: 1) PC cases vary widely in time requirements; and, 2) the classification of a crime (A through E) does not bear a strong correlation to the time required. However, in general, I do find that actual charges bear a strong correlation to time required. There

are always exceptions, but in general, sex offenses will require more time expenditure than trafficking cases, DVA's more than OAS's, etc.

Suggestions:

- a) As crude as a certain number of cases may be, I do believe simple case numbers would be more accurate than the system proposed. I think we can all agree 50 cases at a time for an experienced attorney is presumptively reasonable. 150 cases at a time is presumptively not.
- b) If using a point system, assign points to each type of crime, rather than class of crime. That will require more work up front, but less work in the end.
- c) Employ rebuttable presumptions rather than automatic, computerized cut-offs; reaching a presumptive limit could trigger an obligation to file a form within fourteen (14) days, or a similar requirement.
- d) Scrapping an annual limit in favor of simply an at-a-time limit, or at least do not set it as one and the same.
- e) Certain caseload numbers could be pre-established yellow-flag or red-flag triggers for discretionary audit.

I have a further suggestion as to caseload management, one which could be automated.

In the past, we had to write the Commission to opt in or opt out of rosters on a monthly basis. Under your leadership, we have had much greater control, opting in and out at any time via DefenderData. But if MCILS is going to control assignments, that could allow an even greater degree of control, computer-automated: allow counsel to opt in to a certain number of cases per roster for a given period. That could give counsel a much greater degree of caseload management control. And to the extent that it might result in some attorneys taking fewer cases, and therefore not meeting the needs of a given court, it could also result in attorneys who left rosters or who have been disinclined to do appointed work, signing on in order to take a certain number of cases. I have heard from attorneys who do not take court appointments simply because they do not have sufficient

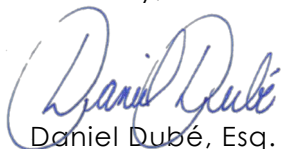
control of case numbers. I heard from one attorney whom a clerk asked to take ten cases. He declined, only wanting five. In the end, he did zero. This was a quality attorney who could have done great work for five clients on five cases.

Often, I pull myself off certain rosters simply because those rosters on average produce more appointments than another roster, a crude mechanism for caseload management that may compound crises where courts most need attorneys. For instance, if a court has a strong need as to one roster, that may be the roster most attorneys leave, because that roster causes too great a spike in their own caseloads.

Lastly, there must be audits regarding caseloads. Audits are a good thing. Authorizing audits is a good thing. Authorizing an agent of MCILS to limit counsel case numbers also is a good thing. Auditing is about reviewing data and identifying possible problems. And some disclosure by appointed attorneys as to caseloads (and staffing) outside of state appointments also is warranted.

I still hope to join today's meeting, but I may be at a jail. So I wanted to send you my thoughts in writing in case I cannot attend. I think a valiant effort was made to control case volume, a very important topic. And caseload management is as much art as science, since cases come in all varieties, shapes and sizes, as do clients. I do make a few suggestions based on my own experience. I think most attorneys are as concerned about caseload management as is the Commission, but we need realistic mechanisms for maintaining realistic caseloads.

Sincerely,



Daniel Dubé, Esq.

Memorandum

April 13, 2022

To: Josh Tardy, Mike Carey, Justin Andrus:
From: DGA

Re: Suggestions Re Proposed Rulemaking Regarding Rostering, Supervision, Accounting, & Caseload Limits

On April 25, 2021 and August 25, 2021 I sent to you memos detailing my concerns with the unnecessary complexity of the rostering requirements and making suggestions to simplify the rosters to (i) recognize the realities of indigent defense practice and (ii) encourage new attorneys and qualified, experienced attorneys to join indigent defense efforts. This memo is an expansion of those memos to address the rules revisions being discussed at this month's work sessions, where, I hope, we will hear and consider the comments and suggestions of many individual attorneys who do great work for indigent clients in Maine. This memo constitutes my comments and suggestions for those work sessions, though I will try to attend at least some.

The problem with the rosters – 16 of them – is that they are too complex and do not adequately recognize important experience and skills that may not follow the roster requirements. Beyond uncertainty and other problems for attorneys initially asked to represent a person charged – or under investigation – at an early stage of a case, the complexity of the current rosters also makes extra work for MCILS staff in determining attorneys' compliance with rostering requirements for particular, and sometimes evolving, cases.

Rosters should be much more generalized and accommodate a broader range of experience. With the current 16 different rosters, it is likely easy for an attorney appointed early in a case, even a very experienced attorney, then to be found not on the correct roster – perhaps for one of six charges at issue in a later indictment, months after the appointment. Until the rosters are more generalized, and reduced to five or less, plus child protective, MCILS should not later veto appointments of otherwise qualified attorneys for not being on the correct roster – except, perhaps, for murder cases.

Some of the present or proposed rostering requirements include (i) prior jury trial experience in specified numbers of cases as second chair or

lead counsel, (ii) completion of case relevant CLE, (iii) an application to MCILS explaining interest and experience, and (iv) letters of recommendation from experienced counsel. Such might be relevant in an application for full time employment with a firm looking for an experienced defense attorney. But most of those requirements are unnecessary bureaucracy for deciding whether a member of the bar in good standing can provide competent representation in a particular individual case. Between May 2018 and May 2019, there were a total of 210 jury trials – criminal and civil – statewide. Since March of 2020 there have been, perhaps, 20 or 30 jury trials statewide. For newer defense attorneys, getting attorney of record experience in even one jury trial can be a challenge – getting several jury trials to demonstrate compliance with rostering requirements is probably out of the question for any attorney with five years or less experience – except for a few ADAs.

Some proposed rostering requirements are not grounded in reality. To become eligible to represent parents in protective custody matters, among other things, it is proposed that the applicant must provide proof of attendance and observation at 8 PC hearings, including one contested Termination of Parental Rights hearing. Quite a challenge because all PC proceedings are confidential by law, casual observers are not permitted. 22 M.R.S. § 4007(1), “All child protection proceedings shall be conducted according to the rules of civil procedure and the rules of evidence, except as provided otherwise in this chapter. All the proceedings shall be recorded. *All proceedings and records shall be closed to the public, unless the court orders otherwise.*” (emphasis added). See also 22 M.R.S. §§ 4005-D(3) & (7), 4008(1). That the proposed rostering requirement was prepared back in 2020, apparently unaware of the broad confidentiality requirement in the law is troubling.

Suggestions: Rostering.

The diverse and detailed rostering requirements are perhaps an understandable response to criticism highlighting alleged lack of supervision and direction of attorneys and a few reported instances of incompetent performances or questionable backgrounds of attorneys among the hundreds of attorneys who perform competently and ethically in representing indigent clients. To encourage more attorneys, particularly experienced attorneys, to participate, qualification requirements and categories need to be simplified.

1. Reduce 16 separate rosters to 5 or 6, for example: (1) Homicides, (2) Sex and Other Crimes of Violence, Arson, and Drug Trafficking, (3) Other Felonies, (4) Other Misdemeanors when it is possible that a sentence of imprisonment may be imposed, (5) Juvenile Cases, and (6) Civil Cases (PCs, guardianships, emancipations, etc.).

2. Consider broader categories of experience in determining qualifications, including contested hearings in civil cases, law school clinic/extern work, DA or AG work, and other experience that develops litigation, personal interaction, and advocacy skills.

3. Make any attorney qualified for Criminal Justice Act assignments in Federal Courts automatically qualified on any roster except (1) Homicides, (5) Juvenile Cases, and (6) Civil Cases.

4. Eliminate the prior jury trial experience prerequisites, except for homicide. Except for homicides, less than 1/2 of 1 % of criminal cases go to a jury trial. If a jury trial is in prospect late in a proceeding, and an assigned attorney has little or no jury trial experience, have another attorney with jury trial experience join the representation as a mentor or co-counsel.

5. Allow any attorney who maintains an active criminal practice representing retained cases and who, (1) in the past 30 years, has tried 10 jury trials as a criminal defense attorney, or 20 jury trials as either a prosecutor, a criminal defense attorney or a civil litigator; (2) can demonstrate having taken 12 hours of CLE related to criminal cases in the last 3 years; and (3) has represented criminal defendants in at least 25 separate cases in the last five years, upon application, to automatically qualify to be placed on the rosters for the category (2), (3), and (4) cases, described above. The twelve hours of criminal CLE, if that has not been accomplished, could be replaced by taking a current MCILS, MACDL, MTLA, MSBA or ACLUME CLE course(s) of at least 6 hours, focusing on criminal law. The attorney would also have to take the prerecorded or online MCILS training on keeping time sheets and case records and MCILS financial and payment requirements and practices.

6. Separately, any attorney who has brought and briefed to the Law Court at least 5 child protective appeals in the last 7 years, or 5 criminal appeals in the last 7 years, should qualify, at least provisionally, for the appeal

rosters for category (2) – (6) cases. Any former AAG for child protective cases or former prosecutor for criminal cases who has defended 10 child protective or criminal appeals in the past 7 years should likewise qualify for appeals rosters for category (2) – (6) cases.

Training and Supervision.

1. Annual Training and Supervision Sessions: 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 CP proceedings) should plan an annual training day (or days) that would include significant networking opportunities and training sessions on:

For Criminal Cases: 1. Initial client contact and communication, confidentiality, explanation of rights, discussion of expectations, acquisition and review of discovery; 2. Consideration of early diversion programs; preparation for and participation in the Dispositional Conference; 3. Pretrial practice, suppression motions, limitation of issues; 4. Approaches to plea discussions (i) with client; (ii) with prosecutor; 5. Practice points for trials, jury or nonjury, etc; 6. Availability of mentoring or co-counsel assistance for jury and non-jury trials.

For Child Protective Cases: 1. Initial client contact and communication, confidentiality of proceedings, explanation of rights, discussion of expectations, review of discovery; 2. Difficulties in dealing with parent/client, lack of cooperation, reluctance to participate or openly communicate, evaluation of risk of exposure to criminal charges, relations with other parent and counsel, access to child; 3. Preliminary proceedings, jeopardy hearings, role of GALs, placement of child – relatives or foster parents, family reunification efforts; 4. Termination of parental rights proceedings, practice for such hearings.

2. Develop a one day training program that would qualify newly admitted attorneys for category (3) & (4) case appointments, and a separate program to qualify for category (6) appointments. Offer this program in late June and in November or early December.

3. Except for training on keeping time sheets and case records and MCILS financial and payment requirements and practices, allow rostered attorneys to meet CLE requirements by taking criminal law or CP case related training provided by MACDL, MTLA, MSBA, ACLU Maine, and perhaps other providers. Those CLE programs that qualify for CLE credits by the Board of Overseers of the Bar, should automatically qualify for MCILS approval. These groups can provide training by attorneys with more diverse experience, fully up to date with current developments. MCILS might help identify some of the training that would be presented by the other groups.

4. We have heard our MCILS attorneys' concerns about the supervision elements of the proposed training and supervision rule. I agree with those concerns. An attorney with 10 or 20 years experience defending criminal or child protective cases should not be required to attend scheduled meetings with MCILS staff to review the attorney's performance and quality of work – absent an indication to MCILS of some significant problem with an attorney's performance or ethics. Presumably attorneys get such review and feedback from other lawyers in their firm and/or, if they are not in a firm, then from other experienced lawyers – and sometimes judges – in the communities where they practice. Like some of the rostering prerequisites, some of the supervision requirements seem more appropriate for attorneys in an employment relationship than for attorneys maintaining diverse practices, including some MCILS indigent defense work, in their communities.

If there are to be scheduled meetings to review an attorney's performance and quality of work, they should be limited to the first 3 to 5 years of an attorney's work with MCILS. Further, an attorney should be able to avoid the performance review meetings if the attorney designates a well experienced attorney who commits to regular meetings with an attorney to discuss their performance and quality of work.

And note: The networking opportunities with other attorneys and interactions with MCILS staff at the fall training sessions – if they are held – can be a good substitute for some of the professional development that otherwise might occur in the performance review meetings.

Accounting and Audits.

My knowledge with electronic time recording, billing, accounting, and auditing for proper billing and accounting practices, compliant with MCILS standards is limited. Thus, I cannot comment in detail on the proposed accounting rules. I am concerned that the proposed auditing requirements that may apply when attorneys are subject to an audit appear excessive when they might be applied when minor discrepancies are discovered in an attorneys' work recording and billing practices – or when an attorney may be subject to a random audit. These requirements need to be adjusted to assure that attorneys subject to audit are not driven from MCILS work by the prospect of large, uncompensated work hours that may have to be spent complying with the audit requirements.

Caseload Limits.

For criminal cases, less than ½ of 1% of cases filed result in a jury trial, around 1% have either a jury or jury waived trial, and only about 10% have a contested hearing of any type – bail, motion to suppress, motion to dismiss, other – before a final disposition and sentencing. (The 10% stat. I recall from the 1990s, I am not aware of more recent quality stats on the issue, though they may exist.). The trial and contested hearing percentages tend to be higher for the more serious felonies and domestic violence cases. Accordingly, caseload limits cannot assume that, except for murder, most cases are likely to go to trial or have contested hearings, and they will need to adjust for the type of case and mix of cases an attorney may be carrying.

I am not in a position to comment on CP cases and prospective CP case caseload limits. We should keep Taylor Kilgore's comments from our last meeting in mind on that issue.

Andrus, Justin

From: Donald Alexander <donald.g.alexander@gmail.com>
Sent: Wednesday, April 13, 2022 8:00 AM
To: Josh Tardy; Josh Tardy (jtardy@rudmanwinchell.com); Andrus, Justin; mcarey; Mike Carey
Subject: Comments for Rules Workshops
Attachments: X MCILS Rosters 4-13-22.docx

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Josh, Mike, Justin:

Good morning. Enclosed is a memo of my comments for the upcoming workshops and other discussions on MCILS rules for rostering, training and supervision, accounting, and caseload limits. These are an expansion of memos I sent to you last year. Look forward to working with you and our MCILS attorneys on these issues.

Best. DGA

Andrus, Justin

From: Kaylee J. Folster <kjf@vbk.com>
Sent: Wednesday, April 13, 2022 1:57 PM
To: Andrus, Justin
Subject: RE: Draft Documents

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Justin,

This new case load positions are interesting. That will just mean people go up represented give that there are not enough attorneys.....

Kaylee J. Folster

Attorney

207.947.6915

kjf@vbk.com

Vafiades, Broutas & Kominsky, LLP

23 Water Street, Suite 300, P.O. Box 919, Bangor, ME 04402-0919

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From: Andrus, Justin <Justin.Andrus@maine.gov>

Sent: Wednesday, April 13, 2022 1:53 PM

To: MCILS <MCILS@maine.gov>

Cc: Guillory, Christopher <Christopher.Guillory@maine.gov>; Fisher, Darcy <Darcy.Fisher@maine.gov>; Washer, Arthur <Arthur.Washer@maine.gov>; Brochu, Stephen <Stephen.Brochu@maine.gov>; Nash, Lynne <Lynne.Nash@maine.gov>; Gariepy, Rachel <Rachel.Gariepy@maine.gov>; Hudson, Megan <Megan.Hudson@maine.gov>

Subject: Draft Documents

Good afternoon, everyone. Attached to this email are the three working documents the illustrate some of the current thinking in the Commission on the issues of supervision, caseload, and audit procedures. These have all be circulated previously, but we are circulating them again now in advance of the forums that begin tomorrow.

Justin W. Andrus
Executive Director
Maine Commission on Indigent Legal Services
(207) 287-3254
Justin.andrus@maine.gov

Andrus, Justin

From: Kaylee J. Folster <kjf@vbk.com>
Sent: Wednesday, April 13, 2022 2:06 PM
To: Andrus, Justin
Subject: RE: Draft Documents

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Also, food for thought multi- cases for one defendant should not count for extra points and drug court should not be that high of points, it's not that intense of work.

Kaylee J. Folster

Attorney

207.947.6915

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Subject: Draft Documents

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(207) 287-3254
Justin.andrus@maine.gov

Andrus, Justin

From: Kaylee J. Folster <kjf@vbk.com>
Sent: Thursday, April 14, 2022 11:01 AM
To: Andrus, Justin
Subject: RE: Draft Documents

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Justin,

There are several issues with your proposal from a practitioner's standpoint. The entire state of Maine is in a lawyer shortage, so implementing this will basically mean, at least in Penobscot and Piscataquis county, that people will go without lawyers. Also, our counties do not have enough rostered attorneys to handle the more serious cases per year. I didn't see Murder cases addressed (unless I missed it) or what it means if you are a second chair. I have a client with 17 open cases. Under your structure, that would be 17 points against me – for a mental health client who keeps violating no trespass orders. The case isn't even hard, but I am given less ability to work because I am assigned a defendant who is mentally disabled and is homeless and keeps going to Dunkin Donuts to get warm? That's essentially 1/5 of my allotted points on 17 misdemeanor cases for one defendant. If I were to accurately report 50% of my case load in general is court appointed (mind you I don't know how I am supposed to determine that).

Drug court is generally an agreed sentence with babysitting in Penobscot. I don't know how it is in other counties, but they don't even allow contested admissions or sentencings. There is no reason that should be 15 points. If you assigned this today, the amount of clients I have in drug court would exceed the limits allowed. Further, this would discourage attorneys from applying people to drug court and interrupt the continuity of representation. This is a 3 point case, but the second my client is accepted to drug court it's a 15 point case? If I don't apply the client to drug court, I can do 4 more cases.

This proposal also essentially encourages me to either not be truthful about the rest of my civil and retained criminal case load, or to essentially re-structure my entire practice. I know you know this, I truly enjoy my court appointed cases. I have a wonderful relationship with my home judges and they trust me. I am routinely emailed by the clerk and told that a specific judge would like you to take this matter on.

Penobscot County attorneys know when to say no, and we address this with the commission or the clerk of courts. Trying to implement a case load max, really says to me "we don't trust your judgment," which then says to me, if you don't trust my judgment, why are you trusting me to do cases in general?

Although I cannot say for sure, I think that this would also cause judges to be more deliberate with who they appoint to what cases, which is obviously not how the system is supposed to work either. (I need to save Attorney Folster for a mental health matter, or a drug matter, ect).

Making LOD worth ANY points is bazar to me in general. I am routinely LOD for Dover 2-3 times a week. That's 2-3 points for an hour total of work? Of which I get no appointments out of? That would encourage Seth and I to stop doing LOD for Dover, which would leave them with no one.

I hear that you feel case limits need to be implemented, and if that's the future, so be it, but as outlined is fraught with problems and with almost 100% certainty leave people unrepresented.

This is not about the money or getting paid for me at all, this is about the glairing over regulation of adults who you trust in all regards, except when managing their own time. My hourly rate for a retained case is \$300 an hour. I can certainly

make more money taking on more civil cases and just stopping court appointed work in general. I choose not too, because I feel indigent defendants deserve representation, and not just kids right out of law school. I was a kid right out of law school doing this to pay the bills a decade ago. I assure you I knew NOTHING.

Additionally, although it may not be MCILS's intention, when these "rules" are released, it essentially feels like you are fighting for a PD office and not supporting your attorneys who work hard every day. I am not the only attorney who feels this is way. I will tell you, I have not met one MCILS attorney who feels that a PD office would better "serve" the indigent population of Maine. You would not get Jeff Silversteins or Dave Bates to represent people if the state goes that way. I am unsure why you feel not having limits violates the 6th amendment, but that is the commission's call to make.

Bottom line, this structure will leave hundreds of defendants without attorneys and will further encourage attorneys to get off the already shrinking lists due to onerous requirements and over regulation.

Sorry to not be supportive of this. I just believe it will leave people without competent representation when needed.

Kaylee J. Folster

Attorney

207.947.6915

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From: Andrus, Justin <Justin.Andrus@maine.gov>

Sent: Thursday, April 14, 2022 10:04 AM

To: Kaylee J. Folster <kjf@vbk.com>

Subject: RE: Draft Documents

Good morning, Kaylee.

What's the solution? The givens are: we must have caseload standards; implement them; and, find a way to enforce them. These are required by our statute, and 6th amendment jurisprudence. I don't have the discretion to not move forward with something on that point. An assumption baked into that is that the caseload standards themselves must be 6th amendment compliant. What we do is open at the moment.

JWA

Justin W. Andrus
Executive Director

Maine Commission on Indigent Legal Services
(207) 287-3254
Justin.andrus@maine.gov

From: Kaylee J. Folster <kjf@vbk.com>
Sent: Wednesday, April 13, 2022 1:57 PM
To: Andrus, Justin <Justin.Andrus@maine.gov>
Subject: RE: Draft Documents

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Justin,

This new case load positions are interesting. That will just mean people go up represented give that there are not enough attorneys.....

Kaylee J. Folster
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Cc: Guillory, Christopher <Christopher.Guillory@maine.gov>; Fisher, Darcy <Darcy.Fisher@maine.gov>; Washer, Arthur <Arthur.Washer@maine.gov>; Brochu, Stephen <Stephen.Brochu@maine.gov>; Nash, Lynne <Lynne.Nash@maine.gov>; Gariepy, Rachel <Rachel.Gariepy@maine.gov>; Hudson, Megan <Megan.Hudson@maine.gov>
Subject: Draft Documents

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Justin W. Andrus
Executive Director
Maine Commission on Indigent Legal Services
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Justin.andrus@maine.gov

Andrus, Justin

From: Mary Kellett Gray <mnk30@myfairpoint.net>
Sent: Thursday, April 14, 2022 7:51 PM
To: Andrus, Justin
Subject: supervision discussion

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Hi Justin - A couple comments/questions.

1. Contemporaneous data entry - In any given day we work on multiple cases, often an email or phone call that is just 0.1 or 0.2 hours. To enter each of these every day is highly inefficient. I have to open each file and make one or two entries. The alternative is to wait until there are 8-10 entries on a case. Then, more efficiency. Also, after a long day in court or a long day on zoom or at the computer, the idea of having to spend another hour of unpaid work staring at the screen is often just too much. I cannot physically or mentally do it. So what are the options. Generally, I spend the weekend doing this unpaid work. Usually 6-8 hours worth while listening to good music. If I am required to doing this, daily, inefficiently, I think we should be allowed to bill an hour a day just for administrative expenses, unrelated to any particular case. And, you should think about us not using this time to exercise or otherwise take care of our mental/physical health. The other option is to take the time away from our clients. It will be taking time from our well-being or time from our clients to tend to the administrative requirements being requested.

2. Depleting the few attorneys in rural areas for supervisor positions. There are so few attorneys - how can we justify hiring two attorneys to represent one client when we don't have the money or attorneys to hire one attorney?

3. "One of the primary responsibilities of supervisors is to serve as co-counsel in their supervisee attorneys' cases." The child protective supervisor will have 5 supervisees. Will that be in one county? Or will the supervisor supervise one attorney each in 5 separate counties.

In any given case, there are 2 to 4 parent attorneys. If the supervisor is a co-counsel, that attorney will only be able to supervise one of these attorneys. In Hancock County we currently have 6 local attorneys representing parents, and two of us have just taken ourselves off the list for new appointments when the court started assigning cases without our consent and refusing to allow us to withdraw even if we had other commitments on the day of the summary preliminary hearing. If you take one of those attorneys away to supervise the others where will you be?

And why would any of these experienced attorneys listen to the "supervising" attorney if that attorney has no more experience or knowledge than the supervisees?

4. Will attorneys be paid for the time that they are supervised? Will they be able to get continuances on their cases by notifying the court that they are not available because they have to take some time off to be supervised? How will it be explained to clients that their attorneys should not be trusted to represent them properly - that they need to be supervised in every stage of their representation? If a less experienced attorney is hired to supervise a more experienced attorney, how will that work?

5. Already I have had to choose to do paperwork over visiting clients in jail, reviewing discovery, or returning phone calls to focus on paperwork to meet the commission requirements. As the paperwork/data collection dimension is prioritized, will the Commission tell these clients that the attorneys are just following the priorities established by the Commission?

Mary Gray

Some attorneys object to the supervision. They feel it is unfair in part because many other attorneys in other areas of the law do not have such a formal oversight. For example, there are many sole practitioners who practice divorce law and do not have this oversight. To help attorneys understand why supervision is important it would be helpful to list the specific cases that have led to Commission to introduce a system of supervision and how the supervision will prevent the specific cases from happening again. I would suggest list examples in addition to the ones cited in the ACLU lawsuit. It appears to me if the MCILS looked at the data entry for the ACLU cases on a weekly basis the alleged problems would have been recognized and corrected without any formal supervision program in place. In addition, all client's and especially those in jail, should have ready access to a toll free number to make a complaint directly to MCILS in real time. The problem with the cases cited in the ACLU complaint can be solved without wholesale intrusion into the files and client meetings of attorneys without probable cause to believe that there is deviation from the standards.

While I am not in favor of the proposed supervision program I would suggest the following:

Suggested rule change:

b. ii. says: Supervisors must meet with supervisees who are fully certified in all panels for which they have applied a minimum of **one time monthly**. I would get rid of the "one time monthly" and change it to "**when passive observation using the automated processes indicates a substantial deviation from the standards of practice**"

Comment:

This should be sufficient because there are very few times when attorneys are not doing a good job. The focus should be on crafting the passive observation system so that it identifies problems. This along with observing an attorney in court will provide ample information about the attorneys work. In addition, it is more akin to independent contract oversight than employer supervision of an employee. This will narrow the focus of supervision to those who really need it.

Suggested rule change:

d.iii **contemporaneous** billing. This should be changed to **weekly**.

Comment:

Weekly will give the supervisors plenty of time to stay on top of things and will give contract attorneys the weekend to catch up on all the data that must be put in to account for the work week. It will be hard enough to have the supervisors to keep up with all the data that will be put in place.

Suggested rule change:

d.iv. Prompts will be sent to the attorneys and their supervisors for **real time** monitoring and correction of any deviation from standards of practice. This should be changed to **weekly** monitoring

Comment:

If you put in the time and activities weekly the prompts will not be generated in real time but weekly. This should be sufficient to catch most problems. This could be changed in any given case where the attorney's compliance with standards comes into question.

Andrus, Justin

From: Harold J. Hainke, Esq. <HHainke@protonmail.com>
Sent: Thursday, April 14, 2022 9:04 AM
To: Andrus, Justin
Subject: Supervision Program Comments
Attachments: Hanks Supervision Comments.docx

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Here are my comments in anticipation of the Supervision Program workshop

Thanks

Hank

Harold J. Hainke, Esq.
Hainke & Tash
P.O. Box 192
Whitefield, ME 04353-0192
Tel. (207) 549-7704

Sent with [ProtonMail](#) secure email.

Andrus, Justin

From: Harold J. Hainke, Esq. <HHainke@protonmail.com>
Sent: Thursday, April 14, 2022 10:08 AM
To: Andrus, Justin
Subject: RE: Supervision Program Comments

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I guess all that can be said is:

Pursuant to Title 4 of the M.R.S. § 1801 et.seq and the Maine and U.S Constitutions, the MCILS is required to provide legal representation for indigent citizens when Constitutional Rights are threatened. Specifically, MCILS must “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;” 4 M.R.S.§ 1804(3)(A). The following supervision program is designed to give the MCILS the information it needs to carry out its duties.

Hank

Harold J. Hainke, Esq.
Hainke & Tash
P.O. Box 192
Whitefield, ME 04353-0192
Tel. (207) 549-7704

Sent with [ProtonMail](#) secure email.

----- Original Message -----

On Thursday, April 14th, 2022 at 9:48 AM, Andrus, Justin <Justin.Andrus@maine.gov> wrote:

Thank you, Hank. This is super helpful.

One question: the issue of supervision is not driven by historical issues in Maine, but rather by the requirement that we be able to show that the work done is good. That requirement lies in US Supreme Court law, 6th amendment, etc. How would you communicate that, to achieve the same end you suggest?

Justin W. Andrus

Executive Director

Maine Commission on Indigent Legal Services

(207) 287-3254

Justin.andrus@maine.gov

From: Harold J. Hainke, Esq. <HHainke@protonmail.com>

Sent: Thursday, April 14, 2022 9:04 AM

To: Andrus, Justin <Justin.Andrus@maine.gov>

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Thanks

Hank

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Hainke & Tash

P.O. Box 192

Whitefield, ME 04353-0192

Tel. (207) 549-7704

Sent with [ProtonMail](#) secure email.

Andrus, Justin

From: Andrus, Justin
Sent: Monday, April 25, 2022 12:49 PM
To: MCILS
Cc: Gariepy, Rachel; Nash, Lynne; Washer, Arthur; Brochu, Stephen; Fisher, Darcy; Guillory, Christopher; Hudson, Megan
Subject: Commission Budget Process
Attachments: MCILS Budget Meeting Schedule.04252022.pdf

Good afternoon, Commissioners. We are digging out from a network issue that is impacting all of us, so I wanted to start sending some stuff individually so that we are not dumping it all on you tomorrow if we can't get it all working today. To that end, I have attached a memorandum laying out our proposed process for addressing the next budget. It is absolutely vital that as a predicate to any detailed budget making we first reach consensus among the commissioners as to how to proceed. We must produce a much more serious budget package than the previous administration presented in 2020, because we absolutely must be included in the next gubernatorial budget. Staff appreciates the work of the Judiciary Committee, and the last minute attention from AFA, but without wholesale change and realistic funding we are dead in the water.

JWA

Justin W. Andrus
Executive Director
Maine Commission on Indigent Legal Services
(207) 287-3254
Justin.andrus@maine.gov

MCILS BUDGET FY'2023/2024

TO: COMMISSIONERS

FROM: JWA

SUBJECT: DEVELOPMENT OF MCILS BUDGET FOR FY'2023/2024

DATE: 4/25/2022

CC: INTERESTED PARTIES

MCILS has been advised that its proposed budget for the next biennium will be due either the last week of August or the first week of September. To ensure that there is time to produce a fully developed set of initiatives, staff proposes the following schedule and process:

<u>Meeting Date</u>	<u>Meeting Type</u>	<u>Location</u>
Tuesday, April 26, 2022	Commission Business Meeting	AFA Chamber / Statehouse
Tuesday, May 10, 2022	Budget Proposal Meeting	MCILS Office
Tuesday, May 24, 2022	Commission Business Meeting	AFA Chamber / Statehouse
Tuesday, June 7, 2022	Budget Proposal Meeting	MCILS Office
Tuesday, June 21, 2022	Commission Business Meeting	AFA Chamber / Statehouse
Tuesday, July 5, 2022	Budget Proposal Meeting	MCILS Office
Tuesday, July 19, 2022	Commission Business Meeting	AFA Chamber / Statehouse
Tuesday, August 2, 2022	Budget Proposal Meeting	MCILS Office
Tuesday, August 16, 2022	Commission Business Meeting	AFA Chamber / Statehouse
Tuesday, August 30, 2022	Budget Proposal Meeting	MCILS Office

As the budget needs to ultimately be the product of the Commission, Staff require insight from the Commission as to how to proceed. To ensure that we move the process in the right direction, Staff will ask the Commission to resolve any conflicts and vote to ratify the project in a series of stages. The purpose of the Budget Proposal Meetings will be for the Commission to review the product of the prior four weeks, to suggest and make edits, and to ratify the evolution of the project.

We think it is important that these budget meetings be distinct from the Commission Business Meetings. These meetings will be broadcast by Zoom.

Between meetings, Staff will meet with those interested Commissioners who are willing to participate directly in the production of the proposal. Those meetings will be open to the public to observe but will not be workshops for public participation.

The project will be phased as follows:

Phase One:

- i. April 26 – May 8: development and production of the topography of the proposal;
- ii. May 8: delivery of the proposed topography to the Commission whole;
- iii. **May 10: Budget Meeting to edit, amend and ratify the topography.**

Phase Two:

- iv. May 10 – June 3: development and production of operational blueprint and specification of outside needs;
- v. June 3: delivery of blueprint to the Commission whole;
- vi. **June 7: Budget Meeting to edit, amend and ratify the blueprint.**

Phase Three:

- vii. June 7 - July 1: development and production of detailed costs and needs;
- viii. July 1: delivery of detailed costs and needs to the Commission whole;
- ix. **July 5: Budget meeting to edit, amend and ratify the detailed costs and needs.**

Phase Four:

- x. July 6 – July 29: development and production of final budget document;
- xi. July 29: delivery of final budget document to the Commission whole;
- xii. **August 2: Budget meeting to edit, amend and ratify the final budget document.**