

MCILS

**December 28, 2021
Commissioner's Meeting
Packet**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

**DECEMBER 28, 2021
COMMISSION MEETING
AGENDA**

- 1) Approval of November 29, 2021 Commission Meeting Minutes
- 2) Chapter 301 Rulemaking
- 3) Report of the Executive Director
- 4) Collections Discussion
- 5) Annual Report
- 6) Biennial Budget Discussion
- 7) Set Date, Time and Location of Next Regular Meeting of the Commission
- 8) Public Comment
- 9) Executive Session

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94-649 MAINE COMMISSION ON INDIGENT LEGAL SERVICES

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 ~~maximum~~ 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 ~~that, unless an attorney has received prior authorization to do otherwise,~~ all that all vouchers must be submitted using ~~the MCILS- MCILS~~ electronic case management system.

SECTION 1. DEFINITIONS

1. Court Assigned Attorney. "Court Assigned Attorney" means an attorney licensed to practice law in ~~the State of~~ 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 Attorney. "Commission Assigned Attorney" means an attorney 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. Attorney. As used in this Chapter "Attorney" means a Court Assigned Attorney or Commission Assigned Attorney, or both.
- 2.4. MCILS or Commission. "MCILS" or "Commission" means the Commissioners of the Maine Commission on Indigent Legal Services.
3. 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 an Attorney, 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.

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SECTION 3. EXPENSES

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1. Routine Office Expenses. Routine Office expenses ~~are considered to be included in the hourly rate will not be paid by MCILS.~~ Routine office expenses ~~include, ing,~~ but are not limited to, postage, express postage, regular telephone, cell telephone, fax, office overhead, utilities, secretarial services, ~~routine copying (under 100 pages) the first 100 pages of any one print or copy job,~~ local phone calls, parking (except as stated below), and office supplies, etc., ~~will not be reimbursed.~~ Paralegal time may be billed to MCILS only through the non-counsel cost procedures.

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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, ~~extensive copying (over 100 pages), 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, ~~but must be approved in advance by the Executive Director.~~

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3. Travel Reimbursement. Mileage reimbursement shall ~~not exceed the be made at the applicable~~ 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 an attorney's home district and superior court. Mileage reimbursement will not be paid for travel to and from an attorney's home district and superior courts. Tolls will be reimbursed, except that tolls will not be reimbursed for travel to and from attorney's home district and superior court. All out-of-state travel or any overnight travel must be approved by ~~the MCILS~~ MCILS in writing prior to incurring the expense. Use of the telephone, video equipment, and email in lieu of travel is encouraged as appropriate.

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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.

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5. ~~5.~~ **Discovery Materials.** ~~The MCILS. 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 ~~forthwith~~ 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.

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6. ~~6.~~ **Expert and Investigator Expenses.** ~~Other non-routine expenses for payment to third parties, which historically required preapproval by the Court before July 1, 2010~~ (e.g., investigators, interpreters, medical and psychological experts, testing, depositions, etc.) ~~are required to~~ shall be approved in advance by MCILS. Funds for third-party services will be provided by ~~the MCILS. MCILS~~ only upon written request and a sufficient demonstration of reasonableness, relevancy, and need in accordance with ~~the MCILS~~ MCILS rules and procedures governing requests for funds for experts and investigators. See Chapter 302 Procedures Regarding Funds for Experts and Investigators.

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7. ~~7.~~ **Witness, Subpoena, and Service Fees.** ~~In criminal and juvenile cases, witness~~ Witness, subpoena, and service fees will be reimbursed only pursuant to ~~M.R. Crim. P. 17(b). 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. ~~MAXIMUM FEES. PRESUMPTIVE REVIEW.~~

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Vouchers submitted for amounts greater than ~~in excess of~~ the applicable maximum fees outlined in this section trigger for presumptive review ~~will not be approved~~ considered for payment, except as approved 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

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A. A. ~~Maximum fees~~ 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 maximum fee ~~trigger~~ limit.

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Effective July 1, 2015:

1) ~~Murder. Fee to be set by the Executive Director on a case by case basis.~~

1) 2) ~~Murder. All murder cases shall trigger presumptive review.~~

2) ~~Class A. \$34,000~~

3) 3) ~~Class B and C (against person). \$2,2503,500~~

4) 4) ~~Class B and C (against property). \$12,500~~

5) 5) ~~Class D and E (Superior or Unified Criminal Court)E. \$7501,500~~

6) 6) ~~Class D and E (District Court). \$540Repealed~~

7) 7) ~~Post-Conviction Review. \$1,2003,000~~

8) 8) ~~Probation Revocation. \$5401,500~~

9) 9) ~~Miscellaneous (i.e. witness representation on 5th Amendment grounds, etc.). \$540.) \$1,000~~

10) 10) ~~Juvenile. \$5401,500~~

B. ~~B.~~ In cases involving multiple counts against a single defendant, the ~~maximum 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, ~~c~~Counsel ~~is expected to shall~~ coordinate and consolidate services as much as possible.

C. ~~C.~~ Criminal and juvenile cases will include all proceedings through a ~~terminal case event~~disposition as defined in Section ~~65-1-A~~ below. Any subsequent proceedings, such as probation revocation, will require new application and appointment.

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~~D. When doing so will not adversely affect the attorney-client relationship, Commission-assigned counsel are urged to limit travel and waiting time by cooperating with each other to stand in at routine, non-dispositive matters by having one attorney appear at such things as arraignments and routine non-testimonial motions, instead of having all Commission-assigned counsel in an area appear.~~

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~~D. E. Upon written request to MCILS, assistant-a second Attorney counsel, may be appointedassigned in a murder case or other complicated cases; to provide for mentorship, or for other good cause at the discretion of the Executive Director:~~

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

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~~2) 2) each attorney 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 attorney.~~

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~~2. 2. District Court Child Protection~~

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

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~~Effective July 1, 2015:~~

~~1) 1) Child protective cases (each stage). \$900,1,500~~

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~~2) 2) Termination of Parental Rights (with a hearing). \$ 1,260,2,500~~

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~~B. B. Counsel must provide MCILS with written justification for any voucher that exceeds the maximum fee triggering limit. Each child protective stage ends when a proceeding results in a court order as defined in Section 5.1.B below 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~~

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shall be considered a new appointment for purposes of the ~~maximum-triggering fee for that case. A separate voucher must be submitted at the end of each stage.~~

~~3.~~ ~~3.~~ **Other District Court Civil**

~~A.~~ ~~A.~~ ~~Maximum fees~~ 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 ~~maximum-triggering fee limit.~~

Effective July 1, 2015:

~~1)~~ ~~1)~~ **Application for Involuntary Commitment. \$4201,000**

~~2)~~ ~~2)~~ **Petition for Emancipation. \$4201,500**

~~3)~~ ~~3)~~ **Petition for Modified Release Treatment. \$4201,000**

~~4)~~ ~~4)~~ **Petition for Release or Discharge. \$4201,000**

~~4.~~ ~~4.~~ **Law Court**

~~A.~~ ~~Maximum fees, excluding any itemized expenses, for Commission-assigned counsel are set in accordance with the following schedule:~~

Effective July 1, 2015:

~~1)~~ ~~Appellate work following the grant of petition for certificate of probable cause. \$1,200~~

~~B.~~ ~~Expenses shall be reimbursed for printing costs and mileage to oral argument at the applicable state rate. Vouchers for payment of counsel fees and expenses must be submitted, including an itemization of time spent.~~

~~A.~~ ~~All appeals shall trigger presumptive review.~~

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SECTION 5: MINIMUM FEES

Effective July:

1, 2015:

1. Attorneys may charge bill a minimum fee of \$150.00 2.5 hours for appearance 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 attorney serves. If an attorney serves as Lawyer of the Day for a morning session that continues into the afternoon, that will be one appearance. If an attorney 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 shall 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.

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SECTION 6: ADMINISTRATION

1. Vouchers for payment of counsel fees and expenses shall be submitted within ninety days after the date of disposition of a criminal, juvenile or appeals of a terminal case, or completion of a stage of a child protection case resulting in an order event. Lawyer of the Day and specialty courts shall be billed within 90 days of the service provided. Vouchers not submitted more than ninety days after final disposition, or completion of a stage of a child protection case, shall not be paid.

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A. For purposes of 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, "disposition" of a criminal or juvenile case shall be at the following times: if that voucher would be payable under this rule.

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1) entry of judgment (sentencing, acquittal, dismissal, or filing);

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Terminal case events are:

1) ~~The withdrawal of counsel~~

2) ~~upon The entry of a deferred disposition;~~

3) ~~upon issuance dismissal of a warrant of arrest for failure to appear; all charges or petitions~~

4) ~~upon granting of leave to withdraw;~~

5) ~~upon decision of any post trial motions;~~

6) ~~upon completion of the services the attorney was assigned to provide (e.g., mental health hearings, "lawyer of the 3) Judgment in a case, or~~

4) ~~Final resolution of post-judgment proceedings for which counsel is responsible~~

~~The 90 day," bail hearings, etc.); or~~

7) ~~specific authorization of the Executive Director to submit an interim period for submitting a voucher.~~

~~B. For purposes of this rule, "each stage" of a child protection case shall be:~~

1) ~~run from the date that an Order after Summary Preliminary hearing, Judgment, or Agreement-Dismissal is docketed.~~

2) ~~Order after Jeopardy Hearing~~

3) ~~Order after each Judicial Review~~

4) ~~Order after a Cease Reunification Hearing~~

5) ~~Order after Permanency Hearing~~

6) ~~Order after Termination of Parental Rights Hearing~~

7) ~~Law Court Appeal~~

1. ~~2. Unless otherwise authorized in advance, all~~ vouchers must be submitted using ~~the MCILS- MCILS~~ electronic case management program and comply with all instructions for use of the system.

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~~2.~~ ~~3.~~ 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.~~ ~~4.~~ All expenses claimed for reimbursement must be fully itemized on the voucher. Copies of receipts for payments to third parties shall be retained and ~~supplied upon request~~ appended to the voucher.

~~5.~~ Legal services provided in the district court for cases subsequently transferred to the superior court shall be included in the voucher submitted to the ~~MCILS~~ MCILS at disposition of the case.

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 ~~major substantive~~)

June 10, 2016 – filing 2016-092 (~~Final adoption, major substantive~~)

July 21, 2021 – filing 2021-149 (EMERGENCY ~~major substantive~~)

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Page 4: [1] Formatted **Andrus, Justin** **10/27/2021 1:56:00 PM**

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Page 4: [2] Formatted **Andrus, Justin** **10/27/2021 1:56:00 PM**

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Page 4: [3] Formatted **Andrus, Justin** **10/27/2021 1:56:00 PM**

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Detailed Basis Statement for Chapter 301

Since July 1, 2015, MCILS Chapter 301, Section 2, has authorized a rate of Sixty Dollars (\$60.00) per hour for time spent on an assigned case. Court appointed counsel operating under the MCILS system have been withdrawing from that system in part because the rate of payment for work on assigned cases did not permit counsel to operate cost efficiently. MCILS relies on appointed counsel to discharge its constitutional and statutory obligations. In Sec. A-22 of the supplemental appropriations bill passed by the Legislature for fiscal years 2021-2022 and 2022-2023, the Legislature appropriated sufficient funds to pay lawyers \$80.00/hr. for the 2021-2022 and the 2022-2023 fiscal years. Section 2 was amended on July 21, 2021 by emergency rulemaking to permit MCILS to pay appointed counsel the \$80 per hour provided by the Legislature. The rule amendment proposed here will make the changes adopted in the emergency rule permanent. The rule amendment also sets the fee amounts that trigger presumptive review for specific case types and provides for some discretion for the Executive Director to authorize payment of a voucher submitted after 90 days of the triggering date upon a showing of good cause.

**Maine Commission on Indigent Legal Services – Commissioners Meeting
November 29, 2021
Room 228, State House**

Minutes

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

MCILS Staff Present: Justin Andrus, Ellie Maciag

| Agenda Item | Discussion | Outcome/Action Item/Responsible Party |
|---|--|---|
| Public Hearing on Chapter 301 Rulemaking | No public comment. | |
| Approval of the October 29, 2021 Commission meeting minutes | No discussion. | Commissioner Schneider moved to approve. Commissioner Cummins seconded. All voted in favor. Approved. |
| Report of the Executive Director | Director Andrus reported that he listened to the recording of the Court’s parents’ attorney training that was discussed at the last meeting and understands the reactions that people might have had to it. Director Andrus noted that there is a tension in the child protection arena between moving cases and diligence. Director Andrus explained that the Commission was able to staff all cases and recently had a minimum standards training with additional people interested in joining the rosters. The surge of cases seen over the summer has slowed and projections made this past August and September have not been realized. Director Andrus had no new information to report concerning the issue of reunifications services but noted attorneys are still struggling to get sufficient | |

| Agenda Item | Discussion | Outcome/Action Item/Responsible Party |
|----------------------|--|--|
| | <p>visitation for their clients to support reunification. Commissioner Carey suggested contacting the child welfare ombudsman to alert her about these visitation issues. Director Andrus reported that the York County Court has notified counsel for all defendants turned away from the York County Jail. Director Andrus was unsure about the next steps but stated that this situation and situations elsewhere in the state are deeply problematic and that collectively more work needs to be done to find alternatives to sending more people to jail. Director Andrus relayed that staff is working to develop programs that were not funded with permanent positions in the last budget cycle, including appellate and diversion and mitigation programs. Director Andrus reported that Representative Harnett's jail recording bill will move forward this upcoming session after a successful appeal in the Legislative Council. Director Andrus updated the Commissioners on the amended stand-in/coverage policy, explaining that he reworked the policy after receiving some feedback from attorneys and that the policy moves the practice towards a client centric approach. The discussion turned to the rural practice article which provided data about bar demographics, highlighting an aging, shrinking rural bar. Commissioner Schneider urged the Commission to again look at a public defender model to address this looming problem. Commissioner Carey renewed a request to workshop Commissioner Alexander's proposal, with Director Andrus adding that staff's new office building has conference space to accommodate such a meeting.</p> | |
| Forum Update | Director Andrus gave a brief update about the logistics and format for the upcoming Attorney Forum on December 9. | |
| Collections Concerns | Director Andrus alerted the Commissioners about a potential issue with collection efforts. Staff is aware of instances where attorneys have been overpaid, including one attorney making large periodic repayments and others making payments in response to the 12-hour alert emails. The issue presented is | |

| Agenda Item | Discussion | Outcome/Action Item/Responsible Party |
|--------------------|---|--|
| | <p>that there is no way for the Commission to account for the overpayment and reimbursement in the defenderData program. Director Andrus requested Justice Works find a solution to this issue. In the interim, defendants could be subjected to improper recapture of bail and overpayment of counsel fees owed. Director Andrus was inclined to suggest that the Commission halt collection efforts until staff can certify that the correct amounts are being collecting. Director Andrus relayed that the Judicial Branch notified him earlier this summer about its desire to cease collecting partial indigency payments but have not yet given him a start date. Director Andrus explained that if the Commission asks the Court to stop collecting it is unclear whether the Court would decide to resume those efforts. Commissioner Carey asked what statutory authority the Commission has to request the Court to stop collecting. Director Andrus suggesting discussing more with legal counsel during executive session but believes the Commission does not have that authority. Following executive session, Director Andrus confirmed the instruction from the Commission to not make any changes to collections and continue with investigations and develop any information he can before taking any different action. Commissioner Carey agreed, noting that there were two things he was interested in learning; what the Commission’s authority is to cease collections and what amount of collections are known to be related to billings that were improper, either through the 12 hour billing alerts or the voluntary settlement.</p> | |
| Public Comment | None | |
| Executive Session | <p>Commissioner 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. Commissioner Alexander seconded. Following executive session and a short discussion, Commissioner Carey moved for the Commission to request the Attorney General’s Office on behalf of the Commission take all necessary steps including initiating litigation against Fairfield and Associates and/or Amy</p> | |

| Agenda Item | Discussion | Outcome/Action Item/Responsible Party |
|------------------------|--|--|
| | Fairfield for overpayments received in the event that repayment is not received by the Commission by November 30, 2021. Commissioner Alexander seconded. Commissioners Alexander, Carey, Katz, Schneider, and Tardy voted in favor. Commissioner Cummins voted to oppose. The motion was approved. | |
| Adjournment of meeting | The next meeting will be held on Tuesday, December 28 th at 9 am. | |

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JUSTIN ANDRUS, EXECUTIVE DIRECTOR
SUBJECT: OPERATIONS REPORTS
DATE: December 7, 2021

Attached you will find the November 2021, Operations Reports for your review and our discussion at the Commission meeting on December 28, 2021. A summary of the operations reports follows:

- 2,119 new cases were opened in the DefenderData system in November. This was a 141 case decrease from October. Year to date, new cases are down 2.5% from 12,548 at this time last year to 12,223 this year.
- The number of vouchers submitted electronically in November was 2,491, a decrease of 441 vouchers from October, totaling \$1,417,496, a decrease of \$219,009 from October. Year to date, the number of submitted vouchers is up by approximately 10.9%, from 12,158 at this time last year to 13,489 this year, with the total amount for submitted vouchers up approximately 33.4%, from \$5,462,375 at this time last year to \$7,288,354 this year.
- In November, we paid 2,567 electronic vouchers totaling \$1,499,115, representing an increase of 108 vouchers and an increase of \$58,192 compared to October. Year to date, the number of paid vouchers is up approximately 20.1%, from 10,930 at this time last year 13,131 this year, and the total amount paid is up approximately 43.3%, from \$4,932,392 this time last year to \$7,070,368 this year.
- We paid no paper vouchers in November.
- The average price per voucher in November was \$584.00 up \$45.34 per voucher from October. Year to date, the average price per voucher is up approximately 19.3%, from \$451.27 at this time last year to \$538.45 this year.
- Post-Conviction Review and Petition/Release/Discharge cases had the highest average voucher in November. There were 9 vouchers exceeding \$5,000 paid in November. See attached addendum for details.
- In November, we issued 82 authorizations to expend funds: 38 for private investigators, 27 for experts, and 17 for miscellaneous services such as interpreters and transcriptionists. In November, we paid \$29,078 for experts and investigators, etc. No requests for funds were denied.
- In November we opened 15 attorney investigations.

- In November, we approved 5 requests for co-counsel.

In our All Other Account, the total expenses for the month of November were \$1,537,062. During November, approximately \$8,867 was devoted to the Commission's operating expenses.

In the Personal Services Accounts, we had \$114,140 in expenses for the month of November.

In the Revenue Account, the transfer from the Judicial Branch for November reflecting October's collections, totaled \$108,667.

During November, we had \$400 in expenses related to training.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY22 FUND ACCOUNTING
AS OF 11/30/2021

| 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 | | \$ - | | \$ - | | \$ - | | \$ - | |
| FY21 Unobligated Carry Forward | | \$ 495,733.30 | | \$ - | | \$ - | | \$ - | \$ 495,733.30 |
| Total Budget Allotments | | \$ 4,803,632.00 | | \$ 5,387,088.00 | | \$ 4,988,737.00 | | \$ 471,013.00 | \$ 16,146,203.30 |
| Total Expenses | 1 | \$ (1,188,459.32) | 4 | \$ (1,531,646.43) | 7 | \$ - | 10 | \$ - | |
| | 2 | \$ (1,479,685.13) | 5 | \$ (1,537,062.18) | 8 | \$ - | 11 | \$ - | |
| | 3 | \$ (1,282,898.64) | 6 | \$ - | 9 | \$ - | 12 | \$ - | |
| Encumbrances (Justice Works) | | \$ (70,052.50) | | \$ 11,627.50 | | \$ - | | \$ - | \$ (58,425.00) |
| Encumbrances (B Taylor) | | \$ (13,260.00) | | \$ 4,420.00 | | \$ - | | \$ - | \$ (8,840.00) |
| Encumbrances (CTB for non attorney expenses) | | \$ (676,875.82) | | \$ 107,097.12 | | \$ - | | \$ - | \$ (569,778.70) |
| Encumbrance (Jamesa Drake training contract) | | \$ (92,400.00) | | \$ - | | \$ - | | \$ - | \$ (92,400.00) |
| TOTAL REMAINING | | \$ 0.59 | | \$ 2,441,524.01 | | \$ 4,988,737.00 | | \$ 471,013.00 | \$ 8,397,007.90 |

| Q2 Month 5 | |
|--------------------------------|--------------------------|
| INDIGENT LEGAL SERVICES | |
| Counsel Payments | \$ (1,499,115.87) |
| Interpreters | \$ (62.50) |
| Private Investigators | \$ (5,749.36) |
| Mental Health Expert | \$ (13,200.00) |
| Misc Prof Fees & Serv | \$ (288.29) |
| Transcripts | \$ (1,515.00) |
| Other Expert | \$ (7,981.83) |
| Process Servers | \$ (281.34) |
| Subpoena Witness Fees | \$ - |
| Out of State Witness Travel | \$ - |
| SUB-TOTAL ILS | \$ (1,528,194.19) |
| OPERATING EXPENSES | |
| Service Center | \$ (1,829.25) |
| DefenderData | \$ (5,617.50) |
| Parking Permit Annual Fee | \$ - |
| Mileage/Tolls/Parking | \$ (581.40) |
| Mailing/Postage/Freight | \$ (366.68) |
| West Publishing Corp | \$ (226.80) |
| Risk Management Insurances | \$ - |
| Office Supplies/Equip. | \$ 73.29 |
| Cellular Phones | \$ (279.65) |
| OIT/TELCO | \$ - |
| Office Equipment Rental | \$ - |
| Barbara Taylor monthly fees | \$ - |
| Tuition for Justin's CLEs | \$ - |
| Dues | \$ (40.00) |
| AAG Legal Srvcs Quarterly Paym | \$ - |
| SUB-TOTAL OE | \$ (8,867.99) |
| TOTAL | \$ (1,537,062.18) |

| INDIGENT LEGAL SERVICES | |
|--|------------------------|
| Q2 Allotment | \$ 5,387,088.00 |
| Q2 Encumbrances for Justice Works contract | \$ 11,627.50 |
| Barbara Taylor Contract | \$ 4,420.00 |
| CTB Encumbrance for non attorney expenses | \$ 107,097.12 |
| Q2 Jamesa Drake training contract | \$ - |
| Q2 Expenses to date | \$ (3,068,708.61) |
| Remaining Q1 Allotment | \$ 2,441,524.01 |

| Non-Counsel Indigent Legal Services | |
|-------------------------------------|----------------------|
| Monthly Total | \$ (29,078.32) |
| Total Q1 | \$ 223,124.18 |
| Total Q2 | \$ 107,097.12 |
| Total Q3 | \$ - |
| Total Q4 | \$ - |
| Fiscal Year Total | \$ 330,221.30 |

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

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

FY22 FUND ACCOUNTING

As of 11/30/2021

| Account 014 95F Z112 02 (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 | \$ - | 4 | \$ - | 7 | \$ - | 10 | \$ - | |
| Budget Order Adjustment | 2 | \$ - | 5 | \$ - | 8 | \$ - | 11 | \$ - | |
| Budget Order Adjustment | | \$ - | 6 | \$ - | 9 | \$ - | 12 | \$ - | |
| Budget Order Adjustment | 3 | \$ - | | \$ - | | \$ - | | \$ - | |
| Total Budget Allotments | | \$ 5,569,080.00 | | \$ 3,551,305.00 | | \$ 282,324.00 | | \$ 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 | \$ - | 10 | \$ - | |
| Collected from McIntosh Law | | \$ 6,000.00 | | \$ - | | \$ - | | \$ - | |
| Collected for reimbursement of counsel fees | | \$ 2,167.00 | | \$ 195.00 | 8 | \$ - | | \$ - | |
| 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 | \$ - | 9 | \$ - | 12 | \$ - | |
| Collected from McIntosh Law | | \$ 2,142.00 | | \$ - | | \$ - | | \$ - | |
| Collected for reimbursement of counsel fees | | \$ 286.00 | | \$ - | | \$ - | | \$ - | |
| Collected from ME Ctr Public Int Reporting | | \$ - | | \$ - | | \$ - | | \$ - | |
| Returned Checks-stopped payments | | \$ - | | \$ - | | \$ - | | \$ - | |
| TOTAL CASH PLUS REVENUE COLLECTED | | \$ 1,149,218.06 | | \$ 215,282.75 | | \$ - | | \$ - | \$ 1,364,500.81 |
| Counsel Payments | 1 | \$ - | 4 | \$ - | 7 | \$ - | 10 | \$ - | |
| Other Expenses | | \$ - | | \$ - | | \$ - | *** | \$ - | |
| Counsel Payments | 2 | \$ (457,655.45) | 5 | \$ - | 8 | \$ - | 11 | \$ - | |
| Other Expenses | | \$ - | | \$ - | | \$ - | | \$ - | |
| Counsel Payments | 3 | \$ - | 6 | \$ - | 9 | \$ - | 12 | \$ - | |
| State Cap for period 2 expenses | * | \$ (4,471.29) | ** | \$ - | *** | \$ - | | \$ - | |
| REMAINING ALLOTMENT | | \$ 5,106,953.26 | | \$ 3,551,305.00 | | \$ 282,324.00 | | \$ 282,324.00 | \$ 9,222,906.26 |
| Overpayment Reimbursements | 1 | \$ - | 4 | \$ - | 7 | \$ - | 10 | \$ - | |
| | 2 | \$ - | 5 | \$ - | 8 | \$ - | 11 | \$ - | |
| | 3 | \$ - | 6 | \$ - | 9 | \$ - | 12 | \$ - | |
| REMAINING CASH Year to Date | | \$ 687,091.32 | | \$ 215,282.75 | | \$ - | | \$ - | \$ 902,374.07 |

** NO COLLECTED REVENUE IN AUGUST

| Collections versus Allotment | |
|--------------------------------|----------------------|
| Monthly Total | \$ 108,667.18 |
| Total Q1 | \$ 264,695.37 |
| Total Q2 | \$ 215,282.75 |
| Total Q3 | \$ - |
| Total Q4 | \$ - |
| Expenses to Date | \$ (462,126.74) |
| Cash Carryover from Prior Year | \$ 884,522.69 |
| Fiscal Year Total | \$ 902,374.07 |

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY22 FUND ACCOUNTING
AS OF 11/30/2021

| 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 | \$ - | 10 | \$ - | |
| | 2 | \$ (103,991.70) | 5 | \$ (85,735.69) | 8 | \$ - | 11 | \$ - | |
| | 3 | \$ (55,046.83) | 6 | \$ - | 9 | \$ - | 12 | \$ - | |
| TOTAL REMAINING | | \$ 0.84 | | \$ 134,712.57 | | \$ 254,914.00 | | \$ 162,917.00 | \$ 552,544.41 |

| Q2 Month 5 | |
|----------------------------|-----------------------|
| Per Diem | \$ - |
| Salary | \$ (32,161.56) |
| Vacation Pay | \$ (1,353.18) |
| Holiday Pay | \$ (2,042.52) |
| Sick Pay | \$ (1,007.85) |
| Empl Hlth SVS/Worker Comp | \$ - |
| Health Insurance | \$ (10,397.74) |
| Dental Insurance | \$ (262.80) |
| Employer Retiree Health | \$ (3,745.38) |
| Employer Retirement | \$ (2,471.15) |
| Employer Group Life | \$ (344.40) |
| Employer Medicare | \$ (828.26) |
| Retiree Unfunded Liability | \$ (7,437.15) |
| Longevity Pay | \$ (160.00) |
| Perm Part Time Full Ben | \$ (4,211.22) |
| Retro Pay Contract | \$ (19,000.00) |
| Retro Lump Sum Pymt | \$ (312.48) |
| TOTAL | \$ (85,735.69) |

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY22 FUND ACCOUNTING
AS OF 11/30/2021

| 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 | \$ - | 10 | \$ - | |
| | 2 | \$ - | 5 | \$ (28,405.03) | 8 | \$ - | 11 | \$ - | |
| | 3 | \$ - | 6 | \$ - | 9 | \$ - | 12 | \$ - | |
| TOTAL REMAINING | | \$ 127,406.00 | | \$ 181,268.97 | | \$ 211,155.00 | | \$ 160,423.00 | \$ 680,252.97 |

| Q2 Month 5 | |
|----------------------------|-----------------------|
| Per Diem | \$ - |
| Salary | \$ (12,622.16) |
| Vacation Pay | \$ (272.00) |
| Holiday Pay | \$ (1,164.96) |
| Sick Pay | \$ - |
| Empl Hlth SVS/Worker Comp | \$ (12.00) |
| Health Insurance | \$ (872.96) |
| Dental Insurance | \$ (29.20) |
| Employer Retiree Health | \$ (1,276.59) |
| Employer Retirement | \$ (1,248.47) |
| Employer Group Life | \$ (53.76) |
| Employer Medicare | \$ (318.05) |
| Retiree Unfunded Liability | \$ (2,534.88) |
| Longevity Pay | \$ - |
| Perm Part Time Full Ben | \$ - |
| Retro Pay Contract | \$ (8,000.00) |
| Retro Lump Sum Pymt | \$ - |
| TOTAL | \$ (28,405.03) |

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY22 FUND ACCOUNTING
AS OF 11/30/2021

| 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 |

| Q2 Month 5 | |
|--------------|-------------|
| | \$ - |
| | \$ - |
| | \$ - |
| | \$ - |
| | \$ - |
| TOTAL | \$ - |

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY22 FUND ACCOUNTING
AS OF 11/30/2021

| 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 |

| Q2 Month 5 | |
|--------------|-------------|
| | \$ - |
| | \$ - |
| | \$ - |
| | \$ - |
| | \$ - |
| TOTAL | \$ - |

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Case Type

11/30/2021

| DefenderData Case Type | Nov-21 | | | | | | Fiscal Year 2022 | | | |
|--|--------------|--------------------|------------------------|---------------|------------------------|------------------|------------------|---------------|------------------------|------------------|
| | New Cases | Vouchers Submitted | Submitted Amount | Vouchers Paid | Approved Amount | Average Amount | Cases Opened | Vouchers Paid | Amount Paid | Average Amount |
| Appeal | 12 | 14 | \$ 16,783.66 | 15 | \$ 21,045.22 | \$ 1,403.01 | 70 | 70 | \$ 109,957.86 | \$ 1,570.83 |
| Child Protection Petition | 217 | 389 | \$ 275,097.80 | 373 | \$ 279,900.27 | \$ 750.40 | 1,064 | 1,900 | \$ 1,285,420.26 | \$ 676.54 |
| Drug Court | 1 | 5 | \$ 6,816.00 | 4 | \$ 5,384.00 | \$ 1,346.00 | 6 | 40 | \$ 71,214.00 | \$ 1,780.35 |
| Emancipation | 11 | 6 | \$ 2,123.60 | 7 | \$ 2,101.60 | \$ 300.23 | 38 | 24 | \$ 6,971.60 | \$ 290.48 |
| Felony | 496 | 560 | \$ 426,876.23 | 554 | \$ 466,679.69 | \$ 842.38 | 2,950 | 2,840 | \$ 2,239,142.12 | \$ 788.43 |
| Involuntary Civil Commitment | 83 | 79 | \$ 22,957.25 | 94 | \$ 31,410.28 | \$ 334.15 | 422 | 433 | \$ 112,438.07 | \$ 259.67 |
| Juvenile | 36 | 70 | \$ 31,808.96 | 72 | \$ 33,137.13 | \$ 460.24 | 243 | 266 | \$ 139,532.25 | \$ 524.56 |
| Lawyer of the Day - Custody | 198 | 198 | \$ 57,425.16 | 220 | \$ 65,130.76 | \$ 296.05 | 1,145 | 1,096 | \$ 328,850.84 | \$ 300.05 |
| Lawyer of the Day - Juvenile | 17 | 21 | \$ 5,011.18 | 24 | \$ 6,745.58 | \$ 281.07 | 120 | 113 | \$ 29,004.10 | \$ 256.67 |
| Lawyer of the Day - Walk-in | 167 | 166 | \$ 57,780.51 | 170 | \$ 58,208.77 | \$ 342.40 | 775 | 762 | \$ 241,519.33 | \$ 316.95 |
| Misdemeanor | 744 | 691 | \$ 285,641.86 | 728 | \$ 311,254.65 | \$ 427.55 | 4,447 | 3,862 | \$ 1,483,227.96 | \$ 384.06 |
| Petition, Modified Release Treatment | 0 | 0 | | 1 | \$ 188.00 | \$ 188.00 | 0 | 15 | \$ 8,059.17 | \$ 537.28 |
| Petition, Release or Discharge | 0 | 1 | \$ 1,849.50 | 1 | \$ 1,849.50 | \$ 1,849.50 | 1 | 5 | \$ 3,679.80 | \$ 735.96 |
| Petition, Termination of Parental Rights | 17 | 29 | \$ 37,408.74 | 37 | \$ 46,127.36 | \$ 1,246.69 | 124 | 260 | \$ 210,025.02 | \$ 807.79 |
| Post Conviction Review | 6 | 10 | \$ 40,102.31 | 9 | \$ 12,956.88 | \$ 1,439.65 | 34 | 31 | \$ 41,628.75 | \$ 1,342.86 |
| Probate | 9 | 5 | \$ 2,160.00 | 3 | \$ 1,368.00 | \$ 456.00 | 19 | 9 | \$ 8,798.00 | \$ 977.56 |
| Probation Violation | 73 | 103 | \$ 47,445.78 | 108 | \$ 54,554.72 | \$ 505.14 | 554 | 573 | \$ 251,355.94 | \$ 438.67 |
| Represent Witness on 5th Amendment | 3 | 2 | \$ 554.00 | 2 | \$ 554.00 | \$ 277.00 | 11 | 11 | \$ 4,556.12 | \$ 414.19 |
| Resource Counsel Criminal | 0 | 1 | \$ 312.00 | 2 | \$ 448.00 | \$ 224.00 | 0 | 10 | \$ 2,080.00 | \$ 208.00 |
| Resource Counsel Juvenile | 0 | 0 | | 0 | | | 0 | 2 | \$ 106.00 | \$ 53.00 |
| Resource Counsel Protective Custody | 0 | 0 | | 0 | | | 0 | 1 | \$ 110.00 | \$ 110.00 |
| Review of Child Protection Order | 29 | 141 | \$ 99,342.15 | 143 | \$ 100,071.46 | \$ 699.80 | 195 | 806 | \$ 492,380.73 | \$ 610.89 |
| Revocation of Administrative Release | 0 | 0 | | 0 | | | 5 | 2 | \$ 310.56 | \$ 155.28 |
| DefenderData Sub-Total | 2,119 | 2,491 | \$ 1,417,496.69 | 2,567 | \$ 1,499,115.87 | | 12,223 | 13,131 | \$ 7,070,368.48 | \$ 538.45 |
| Paper Voucher Sub-Total | | | | | | | | | | |
| TOTAL | 2,119 | 2,491 | \$1,417,496.69 | 2,567 | \$1,499,115.87 | \$ 584.00 | 12,223 | 13,131 | \$ 7,070,368.48 | \$ 538.45 |

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Court

11/30/2021

| Court | Nov-21 | | | | | | Fiscal Year 2022 | | | |
|--------------|--------------|--------------------|------------------------|---------------|------------------------|------------------|------------------|---------------|-----------------------|-----------------|
| | New Cases | Vouchers Submitted | Submitted Amount | Vouchers Paid | Approved Amount | Average Amount | Cases Opened | Vouchers Paid | Amount Paid | Average Amount |
| ALFSC | 5 | 8 | \$ 3,686.00 | 9 | \$ 4,304.00 | \$ 478.22 | 40 | 36 | \$ 16,737.70 | \$464.94 |
| AUBSC | 2 | 0 | | 1 | \$ 552.00 | \$ 552.00 | 8 | 10 | \$ 4,632.71 | \$463.27 |
| AUGDC | 48 | 68 | \$ 44,981.06 | 71 | \$ 44,216.74 | \$ 622.77 | 213 | 301 | \$ 196,812.69 | \$653.86 |
| AUGSC | 0 | 1 | \$ 1,849.50 | 3 | \$ 2,277.50 | \$ 759.17 | 16 | 32 | \$ 23,186.72 | \$724.59 |
| BANDC | 45 | 100 | \$ 40,953.69 | 102 | \$ 43,563.69 | \$ 427.10 | 258 | 450 | \$ 163,333.73 | \$362.96 |
| BANSC | 0 | 1 | \$ 1,180.00 | 0 | | | 3 | 2 | \$ 190.00 | \$95.00 |
| BATSC | 0 | 0 | | 0 | | | 0 | 2 | \$ 1,532.00 | \$766.00 |
| BELDC | 13 | 21 | \$ 10,113.02 | 19 | \$ 12,581.22 | \$ 662.17 | 77 | 105 | \$ 64,678.90 | \$615.99 |
| BELSC | 0 | 0 | | 0 | | | 1 | 2 | \$ 2,009.00 | \$1,004.50 |
| BIDDC | 33 | 53 | \$ 37,720.63 | 50 | \$ 37,173.52 | \$ 743.47 | 204 | 347 | \$ 203,545.09 | \$586.59 |
| BRIDC | 16 | 14 | \$ 10,950.00 | 14 | \$ 9,227.02 | \$ 659.07 | 66 | 71 | \$ 33,495.18 | \$471.76 |
| CALDC | 3 | 13 | \$ 9,939.84 | 12 | \$ 9,327.84 | \$ 777.32 | 15 | 33 | \$ 19,982.80 | \$605.54 |
| CARDC | 3 | 17 | \$ 9,878.80 | 22 | \$ 9,946.42 | \$ 452.11 | 31 | 116 | \$ 63,012.25 | \$543.21 |
| CARSC | 0 | 0 | | 0 | | | 3 | 2 | \$ 2,044.00 | \$1,022.00 |
| DOVDC | 1 | 4 | \$ 2,087.68 | 6 | \$ 3,381.68 | \$ 563.61 | 22 | 46 | \$ 25,779.60 | \$560.43 |
| DOVSC | 0 | 0 | | 0 | | | 1 | 1 | \$ 474.00 | \$474.00 |
| ELLDC | 11 | 33 | \$ 27,338.48 | 25 | \$ 21,054.48 | \$ 842.18 | 61 | 149 | \$ 117,177.84 | \$786.43 |
| ELLSC | 0 | 1 | \$ 700.00 | 0 | | | 1 | 0 | | |
| FARDC | 8 | 13 | \$ 11,903.54 | 15 | \$ 11,042.94 | \$ 736.20 | 32 | 52 | \$ 30,562.74 | \$587.75 |
| FARSC | 0 | 0 | | 0 | | | 0 | 1 | \$ 212.00 | \$212.00 |
| FORDC | 1 | 13 | \$ 18,803.48 | 18 | \$ 21,460.19 | \$ 1,192.23 | 32 | 66 | \$ 45,951.25 | \$696.23 |
| HOUDC | 7 | 18 | \$ 15,611.92 | 21 | \$ 18,774.68 | \$ 894.03 | 33 | 84 | \$ 57,903.15 | \$689.32 |
| HOUSC | 1 | 0 | | 0 | | | 3 | 2 | \$ 1,514.00 | \$757.00 |
| LEWDC | 49 | 88 | \$ 51,663.32 | 85 | \$ 50,332.32 | \$ 592.14 | 271 | 421 | \$ 246,580.85 | \$585.70 |
| LINDC | 15 | 16 | \$ 8,755.56 | 18 | \$ 7,675.80 | \$ 426.43 | 48 | 68 | \$ 28,994.97 | \$426.40 |
| MACDC | 3 | 6 | \$ 7,807.55 | 6 | \$ 7,807.55 | \$ 1,301.26 | 7 | 22 | \$ 29,679.62 | \$1,349.07 |
| MACSC | 0 | 1 | \$ 896.00 | 1 | \$ 896.00 | \$ 896.00 | 1 | 1 | \$ 896.00 | \$896.00 |
| MADDCC | 1 | 1 | \$ 386.40 | 1 | \$ 386.40 | \$ 386.40 | 4 | 5 | \$ 1,859.60 | \$371.92 |
| MILDC | 3 | 5 | \$ 1,674.00 | 7 | \$ 2,354.00 | \$ 336.29 | 21 | 40 | \$ 11,281.76 | \$282.04 |
| NEWDC | 9 | 11 | \$ 4,707.04 | 14 | \$ 6,312.56 | \$ 450.90 | 49 | 100 | \$ 41,449.31 | \$414.49 |
| PORDC | 55 | 86 | \$ 50,277.38 | 82 | \$ 57,274.24 | \$ 698.47 | 342 | 492 | \$ 307,291.40 | \$624.58 |
| PORSC | 1 | 0 | | 1 | \$ 200.00 | \$ 200.00 | 27 | 27 | \$ 10,910.00 | \$404.07 |
| PREDC | 6 | 6 | \$ 4,070.00 | 11 | \$ 3,731.92 | \$ 339.27 | 50 | 69 | \$ 35,006.13 | \$507.34 |
| RODC | 13 | 16 | \$ 6,071.61 | 18 | \$ 7,264.37 | \$ 403.58 | 74 | 95 | \$ 56,010.07 | \$589.58 |
| ROSC | 1 | 1 | \$ 512.00 | 1 | \$ 512.00 | \$ 512.00 | 8 | 4 | \$ 1,544.56 | \$386.14 |
| RUMDC | 10 | 18 | \$ 14,244.24 | 24 | \$ 17,989.34 | \$ 749.56 | 45 | 98 | \$ 78,741.18 | \$803.48 |
| SKODC | 27 | 36 | \$ 21,936.96 | 42 | \$ 26,511.80 | \$ 631.23 | 132 | 244 | \$ 148,047.80 | \$606.75 |
| SKOSC | 1 | 0 | | 0 | | | 5 | 6 | \$ 2,937.60 | \$489.60 |
| SOUDC | 7 | 21 | \$ 15,819.32 | 27 | \$ 25,088.20 | \$ 929.19 | 51 | 98 | \$ 90,504.50 | \$923.52 |
| SOUNSC | 0 | 0 | | 0 | | | 0 | 3 | \$ 884.00 | \$294.67 |
| SPRDC | 17 | 27 | \$ 22,815.07 | 21 | \$ 16,541.89 | \$ 787.71 | 83 | 143 | \$ 99,645.78 | \$696.82 |
| Law Ct | 11 | 10 | \$ 14,530.19 | 13 | \$ 20,148.52 | \$ 1,549.89 | 50 | 53 | \$ 89,636.77 | \$1,691.26 |
| YORCD | 244 | 234 | \$ 111,837.02 | 244 | \$ 147,559.14 | \$ 604.75 | 1,539 | 1,348 | \$ 734,182.08 | \$544.65 |
| ARODC | 107 | 128 | \$ 66,561.53 | 153 | \$ 74,256.14 | \$ 485.33 | 676 | 630 | \$ 316,163.58 | \$501.85 |
| ANDCD | 189 | 191 | \$ 105,424.55 | 183 | \$ 96,786.49 | \$ 528.89 | 899 | 728 | \$ 409,394.16 | \$562.35 |
| KENCD | 125 | 169 | \$ 91,425.98 | 148 | \$ 83,541.70 | \$ 564.47 | 865 | 763 | \$ 402,663.10 | \$527.74 |
| PENCD | 252 | 218 | \$ 108,795.04 | 266 | \$ 149,703.19 | \$ 562.79 | 1,262 | 1,219 | \$ 541,535.09 | \$444.25 |
| SAGCD | 40 | 34 | \$ 10,812.40 | 33 | \$ 13,013.40 | \$ 394.35 | 175 | 146 | \$ 61,765.98 | \$423.05 |
| WALCD | 47 | 46 | \$ 20,687.10 | 40 | \$ 20,244.59 | \$ 506.11 | 284 | 243 | \$ 109,513.87 | \$450.67 |
| PISCD | 14 | 20 | \$ 10,926.20 | 19 | \$ 10,774.20 | \$ 567.06 | 68 | 62 | \$ 35,888.55 | \$578.85 |
| HANCD | 39 | 43 | \$ 26,197.60 | 58 | \$ 29,657.88 | \$ 511.34 | 249 | 222 | \$ 117,066.58 | \$527.33 |
| FRACD | 23 | 32 | \$ 27,303.09 | 32 | \$ 29,037.13 | \$ 907.41 | 115 | 136 | \$ 88,140.73 | \$648.09 |
| WASCD | 23 | 36 | \$ 15,558.23 | 57 | \$ 21,127.03 | \$ 370.65 | 162 | 202 | \$ 81,397.35 | \$402.96 |
| CUMCD | 315 | 318 | \$ 195,869.25 | 339 | \$ 212,328.29 | \$ 626.34 | 2,046 | 1,973 | \$ 1,088,640.69 | \$551.77 |
| KNOCD | 59 | 67 | \$ 29,583.84 | 39 | \$ 15,189.73 | \$ 389.48 | 331 | 353 | \$ 159,226.94 | \$451.07 |
| SOMCD | 56 | 71 | \$ 55,160.06 | 57 | \$ 19,898.97 | \$ 349.10 | 335 | 397 | \$ 147,833.62 | \$372.38 |
| OXFCD | 62 | 41 | \$ 19,038.20 | 42 | \$ 20,471.29 | \$ 487.41 | 372 | 304 | \$ 154,237.80 | \$507.36 |
| LINCD | 33 | 26 | \$ 12,506.65 | 33 | \$ 16,296.75 | \$ 493.84 | 188 | 164 | \$ 83,076.25 | \$506.56 |
| WATDC | 35 | 40 | \$ 25,424.23 | 36 | \$ 21,540.74 | \$ 598.35 | 125 | 181 | \$ 101,272.78 | \$559.52 |
| WESDC | 15 | 16 | \$ 9,027.44 | 16 | \$ 8,807.44 | \$ 550.47 | 66 | 78 | \$ 34,353.28 | \$440.43 |
| WISDC | 5 | 7 | \$ 5,508.64 | 6 | \$ 5,684.94 | \$ 947.49 | 24 | 43 | \$ 22,913.78 | \$532.88 |
| WISSC | 0 | 0 | | 0 | | | 1 | 0 | | |
| YORDC | 10 | 7 | \$ 3,200.00 | 6 | \$ 3,286.00 | \$ 547.67 | 53 | 40 | \$ 24,433.02 | \$610.83 |
| TOTAL | 2,119 | 2,471 | \$ 1,424,711.33 | 2,567 | \$ 1,499,115.87 | \$ 584.00 | 12,223 | 13,131 | \$7,070,368.48 | \$538.45 |

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

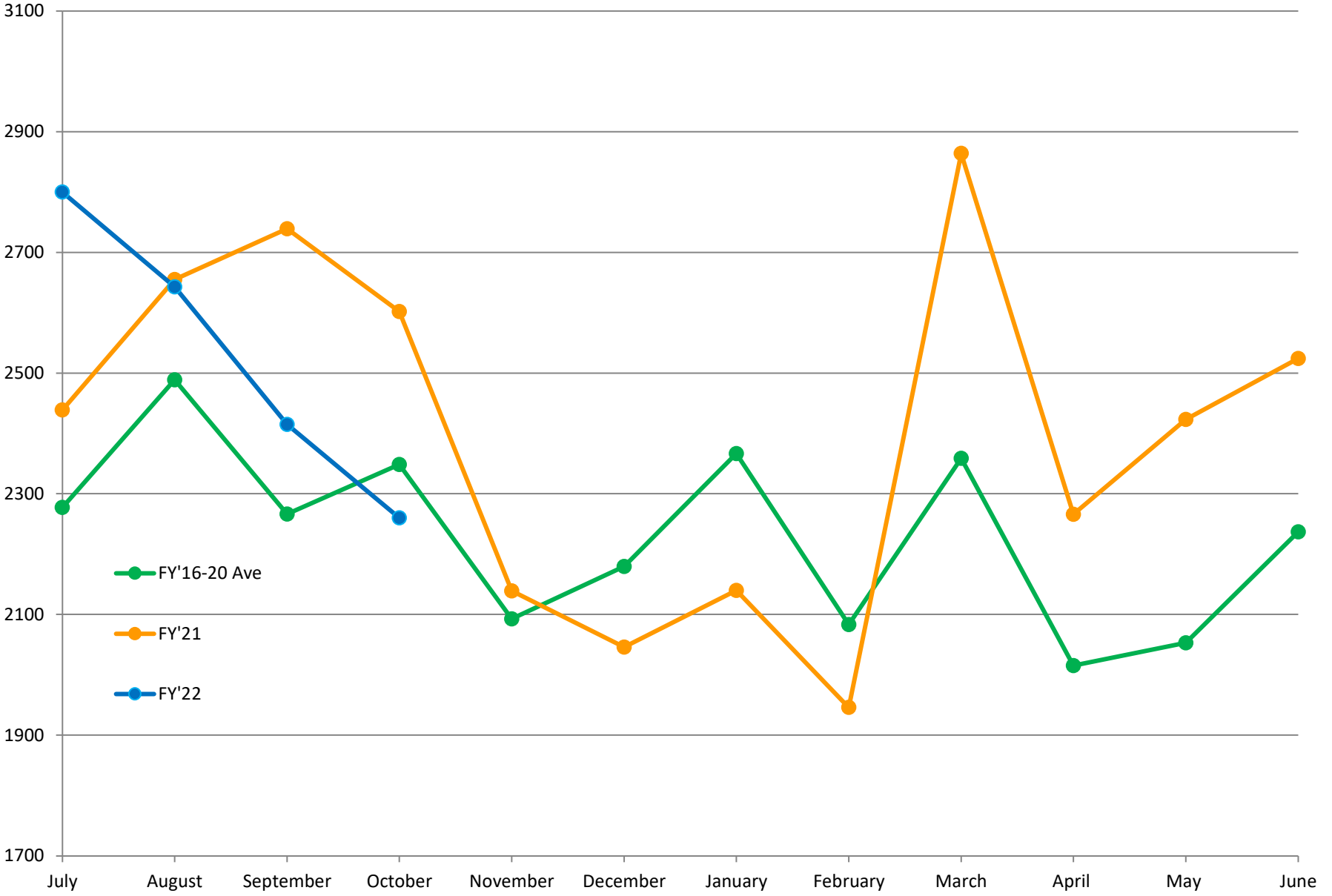
Number of Attorneys Rostered by Court

11/30/2021

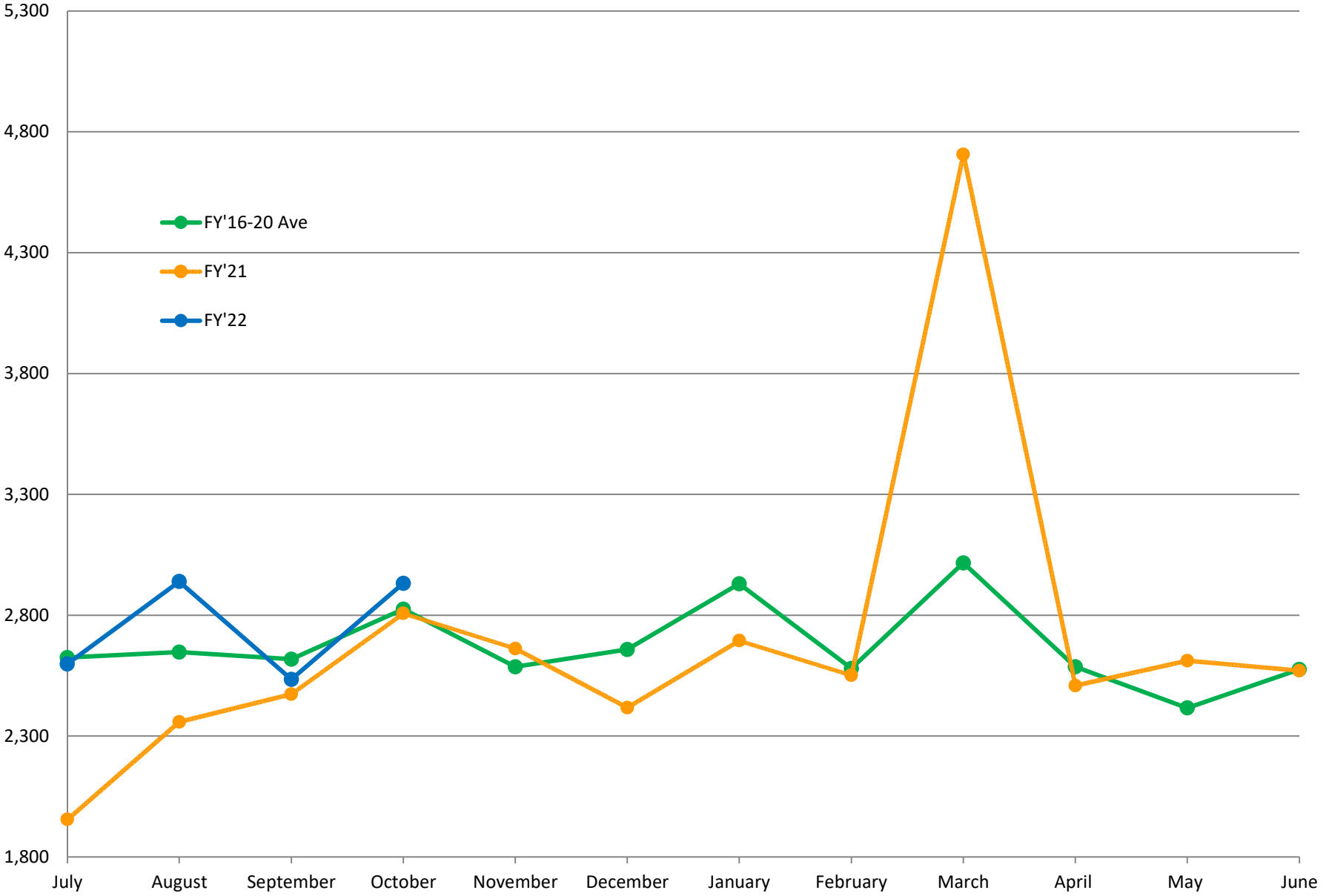
| Court | Rostered Attorneys |
|-------------------------------|---------------------------|
| Augusta District Court | 75 |
| Bangor District Court | 40 |
| Belfast District Court | 39 |
| Biddeford District Court | 104 |
| Bridgton District Court | 65 |
| Calais District Court | 9 |
| Caribou District Court | 15 |
| Dover-Foxcroft District Court | 25 |
| Ellsworth District Court | 29 |
| Farmington District Court | 30 |
| Fort Kent District Court | 11 |
| Houlton District Court | 12 |
| Lewiston District Court | 101 |
| Lincoln District Court | 22 |
| Machias District Court | 14 |
| Madawaska District Court | 11 |
| Millinocket District Court | 16 |
| Newport District Court | 28 |
| Portland District Court | 123 |
| Presque Isle District Court | 13 |
| Rockland District Court | 30 |
| Rumford District Court | 22 |
| Skowhegan District Court | 21 |

| Court | Rostered Attorneys |
|--|---------------------------|
| South Paris District Court | 43 |
| Springvale District Court | 89 |
| Unified Criminal Docket Alfred | 86 |
| Unified Criminal Docket Aroostook | 25 |
| Unified Criminal Docket Auburn | 84 |
| Unified Criminal Docket Augusta | 73 |
| Unified Criminal Docket Bangor | 40 |
| Unified Criminal Docket Bath | 75 |
| Unified Criminal Docket Belfast | 37 |
| Unified Criminal Docket Dover Foxcroft | 23 |
| Unified Criminal Docket Ellsworth | 32 |
| Unified Criminal Docket Farmington | 36 |
| Unified Criminal Docket Machias | 16 |
| Unified Criminal Docket Portland | 121 |
| Unified Criminal Docket Rockland | 25 |
| Unified Criminal Docket Skowhegan | 25 |
| Unified Criminal Docket South Paris | 42 |
| Unified Criminal Docket Wiscasset | 48 |
| Waterville District Court | 38 |
| West Bath District Court | 87 |
| Wiscasset District Court | 52 |
| York District Court | 82 |

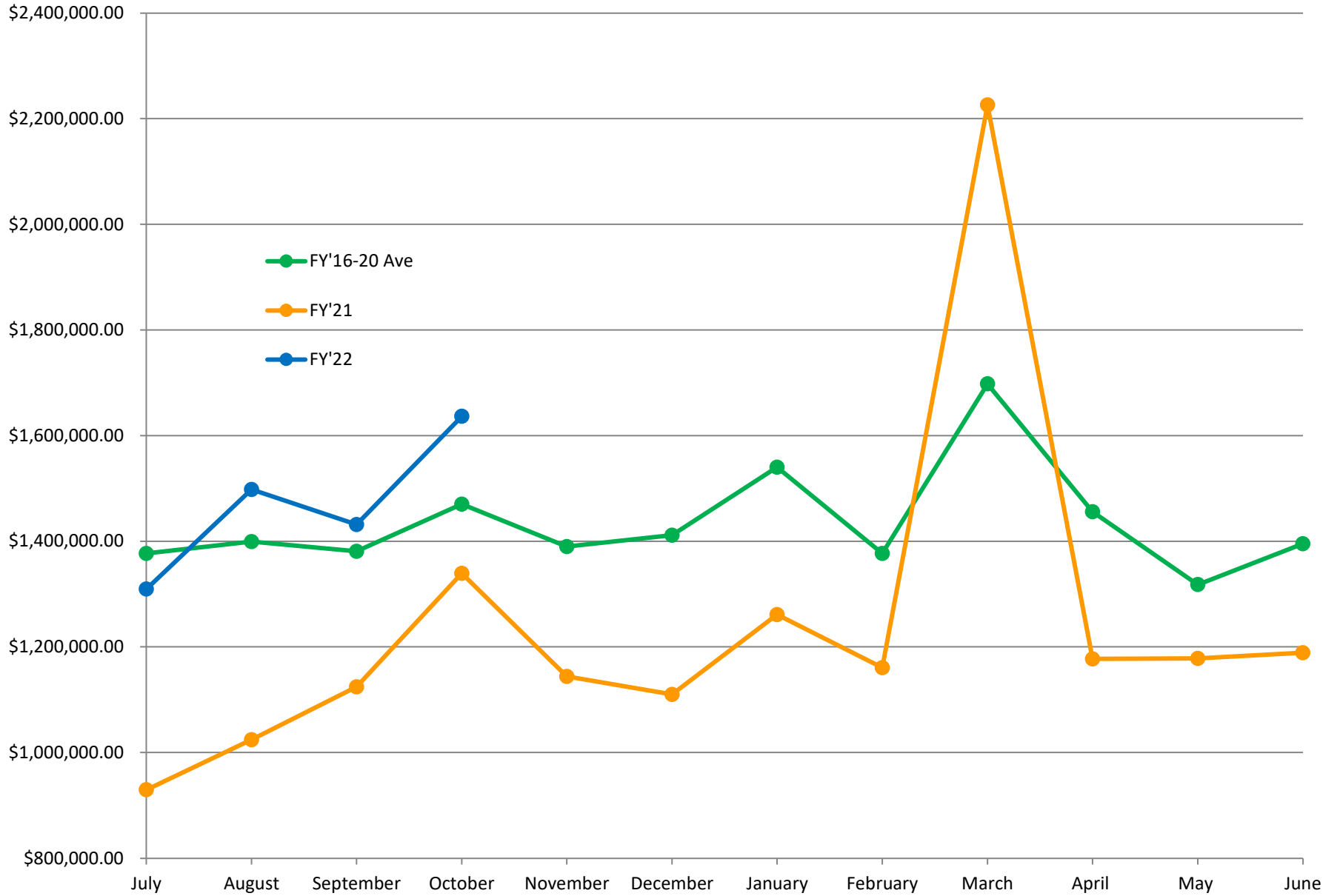
NEW CASES



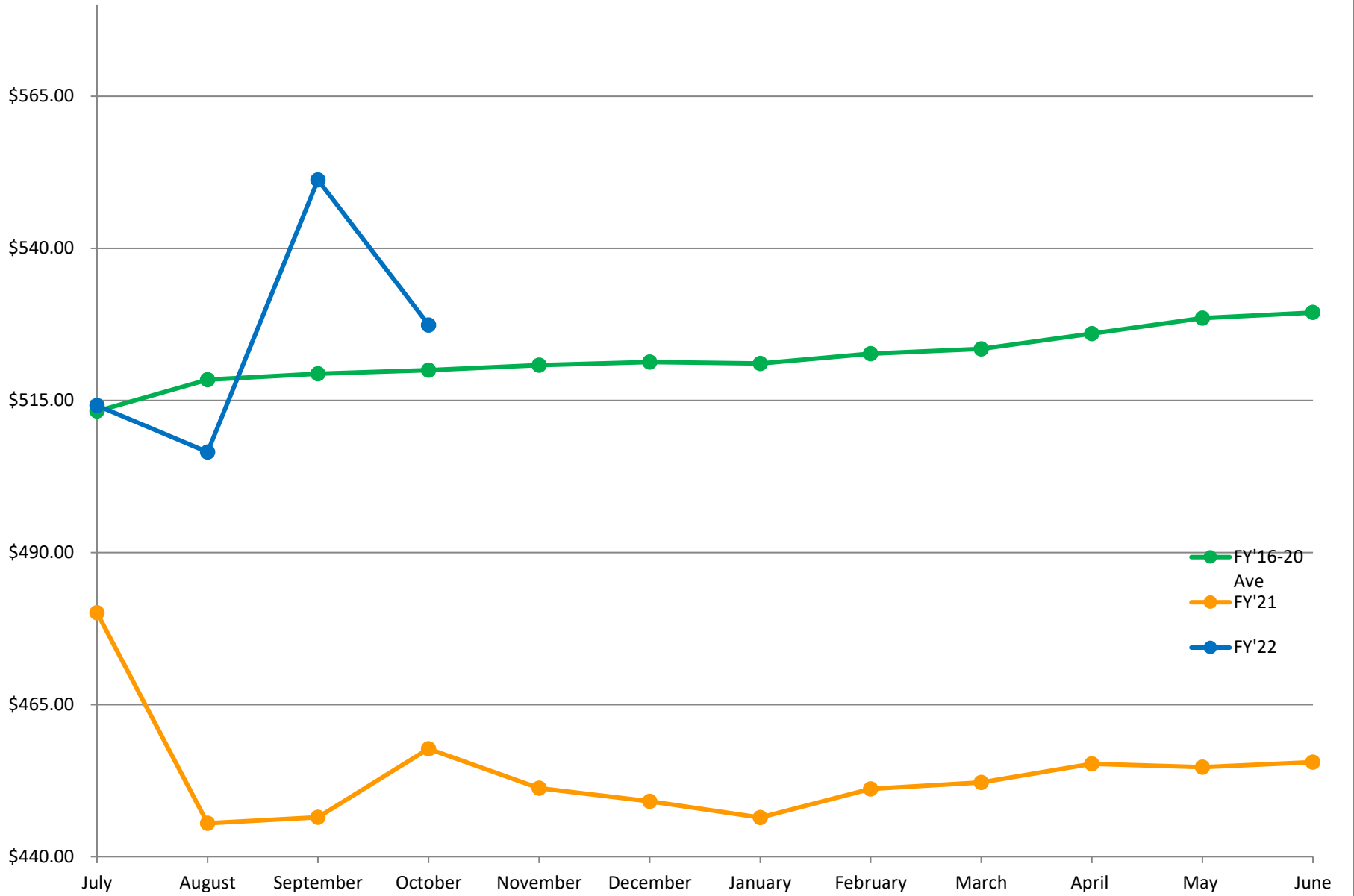
Submitted Vouchers



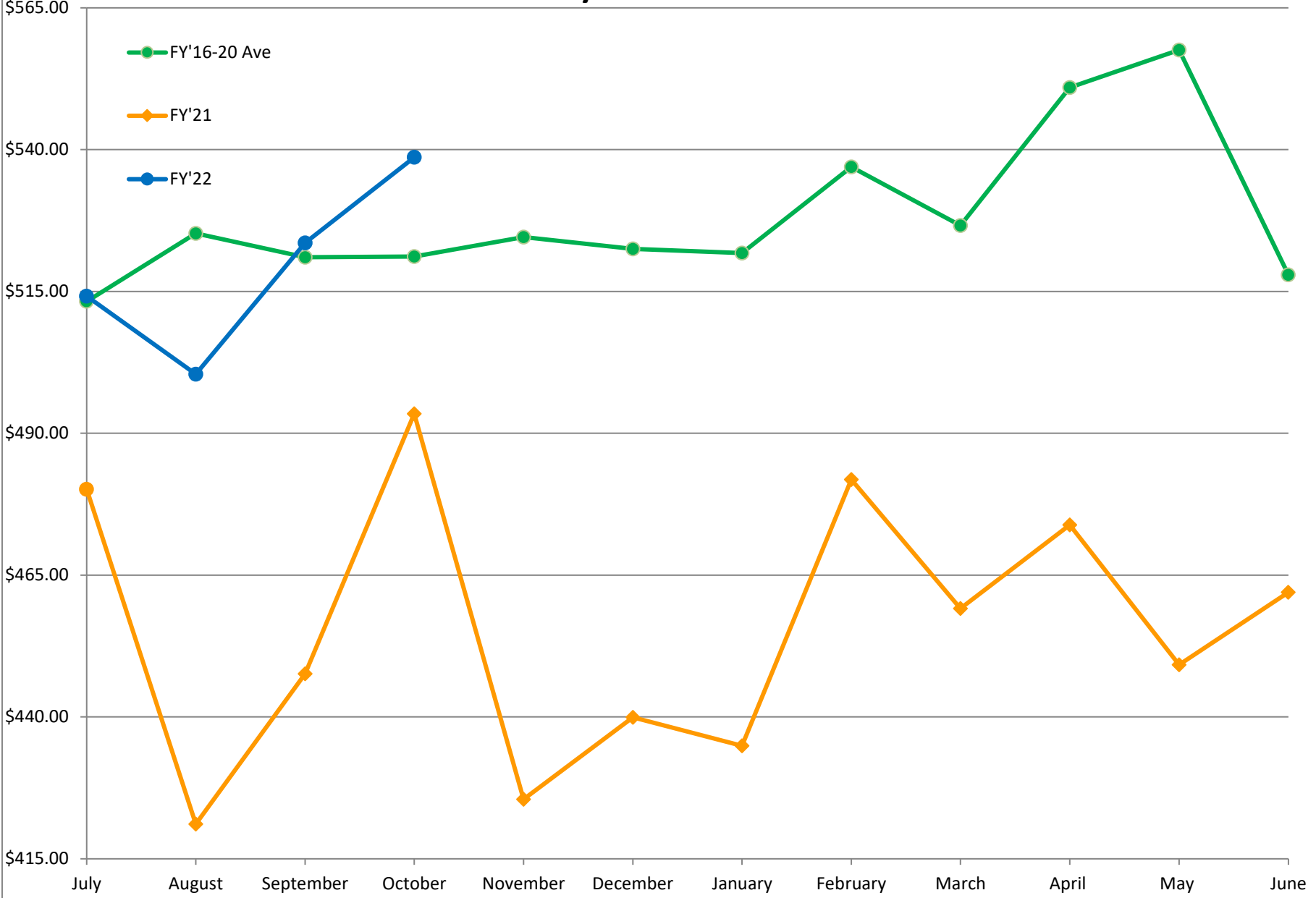
Submitted Voucher Amount



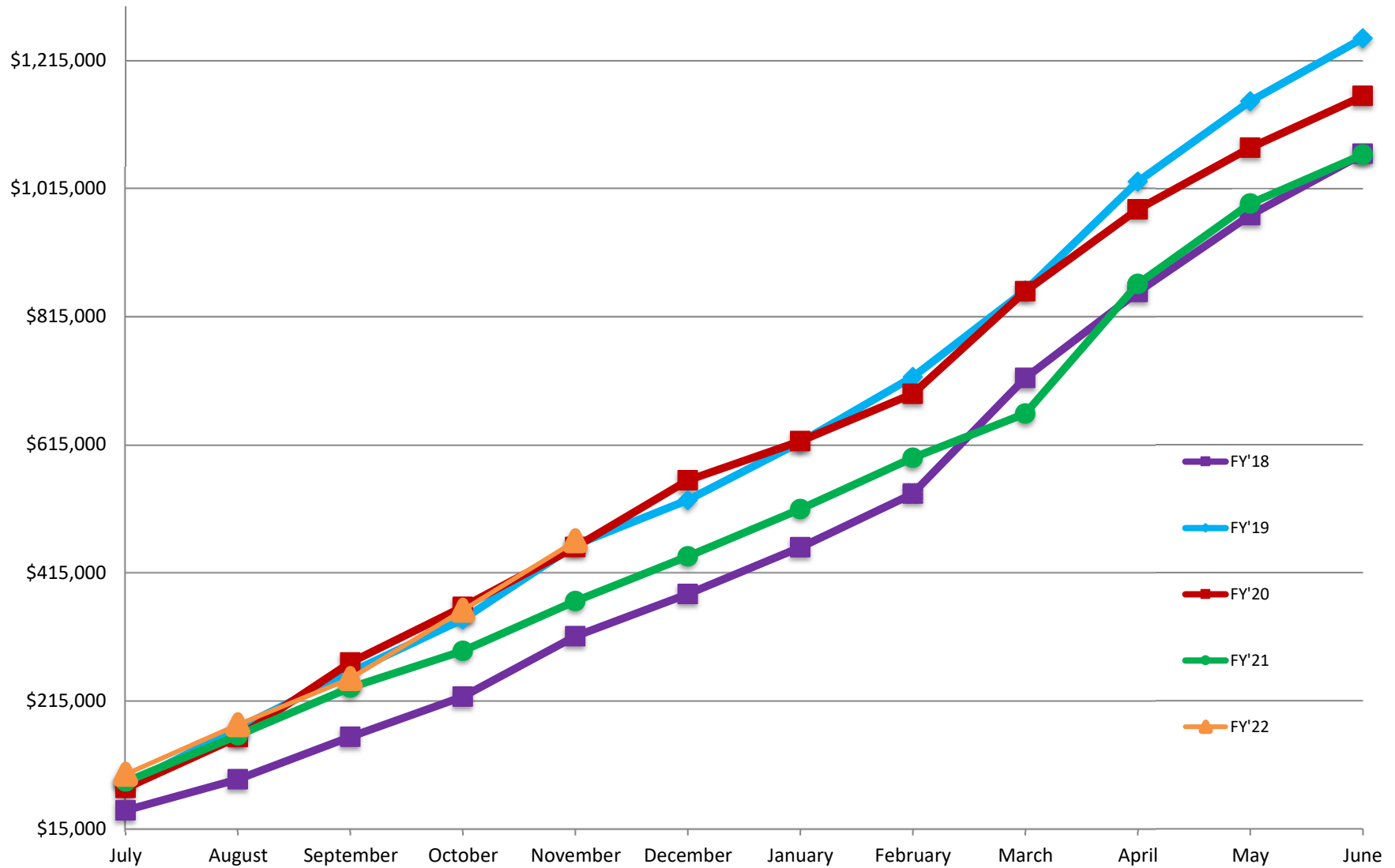
Average Voucher Price Fiscal Year to Date



Monthly Price Per Voucher



COLLECTION TOTALS FY'18 to FY'22



Vouchers over \$5,000

| Comment | Voucher Total | Case Total |
|--------------------------------|----------------------|-------------------|
| Aggravated Trafficking | \$10,180.00 | \$10,180.00 |
| Robbery | \$6,773.34 | \$6,773.34 |
| VCR/Tampering with Witness | \$5,926.68 | \$5,926.68 |
| Termination of Parental Rights | \$5,655.25 | \$5,655.25 |
| Elevated Aggravated Assault | \$5,631.20 | \$5,671.20 |
| OUI | \$5,621.11 | \$7,441.11 |
| Child Protection | \$5,304.00 | \$6,862.00 |
| Child Protection | \$5,074.80 | \$5,953.80 |
| Probation Violation | \$5,000.64 | \$5,000.64 |

REPORT OF MCILS (JJJJ-3)

TO: SENATOR ANNE CARNEY, SENATE JUDICIARY CHAIR
REPRESENTATIVE THOMAS HARNETT, HOUSE JUDICIARY CHAIR
SENATOR NATE LIBBY, SENATE GOC CHAIR
REPRESENTATIVE GENEVIEVE MCDONALD, HOUSE GOC CHAIR

FROM: JUSTIN ANDRUS, EXECUTIVE DIRECTOR, MCILS

SUBJECT: REPORT OF MCILS / JJJJ-3

DATE: 12/23/2021

CC: COMMISSION

The Maine Commission on Indigent Legal Services reports as directed pursuant to Chapter 398, section JJJJ-3. Many of the benefits MCILS expects to see through the application of its amended budget remain in their infancy. MCILS would welcome the opportunity to provide periodic updates as things progress.

Sec. JJJJ-3. Report of MCILS

By January 2022, the Maine Commission on Indigent Legal Services shall provide a report to the joint standing committee of the Legislature having jurisdiction over judiciary matters and to the joint standing committee of the Legislature having jurisdiction over government oversight matters. The report must provide information regarding progress made in indigent legal services as a result of the following changes made in this Act:

1. Increasing the salary range for the executive director of the commission;

Increasing the salary range for the executive director made the position competitive with other State positions of similar responsibility and decreased the gap between the position and competitive local private-sector work. Both changes make the position more attractive to potential in-state candidates and will likely increase the depth of the applicant pool when MCILS seeks its next Executive Director.

2. Raising the reimbursement rate for indigent legal services from \$60 per hour to \$80 per hour;

MCILS implemented the increase in payment rate to \$80 per hour through emergency rulemaking on July 21, 2021, with retroactive effect to July 1st. Since implementing the rate increase, we have had fewer attorneys disengage from the service citing the rate of pay as the primary motivator. We are not aware of an attorney who reengaged with the Commission because of the rate increase.

3. Providing additional funding to reflect actual costs of the commission;

At the beginning of the year MCILS received feedback from counsel that the inadequacy of its initial funding, and the attendant likelihood that there would be interruptions in attorney payments, caused uncertainty and tended to drive some from the program toward greater financial predictability. Since MCILS was granted funding to reflect its actual costs, we no longer hear that people are leaving due to that uncertainty. As a result, MCILS is able to offer a deeper pool of attorneys to its indigent client-base. At this time it appears that MCILS will be able to meet its obligations through FY23.

4. Establishing 6 positions and providing funding for the supervision subdivision;

MCILS has successfully hired for the four attorney positions authorized in the last session. MCILS has not yet identified the appropriate paralegal applicants to whom to offer jobs. The supplemental budget created many jobs statewide, and there was an understandable delay in our ability to hire as the positions worked through the H.R. and Budget offices. As a result, three of our four new hires started at the very end of October, and the fourth joined shortly after that.

MCILS is already benefitting from the addition of the four attorneys. The Training and Supervision staff have already begun presenting trainings; are working with outside partners to develop new trainings and to obtain access to existing training resources; are rigorously assessing applications to become an MCILS eligible attorney or to join a specialized panel; and, are current in review and resolution of outstanding assignments to ineligible counsel. They are also working to develop a formalized oversight and support function, and to update our training standards.

The Audit staff have improved the quality of voucher review; have created and are implementing a formal audit structure, with expected deployment in March 2022; have begun an assessment of the MCILS non-counsel payment structure; and, have taken a leading role in the development of the specifications for the next MCILS case management system.

By undertaking these roles, the new staff have allowed the executive staff to focus on policy and strategic issues.

5. Authorizing remaining balances in the Maine Commission on Indigent Legal Services program to be carried forward for use by the commission in the next fiscal year; and

MCILS has not yet had to apply carry-forward funds because we are still in the first half of the fiscal year. The funds carried forward ensure that MCILS will be able to meet its obligations through FY23, however. That ability in turn allows the attorneys who serve indigent clients to be confident in continuing to serve those clients.

6. Allowing the commission to establish standards and training through routine technical rulemaking rather than major substantive rulemaking.

MCILS has begun a review of its standards and training requirements but has not yet used its amended authority to update those standards and requirements. MCILS anticipates that being able to amend those rules and standards will allow it to better ensure that it meets its constitutional and statutory obligations on an ongoing basis, by eliminating the delay that would occur between when a need arises and the next window of opportunity for legislative review.

MCILS -RESPONSES TO OPEGA AND 6AC REPORTS

TO: COMMISSION

FROM: JUSTIN W. ANDRUS, EXECUTIVE DIRECTOR, MCILS

SUBJECT: MCILS RESPONSES TO THE OPEGA AND 6AC REPORTS

DATE: 12/23/2021

CC: GOVERNOR; CHIEF JUSTICE; JUDICIARY CHAIRS; GOC CHAIRS; OPEGA

MCILS began the year subject to oversight and interest related, in large measure, to reports published by OPEGA and by the Sixth Amendment Center. While those reports do not necessarily encompass every change that MCILS can make to improve the provisions of indigent legal services, the reports do serve as a useful guide to some of those improvements.

Throughout 2021, MCILS has worked to address as many of the shortcomings identified in the two reports as possible. Most have been addressed, as follows:

I. **OPEGA Issues and Recommendations**

Issue 1. There are no established policies and procedures governing expenditures and payments and MCILS's expectations for billing practices may not be effectively communicated to attorneys.

Recommendation: Formal policies and procedures should be established by MCILS management to better define allowable and covered expenses. These policies and procedures would clarify expectations for billing and invoicing practices that if proactively communicated, would improve the effectiveness of the system to approve expenditures and process payments to rostered attorneys and non- counsel service providers.

MCILS has updated its Chapter 301 to make changes to, and to provide clarity about, the rules, practices, and expectations for billing attorney time and certain non-counsel expenses.¹ MCILS anticipates adopting amended Chapter 301 on December 28th, excepting the attorney rate change. That change is subject to legislative review, and adoption on December 28th will be provisional.

In the meantime, MCILS has published Defender Data usages standards² and guidance on the nature and expectations of the relationship between MCILS and counsel.³

MCILS updated its Chapter 302 governing non-counsel service providers in August 2021. A revised process for requesting non-counsel funds is in development.

¹ See attachment A.

² See attachment B.

³ See attachment C.

Issue 2. Data available to MCILS staff via Defender Data is unreliable and potentially misleading

Recommendation: The quality of available data in terms of consistency, accuracy, and reliability could be improved in several ways if the agency undertakes the following interrelated initiatives:

- **Establish and communicate expectations and guidance outlining how time events are to be recorded in Defender Data to improve the consistency of the data;**

MCILS has published its expectations to eligible counsel.

- **work with Justice Works to develop data-entry controls that reflect newly-established expectations and provide guidance to correct potential data issues, or errors, when they occur; and correct data errors within Defender Data at the time they are identified...**

The MCILS contract with Justice Works for the current implementation of Defender Data is in its final extension. That implementation is of a legacy version of the software that will be deprecated shortly. MCILS is working to develop updated data-entry control concepts for implementation in the new case management and billing system. MCILS is actively working with Maine IT to finalize the RFP for the new system. The current specification document is attached.⁴

⁴ See attachment D.

Issue 3. Current efforts to monitor attorney vouchers are inefficient and of limited effectiveness.

Recommendation: Assuming improvements are made to the overall quality of MCILS’s attorney voucher data, the agency should reevaluate its process for reviewing attorney vouchers with the objective of improving both effectiveness and efficiency. At a minimum, the following process attributes should be considered by MCILS in reevaluating and potentially redesigning its attorney voucher review process.

- **The process should identify, investigate and, as necessary, address the types of instances with the greatest potential impacts to financial stewardship and the quality of representation— high daily and annual hours worked by attorney.**

The next MCILS case management system, expected in FY23, will report on both high and low periodic attorney-hours.

- **The process should utilize technology to identify and correct potential data entry errors when they occur, such as flagging the input of values in excess of established limits, instead of relying on manual review of vouchers to identify potential errors.**

The MCILS system design calls for these flags. MCILS expects this function to be part of the next MCILS case management system, expected in FY23.

- **The process should incorporate data and risk-based audit techniques to the greatest extent possible to potentially reduce the burden placed on the Executive Director and Deputy Executive Director by the manual review of vouchers—allowing them to focus on other important, but neglected, aspects of MCILS’s purpose as discussed in Part III.**

MCILS, through its Audit Counsel, is developing a data and risk-based audit system, to permit meaningful sampling of voucher data. The audit system is more fully described in the documents attached as E - H.

- **Additionally, we note that transitioning from a voucher-based payment system to a timecard-based payment system may address issues related to the timeliness and accuracy of daily hours worked.**

MCILS agrees with OPEGA that a timecard-based periodic billing system would bring benefits to the system from both an accuracy-oversight perspective, and from an attorney satisfaction perspective. Moving to that system would require a substantial additional appropriation for the year of the transition, however.

MCILS currently has an arrears-billed relationship with assigned counsel. Counsel bill at the end of a case, or at an intermediate trigger point. Time accrues in each case. Implementation of a timecard-based payment system would require payment of all the accrued time during the first payment cycle. MCILS would be able to make those payments. Doing so would exhaust its payment budget, however. Additional payments would require an additional appropriation.

Issue 4. Invoice-level review of non-counsel invoices may be of limited effectiveness in identifying certain types of noncompliance.

Recommendation: Development of a broader audit/review procedure for non-counsel invoices and periodic use of a risk-based method to select and review invoices would allow the agency to identify and correct instances of inappropriate high daily billings, duplicate charges, duplicate payments, and potentially, other instances of noncompliance.

MCILS expects to produce and implement an audit and review procedure for non-counsel invoices in or about April 2022, after implementation of the counsel-fee audit structure is accomplished. As it stands, MCILS accounting staff review every non-counsel invoice. Staff identifies errors and requires correction by non-counsel providers before payment.

Issue 5. Defined policies and procedures for audit and investigation have not been established. Current methods used by MCILS are limited, inconsistent, and of limited scope, depth and effectiveness.

Recommendation: Establishment of a formal audit process would serve as a more effective control than the current methods used by the agency and would provide for consistency in enforcement efforts. A more effective process could include policies and procedures that would guide the agency regarding:

- **how and when audits are to be conducted;**
- **the records to be maintained by attorneys (and other non-counsel service providers) for potential MCILS review;**
- **a means of determining, confirming, and/or settling disputed overpayment amounts;**
- **a mechanism to recoup overpayments;**
- **penalties (including dismissal from the MCILS roster) for noncompliance; and**
- **consistent enforcement of all MCILS rules.**

MCILS has developed and is implementing a formal audit process for attorney fees. Full implementation is expected by March 31, 2022. A formal process for non-counsel requests and invoices will follow. Documentation of a formal investigative process will be presented to the Commission at or before its January 2022 meeting, together with a proposed updated appellate review structure. Work is ongoing on the question of administrative recoupment. For the moment, MCILS would rely on the Court to provide the venue for a recoupment action. MCILS is enforcing its rules, including through dismissal from the MCILS rosters for noncompliance.

Issue 6. The agency charged with administering MCILS purpose is understaffed.

It remains the case that MCILS is under-staffed. Of the six positions authorized by the legislature, MCILS has filled four. Even when all six positions are filled, however, MCILS will remain understaffed to provide adequate supervision. National standards support a supervisory ratio of 10:1 and assume that supervisors are working in the same offices as the defenders being supervised. To provide proper field oversight, MCILS would require significant additional staffing. That staffing level should reflect both the number of attorneys in need of supervision, and their geographic dispersal.

Issue 7. MCILS staff operates without clearly defined roles and uses current staff inefficiently.

Currently, MCILS staff have clearly defined roles, with limited overlap.

Issue 8. The Commission receives insufficient support for necessary operations.

MCILS expects to be able to meet its current and projected operational expenses for the FY22-23 biennium with current funding. To meet some of goals set for MCILS, however, additional funding and headcount will be necessary.

Issue 9. A weak oversight structure impacts the ability of MCILS to adequately meet its statutory purpose.

MCILS is improving its oversight structure, primarily through the installation of four new attorney-administrators. Indigent defense would benefit from the addition of field trainers and supervisors under the next budget, however.

II. Recommendations of the Sixth Amendment Center:

RECOMMENDATION 1: The State of Maine should remove the authority to conduct financial eligibility screenings from the Maine Commission for Indigent Legal Services. The reconstituted Task Force on Pretrial Justice Reform should determine the appropriate agency to conduct indigency screenings.

MCILS supported legislation that would have removed its authority to conduct financial eligibility screenings. LD 1685 as drafted contained proposed 4 MRSA §8-D.⁵ The bill would have transferred the financial screening function from MCILS to the Judicial Branch and would have eliminated MCILS involvement in collection actions against indigent clients. This section was deleted before other provisions of LD 1685 were enacted.

Resolution of this recommendation requires legislative action and cannot be accomplished by MCILS without that support.

RECOMMENDATION 2: The State of Maine should statutorily bar communication between prosecutors and unrepresented defendants, unless and until defendants have been informed of their right to appointed counsel, a judge has conducted the legally required colloquy, and a defendant has executed a written waiver of the right to counsel in each case to ensure that all waivers of the right to counsel are made knowingly and voluntarily.

The legislature enacted 15 MRSA §815, prohibiting most communication between prosecutors and unrepresented defendants, absent a knowing waiver. Most or all prosecution offices now refer unrepresented defendants to MCILS for information. MCILS has been able to provide basic legal information to callers, without providing legal advice, and to facilitate early assignment of counsel in partial resolution of recommendation 3, below. MCILS is actively working on a program that will allow those unrepresented defendants who make contact to receive the benefit of early advice and assignment of counsel.

⁵ See attachment I.

MCILS was recently asked by CLAC for its opinion on proposed amendments to §815. MCILS supports the amendments proposed on the attached draft.⁶

⁶ See attachment J.

RECOMMENDATION 3: Except for ministerial, non-substantive tasks, the State of Maine and the Maine Commission on Indigent Legal Services should require that the same properly qualified defense counsel continuously represents the client in each case, from appointment through disposition, and personally appears at every court appearance throughout the pendency of an assigned case.

MCILS implemented a continuous representation policy requiring informed client consent before counsel may delegate representation to another person and prohibiting delegation of enumerated dispositive appearances.⁷

RECOMMENDATION 4: MCILS should use its current statutory power to promulgate more rigorous attorney qualification, recertification, training, supervision, and workload standards. The State of Maine should statutorily require financial oversight by requiring that MCILS limit the number of permissible billable hours, subject to waiver only upon a finding of need for additional capacity. The State of Maine should fund MCILS at a level to ensure rigorous training and effective substantive and financial oversight of attorneys.

MCILS was unable to make effective progress on redrafting its standards until additional staff came on-board. Four new staff are now on-board and have begun a comprehensive review of existing MCILS rules and standards. We anticipate updating the rules to implement standards that will begin to address this recommendation by July 1, 2022.

RECOMMENDATION 5: The State of Maine should statutorily ban all public defense contracts that provide financial disincentives to or that otherwise interfere with zealously advocating on behalf of the defendants' stated interests, including the use of fixed fee contracts. Maine should require that any public defense contract include reasonable caseload limits, reporting requirements on any private legal work permitted, and substantial performance oversight, among other protections.

Public defense contracts of the type specified in recommendation 5 have not yet been statutorily banned, however, MCILS does not now make use of any such contracts.

⁷ See attachment K.

RECOMMENDATION 6: The State of Maine should fund MCILS at a level that allows private attorneys to be compensated for overhead expenses plus a reasonable fee (i.e., \$100 per hour). MCILS should be authorized to provide additional compensation of \$25 per hour for designated case types such as murder, sexual assaults, and postconviction review.

The Legislature approved funding to increase the attorney compensation rate to \$80 per hour under the current budget. MCILS continues to support increasing the compensation rate to at least \$100 per hour and supports authorization to provide additional compensation for designated case types.

RECOMMENDATION 7: The State of Maine should authorize and fund MCILS at an appropriate level to employ state government attorneys and support staff to operate a statewide appellate defender office and a Cumberland County trial level public defender office.

The Legislature did not fund the initiation of any statewide or local public defender offices. A hybrid model using both contracted and employed counsel would permit the most flexibility in staffing cases and promote the most effective representation for indigent clients. MCILS expects to renew its request for employed counsel for the next biennial budget.

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94-649 MAINE COMMISSION ON INDIGENT LEGAL SERVICES

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 maximum 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 that, unless an attorney has received prior authorization to do otherwise, all that all vouchers must be submitted using the MCILS- MCILS electronic case management system.

SECTION 1. DEFINITIONS

- 1. Court Assigned Attorney. "Court Assigned Attorney" means an attorney licensed to practice law in the State of 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 Attorney. "Commission Assigned Attorney" means an attorney 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. Attorney. As used in this Chapter "Attorney" means a Court Assigned Attorney or Commission Assigned Attorney, or both.
2.4. MCILS or Commission. "MCILS" or "Commission" means the Commissioners of the Maine Commission on Indigent Legal Services.
3. 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 an Attorney, 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.

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SECTION 3. EXPENSES

1. _____

1. Routine Office Expenses. Routine Office expenses ~~are considered to be included in the hourly rate will not be paid by MCILS.~~ Routine office expenses ~~include, ing,~~ but are not limited to, postage, express postage, regular telephone, cell telephone, fax, office overhead, utilities, secretarial services, ~~routine copying (under 100 pages) the first 100 pages of any one print or copy job,~~ local phone calls, parking (except as stated below), and office supplies, etc., ~~will not be reimbursed.~~ Paralegal time may be billed to MCILS only through the non-counsel cost procedures.

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2. _____

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, ~~extensive copying (over 100 pages), 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, ~~but must be approved in advance by the Executive Director.~~

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3. _____

3. Travel Reimbursement. Mileage reimbursement shall ~~not exceed the be made at the applicable~~ 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 an attorney's home district and superior court. Mileage reimbursement will not be paid for travel to and from an attorney's home district and superior courts. Tolls will be reimbursed, except that tolls will not be reimbursed for travel to and from attorney's home district and superior court. All out-of-state travel or any overnight travel must be approved by ~~the MCILS~~ 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. _____

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.

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5. ~~5.~~ **Discovery Materials.** ~~The MCILS. 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 ~~forthwith~~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.

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6. ~~6.~~ **Expert and Investigator Expenses.** ~~Other non-routine expenses for payment to third parties, which historically required preapproval by the Court before July 1, 2010~~ (e.g., investigators, interpreters, medical and psychological experts, testing, depositions, etc.) ~~are required to~~shall be approved in advance by MCILS. Funds for third-party services will be provided by ~~the MCILS. MCILS~~ only upon written request and a sufficient demonstration of reasonableness, relevancy, and need in accordance with ~~the MCILS~~ MCILS rules and procedures governing requests for funds for experts and investigators. See Chapter 302 Procedures Regarding Funds for Experts and Investigators.

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7. ~~7.~~ **Witness, Subpoena, and Service Fees.** ~~In criminal and juvenile cases, witness~~Witness, subpoena, and service fees will be reimbursed only pursuant to ~~M.R. Crim. P. 17(b). 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.

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SECTION 4. ~~MAXIMUM FEES. PRESUMPTIVE REVIEW.~~

Vouchers submitted for amounts greater than~~in excess of~~ the applicable maximum fees outlined in this section trigger for presumptive review ~~will not be approved~~considered for payment, ~~except as approved 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.

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1. Trial Court Criminal Fees

A. A. ~~Maximum fees~~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 ~~maximum~~ feet~~trigger~~ limit.

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Effective July 1, 2015:

1) ~~Murder. Fee to be set by the Executive Director on a case by case basis.~~

1) 2) ~~Murder. All murder cases shall trigger presumptive review.~~

2) ~~Class A. \$34,000~~

3) 3) ~~Class B and C (against person). \$2,2503,500~~

4) 4) ~~Class B and C (against property). \$12,500~~

5) 5) ~~Class D and E (Superior or Unified Criminal Court)E. \$7501,500~~

6) 6) ~~Class D and E (District Court). \$540Repealed~~

7) 7) ~~Post-Conviction Review. \$1,2003,000~~

8) 8) ~~Probation Revocation. \$5401,500~~

9) 9) ~~Miscellaneous (i.e. witness representation on 5th Amendment grounds, etc.). \$540.) \$1,000~~

10) 10) ~~Juvenile. \$5401,500~~

B. ~~B.~~ In cases involving multiple counts against a single defendant, the ~~maximum 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, ~~c~~Counsel ~~is expected to shall~~ coordinate and consolidate services as much as possible.

C. ~~C.~~ Criminal and juvenile cases will include all proceedings through a ~~terminal case event~~disposition as defined in Section ~~65-1-A~~ below. Any subsequent proceedings, such as probation revocation, will require new application and appointment.

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~~D. When doing so will not adversely affect the attorney-client relationship, Commission-assigned counsel are urged to limit travel and waiting time by cooperating with each other to stand in at routine, non-dispositive matters by having one attorney appear at such things as arraignments and routine non-testimonial motions, instead of having all Commission-assigned counsel in an area appear.~~

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~~D. E. Upon written request to MCILS, assistant-a second Attorney counsel, may be appointedassigned in a murder case or other complicated cases; to provide for mentorship, or for other good cause at the discretion of the Executive Director:~~

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

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~~2) 2) each attorney 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 attorney.~~

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~~2. 2. District Court Child Protection~~

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

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~~Effective July 1, 2015:~~

~~1) 1) Child protective cases (each stage). \$900,1,500~~

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~~2) 2) Termination of Parental Rights (with a hearing). \$ 1,260,2,500~~

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~~B. B. Counsel must provide MCILS with written justification for any voucher that exceeds the maximum fee-triggering limit. Each child protective stage ends when a proceeding results in a court order as defined in Section 5.1.B below 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~~

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shall be considered a new appointment for purposes of the ~~maximum-triggering fee for that case. A separate voucher must be submitted at the end of each stage.~~

~~3. 3. Other District Court Civil~~

~~A. A. Maximum fees 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 maximum-triggering fee limit.~~

Effective July 1, 2015:

~~1) 1) Application for Involuntary Commitment. \$4201,000~~

~~2) 2) Petition for Emancipation. \$4201,500~~

~~3) 3) Petition for Modified Release Treatment. \$4201,000~~

~~4) 4) Petition for Release or Discharge. \$4201,000~~

~~4. 4. Law Court~~

~~A. Maximum fees, excluding any itemized expenses, for Commission-assigned counsel are set in accordance with the following schedule:~~

Effective July 1, 2015:

~~1) Appellate work following the grant of petition for certificate of probable cause. \$1,200~~

~~B. Expenses shall be reimbursed for printing costs and mileage to oral argument at the applicable state rate. Vouchers for payment of counsel fees and expenses must be submitted, including an itemization of time spent.~~

~~A. All appeals shall trigger presumptive review.~~

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SECTION 5: MINIMUM FEES

Effective July:

1, 2015:

1. Attorneys may charge bill a minimum fee of \$150.00 2.5 hours for appearance 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 attorney serves. If an attorney serves as Lawyer of the Day for a morning session that continues into the afternoon, that will be one appearance. If an attorney 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 shall 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.

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SECTION 6: ADMINISTRATION

1. Vouchers for payment of counsel fees and expenses shall be submitted within ninety days after the date of disposition of a criminal, juvenile or appeals of a terminal case, or completion of a stage of a child protection case resulting in an order. event. Lawyer of the Day and specialty courts shall be billed within 90 days of the service provided. Vouchers not submitted more than ninety days after final disposition, or completion of a stage of a child protection case, shall not be paid.

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A. For purposes of 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, "disposition" of a criminal or juvenile case shall be at the following times: if that voucher would be payable under this rule.

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1) entry of judgment (sentencing, acquittal, dismissal, or filing);

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Terminal case events are:

1) ~~The withdrawal of counsel~~

2) ~~upon The entry of a deferred disposition;~~

3) ~~upon issuance dismissal of a warrant of arrest for failure to appear; all charges or petitions~~

4) ~~upon granting of leave to withdraw;~~

5) ~~upon decision of any post trial motions;~~

6) ~~upon completion of the services the attorney was assigned to provide (e.g., mental health hearings, "lawyer of the 3) Judgment in a case, or~~

4) ~~Final resolution of post-judgment proceedings for which counsel is responsible~~

~~The 90 day," bail hearings, etc.); or~~

7) ~~specific authorization of the Executive Director to submit an interim period for submitting a voucher.~~

~~B. For purposes of this rule, "each stage" of a child protection case shall be:~~

1) ~~run from the date that an Order after Summary Preliminary hearing, Judgment, or Agreement-Dismissal is docketed.~~

2) ~~Order after Jeopardy Hearing~~

3) ~~Order after each Judicial Review~~

4) ~~Order after a Cease Reunification Hearing~~

5) ~~Order after Permanency Hearing~~

6) ~~Order after Termination of Parental Rights Hearing~~

7) ~~Law Court Appeal~~

1. ~~2. Unless otherwise authorized in advance, all~~ vouchers must be submitted using ~~the MCILS- MCILS~~ electronic case management program and comply with all instructions for use of the system.

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~~2.~~ ~~3.~~ 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.~~ ~~4.~~ All expenses claimed for reimbursement must be fully itemized on the voucher. Copies of receipts for payments to third parties shall be retained and ~~supplied upon request~~ appended to the voucher.

~~5.~~ Legal services provided in the district court for cases subsequently transferred to the superior court shall be included in the voucher submitted to the ~~MCILS~~ MCILS at disposition of the case.

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 ~~major substantive~~)
- June 10, 2016 – filing 2016-092 (~~Final adoption, major substantive~~)
July 21, 2021 – filing 2021-149 (EMERGENCY ~~major substantive~~)

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Andrus, Justin

From: mcils@maine.gov
Sent: Friday, May 7, 2021 10:48 AM
To: Andrus, Justin
Subject: Defender Data useage standards

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.

Good morning, counsel. Please read this email in its entirety as it contains information and instructions you may not yet have.

We are continuing to see some disorganization in the use of Defender Data. This email is intended to address some of that disorganization to promote effective data collection. Accurate data in turn allows MCILS to advocate for the appointed bar effectively, by demonstrating its diligence and appropriateness.

Standards:

1. Information entered in Defender Data and submitted to MCILS constitutes the good faith representation of counsel that the information is accurate.
2. MCILS approves the appointment of attorneys, not firms. For inquiries related to MCILS, the attorney to whom a case is assigned will be considered the supervising attorney over staff and other attorneys who perform tasks related to the case. If a case assigned to an attorney is transferred to another attorney in the same firm to handle, the assigned attorney is required to file a motion to withdraw and substitute counsel. No informal transfers are allowed.
3. The attorney to whom a case is assigned is responsible for the time entered and/or vouchers submitted during the period that person is assigned to that case. An attorney who allows another person to enter time and/or submit a voucher is nevertheless responsible for the entries of that person.
4. Each attorney is responsible for activity performed through that attorney's login credentials as though that attorney conducted that activity personally.
5. If a staff person uses a staff account, that account must be properly registered to that staff person. Contact the Deputy Director about setting up a staff account.
6. All time entered into Defender Data must accurately reflect the identity of the person who performed the task in the Time Entry User field.
7. Only time worked by attorneys designated as eligible to receive appointments through MCILS and properly registered in Defender Data may be billed through Defender Data. No time for services performed by attorneys not designated as eligible to receive appointments may be billed to MCILS through Defender Data. No staff time may be billed to MCILS through Defender Data.
8. The time billed in Defender Data shall accurately reflect the actual time spent on each task specified, except as set out below. Time may not otherwise be bulked up.

9. An attorney performing Lawyer of the Day services may charge a minimum fee of \$150 under the MCILS rules for each appearance. An appearance may be in person or over video conference. An attorney may not charge any fee if the appearance is cancelled.

10. The previous instruction to aggregate events of the same type into one entry for the day is rescinded. Time records should accurately reflect the text, emails, and other tasks of the day.

JWA

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

**AMENDED MCILS POLICY AS TO ASSIGNMENTS,
BILLING SYSTEMS, AND PAYMENT**

TO: MCILS ELIGIBLE COUNSEL

FROM: JUSTIN W. ANDRUS

SUBJECT: MCILS POLICY AS TO ASSIGNMENTS, BILLING SYSTEMS, AND
PAYMENT

DATE: AMENDED 11/5/2021

CC: COMMISSION

The Maine Commission on Indigent Legal Services (MCILS) adopts the following policy as to assignments, its billing system, and payments, effective October 1, 2021, except to the extent that a later date is specified for specific provisions.

Summary: Through this policy, MCILS restates that indigent clients are assigned to specific assigned counsel, and that those counsel bear individual responsibility for those clients from both a professional responsibility perspective, and from a fiscal perspective from the point of first contact with the client through the final resolution of the matter, or until relieved by the Court or the appearance of successor counsel. MCILS restates its financial relationships to the attorneys who are assigned to represent indigent defendants and to any law office or firm for whom any attorney works. MCILS clarifies the permissible use of its billing system.

I. The financial relationship between MCILS and assigned counsel

MCILS shall be responsible for ensuring that payment for services rendered to an assigned client are made to the assigned attorney, or to the person or entity designated by the assigned attorney, consistent with its then current rules. It shall be the responsibility of the assigned attorney to account for and allocate payment made for services rendered to an assigned client during the period of the assignment to any other person or entity to whom the assigned attorney may have any responsibility. Effective November 1, 2021, MCILS shall not be responsible to any attorney or firm, other than the designated person or entity, for the allocation of fees, except to the extent set out in this document.

The person or entity designated to receive payment from MCILS may be either the individual attorney or that attorney's single member entity; or, may be a firm or individual by whom the attorney is employed or in which the attorney is a member, partner, or shareholder. If an attorney designates an individual or entity other than that attorney to receive payment, and subsequently designates another individual or entity to receive payment, MCILS will direct payment to the designated individual or entity immediately on receipt and acknowledgment of the change. Issues of allocation of those payments, and any recourse related thereto, shall be strictly the responsibility of the attorneys and/or entities involved.

Beginning November 1, 2021, MCILS shall pay all fees claimed for any services provided to any assigned client to the most recent person or entity designated by the individual attorney assigned to represent that client. MCILS will presume that each individual attorney has designated that attorney as the person to be paid, except that for those attorneys who have designated another person or entity to receive payment prior to the publication date of this memorandum, that designated vendor will continue to receive payments on behalf of the individual attorney until the individual attorney designates a new vendor to receive payment.

MCILS will direct payment when a voucher is submitted based on the identity of the attorney assigned to represent the client in the matter in question at that time, and the designation made by that attorney. It is the responsibility of assigned counsel to ensure that a voucher is submitted in each case prior to any substitution of counsel.

Attorneys shall designate the person or entity to receive payment for services provided to any assigned client during the period of the assignment by completing the form appended to this memorandum and then filing the form with MCILS. Any change in designation shall become effective on the date MCILS receives the form and acknowledges the change. MCILS counsel are advised that mail and faxes reach MCILS late and sometimes infrequently. Counsel are advised to use email to ensure timely application of any change. MCILS will not be responsible for payments made to the last designated person or entity prior to receipt and acknowledgment of a change. Counsel are further advised that MCILS anticipates a change to require filings through email only. If a policy requiring email filings is adopted, this paragraph shall not be construed to permit alternative means of filing.

Any attorney or firm that has relied on any previous policy, protocol, or practice of MCILS with respect to the allocation of fees shall take such steps as are necessary to realize the benefit of that reliance before 11:59:59 p.m. on October 31, 2021. These steps may include submitting an interim voucher. No attorney or firm shall rely on any previous policy, protocol, or practice of MCILS with respect to attorney payments on or after November 1, 2021.

II. Access to Defender Data / Subsequent billing and case management systems

Each attorney who is or becomes eligible to receive assignments from the Court, and to be approved to represent an assigned client through MCILS, will be provided with the use of an account through Defender Data, or through a subsequent MCILS billing and case management system. The attorney will not develop a property interest in that account.

Each attorney shall be personally and exclusively responsible for the account assigned to that attorney. Each attorney shall personally maintain access to the that account. No attorney may permit any other person to use the account, nor may any attorney provide any other person with that attorney's login credentials.

Each person who is subject to the rules of MCILS shall access the MCILS billing and case management system only through an account in the name of that person. This provision applies to both attorneys and staff.

A staff person may be assigned an account in the name of that staff person at the direction of an MCILS eligible attorney. Each staff person shall be personally and exclusively responsible for the account assigned to that staff person. Each staff person shall personally maintain access to the that account. No staff person may permit any other person to use the account, nor may any staff person provide any other person with that staff person's login credentials.

III. Responsibility for information related to assigned cases

Beginning November 1, 2021, the attorney assigned to represent a client is responsible to MCILS for all information recorded in, or submitted through, the MCILS billing and case management system related to that assigned matter. It is the responsibility of the assigned attorney to confirm the accuracy of the information submitted to MCILS for each case, irrespective of who performs a specific task for the client, enters time information, or submits a voucher.

Beginning November 1, 2021, each attorney assigned to represent a client is responsible for ensuring the creation, maintenance, and production of information related to that matter, irrespective of who performs a specific task for the client, enters time information, or submits a voucher.

Beginning November 1, 2021, both the attorney assigned to represent a client, and the individual or entity who receives payment for services rendered to an assigned client, shall be jointly and severally liable to MCILS for any overpayment in any assigned case. Issues of allocation, contribution, and subrogation shall lie strictly between the attorney assigned to represent the client and the individual or entity who received payment.

IV. Transition

Mooted November 1, 2021.

~~During the period beginning on the publication date of this memorandum, and ending at 11:59:59 p.m. on October 31, 2021, MCILS will protect the expectation of payment to an individual or entity who has been designated by an MCILS attorney to receive that payment where an attorney has designated a new individual or entity to receive payment on the following limited basis:~~

- ~~1. The protection provided in this Section V, "Transition," is limited as set forth herein.~~
- ~~2. This protection extends to the expectation of payment for services rendered to an assigned client by an attorney designated as eligible to participate in that case type, or otherwise specially approved by MCILS to participate in the specific case, on or before the date on which the attorney to whom the client was assigned advises MCILS that the attorney is no longer employed, partnered, or otherwise associated with individual or entity holding the expectation.~~
- ~~3. During the transition period, MCILS will not change the designation of the person or entity to whom payment should be directed with respect to time entered into the MCILS billing and case management system for billing events that occurred prior to the date on which the attorney to whom the client was assigned advises MCILS that the attorney is no longer~~

~~employed, partnered, or otherwise associated with individual or entity holding the expectation.~~

- ~~4. MCILS may, however, create a mechanism, including, but not limited to, creating a second account in the MCILS billing and case management system to permit an attorney to designate an individual or entity to receive payment for billing events that occurred on or after the date on which the attorney to whom the client was assigned advises MCILS that the attorney is no longer employed, partnered, or otherwise associated with individual or entity holding the expectation.~~
5. Any expectation any individual or entity may hold terminates at 11:59:59 p.m. on October 31, 2021. Any individual or entity who wishes to perfect payment of any expectancy related to an attorney who is no longer employed, partnered, or otherwise associated with the individual or entity holding the expectation shall perfect that payment by submitting an interim voucher prior to that deadline.

REQUEST FOR PROPOSAL: CASE MANAGEMENT SYSTEM

Background and Introduction:

The Maine Commission on Indigent Legal Services (MCILS) is responsible for managing Maine's system for providing legal counsel to indigent individuals in a variety of criminal and civil cases. Therefore, MCILS is seeking proposals to provide a secure case management system (the system) which will allow MCILS to effectively oversee and manage attorney performance in providing legal representation to indigent individuals.

Structurally, the system should be comprised of a web-based application hosted by the provider and should incorporate a companion mobile application which is available for both Android and Apple devices.

The system must enable MCILS to appoint, monitor, and compensate appointed attorneys for work performed as specified in this Request for Proposals document (RFP). Additionally, MCILS is responsible for funding non-counsel vendor services which may be necessary in a given case. Moreover, the system must allow appointed counsel to enter billing information into the system in such a way as to allow it to export that billing information to the State of Maine Advantage ME accounting system for payment to appointed counsel and vendors. To facilitate oversight and payment to appointed counsel, the system must provide methods for MCILS staff to review and authorize bills submitted by appointed counsel.

Further, the system should capture operational data and system metrics as well as provide mechanisms for MCILS staff to generate dynamic reports using the data and metrics captured. The system should be designed on the assumption that much of the information captured during operations is either sensitive or confidential. Consequently, the system must provide and implement reasonable security measures to prevent unauthorized access to or destruction of system data and resources.

I. User Categories

The system must permit and accommodate different user categories with differing permissions levels. Additionally, the system should be able to accommodate the creation of new user categories with differing permissions as may be later required or defined and should have the ability to define unique user permissions within each User category. The system should also ship with pre-defined “test users” such that MCILS leadership can test all functionality available to all users. The relevant default user categories are as follows:

A. MCILS Internal Users

MCILS Internal Users are responsible for overseeing the attorneys appointed to represent clients. As a result, they must have access to all information contained on the system. Designated MCILS Internal Users should have permissions to edit all data entries on the system in a manner that retains evidence of the change. Designated MCILS users should also be provided read access to the underlying database. The remaining MCILS Internal Users should have permissions to edit only the information which is required to use the functions and features available to them or as otherwise described in this document.

B. MCILS Screener Users

MCILS Screener Users must have access to attorney voucher reports for specific clients. They must also have the permissions to both access and edit client eligibility data. They must not have access to other data on the system and must not have the ability to modify any data on the system.

C. Attorney Users

Attorney Users are responsible for recording client, case, and billing information on the system. Therefore, they must have the permissions necessary to use the functions and features available to them or as otherwise described in this document. Attorney Users should also have the ability to generate reports and view data related to only that User’s caseload and performance.

D. Judicial Branch Users

Judicial Branch Users are primarily responsible for appointing attorneys to cases. Therefore, these Users must have the ability to retrieve then-current attorney eligibility designations as described in Section II(C). Generally, Judicial Branch Users must not have the ability to edit data on the system. However, the system should have the ability to grant certain specified Judicial Branch Users, designated by MCILS, permission to input and edit certain information as is necessary to implement the functions and features described in this document.

E. Vendor Users

Vendor Users should have the ability to enter and update vendor demographic and financial information. They should also have the ability to review that status of requests for payment and should be able to submit information to MCILS in response to requests for

information. Vendor Users must not have any ability to edit other information on the system except as otherwise described in this document.

F. Public Users

Public Users must have the ability to retrieve reports of individual attorney eligibility designations or reports for sets of attorneys, including all attorneys. Public Users must not have permissions to access any other data on the system.

II. Information Management

A. Data Security

The provider must implement security and privacy by design principles in both the design and production phases of development. Further, the system must implement reasonable security measures to ensure the confidentiality, integrity, and availability of the data stored on the system. Necessary security measures include but are not limited to encryption, access controls, systems logging, and redundant permanent back-ups of all system data. Encryption must be used to secure data both at rest and in transit. The system must not rely on user tools and browser add-ons to implement privacy and security controls such as HTTPS Everywhere. The system must maintain permanent backups of all source code and system data.

Each user should have a unique ID to enable data and function access controls. Attorney Users must not have access to any case or client information for which they are not appointed. Vendor Users must not have access to any case or client information. The system must implement a secure passwords scheme which requires sufficiently complex passwords to prevent brute force attacks on the system. It should also require passwords be changed on a regular schedule set by the system administrator. Users should be prevented from using reusing previously used passwords to protect against targeted attacks using data breach data. The system must implement logging for all activities that occur in-platform in a way that maintains evidence of all edits of existing data made by any User. Access to logs should be restricted to MCILS Internal Users or the systems administrator as appropriate. Where MCILS Internal Users have access to systems logs, they should only have read access.

Where Users are required to enter information into web forms, the system should sanitize the data submitted to the web form such that the User cannot inject malicious code. To guard against additional malicious activity, the system should implement a monitoring process that identifies abnormal system behavior indicative of unauthorized system access.

B. Attorney Information Management

To effectively administer billing management and performance oversight, it is necessary for MCILS to capture and analyze attorney information. The system must provide mechanisms for collecting, organizing, and analyzing information within “attorney profiles” which are unique to each eligible Attorney User. Each attorney’s profile should house all information relevant to that attorney including the attorney’s personal data and case data. The system should permit Attorney Users to submit demographic information to MCILS and should enable reporting of

that information to MCILS including in a form that will permit mail merge. Attorney Users should also have the ability to submit financial information, including payee designations, in a form that will permit output to the State of Maine payment processing system so that MCILS can process submitted bills/vouchers.

To facilitate the tracking of individual attorney caseload data, the system should incorporate a weighted-score case load standard to be defined by MCILS. The system should either import a properly formatted document incorporating the case load standard or provide an in-platform mechanism for setting and editing the case load standard. The system must enforce baseline case load limits based on the pre-defined criteria provided by MCILS and should also allow MCILS Internal Users to set case load limits by attorney. The system should further allow Attorneys to set their own case load limits in total and by case type and court.

Additionally, Attorney Users will need access to their own metrics and information in a way that is useful and actionable. The system should therefore push quarterly reports to Attorney Users or display such metrics on the Attorney User's dashboard or home screen. The report or dashboard should minimally contain the attorney's current case load including the weighted case load number and raw number of clients and cases, along with the total hours worked that quarter. The system should provide Attorney Users the ability to add data elements to these reports but should not allow them to reduce them beyond the minimal amount stated above. Moreover, attorneys should have access to their own metrics so that they may check their numbers at any time and should not have access to any other attorney's data.

C. Attorney Eligibility

MCILS is responsible for designating which attorneys are eligible to receive assignments to represent indigent clients. Attorneys may be eligible both generally and specifically with regard to some categories of complicated cases as well as with respect to which counties they accept cases in. As a result, the system must provide the ability to track and update attorney eligibility with sufficient granularity to determine an attorney's eligibility to accept certain case assignments across subject matter and geographical space. The system must also provide a mechanism for tracking attorney qualifications across time and subject matter.

i. Baseline and Specific Eligibility

To account for changes in attorney eligibility over time, the system must provide both MCILS Internal Users and Attorney Users with the ability to edit eligibility designations, subject to the following requirements. Specifically, the system must permit only MCILS Internal Users to set an attorney's baseline eligibility to receive cases generally, by specific case type, and by county. Further the system should permit MCILS Internal Users to make batched updates to attorney eligibility. The system must provide Attorney Users with the ability to opt in and out of case types by county for only those case types or counties that MCILS has made a positive baseline eligibility determination. The system must also provide the mechanisms necessary to enable the reporting function described in this document.

ii. Attorney CLE Information

It is necessary for MCILS to receive and track information regarding attorney participation in continuing legal education (CLE) programs. As a result, the system must provide a mechanism for Attorney Users to submit proof of CLE attendance to MCILS and should permit reporting of CLE compliance to MCILS. The implementation of this function should allow Attorney Users to upload documents showing proof of CLE attendance. The system should also provide a mechanism for Attorney Users to manually submit the following information: (1) credit hours; (2) CLE title; (3) subject matter; and (4) date of attendance. This information should be linked to the attorney's demographic or "profile" information such that it is easily retrievable by MCILS Internal Users and Attorney Users. The system should indefinitely store attorney CLE information so that MCILS can track attorney CLE attendance across time and subject matter.

D. Attorney Appointments

Both MCILS and Judicial Branch personnel may assign counsel in cases where a client is deemed eligible to receive appointed counsel as described above. The system must account for both possibilities and permit importation of assigned data from the Judicial Branch. To that end, the system should implement the tools for both Judicial Branch Users and MCILS Internal Users to generate and edit attorney assignments.

i. Appointing Attorneys

In practice, the Judicial Branch is primarily responsible for appointing attorneys to cases and has its own established procedures. As a result, it is unclear to what extent the Judicial Branch leadership will be willing to interact with the system. The following system components should be designed to accommodate different methods for importing data necessary to complete an appointment from the Judicial Branch including via XML or similar language over SFTP or similar protocol, from a filled PDF, and from formatted emails. In sum, the system should accept properly formatted electronic data to create client and case entries for approval either by automated system processes or by MCILS Internal Users.

The system should provide a mechanism for Judicial Branch Users to appoint attorneys to cases. The implementation of that mechanism should accept input from the Judicial Branch User and suggest the attorney to be appointed in that case based on pre-defined criteria such as: (1) attorney eligibility information; (2) current assigned case load and case load limits; and (3) known attorney-client relationships. Judicial Branch Users should have the ability to override the system suggestion. The mechanism allowing override should require the Judicial Branch User to provide a reason for the override. Similar mechanisms should be provided to MCILS Internal Users so that they may appoint attorneys as the need arises. The system should provide a method for sending appointment data regarding appointments made by MCILS Internal Users both Internally to Judicial Branch Users and externally to the appropriate court within the Judicial Branch.

When an attorney is appointed to a case, either by a Judicial Branch User or MCILS Internal User, the system should minimally require the following information: (1) client name; (2) client's date of birth; (3) docket number; (4) charges, including sequence number and any enhancements; and (5) attorney name (but see below)¹. Judicial Branch Users and MCILS Internal Users should also have the ability to provide more information than these five data points when appointing counsel, although additional information should not be required. MCILS Internal Users should also have the ability to override the docket number and date of birth requirements as those data points are generally not known to MCILS until provided by the attorney. Further, the system should have the ability to import and enter case and client information either from Judicial Branch software or some other source of properly formatted data including via XML over SFTP or similar protocol. Attorney Users should also be provided the ability to manually open cases to which they have been assigned.

The system should account for the possibility that the Judicial Branch is unable or unwilling to use the system to appoint attorneys. As a result, the system should provide Attorney Users with the necessary mechanisms to open cases themselves. When an Attorney User opens a case after being appointed by a Judge that User should be required to enter all case and client information. Case and client information is described in Sections E-G below.

ii. Automation

When Judicial Branch Users appoint an attorney, the system should verify that the attorney eligibility designation and case type match. If they match, then the system should automatically approve the appointment. If they do not match, then the appointment should automatically be rejected. Further, the system should automatically notify the attorney, in platform and through email, that the appointment has either been approved or rejected. If rejected, the system should provide the client name, docket number, and reason for the rejection in the notification sent to the Attorney User. The system should send similar notifications to MCILS Internal Users and the relevant Judicial Branch Users. When an appointment will exceed the attorney's caseload limit, the system should neither approve nor reject the appointment, but should flag it for review by MCILS Internal Users. The system should then notify MCILS Internal Users in-platform or through email, as that User may choose, so that the appointment may be reviewed and processed. The system should therefore also provide a mechanism for MCILS Internal Users to approve and reject appointments manually. Likewise, the system must permit MCILS Internal Users to override the caseload limits.

Once an attorney has been appointed to a case, the case should automatically be created in the client profile if it does not exist. (Client profiles are described in Section E below.) Similarly, if the client profile does not yet exist, then the system should automatically create one and prompt the User assigning the case to enter the necessary information. A notification should then be sent to the attorney appointed to the case notifying them of the appointment. The system

¹ The system should accept the attorney's name or other appropriate input to identify the desired attorney for appointment. Because this input field is intended to automatically open cases that did not previously exist and populate appointment data in both the client and attorney profiles, it may be necessary to implement a unique identifier other than the attorney's name.

should distribute this notification both in platform and through email. After appointment, the attorney will be responsible for providing the remaining required case data, and client data if there is no existing client profile.

The system should update itself in real time, via XML or similar language over SFTP or similar protocol, to reflect changes in the data. At a minimum, the system should update changes to individual attorney caseloads and eligibility designations but should update all metrics in real time.

iii. Special Case Types and Rules

MCILS often institutes new programs for providing and improving the legal services provided to Maine's indigent population which do not fit neatly into the traditional model of appointing counsel. As a result, the system should provide a mechanism for Attorney Users to generate cases not under any particular client for time and expense reporting relevant to a particular program. These programs should belong to their own case type such that they system can filter them pursuant to the reporting function described in Section V(B). Time and expense reporting in these types of programs should be identical to the traditional model, except that when an attorney submits time in the Attorney Mentor program, the event category drop down should be replaced with a text box for the mentee's name and the docket number field should be replaced with a text box for the purpose of designating the type of specialty case.

E. Client Information Management

Over the course of a case, MCILS and appointed counsel collect various amounts and types of data relevant to the client. The system should accept user inputs to build "client profiles" which will be the structure for capturing and storing all information relevant to that client including their respective cases. The system should allow for the importation of data as described in this document to automatically generate client information. Additionally, the system should provide Attorney Users a mechanism for entering and editing client information including demographic, contact, and case information.

As a result, the system should require the Attorney User to verify or enter the following client information directly into the system when assigned a case: (1) last name; (2) first name; (3) date of birth; (4) address (last known physical or mailing); (5) phone number; (6) immigration status; and (7) client custody status (i.e. whether the client is currently incarcerated). Often one or more data points are missing due to the client's socioeconomic position. Therefore, the system should allow an Attorney User to continue without providing an address or phone number by designating the client as not having one or either. The system should track how many days since the attorney last contacted the client and how many days since the client has been incarcerated. Finally, the system should provide a mechanism for Attorney Users to add general notes, independent of billing data, to a client's profile to specify details relevant to the client that may not be readily apparent by reviewing individual case data.

F. Client Eligibility

MCILS provides appointed counsel to indigent people who are made eligible by statute or rule. Consequently, the system must identify and track base line client eligibility as well as changes to that eligibility over time. As a result, the system must provide a mechanism for indicating whether a person has been deemed eligible for appointed counsel or not. The system must also provide a mechanism for MCILS Internal Users to indicate client eligibility determinations. The system should assume that a person for whom a case entry is made, either by an Attorney User, a Judicial Branch User, or through automatic importation of case information provided by the Judicial Branch, has been designated eligible to receive appointed counsel.

G. Case Information Management

The system must allow Attorney Users, MCILS Users, and the Judicial Branch Users to enter case information into the system. MCILS and the Judicial Branch may enter case information into the system when appointing counsel in a case, but ultimately the appointed attorney will be responsible for providing the remaining information. As a result, attorneys should be required to enter certain case information every time they are appointed to a case. Likewise, attorneys should be required to provide certain information every time a case is closed. Once case information has been entered, the case and all its information should be housed under the appropriate “client profile.” As a design principle, the case system should provide a summary view of a case so that MCILS Internal Users and the appointed attorney may quickly determine where the case is in the process, what has been done, and what is next.

i. Case Opening

The system should provide the mechanisms necessary for Attorney Users to enter or edit the following required information for each case:

- (1) docket number;
- (2) procedural posture relevant to the docket number;
- (3) point of contact information (POC) for relevant people;
- (4) appointment date;
- (5) upcoming hearing date(s);
- (6) case status (open/closed);
- (7) case type;
- (8) charge(s) in criminal cases;
- (9) sequence number; and
- (10) class of crime charged in criminal cases.

The system must have the ability to correlate charge sequence numbers to case types. Data points (1)-(5) should accept user input through form text boxes and should be formatted appropriately. Data points (7)-(10) should accept user input through pre-defined drop-down options. Data point (6) should accept binary or Boolean user input. Although this information should be provided upon opening a case, the attorney appointed to the matter should have the ability to edit the information provided such as POC information and procedural posture. Additionally, the system should prevent an Attorney User from submitting a bill or voucher in

any case where any of the case information described above is missing. Attorney Users should also have the ability to upload documents to the particular case such as motions and court notices.

ii. Case Closing

Every time a case is closed the appointed attorney should be required to enter the following case specific information:

- (11) charge-specific sentence or stage disposition;
- (12) charge-specific sentence or stage disposition notes;
- (13) final case disposition;
- (14) final case disposition notes; and
- (15) disposition date.

Data points (11) and (13) should accept user input through pre-defined drop-down options and data points (12) and (14) should accept user input through form text boxes. These drop downs should be dependent on the case type as different case types will have different dispositions. Often cases are resolved by plea deal resulting in changes to the original charges. The new charges typically better suit the defendant's personal situation than the original crime charged. The system should provide a mechanism to track this sort of charge bargaining across the system. Similarly, the system should track disposition data, including sentencing data, with sufficient granularity that it may be aggregated and tracked by case type, charge or stage, and geographical region. These metrics should be collected and stored so that they may be integrated into the reporting function described in this document.

Additionally, the attorney should be required to complete a checklist upon closing a case. That checklist should reflect items defined by MCILS. Consequently, MCILS Internal Users should have the ability to edit the items on the checklist so that the list will reflect practice standard requirements.

III. Communications Management

A. Communications

In the course of its work, MCILS often finds it necessary to communicate with appointed counsel regarding various topics related to billing and performance. The system should implement a central messaging system allowing MCILS staff to directly communicate with appointed counsel in-platform. The system should also provide for email or SMS forwarding of messages sent in-platform. All messages sent or received in-platform including the associated meta data should be indefinitely retained. The associated meta data should minimally include whether and how a message was forwarded off platform.

B. Contact Management

The system should provide a mechanism for storing and accessing contact information for both appointed counsel and clients. Because contact information including address and phone

number may be considered personal or sensitive information, contact information should be stored securely and access should be limited. The system should provide contact information to all attorneys eligible to receive appointment for the following groups of people: (1) other attorneys eligible to receive appointments, excluding personal contact information; (2) prosecutors; (3) non-counsel vendors; and (4) courts. Additionally, the system should have the ability to store and retrieve all attorney contact information. The system should be able to do so in a fashion that outputs attorney contact information in a logical list in a printable or electronically distributable format such as email from within mail merge. Personal attorney contact information should only be accessible by MCILS Internal Users.

C. Notifications

The system should provide Users with an in-platform notifications center which houses all appropriate notifications regarding actions taken and messages sent and received on the system. The notifications feature should handle the trigger alerts and automated reports; however, the system should treat trigger alerts and automated reports like messages by indefinitely retaining them in the system even if removed from the appropriate Users view. Users should have the ability to edit their own notification settings to reduce or improve the notifications received. However, Attorney Users should always receive a notification when they receive a new case appointment, new messages, new alert, and when any request is approved, denied, or otherwise processed. When clearing notifications from the center, Users should have the option to remove individual notifications or batch remove notifications. However, Attorney Users should not be able to remove alert notifications until they are resolved. Evidence of all notifications should be retained by the system either through logging or by some other means.

IV. Billing Management

All billing functions described below should be linked to a case or cases such that when a bill/voucher or a funds request is submitted in the case, the appropriate case and client information should automatically be provided with the bill/voucher or request.

A. Time and Expense Reporting

The system should provide sufficient mechanisms for appointed counsel to record the time spent on a case in the relevant case file for billing purposes. The mechanism permitting the entry of time should consist of several input fields outlined below. Additionally, the time and expense reporting mechanism should be LEDES compliant, thereby enabling importation of billing events from other LEDES complaint case management software.

i. Time Recording

The system should minimally require, except for data points (2) and (3) below, attorneys to enter the following information for each time entry:

- (1) date;
- (2) event category;
- (3) time billed (in 10th hour increments rounded to the nearest 10th);

- (4) entry note/comment;
- (5) provider name;
- (6) binary or Boolean indicator showing whether the work was done by a paralegal (default is false); and
- (7) a binary or Boolean indicator showing whether contact was made with the client (default is false).

An Attorney User should not be permitted to designate time as paralegal time without first obtaining prior approval from MCILS Internal Users. If paralegal time is entered, that time should be recorded separately from the attorney's personal performance metrics. Also, the system should accommodate changes to the event category list which are provided pre and post-deployment.

MCILS intends to implement a requirement that billing entries be made contemporaneously with the work done. As a result, the system should provide a mechanism for MCILS Internal Users to set a numerical value representing the maximum length of time between the actual time event and the point when the time was recorded. Time entries which are submitted outside this permissible bound should be accepted by the system but should not be added to the bill total. The system should also automatically notify the Attorney User of the discrepancy and should require the Attorney User to submit an explanation for the late entry subject to approval by MCILS Internal Users. If the late submission is approved by MCILS Internal Users it should be added to the bill total; otherwise, the entry should remain on the bill but not be included in the bill total.

It is common for an attorney to be appointed to represent a single client in several different cases. Some cases may be related, and others may be unrelated. The system should provide attorneys with the ability to link cases which belong to a single client so that time may be entered in all cases at once from one single location. When an Attorney User links cases together in this way, only one bill/voucher for the group of cases should be submitted for payment.

ii. Time Sheet Recording

The system should provide a mechanism or a collection of mechanisms that will allow Attorney Users to record all time entry billing data in multiple cases across their entire client base in one central location. This feature should be designed in such a way that the information entered by the Attorney User will not be lost when their session times out. The mechanism should include the data points listed above and should also include and require fields for "client" and "case" so that the time may be entered in the correct case. As a security measure Attorney Users should only be allowed to enter time in cases for which they are assigned.

iii. Travel Expense Recording

The system should also allow Attorney Users to submit travel time and expense claims. These entries should be maintained separate from the regular time entries described above. However, when the Attorney User submits a bill in the case, these entries should be included in

the bill. When recording travel time and mileage the Attorney User should be required to submit the following minimum information:

- (1) starting address;
- (2) destination address;
- (3) time billed (in 10th hour increments rounded to the nearest 10th); and
- (4) miles traveled.

iv. Other Expenses

When making a claim for expense reimbursement, the attorney should minimally be required to describe the type of expense and the reimbursement amount. The attorney should also have the ability to upload a receipt or other document as proof of the expense. Documents uploaded as proof of expense should be submitted with the voucher or bill when it is submitted.

B. Vendor Expense Management

It is often necessary or desirable for appointed counsel to hire investigators, experts, and other professionals to provide competent and quality representation. This document refers to these types of professionals as vendors. Additionally, the system should generally provide the same time reporting and funds requests mechanisms for paralegals. The system should provide appointed counsel with a mechanism to request funds to pay vendors as necessary in a given case. To enable MCILS to process requests for funds, the system should minimally collect the following information from the attorney requesting the funds:

- (1) reason for the request;
- (2) type of vendor;
- (3) anticipated vendor (if applicable);
- (4) anticipated hourly rate;
- (5) anticipated total cost; and
- (6) description of the anticipated work.

The system should automatically check the anticipated hourly rate and total cost against pre-defined limits for that type of vendor and should flag the request to the MCILS Internal User who reviews the request.

Additionally, the system should provide a mechanism for MCILS Internal Users to authorize requests for vendor funds with certain requirements or specifications. For example, the system should allow a request to be approved with a cost cap. Once approval is made, the Vendor User should have the ability to record work done by that vendor. The vendor time records should be maintained separately from the attorney's own time records but should correspond to the appropriate case. Moreover, vendor time should be recorded in the same manner as attorney time except that each time entry should require the name of the person who did the work, a detailed description of the work that was done, and the vendor's hourly rate thereby allowing for the possibility that different vendors will have different rates. A Vendor User or Attorney User should be prevented from submitting a time entry which reflects a rate

greater than the established rate limits unless a prior exception has been made by an MCILS Internal User.

Next, the system should provide a mechanism for Vendor Users and Attorney Users to submit bills/vouchers for payment of vendor funds once the vendor's services have been completed. These invoices or vouchers should be submitted in the same manner as attorney vouchers. However, where the Vendor User is the one submitting the bill/voucher, it should first be submitted for approval by the appointed Attorney User and then submitted for review by that Attorney User. As a security measure, Vendor Users should only be able to enter and submit invoices or vouchers for cases and amounts for which they have been approved. Finally, the system should provide MCILS Internal Users with a mechanism for reviewing and approving submitted vendor invoices or vouchers.

C. Billing and Payment Management

The system must provide a method for appointed counsel to not only enter the time spent working on appointed matter, but also must provide a mechanism for appointed counsel to submit for payment in any case in which they are appointed. Likewise, the system should provide for MCILS Internal Users to administer requests for payment made by appointed counsel. Where more than one attorney is appointed to represent a client in a case, the submission for payment by one attorney should not submit payment for any other appointed attorney. As bills/vouchers are submitted in the system, that information should be recorded and stored indefinitely or according to a retention schedule defined by MCILS. Similarly, the system should accept and store legacy billing data from the existing Justice Works defenderData system.

Most attorneys review their bills/vouchers before submitting for payment. Occasionally an attorney will discover an error and will correct that error. As a result, the system should allow Attorney Users to edit time entries after they were entered but before the bill/voucher is submitted for payment. MCILS Internal Users should have the ability to edit any information in a bill/voucher after it is submitted for payment. MCILS Internal Users should also have the ability to return the bill/voucher to the Attorney User to make edits. All edits made to a bill/voucher by either Attorney or MCILS Internal Users should be logged and retained by the system. MCILS Internal Users should have the ability to view these logs but should not have the ability to write to them.

The system should not allow an Attorney or Vendor User to submit a bill/voucher for payment if that bill/voucher has an associated outstanding trigger alert, as described in Section V(C) below. Moreover, the system should require the trigger alert be resolved before submission of a bill/voucher is permitted. Additionally, MCILS requires bills/vouchers be submitted within a pre-defined period (currently 90 days) from some triggering date. The system should determine whether the bill/voucher is submitted in excess of that window. It should also automatically reject the bills/vouchers submitted outside that window and allow Users to request an exception to the rule by providing a reason or explanation for the late submission.

Finally, the system must provide mechanisms allowing MCILS Internal Users to approve, deny, or inquire about submitted bills/vouchers so that they may be processed.

V. Systems Features

A. Calendar Management

The system should host an in-platform calendar that is bidirectionally compatible with Outlook Calendar. There should be two forms of calendars. First, the system should maintain a system calendar which reflects information provided by MCILS. Second, the system should provide each User with their own individual calendars which they can manipulate and share according to their own preferences. All users should have access to the system calendar events. Additionally, MCILS Internal Users should have access to all Attorney User calendars but should not permit Attorney Users to view any other Attorney User calendar which is not their own.

i. MCILS System Calendar

Among other things, the MCILS system calendar will be a central repository for statewide court dates and MCILS sponsored CLEs. The system calendar should have the ability to import data directly from Judicial Branch software or some other source to automatically populate calendar entries such as court dates. The system should track court date conflicts across time and regions. As part of the reporting function described later in this document, this information should be reportable in a reasonable printable and exportable format.

The system should also allow MCILS Internal Users to manually input calendar entries within the platform and import calendar entries from their local Outlook Calendar. MCILS Internal Users should have the ability to prevent importation from Outlook Calendar to prevent accidentally oversharing their personal appointments. The system should track court date conflicts across time and regions.

ii. Attorney User Personal Calendar

The system should provide Attorney Users with their own individual calendars. This calendar will provide attorneys with the ability to set in-platform reminders, alerts, appointments, and due dates. Attorneys should be able to accomplish this both manually in-platform and through the importation of data from their own local calendars. Attorney Users should have the ability to prevent importation of local calendar entries through user settings to prevent accidental overshare of personal appointments. Attorneys should also be able set permission managing Judicial Branch access to their own individual calendars. However, the system should capture time conflicts to the extent possible and track the frequency of time conflicts so that it is reasonably reportable as part of the reporting function described later in this document.

B. Report Generation and System Metrics

The system should provide a mechanism for generating comprehensive and dynamic reports using any data point or other system metric captured by the system. When generating reports, users should have the ability to specify the filters for obtaining the relevant information and articulate the types of data to be included in the report. All reports should be generated in format which is in a reasonably exportable and distributable format such that people of varying

technical sophistication can easily access and use them. The system should also permit users to generate visualizations and conduct statistical analysis on the data in a report, according to user-defined parameters as explained below.

The reporting features and mechanisms provided by the system should be comprehensive and should minimally provide the following filters:

- (1) date or date range;
- (2) attorney;
- (3) event entry;
- (4) case type;
- (5) case status (open/closed);
- (6) client;
- (7) hours worked on a given date;
- (8) voucher / bill amount;
- (9) total hours billed;
- (10) trigger alert;
- (11) case identifier or docket number;
- (12) sentence or disposition;
- (13) vendor;
- (14) vendor type;
- (15) bill/voucher number; and
- (16) time spent by event entry.

The system should also be capable of tracking the following information, and similar information, so that it can be included within a report:

- (17) number of cases by case type;
- (18) total number of cases;
- (19) number of eligible attorneys;
- (20) number of attorneys by eligibility;
- (21) number of clients;
- (22) year-to-date (YTD) expenditures by case time;
- (23) YTD total expenditures;
- (24) YTD expenditures on non-counsel fees by vendor type;
- (25) YTD expenditures on paralegal support;
- (26) YTD hours worked;
- (27) open, closed, and lifetime cases by attorney;
- (28) number of hours spent on a case by case type;
- (29) number of cases going to trial;
- (30) number of vendor funds requests;
- (31) number of active attorneys by eligibility type and geographical area;
- (32) case dispositions across case types and courts (to track attorney activity);
- (33) number of contested hearings;

(34) number of cases settling without trial;
(35) travel time and expenses by attorney; and
(36) case type frequency by attorney and firm (e.g. how many burglaries were handled within a specified time frame).

These lists, (1)-(16) and (17)-(36), are not exhaustive and should be considered the minimum. MCILS Internal Users should have the ability to combine and filter all information retained by the system including attorney information, case information, and client information. In short, the system should allow MCILS Internal Users to build SQL queries or the functional equivalent to design the desired reports from any data within the system. Where the filter or data point is a number, MCILS Internal users should be able to define a range. The system should provide similar functionality for filtering bill/vouchers by attorney and across the system. This feature should be able to generate reports in several different file formats such as PDF, CSV, Excel, and HTML. Further, the system should provide tools to MCILS Internal Users so that they may conduct statistical analysis on specified system data using, among other methods, clustering, regression, and cross-sectional analysis. Users should be able to aggregate data across the system to identify outliers based on pre-defined filters.

Next, MCILS Internal Users should have the ability to set and edit pre-defined criteria to implement automated report generation on a scale and frequency determined by MCILS Internal Users. The underlying functionality should be identical to the reporting system described above. The system should also have the ability to import statistical data and metrics from the Judicial Branch in a usable format so that MCILS Internal Users will be able to use the reporting function described above to generate reports and conduct statistical analysis on it. MCILS is specifically interested in tracking information regarding case volumes, case types, court region, and attorney appointments by court.

i. Attorney Eligibility Reporting

The system must provide a mechanism to report to MCILS Internal Users and Judicial Branch personnel whether an attorney has been designated eligible and available to receive a case of any identified type(s) in any identified geographical location(s). The system must permit reporting of attorney eligibility elections to MCILS, the Judicial Branch, and the public. The system must provide a public facing mechanism to report attorney eligibility information. Attorney eligibility reporting may be implemented using the reporting function described above or by some other means.

ii. Data Visualization

The system should provide mechanisms for MCILS Internal Users to generate data visualizations in the form of graphs, charts, tables, and other appropriate statistical modeling tools. The system should have the ability to generate heat maps to determine weaknesses in practice coverage throughout the state. Although these tools should operate independent of report generation, they should use the same criteria available for generating both reports and system alerts and triggers. The mechanisms provided should allow MCILS Internal Users to set

parameters to automatically generate pre-defined visualizations and display those visualizations on the User's home screen or dashboard. These pre-defined visualizations should update either in real time or on a pre-defined schedule to be set by the MCILS Internal User.

C. Triggers and Alerts on System Usage

To better monitor the system MCILS intends to implement various automated functions to efficiently focus efforts where they are needed. As part of that goal, the system should provide a mechanism for MCILS to set pre-defined criteria to create custom triggers for both automated report generation and alert generation post-deployment. Similarly, the system should provide MCILS the ability to define which users receive which alerts and automated reports when and if they are generated and specify whether a response is required by a user receiving the alert. If a response is required, the MCILS Internal User creating or editing the trigger criteria should have the ability to set a deadline for that response in terms of time elapsed since the alert went out. The alerts and reports generated should be based on the information provided to the system through user input and should not be dependent on appointed counsel's submitting bills for payment.

The alert triggering feature should have the same basic capabilities as the report generation feature described above, in terms of data granularity. MCILS Internal Users should be able to set trigger criteria according to similar parameters. The system should ship with the following default alert triggers:

- (1) No time billed in a case (MCILS and Attorney);
- (2) No time billed for a jail visit and the client is in custody (MCILS and Attorney);
- (3) Appointment exceeds caseload limitation (MCILS and Attorney);
- (4) Attorney Users or Vendor User bill in excess of presumptive review (MCILS and Other User);
- (5) Case hours in a given case are below a pre-defined minimum (MCILS and Attorney);
- (6) Case hours in a given case exceed a pre-defined maximum (MCILS and Attorney);
- (7) Duplicate time entries (alert to Attorney first for confirmation, alert to MCILS upon confirmation);
- (8) Attorney caseload exceeds annual case cap defined by MCILS (MCILS); and
- (9) Attorney when a time value exceeds a numerical value set for the relevant event entry category, the system should allow the attorney to submit the value despite the trigger, should alert MCILS, and should concatenate the Attorney User's response to the comment corresponding to the relevant time entry.

D. Mentorship Program

The system should include a platform for matching mentor attorneys with mentee attorneys. The platform should suggest new mentor-mentee matches subject to MCILS review and should provide for blind matching. MCILS Internal Users should have the ability to link mentorship cases to individual cases or client profiles such that when the bill/voucher is submitted the case and client information will be included. The system should also track metrics

related to the mentorship program and should make those metrics reportable using the reporting function described in this document. The system should minimally track the number of mentees, number of mentors, and the number of mentees assigned to each mentor.

VI. General Systems Requirements

A. UX / UI Design

i. Overall System Design

The system should implement a user interface that is simple, modern, and reasonably intuitive to users. The UI should allow each User to access and use each of the tools available to them.

For Attorney Users, the system should provide a home page or dashboard minimally containing the following elements:

- (1) Notifications;
- (2) Client list;
- (3) Calendar
- (4) Voucher review and submission tools;
- (5) Attorney User metrics;
- (6) Outstanding/unanswered alerts list with a hyperlink to the mechanism for responding to that alert;
- (7) Messages/message center;
- (8) Time sheet tool described in the Time and Expense Reporting section above; and
- (9) Outstanding requests submitted to MCILS.

For MCILS Internal Users the system should implement a home page or dashboard that is largely customizable and incorporates at least the following elements:

- (1) System Metrics and data visualizations;
- (2) Notifications;
- (3) Messages/Message center;
- (4) Alerts list with a hyperlink to the mechanism for observing the relevant data and responding to the alert;
- (5) Automated reports list with a hyperlink to the relevant generated report; and
- (6) Voucher Review tools.

ii. Mobile Application

The system should implement a mobile application which is compatible with the system described in this document. The mobile app contemplated by MCILS is primarily for the benefit of Attorney Users who may find the need to enter time in a case while away from their office. To that end, the system should implement a function similar to the time sheet functionality described in the Time and Expense Reporting section above, such that an Attorney User with the app can submit time for work done in any case across their client base. Attorneys should also be able to

view the calendars on the system for which they have access. They should further be able to view, send, and receive message on the system, as well as view and remove their notifications on the app and system as appropriate. When data is entered into the system via the app, the system should be updated with that information such that those changes are visible from the computer or desktop view.

B. Data Storage Requirements

The system should provide sufficient storage capacity to indefinitely store all system data either manually entered or automatically generated by the system either in response to user inputs or as a function of the system's logging rules. The system should employ redundant storage solutions to protect against data loss as a result of environmental damage to infrastructure, data corruption, or a systems data breach.

C. Documentation

The system should be built with an eye toward usability. The provider of the system must develop and produce to MCILS documentation sufficient to allow all new users to effectively use all system functionality available to them. The documentation should be divided by User category and should be sufficiently compartmentalized.

Random Sampling: Fraud Detection

1. Test Objectives

The purpose of selecting this random sample is to identify anomalous entries reflected in submitted vouchers which are indicative of fraudulent or non-compliant billing practices. This sample is drawn to test for the presence of double billing, over billing, billing for work not done, and misstated billing. These billing practices each share characteristics and are component parts of the larger problem that is fraudulent billing.

2. Type of Test Performed

In pursuing the objective stated above, this sampling procedure will employ both compliance testing and substantive testing. The **compliance tests** designed for this audit procedure are intended to identify the presence of actions or practices which are expected to exist where fraudulent billing practices are present. The **substantive tests** designed for this are intended to quantify the presence and extent of fraudulent billing practices within the indigent defense system.

3. Deviation Conditions

A deviation occurs when the auditor finds, given the evidence collected, that the sampling unit (voucher) contains at least one intentionally misstated billing entry. In this context a deviation does not occur when the misstatement reduces the value for that billing entry below the amount for which the attorney is entitled. The auditor must use their professional judgment in determining whether a deviation has occurred in each sampling unit. However, the auditor should apply the formal procedures and guidelines developed for determining the presence of fraud within a sampling unit.

4. Population

The relevant population includes all vouchers submitted to MCILS through electronic or other means during the previous calendar year. Because this sampling procedure is designed to test for fraud within the system generally, it is appropriate to reduce stratification of the population as fraud is as likely to exist within any strata likely to be defined. Further, not only does MCILS lack the data necessary to determine that stratification would yield more representative results, but stratification would result in reduced efficiency and increased costs to MCILS.

Additionally, the overall audit strategy employed by MCILS includes both automated and manual sampling procedures designed to identify, among other things, anomalous or fraudulent billing practices. For example, MCILS has designed continuous auditing and monitoring controls and procedures which will be implemented once the underlying infrastructure is developed. These controls and procedures are designed to perpetually monitor MCILS's billing system in real time to identify the types of anomalies auditors will be testing for pursuant to this procedure. Once an anomaly is identified, the audit division and MCILS Executive Directors will be notified of the anomaly and a report will be

generated to provide auditors with the information needed to pursue the alert according to the established auditing procedures.

MCILS also engages in manual sampling strategies designed to identify anomalous and fraudulent billing practices within the system. For instance, MCILS has developed a scheme which scans the system for conditions matching pre-defined criteria determined by audit staff. The criteria set is designed to, among other things, identify the conditions expected where fraud is present. Of course, this set of criteria is limited to data housed within the case management and billing system used by MCILS to manage attorney billing. But, while MCILS's manual methods for sampling will not initially determine the presence of fraud, they will allow audit staff to focus their efforts and initiate targeted audits where fraud may be present.

Therefore, because MCILS has implemented complimentary sampling and audit procedures, including some level of 100% audit through continuous auditing and monitoring, the appropriate population for this sampling procedure is the entire population of vouchers submitted within the relevant time period.

5. Sample Size

The sample size is determined using the Yamane formula which determines the appropriate sample size based on the overall population and desired confidence level. This sampling procedure is designed with a 95% confidence level and is based on the population of vouchers as described above in Section 4. Because the population size is variable, the sample size will not be known until the sample is drawn. However, the range of possible sample sizes is predictable given historical voucher data. Consequently, this sampling procedure assumes a sample size of 395. This size was determined by recording the number of vouchers submitted per year starting in 2016 and ending in 2021. The Yamane formula was then applied to each year to determine the appropriate sample size. Because the number of vouchers submitted per year were fairly consistent across the data set, each sample size was within .5 of 395. Therefore, although the sample size should be determined according to the actual characteristics of the population, this sampling procedure assumes a sample size of 395.

6. Selection Method

This auditing procedure uses random selection to choose both attorneys and records to be audited. To do so, this procedure employs two levels of randomization.

The first level of randomization designates the attorneys who will be subject to audit. The number of attorneys selected is dependent on the sample size and the amount of vouchers submitted by the attorneys that are selected. As an initial step, the appropriate sample size for the population is designated as described above in Section 5. The system will then begin to randomly select attorneys from the roster. The randomization system will be entirely handled by software and every attorney will have an equal chance of being chosen. When an attorney is selected, the software will determine how many vouchers were submitted by that attorney

during the relevant period. The software will then calculate a percentage of those vouchers and reduce that number from the overall sample size. The attorney will then be removed from the master list and a new attorney will be selected. This process will continue until the population counter reaches zero. In the event that the last attorney is chosen where the amount of necessary records left in the counter is lower than the appropriate percentage of vouchers submitted by the attorney, that attorney should still be selected and the percentage control should be enforced. This will occasionally result in an actual sample size which is larger than the originally calculated sample size and may result in additional costs. However, the increased sample size will not reduce the confidence level or increase the error rate of the test. Once the attorneys and the appropriate amount of cases for each attorney have been selected, the system will then randomly select the cases submitted by that attorney for auditing.

Next, the second level of randomization will select the actual vouchers (sampling units) which will be the subject of the audit. This random process will also be automated and therefore handled by a software solution. Initially, the software will generate a list of voucher numbers submitted by the attorney within the relevant population described above in Section 4. The system will then randomly select a number from that list which will be included in the sample. The number selected is then removed from the population and another voucher is randomly chosen. This process will repeat until the appropriate amount of vouchers have been randomly selected for each attorney. Once this process is complete a list of each attorney and the respective vouchers will be generated and output to audit staff for viability testing.

7. Test Sample Viability

Once the sample is selected it will be tested for viability. A sample will be determined viable if the average voucher amount across the selected sample is within a predefined range. This is done by first calculating the average voucher amount across the population. A 10% deviation in either direction from the average is then calculated and assigned as the upper and lower ends respectively. For example, if the average voucher amount for population is \$450 then the viability range will be \$405-\$495. If the average sample voucher amount is within that range, then the sample is considered representative of the population. However, if the average sample voucher amount is outside the permissive range then the sample is considered non-representative. Where a sample is considered non-representative, the sample will be discarded, and a new sample drawn using the process described above in Section 5.

8. Evaluate Sample Results

While the audit procedures are being conducted auditors must record their findings and periodically review their results and findings. Where deviations are found, the sample size should either be increased, or the relevant record should be rejected as unreliable. Auditors will use their professional judgment when determining whether to reject a record or increase the sample size. If the record is rejected a new record should be randomly selected from the

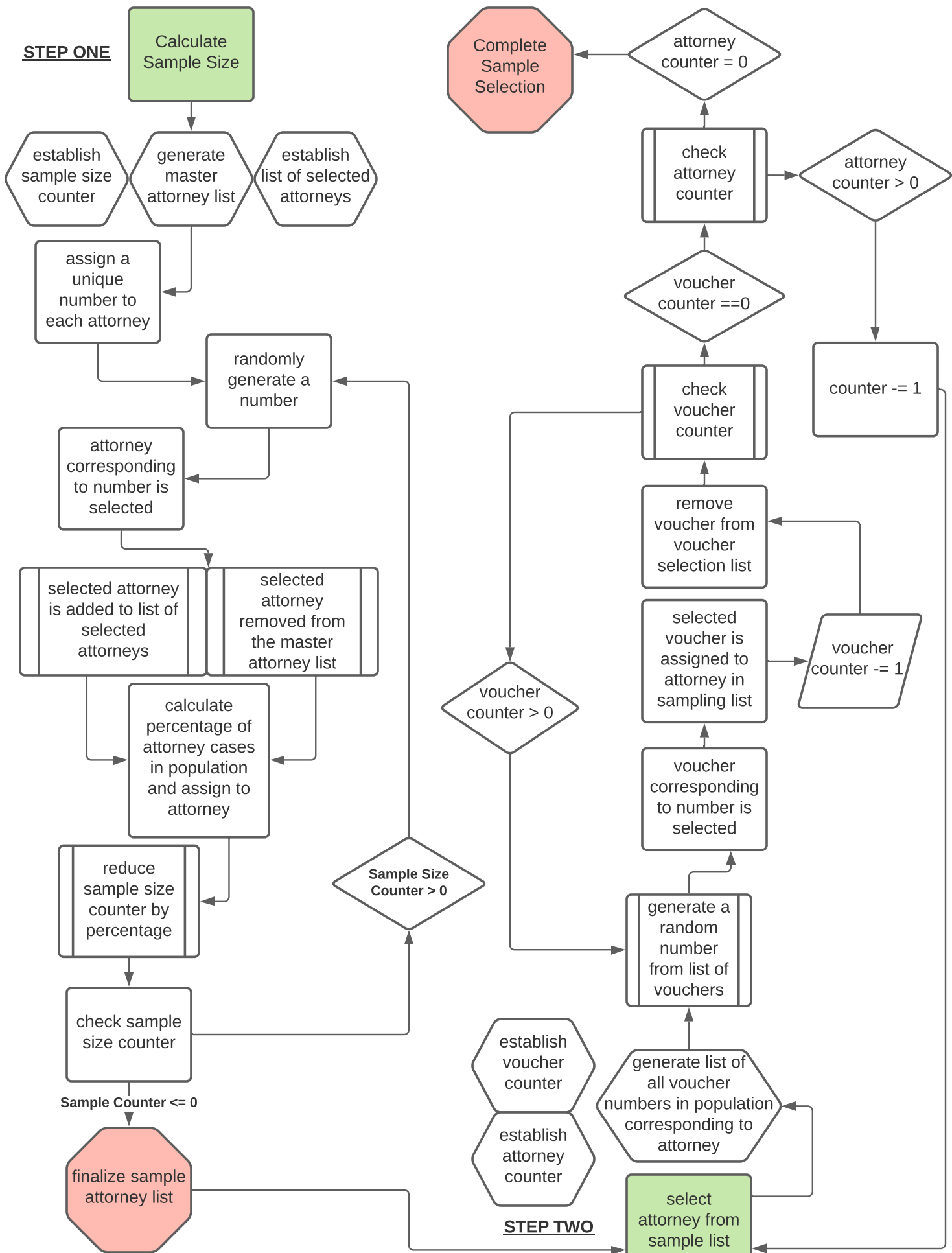
respective attorney's voucher population. Once the substantive audit procedures have been conducted the results from that sample must be summarized and evaluated.

The substantive test results should be evaluated for the rate of deviations found. If there are 5 or more deviations, then the auditor must extrapolate the results of the sample to the population. Otherwise the deviations should be detailed and recorded instead of extrapolated to the population. Where results are being extrapolated to the population, audit staff should calculate the percentage of error (POE). They should do so using the following formula:

$$\frac{\$ \text{Deviations (or sample results)}}{\$ \text{Total Sample}} (\$ \text{Population})$$

The numerator in the above formula should represent the subject of testing relevant to the sample. The numerator should not contain any non-recurring deviations which do not affect the rest of the population. Similarly, non-systematic errors should be evaluated to determine their cause. Once the cause is understood they should be investigated according to the auditor's professional judgment. The denominator should be the corresponding value represented by the sample. The population value should be the complete population as defined above in Section 4.

Once the POE is calculated, it should be extrapolated to the population. This number will provide an estimate regarding the level of fraud present in the system. Where deviations were found, audit staff should also determine the next steps, in accordance with established policies and procedures. A report should then be drafted which describes the findings and overall result of the audit. Finally, this audit process and the audit procedures employed should be reviewed for efficiency and effectiveness so that appropriate changes may be made.



Audit Management Program

1. Executive Summary
2. General
 - a. Program Design Basis
 - b. Information Security and Confidentiality
 - c. Education and CLE
3. Audit Objectives
 - a. Overall Objectives of the Audit Program
 - b. Key Performance Indicators and Performance Goals
4. Risks and Opportunities
 - a. Audit Team and Responsibilities
 - i. Audit Team Leader
 - ii. Audit Staff
 - b. Barriers to accurate audit results
 - c. Possibilities for inefficiencies
 - d. Potential causes of reduced effectiveness
5. Audit Types
 - a. Continuous
 - b. Fraud
 - c. Performance
 - d. Systems
6. Audit Scope
 - a. Overall substantive scope given overarching goals
 - b. Guidance for determine individual audit scope
 - i. Continuous Auditing and Monitoring Scope
 - ii. Fraud Scope
 - iii. Performance Scope
 - c. Systems Audit Scope
7. Schedule
 - a. Regularity and Frequency of Audits
 - b. Continuous Auditing and Monitoring
 - c. Fraud
 - d. Performance
 - e. System
8. Audit Criteria
 - a. Continuous Auditing and Monitoring
 - b. Fraud
 - c. Performance
 - d. System
9. Auditing Methods
 - a. General methods used
 - b. Guidance RE: application of methods
 - i. Continuous

- ii. Fraud
 - iii. Performance
 - iv. System
 - c. Audit Evidence guidance and sufficiency
- 10. Audit Process
 - a. General
 - b. Initiate the Audit
 - i. Contact with Auditee
 - ii. Procedures Overview
 - iii. Document Collection and Retention Schedule Disclosure
 - c. Planning and Preparation
 - i. Planning Approach
 - ii. Assign and Allocate Work
 - iii. Gather Documented Information
 - iv. Document Audit Plan
 - 1. Minimum content requirements
 - v. Communicate Plan to Auditee
 - d. Conduct Audit
 - i. Roles and Responsibilities
 - ii. Opening Meeting
 - iii. Communication
 - iv. Information Availability and Access
 - 1. Standards for Attorney Cooperation
 - v. Review of Documented Information
 - 1. Resource Documents
 - vi. Collect and Verify Information
 - 1. Sources of Relevant Information
 - 2. Collection Methods
 - 3. Evaluation for Deviation Conditions
 - 4. Storage and Retention Policies
 - vii. Generate Audit Findings
 - 1. Documenting Findings
 - 2. Communicating Findings
 - 3. Escalation Procedures based on Findings
 - viii. Determine Conclusions
 - ix. Closing Meeting
 - 1. Minimum Content
 - e. Prepare Audit Report
 - i. Preparation
 - ii. Contents
 - 1. Minimum Contents
 - 2. Optional Contents
 - iii. Distribution

1. Recipients
 2. Method
 - iv. Retention Schedule
 - f. Follow-up
 - i. Applicability
 - ii. Scope
 - iii. Procedures
11. Program Monitoring
 - a. Responsible Persons
 - b. Monitoring Schedule
 - c. Feedback Mechanisms
 - d. Documentation
 - e. Action
12. Program Review and Revision
 - a. Schedule for Review and Revisions
 - b. Establish Roles and Responsibilities of the Audit Team
 - c. Process for making changes to program
 - d. Relevant Information for Review
13. Criteria for Selecting Team Members
 - a. General Competence Requirements
 - b. Knowledge and Skills
 - c. Discipline and Sector Specific Competence
 - d. Audit Team Leader Competence
 - e. Auditor Evaluations
 - f. Maintaining and Improving Competence
14. Documented Information
 - a. Checklists
 - b. Work Documents
 - c. Guidance
 - i. Field Audit Etiquette
 - ii. Remote Audit
 - d. Standards
 - e. Informative References
 - f. Other Resources

| Due Date | Topic | Deliverables |
|------------|---|--|
| 12/17/2021 | Audit Objectives | Written audit objectives: (1) overall objectives of the program and (2) Performance goals |
| 12/23/2021 | Risks and Opportunities | (1) Audit Team Responsibilities; (2) Barriers to effectiveness and efficiency; (3) Opportunities to increase efficiency |
| 12/30/2021 | Audit Schedule, Scope, and Type | Formal establishment of audit regularity by type and the corresponding audit scope by audit type |
| 1/7/2022 | Audit Methods | Descriptions and Guidance |
| 1/14/2022 | Audit Process: General and Initiating Audit | (1) Contact procedures and policies; (2) Necessary Implementing Documents; (3) Initial system records review; and (4) Introduction to Audit Process |
| 1/21/2022 | Audit Process: Planning | (1) Approach; (2) Policy RE: assignment and allocation of work; (3) Procedures RE: audit planning; (4) Planning documents and checklists; and (5) Plan documentation policies. |
| 2/4/2022 | Audit Process: Conducting Audit | (1) Written procedures for conducting audit; (2) Draft working documents; (3) Model documents; (4) Audit Resources; (5) Documentation Requirements; (6) Information collection methods; |
| 2/11/2022 | Audit Process: Report and Follow-Up | (1) Report Preparation; (2) Contents Checklists; (3) Distribution Requirements; (4) Retention Schedule; and (5) Follow-up Policies. |
| 2/18/2022 | Audit Criteria | Formal audit criteria by audit type |
| 2/18/2022 | Program Monitoring and Review` | (1) Schedule for Monitoring; (2) Responsible Persons; (3) Feedback Mechanisms; (4) Documentation Requirements for Monitoring and Review; (5) Schedule for Formal Program Revisions; (6) Process for making Revisions; and (7) Relevant information for formal review |
| 2/25/2022 | Criteria for Selecting Team Members | (1) General Competence Requirements; (2) Knowledge and Skills; (3) Discipline and Sector Specific Competence; (4) Team Leader Competence; (5) Auditor Evaluations; (6) Plan for Maintaining and Improving Competence. |
| 3/4/2022 | Resources / Documented Information | (1) Final Checklists; (2) Working Documents for Audit Program; (3) Written guidance on formal procedures; (4) Supporting Standards citations; (5) Informative references; and (6) other resources |
| 3/7/2022 | Substantive Review of Draft Program | Division Level |
| 3/10/2022 | Substantive Revisions | Division Level |
| 3/11/2022 | Substantive Review of Draft Program | Executive Level |
| 3/31/2022` | Revisions | Publishable Product |



130th MAINE LEGISLATURE

FIRST SPECIAL SESSION-2021

Legislative Document

No. 1685

H.P. 1254

House of Representatives, May 6, 2021

An Act To Protect the Constitutional Rights of Indigent Defendants

Reported by Representative HARNETT of Gardiner for the Joint Standing Committee on Judiciary pursuant to the Maine Revised Statutes, Title 4, section 1804, subsection 3, paragraph H.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in cursive script that reads "R(t) B. Hunt".

ROBERT B. HUNT
Clerk

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 4 MRSA §8-D** is enacted to read:

3 **§8-D. Rules; assessment of indigency and ability to pay**

4 **1. Rules.** The Supreme Judicial Court may prescribe, repeal, add to, amend or modify
5 rules or orders providing for a procedure in all courts through which an individual's
6 financial capacity is assessed for the following purposes:

7 A. To determine eligibility for a court-appointed attorney. The eligibility standards
8 must take into account the possibility of a party's ability to make periodic installment
9 payments toward counsel fees;

10 B. To determine whether a party qualifies to proceed in forma pauperis; and

11 C. To determine, after a fine has been ordered in a criminal case, a party's ability to
12 pay and the schedule for payments.

13 **2. Partial indigency and reimbursement.** This subsection applies to partial
14 indigency and reimbursement of expenses incurred by assigned counsel or contract
15 counsel.

16 A. If the court determines that a defendant or civil party is unable to pay to obtain
17 private counsel but is able to contribute to payment of assigned counsel or contract
18 counsel, the court shall order the defendant or civil party to make periodic installment
19 payments up to the full cost of representation or to pay a fixed contribution. The court
20 shall remit payments received to the Maine Commission on Indigent Legal Services
21 under section 1801.

22 B. A defendant or civil party may not be required to pay for legal services in an amount
23 greater than the expenses actually incurred.

24 C. Upon petition of a defendant or civil party who is incarcerated, the court may
25 suspend an order for reimbursement issued pursuant to this subsection until the time of
26 the defendant's or civil party's release.

27 **Sec. 2. 4 MRSA §1804, sub-§2, ¶A**, as amended by PL 2017, c. 284, Pt. UUUU,
28 §1, is repealed.

29 **Sec. 3. 4 MRSA §1805, sub-§10-A**, as enacted by PL 2017, c. 284, Pt. UUUU,
30 §13, is amended to read:

31 **10-A. Reimbursement of expenses.** Administer and improve reimbursement of
32 expenses incurred by assigned counsel and contract counsel ~~as described in section 1805-A;~~

33 **Sec. 4. 4 MRSA §1805-A**, as enacted by PL 2017, c. 284, Pt. UUUU, §14, is
34 repealed.

35 **Sec. 5. 15 MRSA §815** is enacted to read:

36 **§815. Communication between prosecutor and unrepresented defendant**

37 To ensure that all waivers of the right to counsel are made knowingly, voluntarily and
38 intelligently, a prosecutor may not communicate with an unrepresented defendant unless:

39 **1. Informed of right.** The defendant has been informed of the defendant's right to
40 court-appointed counsel;

15 MRS §815. Communication between prosecutor attorney for the State and unrepresented defendant in criminal prosecutions.

1. Requirements for communication. To ensure that all waivers of the right to counsel are made knowingly, voluntarily and intelligently, a prosecutor an attorney for the State may not communicate with an unrepresented defendant concerning the facts, circumstances, merits or disposition of a pending criminal charge against the defendant unless:

A. The defendant has been informed by a judicial officer of the defendant's right to counsel, including court-appointed counsel if defendant is indigent;

B. The court has provided to the defendant a statement of:

(1) The substance of the charges against the defendant;

(2) The defendant's right to retain counsel, to request the assignment of counsel and to be allowed a reasonable time and opportunity to consult counsel before entering a plea;

(3) The defendant's right to remain silent and that the defendant is not required to make a statement and that any statement made by the defendant may be used against the defendant;

(4) The maximum possible sentence and any applicable mandatory minimum sentence; and

(5) The defendant's right to trial by jury; and

C. ~~The defendant has executed a written waiver of the right to counsel in each prosecution.~~ The defendant has waived the right to counsel pursuant to rules adopted by the Supreme Judicial Court.

2. Exception. Notwithstanding subsection 1, a prosecutor may communicate with an unrepresented defendant ~~who has not executed a written waiver of the right to counsel~~

A. To offer the defendant an opportunity to participate in an established precharge diversion program, the successful completion of which would results in the prosecutor attorney for the State not prosecuting the charge or charges against the defendant; or

B. To notify a defendant that a pending criminal matter is being dismissed.

3. Application. This section does not apply to:

A. the obligation of the State to provide discovery or other information pursuant to court order, rules adopted by the Supreme Judicial Court, or otherwise required by the Maine or U.S. Constitution; or

B. Notice by the attorney for the State to a person that no charge is being filed.

CONTINUOUS REPRESENTATION

TO: MCILS ELIGIBLE COUNSEL

FROM: JUSTIN W. ANDRUS, EXECUTIVE DIRECTOR

SUBJECT: CONTINUOUS REPRESENTATION

DATE: 11/5/2021

CC: COMMISSION

I. Basis

MCILS approves and administers the assignment of individual attorneys to represent indigent clients, and, where appropriate, assigns counsel to represent clients directly. In criminal cases, assignments made by the Court are made under Rule 44. Rule 44 contemplates the assignment of counsel as individuals. For civil cases, Rule 88 adopts the provisions of criminal Rule 44. The individual attorney assigned by the Court or by MCILS to represent an indigent client is responsible to MCILS for all services rendered to that client and for all billing claimed for those services during the period of the assignment.

Except as qualified below, the attorney assigned to represent an indigent client shall personally provide direct representation to the client at all substantive appearances. Notwithstanding the exceptions set forth below, the attorney assigned to represent an indigent client shall personally ensure the adequacy of all phases of representation and the accuracy of billing submitted to MCILS for that representation.

Continuous representation is a fundamental principle of an effective public defense delivery system:

ABA Ten Principles of A Public Defense Delivery System – Principle 7:

The same attorney continuously represents the client until completion of the case. Often referred to as “vertical representation,” the same attorney should continuously represent the client from initial assignment through the trial and sentencing. The attorney assigned for the direct appeal should represent the client throughout the direct appeal.

“Continuous representation from appointment through disposition,” ABA Principle 7, requires that the same attorney initially appointed to a case continuously represent the

defendant through disposition of the case. Commonly referred to as “vertical representation,” the continuous representation by the same attorney is contrasted with “horizontal representation” – a representational scheme whereby one attorney represents the client during one court proceeding before handing off the client’s case to another attorney to cover the next stage.

As the American Bar Association explains, “horizontal representation” is uniformly implemented as a cost-saving measure in the face of excessive workloads and to the detriment of clients. In fact, the ABA rejects the use of horizontal representation in any form, stating specifically that: “[c]ounsel initially provided should continue to represent the defendant throughout the trial court proceedings and should preserve the defendant’s right to appeal, if necessary.”

In explaining why horizontal representation is so harmful to clients, the ABA states:

Defendants are forced to rely on a series of lawyers and, instead of believing they have received fair treatment, may simply feel that they have been “processed by the system.” This form of representation may be inefficient as well because each new attorney must begin by familiarizing himself or herself with the case and the client must be re-interviewed. Moreover, when a single attorney is not responsible for the case, the risk of substandard representation is probably increased. Appellate courts confronted with claims of ineffective assistance of counsel have commented critically on stage[d] representation practices.

The nexus between the requirement that trial counsel be appointed as early as possible and the requirement that the attorney who is appointed initially to represent the client remains with that client’s case through to completion is to ensure that the minimum level of advocacy necessary to mount a meaningful defense commences as soon as possible. In defender systems relying on horizontal representation schemes, the delay in appointing the actual trial lawyer has negative consequences for the client, as exculpatory evidence like video tapes are routinely destroyed within days, physical evidence like bruises fade away quickly, and witnesses can become harder and harder to track down. (*The Right to Counsel in Maine – Evaluation of Services Provided by the Maine Commission on Indigent Legal Services*, pp. 53-54)

II. Policy

- A. An attorney may delegate tasks related to the representation of an assigned client to another attorney only to the extent consistent with the assigned attorney’s duties to the client under the Constitutions of the United States and the State of Maine, the Maine Rules of Professional Responsibility, applicable MCILS practice standards, and to the extent consistent with this policy. The assigned attorney is nevertheless responsible to MCILS and to the client individually for all services provided by any attorney during the period of the assignment, and for all billing claimed for those services.

- B. Except as set out below, an assigned attorney may not delegate substantive appearances to another attorney. Substantive appearances include, without limitation: bail hearings; motions hearings; dispositional conferences; adjudicatory hearings; jury selection; trial; sentencing; commitment hearings; appellate oral argument; hearings on preliminary protective orders; jeopardy hearings; judicial reviews; and hearings on petitions for termination of parental rights. The assigned attorney shall personally ensure that clients and all witnesses have notice of and are prepared for each proceeding.
- C. Delegation of those substantive appearances in which delegation may be appropriate shall occur only as follows:
1. Questions related to the delegation of substantive appearances will be resolved from a client-centric perspective.
 2. Delegation of substantive appearances shall be an exception to the expectation that assigned counsel will personally provide continuous representation of assigned clients.
 3. Delegation of substantive appearances may be made only to counsel who have been designated eligible to receive assignments of the applicable case type.
 4. Delegation of substantive appearances shall be made only with informed client consent.
 - a. “Informed consent” means a person’s agreement to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. Whether a client has given informed consent to representation shall be determined in light of the mental capacity of the client to give consent, the explanation of the advantages and risks involved provided by the lawyer seeking consent, the circumstances under which the explanation was provided and the consent obtained, the experience of the client in legal matters generally, and any other circumstances bearing on whether the client has made a reasoned and deliberate choice.
 5. In the context of delegation of an appearance for an assigned client, informed client consent shall include informed consent from the client to reveal those confidences and secrets as are necessary to the delegated representation.
 - a. “Confidence” refers to information protected by the attorney-client privilege under applicable law, and “secret” refers to other information relating to the representation if there is a reasonable prospect that revealing the information will adversely affect a material interest of the client or if the client has instructed the lawyer not to reveal such information.
 6. Assigned counsel shall document the client’s informed consent prior to delegating an appearance. Where possible that informed consent shall be in a writing signed

by the client. Counsel shall maintain documentation of consent and shall provide it to MCILS on request.

- D. Assigned counsel shall not delegate hearings on dispositive motions, jury selection, trials, sentencing hearings, summary preliminary hearings, jeopardy hearings, contested judicial reviews, hearings on petitions for termination of parental rights, or appellate oral arguments.

If an attorney cannot appear to represent a client at an appearance for which delegation is prohibited, counsel may, with informed client consent, seek the assignment of co-counsel in the matter. Where appropriate and permitted by rule, the appearance of co-counsel may be limited.

§1804 UPDATE

TO: COMMISSION

FROM: JUTIN ANDRUS, EXECUTIVE DIRECTOR, MCILS

SUBJECT: §1804 COMPLIANCE UPDATE

DATE: 12/23/2021

CC:

§1804. Commission responsibilities

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

The Commission has hired an Executive Director with the requisite experience.

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

A. Standards governing eligibility for indigent legal services. The eligibility standards must take into account the possibility of a defendant's or civil party's ability to make periodic installment payments toward counsel fees;

The Commission has promulgated Chapter 401 addressing eligibility.

The Commission may want to reevaluate its standards and should reevaluate its processes for eligibility screening and collection.

B. Standards prescribing minimum experience, training and other qualifications for contract counsel and assigned counsel;

The Commission has promulgated Chapter 2 addressing these standards.

Commission staff will suggest updated and modified standards for consideration in the second half of FY22. These standards will integrate with updated training and mentorship standards.

C. Standards for assigned counsel and contract counsel case loads;

The Commission has not yet promulgated case load standards.

Commission staff anticipates that case load standards will be part of the updated performance standards under development. Case load tracking and management is part of the system design for the next case management system.

D. Standards for the evaluation of assigned counsel and contract counsel. The commission shall review the standards developed pursuant to this paragraph every 5 years or upon the earlier recommendation of the executive director;

The Commission has not yet promulgated evaluation standards.

Commission staff anticipates that evaluation standards will be part of the performance standards under development.

E. Standards for independent, quality and efficient representation of clients whose cases present conflicts of interest;

The Commission has not yet promulgated a formal standard for addressing conflicts of interest, however staff operational practices address the issue of conflicts by identifying and assigning counsel who are not conflicted as substitutes for those who are.

F. Standards for the reimbursement of expenses incurred by assigned counsel and contract counsel; and

The Commission has promulgated Chapters 301 and 302 to address these requirements.

G. Other standards considered necessary and appropriate to ensure the delivery of adequate indigent legal services.

The Commission has promulgated Chapters 101, 102, and 103, to address the adequate delivery of indigent legal services.

Commission staff are working to update these rules.

3. Duties. The commission shall:

A. Develop and maintain a system that may employ attorneys, use appointed private attorneys and contract with individual attorneys or groups of attorneys. The commission shall consider other programs necessary to provide quality and efficient indigent legal services;

The Commission has developed and is operating a system that complies with this requirement.

Commission staff are developing other programs necessary to promote its goals, including, without limitation, appellate, PCR, diversion and mitigation, and child protective specialist programs.

B. Develop and maintain an assigned counsel voucher review and payment authorization system that includes disposition information;

The Commission developed and is operating a system that complies with this requirement.

Commission staff are working with Maine IT to develop and implement an updated system to better serve this function.

C. Establish processes and procedures consistent with commission standards to ensure that office and contract personnel use information technology and case load management systems so that detailed expenditure and case load data are accurately collected, recorded and reported;

The Commission does not yet have processes and procedures that track caseloads in real time.

Commission staff are working with Maine IT to develop and implement an updated system to serve this function. Staff anticipates that implementation of this system will coincide with the implementation of working rules, policies and practices to support the function.

D. Develop criminal defense, child protective and involuntary commitment representation training and evaluation programs for attorneys throughout the State to ensure an adequate pool of qualified attorneys;

The Commission has existing training programs to promote the availability of adequate counsel as defined by existing rules.

Commission staff are working to develop additional in-house and external trainings, and to obtain access to existing external training resources. The Training and Supervision division is working to develop a formalized evaluation process.

E. Establish minimum qualifications to ensure that attorneys are qualified and capable of providing quality representation in the case types to which they are assigned, recognizing that quality representation in each of these types of cases requires counsel with experience and specialized training in that field;

The Commission has promulgated Chapters 2 and 3 to meet this requirement.

Commission staff are working to revise the minimum qualifications, and to establish training and development paths to meet those qualifications.

F. Establish rates of compensation for assigned counsel;

Commission Chapter 301, currently under amendment, addresses this requirement.

G. Establish a method for accurately tracking and monitoring caseloads of assigned counsel and contract counsel;

The Commission does not yet have processes and procedures that track caseloads in real time.

Commission staff are working with Maine IT to develop and implement an updated system to serve this function. Staff anticipates that implementation of this system will coincide with the implementation of working rules, policies and practices to support the function.

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

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

The joint standing committee of the Legislature having jurisdiction over judiciary matters may report out legislation on matters related to the report;

Commission staff prepare this document annually.

I. Approve and submit a biennial budget request to the Department of Administrative and Financial Services, Bureau of the Budget, including supplemental budget requests as necessary;

The Commission will begin this process at the December 28, 2021 meeting.

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

(1) Whether an attorney meets the minimum eligibility requirements to receive assignments or to receive assignments in specialized case types pursuant to any commission rule setting forth eligibility requirements;

(2) Whether an attorney previously found eligible is no longer eligible to receive assignments or to receive assignments in specialized case types pursuant to any commission rule setting forth eligibility requirements; and

(3) Whether to grant or withhold a waiver of the eligibility requirements set forth in any commission rule.

All decisions of the commission, including decisions on appeals under subparagraphs (1), (2) and (3), constitute final agency action. All decisions of the executive director, or the executive director's designee, other than decisions appealable under subparagraphs (1), (2) and (3), constitute final agency action;

The Commission has promulgated Chapter 201 to address this requirement.

Commission staff is developing an updated rule to provide additional clarity in the appellate process.

K. Pay appellate counsel;

Commission Chapter 301 includes appellate counsel within its scope.

L. Establish processes and procedures to acquire investigative and expert services that may be necessary for a case, including contracting for such services;

Chapter 302 addresses this requirement.

M. Establish procedures for handling complaints about the performance of counsel providing indigent legal services;

The Commission does not yet have a documented process for addressing complaints.

Commission staff has developed a protocol and anticipates presenting it in written form for Commission consideration in the near future.

N. Develop a procedure for approving requests by counsel for authorization to file a petition as described in section 1802, subsection 4, paragraph D; and

The Commission does not yet have a documented process for requesting authorization to file a Cert Petition.

Commission staff has developed a protocol and anticipates presenting it in written form for Commission consideration in the near future.

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

Commission staff have developed an audit program, and anticipate deploying that program in March 2022.

The Commission should develop a policy for the use of summonses and subpoenas, and for recoupment.

**Revised Suggestions to Increase Attorney Participation and Improve
Attorney Training for MCILS Cases**
[Originally Offered for discussion at the October 29th meeting.]

Revised December 3, 2021

To: Maine Commission on Indigent Legal Services
Fr: Donald Alexander

Following are some suggestions for promoting greater attorney participation in, and improved training for, MCILS criminal and child protective cases.

1. *A File Opening Fee:* This would be a flat fee of \$125 (or perhaps a flat fee equal to 1.5 x the hourly rate) to cover the overhead cost of opening a file for a new case. In criminal cases, one fee would apply, whether the case involved one or several charges. The file opening fee would cover (i) opening the file for a newly assigned case; (ii) the first communication with the new client for up to 30 minutes (any time in excess of 30 min. would be billed the regular rate); and (iii) minor communications during the course of the case (phone calls, emails, texts, etc.) of less than 5 minutes each that unnecessarily complicate time-keeping and billing in current practice – and that some attorneys may not bill.

The file opening fee would be paid upon completion and closure of the case in the trial court. If the case was transferred to another attorney before closure, the file opening fee would only be paid to the attorney who closes the case. If a case is transferred to another attorney for an appeal, the new attorney on appeal would be paid a separate file opening fee upon completion of the appeal.

2. *A Higher Minimum Attorney-for-the-Day Fee:* The minimum attorney for the day fee would increase to 3 x the hourly rate (\$240) for any morning or afternoon first appearance session at court. Incident to this arrangement, MCILS would work with the courts, prosecutors, and law enforcement to change not in custody first appearance scheduling practice so that defendants would be required to appear 30 minutes before the judge's anticipated entry into the courtroom. In this time (1) court staff would play the first appearance video, (2) the attorney for the day would then speak to (i) explain to all present the process about to occur, (ii) invite those who might qualify

for court appointed counsel to fill out the necessary forms, (iii) invite and respond to questions about the process from anyone in the room, and (iv) consult with anyone who (a) desired to talk about their case and (b) appeared likely to qualify for court appointed counsel.

The minimum fee for any attorney for the day at the jail, or any second (backup) attorney for the day in the courtroom, would increase to 2.5 x the hourly rate (\$200).

For any time in excess of 3 hours for the primary attorney for the day, or 2.5 hours for the jail or backup attorney for the day, the attorney would be compensated at the regular hourly rate. For those defendants not likely to qualify for court appointed counsel, the attorney for the day, any backup attorney for the day, or any other qualified attorney could make private representation arrangements with the defendant.

3. *A Modified Contract with Counsel:* For counties or individual courts where there is difficulty getting local counsel to staff MCILS criminal or child protective cases, pay attorneys agreeing to provide regularly available MCILS representation an up front, annual fee of between \$20,000 (250 hours a year @ \$80 an hour) and \$50,000 (525 hours a year @ \$80 an hour). The fee would be negotiated and depend on the amount of service the attorney would be anticipated to provide, plus also perhaps a review of the attorney's past performance in either MCILS work or other work measured by hours worked. Note: An attorney in full-time practice may anticipate availability to bill between 1600 and 2000 hours a year if fully engaged with work 48 to 50 weeks a year.

The up front fees would be recovered by a set off of attorney for the day flat fees earned and file opening fees earned – if file opening fees are approved. Plus one half of the hourly rate earned would be set off, until the up front fee was covered. Thus, an attorney with an annual up front fee arrangement would retain \$40 an hour for work on each case until the up front fee was covered, and \$80 an hour thereafter. This system avoids the concern expressed about the current contract counsel program that it incentivizes doing as little work as possible on each case because there is no compensation for putting in extra hours. Based on my experience with the contract counsel program, I do not share that concern, but this proposal provides more compensation for more work. If counsel did not do enough

work in a year to set off the up front fee, the remaining fee might be paid back or carried over for the next year. But no new annual up front fee should be paid before any previously paid fees are covered by MCILS work performed.

Attorneys contracting to receive the up front annual fees would be free to also accept paying clients in criminal cases and any type of civil case, as long as they met their commitment for MCILS cases. The up front fee could be particularly beneficial to attorneys seeking to maintain or establish practices in underserved areas, as attorneys could depend on a base amount of income to support overhead and staff which is a particular challenge in rural and underserved communities.

Health Insurance and Loan Forgiveness: An up front annual fee program, if applied to a significant number of attorneys may also open opportunity to explore two other concerns of many attorneys serving MCILS programs. First, a grouping of a significant number of attorneys participating in the up front fee program may be a mechanism to support a health insurance program, with MCILS committing to pay all or part of the individual's health insurance costs if the individual committed to performing a certain number of MCILS hours work annually – for example 400 or 500 hours. The health insurance program might offer benefits similar to benefits offered by a small or medium sized law firm. The individual attorney could pay an additional fee to get family coverage. The program would have to be structured so the participating attorneys were not viewed as MCILS employees.

Second, the up front fee program, once implemented, might be a basis to support change to public or university loan forgiveness programs. Such programs presently provide significant educational loan forgiveness for professionals doing public service or doing work serving underserved communities or areas. Such programs for lawyers tend to be limited to attorneys working full time for public agencies of legal services organizations serving low income individuals. There is no such limitation on loan forgiveness programs for physicians or large animal veterinarians serving what are designated underserved areas or communities. These professionals can provide and be compensated for services to wealthy individuals, or their farm animals, as long as the community where the professional service is provided is designated an underserved community. An attorney serving MCILS and private pay clients in a designated underserved area should be entitled to similar benefits, particularly if it could be demonstrated that a

significant portion of the attorney's work was representing low income clients.

4. *Inviting Return of Experienced Defense Attorneys:* The current rostering requirements should be simplified to no more than 6 separate rosters: A. for child protective, B. for juvenile, C. for homicide, D. for violence and drug felonies, E. for property felonies and misdemeanor crimes of violence, and F. for "other" crimes (Title 17-A misdemeanors, all Title 12 and Title 29-A non-violent crimes, and other non-violent crimes in the statutes).

Any attorney who maintains an active criminal practice representing retained cases and who, (1) in the past 22¹ years, has tried 10 jury trials as a criminal defense attorney, or 25 jury trials as either a prosecutor or a criminal defense attorney, and (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 three or four years, should, upon application, automatically qualify to be placed on the rosters for the category (E) and (F) cases, and perhaps the category (D) 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, or ACLUME CLE course of at least 6 hours, focusing on criminal law.

Separately, any attorney who has brought or defended and briefed to the Law Court at least 5 child protective appeals in the last 5 years, or 5 criminal appeals in the last 5 years, should qualify, at least provisionally, for the appeal rosters for E & F criminal cases or child protective 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 5 years should likewise qualify for the E & F criminal or child protective case appeal rosters. These standards are suggestions for discussion of criteria to get experienced to join MCILS rosters by reducing to complexity of the current rosters which deter experienced attorney participation in MCILS work.

5. *An Annual Training Day:* 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

¹ The 22-year lookback assumes that any significant jury trial experience would have been gained before the start of 2020.

for CP proceedings) should plan an annual training day (or days) that would include training sessions on:

For Criminal Cases: 1. Initial client contact and communication, explanation of rights, discussion of expectations, obtaining and review of discovery; 2. Consideration of 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 the client; (ii) with the prosecutor; 5. Practice points for trials, jury or nonjury, etc.

For Child Protective Cases: 1. Initial client contact and communication, confidentiality of proceedings, explanation of rights, discussion of expectations, obtaining and review of discovery; 2. Difficulties in dealing with parent/client, lack of cooperation, reluctance to participate or openly communicate, evaluation of client's risk of exposure to criminal charges, relations with other parent and counsel, access to child; 3. 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.

6. *A Mentoring Program:* Attorneys with substantial criminal practice experience, including a specified number of jury trials, who MCILS recognizes to have substantial experience and a good reputation, should be invited to mentor new MCILS attorneys for: (1) strategy and planning for pretrial practice, including consideration of motions to suppress, and/or (2) strategy, preparation for, and conduct of jury and nonjury trials. A very experienced attorney could be a mentor even if not a rostered attorney.



Bill Tracking Report for Bob Cummins
130th Maine Legislature
Status of Bills Referred to Committee
12.15.2021

Legislative Requests

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|-------------------|--------------|---|---|
| <u>LR</u> 2256 | <u>Paper</u> | <u>Title:</u> An Act To Ensure Constitutionally Adequate Contact with Counsel <u>Referred:</u> | <u>Sponsor</u> Representative Harnett of Gardiner <u>Priority:</u> <u>Position:</u> <u>Action:</u> |
| | | Public Hearing: Committee Action: House: Legislative Council Voted in (6-2) at 11/18/2021 meeting Action: Final Disposition: | Work Session: Senate: Governor: |

Bills Carried Over

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|-------------------|------------------------|--|---|
| <u>LD</u> 1326 | <u>Paper</u> HP 978 | <u>Title:</u> An Act To Provide Funding for the Maine Civil Legal Services Fund <u>Referred:</u> Judiciary | <u>Sponsor</u> Representative Cardone of Bangor <u>Priority:</u> <u>Position:</u> <u>Action:</u> |
| | | Public Hearing: 04.13.2021 10:30AM Committee Action: 04.16.2021 Voted: Divided Report 06.16.2021 Reported Out: OTP-AM/ONTP House: 03.30.2021 Bill Referred to the Committee on Judiciary 03.30.2021 Carried over, in the same posture, to a subsequent special or regular session of the 130 th Legislature, pursuant to Joint Order SP 435 06.17.2021 Reports Read; Majority OTP-AM Report Accepted (Roll Call: 81-59); Bill Read Once; Committee Amendment "A" (H-706) Read and Adopted; Bill given its Second Reading; Bill Passed to be Engrossed as Amended by Committee Amendment "A" (H-706) 06.17.2021 Passed to be Enacted | Work Session: 04.16.2021 9:00AM Senate: 03.30.2021 Bill Referred to the Committee on Judiciary 06.17.2021 Reports Read; Majority OTP-AM Report Accepted; Read Once; Committee Amendment "A" (H-706) Read and Adopted; Read a Second Time and Passed to be Engrossed as Amended by Committee Amendment "A" (H-706) 06.17.2021 Placed on the Special Appropriations Table pending passage to be Enacted 07.19.2021 Carried over, in the same posture, to any special or regular session of the 130 th Legislature, pursuant to Joint Order HP 1302 Governor: |

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|-------------------|----------------------|---|--|
| <u>LD</u> 1686 | <u>Paper</u> 1255 | <u>Title:</u> An Act To Implement a Geographically Limited Public Defender Office <u>Referred:</u> Judiciary | <u>Introducer</u> <u>Representative</u> <u>Harnett of Gardiner</u> <u>Priority:</u> <u>Position:</u> |
| | | <u>Public Hearing:</u> 05.21.2021 9:00AM <u>Committee Action:</u> 05.26.2021 Voted: Divided Report 06.16.2021 Reported Out: OTP-AM/OTP-AM | <u>Work Session:</u> 05.26.2021 10:00AM |
| | | <u>House:</u> 05.19.2021 For the Joint Standing Committee on Judiciary, pursuant to MRS, Title 4, section 1804, subsection 3, paragraph 4 reports that the Bill be Referred to the Committee on Judiciary; Report Read and Accepted; Bill Referred to Committee on Judiciary 06.17.2021 Reports Read; Majority OTP-AM Report Accepted; Bill Read Once; Committee Amendment "A" (H-700) Read and Adopted; Bill given its Second Reading; Bill Passed to be Engrossed as Amended by Committee Amendment "A" (H-700) 06.17.2021 Passed to be Enacted | <u>Senate:</u> 05.19.2021 Report Read and Accepted; Bill Referred to the Committee on Judiciary 06.17.2021 Reports Read; Majority OTP-AM Report Accepted; Read Once; Committee Amendment "A" (H-700) Read and Adopted; Read a Second Time and Passed to be Engrossed as Amended by Committee Amendment "A" (H-700) 06.17.2021 Placed on the Special Appropriations Table pending passage to be Enacted 07.19.2021 Carried over, in the same posture, to any special or regular session of the 130 th Legislature, pursuant to Joint Order HP 1302 |
| | | <u>Final Disposition:</u> | <u>Action:</u> |
| | | | <u>Governor:</u> |

Laws & Resolves

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| <u>LD</u> 320 | <u>Paper</u> HP 224 | <u>Title:</u> An Act To Provide the Right to Counsel for Juveniles and Improve Due Process for Juveniles <u>Referred:</u> Judiciary | <u>Sponsor</u> <u>Representative</u> <u>Morales of South</u> <u>Portland</u> <u>Priority:</u> <u>Position:</u> |
| | | <u>Public Hearing:</u> 02.24.2021 10:00AM <u>Committee Action:</u> 05.27.2021 Tabled 06.04.2021 Voted: OTP-AM 06.16.2021 Reported Out: OTP-AM | <u>Work Session:</u> 05.27.2021 9:00AM; 06.04.2021 9:30AM |
| | | <u>House:</u> 02.04.2021 Received by the Clerk of the House; Bill Referred to the Committee on Judiciary 03.30.2021 Carried over, in the same posture, to a subsequent special or regular session of the 130 th Legislature, pursuant to Joint Order SP 435 06.17.2021 Bill Passed to be Engrossed as Amended by Committee Amendment "A" (H-698) 06.17.2021 Passed to be Enacted | <u>Senate:</u> 06.17.2021 Report Read and Accepted; Read Once; Committee Amendment "A" (H-698) Read and Adopted; Read a Second Time and Passed to be Engrossed as Amended by Committee Amendment "A" (H-698) 06.17.2021 Passed to be Enacted |
| | | <u>Final Disposition:</u> Public Law | <u>Action:</u> |
| | | | <u>Governor:</u> 06.22.2021 Signed |

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| <u>LD</u> 483 | <u>Paper</u> SP 189 | <u>Title:</u> An Act To Clarify Funding for Civil Legal Services <u>Referred:</u> Judiciary | <u>Sponsor</u> <u>Senator Carney of</u> <u>Cumberland</u> |
|------------------|------------------------|--|---|

Public Hearing: 04.13.2021 10:30AM
 Committee Action: 04.16.2021 Voted: Divided Report
 04.21.2021 Voted: Divided Report
 06.21.2021 Voted: Divided Report
 06.15.2021 Reported Out: OTP-AM/ONTP
 House: 06.17.2021 Reports Read; Majority OTP-AM Report Accepted; Bill Read Once; Committee Amendment "A" (S-320) Read and Adopted; Bill given its Second Reading; Bill Passed to be Engrossed as Amended by Committee Amendment "A" (S-320)
 06.17.2021 Passed to be Enacted

Work Session: 04.16.2021 9:00AM
 Priority: Emergency
 Position:

Senate: 02.17.2021 Received by the Secretary of the Senate and Referred to the Committee on Judiciary
 03.30.2021 Carried over, in the same posture, to a subsequent special or regular session of the 130th Legislature, pursuant to Joint Order SP 435
 06.16.2021 Reports Read; Majority OTP-AM Report Accepted (Roll Call: 22-12); Read Once; Committee Amendment "A" (S-320) Read and Adopted; Read a Second Time and Passed to be Engrossed as Amended by Committee Amendment "A" (S-320)
 06.18.2021 Passed to be Enacted

Action:

Final Disposition: Public Law
 Governor: 06.22.2021 Signed

LD Paper Title: An Act To Create an Access to Justice Income Tax Credit
 978 HP 724 Referred: Taxation Sponsor
 Representative
 Hepler of Woolwich
 Priority:

Public Hearing: 04.02.2021 9:00AM
 Work Session: 04.06.2021 9:00AM; 05.25.2021 9:00AM
 Position:

Committee Action: 04.06.2021 Tabled
 05.25.2021 Voted: OTP-AM
 06.08.2021 Reported Out: OTP-AM

House: 03.10.2021 Bill Referred to the Committee on Taxation
 03.30.2021 Carried over, in the same posture, to a subsequent special or regular session of the 130th Legislature, pursuant to Joint Order SP 435
 06.09.2021 Bill Passed to be Engrossed as Amended by Committee Amendment "A" (H-497)
 06.14.2021 Passed to be Enacted

Senate: 03.10.2021 Bill Referred to the Committee on Taxation
 06.10.2021 Report Read and Accepted; Read Once; Committee Amendment "A" (H-497) Read and Adopted; Read a Second Time and Passed to be Engrossed as Amended by Committee Amendment "A" (H-497)
 06.14.2021 Placed on the Special Appropriations Table pending passage to be Enacted
 07.02.2021 Taken from the Special Appropriations Table; Passed to be Enacted

Action:

Final Disposition: Public Law
 Governor: 07.15.2021 Became Law without Governor's Signature

LD Paper Title: An Act To Protect the Constitutional Rights of Indigent Defendants Introducer
 1685 HP 1254 Referred: Judiciary Representative

Public Hearing: 05.21.2021 9:00AM
Committee Action: 05.26.2021 Voted: Divided Report
06.16.2021 Reported Out: OTP-AM/OTP-AM
House: 05.19.2021 For the Joint Standing Committee on
Judiciary, pursuant to MRS, Title 4, section 1804,
subsection 3, paragraph 4 reports that the Bill be
Referred to the Committee on Judiciary; Report Read
and Accepted; Bill Referred to Committee on Judiciary
06.17.2021 Reports Read; Majority OTP-AM Report
Accepted; Bill Read Once; Committee Amendment "A"
(H-692) Read and Adopted; Bill given its Second
Reading; Bill Passed to be Engrossed as Amended by
Committee Amendment "A" (H-692)
07.02.2021 House Receded and Concurred to
Passage to be Engrossed as Amended by Committee
Amendment "A" (H-692) as Amended by Senate
Amendment "A" (S-395)
07.02.2021 Passed to be Enacted

Final Disposition: Public Law

LD Paper Title: An Act To Improve the Provision of Indigent Legal Services
1687 HP 1256 Referred: Judiciary

Public Hearing: 05.21.2021 9:00AM
Committee Action: 05.26.2021 Voted: Divided Report
06.16.2021 Reported Out: OTP-AM/OTP-AM
House: 05.19.2021 For the Joint Standing Committee on
Judiciary, pursuant to MRS, Title 4, section 1804,
subsection 3, paragraph 4 reports that the Bill be
Referred to the Committee on Judiciary; Report Read
and Accepted; Bill Referred to Committee on Judiciary
06.17.2021 Reports Read; Majority OTP-AM Report
Accepted; Bill Read Once; Committee Amendment "A"

Work Session: 05.26.2021 10:00AM

Senate: 05.19.2021 Report Read and Accepted; Bill
Referred to the Committee on Judiciary
06.17.2021 Reports Read; Majority OTP-AM
by Committee Amendment "A" (H-692)
Report Accepted; Read Once; Committee
Amendment "A" (H-692) Read and Adopted;
Read a Second Time and Passed to be
Engrossed as Amended by Committee
Amendment "A" (H-692)
06.17.2021 Placed on the Special
Appropriations Table pending Passage to be
Enacted
07.02.2021 Taken from the Special
Appropriations Table; Senate Reconsidered
whereby the Bill was Passed to be
Engrossed as Amended by Committee
Amendment "A" (H-692); Senate
Reconsidered whereby Committee
Amendment "A" (H-692) was Adopted;
Senate Amendment "A" (S-395) to
Committee Amendment "A" (H-692) Read
and Adopted; Committee Amendment "A"
(H-692) as Amended by Senate Amendment
"A" (S-395) thereto Adopted; Passed to be
Engrossed as Amended by Committee
Amendment "A" (H-692) as Amended by
Senate Amendment "A" (S-395) in Non-
Concurrence)
07.02.2021 Passed to be Enacted

Governor: 07.15.2021 Became Law without Governor's Signature

Work Session: 05.26.2021 10:00AM

Senate: 05.19.2021 Report Read and Accepted; Bill
Referred to the Committee on Judiciary
06.17.2021 Reports Read; Majority OTP-AM
by Committee Amendment "A" (H-707)
Report Accepted (Roll Call: 34-0); Read
Once; Committee Amendment "A" (H-707)
Read and Adopted; Read a Second Time

Harnett of Gardiner
Priority:
Position:

Action:

Introducer
Representative
Harnett of Gardiner
Priority: Emergency
Position:

(H-707) Read and Adopted; Bill given its Second Reading; Bill Passed to be Engrossed as Amended by Committee Amendment "A" (H-707)
07.02.2021 House Receded and Concurred to Passage to be Engrossed as Amended by Committee Amendment "A" (H-707) as Amended by Senate Amendment "A" (S-396)
07.02.2021 Passed to be Enacted (2/3 Required)

and Passed to be Engrossed as Amended by Committee Amendment "A" (H-707)
06.17.2021 Placed on the Special Appropriations Table pending Passage to be Enacted (Emergency-2/3 Required)
07.02.2021 Taken from the Special Appropriations Table; Senate Reconsidered whereby the Bill was Passed to be Engrossed as Amended by Committee Amendment "A" (H-707) Senate Reconsidered whereby Committee Amendment "A" (H-707) was Adopted; Senate Amendment "A" (S-396) to Committee Amendment "A" (H-707) Read and Adopted; Committee Amendment "A" (H-707) as Amended by Senate Amendment "A" (S-396) thereto Adopted; Passed to be Engrossed as Amended by Committee Amendment "A" (H-707) as Amended by Senate Amendment "A" (S-396) in Non-Concurrence)
07.02.2021 Passed to be Enacted (2/3 Required)

Final Disposition: Public Law

Governor: 07.15.2021 Became Law without Governor's Signature

Dead Bills

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| <u>LD</u> 348 | <u>Paper</u> HP 246 | <u>Title:</u> An Act To Give Oversight Powers to the Maine Commission on Indigent Legal Services <u>Referred:</u> Judiciary | <u>Sponsor</u> Representative Evangelos of Friendship Priority: Position: |
| | | <u>Public Hearing:</u> 04.07.2021 10:00AM <u>Committee Action:</u> 04.16.2021 Voted: ONTP 05.17.2021 Reported Out: ONTP | <u>Work Session:</u> 04.16.2021 9:00AM |
| | | <u>House:</u> 02.04.2021 Received by the Clerk of the House; Bill Referred to the Committee on Judiciary 03.30.2021 Carried over, in the same posture, to a subsequent special or regular session of the 130 th Legislature, pursuant to Joint Order SP 435 06.15.2021 Placed in Legislative Files (DEAD) | <u>Senate:</u> |
| | | <u>Final Disposition:</u> Dead | <u>Governor:</u> |
| <u>LD</u> 398 | <u>Paper</u> HP 282 | <u>Title:</u> An Act To Implement Recommendations of the Sixth Amendment Center Concerning Indigent Legal Services <u>Referred:</u> Judiciary | <u>Sponsor</u> Representative Cardone of Bangor Priority: Position: |
| | | <u>Public Hearing:</u> <u>Committee Action:</u> 06.09.2021 Voted: ONTP 06.14.2021 Reported Out: ONTP | <u>Work Session:</u> 06.09.2021 1:00PM |

House: 02.08.2021 Received by the Clerk of the House; Bill
Referred to the Committee on Judiciary
03.30.2021 Carried over, in the same posture, to a
subsequent special or regular session of the 130th
Legislature, pursuant to Joint Order SP 435
06.15.2021 Placed in Legislative Files (DEAD)

Final Disposition: Dead

Senate:

Action:

Governor: