

MCILS

January 25, 2022
Commissioner's Meeting
Packet

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

**JANUARY 25, 2022
COMMISSION MEETING
AGENDA**

- 1) Approval of December 28, 2021 and January 10, 2022 Commission Meeting Minutes
- 2) Report of the Executive Director
- 3) Public Hearing Policy Memorandum Discussion and Vote
- 4) Legislative Update
- 5) Strategic Planning/Biennial Budget Discussion
- 6) Specialized Contracts
- 7) Set Date, Time and Location of Next Regular Meeting of the Commission
- 8) Public Comment
- 9) Executive Session

**Maine Commission on Indigent Legal Services – Commissioners Meeting
December 28, 2021
Zoom**

Minutes

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

MCILS Staff Present: Justin Andrus, Ellie Maciag

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Remote Meeting Emergency Declaration	Chair Tardy declared an emergency due to weather conditions as the reason for a remote meeting.	
Approval of the November 29, 2021 Commission meeting minutes	No discussion.	Commissioner Carey moved to approve. Commissioner Katz seconded. All voted in favor. Approved.
Chapter 301 Rulemaking	Commissioner Carey moved to adopt the proposed basis statement for Chapter 301, to provisionally adopt the major substantive portions of the chapter and submit those portions to the Legislature for review and approval, and to adopt the routine technical portions of the rule. Commissioner Alexander seconded. All voted in favor.	
Report of the Executive Director	Director Andrus reported that new cases are trending downwards and that the projections of continued high case counts from this summer have thankfully not materialized. Director Andrus reminded the Commissioners about the upcoming statutory annual report deadline and provided a draft response for Commission consideration of the report due to OPEGA/GOC that was included in part JJJ in	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>last year's budget requiring an update on how additional funding and staffing have be utilized to date. Commissioner Alexander expressed some concern about some of the proposed responses regarding contracts and public defender offices and changes to 15 MRSA 1815. Director Andrus also presented the Audit staff's proposed schedule for development and implementation of a comprehensive audit program. Commissioner Carey suggested asking both the State Auditor and OPEGA staff to review the proposal and provide feedback. Director Andrus alerted the Commissioners about several financial screeners leaving our service and a legislator who has expressed interest in renewing efforts to move the screening function back to the Judicial Branch.</p>	
Collections Discussion	<p>Director Andrus provided follow up to last meeting's discussion about his concerns regarding collections. Director Andrus had relayed concerns about the propriety of our collection efforts where attorneys have identified instances of overpayment and have submitted reimbursements. Director Andrus explained that this collection issue has not and may never be fully resolved despite best efforts to the quantify the problem.</p>	
Biennial Budget Discussion	<p>Commissioner Cummins requested the Commission set up time to workshop his open letter urging participation in the reform process by all three branches of government. A brief discussion ensued about the Commission's next steps as it relates to the biennial budget and any requests in the upcoming short session.</p>	
Public Comment	<p><u>Representative Evangelos</u>: Representative Evangelos urged the Commission to not wait until the next biennium to seek additional funding for reforms, noting that the resources are there now.</p> <p><u>Robert Ruffner, Esq.</u> Attorney Ruffner urged the Commission to use the annual report as a vehicle to request additional resources and to document to the legislature that it recognizes that there are things that it isn't doing.</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Executive Session	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 concerning pending or contemplated litigation as well pursuant 405(6)(f) to discuss information contained in the records made, maintained or received by the Commission when access to by the general public to those records is prohibited under 1 MRS 402(3)(M) and 4 MRS section 1806(2)(F). Commissioner Alexander seconded. No votes were taken.	
Adjournment of meeting	The next meeting will be held on January 25, 2022 at 9 am.	

**Maine Commission on Indigent Legal Services – Commissioners Meeting
January 10, 2022
Zoom**

Minutes

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

MCILS Staff Present: Justin Andrus, Ellie Maciag

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Declaration of Emergency	Chair Tardy cited the increase in COVID infection rates as the emergency requiring remote participation for the meeting.	
Discussion of Response to OPEGA & 6AC Reports, Report on ABA Ten Principles Compliance, and Annual Report	Director Andrus presented draft responses to the OPEGA and Sixth Amendment Center reports for Commission consideration. A lengthy discussion ensued with Commissioner Schneider advocating for the submission of the draft as written, noting that the Commission is still not doing what it needs to do under our statute or the ABA Ten Principles. Commissioner Alexander countered that he does not support draft responses to 2, 5, and 7 and was critical of the conclusions in the 6AC report. Following this discussion, no vote was taken to compel a modification to either document and Director Andrus will submit as drafted. Director Andrus relayed that he would work on finalizing the annual report and will circulate a draft for Commissioner input later in the week.	
Proposed Amendments to 15 MRSA §815	Director Andrus provided additional language to 15 MRSA §815 that was developed at last week’s workshop. Commissioners did not suggest any changes to the new amended language and Director Andrus will forward the revised draft to CLAC.	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Commissioner Alexander Proposal Discussion	Commissioner Alexander put forward a proposal to help address issues surrounding attorney retention and satisfaction, which was discussed in depth at an earlier workshop. Commissioners Burbank and Morgan both reported that MSBA and MACDL members had a mixed response to the proposal. Commissioner Katz suggested soliciting additional feedback from rostered attorneys about the proposal before staff spends time on plan development.	
Probate Court	Chair Tardy requested Director Andrus prepare the most accurate fiscal note possible on the additional cost to the Commission for assuming responsibility for payments to assigned counsel in probate court matters.	
Proposed Legislation on Traffic Infractions	Director Andrus alerted the Commission about a concept draft to make certain traffic infractions secondary offenses. The Commissioners decided to defer consideration on whether to support the bill until draft language has been published.	
Student Loan Repayment Assistance Proposal	Director Andrus presented Audit Counsel Art Washer’s proposal for a student loan repayment assistance program and noted that he hoped to find a sponsor for the proposal. Commissioner Alexander added that few rostered attorneys will be able to benefit from the newly enacted tax credit program.	
Financial Screener Status	Director Andrus alerted the Commission that an additional screener has left our service and explained that the screening function is not nearly as efficient as it could be. Director Andrus noted that the Commission needs to have a broader discussion soon about how the screening function should work.	
Funding Reclassifications	Director Andrus explained that to fund a recent employee reclassification determination by HR, permanent salary savings needs to be found. The only vacant position available to fund such permanent savings is the Office Associate position.	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Public Comment	<p><u>Representative Evangelos</u>: Representative Evangelos offered to sponsor the proposed student loan repayment assistance proposal. Rep. Evangelos also renewed his call for a level playing field between the State and indigent defense and offered his commitment to this issue.</p> <p><u>Robert Ruffner, Esq.</u> Attorney Ruffner renewed his call for a chief public defender in Maine as someone who could speak for the justice system from the defense perspective. Attorney Ruffner also renewed his support for the financial screening function to move back to the Judicial Branch. Attorney Ruffner urged the Commissioners to have a dialogue about what the various methods of indigent defense delivery might be to address the issues highlighted in the Sixth Amendment Center report.</p>	
Executive Session	None	
Adjournment of meeting	The next meeting will be held on Tuesday, January 25 at 9 am via Zoom.	

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS

FROM: JUSTIN ANDRUS, EXECUTIVE DIRECTOR

SUBJECT: OPERATIONS REPORTS

DATE: January 20, 2022

Attached you will find the December 2021, Operations Reports for your review and our discussion at the Commission meeting on January 25, 2022. A summary of the operations reports follows:

- 2,274 new cases were opened in the DefenderData system in December. This was a 155 case increase from November. Year to date, new cases are basically flat from 14,571 at this time last year to 14,492 this year.
- The number of vouchers submitted electronically in December was 2,456, a decrease of 35 vouchers from November, totaling \$1,417,110, a decrease of \$386 from November. Year to date, the number of submitted vouchers is up by approximately 9.2%, from 14,529 at this time last year to 15,867 this year, with the total amount for submitted vouchers up approximately 32.5%, from \$6,524,127 at this time last year to \$8,644,583 this year.
- In December, we paid 1,839 electronic vouchers totaling \$1,083,757, representing a decrease of 728 vouchers and a decrease of \$415,358 compared to November. Year to date, the number of paid vouchers is up approximately 10.7%, from 13,522 at this time last year 14,970 this year, and the total amount paid is up approximately 34.2%, from \$6,072,685 this time last year to \$8,154,125 this year.
- We paid no paper vouchers in December.
- The average price per voucher in December was \$589.32 up \$5.32 per voucher from November. Year to date, the average price per voucher is up approximately 21.2%, from \$449.10 at this time last year to \$544.70 this year.
- Post-Conviction Review and Drug Court cases had the highest average voucher in December. There were 9 vouchers exceeding \$5,000 paid in December. See attached addendum for details.
- In December, we issued 64 authorizations to expend funds: 28 for private investigators, 27 for experts, and 9 for miscellaneous services such as interpreters and transcriptionists. In December, we paid \$86,785 for experts and investigators, etc. No requests for funds were denied.
- In December we opened no attorney investigations.

In our All Other Account, the total expenses for the month of December were \$1,194,029. During December, approximately \$23,486 was devoted to the Commission's operating expenses.

In the Personal Services Accounts, we had \$110,177 in expenses for the month of December.

In the Revenue Account, the transfer from the Judicial Branch for December reflecting November's collections, totaled \$87,445.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY22 FUND ACCOUNTING
AS OF 12/31/2021

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	\$ (1,194,029.95)	9	\$ -	12	\$ -	
Encumbrances (Justice Works)		\$ (70,052.50)		\$ 16,885.00		\$ -		\$ -	\$ (53,167.50)
Encumbrances (B Taylor)		\$ (13,260.00)		\$ (13,260.00)		\$ -		\$ -	\$ (26,520.00)
Encumbrances (CTB for non attorney expenses)		\$ (676,875.82)		\$ 193,882.84		\$ -		\$ -	\$ (482,992.98)
Encumbrance (Jamesa Drake training contract)		\$ (92,400.00)		\$ -		\$ -		\$ -	\$ (92,400.00)
TOTAL REMAINING		\$ 0.59		\$ 1,321,857.28		\$ 4,988,737.00		\$ 471,013.00	\$ 7,277,341.17

Q2 Month 6

INDIGENT LEGAL SERVICES	
Counsel Payments	\$ (1,083,757.42)
Interpreters	\$ (417.50)
Private Investigators	\$ (10,282.41)
Mental Health Expert	\$ (34,752.50)
Misc Prof Fees & Serv	\$ (4,041.23)
Transcripts	\$ (17,995.86)
Other Expert	\$ (19,000.00)
Process Servers	\$ (296.22)
Subpoena Witness Fees	\$ -
Out of State Witness Travel	\$ -
SUB-TOTAL ILS	\$ (1,170,543.14)
OPERATING EXPENSES	
Service Center	\$ -
DefenderData	\$ (5,257.50)
Parking Permit Annual Fee	\$ -
Mileage/Tolls/Parking	\$ (736.40)
Mailing/Postage/Freight	\$ (207.55)
West Publishing Corp	\$ (226.80)
Criminal & MV statutes books	\$ (132.00)
Office Supplies/Equip.	\$ (205.08)
Cellular Phones	\$ (238.36)
OIT/TELCO	\$ -
Office Equipment Rental	\$ (316.28)
Barbara Taylor monthly fees	\$ (8,840.00)
Survey Monkey fees	\$ (396.00)
Legal Ads	\$ (722.30)
AAG Legal Svcs Quarterly Paym	\$ (6,208.54)
SUB-TOTAL OE	\$ (23,486.81)
TOTAL	\$ (1,194,029.95)

INDIGENT LEGAL SERVICES	
Q2 Allotment	\$ 5,387,088.00
Q2 Encumbrances for Justice Works contract	\$ 16,885.00
Barbara Taylor Contract	\$ (13,260.00)
CTB Encumbrance for non attorney expenses	\$ 193,882.84
Q2 Jamesa Drake training contract	\$ -
Q2 Expenses to date	\$ (4,262,738.56)
Remaining Q1 Allotment	\$ 1,321,857.28

Non-Counsel Indigent Legal Services	
Monthly Total	\$ (86,785.72)
Total Q1	\$ 223,124.18
Total Q2	\$ 193,882.84
Total Q3	\$ -
Total Q4	\$ -
Fiscal Year Total	\$ 417,007.02

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 12/31/2021

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	\$ (64,196.13)	9	\$ -	12	\$ -	
TOTAL REMAINING		\$ 0.84		\$ 70,516.44		\$ 254,914.00		\$ 162,917.00	\$ 488,348.28

Q2 Month 6	
Per Diem	\$ (220.00)
Salary	\$ (29,888.51)
Vacation Pay	\$ (1,121.47)
Holiday Pay	\$ (3,835.60)
Sick Pay	\$ (1,146.70)
Empl Hlth SVS/Worker Comp	\$ -
Health Insurance	\$ (9,636.97)
Dental Insurance	\$ (248.20)
Employer Retiree Health	\$ (3,629.29)
Employer Retirement	\$ (2,415.30)
Employer Group Life	\$ (331.38)
Employer Medicare	\$ (538.13)
Retiree Unfunded Liability	\$ (7,206.62)
Longevity Pay	\$ (160.00)
Perm Part Time Full Ben	\$ (3,817.96)
Retro Pay Contract	\$ -
Retro Lump Sum Pymt	\$ -
TOTAL	\$ (64,196.13)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY22 FUND ACCOUNTING
AS OF 12/31/2021

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	\$ (35,981.80)	9	\$ -	12	\$ -	
TOTAL REMAINING		\$ 127,406.00		\$ 145,287.17		\$ 211,155.00		\$ 160,423.00	\$ 644,271.17

Q2 Month 6	
Per Diem	\$ -
Salary	\$ (20,789.04)
Vacation Pay	\$ (34.00)
Holiday Pay	\$ (2,329.92)
Sick Pay	\$ (379.84)
Empl Hlth SVS/Worker Comp	\$ -
Health Insurance	\$ (3,447.84)
Dental Insurance	\$ (87.60)
Employer Retiree Health	\$ (2,136.80)
Employer Retirement	\$ (2,089.74)
Employer Group Life	\$ (117.60)
Employer Medicare	\$ (326.44)
Retiree Unfunded Liability	\$ (4,242.98)
Longevity Pay	\$ -
Perm Part Time Full Ben	\$ -
Retro Pay Contract	\$ -
Retro Lump Sum Pymt	\$ -
TOTAL	\$ (35,981.80)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

FY22 FUND ACCOUNTING

As of 12/31/2021

Account 014 95F Z112 01 (Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY22 Total
Original Total Budget Allotments		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00	\$ 1,100,000.00
Financial Order Adjustment		\$ 5,294,080.00		\$ 3,276,305.00		\$ 7,324.00		\$ 7,324.00	\$ 8,585,033.00
Financial Order Adjustment	1	\$ -	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	\$ 87,445.18	9	\$ -	12	\$ -	
Collected from McIntosh Law		\$ 2,142.00		\$ -		\$ -		\$ -	
Collected for reimbursement of counsel fees		\$ 286.00		\$ 426.00		\$ -		\$ -	
Collected from ME Ctr Public Int Reporting		\$ -		\$ -		\$ -		\$ -	
Returned Checks-stopped payments		\$ -		\$ -		\$ -		\$ -	
TOTAL CASH PLUS REVENUE COLLECTED		\$ 1,149,218.06		\$ 303,153.93		\$ -		\$ -	\$ 1,452,371.99
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)	**	\$ (277.54)	***	\$ -			
REMAINING ALLOTMENT		\$ 5,106,953.26		\$ 3,551,027.46		\$ 282,324.00		\$ 282,324.00	\$ 9,222,628.72
Overpayment Reimbursements	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
REMAINING CASH Year to Date		\$ 687,091.32		\$ 302,876.39		\$ -		\$ -	\$ 989,967.71

** NO COLLECTED REVENUE IN AUGUST

Collections versus Allotment	
Monthly Total	\$ 87,445.18
Total Q1	\$ 264,695.37
Total Q2	\$ 303,153.93
Total Q3	\$ -
Total Q4	\$ -
Expenses to Date	\$ (462,404.28)
Cash Carryover from Prior Year	\$ 884,522.69
Fiscal Year Total	\$ 989,967.71

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY22 FUND ACCOUNTING
AS OF 12/31/2021

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
FY22 FUND ACCOUNTING
AS OF 12/31/2021

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

Activity Report by Case Type

12/31/2021

DefenderData Case Type	Dec-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	16	18	\$ 30,742.11	10	\$ 16,505.67	\$ 1,650.57	86	82	\$ 134,711.13	\$ 1,642.82
Child Protection Petition	198	426	\$ 287,635.34	279	\$ 188,889.06	\$ 677.02	1,248	2,156	\$ 1,457,704.32	\$ 676.12
Drug Court	0	9	\$ 16,952.00	10	\$ 18,552.00	\$ 1,855.20	6	50	\$ 89,766.00	\$ 1,795.32
Emancipation	7	9	\$ 5,749.60	5	\$ 4,525.20	\$ 905.04	45	29	\$ 11,496.80	\$ 396.44
Felony	541	440	\$ 384,454.17	389	\$ 308,045.68	\$ 791.89	3,485	3,228	\$ 2,546,291.80	\$ 788.81
Involuntary Civil Commitment	76	105	\$ 26,275.20	80	\$ 20,523.61	\$ 256.55	498	513	\$ 132,961.68	\$ 259.18
Juvenile	63	37	\$ 29,042.05	16	\$ 12,339.47	\$ 771.22	307	282	\$ 151,871.72	\$ 538.55
Lawyer of the Day - Custody	214	195	\$ 55,500.00	148	\$ 42,055.20	\$ 284.16	1,359	1,244	\$ 370,906.04	\$ 298.16
Lawyer of the Day - Juvenile	29	20	\$ 6,220.10	15	\$ 4,759.00	\$ 317.27	149	128	\$ 33,763.10	\$ 263.77
Lawyer of the Day - Walk-in	166	142	\$ 47,516.12	85	\$ 27,176.27	\$ 319.72	942	847	\$ 268,695.60	\$ 317.23
Misdemeanor	771	739	\$ 282,549.35	560	\$ 215,981.59	\$ 385.68	5,216	4,421	\$ 1,695,997.95	\$ 383.62
Petition, Modified Release Treatment	2	8	\$ 4,919.53	8	\$ 4,919.53	\$ 614.94	2	23	\$ 12,978.70	\$ 564.29
Petition, Release or Discharge	0	1	\$ 348.28	1	\$ 348.28	\$ 348.28	1	6	\$ 4,028.08	\$ 671.35
Petition, Termination of Parental Rights	26	61	\$ 64,465.88	37	\$ 43,860.38	\$ 1,185.42	153	310	\$ 256,793.15	\$ 828.37
Post Conviction Review	8	8	\$ 37,562.84	8	\$ 64,454.47	\$ 8,056.81	42	39	\$ 106,083.22	\$ 2,720.08
Probate	7	4	\$ 2,724.00	5	\$ 3,162.00	\$ 632.40	25	14	\$ 11,960.00	\$ 854.29
Probation Violation	99	84	\$ 40,578.76	64	\$ 32,318.79	\$ 504.98	655	638	\$ 284,570.73	\$ 446.04
Represent Witness on 5th Amendment	0	1	\$ 560.00	1	\$ 560.00	\$ 560.00	11	12	\$ 5,116.12	\$ 426.34
Resource Counsel Criminal	0	1	\$ 216.00	1	\$ 312.00	\$ 312.00	0	11	\$ 2,392.00	\$ 217.45
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	50	146	\$ 92,576.50	116	\$ 74,318.82	\$ 640.68	256	931	\$ 575,360.80	\$ 618.00
Revocation of Administrative Release	1	2	\$ 522.40	1	\$ 150.40	\$ 150.40	6	3	\$ 460.96	\$ 153.65
DefenderData Sub-Total	2,274	2,456	\$ 1,417,110.23	1,839	\$ 1,083,757.42	\$ 589.32	14,492	14,970	\$ 8,154,125.90	\$ 544.70
Paper Voucher Sub-Total										
TOTAL	2,274	2,456	\$1,417,110.23	1,839	\$1,083,757.42	\$ 589.32	14,492	14,970	\$ 8,154,125.90	\$ 544.70

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Court

12/31/2021

Court	Dec-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	3	3	\$ 4,507.00	3	\$ 1,428.00	\$ 476.00	40	39	\$ 18,165.70	\$465.79
AUBSC	0	0		0			7	10	\$ 4,632.71	\$463.27
AUGDC	36	52	\$ 35,452.35	42	\$ 29,430.35	\$ 700.72	249	343	\$ 226,243.04	\$659.60
AUGSC	2	8	\$ 4,905.81	8	\$ 4,905.81	\$ 613.23	18	40	\$ 28,092.53	\$702.31
BANDC	50	128	\$ 58,532.00	61	\$ 29,312.30	\$ 480.53	308	513	\$ 193,174.03	\$376.56
BANSC	0	2	\$ 1,708.00	2	\$ 1,708.00	\$ 854.00	3	4	\$ 1,898.00	\$474.50
BATSC	0	0		0			0	2	\$ 1,532.00	\$766.00
BELDC	11	39	\$ 23,556.07	27	\$ 16,127.60	\$ 597.32	88	132	\$ 80,806.50	\$612.17
BELSC	0	0		0			1	2	\$ 2,009.00	\$1,004.50
BIDDC	45	42	\$ 22,764.83	42	\$ 23,087.53	\$ 549.70	249	389	\$ 226,632.62	\$582.60
BRIDC	11	13	\$ 8,792.47	12	\$ 7,323.59	\$ 610.30	77	83	\$ 40,818.77	\$491.79
CALDC	1	8	\$ 4,400.70	7	\$ 4,128.70	\$ 589.81	16	40	\$ 24,111.50	\$602.79
CARDC	4	22	\$ 14,346.11	13	\$ 10,466.11	\$ 805.09	35	129	\$ 73,478.36	\$569.60
CARSC	0	0		0			3	2	\$ 2,044.00	\$1,022.00
DOVDC	2	11	\$ 7,477.20	10	\$ 6,346.10	\$ 634.61	24	56	\$ 32,125.70	\$573.67
DOVSC	0	0		0			1	1	\$ 474.00	\$474.00
ELLDC	15	31	\$ 32,457.40	28	\$ 30,096.00	\$ 1,074.86	76	177	\$ 147,273.84	\$832.06
ELLSC	0	0		0			1	0		
FARDC	8	10	\$ 6,274.82	8	\$ 5,937.32	\$ 742.17	40	60	\$ 36,500.06	\$608.33
FARSC	0	0		0			0	1	\$ 212.00	\$212.00
FORDC	7	12	\$ 8,398.00	6	\$ 4,080.00	\$ 680.00	39	70	\$ 49,503.25	\$707.19
HOUDC	11	20	\$ 18,223.10	7	\$ 6,998.00	\$ 999.71	43	91	\$ 64,901.15	\$713.20
HOUSC	0	0		0			2	2	\$ 1,514.00	\$757.00
LEWDC	50	74	\$ 36,448.73	55	\$ 22,436.35	\$ 407.93	320	474	\$ 268,897.20	\$567.29
LINDC	11	21	\$ 11,357.29	18	\$ 10,021.88	\$ 556.77	59	86	\$ 39,016.85	\$453.68
MACDC	6	5	\$ 3,346.00	3	\$ 2,210.00	\$ 736.67	13	25	\$ 31,889.62	\$1,275.58
MACSC	0	0		0			1	1	\$ 896.00	\$896.00
MADDc	2	0		0			6	5	\$ 1,859.60	\$371.92
MILDc	2	4	\$ 928.00	2	\$ 672.00	\$ 336.00	23	42	\$ 11,953.76	\$284.61
NEWDC	19	29	\$ 16,089.75	13	\$ 7,506.85	\$ 577.45	68	113	\$ 48,956.16	\$433.24
PORDC	75	112	\$ 73,700.14	85	\$ 52,481.87	\$ 617.43	418	577	\$ 359,773.27	\$623.52
PORSC	1	3	\$ 1,812.00	1	\$ 200.00	\$ 200.00	26	27	\$ 10,910.00	\$404.07
PREDc	11	22	\$ 11,124.96	18	\$ 8,626.96	\$ 479.28	61	87	\$ 43,633.09	\$501.53
RODC	10	9	\$ 5,386.83	10	\$ 5,323.39	\$ 532.34	84	105	\$ 61,333.46	\$584.13
ROSC	2	0		0			9	4	\$ 1,544.56	\$386.14
RUMDC	16	24	\$ 28,676.71	13	\$ 7,479.50	\$ 575.35	61	111	\$ 86,220.68	\$776.76
SKODC	15	36	\$ 16,814.90	19	\$ 10,412.90	\$ 548.05	147	263	\$ 158,460.70	\$602.51
SKOSC	0	1	\$ 25,346.36	1	\$ 25,346.36	\$ 25,346.36	5	7	\$ 28,283.96	\$4,040.57
SOUDC	18	27	\$ 30,821.81	15	\$ 11,129.26	\$ 741.95	68	113	\$ 101,633.76	\$899.41
SOUSC	0	0		0			0	3	\$ 884.00	\$294.67
SPRDC	28	21	\$ 13,664.07	22	\$ 19,672.45	\$ 894.20	111	165	\$ 119,318.23	\$723.14
Law Ct	9	17	\$ 29,344.11	9	\$ 15,785.67	\$ 1,753.96	59	62	\$ 105,422.44	\$1,700.36
YORCD	339	258	\$ 122,662.84	221	\$ 94,443.45	\$ 427.35	1,878	1,569	\$ 828,625.53	\$528.12
ARODC	94	113	\$ 51,050.97	80	\$ 42,712.17	\$ 533.90	771	710	\$ 358,875.75	\$505.46
ANDCD	136	110	\$ 57,287.86	97	\$ 47,629.12	\$ 491.02	1,035	827	\$ 457,143.28	\$552.77
KENCD	161	130	\$ 62,670.85	128	\$ 59,221.54	\$ 462.67	1,027	891	\$ 461,884.64	\$518.39
PENCD	253	245	\$ 122,637.65	159	\$ 94,248.14	\$ 592.76	1,515	1,378	\$ 635,783.23	\$461.38
SAGCD	37	25	\$ 9,538.84	18	\$ 6,695.84	\$ 371.99	212	164	\$ 68,461.82	\$417.45
WALCD	64	78	\$ 38,999.45	61	\$ 30,665.27	\$ 502.71	348	304	\$ 140,179.14	\$461.12
PISDC	11	15	\$ 12,067.58	7	\$ 9,235.18	\$ 1,319.31	79	69	\$ 45,123.73	\$653.97
HANCD	41	44	\$ 17,017.20	28	\$ 13,497.60	\$ 482.06	290	250	\$ 130,564.18	\$522.26
FRACD	34	31	\$ 16,287.26	19	\$ 8,196.81	\$ 431.41	149	155	\$ 96,337.54	\$621.53
WASCD	35	22	\$ 7,214.10	7	\$ 3,504.00	\$ 500.57	197	209	\$ 84,901.35	\$406.23
CUMCD	315	281	\$ 156,882.83	220	\$ 120,289.40	\$ 546.77	2,364	2,194	\$ 1,209,130.09	\$551.11
KNOCD	76	65	\$ 34,717.51	54	\$ 24,783.25	\$ 458.95	408	407	\$ 184,010.19	\$452.11
SOMCD	50	81	\$ 33,780.68	70	\$ 55,781.21	\$ 796.87	385	467	\$ 203,614.83	\$436.01
OXFCD	67	44	\$ 59,886.88	35	\$ 46,351.76	\$ 1,324.34	439	339	\$ 200,589.56	\$591.71
LINCD	30	26	\$ 16,942.14	21	\$ 15,158.14	\$ 721.82	218	185	\$ 98,234.39	\$531.00
WATDC	19	59	\$ 33,148.07	38	\$ 24,983.69	\$ 657.47	144	219	\$ 126,256.47	\$576.51
WESDC	21	10	\$ 3,004.00	5	\$ 2,000.00	\$ 400.00	86	83	\$ 36,353.28	\$437.99
WISDC	6	5	\$ 1,850.00	3	\$ 874.00	\$ 291.33	30	46	\$ 23,787.78	\$517.13
WISSC	1	0		0			2	0		
YORDC	3	8	\$ 2,806.00	8	\$ 2,806.00	\$ 350.75	56	48	\$ 27,239.02	\$567.48
TOTAL	2,274	2,456	\$ 1,417,110.23	1,839	\$ 1,083,757.42	\$ 589.32	14,492	14,970	\$8,154,125.90	\$544.70

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

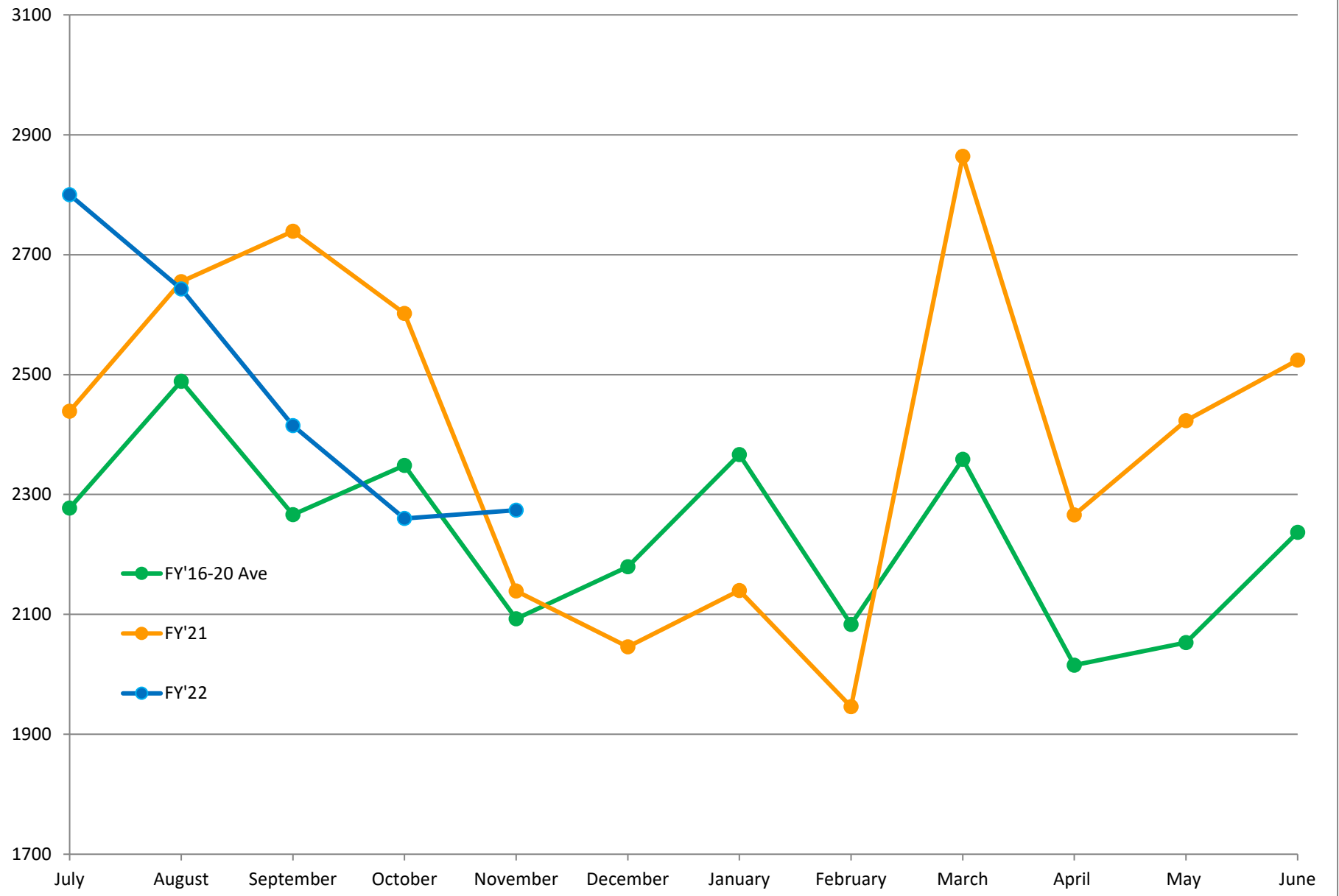
Number of Attorneys Rostered by Court

12/31/2021

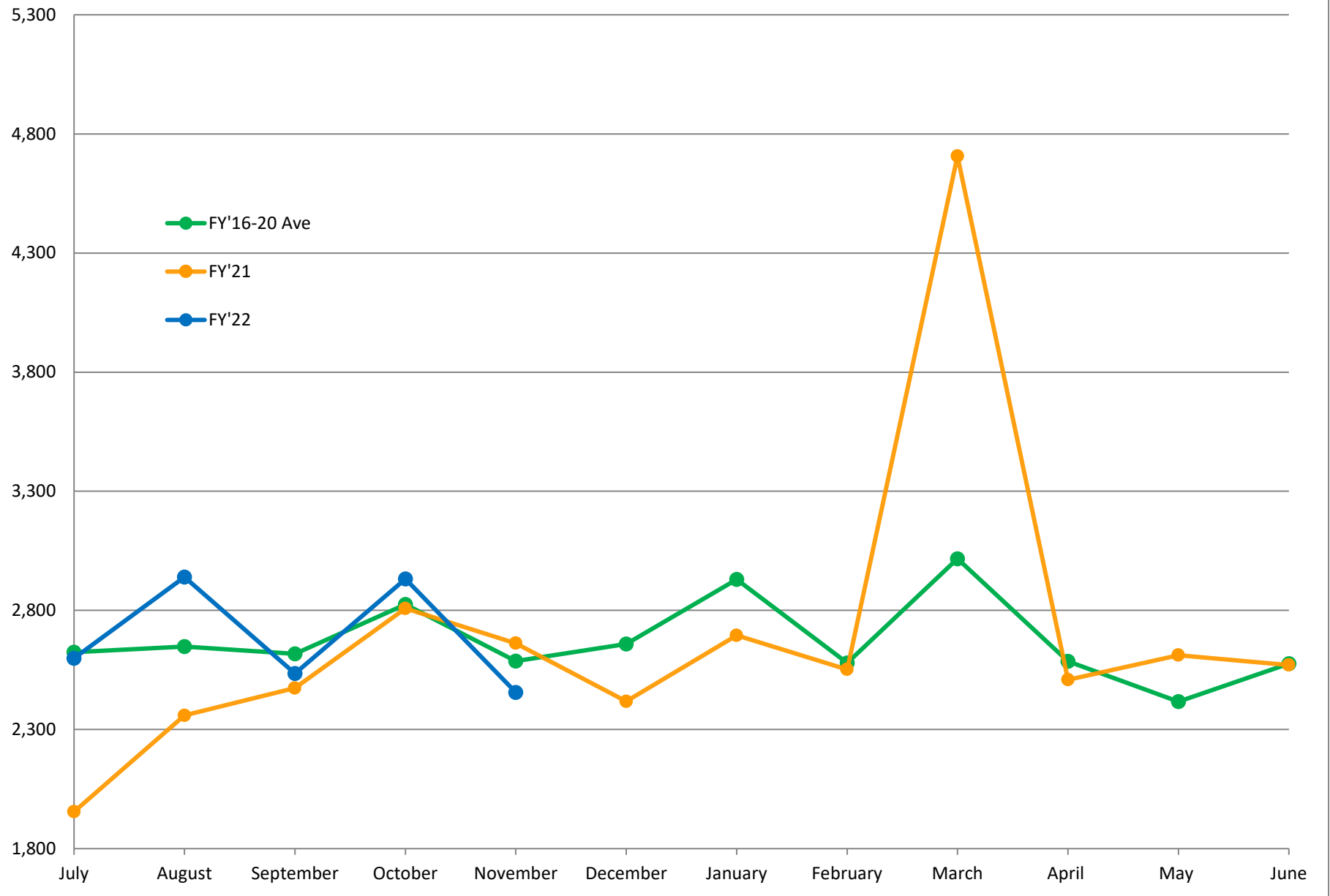
Court	Rostered Attorneys
Augusta District Court	76
Bangor District Court	40
Belfast District Court	39
Biddeford District Court	105
Bridgton District Court	67
Calais District Court	9
Caribou District Court	15
Dover-Foxcroft District Court	25
Ellsworth District Court	29
Farmington District Court	30
Fort 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	126
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	90
Unified Criminal Docket Alfred	89
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	123
Unified Criminal Docket Rockland	25
Unified Criminal Docket Skowhegan	25
Unified Criminal Docket South Paris	42
Unified Criminal Docket Wiscasset	48
Waterville District Court	39
West Bath District Court	88
Wiscasset District Court	52
York District Court	83

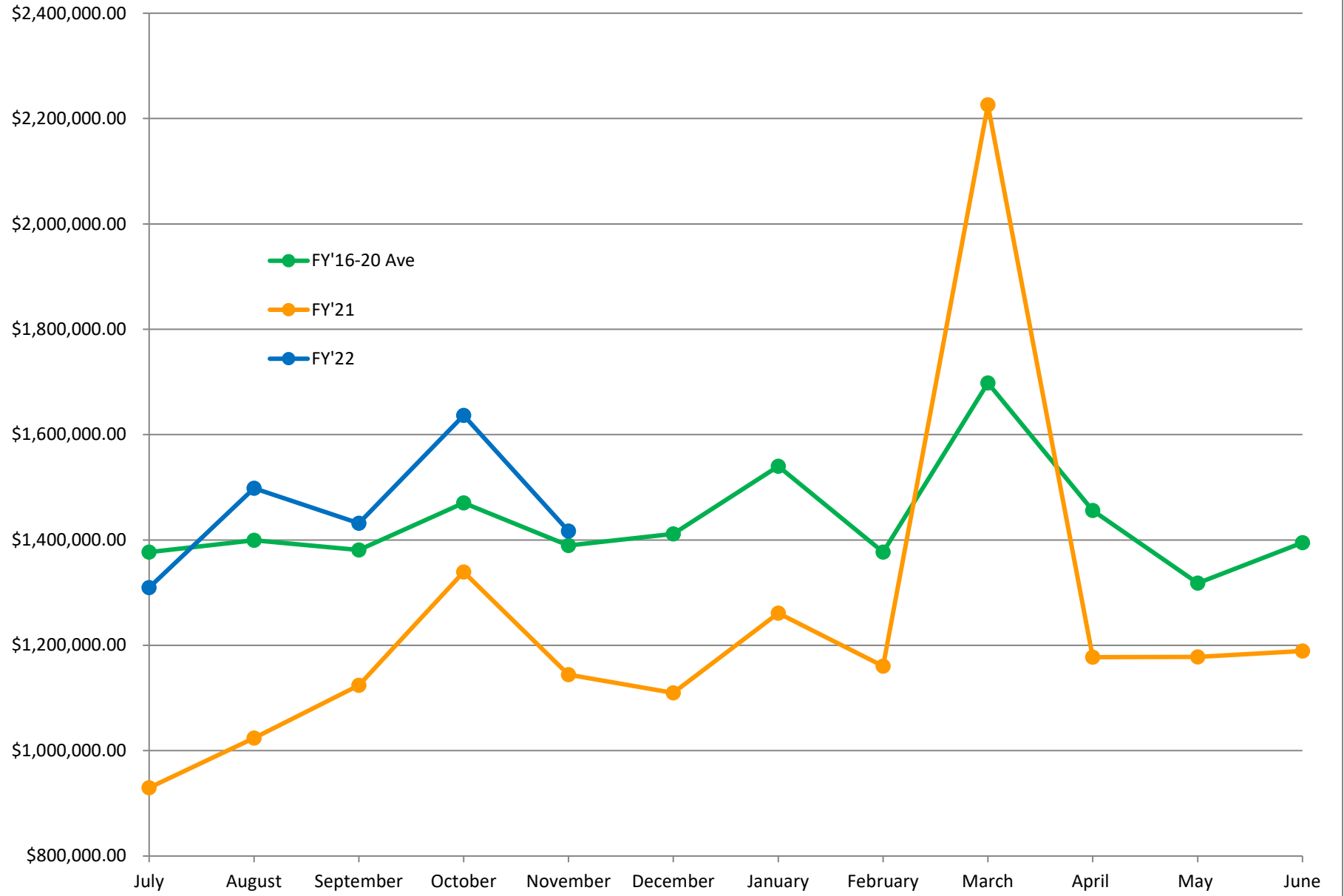
NEW CASES



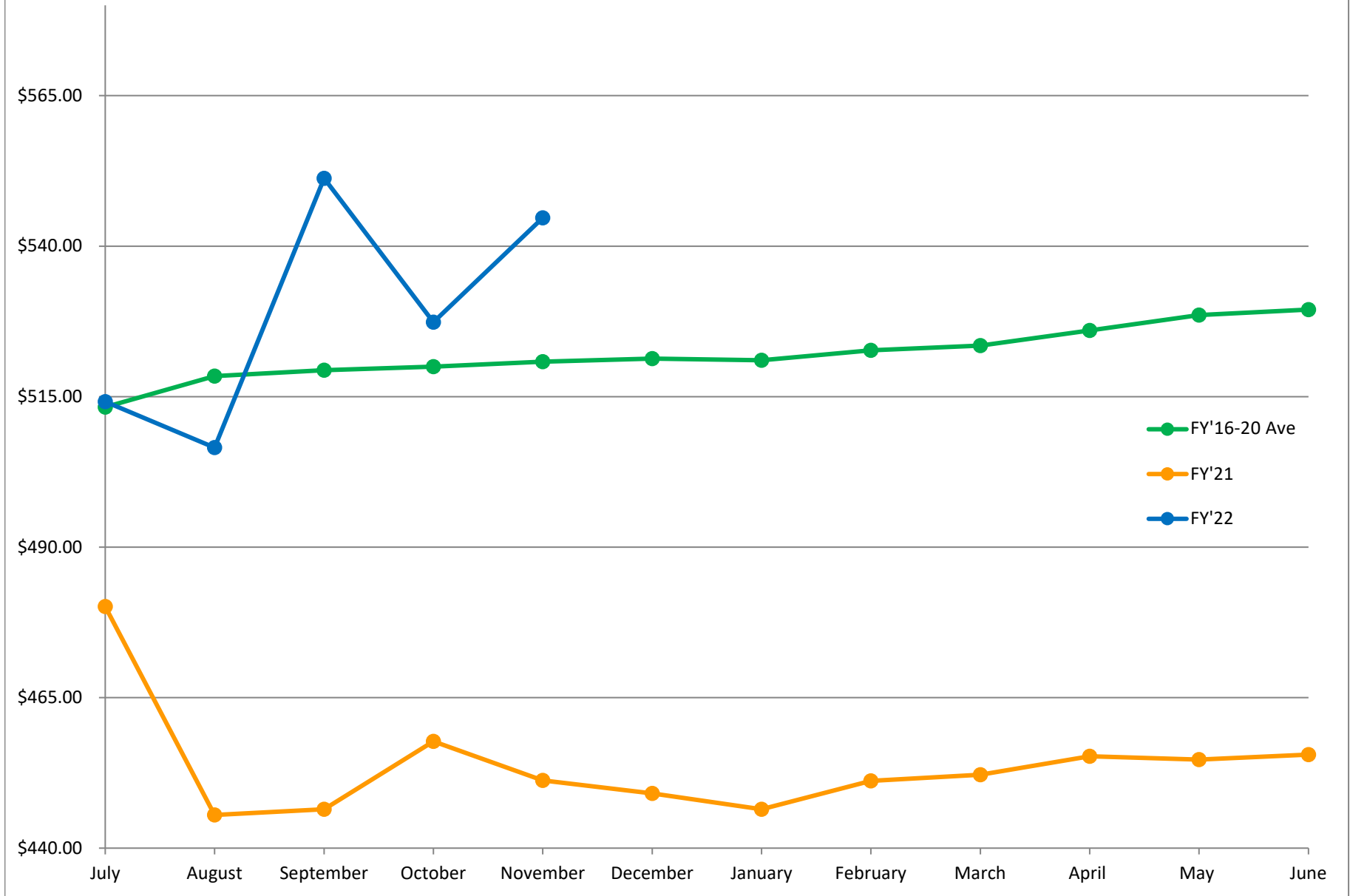
Submitted Vouchers



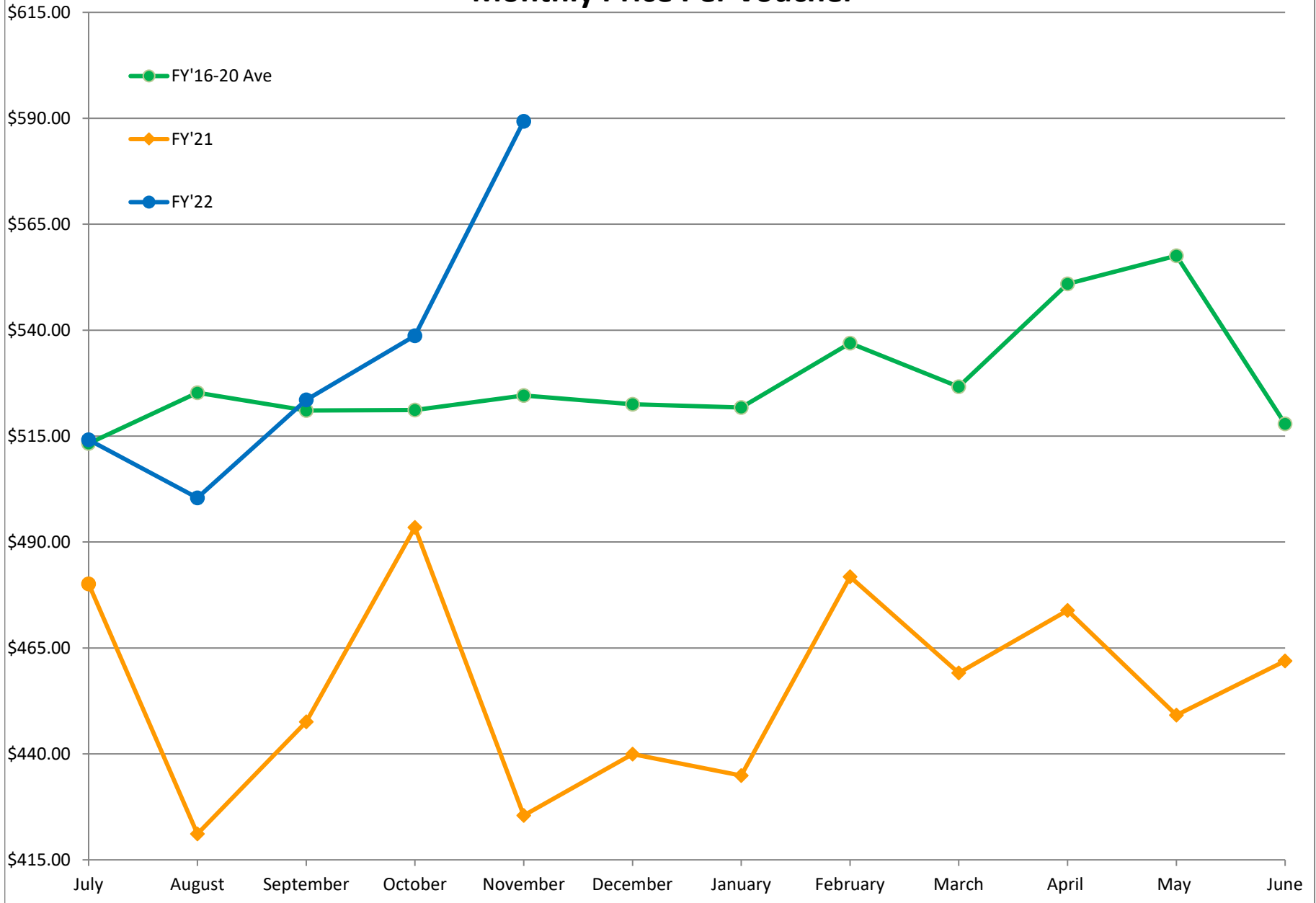
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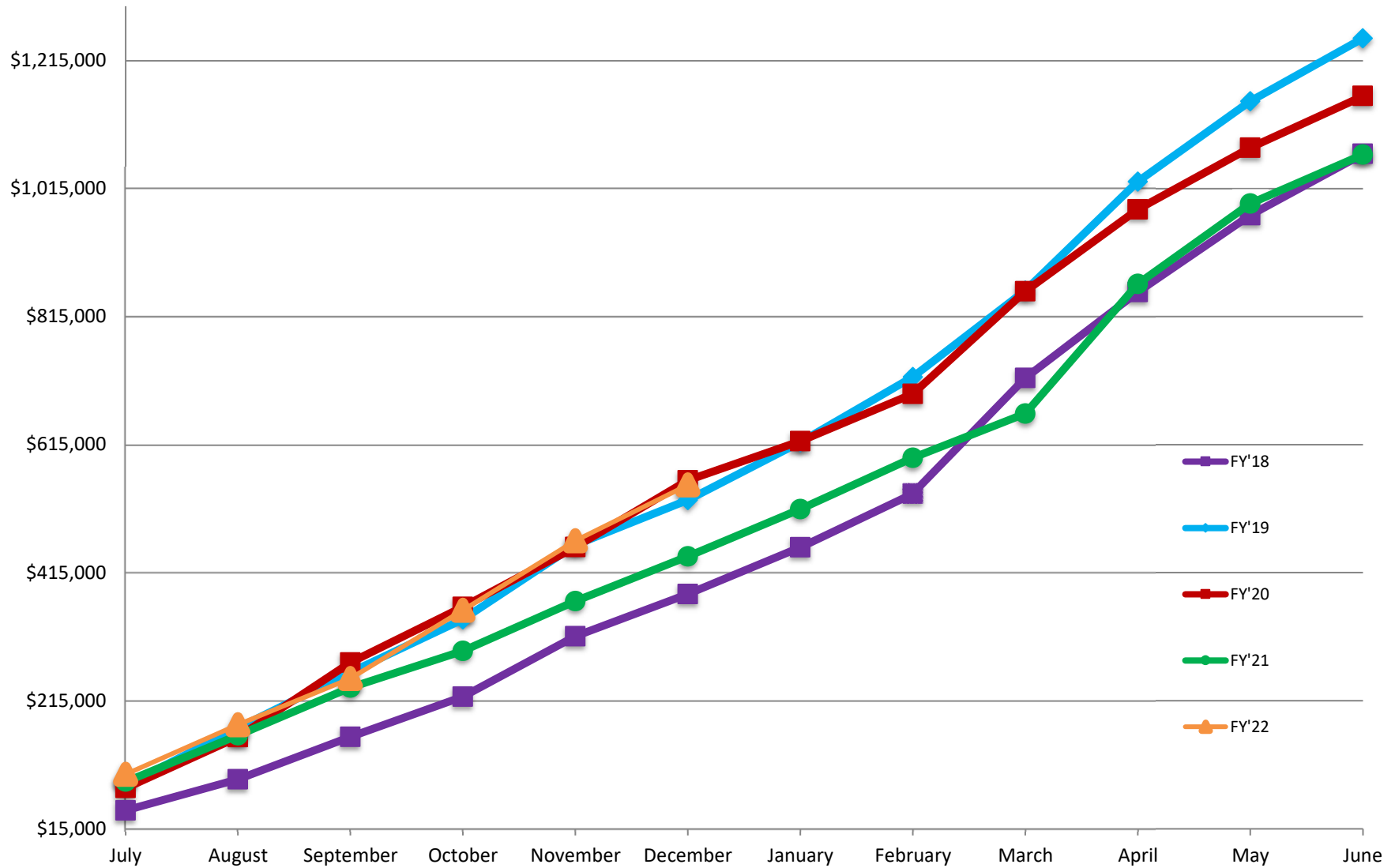
Average Voucher Price Fiscal Year to Date



Monthly Price Per Voucher



COLLECTION TOTALS FY'18 to FY'22



Vouchers over \$5,000

Comment	Voucher Total	Case Total
Homicide	\$28,942.56	\$28,942.56
PCR Homicide	\$27,155.63	\$27,155.63
PCR Homicide	\$25,346.36	\$50,610.40
Burlglary/Attempted Murder	\$8,919.18	\$8,919.18
Homicide	\$7,922.00	\$7,922.00
PCR Homicide	\$7,794.48	\$7,794.48
Homicide	\$7,068.00	\$7,068.00
Termination of Parental Rights	\$6,888.00	\$8,478.00
Child Protection	\$5,726.84	\$5,726.84

ATTORNEY DEMOGRAPHICS AND EXPENSES

TO: COMMISSION

FROM: JUSTIN ANDRUS, EXECUTIVE DIRECTOR

SUBJECT: MCILS ATTORNEY DEMOGRAPHICS AND EXPENSES

DATE: 1/21/2022

CC:

I. Attorney age and location demographics

On January 19th, MCILS published a survey to its attorneys seeking information related to attorney demographics and the cost of operating a law firm. The survey will not close finally until on or after April 16, 2022, but by 9:30 a.m. on Friday, January 21, 77 attorneys, representing 28% of those actively seeking cases had responded. These provide a useful sample from which to form a preliminary report. This report may be updated as additional responses are received.

Overall attorney age, experience, and degree of participation in indigent defense is reflected in the following table:

Responses Received	77
Average Age	52
Average years of practice	21
Years serving indigent clients	18
Years with MCILS	9
% MCILS caseload	70

These overall statistics are concerning from an attorney replacement rate perspective, suggesting that few new attorneys are joining the MCILS program. Only 27 of the 77 attorneys reported joining MCILS after its creation. Only 18 were in the first five years of practice. These numbers illustrate the pressing need for the State to not only eliminate barriers to entry to indigent defense, but to create incentives to do so.

A breakdown of age demographics by county reveals that the problem of attorney replenishment is even more stark in some areas of the state. With 14 counties represented in the sample, we see that in four the average respondent is over 60 years old, and that only in Kennebec is the average age what might reasonably be mid-trajectory for a career in the law. In considering the table that follows, please note that this table reflects the attorney

demographic by the county in which counsel has an office, but that many counsel serve clients in multiple counties.

County	Age (Ave)
Androscoggin	58
Aroostook	52.5
Cumberland	48
Hancock	62
Kennebec	44
Knox	62
Lincoln	63
Oxford	60
Penobscot	50
Sagadahoc	52
Somerset	58
Waldo	49
Washington	55
York	48

While MCILS has been able to staff all of its cases so far, the issue of recruitment, and the related issue of retention, remain high priorities. Unless a practice including indigent defense is made more accessible and more attractive, MCILS will likely be unable to staff its cases in the not distant future.

II. Attorney Expenses

a. Overview

The 8th ABA Principle of a Public Defense Delivery System requires that **“There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.”**

The comment continues by explaining that there should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense. Assigned counsel should be paid a reasonable fee in addition to actual overhead and expenses. Contracts with private attorneys for public defense services should never be primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual, or complex cases, and separately fund expert, investigative, and other litigation support services.

It remains the situation that defense counsel – including all counsel serving indigent clients in matters involving state action – do not experience parity with the prosecution functions.

For example, the payment rate for assigned counsel was increased from \$60 to \$80 per hour in July 2021. That increase alleviated some burden for counsel. It is universally appreciated. The increase, however, does not allow defense counsel to practice with the same resources as attorneys for the state. MCILS has sought data from assigned counsel to quantify the expenses state-wide. Data from the initial sample of respondents is discussed below.

Before turning to that data, however, the gulf between the practice conditions of assigned counsel and their state-employed peers is evident. In 2020, the legislature gave MCILS permission to hire two paralegals to support its operations. Those paralegals would be paid \$40,463, with fringe benefits costs of \$38,500, for a total of \$78,963 per position, excluding equipment costs. That is an effective hourly cost of \$39 per hour, or effectively half of the \$80 gross payment assigned counsel receive per hour. At that rate MCILS has been unable to attract appropriate candidates to its positions, and they remain unfilled, suggesting that those rates are low for the labor market. The most recent job listing has recent expired without a single applicant. Even if assigned counsel could hire staff at that rate, however, only \$41 per hour would remain for counsel to operate the law firm, obtain benefits, and earn take-home pay. Defenders thus cannot hire staff but must litigate cases against District Attorney offices equipped with up to three support staff per attorney.

MCILS asked to hire employee-defenders in the last legislative session. The junior defenders were intended to bring parity with assistant district attorneys. Those defenders would have been paid \$70,720, with fringe costs of \$49,907, totaling \$120,627 each – an effective hourly rate of \$60 perhour.

In other words, defender parity requires an hourly rate of more than \$100 per hour across assuming 40 billable hours per week, and 50 weeks per year, simply to make payroll. Rent, equipment, insurance, legal research software, books, communications, internet access, bar dues, and other expenses would still not be accounted for at that rate.

Even the idea that assigned counsel could, or should, bill 2,000 hours per year illustrates the lack of parity between the defense and prosecution functions. Maine State employees will enjoy 13 paid holidays in 2022. State attorneys will be granted at least two full weeks of vacation, in addition to personal time and sick time. Holidays, vacation time, and personal days result in approximately 10% of a State employee's pay resulting from paid time off. Furthermore, State employed attorneys have the opportunity to be paid while sick or injured, or while caring for children or family members under certain circumstances.

Line state prosecuting attorneys are also not required to engage in billing and business management tasks and are paid for time spent attending trainings and engaging in professional development. Assigned counsel must dedicate time to those functions without compensation. Even very efficient assigned counsel spend 20% or more of their time engaged in tasks for which they cannot bill.

In considering parity then, it is necessary to discount the potential for assigned counsel to earn revenue to account for that administrative time, and further to account for the paid time State attorney spend performing tasks that are not compensable for assigned counsel. From 260 total week days per year, 26 must be discounted to account for State paid holidays, vacation and personal time for prosecutors. This leaves 234 workdays per year (still without adequately addressing the disparity with respect to sick time and other special leaves). 234 days of eight hours of work, is 1,872 hours. Discounting those by the 20% of activity that cannot be billed results in slightly fewer than 1,500 hours per year. At the current attorney compensation rate of \$80 per hour, this results in gross payment of \$120,000 per year.

Remarkably, that \$120,000 per year is almost precisely the projected cost of a paid defender, again calculated for parity with a typical assistant district attorney. That \$120,000 per year excludes, however, staff and overhead altogether. It is also important to recognize that many assigned counsel do not receive a caseload that permits billing even to that standard.

The attorneys who had answered the MCILS survey when the sample was collected for analysis ranged widely among different tiers of office expense. In discussing parity with the State, however, the comparisons cannot be made assuming that defense counsel can continue to operate from beleaguered, under resourced positions. The State must provide the resources necessary for defense counsel to achieve a reasonable living while also permitting their clients to benefit from the same resources available to prosecutors.

Of the responding attorneys, 26 of 77 reported practicing with one or more other attorneys. The remainder are sole practitioners. The survey questions were phrased to elicit responses on a per attorney basis, to permit uniform consideration of the data.

b. Survey Data – Attorney Specific Costs

Assigned counsel report that servicing student loan debt is a major expense and an impediment to serving indigent consumers. The ability of prosecutors to earn loan forgiveness through state service while defense counsel are unable to do so represents a significant point of departure from parity.

Of the 77 respondents, 29 reported still having student loan debt, while 25 reported no debt and 23 declined to answer. As might be expected, there is a marked difference in the average ages between those who still have school debt, and those that do not. It is reasonable to assume that most of those students now graduating from law school will carry loan debt, and thus debt service should be considered an obstacle to recruitment.

	<u>Yes</u>	<u>No</u>	<u>Declined</u>
Count	29	25	23
Age	45	59	

The 29 attorneys who provided data on their student loans were responsible for an average of \$119,951 in principle, and pay an average of \$727 per month, including those who have negotiated a loan payment through an income-based repayment plan. One-third of those making student loan payments were not able to pay enough to reduce the principle balances due.

Based on these responses, a prosecutor is eligible to receive a benefit worth on average almost \$120,000 over ten years, while defense counsel have no similar opportunity. Parity between the functions requires some form of loan forgiveness or payment for assigned counsel.

A similar disparity exists with respect to health, dental, vision, and disability insurances. Among the sampled attorneys, 39% did not indicate that they could maintain health insurance. Counsel reported an average monthly premium of \$724 – with almost 25% over \$1,000 – for insurance that carried an average deductible approaching \$5,000 and significant copays and coinsurance burdens.

These insurance costs, and uninsured costs, create a significant deterrent to serving consumers of indigent legal services, while providing an incentive to enter state service instead. In addition, the high uninsured costs pose a risk to clients by creating a disincentive for counsel to seek medical attention when necessary.

31% endorsed having dental insurance and only 16% endorsed having vision benefits. From among the 77 respondents, one indicated that they had access to short term disability insurance and four indicated access to long term disability insurance. All of these are benefits available to state attorneys.

Finally, only 29% of attorneys responding during the sample period are able to contribute to a retirement account or plan, and only three of the 77 indicated that they believed they could support themselves in retirement. In contrast, a state attorney earns access to a pension, and will receive a payment of 20% of final average salary every year, after 10 years of service.

Achieving parity between the defense and prosecution functions, and promoting recruitment and retention of defense counsel, is dependent on addressing these disparities, and ensuring that defense counsel have reasonable, equivalent access to the same benefits as prosecutors. When considering how to accomplish that parity, it is important to consider the cost differences between insurance for state group insurance enrollees and the individual policies most assigned counsel are eligible for.

c. Survey Data – Staff Specific Costs

Prosecutors are provided with staff to support their offices. Most assigned counsel are unable to engage staff to support their practices with the budget available from serving consumers of indigent legal services. Among the attorneys who provided the data sampled here, only 36% had any staff support. Among those with some staff support, on average each had less than one full time equivalent in support, in contrast with prosecutors who, by report, enjoy staff support from 1:1 to 3:1 per prosecutor. For those attorneys with staff support, the average direct payroll cost for staff was \$4,000 per month. Five attorneys reported being able to provide any staff fringe benefits.

The impossibility of acquiring adequate staff support results in attorney fatigue and eventually to burnout, adding to the difficulty in recruitment and retention. The absence of staff support has a tendency to create a negative impact on client services by making it more difficult for clients to communicate with counsels' offices.

d. Survey Data – Office Costs

The survey asked counsel to provide the costs involved in operating their offices. The averages are reflected in the table below. Not every attorney reported incurring every expense, but every expense listed reflects a benefit afforded to the prosecution function by the State. The sole exception may be for legal malpractice insurance, because prosecutors have immunity, while assigned counsel do not.

Rent/Mortgage	\$ 823.00
Utilities	\$ 236.00
Landline	\$ 130.00
Cellular Telephone	\$ 146.00
Internet	\$ 126.00
Legal Research Subscriptions	\$ 58.00
Technology / Software	\$ 200.00
Legal Malpractice Insurance	\$ 285.00
Supplies	\$ 199.00
Postage	\$ 76.00
Storage	\$ 83.00
Total office expenses	\$ 2,362.00

III. Conclusion

The data available today shows that for the defense function to achieve parity with the prosecution function, the State must pay defense counsel \$150 per hour, based on a 1,500 billable hour year. This would achieve an effective salary for defense counsel of \$70,720, while providing salary, staff, and office expense parity. At the current rate of \$80 per hour, each full-time defender is under-resourced by \$107,934.

Attorney salary and benefits	\$ 120,627.00
Staff salary and benefits	\$ 78,963.00
Office expenses	\$ 28,344.00
Total per attorney:	\$ 227,934.00

1500 billable hour year:

\$ 151.96	\$ 227,934.00
(@ \$80 / hr)	\$ 120,000.00
Deficit	\$ 107,934.00

In addition, to achieve parity defense counsel must have access to a retirement program that provides similar benefits to prosecutors at a similar cost; to group health, vision, and disability programs that provide benefits with reasonable deductibles and copays; and, access to a loan forgiveness or payment program that provides the same degree of relief for career defenders as is available to career prosecutors.

As the indigent defense bar continues to age, and as some of those in the program continue to exit due to financial pressure, MCILS is well below a 1:1 replenishment rate. Without eliminating these practice disparities and creating incentives to joining the defense bar, the State will be unable to meet its obligation to provide counsel.

Furthermore, under-resourced counsel may not in every instance be able to offer clients the degree of service each could otherwise perform. Indigent clients deserve healthy, rested, and well-informed counsel, and the ability to communicate with counsel through staff.

/JWA

HEARING POLICIES / CONFIDENTIALITY

TO: COMMISSIONERS

FROM: JUSTIN W. ANDRUS, EXECUTIVE DIRECTOR

SUBJECT: HEARING POLICIES / CONFIDENTIALITY

DATE: 1/21/2022

CC:

Commissioners, there are several issues related to the conduct of appeals hearings that call for resolution at the Commission level. This memorandum sets out those issues and provides the staff perspective, together with the relevant statutory language. There is an upcoming hearing to which these issues adhere. For that reason, it will be important to discuss these issues at the next Commission meeting and to reach resolution on them. I anticipate that staff will present a proposed overhaul of our investigative and appellate processes. The policy decisions of the Commission will be effective and should uniformly apply from the date of the decisions until that overhaul. It will be possible to revisit these issues at that time.

The issues are:

- I. Does information obtained or gathered by the Commission during an evaluation or investigation of an attorney become public at any point under existing 4 MRSA §1806 (2)(F)?
- II. Is public notice as defined by the Administrative Procedures Act required before an appellate hearing?
- III. May the public attend an appellate hearing and, if so, how will confidentiality be upheld?

The staff perspective is that because there is no releasing language in §1806, information obtained or gathered by the Commission during an evaluation or investigation of an attorney remains confidential through an appeal hearing. Public notice may nevertheless be required, but only if the Commission decided that the hearing involves the determination of issues of substantial public interest. The public should be excluded from

the hearing because all, or substantially all, of the relevant evidence and argument at hearing would be related to information made confidential by §1806.

I. Confidentiality

The disclosure of information held by MCILS is governed by 4 MRSA §1806. Subsection 2(F) makes confidential any information obtained or gathered by the Commission when performing an evaluation or investigation of an attorney. Information may be disclosed to the attorney. There is no provision §1806 that renders information that was confidential during an investigation public at any point. There is also no provision that permits a waiver of confidentiality by the attorney.

Staff recommends:

- a. Strict compliance with §1806 at hearing; and,
- b. The Commission consider seeking an amendment of §1806 as part of a broader reconsideration of its hearing policy.

§1806. Information not public record

Disclosure of information and records in the possession of the commission is governed by this section.

2. Confidential information. The following information and records in the possession of the commission are not open to public inspection and do not constitute public records as defined in Title 1, section 402, subsection 3.

F. Any information obtained or gathered by the commission when performing an evaluation or investigation of an attorney is confidential, except that it may be disclosed to the attorney being evaluated or investigated.

II. Administrative Procedures Act Notice

Pursuant to Title 5, Chapter 375, the Maine Administrative Procedures Act, public notice of a hearing is required if that hearing is deemed by the agency to involve the determination of issues of substantial public interest. “Agency” in this context means the Commission itself, rather than staff.

MCILS has not had a policy that controls how this question is presented to the Commission, nor has it had a policy that governs the determination of the issue.

Staff recommends that the Commission adopt a policy that:

- a. The question of whether a hearing involves the determination of issues of substantial public interest should be presented to the Commission in executive session during a Commission meeting. Presentation of the question and any subsequent discussion will require disclosure of information that is confidential by statute. The subsequent vote as to whether the hearing involves the determination of issues of substantive public interest should then be conducted in public, without reference to confidential facts;
- b. In determining whether the hearing raises issues of substantial public interest the Commission should consider whether the decision of the hearing officer will impact primarily the specific attorney who is party to the hearing, or whether the decision will have broader effect on the indigent defense bar; and,
- c. The question of whether the hearing raises issues of substantial public interest should be presented to the Commission after the Hearing Officer has been selected by the Chair. The Hearing Officer should not participate in deciding the question.

§9052. Notice

1. Notice of hearing. When the applicable statute or constitutional law requires that an opportunity for hearing shall be provided, notice shall be given as follows: ...

B. In any proceeding deemed by the agency to involve the determination of issues of substantial public interest, to the public sufficiently in advance of the anticipated time of the decision to afford interested persons an adequate opportunity to prepare and submit evidence and argument, and to request a hearing if so desired[.]

2. Hearing required. When a hearing is required by the applicable statute or by agency regulation, or has been requested pursuant to subsection 1, paragraph A, or has been set in an exercise of the agency's discretion, notice shall be given as follows: ...

B. In any proceeding deemed by the agency to involve the determination of issues of substantial public interest, to the public sufficiently in advance of the hearing date to afford interested persons an adequate opportunity to prepare and submit evidence and argument and to petition to intervene pursuant to section 9054.

§8002. Definitions

As used in this Act, unless the context otherwise indicates, the following words and phrases shall have the following meanings. ...

2. Agency. "Agency" means any body of State Government authorized by law to adopt rules, to issue licenses or to take final action in adjudicatory proceedings, including, but not limited to, every authority, board, bureau, commission, department or officer of the State Government so authorized; but the term does not include the Legislature, Governor, courts, University of Maine System, Maine Maritime Academy, community colleges, the Commissioner of Education for schools of the unorganized territory, school administrative units, community action agencies as defined in Title 22, section 5321, special purpose districts or municipalities, counties or other political subdivisions of the State.

III. Public Attendance at Hearing

An appellate hearing as defined under 4 MRSA §1804(3)(J) and MCILS Rules Chapter 201 is not a public proceeding as defined by 1 MRSA §402(2). For that reason, MCILS is not required to conduct open appellate hearings. The Commission may choose to do so, however.

Staff recommends that the Commission choose to not conduct open appellate hearings, because most or all the evidence and argument presented at an appellate hearing will be confidential. It will be unworkable to cycle the public in and out of the hearing to listen to only those brief elements of the hearing that may not be confidential; and, under the current investigative and appellate schemes, an appellant will have been subject to the unilateral decision making of the Executive Director, however well-reasoned. It is reasonable to conduct the appellate hearing in a manner that provides for review of the Executive Director's decision without the risk of unintended disclosures.

§402. Definitions

2. Public proceedings. The term "public proceedings" as used in this subchapter means the transactions of any functions affecting any or all citizens of the State by any of the following:

- A. The Legislature of Maine and its committees and subcommittees;
- B. Any board or commission of any state agency or authority, the Board of Trustees of the University of Maine System and any of its committees and subcommittees, the Board of Trustees of the Maine Maritime Academy and any of its committees

and subcommittees, the Board of Trustees of the Maine Community College System and any of its committees and subcommittees;

C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision

D. The full membership meetings of any association, the membership of which is composed exclusively of counties, municipalities, school administrative units or other political or administrative subdivisions; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;

E. The board of directors of a nonprofit, nonstock private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees;

F. Any advisory organization, including any authority, board, commission, committee, council, task force or similar organization of an advisory nature, established, authorized or organized by law or resolve or by Executive Order issued by the Governor and not otherwise covered by this subsection, unless the law, resolve or Executive Order establishing, authorizing or organizing the advisory organization specifically exempts the organization from the application of this subchapter; and

G. The committee meetings, subcommittee meetings and full membership meetings of any association that:

(1) Promotes, organizes or regulates statewide interscholastic activities in public schools or in both public and private schools; and

(2) Receives its funding from the public and private school members, either through membership dues or fees collected from those schools based on the number of participants of those schools in interscholastic activities.