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

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**TO:** MCILS ELIGIBLE COUNSEL

**FROM:** JUSTIN W. ANDRUS

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

**DATE:** 9/30/2021

**CC:** COMMISSION

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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. Assignments are made to individual attorneys

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 attorney assigned by the Court 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.

The attorney assigned by the Court to represent an indigent client shall personally provide direct representation to the client at all substantive appearances and shall personally ensure the adequacy of all phases of representation.

An attorney may delegate tasks related to the representation of an assigned client to another attorney 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.

An assigned attorney may not delegate substantive appearances to another attorney. The assigned attorney shall appear personally for all substantive appearances including, without limitation: bail hearings; motions hearings; dispositional conferences; adjudicatory hearings; jury selection; trial; sentencing; 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.

## II. 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.

### III. 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.

### IV. 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.

## V. Transition

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.