

**Maine Commission on Indigent Legal Services – Commissioners Meeting  
March 8, 2011**

**Minutes**

**Commissioners Present:** Ron Schneider, Ken Spirer, Kim Moody, Sally Sutton

**MCIL Staff Present:** John Pelletier, Steve Carey, Jennifer Smith

<b>Agenda Item</b>	<b>Discussion</b>	<b>Outcome/Action Item/Responsible Party</b>
Approval of 1/11/11 Commission Meeting Minutes	Copy of minutes received by all Commissioners.	All present voted in favor. Approved.
Operations Report	<p>Jennifer presented the Operations Report for January of 2011 and February of 2011.</p> <p>The number of rostered attorneys is up to 448. There were over a 20 attorneys added after the February Minimum Standards Trainings.</p> <p>There were 2,297 new cases opened in DefenderData in January and 2,065 in February.</p> <p>There were 2,319 vouchers were submitted electronically in January, and 1,957 were submitted in February. There were 2,641 vouchers were paid in January totaling \$975,731.71. Over half of these vouchers were carry-overs from December submissions when we ran out of allotment at the end of Quarter 2. Additionally 1,706 vouchers were paid in February totaling \$655,016.45.</p> <p>The number of paper vouchers submitted and paid decreased in January to 26, totaling 16,940.00, and in February to 8, totaling \$3,427.92.</p> <p>Combined, there were 2,667 electronic and paper vouchers paid in January, totaling \$992,671.76, and 1,714 electronic and paper vouchers paid in February, totaling \$658,444.38.</p>	

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<p>Operations Report (continued)</p>	<p>The average amount per voucher has risen slightly from \$369.46 in December, to \$372.21 in January, to \$384.16 in February. Fiscal year to date, vouchers paid average \$386.94 per voucher.</p> <p>Based on the Month 1 and Month 2 submissions in Quarter 3, we anticipate that the vouchers submitted in this quarter will total nearly \$2,500,000. This is less than the Q1 voucher submissions of \$2,730,360, but greater than the \$2,388,528 submitted in Q2.</p> <p>Included in the Operations Reports, you will also find a new Fund Accounting Report for the MCILS Conference Account. This account was set up by means of a Financial Order prepared last December and signed by former Governor Baldacci. This account will be funded solely by registration fees paid by attendees at MCILS trainings and used only to pay costs associated with the trainings. Any balance in the account carries forward one fiscal year before the funds lapse to the general fund.</p> <p>As Deputy Director Carey will discuss in his training update, the number of participants at our first minimum standards trainings was much greater than originally anticipated – we had over 150 attorneys attend each day of the two-day training. The higher than anticipated turnout resulted in our collected revenue for registration fees being greater than the original allotment in the conference account. Although we received and deposited over \$15,000 in registration fees into the conference account, we are unable to pay out the full amount of funds because our allotment is only \$12,500. I will discuss in the budget memo what steps we took with the Bureau of Budget office to rectify the problem and to have the Q4 allotments increased as well to adequately reflect anticipated revenue through the end of the fiscal year.</p>	
<p>Budget Report</p>	<p>John presented the Budget update.</p> <p>As you know in January, we prepared a budget projection for the remainder of Fiscal Year 2011 in response to the proposed \$98,840 cut to the MCILS All Other account in supplemental budget. The January projections showed a budget shortfall that would have led to the Commission only being able to pay vouchers submitted through May 26 in Q4, resulting in a carry-over of \$864,616 from Q4 of FY11 to Q1 of FY12.</p>	

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Budget Report (continued)	<p>In response to these projections, Ron and I both testified in front of the Joint Standing Committees on Appropriation and Judiciary against the proposed reduction, and advocated for an additional amount of \$400,000 in the supplemental budget to keep the Commission on its current voucher pay schedule of 14 days. At the supplemental budget work session with the Judiciary Committee, the Committee voted to table the discussion on the MCILS budget until representatives of the Commission and Governor’s Office met to discuss the underfunding. We met with the Governor’s Office, and subsequently the Governor’s Office recommended elimination of the reduction of \$98,840 from the supplemental budget and also recommended an increase of \$200,000 in the MCILS All Other account. This recommendation was approved by the Judiciary Committee and the Appropriations Committee, and subsequently signed into law by the Governor. The additional \$200,000 was transferred into the MCILS All Other account by Financial Order on February 15, 2011. Despite this infusion of funds, voucher submissions for January and February, if indicative of actual submissions for the rest of the fiscal year, show that our budget will continue to fall short by increasing amounts over the final two quarters of this fiscal year. Recalculated projections based in part on submissions for January and February show that we will end this fiscal year with a shortfall of \$994,616.</p> <p>Ken questioned if the shortfall stemmed from the \$700,000 in carry over vouchers that were passed on to MCILS by the Judiciary. John stated that it accounted for some but not the entire projected shortfall.</p> <p>After lengthy discussions with the Governor’s Office on the ongoing underfunding of the MCILS All Other account, the Governor’s Biennial Budget proposed additional baseline budget funding in the MCILS All Other account both years; an additional \$300,000 over the FY11 baseline budget in FY12, and an additional \$400,000 over the FY11 baseline budget in FY13.</p> <p>The Revenue Account allotment remains the same; however the collections for that account are falling much shorter than allotted - a projected \$300,000 per year as opposed to \$506,497. As a reminder, the Revenue Account allotment is not a guarantee of those funds - rather, it is an appropriation of the amount up to which MCILS can collect and spend. The funds in the Revenue Account represent fees collected for partial indigency.</p>	

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Budget Report (continued)	<p>After analyzing our January and February 2011 operations expenses and the proposed biennial budget, we prepared new projections for the MCILS All Other and Revenue Accounts. These new projections show that at the funding level proposed in the Governor’s biennial budget, the shortfall accumulated in Fiscal Year 2011 will continue to grow in Fiscal Years 2012 and 2013 to staggering numbers.</p> <p>I do want to note that these projections are based on only 2 full quarters of data and 8 months of operation. These projections could change dramatically if there is a dip or increase in case filings. As time goes by, we will constantly update these projections to reflect actual expenses. That being said, at this time we feel we have conservatively run these projections, flat funding all costs over the course of the biennial budget.</p> <p><b>As proposed, in FY12:</b></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">FY12 All Other Baseline Budget:</td> <td style="text-align: right;">\$ 9,658,836</td> </tr> <tr> <td>FY12 Projected Revenue Collections:</td> <td style="text-align: right;">\$ 300,000</td> </tr> <tr> <td></td> <td style="text-align: right;">-----</td> </tr> <tr> <td></td> <td style="text-align: right;">\$ 9,958,836</td> </tr> <tr> <td> </td> <td></td> </tr> <tr> <td>Projected Carry-Over Vouchers from FY11:</td> <td style="text-align: right;">\$ (994,616)</td> </tr> <tr> <td>FY11 Projected Voucher Submissions:</td> <td style="text-align: right;">\$(10,000,000)</td> </tr> <tr> <td>FY11 Somerset County Contract:</td> <td style="text-align: right;">\$ (247,500)</td> </tr> <tr> <td>FY11 Projected Non-Counsel ILS:</td> <td style="text-align: right;">\$ (400,000)</td> </tr> <tr> <td>FY11 Projected Operating Expenses:</td> <td style="text-align: right;">\$ (128,000)</td> </tr> <tr> <td></td> <td style="text-align: right;">-----</td> </tr> <tr> <td></td> <td style="text-align: right;">\$ (11,770,116)</td> </tr> </table> <p>The shortfall between baseline budget and projected revenue and the projected costs if \$1,811,280. If these projection hold true, this would lead to the Commission’s funding running out in the first month of FY12, Q4 (April). The Commission would be forced to stop paying vouchers for well over 60 days until FY13.</p>	FY12 All Other Baseline Budget:	\$ 9,658,836	FY12 Projected Revenue Collections:	\$ 300,000		-----		\$ 9,958,836	 		Projected Carry-Over Vouchers from FY11:	\$ (994,616)	FY11 Projected Voucher Submissions:	\$(10,000,000)	FY11 Somerset County Contract:	\$ (247,500)	FY11 Projected Non-Counsel ILS:	\$ (400,000)	FY11 Projected Operating Expenses:	\$ (128,000)		-----		\$ (11,770,116)	
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Budget Report (continued)	<p><b>Then in FY13:</b></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">FY13 All Other Baseline Budget:</td> <td style="text-align: right;">\$ 9,758,836</td> </tr> <tr> <td>FY12 Projected Revenue Collections:</td> <td style="text-align: right;">\$ 300,000</td> </tr> <tr> <td></td> <td style="text-align: right;">-----</td> </tr> <tr> <td></td> <td style="text-align: right;">\$ 10,058,836</td> </tr> <tr> <td> </td> <td></td> </tr> <tr> <td>Projected Carry-Over Vouchers from FY12:</td> <td style="text-align: right;">\$ (1,811,280)</td> </tr> <tr> <td>FY11 Projected Voucher Submissions:</td> <td style="text-align: right;">\$(10,000,000)</td> </tr> <tr> <td>FY11 Somerset County Contract:</td> <td style="text-align: right;">\$ (247,500)</td> </tr> <tr> <td>FY11 Projected Non-Counsel ILS:</td> <td style="text-align: right;">\$ (400,000)</td> </tr> <tr> <td>FY11 Projected Operating Expenses:</td> <td style="text-align: right;">\$ (128,000)</td> </tr> <tr> <td></td> <td style="text-align: right;">-----</td> </tr> <tr> <td></td> <td style="text-align: right;">\$ (12,586,780)</td> </tr> </table> <p>The projected shortfall in FY13 is \$2,527,944. At that amount, vouchers submitted in FY13, Q3 would be paid, but the Commission would not be able to pay any counsel vouchers submitted in Q4, and would fall short on its non-ILS obligations as well.</p> <p>These projections are supported on the enclosed spreadsheets titled “MCILS – Proposed Biennial Budget Projections.” We have also prepared and enclosed another projection spreadsheet titled “MCILS – Proposed Biennial Budget Needed to Maintain MCILS Payment Schedules.” As you will see on the second spreadsheet, we project that in order to maintain our current payment schedules through the next biennium, we will need an estimated \$11,045,000 baseline All Other budget in FY12 and an estimated \$10,500,000 baseline All Other budget in FY13. The baseline budget amount in FY12 is greater than in FY13 based on the need to cover the shortfall carried from FY11 into FY12.</p> <p>Jennifer restated that the projections are only based on a small sample.</p> <p>In reference to the projected shortfalls, John outlined that all vouchers are reviewed line by line. We are paying attorneys only for work that is appropriate. There has been no raise in the hourly fee since 1999 and we are not asking more of every attorney by requiring trainings and performance standards.</p>	FY13 All Other Baseline Budget:	\$ 9,758,836	FY12 Projected Revenue Collections:	\$ 300,000		-----		\$ 10,058,836	 		Projected Carry-Over Vouchers from FY12:	\$ (1,811,280)	FY11 Projected Voucher Submissions:	\$(10,000,000)	FY11 Somerset County Contract:	\$ (247,500)	FY11 Projected Non-Counsel ILS:	\$ (400,000)	FY11 Projected Operating Expenses:	\$ (128,000)		-----		\$ (12,586,780)	
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<p>Budget Report (continued)</p>	<p>John outlined two ways of approaching the projected shortfalls. We could testify with the updated numbers at the biennial budget hearings and request additional funding or deal with the issue by front loading allotments in the first three quarters of the next fiscal years by our work plan. We would run out in the fourth quarter and be unfunded. Then go to the hearings on supplement budgets with more data and requesting more funding. One issue could be the timeliness of any supplement funding.</p> <p>Ken asked if there was any reason we could not do both? John stated that this year's budget is done but we could ask for more for 2012 and 2013. Kim stated that in her opinion we have to do both. Use the current data to give our best conservative projection saying we need more money and then if they do not give it to us we can go back at the supplemental with that testimony in hand. Sally stated that she agreed.</p> <p>Ron stated we need to make the point that 9.9 million was not enough and people that. Judges told Ron we would have to either cut vouchers or run out of money. The rate has not gone up since 1999 and in 1999 dollars it is equal to \$37. The town of Wells pays contract plow guys \$55 an hour and we are paying attorneys \$50 an hour. We can not control the number of cases, the felonization of crimes, the DA's or the Courts. These are constitutionally mandated and it is incumbent on us to go back and say we need more.</p> <p>John stated then staff has our marching orders. Public hearing is a week from today. Ron was not sure he could make it but would do written testimony. Kim stated she could not make it but a commissioner should be there with John.</p> <p>In December, on recommendation from staff, the Commission voted to rescind the \$42,000 Financial Order that moved funds from the All Other account to Personal Services. Staff has not yet completed this task, and after further consultation with the Budget Office, current Personal Services projections are showing a smaller than originally projected PS budget surplus. I have attached the new PS budget projections provided by our budget officer, which do not account for per diem payments to Commissioners. Based on this information, we now recommend that we do not rescind that Financial Order. Rather, we prepare a new Financial Order transferring \$30,000 from PS to AO. The Governor's Office has stated that they will approve this transfer.</p>	<p>Kim made a motion not to rescind the financial order. Sally seconded it. All present voted in favor.</p> <p>Sally made a motion to issue a new financial order for \$30,000 as outlined by John. Ken seconded. All present voted in favor.</p>

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Budget Report (continued)	<p>The new MCILS conference account created in January to receive payments for training registration fees was originally allotted \$25,000 spread equally over Q3 and Q4. Our first conference, however, grew from an anticipated 100 participants to over 150 participants each day.</p> <p>Due to the larger than anticipated registration, the amount of collected revenue for registration fees was greater than the \$12,500 Q3 allotment. In order to pay the full invoice to the vendor where the training took place, we were required to prepare a Financial Order to have the Q3 allotments increased. We filed the FO with the budget office at the end of February and requested a waiver of the 30-day wait requirement so that we can get the vendor paid in a timely manner. At the same time, we also requested an increase in our Q4 allotment to have ample allotment for our upcoming three-day training in May and the other smaller trainings to be held in the coming months.</p> <p>This morning we received word from the Budget Office that the Appropriations Committee approved the waiver of the 30-day wait and the Financial Order has been signed. We do not yet have a copy of the signed FO to provide in the packet. The Budget Office confirmed that they will be extracting the funding into our conference account by the end of the day.</p>	
Regulatory & Legislative Update	<p>John presented the Regulatory and Legislative Update.</p> <p>At 1:00 P.M. today the Joint Standing Committee on Judiciary will hold a public hearing of the following MCILS measures:</p> <p>LD 593 (HP 451), Resolve, Regarding Legislative Review of Chapter 3: Eligibility Requirements for Specialized Case Types;</p> <p>LD 602 (SP 182), An Act to Clarify the Method of Appealing Decisions of the Executive Director of the Maine Commission on Indigent Legal Services; and</p> <p>LD 609 (SP 189), An Act to Declare Certain Records of the Maine Commission on Indigent Legal Services Confidential.</p>	

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<p>Regulatory &amp; Legislative Update (continued)</p>	<p>The Commission will be testifying in favor of both LD 593 and LD 609 as written.</p> <p>In respect to LD 602, after submission of the bill the Commission received comment from our Assistant Attorney General, Carrie Carney, indicating that the language in the bill pertaining to appeals being heard by less than a full quorum of the Commission may be a violation of the law governing public records and proceedings under 1 M.R.S.A. § 401 et seq. In response to the comments from the Office of the Attorney General, the staff has drafted, and attached for your review, an amendment to the bill that I recommend we submit during public hearing.</p> <p>The proposed amendment removes the language allowing appeals under certain sections to be heard by a panel of 2 members, thereby making all appeals allowed under the statute to be heard by the full Commission. As re-written, any decision of the Executive Director, other than those specifically spelled out in the statute, will continue to constitute final agency action, appealable to the courts.</p> <p>Regardless of the outcome of the bill, the Commission must create an appeals procedure. The staff will be working on draft language for a rule for your review and consideration at the April Commission meeting.</p> <p>Ron stated that a while back we had discussed having 2 commissioners hear the appeal then their decision is final agency action. Kim stated it would be more efficient if we could. Ken and Sally agreed. Ron questioned if a meeting of 2 commissioners would be public. Jennifer pointed out that if the 2 commissioners disagreed then there would have to be a re-hearing. Ron suggested having one commissioner hear the case, make a decision then have the full commission sign off on it. Sally questioned if we can do that? Carrie (AAG) stated it was her first time hearing it. Ken asked about the difference between the bill and the rule for appeals. John stated the bill says what can be appealed and the rule will say how.</p> <p>There was a brief discussion of a bill filed by the DA's LD 791, which would require that plans for new court facilities consider the space needs of district attorneys and attorneys providing indigent legal services. This bill would also prohibit rent being</p>	

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Regulatory & Legislative Update (continued)	<p>imposed on district attorneys and attorneys providing indigent legal services. John handed our copies of the bill. Kim stated that we have enough to worry about. Ron stated if the DA gets space why shouldn't MCILS. We should look into it more. Kim suggested that we take to the Judiciary about it.</p>	
Training Update	<p>Steve updated the Commissioners on training.</p> <p>The first round of minimum standards training has taken place. On February 3, 2011 we presented a full day Criminal Defense Minimum Standards Training at the Hilton Garden Inn in Auburn. The training consisted of eight sessions covering various topics all presented by experienced practitioners from throughout the state (14 of the 16 counties were represented). The training provided 7.0 hours of CLE credit and was attended by over 180 attorneys. On February 4, 2011 we presented a half day Juvenile Defense Training and a half day Protective Custody Minimum Standards Training. Each training consisted of five sessions covering various topics and again presented by experienced practitioners from throughout the state. Each of the half day sessions provided 3.75 hours of CLE credit and was attend by 150 attorneys.</p> <p>The Maine State Bar Association is presenting a training titled <i>Mental Health Law: Involuntary Hospitalization and Community Commitment</i>. It is a webcast program that will take place on March 10, 2011. MCILS has elected to approve this training as meeting the requirements for the Minimum Standards Training for the area of Involuntary Commitment.</p> <p>MCILS is in the process of planning a two hour training that would meet the requirements for Minimum Standards training for the area of Emancipation. We are working on having the training in the Portland area at the beginning of April. The presenters will be experienced attorneys who regularly handle emancipation cases in the southern Maine counties.</p> <p>MCILS is also is in the process of planning three-day long training in Bangor in the week of May 16<sup>th</sup> to the 20<sup>th</sup> (final dates yet to be determined) covering the Minimum Standards Training requirements in the areas of Criminal Defense, Juvenile Defense, Protective Custody Matters and Emancipation. These trainings will be broken into</p>	

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Training Update (continued)	<p>one full-day training on Criminal Defense; one full-day training on Juvenile Defense; one three-quarter-day training on Protective Custody matters and one quarter-day training on Emancipation. Note that due to feedback from our first set of trainings the time for the Juvenile Defense and Protective Custody trainings have been expanded. To offset the cost, we will be charging a registration fee to attorneys who take the trainings of: \$100 for each the full-day training sessions; \$75 for the three-quarter day session and \$25 for the quarter day training session, with the total registration fee for the full three-day program will be \$300. We anticipate approximately 100 participants will attend each day.</p> <p>Additionally, we are planning on conducting our own a half-day training session in June to cover the Minimum Standards Training requirements for Civil Commitment. Location, date, time, and fees are yet to be determined.</p>	
Review of Draft Practice Standards	<p>Ron stated that we only had a ½ hour left to the meeting and he wants to save time for public comment but that he wants to get these standards moving. Ken asked what the process of drafting looked like. Ron stated that we were going to do it as a subcommittee but that due to rule making procedures it would be too difficult and time consuming. Ron stated for the criminal standards he used the NAID and borrowed from other states. Steve stated that he did the same using stuff from the NJDC and others states to draft the juvenile standards and that Professor Christopher Northrop did the same with the child protective standards. Ron stated that these standards will be used to evaluate attorneys in the future. John agreed stating they will give us some objective criteria to use. Ron suggested that any corrections or suggestions be sent to Steve prior to the next meeting.</p>	
Public Comment	<p>Robert Ruffner (MIDC) - He shared with the commission some charts showing the growth of the budget when the courts had it. He also stated that it is important to remember that MCILS did not get the money you were going to get to start with.</p> <p>David Mitchell (MACDL President) – He stated that he is hearing good feedback about the training MCILS put on. He continues to be hopeful that MCILS will allow MACDL to assist in trainings for specialized panels like OUI since they will be doing an OUI training that their upcoming annual meeting. Steve stated that he has been in</p>	

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	<p>touch with MACDL’s CLE Committee Chair about working together on that process. David continued to state that MACDL will be at the legislature to support the requests for additional funding. He had not comment on the legislative matters. He did state that they do not see much of an issue with the Standards since they are nuts and bolts type of things and it is good to have them in writing. He did questioned how they would be policed. What procedural process will be used? Only if there is a formal complaint? Ron stated if there is a complaint or maybe done randomly. David stated random checks would not be received well by the attorneys. Ron stated that the bark is not hiring attorneys or responsible for the work they do.</p>	
<p>Adjournment of Meeting</p>	<p>Next meeting April 12, 2011 at 9:30 am.</p>	<p>Ken moved to adjourn. Ron seconded. All present voted in favor. Approved.</p>

