

**MCILS**

**April 12, 2016  
Commissioner's Meeting  
Packet**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**APRIL 12, 2016**

**COMMISSION MEETING**

**19 UNION STREET, ROOM 111B, AUGUSTA**

**AGENDA**

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- 1) Approval of March 8, 2016 Commission Meeting Minutes
- 2) Operations Reports Review
- 3) Legislative Update
- 4) Final Adoption of Amendment to Chapter 3: Eligibility Requirements for Specialized Case Types
- 5) Final Adoption of Amendment to Chapter 301: Fee Schedule and Administrative Procedures for Payment of Commission Assigned Counsel
- 6) Appellate Contracts
- 7) Payment for Requests for Certiorari to the United States Supreme Court
- 8) Training Update
- 9) Public Comment
- 10) Set Date, Time and Location of Next Regular Meeting of the Commission
- 11) Executive Session, if needed (Closed to Public)

**(1.)**  
**March 8, 2016**  
**Commission Meeting**  
**Minutes**

**Maine Commission on Indigent Legal Services – Commissioners Meeting  
March 8, 2016**

**Minutes**

**Commissioners Present:** Steven Carey, Marvin Glazier, William Logan, Kenneth Spirer  
**MCILS Staff Present:** John Pelletier, Ellie Maciag

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Approval of the January 12, 2016 Commission Meeting Minutes	No discussion of meeting minutes.	Commissioner Glazier moved for approval, Commissioner Spirer seconded. All present in favor. Approved.
Operations Reports Review	<p>Due to the cancellation of the March Commission meeting, Director Pelletier presented both the January and February 2016 Operations Reports.</p> <p><u>January 2016 Operations Report:</u> 2,218 new cases were opened in the DefenderData system in January. This was a 205 case increase from December. The number of submitted vouchers in January was 2,636, an increase of 101 vouchers from December, totaling \$1,384,836, an increase of \$25,000 from December. In January, the Commission paid 1,500 vouchers totaling \$786,747, a decrease of 2,004 vouchers and \$1,025,000 from December. Director Pelletier explained that the payment totals were unusually low because staff used surplus funds to pay all vouchers submitted in December and did not have the usual two week carry-over of vouchers. The average price per voucher in January was \$524.28, up \$5.70 per voucher over December. Appeal and Post-Conviction Review cases had the highest average vouchers in January. There were 8 vouchers exceeding \$5,000 paid in January. The monthly transfer from the Judicial Branch for counsel fees for January, which reflects December’s collections, totaled \$47,755, up approximately \$6,000 from the previous month. Collection totals continue to run below the projected monthly totals for the year. <u>February 2016 Operations Report:</u> 2,239 new cases were opened in the DefenderData system in February. This was a 21 case increase from</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>January. The number of submitted vouchers in February was 2,601, a decrease of 35 vouchers from January, totaling \$1,345,070, a decrease of \$40,000 from January. In February, the Commission paid 2,367 vouchers totaling \$1,245,502, an increase of 867 vouchers and \$459,000 from January. Director Pelletier explained that this increase was due to January being an unusually low month for voucher payments. Appeal and Petition for Release-NCR cases had the highest average vouchers in February. The average price per voucher in February was \$526.19, up \$1.91 per voucher over January. There were 10 vouchers exceeding \$5,000 paid in February. The monthly transfer from the Judicial Branch for counsel fees for February, which reflects January's collections, totaled \$43,023, down approximately \$4,000 from the previous month. Collection totals continue to run below the projected monthly totals for the year. Director Pelletier believes the downturn in collection totals stems from the Judicial Branch policy change regarding application of bail. After satisfying restitution, bail use to be applied to counsel fees; now it is being applied to fines and then to counsel fees.</p> <p>Director Pelletier updated the Commissioners on his testimony at the Appropriations Committee hearing about our supplemental budget needs. After a brief discussion about the Commission's historical budget trends, the Commissioners asked staff to prepare charts for next month's meeting to demonstrate a 13 month trend for average voucher amount, number of vouchers submitted, and collection totals.</p>	
Discussion of LD 1433	<p>Director Pelletier updated the Commissioners on his and Chair Carey's testimony at the January 14<sup>th</sup> public hearing on LD 1433. Only one person spoke in favor of the bill, while many others, including many rostered attorneys, spoke against the bill. The vote was 12-1 ought not to pass and the Judiciary Committee has not yet reported out the bill. Director Pelletier also gave an update on the status of the fee rule, which the Governor vetoed. The House overrode the veto, but the Senate has yet to act. Director Pelletier confirmed with the Attorney General's Office that since the Legislature did not act to disapprove the rule, it goes into effect notwithstanding the Governor's attempted veto.</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>Chair Carey expressed his desire to see Commission staff, and to some extent non-staff proxies, be on more committees. Chair Carey indicated that once the fate of LD 1433 is resolved, he and Director Pelletier should request a meeting with the Chief Justice and the Commission should consider changes to the rosters.</p>	
<p>Appellate Contracts</p>	<p>A brief discussion ensued about a potential appellate contract. Chair Carey indicated that a contract would be a good way to improve the quality of appellate work and would control cost. Commissioner Glazier noted that he would like attorneys to have the ability to handle their own appeal even if the Commission moves forward with an appellate contract. The Commissioners asked staff to put together a draft request for proposals to discuss at next month's meeting.</p>	
<p>Public Comment</p>	<p><u>Robert J. Ruffner, Esq.</u>: Attorney Ruffner stated that he drafted an amended version of LD 1433, including three new staff positions, but it was not provided to committee members during the work session.</p> <p>Attorney Ruffner stated that the goal for any appellate contract should be to improve quality. He noted that a contract could require rigorous standards in order to be rostered and would allow for a more select group of attorneys who follow trends in the law. He also noted that a contract could allow for meetings between attorneys on how to handle appeals and identify issues to raise, as well as provide training to trial counsel on preservation and trending issues. Attorney Ruffner believes that the Commission would see an increase in appeal cases if an appellate panel was created.</p> <p>Attorney Ruffner suggested the Commission evaluate the composition of the attorney rosters. He noted that attorneys have to expand their geographic scope in order to stay busy. He believes that by cutting down the size of the rosters it will create efficiencies.</p>	
<p>Executive Session</p>	<p>none</p>	

<b>Agenda Item</b>	<b>Discussion</b>	<b>Outcome/Action Item/Responsible Party</b>
Adjournment of meeting	The Commission voted to adjourn with the next meeting to be on April 12, 2016 at 9:30 a.m.	Commissioner Logan moved to adjourn. Commissioner Spierer seconded. All present at the meeting in favor.

**(2.)**  
**Operations Reports**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**TO:** MCILS COMMISSIONERS  
**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR  
**SUBJECT:** MARCH 2016 OPERATIONS REPORTS  
**DATE:** APRIL 4, 2016

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Attached you will find the March, 2016 Operations Reports for your review and our discussion at the upcoming Commission meeting on April 12, 2016. A summary of the operations reports follows:

- 2,379 new cases were opened in the DefenderData system in March. This was a 140 case increase over February.
- The number of vouchers submitted electronically in March was 2,981, an increase of 380 vouchers over February, totaling \$1,663,650.86, an increase of \$318,000 over February. In March, we paid 4,119 electronic vouchers totaling \$2,177,223.73, representing an increase of 1,752 vouchers and \$932,000 compared to February.
- There was one paper vouchers submitted and paid in March.
- The average price per voucher in March was \$528.58, up \$2.39 per voucher over February.
- Appeal and Post-Conviction Review cases had the highest average vouchers in March. There were 11 vouchers exceeding \$5,000 paid in March. Four vouchers involved homicide charges: a 6 day murder trial and a three day bench trial on a manslaughter charge that both resulted in guilty verdicts; an attempted murder/gross sexual assault case that resolved on the eve of trial with a pleas to lesser charges; and an appeal from a murder conviction. Three vouchers involved sexual assault cases that had previously resulted in mistrials: a re-trial of a gross sexual assault charge where the defendant was found not guilty; an unlawful sexual assault case that resolved by plea agreement on the eve of a re-trial; and an unlawful sexual conduct trial that resulted in guilty of some counts and not guilty on others. Two vouchers involved aggravated assault charges: one a four day trial in which counsel was “co-counsel” with a defendant representing himself who was found guilty; and one involving a defendant with a substantial record facing significant exposure to prison time, but that resulted in a plea to lesser charges and a sentence substantially below the State’s original position. One voucher involved a plea on the eve of trial in an aggravated trafficking case that involved DNA evidence and litigated issues regarding voir dire. The last voucher involved a multi-stage bill in a child protection case.

In our All Other Account, the total expenses for the month of March were \$2,149,816.40. Of the amount, under \$10,000 was devoted to the Commission's operating expenses. Our unspent allotment for the third quarter totaled \$248,808.65, bringing the total unspent allotment for the fiscal year to \$741,836.48.

In the Personal Services Account, we had \$55,530.51 in expenses for the month of March.

In the Revenue Account, we received both the scheduled February transfer of January's collections totaling \$43,023.74 and the March transfer of February's collections in the amount of \$106,691.66, the highest monthly revenue transfer in the Commission's history. From the revenue account, we spent \$193,857 on voucher payments through the DefenderData system.

In our Conference Account, we collected registrations for an upcoming training in Bangor in April and paid a fee for the CLE credit application for that training. The account balance totals \$11,572.34.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Case Type

3/31/2016

DefenderData Case Type	Mar-16						Fiscal Year 2016			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
Appeal	9	16	\$ 27,951.46	22	\$ 33,491.26	\$ 1,522.33	94	182	\$ 245,965.15	\$ 1,351.46
Child Protection Petition	187	362	\$ 243,371.53	540	\$ 349,571.68	\$ 647.35	1,376	3,060	\$ 1,919,925.43	\$ 627.43
Drug Court	2	3	\$ 1,146.00	5	\$ 2,616.00	\$ 523.20	4	52	\$ 29,902.50	\$ 575.05
Emancipation	6	7	\$ 2,677.44	9	\$ 2,929.44	\$ 325.49	65	74	\$ 21,839.84	\$ 295.13
Felony	581	778	\$ 654,430.19	1,014	\$ 799,991.52	\$ 788.95	4,992	5,524	\$ 4,363,118.85	\$ 789.85
Involuntary Civil Commitment	80	62	\$ 14,790.39	102	\$ 24,432.39	\$ 239.53	628	582	\$ 139,471.95	\$ 239.64
Juvenile	92	106	\$ 47,673.11	154	\$ 71,791.74	\$ 466.18	776	836	\$ 354,252.58	\$ 423.75
Lawyer of the Day - Custody	249	241	\$ 54,869.97	331	\$ 76,275.65	\$ 230.44	2,021	1,896	\$ 438,235.27	\$ 231.14
Lawyer of the Day - Juvenile	42	38	\$ 7,566.46	48	\$ 8,877.46	\$ 184.95	374	354	\$ 72,866.66	\$ 205.84
Lawyer of the Day - Walk-in	134	127	\$ 32,746.38	165	\$ 41,800.24	\$ 253.33	1,064	963	\$ 239,354.41	\$ 248.55
Misdemeanor	734	853	\$ 360,537.95	1,136	\$ 457,773.21	\$ 402.97	6,211	6,239	\$ 2,441,621.57	\$ 391.35
Petition, Modified Release Treatment	0	0		3	\$ 2,037.50	\$ 679.17	4	40	\$ 15,044.93	\$ 376.12
Petition, Release or Discharge	0	0		0			1	3	\$ 10,339.63	\$ 3,446.54
Petition, Termination of Parental Rights	16	40	\$ 39,813.90	67	\$ 57,096.29	\$ 852.18	145	461	\$ 346,315.14	\$ 751.23
Post Conviction Review	8	10	\$ 18,200.75	14	\$ 19,056.35	\$ 1,361.17	63	59	\$ 92,930.66	\$ 1,575.10
Probation Violation	199	195	\$ 84,650.43	276	\$ 117,904.21	\$ 427.19	1,537	1,528	\$ 609,777.09	\$ 399.07
Represent Witness on 5th Amendment	7	4	\$ 651.84	4	\$ 651.84	\$ 162.96	27	19	\$ 3,874.78	\$ 203.94
Review of Child Protection Order	31	135	\$ 71,388.90	222	\$ 109,268.79	\$ 492.20	284	1,426	\$ 702,174.18	\$ 492.41
Revocation of Administrative Release	2	4	\$ 1,184.16	7	\$ 1,658.16	\$ 236.88	27	20	\$ 5,271.66	\$ 263.58
<b>DefenderData Sub-Total</b>	<b>2,379</b>	<b>2,981</b>	<b>\$ 1,663,650.86</b>	<b>4,119</b>	<b>\$ 2,177,223.73</b>	<b>\$ 528.58</b>	<b>19,693</b>	<b>23,318</b>	<b>\$ 12,052,282.28</b>	<b>\$ 516.87</b>
<b>Paper Voucher Sub-Total</b>	<b>1</b>	<b>1</b>	<b>\$ 2,250.00</b>	<b>1</b>	<b>\$ 2,250.00</b>	<b>\$ 2,250.00</b>	<b>6</b>	<b>6</b>	<b>\$ 8,767.78</b>	<b>\$ 1,461.30</b>
<b>TOTAL</b>	<b>2,380</b>	<b>2,982</b>	<b>\$1,665,900.86</b>	<b>4,120</b>	<b>\$2,179,473.73</b>	<b>\$ 529.00</b>	<b>19,699</b>	<b>23,324</b>	<b>\$ 12,061,050.06</b>	<b>\$ 517.11</b>

MAINE COMMISSION ON INDIGENT LEGAL SERVICES  
 FY16 FUND ACCOUNTING  
 AS OF 03/31/2016

Account 010 95F Z112 01 (All Other)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY16 Total
FY15 Professional Services Allotment		\$ 4,428,945.00		\$ 4,364,292.00		\$ 4,515,272.00		\$ 4,873,093.00	
FY15 General Operations Allotment		\$ 34,560.00		\$ 34,560.00		\$ 34,560.00		\$ 34,560.00	
Financial Order Adjustment		\$ -		\$ 8,633.00		\$ 8,633.00		\$ 8,634.00	
Financial Order Adjustment		\$ -		\$ -		\$ -		\$ -	
<b>Total Budget Allotments</b>		<b>\$ 4,463,505.00</b>		<b>\$ 4,407,485.00</b>		<b>\$ 4,558,465.00</b>		<b>\$ 4,916,287.00</b>	<b>\$ 18,345,742.00</b>
Total Expenses	1	\$ (1,034,674.33)	4	\$ (1,209,786.02)	7	\$ (896,072.76)	10	\$ -	\$ (3,140,533.11)
	2	\$ (1,384,090.42)	5	\$ (1,175,979.15)	8	\$ (1,333,137.69)	11	\$ -	\$ (3,893,207.26)
	3	\$ (1,609,871.30)	6	\$ (1,821,435.96)	9	\$ (2,149,816.40)	12	\$ -	\$ (5,581,123.66)
Encumbrances (Somerset PDP & Justice Works)		\$ (213,187.50)		\$ 71,062.50		\$ 71,062.50		\$ -	\$ (71,062.50)
Encumbrances (WestLaw)						\$ (1,692.00)		\$ -	\$ (1,692.00)
<b>TOTAL REMAINING</b>		<b>\$ 221,681.45</b>		<b>\$ 271,346.37</b>		<b>\$ 248,808.65</b>		<b>\$ 4,916,287.00</b>	<b>\$ 5,658,123.47</b>

Q3 Month 9 (as of 03/31/16)	
<b>INDIGENT LEGAL SERVICES</b>	
Counsel Payments	\$ (1,985,616.73)
Somerset County	\$ (23,337.50)
Subpoena Witness Fees	\$ -
Private Investigators	\$ (29,044.43)
Mental Health Expert	\$ (35,661.44)
Transcripts	\$ (39,909.62)
Other Expert	\$ (22,393.60)
Air fare-out of state witness	\$ -
Process Servers	\$ (861.08)
Interpreters	\$ (1,358.10)
Misc Prof Fees & Serv	\$ (1,758.00)
<b>SUB-TOTAL ILS</b>	<b>\$ (2,139,940.50)</b>
<b>OPERATING EXPENSES</b>	
Service Center	\$ -
DefenderData	\$ (4,879.75)
Parking Permit Fee-Auburn	\$ -
Mileage/Tolls/Parking	\$ (1,342.25)
Mailing/Postage/Freight	\$ (670.88)
Bar Dues - John & Ellie	\$ -
Annual Report Print Cost	\$ -
Office Supplies/Equip.	\$ (278.57)
Cellular Phones	\$ (145.97)
Subscriptions	\$ -
Office Equipment Rental	\$ (125.64)
Notary Fees	\$ -
OIT/TELCO	\$ (2,432.84)
<b>SUB-TOTAL OE</b>	<b>\$ (9,875.90)</b>
<b>TOTAL</b>	<b>\$ (2,149,816.40)</b>

INDIGENT LEGAL SERVICES	
Q3 Allotment	\$ 4,558,465.00
Q3 Encumbrances for Somerset city PDP & Justice Works contracts	\$ 71,062.50
Q3 WestLaw Contract 12 month encumbrance	\$ (1,692.00)
Q3 Expenses as of 03/31/16	\$ (4,379,026.85)
Remaining Q3 Allotment as of 03/31/16	\$ 248,808.65

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**  
**FY16 FUND ACCOUNTING**  
As of 03/31/16

Account 014 95F Z112 01 (Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY16 Total
<b>Total Budget Allotments</b>		\$ 180,124.00		\$ 180,124.00		\$ 180,124.00		\$ 180,125.00	\$ 720,497.00
Financial Order Adjustment	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Financial Order Adjustment	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Budget Order Adjustment	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
Financial Order Adjustment	3	\$ 14,106.00	4	\$ 15,000.00	9	\$ 15,000.00	12	\$ 15,000.00	\$ 59,106.00
<b>Total Budget Allotments</b>		\$ 194,230.00		\$ 195,124.00		\$ 195,124.00		\$ 195,125.00	\$ 779,603.00
Cash Carryover from Prior Quarter		\$ 59,106.00		\$ 16,758.55		\$ 0.44		\$ -	
Collected Revenue from JB	1	\$ 54,101.64	4	\$ 46,384.74	7	\$ 47,754.68	10	\$ -	
Promissory Note Payments		\$ 50.00		\$ -		\$ -		\$ -	
Collected Revenue from JB	2	\$ 44,316.49	5	\$ 48,960.09	8		11	\$ -	
Promissory Note Payments		\$ 50.00		\$ 200.00		\$ -		\$ -	
Collected Revenue from JB (late transfer)		\$ -		\$ -	9	\$ 43,023.74		\$ -	
Collected Revenue from JB	3	\$ 43,704.16	6	\$ 41,462.08	9	\$ 106,691.66	12	\$ -	
Promissory Note Payments		\$ 50.00		\$ 50.00		\$ -		\$ -	
<b>TOTAL CASH PLUS REVENUE COLLECTED</b>		\$ 201,378.29		\$ 153,815.46		\$ 197,470.52		\$ -	\$ 476,799.28
Counsel Payments	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Other Expenses		\$ (90.50)		\$ -		\$ -		\$ -	
Counsel Payments	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Other Expenses		\$ (1.93)						\$ -	
Counsel Payments	3	\$ (178,086.96)	6	\$ (149,790.00)	9	\$ (193,857.00)	12	\$ -	
Other Expenses	**	\$ (3,802.16)		\$ (3,198.02)				\$ -	
<b>REMAINING ALLOTMENT</b>		\$ 12,248.45		\$ 42,135.98		\$ 1,267.00		\$ 195,125.00	\$ 250,776.43
Overpayment Reimbursements	1	\$ (2,394.19)	4	\$ (295.00)	7	\$ -	10	\$ -	
	2	\$ (244.00)	5	\$ (532.00)	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ (146.50)	12	\$ -	
<b>REMAINING CASH Year to Date</b>		\$ 16,758.55		\$ 0.44		\$ 3,467.02		\$ -	

<b>Q3 Month 9 (as of 03/31/16)</b>	
<b>DEFENDER DATA COUNSEL PAYMENTS</b>	
	\$ (193,857.00)
<b>SUB-TOTAL ILS</b>	\$ (193,857.00)
<b>OVERPAYMENT REIMBURSEMENTS</b>	\$ (146.50)
Paper Voucher	\$ -
Somerset County CDs	\$ -
Private Investigators	\$ -
Mental Health Expert	\$ -
Transcripts	\$ -
Other Expert	\$ -
StaCap Expense	\$ -
<b>SUB-TOTAL OE</b>	\$ (146.50)
<b>TOTAL</b>	\$ (194,003.50)

\*\* StaCap pulled in October but charged against Q1 expenses

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**  
**FY16 FUND ACCOUNTING**  
AS OF 03/31/2016

Account 010 95F Z112 01 (Personal Services)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY16 Total
<b>FY16 Allotment</b>		\$ 197,643.00		\$ 197,641.00		\$ 174,658.00		\$ 181,575.00	\$ -
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustments				\$ -		\$ -		\$ -	
<b>Total Budget Allotments</b>		<b>\$ 197,643.00</b>		<b>\$ 197,641.00</b>		<b>\$ 174,658.00</b>		<b>\$ 181,575.00</b>	<b>\$ 751,517.00</b>
Total Expenses	1	\$ (73,500.45)	4	\$ (51,930.26)	7	\$ (52,614.99)	10	\$ -	
	2	\$ (49,758.60)	5	\$ (52,356.41)	8	\$ (53,480.85)	11	\$ -	
	3	\$ (48,847.23)	6	\$ (74,897.31)	9	\$ (55,530.51)	12	\$ -	
<b>TOTAL REMAINING</b>		<b>\$ 25,536.72</b>		<b>\$ 18,457.02</b>		<b>\$ 13,031.65</b>		<b>\$ 181,575.00</b>	<b>\$ 238,600.39</b>

<b>Q3 Month 9 (as of 03/31/16)</b>	
Per Diem Payments	\$ (220.00)
Salary	\$ (24,626.56)
Vacation Pay	\$ (1,543.36)
Holiday Pay	\$ (1,549.04)
Sick Pay	\$ (1,271.08)
Employee Hlth Svs/Workers Comp	\$ (74.00)
Health Insurance	\$ (11,430.44)
Dental Insurance	\$ (249.48)
Employer Retiree Health	\$ (3,196.08)
Employer Retirement	\$ (2,254.40)
Employer Group Life	\$ (230.64)
Employer Medicare	\$ (424.75)
Retiree Unfunded Liability	\$ (5,457.92)
Retro Pymt	\$ -
Perm Part Time Full Ben	\$ (3,002.76)
<b>TOTAL</b>	<b>\$ (55,530.51)</b>

MAINE COMMISSION ON INDIGENT LEGAL SERVICES  
 FY16 FUND ACCOUNTING  
 As of 03/31/16

Account 014 95F Z112 02 (Conference)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY16 Total
<b>Total Budget Allotments</b>		\$ 10,385.00	\$	15,000.00	\$	15,000.00	\$	20,000.00	\$ 60,385.00
Financial Order Adjustment	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Financial Order Adjustment	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Financial Order Adjustment	3	\$ 1,196.00	6	\$ 3,000.00	9	\$ 3,000.00	12	\$ 2,000.00	\$ 9,196.00
<b>Total Budget Allotments</b>		\$ 11,581.00	\$	18,000.00	\$	18,000.00	\$	22,000.00	\$ 69,581.00
Cash Carryover from Prior Quarter		\$ 12,580.84	\$	11,962.77	\$	11,122.60	\$	-	
Collected Revenue	1	\$ -	4	\$ 1,400.00	7	\$ -	10	\$ -	
Collected Revenue	2	\$ 22.50	5	\$ 625.00	8	\$ -	11	\$ -	
Collected Revenue	3	\$ -	6	\$ 1,275.00	9	\$ 550.00	12	\$ -	
<b>TOTAL CASH PLUS REVENUE COLLECTED</b>		\$ 12,603.34	\$	15,262.77	\$	11,672.60	\$	-	\$ 3,872.50
Total Expenses	1	\$ (99.00)	4	\$ -	7	\$ (65.26)	10	\$ -	
	2	\$ (530.29)	5	\$ (1,060.79)	8	\$ -	11	\$ -	
	3	\$ (11.28)	6	\$ (3,079.38)	9	\$ (35.00)	12	\$ -	
Encumbrances		\$ (3,385.00)	\$	2,325.00					\$ (1,060.00)
<b>REMAINING ALLOTMENT</b>		\$ 7,555.43	\$	16,184.83	\$	17,965.00	\$	22,000.00	\$ 63,705.26
<b>REMAINING CASH Year to Date</b>		\$ 11,962.77	\$	11,122.60	\$	11,572.34	\$	-	

Q3 Month 9 (as of 03/31/16)	
Training Manuals Printing	\$ -
Training Refreshments/Meals	\$ -
Media Northeast (encumbered Q1)	\$ -
Refund(s) for non-attendance	\$ -
Office Supplies	\$ -
CLE App to the Bar	\$ (35.00)
State Cap Expense	\$ -
<b>TOTAL</b>	\$ (35.00)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Court

3/31/2016

Court	Mar-16						Fiscal Year 2016			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
ALFSC	44	89	\$ 80,140.50	131	\$ 114,697.94	\$ 875.56	605	1,345	\$ 1,042,406.58	\$ 775.02
AUBSC	18	78	\$ 49,030.61	108	\$ 65,389.10	\$ 605.45	253	696	\$ 495,495.98	\$ 711.92
AUGDC	64	62	\$ 33,298.10	75	\$ 37,859.02	\$ 504.79	398	599	\$ 294,243.54	\$ 491.22
AUGSC	25	58	\$ 28,313.90	90	\$ 41,417.94	\$ 460.20	389	639	\$ 473,854.35	\$ 741.56
BANDC	60	84	\$ 30,279.42	145	\$ 49,636.02	\$ 342.32	503	840	\$ 299,813.83	\$ 356.92
BANSC	1	3	\$ 3,593.40	4	\$ 3,833.40	\$ 958.35	10	18	\$ 11,243.40	\$ 624.63
BATSC	1	2	\$ 240.00	4	\$ 1,257.24	\$ 314.31	13	14	\$ 5,754.65	\$ 411.05
BELDC	9	19	\$ 8,630.13	31	\$ 13,979.58	\$ 450.95	59	222	\$ 110,935.24	\$ 499.71
BELSC	3	4	\$ 7,627.74	7	\$ 12,842.79	\$ 1,834.68	23	99	\$ 71,997.11	\$ 727.24
BIDDC	68	82	\$ 39,016.37	120	\$ 55,690.25	\$ 464.09	549	769	\$ 394,948.20	\$ 513.59
BRIDC	13	18	\$ 10,927.06	22	\$ 15,732.47	\$ 715.11	100	167	\$ 95,665.96	\$ 572.85
CALDC	6	10	\$ 6,135.58	9	\$ 5,384.38	\$ 598.26	42	99	\$ 60,195.18	\$ 608.03
CARDC	13	24	\$ 14,765.35	35	\$ 21,615.59	\$ 617.59	118	212	\$ 115,178.90	\$ 543.30
CARSC	14	25	\$ 24,963.61	33	\$ 29,524.00	\$ 894.67	123	256	\$ 169,530.65	\$ 662.23
DOVDC	4	15	\$ 5,580.00	21	\$ 6,957.58	\$ 331.31	23	139	\$ 41,993.69	\$ 302.11
DOVSC	0	1	\$ 1,345.10	1	\$ 1,345.10	\$ 1,345.10	3	3	\$ 2,497.10	\$ 832.37
ELLDC	18	36	\$ 24,271.00	47	\$ 30,577.36	\$ 650.58	98	315	\$ 167,585.59	\$ 532.02
ELLSC	0	3	\$ 1,725.00	3	\$ 1,725.00	\$ 575.00	10	40	\$ 12,041.43	\$ 301.04
FARDC	6	13	\$ 13,968.40	21	\$ 31,549.12	\$ 1,502.34	71	115	\$ 98,933.90	\$ 860.29
FARSC	2	2	\$ 283.80	3	\$ 1,078.30	\$ 359.43	10	11	\$ 5,381.02	\$ 489.18
FORDC	3	6	\$ 5,173.30	9	\$ 7,093.30	\$ 788.14	55	89	\$ 45,229.25	\$ 508.19
HOUDC	42	49	\$ 20,634.42	64	\$ 26,649.02	\$ 416.39	344	444	\$ 174,670.91	\$ 393.40
HOUSC	6	10	\$ 9,489.45	13	\$ 12,686.29	\$ 975.87	55	112	\$ 93,729.97	\$ 836.87
LEWDC	84	118	\$ 54,613.74	185	\$ 78,835.20	\$ 426.14	777	1,197	\$ 530,641.01	\$ 443.31
LINDC	12	13	\$ 7,537.80	21	\$ 10,416.82	\$ 496.04	100	144	\$ 85,555.86	\$ 594.14
MACDC	13	9	\$ 4,770.80	14	\$ 6,098.00	\$ 435.57	85	148	\$ 59,745.95	\$ 403.69
MACSC	5	7	\$ 11,528.98	8	\$ 11,762.98	\$ 1,470.37	40	82	\$ 46,099.96	\$ 562.19
MADDC	6	5	\$ 2,113.28	7	\$ 2,941.28	\$ 420.18	38	36	\$ 11,108.42	\$ 308.57
MILDC	2	2	\$ 315.00	3	\$ 519.00	\$ 173.00	23	23	\$ 6,699.16	\$ 291.27
NEWDC	19	26	\$ 15,511.70	41	\$ 21,042.51	\$ 513.23	157	207	\$ 83,549.20	\$ 403.62
PORDC	69	130	\$ 64,996.51	178	\$ 93,917.64	\$ 527.63	691	1,069	\$ 549,854.30	\$ 514.36
PORSC	3	5	\$ 2,852.26	8	\$ 3,477.90	\$ 434.74	32	28	\$ 24,070.57	\$ 859.66
PREDC	14	43	\$ 24,066.06	62	\$ 31,018.24	\$ 500.29	191	397	\$ 154,109.52	\$ 388.19
ROCD	17	34	\$ 10,010.94	41	\$ 11,100.54	\$ 270.74	194	251	\$ 97,731.56	\$ 389.37
ROSC	9	6	\$ 2,382.80	13	\$ 9,641.96	\$ 741.69	85	123	\$ 104,187.97	\$ 847.06
RUMDC	6	13	\$ 8,135.80	25	\$ 13,500.66	\$ 540.03	96	139	\$ 68,658.56	\$ 493.95
SKODC	23	43	\$ 24,437.76	74	\$ 39,133.08	\$ 528.83	128	360	\$ 187,836.23	\$ 521.77
SKOSC	0	1	\$ 3,905.50	1	\$ 3,905.50	\$ 3,905.50	3	4	\$ 9,353.20	\$ 2,338.30
SOUDC	3	14	\$ 6,894.45	12	\$ 5,183.45	\$ 431.95	120	175	\$ 72,454.73	\$ 414.03
SOUSC	11	33	\$ 30,605.01	29	\$ 23,340.54	\$ 804.85	116	251	\$ 149,265.86	\$ 594.68
SPRDC	69	68	\$ 39,900.29	106	\$ 57,238.95	\$ 539.99	506	621	\$ 318,372.71	\$ 512.68
Law Ct	6	12	\$ 16,545.21	16	\$ 19,183.78	\$ 1,198.99	72	123	\$ 164,806.88	\$ 1,339.89
YORCD	167	162	\$ 92,127.18	199	\$ 113,211.93	\$ 568.90	1,198	631	\$ 322,187.88	\$ 510.60
AROCD	59	43	\$ 23,386.93	54	\$ 27,197.05	\$ 503.65	314	162	\$ 68,882.03	\$ 425.20
ANDCD	119	93	\$ 47,138.27	137	\$ 65,752.58	\$ 479.95	893	423	\$ 174,776.26	\$ 413.18
KENCD	157	162	\$ 69,828.98	211	\$ 83,839.58	\$ 397.34	1,174	883	\$ 318,630.21	\$ 360.85
PENCD	239	270	\$ 143,484.22	373	\$ 191,742.62	\$ 514.06	1,970	2,080	\$ 941,118.65	\$ 452.46
SAGCD	36	48	\$ 24,173.08	65	\$ 31,562.76	\$ 485.58	314	303	\$ 202,892.61	\$ 669.61
WALCD	23	15	\$ 8,124.40	26	\$ 16,905.16	\$ 650.20	271	200	\$ 76,991.14	\$ 384.96
PISCD	20	19	\$ 4,977.00	27	\$ 6,441.00	\$ 238.56	120	129	\$ 38,769.38	\$ 300.54
HANCD	65	84	\$ 55,324.77	116	\$ 71,047.03	\$ 612.47	516	503	\$ 231,253.41	\$ 459.75
FRACD	72	75	\$ 26,328.00	83	\$ 26,797.75	\$ 322.86	463	490	\$ 179,527.35	\$ 366.38
WASCD	41	43	\$ 10,171.02	64	\$ 16,881.22	\$ 263.77	346	251	\$ 63,216.27	\$ 251.86
CUMCD	366	390	\$ 234,995.84	514	\$ 275,672.85	\$ 536.33	2,885	2,733	\$ 1,524,369.21	\$ 557.76
KNOCD	40	43	\$ 18,825.84	86	\$ 33,479.54	\$ 389.30	462	348	\$ 155,643.67	\$ 447.25
SOMCD	1	6	\$ 27,764.96	6	\$ 27,764.96	\$ 4,627.49	7	12	\$ 31,010.26	\$ 2,584.19
OXFCD	72	65	\$ 28,228.28	69	\$ 27,123.26	\$ 393.09	464	224	\$ 72,684.23	\$ 324.48
LINCD	38	58	\$ 34,150.55	71	\$ 40,625.94	\$ 572.20	340	277	\$ 136,402.25	\$ 492.43
WATDC	20	37	\$ 19,797.39	57	\$ 30,948.07	\$ 542.95	181	373	\$ 177,835.88	\$ 476.77
WESDC	21	47	\$ 16,709.93	66	\$ 25,740.54	\$ 390.01	211	304	\$ 122,560.29	\$ 403.16
WISDC	3	15	\$ 9,391.52	21	\$ 14,151.40	\$ 673.88	81	141	\$ 70,623.69	\$ 500.88
WISSC	2	8	\$ 8,484.45	9	\$ 8,667.95	\$ 963.11	37	97	\$ 79,119.08	\$ 815.66
YORDC	27	23	\$ 9,682.12	25	\$ 10,891.72	\$ 435.67	138	133	\$ 56,360.45	\$ 423.76
<b>TOTAL</b>	<b>2,379</b>	<b>2,981</b>	<b>\$ 1,663,650.86</b>	<b>4,119</b>	<b>\$ 2,177,223.73</b>	<b>\$ 528.58</b>	<b>19,693</b>	<b>23,318</b>	<b>\$ 12,052,282.28</b>	<b>\$ 516.87</b>

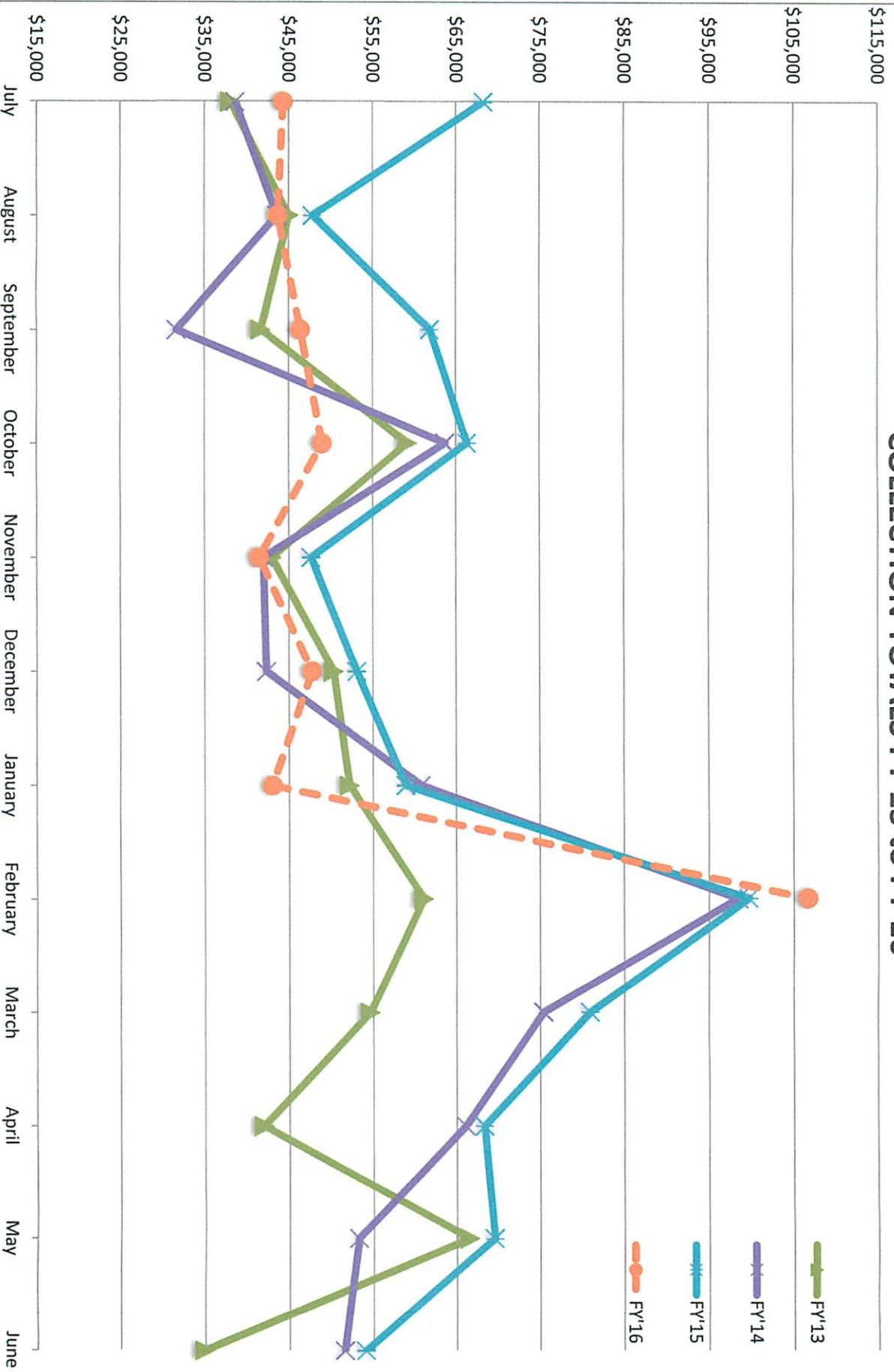
**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

**Number of Attorneys Rostered by Court**

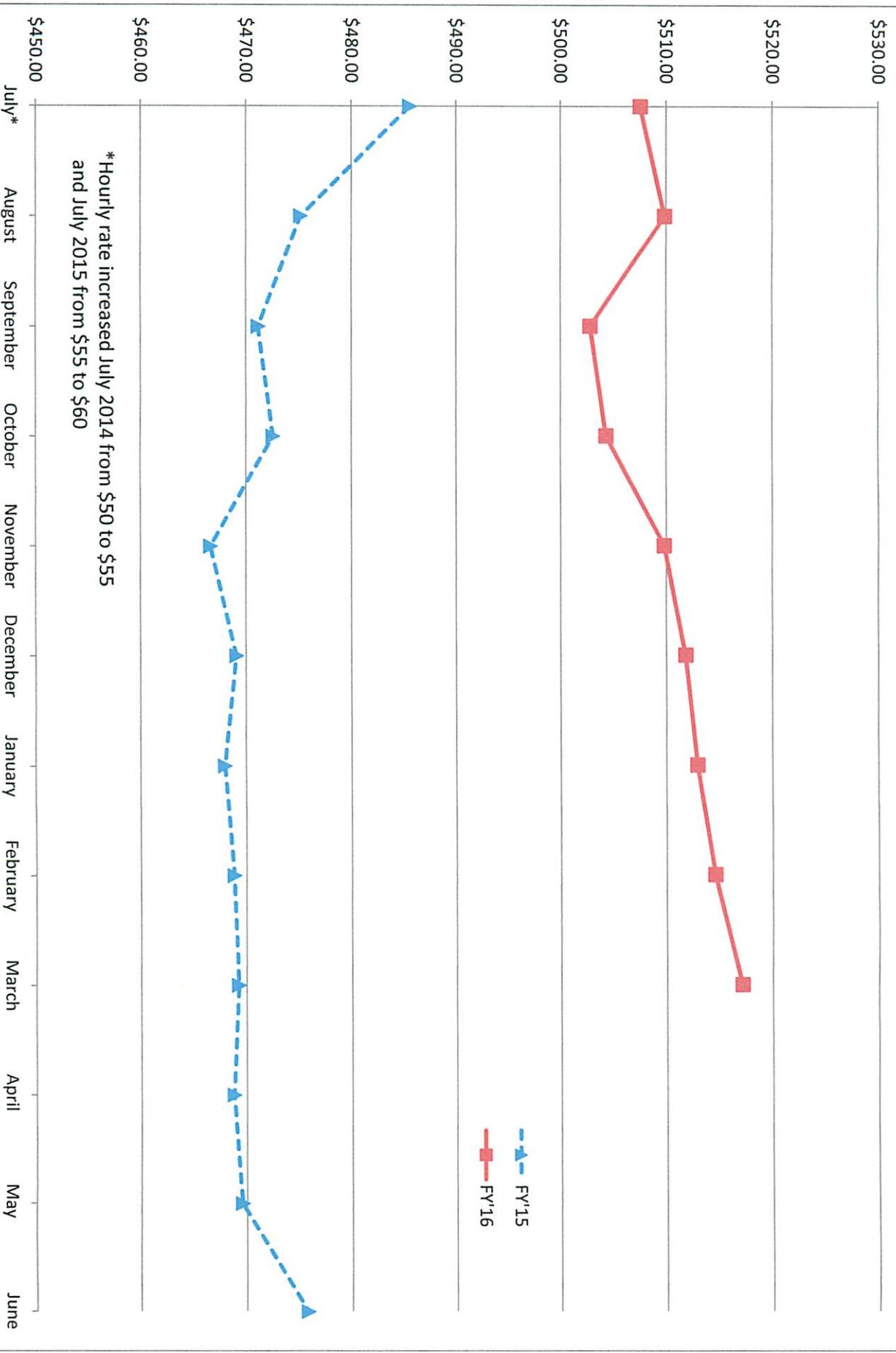
**03/31/2016**

<b>Court</b>	<b>Rostered Attorneys</b>	<b>Court</b>	<b>Rostered Attorneys</b>
Augusta District Court	101	South Paris District Court	59
Bangor District Court	56	Springvale District Court	118
Belfast District Court	53	Unified Criminal Docket Alfred	110
Biddeford District Court	133	Unified Criminal Docket Aroostook	23
Bridgton District Court	96	Unified Criminal Docket Auburn	102
Calais District Court	11	Unified Criminal Docket Augusta	95
Caribou District Court	19	Unified Criminal Docket Bangor	55
Dover-Foxcroft District Court	29	Unified Criminal Docket Bath	93
Ellsworth District Court	46	Unified Criminal Docket Belfast	46
Farmington District Court	26	Unified Criminal Docket Dover Foxcroft	24
Fort Kent District Court	11	Unified Criminal Docket Ellsworth	40
Houlton District Court	16	Unified Criminal Docket Farmington	27
Lewiston District Court	127	Unified Criminal Docket Machias	17
Lincoln District Court	31	Unified Criminal Docket Portland	146
Machias District Court	18	Unified Criminal Docket Rockland	40
Madawaska District Court	12	Unified Criminal Docket Skowhegan	20
Millinocket District Court	22	Unified Criminal docket Soputh Paris	98
Newport District Court	41	Unified Criminal Docket Wiscasset	69
Portland District Court	159	Waterville District Court	56
Presque Isle District Court	15	West Bath District Court	111
Rockland District Court	48	Wiscasset District Court	77
Rumford District Court	23	York District Court	106
Skowhegan District Court	29		

# COLLECTION TOTALS FY'13 to FY'16

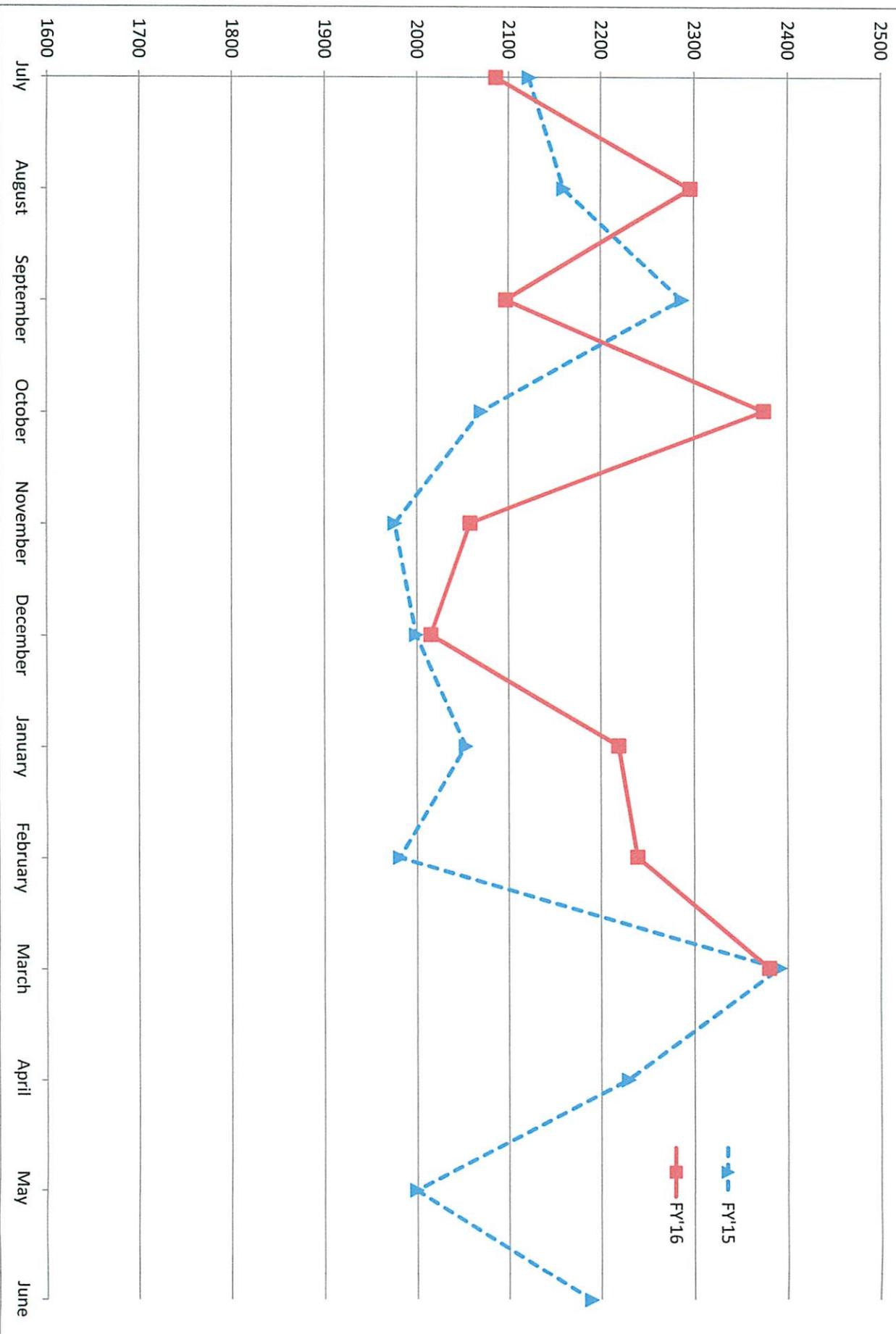


## Average Voucher Price

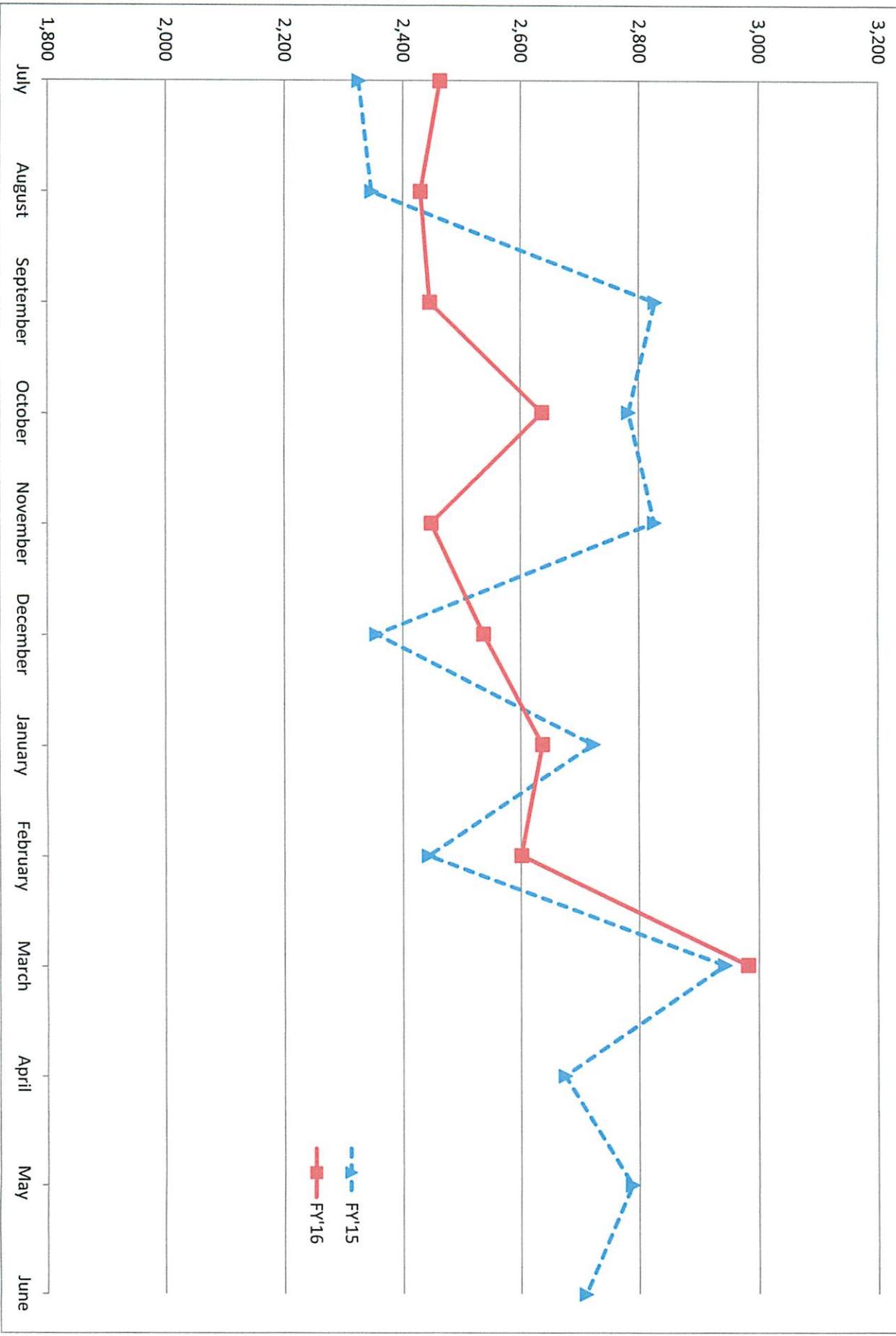


\*Hourly rate increased July 2014 from \$50 to \$55 and July 2015 from \$55 to \$60

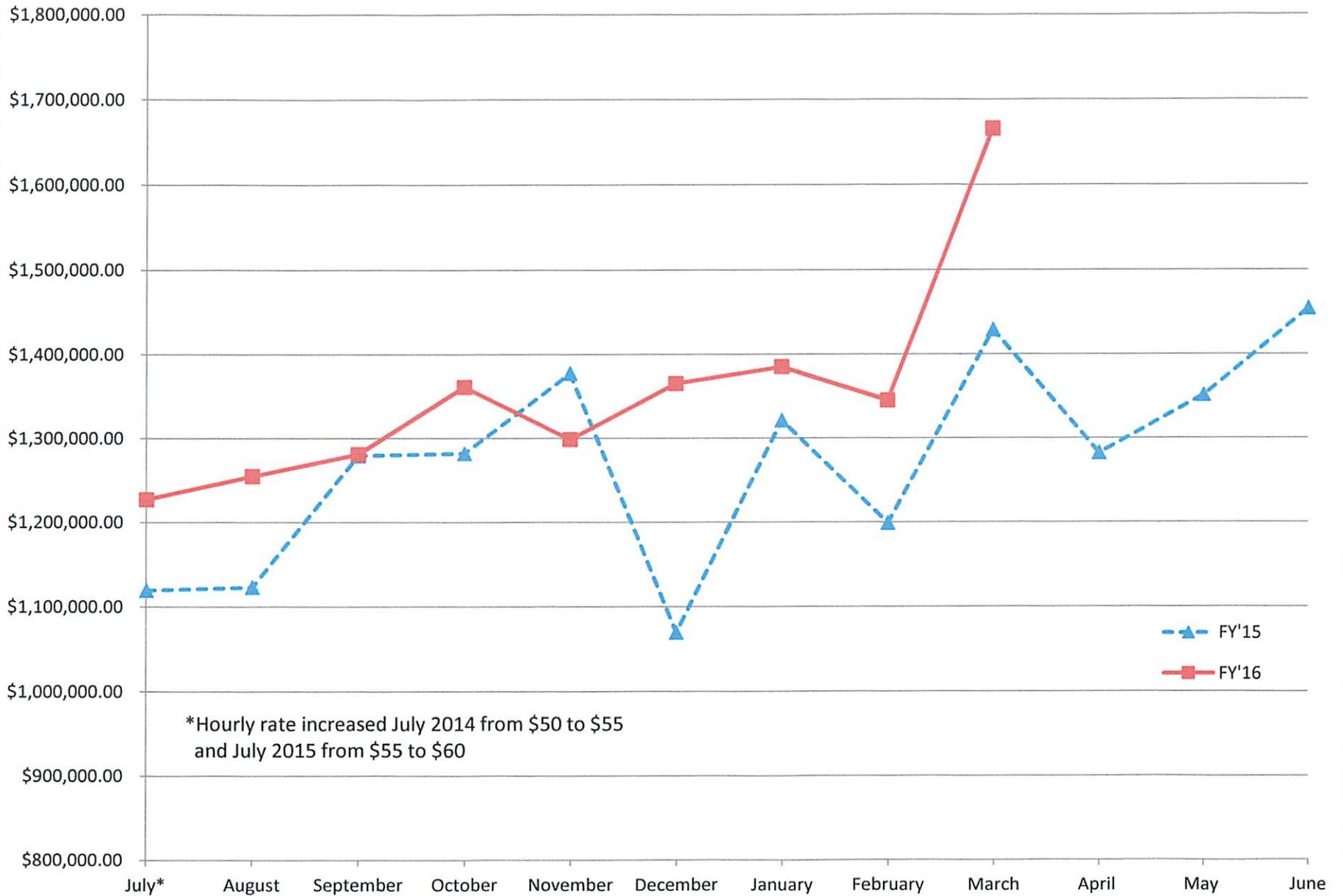
# NEW CASES



# Submitted Vouchers



# Submitted Voucher Amount



**(3.)  
Legislative Update**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**TO:** MCILS COMMISSIONERS  
**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR  
**CC:** ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR  
**SUBJECT:** LEGISLATIVE SUMMARY  
**DATE:** APRIL 5, 2016

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LD 1433:

On March 15, 2016, the Senate voted unanimously to accept the majority Ought Not to Pass report of the Judiciary Committee. On March 16, 2016, the House also voted unanimously to accept the majority Ought Not to Pass Report, thus killing the bill.

LD 778:

This resolve to approve final adoption of Chapter 3: Eligibility Requirements for Specialized Case Types was vetoed by the Governor. On March 28, 2016, the House voted to override the Governor's veto by a vote of 109 to 33. On March 29, 2016, the Senate voted to override the veto by a vote of 28 to 4. The resolve being an emergency measure, it became law immediately. By statute, the Commission now has 60 days from March 29<sup>th</sup> to finally approve this major substantive rule amendment.

LD 146:

This resolve to approve final adoption of Chapter 301: Fee Schedule and Administrative Procedures for Payment of Commission Assigned Counsel was vetoed by the Governor. On February 23, 2016, the House voted to override the Governor's veto by a vote of 136 to 9. On March 29, 2016, the Senate voted to override the veto by a vote of 34 to 0. The resolve being an emergency measure, it became law immediately. By statute, the Commission now has 60 days from March 29<sup>th</sup> to finally approve this major substantive rule amendment.

Budget:

During the last week of March, the Appropriations Committee considered a number of spending proposals to be included in what would be the equivalent of a supplemental budget. The Commission's request to close a \$3 million gap in its FY'17 budget received consideration among a number of other proposals. On April 4, 2016, the Committee voted to pass only a small number of the proposals that had been discussed the previous week, and some of the items passed were for significantly reduced amounts. Funds for the Commission's FY'17 budget were not included in the measure that passed. The proponents of the measure characterized the included items as needs that simply could not await action by the next Legislature. The pared down spending package passed by

a committee vote of 12-4, and its fate in the full Legislature remains uncertain.

Accordingly, the Commission will have to seek supplemental funding from the Administration in a supplemental budget proposal at the end of the summer and from the Legislature next January. As it stands, additional funding will be necessary to maintain timely payments to attorneys during the fourth quarter of FY'17.

**(4.)**  
**Final Adoption of**  
**Amendment to Chapter 3**

STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND AND SIXTEEN

—  
H.P. 531 - L.D. 778

**Resolve, Regarding Legislative Review of Portions of Chapter 3: Eligibility Requirements for Specialized Case Types, a Late-filed Major Substantive Rule of the Maine Commission on Indigent Legal Services**

**Emergency preamble.** Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

**Whereas,** the above-named major substantive rule has been submitted to the Legislature outside the legislative rule acceptance period; and

**Whereas,** immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

**Sec. 1. Adoption. Resolved:** That final adoption of portions of Chapter 3: Eligibility Requirements for Specialized Case Types, a provisionally adopted major substantive rule of the Maine Commission on Indigent Legal Services that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A outside the legislative rule acceptance period, is authorized.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.

Chapter 3: ELIGIBILITY REQUIREMENTS FOR SPECIALIZED CASE TYPES

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**Summary:** Chapter 2 of the Commission’s Rules sets out the minimum eligibility requirements to be rostered to accept appointments from the Maine Commission on Indigent Legal Services (“MCILS”). The Rules in this Chapter are promulgated to establish the eligibility requirements to be rostered on specialty panels for specific types of cases.

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**SECTION 1. Definitions.** For purposes of this Chapter, the following terms are defined as follows:

1. Contested Hearing. “Contested Hearing” means a hearing at which a contested issue is submitted to the court for resolution after evidence is taken or witnesses are presented.
2. Domestic Violence. “Domestic Violence” means:
  - A. Offenses denominated as Domestic Violence under 17-A M.R.S.A. §§ 207-A, 209-A, 210-B, 210-C, and 211-A;
  - B. Any class D or E offense alleged to have been committed against a family or household member or dating partner;
  - C. The class D offense of stalking under 17-A M.R.S.A. § 210-A;
  - D. Violation of a protection order under 17-A M.R.S.A. § 506-B.
  - E. “Domestic Violence” includes crimes involving substantially similar conduct in another jurisdiction.
  - F. “Domestic Violence” also includes Criminal Conspiracy under 17-A M.R.S.A. § 151, Criminal Attempt under 17-A M.R.S.A. § 152, and Criminal Solicitation under 17-A M.R.S.A. § 153 to commit any of the offenses listed above.
3. Serious Violent Felony. “Serious Violent Felony” means:

- A. An offense under 17-A M.R.S.A. §§ 152-A (Aggravated Attempted Murder), 208 (Aggravated Assault), 208-B (Elevated Aggravated Assault), 208-C (Elevated Aggravated Assault on a Pregnant Person), 301 (Kidnapping), 401(1)(B)(1), (2), or (3) (Burglary with a Firearm, Burglary with Intent to Inflict Bodily Harm, and Burglary with a Dangerous Weapon), 651 (Robbery), 802 (Arson), 803-A (Causing a Catastrophe), 1105-A (Aggravated Trafficking of Scheduled Drugs), 1105-B (Aggravated Trafficking of Counterfeit Drugs), and 1105-C (Aggravated Furnishing of Scheduled Drugs).
  - B. “Serious Violent Felony” includes crimes involving substantially similar conduct in another jurisdiction.
  - C. “Serious Violent Felony” also includes Criminal Conspiracy under 17-A M.R.S.A. § 151, Criminal Attempt under 17-A M.R.S.A. § 152, and Criminal Solicitation under 17-A M.R.S.A. § 153 to commit any of the offenses listed above.
4. Sex Offense. “Sex Offense” means:
- A. An offense under, 17-A M.R.S.A. §§ 251-259-A (Sexual Assaults), §§ 281-285 (Sexual Exploitation of Minors), § 556 (Incest), § 511(1)(D) (Violation of Privacy), § 852 (Aggravated Sex Trafficking), and § 855 (Patronizing Prostitution of Minor or Person with Mental Disability).
  - B. “Sex Offense” includes crimes involving substantially similar conduct in another jurisdiction.
  - C. “Sex Offense” also includes Criminal Conspiracy under 17-A M.R.S.A. § 151, Criminal Attempt under 17-A M.R.S.A. § 152, and Criminal Solicitation under 17-A M.R.S.A. § 153 to commit any of the offenses listed above.
5. Specialized Case Types. “Specialized Case Types” means those cases that are complex in nature due to the allegations against the person as well as the severity of the consequences if a conviction occurs. They include the following case types:
- A. Homicide, including OUI manslaughter
  - B. Sex offenses
  - C. Serious violent felonies
  - D. Operating under the influence
  - E. Domestic violence
  - F. Juvenile defense
  - G. Protective custody matters

H. Repealed.

## **SECTION 2. Powers and Duties of the Executive Director**

1. The Executive Director, or his or her designee, shall develop an application process for an attorney seeking appointment(s) in Specialized Case Types to demonstrate the minimum qualifications necessary to be placed on Specialized Case Type Rosters. An applicant for a Specialized Case Type Roster must present additional information beyond the minimum requirements of this Chapter if requested by the Executive Director, or his or her designee.
2. The Executive Director, or his or her designee, shall have the sole discretion to make the determination if an attorney is qualified to be placed on a Specialized Case Type Roster. In addition, the Executive Director, or his or her designee, shall have the sole discretion, to grant or deny a waiver pursuant to, and in accordance with, Section 4.
3. The Executive Director, or his or her designee, may, in his or her sole discretion, remove an attorney from a Specialized Case Type Roster at any time if the attorney is not meeting the minimum qualifications and standards as determined by the Executive Director, or his or her designee.
4. This subsection does not exempt an attorney from satisfying the requirements of this Chapter at any time thereafter or limit the authority of the Executive Director, or his or her designee, to remove an attorney from any Specialized Case Type Roster at any time.

## **SECTION 3. Minimum Eligibility Requirements for Specialized Case Types.**

1. **Homicide**. In order to be rostered for homicide cases an attorney must:
  - A. Have at least five years of criminal law practice experience;
  - B. Have tried before a judge or jury as first chair at least five felony cases within the last ten years, at least two of which were serious violent felony, homicide, or Class C or higher sex offense cases, AND at least two of which were jury trials;
  - C. Have tried as first chair a homicide case in the last fifteen years, OR have tried as second chair at least one homicide case with an experienced homicide defense

attorney within the past five years;

- D. Demonstrate a knowledge and familiarity with the evidentiary issues relevant to homicide cases, including but not limited to forensic and scientific issues relating to DNA testing and fingerprint analysis, mental health issues, and eyewitness identification;
- E. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with homicide; and
- F. Have submitted to the Commission three letters of reference from attorneys with whom the applicant does not practice, that assert that the applicant is qualified to represent individuals charged with homicide, including OUI manslaughter. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.

2. **Sex Offenses.** In order to be rostered for sex offense cases an attorney must:

- A. Have at least three years of criminal law practice experience;
- B. Have tried before a judge or jury as first chair at least three felony cases in the last ten years, at least two of which were jury trials;
- C. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a sex offense; and
- D. If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting that the applicant is qualified to represent individuals charged with a sex offense. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.
- E. Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.

3. **Serious Violent Felonies.** In order to be rostered for serious violent felony cases an attorney must:

- A. Have at least two years of criminal law practice experience;
- B. Have tried as first chair at least four criminal or civil cases in the last ten years, at least two of which were jury trials and at least two of which were criminal trials;
- C. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a serious violent felony; and

- D. If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting that the applicant is qualified to represent individuals charged with a serious violent felony. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.
  - E. Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.
4. **Operating Under the Influence.** In order to be rostered for OUI cases an attorney must:
- A. Have at least one year of criminal law practice experience;
  - B. Have tried before a judge or jury as first chair at least two criminal cases, and conducted at least two contested hearings within at least the last ten years;
  - C. Have obtained in the last three years at least four hours of CLE credit on topics relevant particularly to OUI defense;
  - D. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with an OUI; and
  - E. If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting that the applicant is qualified to represent individuals charged with an OUI. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.
  - F. Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.
5. **Domestic Violence.** In order to be rostered for domestic violence cases an attorney must:
- A. Have at least one year of criminal law practice experience;
  - B. Have tried before a judge or jury as first chair at least two criminal cases and conducted at least two contested hearings within at least the last ten years;
  - C. Have obtained in the last three years at least four hours of CLE credit on topics related to domestic violence defense which included training on the collateral consequences of such convictions;
  - D. Provide a letter explaining reasons for interest in and qualifications for

representing individuals charged with a domestic violence crime; and

- E. If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting that the applicant is qualified to represent individuals charged with a domestic violence crime. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.
- F. Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.

6. **Juvenile Defense.** In order to be rostered for felony, sex offense, and bind-over juvenile defense cases an attorney must:

A. Repealed.

B. For felony cases and sex offense cases:

- 1) Have at least one year of juvenile law practice experience;
- 2) Have handled at least 10 juvenile cases to conclusion;
- 3) Have tried at least 5 contested juvenile hearings (including but not limited to: detention hearings, evidentiary hearings, adjudication hearings, and dispositional hearings);
- 4) Have attended in the last three years at least four hours of CLE credit on two or more of the following topics related to juvenile defense including training and education regarding placement options and dispositions, child development, adolescent mental health diagnosis and treatment, and the collateral consequences of juvenile adjudications;
- 5) Provide a letter explaining reasons for interest in and qualifications for representing juveniles in felony and sex offense cases; and
- 6) If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting that the applicant is qualified to represent juveniles in felony and sex offenses cases. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.
- 7) Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.
- 8) Upon notice from the State, whether formal or informal, that it may be seeking bind-over in the case, the attorney must immediately notify the

Executive Director.

- C. For Bind-over Hearings:
- 1) Have at least two years of juvenile law practice experience;
  - 2) Have handled at least 20 juvenile cases to conclusion in the past ten years;
  - 3) Have tried at least 10 contested juvenile hearings (including but not limited to: detention hearings, evidentiary hearings, adjudication hearings, and dispositional hearings in the past ten years);
  - 4) Have attended in the last three years at least eight hours of CLE credit that cover all of the following topics devoted to juvenile defense including training and education regarding placement options and dispositional alternatives, child development, adolescent mental health diagnosis and treatment, issues and case law related competency, bind-over procedures, and the collateral consequences of juvenile adjudications;
  - 5) Provide a letter explaining reasons for interest in and qualifications for representing juveniles in bind-over hearings; and
  - 6) If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting that the applicant is qualified to represent juveniles in bind-over hearings. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.
  - 7) Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.

7. **Protective Custody Matters.** In order to be rostered to represent parents in protective custody cases an attorney must:

- A. Repealed.
- B. Have conducted at least four contested hearings in civil or criminal cases within the last five years;
- C. Have attended in the last three years at least four hours of CLE credit on topics related to the representation of parents in protective custody proceedings;
- D. Provide a letter explaining reasons for interest in and qualifications for representing parents in protective custody proceedings; and
- E. If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting that the

applicant is qualified to represent parents in protective custody cases. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.

- E-1. Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.
- F. If a Petition to Terminate Parental Rights is filed and the attorney of record has not previously tried as a first or second chair a termination of parental rights hearing, or has less than 6 months of child protection experience, then the attorney of record must file a request with the MCILS for a more experienced attorney to serve as a second chair to assist the attorney of record with the termination of parental rights hearing.

**8. Repealed.**

9. **Law Court Appeals.** In order to be rostered for assignments to Law Court appeals in cases where trial counsel is not continuing on appeal, an attorney must:

- A. Have provided representation to the conclusion of six cases. “Conclusion” means:
  - 1) In criminal and juvenile cases, the entry of sentence or disposition either after plea or trial or the entry into a deferred disposition;
  - 2) In child protective cases, the issuance of a jeopardy order or an order terminating parental rights;
- B. Applicants who have provided representation in three or more appeals, including appeals to the Law Court and Rule 80B or Rule 80C appeals to the Superior Court, must submit copies of briefs that they have filed in the three appeals most closely pre-dating the date of their application for placement on the appellate roster.
- C. Applicants who have not provided representation in three or more appeals must submit copies of any briefs that they have filed in an appeal, together with copies of a sufficient number of memoranda of law submitted to any court so that the submissions total three.
- D. Submit a letter explaining the applicant’s interest in and qualifications for providing representation on appeals; including a description of the applicant’s experience with appeals, representative examples of issues raised on appeal, and a summary of the results of those appeals; and
- E. If the applicant seeks a waiver, the applicant shall submit three letters of reference

from attorneys with whom the applicant does not practice asserting that the applicant is qualified to provide representation in appeal cases. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.

- F. Letters of reference shall be submitted upon the request of the Executive Director, or his or her designee.
- G. This rule is not applicable to cases where trial counsel continues on appeal.

10. **Post-Conviction Review.** In order to be rostered for post-conviction review cases an attorney must:

- A. Have at least three years of criminal law experience;
- B. Have previously qualified to be placed on the trial roster for the case type applicable to the conviction being challenged on post-conviction review;
- C. Submit a letter explaining the applicant's interest in and qualifications for providing representation in post-conviction review cases, including a description of the applicant's criminal law experience generally and how that experience prepared the applicant to address the issues applicable to post-conviction review cases; and
- D. If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting that the applicant is qualified to provide representation in post-conviction cases. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.
- E. Letters of reference and writing samples shall also be submitted upon the request of the Executive Director, or his or her designee.

#### **SECTION 4. Waiver of Certain Eligibility Requirements**

- 1. An attorney who wishes to receive assignments for one or more of the specialized case types listed above but who does not meet both requirements of: (1) years of practice experience; and (2) trial or litigation experience, may seek a waiver of either, but not both, requirements. An attorney seeking a waiver must provide the Executive Director, or his or her designee, with written information explaining the need for a waiver and the attorney's experience and qualifications to provide representation to the indigent people whose charges or litigation matters are covered by this rule.

2. An attorney may apply for a conditional waiver if additional time is needed to meet CLE requirements.
3. The Executive Director, or his or her designee, may consider other litigation experience, total years of practice, and regional conditions and needs in granting or denying a waiver to any particular attorney.

**AUTHORITY:** 4 M.R.S.A. §§ 1804(2)(B), (2)(G), (3)(E) and (4)(D)

**EFFECTIVE DATE:**  
July 8, 2011

**AMENDED:**

**(5.)**

**Final Adoption of Amendment to  
Chapter 301**

STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND AND SIXTEEN

—  
H.P. 1002 - L.D. 1460

**Resolve, Regarding Legislative Review of Portions of Chapter 301: Fee Schedule and Administrative Procedures for Payment of Commission Assigned Counsel, a Major Substantive Rule of the Maine Commission on Indigent Legal Services**

**Emergency preamble.** Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

**Whereas,** the above-named major substantive rule has been submitted to the Legislature for review; and

**Whereas,** immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

**Sec. 1. Adoption. Resolved:** That final adoption of portions of Chapter 301: Fee Schedule and Administrative Procedures for Payment of Commission Assigned Counsel, a provisionally adopted major substantive rule of the Maine Commission on Indigent Legal Services that has been submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, is authorized.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.

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**94-649 MAINE COMMISSION ON INDIGENT LEGAL SERVICES****Chapter 301: FEE SCHEDULE AND ADMINISTRATIVE PROCEDURES FOR PAYMENT OF COMMISSION ASSIGNED COUNSEL**

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**Summary:** This Chapter establishes a fee schedule and administrative procedures for payment of Commission assigned counsel. The Chapter sets a standard hourly rate and maximum fee amounts for specific case types. The Chapter also establishes rules for the payment of mileage and other expenses that are eligible for reimbursement by the Commission. Finally, this Chapter requires that, unless an attorney has received prior authorization to do otherwise, all vouchers must be submitted using the MCILS electronic case management system.

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**SECTION 1. DEFINITIONS**

1. **Attorney.** "Attorney" means an attorney licensed to practice law in the State of Maine.
2. **MCILS or Commission.** "MCILS" or "Commission" means the Commissioners of the Maine Commission on Indigent Legal Services.
3. **Executive Director.** "Executive Director" means the Executive Director of MCILS or the Executive Director's decision making designee.

**SECTION 2. HOURLY RATE OF PAYMENT**

Effective July 1, 2015:

A rate of Sixty Dollars (\$60.00) per hour is authorized for time spent on an assigned case.

**SECTION 3. EXPENSES**

1. **Routine Office Expenses.** Routine Office expenses are considered to be included in the hourly rate. Routine office expenses, including but not limited to postage, express postage, regular telephone, cell telephone, fax, office overhead, utilities, secretarial services, routine copying (under 100 pages), local phone calls, parking (except as stated below), and office supplies, etc., will not be reimbursed.
2. **Itemized Non-Routine Expenses.** Itemized non-routine expenses, such as discovery from the State or other agency, long distance calls (only if billed for long distance calls by your phone carrier), collect phone calls, extensive copying (over 100 pages), printing/copying/ binding of legal appeal brief(s), relevant in-state mileage (as outlined below), tolls (as outlined below), and fees paid to third parties. Necessary parking fees associated with multi-day trials and hearings will be reimbursed, but must be approved in advance by the Executive Director.
3. **Travel Reimbursement.** Mileage reimbursement shall not exceed the applicable State rate. Mileage reimbursement will be paid for travel to and from courts other than an attorney's home district and superior court. Mileage reimbursement will not be paid for

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

4. **Itemization of Claims.** Claims for all expenses must be itemized.
5. **Discovery Materials.** The MCILS will reimburse only for one set of discovery materials. If counsel is permitted to withdraw, appropriate copies of discovery materials must be forwarded to new counsel forthwith.
6. **Expert and Investigator Expenses.** Other non-routine expenses for payment to third parties, which historically required preapproval by the Court before July 1, 2010 (e.g., investigators, interpreters, medical and psychological experts, testing, depositions, etc.) are required to be approved in advance by MCILS. Funds for third-party services will be provided by the MCILS only upon written request and a sufficient demonstration of reasonableness, relevancy, and need in accordance with the MCILS rules and procedures governing requests for funds for experts and investigators. See Chapter 302 Procedures Regarding Funds for Experts and Investigators.
7. **Witness, Subpoena, and Service Fees.** In criminal and juvenile cases, witness, subpoena, and service fees will be reimbursed only pursuant to M.R. Crim. P. 17(b). It is unnecessary for counsel to advance these costs, and they shall not be included as a voucher expense. Fees for service of process by persons other than the sheriff shall not exceed those allowed by 30-A M.R.S. § 421. The same procedure shall be followed in civil cases.

#### SECTION 4. MAXIMUM FEES

Vouchers submitted for amounts greater than the applicable maximum fees outlined in this section will not be approved for payment, except as approved by the Executive Director:

1. **Trial Court Criminal Fees**
  - A. Maximum fees, excluding any itemized expenses, are set in accordance with this subsection. Counsel must provide MCILS with written justification for any voucher that exceeds the maximum fee limit.

Effective July 1, 2015:

- 1) **Murder.** Fee to be set by the Executive Director on a case by case basis.
- 2) **Class A.** \$3,000
- 3) **Class B and C (against person).** \$2,250
- 4) **Class B and C (against property).** \$1,500

- 5) **Class D and E (Superior or Unified Criminal Court). \$750**
  - 6) **Class D and E (District Court). \$540**
  - 7) **Post-Conviction Review. \$1,200**
  - 8) **Probation Revocation. \$540**
  - 9) **Miscellaneous (i.e. witness representation on 5<sup>th</sup> Amendment grounds, etc.) \$540**
  - 10) **Juvenile. \$540**
- B. In cases involving multiple counts against a single defendant, the maximum fee shall be that which applies to the most serious count. In cases where a defendant is charged with a number of unrelated offenses, Counsel is expected to coordinate and consolidate services as much as possible.
- C. Criminal and juvenile cases will include all proceedings through disposition as defined in Section 5.1.A below. Any subsequent proceedings, such as probation revocation, will require new application and appointment.
- D. When doing so will not adversely affect the attorney-client relationship, Commission-assigned counsel are urged to limit travel and waiting time by cooperating with each other to stand in at routine, non-dispositive matters by having one attorney appear at such things as arraignments and routine non-testimonial motions, instead of having all Commission-assigned counsel in an area appear.
- E. Upon written request to MCILS, assistant counsel may be appointed in a murder case or other complicated cases:
- 1) the duties of each attorney must be clearly and specifically defined and counsel must avoid unnecessary duplication of effort;
  - 2) each attorney must submit a voucher to MCILS. Counsel should coordinate the submission of voucher so that they can be reviewed together. Co-counsel who practice in the same firm may submit a single voucher that reflects the work done by each attorney.

## 2. **District Court Child Protection**

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

Effective July 1, 2015:

- 1) **Child protective cases (each stage). \$900**

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

- B. Counsel must provide MCILS with written justification for any voucher that exceeds the maximum fee limit. Each child protective stage ends when a proceeding results in a court order as defined in Section 5.1.B below. Each distinct stage in on-going child protective cases shall be considered a new appointment for purposes of the maximum fee. A separate voucher must be submitted at the end of each stage.

3. **Other District Court Civil**

- A. Maximum fees, excluding any itemized expenses, are set in accordance with this subsection. Counsel must provide MCILS with written justification for any voucher that exceeds the maximum fee limit.

Effective July 1, 2015:

- 1) **Application for Involuntary Commitment. \$420**
- 2) **Petition for Emancipation. \$420**
- 3) **Petition for Modified Release Treatment. \$420**
- 4) **Petition for Release or Discharge. \$420**

4. **Law Court**

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

Effective July 1, 2015:

- 1) **Appellate work following the grant of petition for certificate of probable cause. \$1,200**
- B. Expenses shall be reimbursed for printing costs and mileage to oral argument at the applicable state rate. Vouchers for payment of counsel fees and expenses must be submitted, including an itemization of time spent.

**SECTION 5: MINIMUM FEES**

Effective July 1, 2015:

1. Attorneys may charge a minimum fee of \$150.00 for appearance as Lawyer of the Day. Vouchers seeking the minimum fee shall show the actual time expended and the size of the minimum fee adjustment rather than simply stating that the minimum fee is claimed. In addition to previously scheduled representation at initial appearance sessions, Lawyer

of the Day representation includes representation of otherwise unrepresented parties at the specific request of the court on a matter that concludes the same day. Only a single minimum fee may be charged regardless of the number of clients consulted at the request of the court.

## **SECTION 6: ADMINISTRATION**

1. Vouchers for payment of counsel fees and expenses shall be submitted within ninety days after the date of disposition of a criminal, juvenile or appeals case, or completion of a stage of a child protection case resulting in an order. Vouchers submitted more than ninety days after final disposition, or completion of a stage of a child protection case, shall not be paid.
  - A. For purposes of this rule, "disposition" of a criminal or juvenile case shall be at the following times:
    - 1) entry of judgment (sentencing, acquittal, dismissal, or filing);
    - 2) upon entry of a deferred disposition;
    - 3) upon issuance of a warrant of arrest for failure to appear;
    - 4) upon granting of leave to withdraw;
    - 5) upon decision of any post-trial motions;
    - 6) upon completion of the services the attorney was assigned to provide (e.g., mental health hearings, "lawyer of the day," bail hearings, etc.); or
    - 7) specific authorization of the Executive Director to submit an interim voucher.
  - B. For purposes of this rule, "each stage" of a child protection case shall be:
    - 1) Order after Summary Preliminary hearing or Agreement
    - 2) Order after Jeopardy Hearing
    - 3) Order after each Judicial Review
    - 4) Order after a Cease Reunification Hearing
    - 5) Order after Permanency Hearing
    - 6) Order after Termination of Parental Rights Hearing
    - 7) Law Court Appeal

2. Unless otherwise authorized in advance, all vouchers must be submitted using the MCILS electronic case management program and comply with all instructions for use of the system.
  3. All time on vouchers shall be detailed and accounted for in .10 of an hour increments. The purpose for each time entry must be self-evident or specifically stated. Use of the comment section is recommended.
  4. All expenses claimed for reimbursement must be fully itemized on the voucher. Copies of receipts for payments to third parties shall be retained and supplied upon request.
  5. Legal services provided in the district court for cases subsequently transferred to the superior court shall be included in the voucher submitted to the MCILS at disposition of the case.
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STATUTORY AUTHORITY: 4 M.R.S. §§ 1804(2)(F), (3)(B), (3)(F) and (4)(D)

EFFECTIVE DATE:

August 21, 2011 – filing 2011-283

AMENDED:

March 19, 2013 – filing 2013-062

July 1, 2013 – filing 2013-150 (EMERGENCY)

October 5, 2013 – filing 2013-228

July 1, 2015 – filing 2015-121 (EMERGENCY)

**(6.)**  
**Appellate Contracts**

(One   
indicates for review  
by Commissioners)

**State of Maine - Department of (Insert Department name)**  
*(Insert Division/Office name)*  
**RFP# (Inserted by Purchases when assigned/approved)**  
**(Insert RFP title)**

**PART I INTRODUCTION**

**A. Purpose and Background**

 The Maine Commission on Indigent Legal Services (“Department”) is seeking proposals to provide appellate indigent legal services as defined in this Request for Proposals (RFP) document. This document provides instructions for submitting proposals, the procedure and criteria by which the Provider(s) will be selected, and the contractual terms which will govern the relationship between the State of Maine (“State”) and the awarded Bidder(s).

Pursuant to 4 M.R.S. § 1804 (3) (A), the Commission has a duty to “develop and maintain a system that uses...contracts with individual attorneys or groups of attorneys [...] to provide quality and efficient indigent legal services.”

MCILS requests proposals from private individual attorneys, groups of attorneys or law firms, or groups of attorneys organized as a non-profit entity to represent indigent clients in criminal appeals, post-conviction review appeals, and child protection appeals matters. A successful bid will provide legal services to a qualified indigent client for either criminal, post-conviction review or child protection appeals to the Law Court in a highly-qualified manner in accordance with the Sixth Amendment of the United States Constitution; Art. I., § 6 of the Maine Constitution; Chapter 2 and Chapter 3 of the Commission’s Rules for minimum and specialized case types eligibility requirements; the Maine Rules of Professional Conduct, applicable national standards (including the NLADA Standards and Guidelines and ABA relevant guidelines), case law, and the terms of the contract.

**B. General Provisions**

1. From the time this RFP is issued until award notification is made, all contact with the State regarding this RFP must be made through the aforementioned RFP Coordinator. No other person/ State employee is empowered to make binding statements regarding this RFP. Violation of this provision may lead to disqualification from the bidding process, at the State’s discretion.
2. Issuance of this RFP does not commit the Department to issue an award or to pay expenses incurred by a Bidder in the preparation of a response to this RFP. This includes attendance at personal interviews or other meetings and software or system demonstrations, where applicable.
3. All proposals should adhere to the instructions and format requirements outlined in this RFP and all written supplements and amendments (such as the Summary of Questions and Answers), issued by the Department. Proposals are to follow the format and respond to all questions and instructions specified below in the “Proposal Submission Requirements” section of this RFP.
4. Bidders shall take careful note that in evaluating a proposal submitted in response to this RFP, the Department will consider materials provided in the proposal, information obtained through interviews/presentations (if any), and internal Departmental information of previous contract history with the Bidder (if any). The Department also reserves the right to consider other reliable references and publicly available information in evaluating a Bidder’s experience and capabilities.

5. The proposal shall be signed by a person authorized to legally bind the Bidder and shall contain a statement that the proposal and the pricing contained therein will remain valid and binding for a period of 180 days from the date and time of the bid opening.
6. The RFP and the selected Bidder's proposal, including all appendices or attachments, shall be the basis for the final contract, as determined by the Department.
7. Following announcement of an award decision, all submissions in response to this RFP will be considered public records available for public inspection pursuant to the State of Maine Freedom of Access Act (FOAA) (1 M.R.S. §§ 401 et seq.).  
<http://www.mainelegislature.org/legis/statutes/1/title1sec401.html>
8. The Department, at its sole discretion, reserves the right to recognize and waive minor informalities and irregularities found in proposals received in response to this RFP.
9. The State of Maine Division of Purchases reserves the right to authorize other Departments to use the contract(s) resulting from this RFP, if it is deemed to be beneficial for the State to do so.
10. All applicable laws, whether or not herein contained, shall be included by this reference. It shall be Proposer's/Vendor's responsibility to determine the applicability and requirements of any such laws and to abide by them.

**C. Eligibility to Submit Bids**



Individual attorneys, groups of attorneys, individual law firms, groups of law firms, or groups of attorneys organized as a non-profit entity are invited to submit bids in response to this Request for Proposals provided that applicant attorneys are in good standing with the Maine Board of Overseers of the Bar.

**D. Contract Term**

The Department is seeking a cost-efficient proposal(s) to provide services, as defined in this RFP, for the anticipated contract period defined in the table below. Please note that the dates below are estimated and may be adjusted, as necessary, in order to comply with all procedural requirements associated with this RFP and the contracting process. The actual contract start date will be established by a completed and approved contract.

Contract Renewal: Following the initial term of the contract, the Department may opt to renew the contract for (Insert number of renewals; the State's standard is two renewals, the first renewal for two years and the second renewal for one year – and consider the final year to be an opportunity to complete a new RFP, as needed) renewal periods, as shown in the table below, and subject to continued availability of funding and satisfactory performance.

The term of the anticipated contract, resulting from this RFP, is defined as follows:

<b>Period</b>	<b>Start Date</b>	<b>End Date</b>
Initial Period of Performance	(Insert date)	(Insert date)
Renewal Period #1	(Insert date)	(Insert date)
Renewal Period #2	(Insert date)	(Insert date)

**E. Number of Awards**



The Commission reserves the right to make one or multiple awards for criminal appeals, post-conviction review appeals, and child protection appeals matters, whichever is in the best interests of the State, as a result of this RFP process.

## **PART II SCOPE OF SERVICES TO BE PROVIDED**



Representation of indigent clients on:

- 1) Criminal appeals to the Law Court
- 2) Child Protective appeals to the Law Court
- 3) Discretionary appeals to the Law Court (e.g. Post-Conviction Review, Probation Violation)

With respect to each case assigned under the contract, the applicant will perform the tasks necessary to provide high-quality appellate representation in accordance with the standards described in Part I, Section A. Proposals should be for a period of one (1) year. Applicants may propose to provide representation in criminal appeals, discretionary appeals (including the drafting of the post-conviction review petition), child protective appeals or a combination of the three.

## **PART III KEY RFP EVENTS**

### **A. Bidders Conference**

The Department will sponsor a Bidders' Conference concerning this RFP beginning at the date and time shown on the RFP cover page. The Bidders' Conference will be held at (Insert place, including a complete address)

The purpose of the Bidders' Conference is to answer and/or field questions, clarify for potential Bidders any aspect of the RFP requirements that may be necessary and provide supplemental information to assist potential Bidders in submitting responses to the RFP. Although attendance at the Bidders' Conference is not mandatory, it is strongly encouraged that interested Bidders attend.

### **B. Questions**

#### **1. General Instructions**

- a. It is the responsibility of each Bidder to examine the entire RFP and to seek clarification, in writing, if the Bidder does not understand any information or instructions.
- b. Submitted Questions must be submitted by e-mail and received by the RFP Coordinator, identified on the cover page of this RFP, as soon as possible but no later than the dates and times specified on the RFP cover page.
- c. Submitted Questions should include the RFP Number and Title in the subject line. The Department assumes no liability for assuring accurate/complete/on time e-mail transmission and receipt.
- d. Be sure to refer to the page number and paragraph within this RFP relevant to the question presented for clarification, if applicable.

2. **Summary of Questions and Answers:** Responses to all substantive and relevant questions will be compiled in writing and distributed to all registered, interested persons by e-mail no later than seven (7) calendar days prior to the proposal due date. Only those answers issued in writing by the RFP Coordinator will be considered binding. The Department reserves the right to answer or not answer any question received.

### **C. Submitting the Proposal**

1. **Proposals Due:** Proposals must be received no later than 2:00 p.m. local time, on the date listed on the cover page of this RFP, at which point they will be opened. Proposals received after the 2:00 p.m. deadline will be rejected without exception.
2. **Mailing/Delivery Instructions:** The official delivery site is the State of Maine, Division of Purchases (Please refer to the RFP cover page for submission address).
  - a. Only proposals received at the official delivery site prior to the stated deadline will be considered. Bidders submitting proposals are responsible for allowing adequate time for delivery. Postmarks do not count and fax or electronic mail transmissions of proposals are not permitted. Any method of hardcopy delivery is acceptable, such as US Mail, in-person delivery by Bidder, or use of private courier services.
  - b. The Bidder must send its proposal submission in a sealed package and must include **an original, signed copy and one electronic copy** of their complete proposal. The electronic copy of the proposal must be provided on USB flash drive with the complete narrative and attachments in MS Word format. Any attachments that cannot be submitted in MS Word format may be submitted as Adobe (.pdf) files.

- c. Bidders' submission packages are to be clearly labeled and contain the following information:
- Proposal submission address provided on the RFP cover page
  - The Bidder's full business name and address
  - The RFP Number and Title

## PART IV PROPOSAL SUBMISSION REQUIREMENTS



Proposal submissions must:

1. Identify the type and number of appellate cases for which the proposal is submitted (e.g. criminal appeals, post-conviction review petitions and appeals, child protective appeals or a combination);
2. Identify the number of attorneys available to prosecute the appeals and describe the attorneys' workload under the proposal in the context of other legal work performed by the attorneys sufficiently to assure the Commission that the proposal will not result in an excessive workload or exceed the NLADA Standards on caseload limits. List for the previous calendar year the number of new cases opened for each attorney, describing the type of cases handled (e.g. civil or criminal, trial or appeal);
3. Identify the attorneys' experience and qualifications to prosecute appeals as proposed, including trial and appellate court experience;
4. Identify the office space, technology, including whether attorneys have access to a subscription legal research program, support staff and other resources available to support the provision of quality appellate representation;
5. Include at least three (3) references for review by MCILS;
6. Include three (3) original motions or briefs that were submitted to a court from each attorney who will prosecute appeals under the proposal;
7. Include a current list of MCILS approved CLE credits to meet the minimum required 8 hours;
8. Document good standing with the Maine Board of Overseers of the Bar;
9. Document applicable malpractice insurance in force.
10. Agree to monitoring and evaluation by MCILS to ensure private attorneys provide high-quality representation to indigent clients and are in compliance with attorney performance evaluation procedures as established by the Commission, including but not limited to audits of contracted counsels' finances for discrepancies.

This section contains instructions for Bidders to use in preparing their proposals. The Bidder's proposal must follow the outline used below, including the numbering and section and sub-section headings as they appear here. Failure to use the outline specified in this section, or to respond to all questions and instructions throughout this document, may result in the proposal being disqualified as non-responsive or receiving a reduced score. The Department, and its evaluation team for this RFP, has sole discretion to determine whether a variance from the RFP specifications should result in either disqualification or reduction in scoring of a proposal. Rephrasing of the content provided in this RFP will, at best, be considered minimally responsive. The Department seeks detailed yet succinct responses that demonstrate the Bidder's experience and ability to perform the requirements specified throughout this document.

### A. Proposal Format

1. All pages of a Bidder's proposal should be numbered consecutively beginning with number 1 on the first page of the narrative (this does not include the cover page or table of contents pages) through to the end, including all forms and attachments. For clarity, the Bidder's name should appear on every page, including Attachments. Each Attachment must reference the section or subsection number to which it corresponds.
2. Bidders are asked to be brief and concise in responding to the RFP questions and instructions.

3. The Bidder may not provide additional attachments beyond those specified in the RFP for the purpose of extending their response. Additional materials not requested will not be considered part of the proposal and will not be evaluated.
4. Include any forms provided in the application package or reproduce those forms as closely as possible. All information should be presented in the same order and format as described in the RFP.
5. It is the responsibility of the Bidder to provide all information requested in the RFP package at the time of submission. Failure to provide information requested in this RFP may, at the discretion of the Department's evaluation review team, result in a lower rating for the incomplete sections and may result in the proposal being disqualified for consideration.
6. Bidders should complete and submit the "Proposal Cover Page" provided in **Appendix A** of this RFP and provide it with the Bidder's proposal. The cover page must be the first page of the proposal package. It is important that the cover page show the specific information requested, including Bidder address(es) and other details listed. The proposal cover page shall be dated and signed by a person authorized to enter into contracts on behalf of the Bidder.
7. Bidders should complete and submit the "Debarment, Performance and Non-Collusion Certification Form" provided in **Appendix B** of this RFP. Failure to provide this certification may result in the disqualification of the Bidder's proposal, at the discretion of the Department.

## **B. Proposal Contents**

### **Section I Organization Qualifications and Experience**



#### **1. Required Attachments Related to Qualifications**

- a. Attach documentation of any applicable licensure requirements or any specific credentials required to provide the requested services.
- b. Describe the current or proposed location where services will be provided or from which the contract will be managed. Include applicant's ability to meet with clients in a confidential and appropriate manner. Include information about staff and personnel, such as paralegals, legal interns, and staffed experts/investigators, that would provide the Commission with a better understanding of the applicant's work space and client services.
- c. Indicate whether the applicant is currently rostered with the Commission to receive indigent clients.
- d. Attach documentation of applicant(s) good standing with the Maine Board of Overseers of the Bar.
- e. Attach a certificate of insurance on a standard Acord form (or the equivalent) evidencing the Bidder's general liability, professional liability and any other relevant liability insurance policies that might be associated with this contract.

### **Section II Proposed Services**

#### **1. Services to be Provided**



Discuss how applicants will meet clients' needs, including attorneys' qualifications, office space, familiarity with proposed case types and any other relevant information the Commission may find helpful in evaluating the proposal.

Present a statement of qualifications and short summary of relevant experience. The statement should include:

1. All proposed attorneys names and State bar numbers;

2. The physical address of the office and technology available to staff;
3. All attorneys qualifications for the proposed case types including CLE information, attendance at MCILS sponsored trainings since 2010, and how all attorneys meet the Commission's minimum eligibility requirements pursuant to Chapter 102 Criminal Proceedings and Chapter 103 Child Protective Proceedings;
4. Applicants' criminal, post-conviction review, child protection law, and trial experience when appropriate;
5. Any support staff employed by the applicant (including experts and investigators);
6. Whether any applicant attorney has prior criminal and bar complaints within the last five (5) years; and
7. Applicants' appellate qualifications including, but not limited to, clerkships or similar employment at an appellate court, approval and acceptance for relevant specialized case types, and the number of appellate cases tried and the case disposition.

### **Section III Cost Proposal**

#### **1. General Instructions**

- a. The Bidder must submit a cost proposal that covers the entire period of the initial contract. Please use the expected "Initial Period of Performance" dates stated in PART I, D.
- b. The cost proposal shall include the costs necessary for the Bidder to fully comply with the contract terms and conditions and RFP requirements.
- c. No costs related to the preparation of the proposal for this RFP or to the negotiation of the contract with the Department may be included in the proposal. Only costs to be incurred after the contract effective date that are specifically related to the implementation or operation of contracted services may be included.

#### **2. Cost Proposal Form Instructions**



The Commission is seeking proposals for appellate cases on a flat fee per case basis. The fee proposed may vary by case type. Out of pocket expenses (i.e. printing and binding costs, fees for investigators or other experts) should not be factored into the proposed fee.

The Bidder should fill out **Appendix D** (Cost Proposal Form), following the instructions detailed here and in the form. Failure to provide the requested information, and to follow the required cost proposal format provided, may result in the exclusion of the proposal from consideration, at the discretion of the Department.

### **Section IV Economic Impact within the State of Maine**

Using the form in **Appendix E** (Economic Impact Form), the Bidder (Bidder identified on the "Proposal Cover Page" of their proposal submission) is required to describe the Bidder's recent and anticipated economic impact upon and within the State of Maine. The use of economic impact in making contract award decisions is required in accordance with Executive Order 2012-004, which states that certain service contracts "...advertised for competitive bid shall include scoring criteria evaluating the responding Bidder's economic impact on the Maine economy and State revenues."

## PART V PROPOSAL EVALUATION AND SELECTION

Evaluation of the submitted proposals shall be accomplished as follows:

### A. Evaluation Process - General Information

1. An evaluation team, comprised of qualified reviewers, will judge the merits of the proposals received in accordance with the criteria defined in the RFP, and in accordance with the most advantageous financial and economic impact considerations (where applicable) for the State.
2. Officials responsible for making decisions on the selection of a contractor shall ensure that the selection process accords equal opportunity and appropriate consideration to all who are capable of meeting the specifications. The goals of the evaluation process are to ensure fairness and objectivity in review of the proposals and to ensure that the contract is awarded to the Bidder whose proposal provides the best value to the State of Maine.
3. The Department reserves the right to communicate and/or schedule interviews/presentations with Bidders if needed to obtain clarification of information contained in the proposals received, and the Department may revise the scores assigned in the initial evaluation to reflect those communications and/or interviews/presentations. Interviews/presentations are not required, and changes to proposals will not be permitted during any interview/presentation process. Therefore, Bidders should submit proposals that present their rates and other requested information as clearly and completely as possible.

### B. Scoring Weights and Process



1. **Scoring Weights:** The score will be based on a 100 point scale and will measure the degree to which each proposal meets the following criteria.

#### **Section I. Organization Qualifications and Experience (35 points)**

Includes all elements addressed above in Part IV, C, Section I.

#### **Section II. Specifications of Work to be Performed (35 points)**

Includes all elements addressed above in Part IV, C, Section II.

#### **Section III. Cost Proposal (30 points)**

Includes all elements addressed above in Part IV, C, Section III.

#### **Section IV. Economic Impact within the State of Maine (XX points)**

Includes all elements addressed above in Part IV, D, Section IV.

2. **Scoring Process:** The review team will use a consensus approach to evaluate and score Sections I & II above. Members of the review team will not score those sections individually but, instead, will arrive at a consensus as to assignment of points for each of those sections. The Cost and Economic Impact sections will be scored as described below. The contract award(s) will be made to the Bidder(s) receiving the highest number of evaluation points based upon the proposals' satisfaction of the criteria established in the RFP.
3. **Scoring the Cost Proposal:** The total cost proposed for conducting all the functions specified in this RFP will be assigned a score according to a mathematical formula. The lowest bid will be awarded XX points. Proposals with higher bids values will be awarded proportionately fewer points calculated in comparison with the lowest bid.

The scoring formula is:

(Lowest submitted cost proposal / Cost of proposal being scored) x (Insert maximum cost points available) = pro-rated score

**No Best and Final Offers:** The State of Maine will not seek a best and final offer (BAFO) from any Bidder in this procurement process. All Bidders are expected to provide their best value pricing with the submission of their proposal.

- 4. Scoring the Economic Impact:** The Economic Impact for this RFP will be assigned a score according to a mathematical formula.

**Recent Economic Impact:** The highest recent economic impact will be awarded X points. Proposals with lower recent economic impact will be awarded proportionately fewer points calculated in comparison with the highest impact.

The Recent Economic Impact scoring formula is:

(Recent Economic Impact proposal being scored / Highest submitted recent Economic Impact proposal) x X = pro-rated score

**Projected Economic Impact\*:** The highest projected economic impact will be awarded X points. Proposals with lower projected economic impact will be awarded proportionately fewer points calculated in comparison with the highest projected economic impact.

The Projected Economic Impact scoring formula is:

(Projected Economic Impact proposal being scored / Highest submitted projected Economic Impact proposal) x X = pro-rated score

**\*Projected Economic Impact is to be based solely on the resulting contract should the Bidder be awarded the contract for these services (See Appendix E for a more detailed explanation).**

Please note: If the State determines that the Bidder's recent and/or projected economic impact information is deemed to be substantially inaccurate, then the State may determine to not award any points for economic impact to that Bidder for the applicable section(s).

- 5. Negotiations:** The Department reserves the right to negotiate with the successful Bidder to finalize a contract at the same rate or cost of service as presented in the selected proposal. Such negotiations may not significantly vary the content, nature or requirements of the proposal or the Department's Request for Proposals to an extent that may affect the price of goods or services requested. The Department reserves the right to terminate contract negotiations with a selected respondent who submits a proposed contract significantly different from the proposal they submitted in response to the advertised RFP. In the event that an acceptable contract cannot be negotiated with the highest ranked Bidder, the Department may withdraw its award and negotiate with the next-highest ranked Bidder, and so on, until an acceptable contract has been finalized. Alternatively, the Department may cancel the RFP, at its sole discretion.

## C. Selection and Award

1. The final decision regarding the award of the contract will be made by representatives of the

Department subject to approval by the State Procurement Review Committee.

2. Notification of contractor selection or non-selection will be made in writing by the Department.
3. Issuance of this RFP in no way constitutes a commitment by the State of Maine to award a contract, to pay costs incurred in the preparation of a response to this request, or to pay costs incurred in procuring or contracting for services, supplies, physical space, personnel or any other costs incurred by the Bidder.
4. The Department reserves the right to reject any and all proposals or to make multiple awards.

#### **D. Appeal of Contract Awards**

Any person aggrieved by the award decision that results from this RFP may appeal the decision to the Director of the Bureau of General Services in the manner prescribed in 5 MRSA § 1825-E and 18-554 Code of Maine Rules, Chapter 120 (found here: <http://www.maine.gov/purchases/policies/120.shtml>). The appeal must be in writing and filed with the Director of the Bureau of General Services, 9 State House Station, Augusta, Maine, 04333-0009 within 15 calendar days of receipt of notification of contract award.

If this RFP results in the creation of a pre-qualified or pre-approved list of vendors, then the appeal procedures mentioned above are available upon the original determination of that vendor list, but not during subsequent competitive procedures involving only the pre-qualified or pre-approved list participants.

## **PART VI CONTRACT ADMINISTRATION AND CONDITIONS**

### **A. Contract Document**

1. The successful Bidder will be required to execute a contract in the form of a State of Maine Agreement to Purchase Services (BP54). A list of applicable Riders is as follows:

Rider A: Specification of Work to be Performed

Rider B: Method of Payment and Other Provisions

Rider C: Exceptions to Rider B

Rider D: (Optional; for use by Department)

Rider E: (Optional; for use by Department)

Rider G: Identification of Country in Which Contracted Work Will Be Performed

The complete set of standard BP54 contract documents may be found on the Division of Purchases website at the following link: <http://www.maine.gov/purchases/info/forms/BP54.doc>

Other forms and contract documents commonly used by the State can be found on the Division of Purchases website at the following link: <http://www.maine.gov/purchases/info/forms.html>

2. Allocation of funds is final upon successful negotiation and execution of the contract, subject to the review and approval of the State Procurement Review Committee. Contracts are not considered fully executed and valid until approved by the State Procurement Review Committee and funds are encumbered. No contract will be approved based on an RFP which has an effective date less than fourteen (14) calendar days after award notification to Bidders. (Referenced in the regulations of the Department of Administrative and Financial Services, Chapter 110, § 3(B)(i): <http://www.maine.gov/purchases/policies/110.shtml>)

This provision means that a contract cannot be effective until at least 14 days after award notification.

3. The State recognizes that the actual contract effective date depends upon completion of the RFP process, date of formal award notification, length of contract negotiation, and preparation and approval by the State Procurement Review Committee. Any appeals to the Department's award decision(s) may further postpone the actual contract effective date, depending upon the outcome. The contract effective date listed in this RFP may need to be adjusted, if necessary, to comply with mandated requirements.
4. In providing services and performing under the contract, the successful Bidder(s) shall act as an independent contractor and not as an agent of the State of Maine.

### **B. Standard State Agreement Provisions**

1. Agreement Administration
  - a. Following the award, an Agreement Administrator from the Department will be appointed to assist with the development and administration of the contract and to act as administrator during the entire contract period. Department staff will be available after the award to consult with the successful Bidder in the finalization of the contract.
  - b. In the event that an acceptable contract cannot be negotiated with the highest ranked Bidder, the Department may withdraw its award and negotiate with the next-highest ranked Bidder,

and so on, until an acceptable contract has been finalized. Alternatively, the Department may cancel the RFP, at its sole discretion.

**2. Payments and Other Provisions**

The State anticipates paying the Contractor on the basis of net 30 payment terms, upon the receipt of an accurate and acceptable invoice. An invoice will be considered accurate and acceptable if it contains a reference to the State of Maine contract number, contains correct pricing information relative to the contract, and provides any required supporting documents, as applicable, and any other specific and agreed-upon requirements listed within the contract that results from this RFP.

**(7.)**  
**Requests for Certiorari**

## Pelletier, John

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**From:** Jamesa Drake <jamesa\_drake@hotmail.com>  
**Sent:** Thursday, March 17, 2016 8:22 PM  
**To:** Pelletier, John; scarey@thecareylawfirm.com  
**Subject:** state pay for cert. petitions  
**Attachments:** Maine research (March 2016) - FInal.pdf

Hi John and Steve,

As you probably know, the Law Court recently decided State v. Nisbet. This is the case where the defendant threatened his (sixth) lawyer. The court held that the defendant \*forfeited\* his right to counsel, which (a) is a theory of constitutional law that the U.S. Supreme Court has never endorsed; and (b) is a theory of constitutional law that has splintered the lower courts (the split is over whether the right to counsel can be forfeited, rather than waived). I believe strongly that this case is cert-worthy.

I know that Maine has not, in the past, paid for cert petitions. So, I asked David Carroll at the Sixth Amendment Center to do a little research. He has confirmed that Maine is the only state without an intermediate appellate court that refuses to pay for cert petitions for indigent criminal defendants. David's work is attached.

In light of this new information, and considering the Nisbet case in particular, I am respectfully asking that the Commission pay for a cert petition in this case. Of course, I'm happy to answer any questions that you might have.

Thanks in advance for your consideration,  
Jamesa



SIXTH  
AMENDMENT  
CENTER

P.O. Box 15556, Boston MA 02215

***Q: Is Maine the only state that does not have an intermediate appellate court and whose state-funded indigent defense system does not pay attorneys to file petitions of certiorari in federal court?***

A: Yes. Besides Maine, eight states do not have an intermediate court of appeal: Delaware, Montana, New Hampshire, Rhode Island, South Dakota, Vermont, West Virginia, and Wyoming. South Dakota is eliminated from the comparison, because the state has passed on to its counties the financial responsibility for providing Sixth & Fourteenth Amendment lawyers to people of insufficient means when faced with a potential loss of liberty in a criminal or delinquency proceeding.

The statutes, policies, and practices of the remaining seven states are detailed below:

1. Delaware: The Office of the Public Defender (OPD) operates a statewide, state-funded public defense system. Full time staff public defenders provide primary juvenile and adult representation in all levels of court. The public defender office recently created an Office of Conflicts Counsel to oversee the state's conflict program (previously, it was a function of the Administrative Office of Courts). Private bar attorneys working under contract for an annual flat rate provide conflict representation (though certain conditions trigger counsel to earn an hourly rate above and beyond the annual flat fee). Public defenders are allowed to file cert in federal courts when necessary and conflict attorneys are similarly paid to do so, through the policies of the OPD.
2. Montana: The Montana Public Defender Commission (MPDC) oversees the Office of the State Public Defender (OSPD). In addition to the Office of the Chief Public Defender, OSPD also houses the appellate division, a contracts division, and a training unit. OSPD regional directors determine the indigent defense delivery model employed in their respective regions, in consultation with OSPD. And, since Montana is the fourth largest state geographically but with one of the smallest state populations, Montana has adopted a flexible indigent defense delivery system in which a region can use both public and private attorneys to provide representation. The OSPD appellate division handles all appeals arising from the regional

systems and attorneys may file cert petitions in federal courts as a matter of course through internal policies of the OSPD.

3. New Hampshire: The New Hampshire Judicial Council (NHJC) is a statewide coordinating committee that serves as a forum for objective justice policies, collecting objective justice data, and providing public education on the court system (both civil and criminal). The NHJC also oversees the state's indigent defense fund. Since 1972, the NHJC has contracted the provision of all criminal right to council services to an independent, non-profit organization called the New Hampshire Public Defender (NHPD). The NHPD qualifies and appoints all conflict counsel (some are paid hourly, while others are under contract, depending on the region served).

There is no statutory language barring the NHPD from filing federal cert petitions. Additionally, contract language between the NHJC and the NHPD states that the NHPD "shall provide such other representation as is necessary and consistent with normal criminal defense, as required by the provisions of the United States and New Hampshire Constitutions, as well as related activities."

4. Rhode Island: Though the right to counsel is funded entirely by the state, representation is divided among two governmental entities. The Rhode Island State Public Defender (RISPD) provides primary services. Conflict representation is provided by a panel of private attorneys, paid hourly on a per-case basis and administered by the Rhode Island Supreme Court.

There is no statutory language prohibiting public attorneys from filing federal cert. The RISPD has an appellate division whose attorneys have agency permission to file federal cert petitions.

5. Vermont: The Vermont Office of the Defender General oversees all indigent defense representation, both primary and conflict. Primary trial-level services are provided through a combination of public defender offices with fulltime staff attorneys and contracts with private law firms. Private attorneys are paid hourly to provide conflict representation. In practice, the appellate division of the Office of the Defender General handles all appeals (both state and federal) arising from either the primary or conflict system.

Two statutes provide authority for public attorneys to enter federal courts. V.S.A. Title 13, Chapter 163 § 5203 (Federal courts) "does not prohibit the defender general, the deputy defender general or public defenders from representing a needy person in a federal court of the United States, if: (1)

The matter arises out of or is related to an action pending or recently pending in a court of criminal jurisdiction of the state; or (2) Representation is under a plan of the United States District Court as required by the Criminal Justice Act of 1964 (18 U.S.C. § 3006A).”

Similarly, V.S.A. Title 13, Chapter 163 § 5233 (Extent of services) explicitly states that a needy person entitled to counsel shall be represented in “any appeal,” including, any “postconviction proceeding which may have more than a minimal effect on the length or conditions of detention where the attorney considers the claims, defenses, and other legal contentions to be warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.”

6. West Virginia: Though the State of West Virginia provides 100% of indigent defense funding, statutes allow for local administration of services. State funding is overseen by West Virginia Public Defender Services (WVPDS). In 18 of the states 31 judicial circuits, public defender corporations (i.e., non-profit organizations under contract to WVPDS) provide primary services. In these circuits, private assigned counsel attorneys are appointed when the public defender corporation has a conflict of interest with a defendant or has a caseload that does not permit additional appointments. In the remaining 15 judicial circuits, assigned counsel attorneys are the primary source of representation of indigent defendants.

Both the public defender corporation and the panel attorneys can only be appointed to “eligible proceedings.” W. Va. Code 29-21-2(2). The definition provides that “legal representation provided pursuant to the provisions of this article is limited to the court system of the state of West Virginia....” *Id.* Accordingly, the official position is that neither panel attorneys nor the public defender corporations can prepare petitions for federal certiorari.

However, WVPDS houses an appellate advocacy division. W. Va. Code 29-21-6(e). The enabling statute refers to “litigation on behalf of eligible clients in the Supreme Court of Appeals.” WVPDS has taken the position that the appeal of a decision from the Supreme Court of Appeals of West Virginia to the Supreme Court of the United States is appropriate. No challenge has been issued to this position, and, in fact, several petitions for certiorari have been filed without issue.

7. Wyoming: The funding of indigent defense services in Wyoming is a hybrid state and county responsibility, with 85% coming from state general funds

and 15% from counties. However, counties are billed a prorated share of the state allocation based on an equitable formula that takes into account such factors as population, property valuation, and level of serious crime. Thus all indigent defense budget battles occur at the state level (which is why Wyoming is included in this comparison).

The Wyoming Office of the Public Defender (OPD) directs the delivery of all right to counsel services across the state, both primary and conflict. Fourteen branch public defender offices (with full time and part time staff attorneys) provide the majority of services, although the agency also contracts with private attorneys to handle conflict cases.

WY State § 7-6-104c(ii) states that a needy person entitled to representation is entitled to be “represented in any appeal to a Wyoming court, and in cases in which the death penalty has been imposed or in such other cases as the state public defender deems appropriate, in a writ of certiorari to the United States supreme court.”

**(8.)  
Training Update**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**TO:** MCILS COMMISSIONERS  
**FROM:** ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR  
**SUBJECT:** MCILS TRAINING UPDATE  
**DATE:** APRIL 4, 2016

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Video Replays

We will be holding several video replays in 2016:

- ♦ April 27 in Bangor – the Ira Mickenberg training on identifying and litigating Brady issues and two sessions from the advanced criminal training on the 5<sup>th</sup> and 6<sup>th</sup> amendments. The cost will be \$50 for 5.5 CLE credits and will be at the Penobscot Judicial Center.
- ♦ May 20 & 23 in Fort Kent and Houlton – Ira Mickenberg training on Brady. This training will be free and will be open to judges and prosecutors as well. Logistics for both trainings are still being worked out.
- ♦ June 20-22 in Augusta – minimum standards training for criminal, child protective and juvenile law. These trainings will be at the Capital Judicial Center.
- ♦ September – date TBD in Augusta for emancipation minimum standards training and 4 hour civil commitment training. Due to relatively low demand for these trainings, staff decided that video replays could be shown once a year.

Live Training

Only one live training is currently planned in 2016. It will be the criminal law minimum standards training held in conjunction with the MSBA Bridging the Gap program in the late Fall. It will be videotaped for future trainings.

Grant Opportunity for Juvenile Trainings

Director Pelletier was contacted by Sara Gagné-Holmes at the John T. Gorman Foundation about the possibility of funding two live juvenile justice trainings and three video replays. The live trainings would be held in Bangor and Augusta, while the video replays would be held in Farmington, Ellsworth, and Presque Isle. A preliminary budget for these five trainings was submitted to the Foundation's Board for consideration. Today, we received word that the Board has invited us to submit an application for project funding through the Foundation's Invitational Grant Program.