

MCILS

**August 12, 2014
Commissioner's Meeting
Packet**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

AUGUST 12, 2014
COMMISSION MEETING
JUDICIARY COMMITTEE ROOM, STATEHOUSE, AUGUSTA
AGENDA

- 1) Approval of July 15, 2014 Commission Meeting Minutes
- 2) Operations Reports Review
- 3) Somerset County Contract Discussion
- 4) Attorney Removal Rule Amendment Discussion
- 5) Specialized Panel Rule Discussion
 - a. Draft Amendments to Existing Rule
 - b. Draft Appellate and Post-Conviction Sections
- 6) Budget Discussion
- 7) Public Comment
- 8) Set Date, Time and Location of Next Regular Meeting of the Commission
- 9) Executive Session, if needed (Closed to Public)

(1.)
July 15, 2014
Commission Meeting
Minutes

**Maine Commission on Indigent Legal Services – Commissioners Meeting
July 15, 2014**

Minutes

Commissioners Present: Steven Carey, Marvin Glazier, William Logan, Susan Roy, Kenneth Spierer

MCILS Staff Present: John Pelletier, Ellie Brogan

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Approval of the June 10, 2014 Commission Meeting Minutes	Copy of minutes received by all Commissioners.	Commissioner Logan moved for the approval of the minutes. Commissioner Roy seconded. All present voted in favor. Approved.
Operations Reports Review	<p>Director Pelletier presented the <u>June 2014 Operations Reports</u>. The number of new cases opened in DefenderData totaled 2,163 – a 78 case decrease from May. 2,581 vouchers were submitted in June, totaling \$1,271,076. This was a 129 voucher and \$157,500 increase over May. In June, the Commission paid 2,514 vouchers, totaling \$1,191,106, a 123 voucher and \$55,000 increase over May. The Commission was able to end fiscal year 2014 having paid all expenses in full. The average price per voucher in June was \$473.47, an increase of \$40.39 per voucher from May. This brought the fiscal year average voucher price to \$434.60. The 2014 fiscal year voucher average rose \$26.72 per voucher over fiscal year 2013. Appeal and Post-Conviction Review cases were the highest average vouchers. Six vouchers exceeding \$5,000 were paid in June. The June transfer of counsel fees, which reflected May’s collections, totaled \$53,257.53, bringing the total amount collected in fiscal year 2014 to \$654,406.21. This was the highest total in the Commission’s history.</p> <p>Chair Carey was pleased that the Commission was able to meet all its financial obligations this fiscal year. He thanked the Legislature, the Governor’s Office, Commission staff, MACDL, and attorneys who advocated on the Commission’s behalf for increased funding. He also thanked the financial screeners and court staff for their hard work on counsel fee collections this year.</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>A short discussion ensued about the reason behind the rise in average voucher costs seen this fiscal year. Director Pelletier believes that several factors are behind the increase, including: attorney time devoted to review of electronic media; high demand for interpreter services; an increase in the ratio of felony to misdemeanor cases during the first half of the year; a sharp increase in protective custody cases, which are expensive cases; and large number of cases with immigration consequences.</p> <p>Chair Carey requested that Commission staff start keeping track of court time on vouchers to see if there has been an increase for that as well. While costs are trending upwards, Chair Carey indicated that the average voucher amount of \$434 is still not a large amount.</p>	
<p>Consideration of Adoption of Fee Schedule Amendment</p>	<p>Director Pelletier noted that one minor change will need to be made on page 8 of the proposed amended Chapter 301 Rule to include “appeal as of right” language to the section on appeals. The Commissioners then voted on the amended rule.</p>	<p>Commissioner Spierer moved for the amended Rule to be approved and to adopt the staff response to public comments. Commission Glazier seconded. All voted in favor.</p>
<p>Somerset County Contract</p>	<p>Director Pelletier updated the Commissioners on the status of the Somerset County Contract. The Commission received one bid by the current contract provider and a conditional award has been issued to that bidder. The conditional award is contingent upon successful negotiation of a final contract. Following the conditional award, Director Pelletier learned that one of the four provider attorneys listed in the bid had taken a job as a prosecutor in the Attorney General’s Office, and could no longer provide services under the contract. Director Pelletier sought clarification from the bidder about whether a fourth attorney would be added or if it was moving ahead with only three. The bidder responded that it had no current plans to bring on a fourth attorney. The current contract expired on June 30, 2014, and has been extended for an additional two months to August 30th.</p> <p>Director Pelletier sought guidance from the Commissioners about whether during contract negotiations he should seek an agreement on a requirement that at least four attorneys provide services under the contract. Attorney Philip Molar, an attorney under</p>	<p>Commissioner Spierer moved to execute the contract with an informal review date in six months. Chair Carey moved to table the motion for further discussion at the August meeting. Commissioner Glazier seconded the motion to table. All voted in favor.</p>

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>the current contract and a member of the bidding group, was in attendance at the meeting and answered questions about the ability of the bidder group to provide quality indigent legal services under the contract with only three attorneys. Attorney Molar explained that the bidding group is trying to sort out the division of work between the remaining three attorneys and have explored the possibility of adding a fourth attorney. He believes that the group of three can handle the workload and assured the Commissioners that the group would not hesitate to add a fourth attorney if it turned out three was insufficient.</p> <p>Chair Carey indicated that his preference is for four attorneys, but that he might still approve a contract that only had three. He asked Director Pelletier to contact judges in Somerset County to get the court's opinion on the Somerset Contract having three verses four attorneys. Commissioner Spirer suggested executing the contract with the condition that the group report back to the Commission in six months. Director Pelletier explained the RFP terms, which included a two year contract term with two one-year renewals. The Commissioners then discussed the possibility of adding a requirement in the contract that there be a six month review to check on the group's ability to handle the workload with only three attorneys. Director Pelletier said he would check with Purchasing about whether that contract term could be added.</p>	
<p>Attorney Removal Rule Amendment Discussion</p>	<p>Director Pelletier reviewed the changes that were made to the attorney eligibility rule as a result of the discussion at last month's meeting. The Commissioners suggested additional changes and, together with the prior meeting's changes, these substantive changes included: (1) a written notice requirement that the attorney notify the Commission about any bar complaint that has been set for a grievance panel or single justice hearing. Failure to do so will now be grounds for removal; (2) a written notice requirement that the attorney notify the Commission about any criminal charge. Failure to do so will now be grounds for removal; (3) upon notice of a criminal charge, the Executive Director will have the discretion about whether to require the attorney to notify his or her clients about the criminal charge and have the discretion to suspend the attorney from the rosters during the pendency of the case; (4) a notification requirement that the attorney must notify the Commission about the disposition of the criminal case; (5) addition of language already included in other rules that gives notice that any roster decision made by the Executive Director is appealable to the Commission, whose decision is in turn appealable to the district court.</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>Commissioner Glazier suggested Director Pelletier contact bar counsel about the proper language to use in Section 2(1)(b). The Commissioners agreed the while there will be a notice requirement to promptly inform the Commission of any grievance hearing or criminal charge, the annual renewal form should retain the questions about both topics.</p> <p>Commission Logan suggested Director Pelletier investigate whether a statute change would be necessary to protect against the disclosure of sensitive information concerning an attorney in response to a FOAA request. Commissioner Glazier supported this idea of protecting any confidential information disclosed during an internal Commission investigation. Commissioner Spirer cautioned that the Commission should be extremely careful about equating mental health issues with a person's ability to practice.</p> <p>Director Pelletier will present a revised draft of the amended rule at the August meeting.</p>	
Specialized Panel Rule Discussion	<p>Director Pelletier reviewed the changes that were made to the specialized panel rule as a result of the discussion at last month's meeting. These changes include: (1) the offense of criminal trespass was removed; (2) the reference letter requirement was revised for all case types, except homicide, to make it mandatory only if the attorney is requesting a waiver or upon request by the Executive Director; (3) the domestic violence panel was not removed; (4) the six month practice requirement and continuing legal education requirement were removed for the misdemeanor portion of the juvenile panel; (5) the practice requirement for the protective custody panel was clarified to allow both civil and criminal experience to count; and (6) the involuntary commitment panel was removed. The Commissioners then voted on the revised amended rule.</p>	<p>Commissioner Logan moved to approve the proposed rule as amended at the meeting. Commissioner Roy seconded. All voted in favor.</p>
Appellate Panel Discussion	<p>The Commissioners discussed the creation of an appellate roster and an appellate rule. Chair Carey suggested that the staff survey rostered attorneys to see if they would support a change from the current practice where trial counsel continues on appeal unless granted leave to withdraw, to a new rule where trial counsel's responsibility would end at the trial court level and would have the option of handling the appeal with the client's consent. Chair Carey also asked the staff to get feedback from the Law Court on an appellate roster and the necessary skills the Court would like to see rostered attorneys have. The Commissioners suggested the following qualifications and application requirements: (1) writing sample; (2) trial experience; (3) appellate experience (4) using</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>current trial court roster eligibilities for appellate eligibilities; and (5) clerk experience.</p> <p>Director Pelletier will present a draft of the appellate rule at the August meeting.</p>	
<p>Conference Room Sound System</p>	<p>Director Pelletier relayed that it would cost \$700 per month to equip the conference room at 19 Union Street with internet broadcast capabilities in order to broadcast Commission meetings online. The Commissioners agreed that this would be too much of a cost to incur for something that the Commission is not actually required to do. Chair Carey wondered if anyone listens to the meetings online and asked Director Pelletier to survey the attorneys. He also asked Director Pelletier to investigate the cost of recording and posting the audio to the Commission's website.</p>	
<p>Public Comment</p>	<p>None</p>	
<p>Adjournment of meeting</p>	<p>The Commission then voted to adjourn with the next meeting to be on August 12, 2014, at 9:30 am in the Judiciary Committee Room.</p>	<p>Commissioner Spirer made a motion to adjourn. Commissioner Glazier seconded. All present voted in favor.</p>

(2.)
Operations Reports
Review

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
SUBJECT: JULY 2014 OPERATIONS REPORTS
DATE: AUGUST 6, 2014

Attached you will find the July, 2014 Operations Reports for your review and our discussion at the upcoming Commission meeting on August 12, 2014. A summary of the operations reports follows:

- 2,121 new cases were opened in the DefenderData system in July. This was a 42 case decrease from June.
- The number of vouchers submitted electronically in July was 2,324, a decrease of 257 vouchers from June, totaling \$1,119,255.48, a decrease of \$152,000 from June. In July, we paid 2,156 electronic vouchers totaling \$1,047,157.24. This was a 357 voucher and \$143,000 decrease from June.
- There was one paper voucher submitted and paid in July totaling \$163.62.
- The average price per voucher in July was \$485.55, up \$12.08 per voucher from June.
- Appeal and NCR Release Petition cases had the highest average vouchers in July. There were 8 vouchers exceeding \$5,000 paid in July. These cases involved: 1) two very large vouchers in recently completed high profile murder cases and two interim vouchers in other pending murder cases 2) a verdict of not guilty in a Gross Sexual Assault trial; 3) the denial of a Petition to terminate parental rights after a two day trial; 4) a 5 day trial in which the defendant was found guilty of workers compensation fraud; and 5) a voucher from standby co-counsel in the trial of a case where the court had ruled that the defendant had forfeited his right to be represented by counsel.

In our All Other Account, the total expenses for the month of July were \$1,141,359.56. Of the amount, \$11,205.60 was devoted to the Commission's operating expenses.

In the Personal Services Account, we had \$66,591.80 in expenses for the month of July.

In the Revenue Account, our monthly transfer from the Judicial Branch for counsel fees for the month of July, which reflects June's collections, totaled \$55,555.85.

In our Conference Account, we collected registration fees for the July involuntary commitment training bringing the account balance at \$21,768.37.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Case Type

7/31/2014

DefenderData Case Type	Jul-14						Fiscal Year 2015			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
Appeal	13	11	\$ 11,665.74	10	\$ 10,547.25	\$ 1,054.73	13	10	\$ 10,547.25	\$ 1,054.73
Child Protection Petition	160	354	\$ 199,294.39	367	\$ 192,177.80	\$ 523.65	160	367	\$ 192,177.80	\$ 523.65
Drug Court	1	4	\$ 1,768.50	5	\$ 2,315.00	\$ 463.00	1	5	\$ 2,315.00	\$ 463.00
Emancipation	15	3	\$ 1,014.50	4	\$ 409.68	\$ 102.42	15	4	\$ 409.68	\$ 102.42
Felony	533	503	\$ 398,827.48	459	\$ 386,124.23	\$ 841.23	533	459	\$ 386,124.23	\$ 841.23
Involuntary Civil Commitment	89	66	\$ 14,684.36	61	\$ 10,142.60	\$ 166.27	89	61	\$ 10,142.60	\$ 166.27
Juvenile	120	107	\$ 33,489.16	82	\$ 27,865.32	\$ 339.82	120	82	\$ 27,865.32	\$ 339.82
Lawyer of the Day - Custody	192	205	\$ 42,286.41	196	\$ 37,607.68	\$ 191.88	192	196	\$ 37,607.68	\$ 191.88
Lawyer of the Day - Juvenile	30	27	\$ 4,740.84	33	\$ 5,917.64	\$ 179.32	30	33	\$ 5,917.64	\$ 179.32
Lawyer of the Day - Walk-in	93	97	\$ 19,964.09	69	\$ 12,862.94	\$ 186.42	93	69	\$ 12,862.94	\$ 186.42
Misdemeanor	649	619	\$ 236,773.01	537	\$ 202,363.36	\$ 376.84	649	537	\$ 202,363.36	\$ 376.84
Petition, Modified Release Treatment	1	2	\$ 730.00	6	\$ 1,372.56	\$ 228.76	1	6	\$ 1,372.56	\$ 228.76
Petition, Release or Discharge	0	1	\$ 2,560.63	1	\$ 2,560.63	\$ 2,560.63	0	1	\$ 2,560.63	\$ 2,560.63
Petition, Termination of Parental Rights	24	44	\$ 29,421.41	46	\$ 32,290.39	\$ 701.97	24	46	\$ 32,290.39	\$ 701.97
Post Conviction Review	3	4	\$ 5,484.10	4	\$ 4,985.08	\$ 1,246.27	3	4	\$ 4,985.08	\$ 1,246.27
Probation Violation	163	132	\$ 45,717.98	118	\$ 39,807.85	\$ 337.35	163	118	\$ 39,807.85	\$ 337.35
Represent Witness on 5th Amendment	1	2	\$ 310.00	1	\$ 100.00	\$ 100.00	1	1	\$ 100.00	\$ 100.00
Review of Child Protection Order	32	140	\$ 69,693.88	154	\$ 76,587.23	\$ 497.32	32	154	\$ 76,587.23	\$ 497.32
Revocation of Administrative Release	2	3	\$ 829.00	3	\$ 1,120.00	\$ 373.33	2	3	\$ 1,120.00	\$ 373.33
DefenderData Sub-Total	2,121	2,324	\$ 1,119,255.48	2,156	\$ 1,047,157.24	\$ 485.69	2,121	2,156	\$ 1,047,157.24	\$ 485.69
Paper Voucher Sub-Total	1	1	\$ 163.62	1	\$ 163.62	\$ 163.62	1	1	\$ 163.62	\$ 163.62
TOTAL	2,122	2,325	\$1,119,419.10	2,157	\$1,047,320.86	\$ 485.55	2,122	2,157	\$ 1,047,320.86	\$ 485.55

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY15 FUND ACCOUNTING
AS OF 07/31/2014

Account 010 95F Z112 01 (All Other)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY15 Total
FY15 Professional Services Allotment		\$ 3,668,113.00		\$ 3,314,658.00		\$ 3,737,544.00		\$ 3,228,737.00	
FY15 General Operations Allotment		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustment		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustment		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustment		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustment		\$ -		\$ -		\$ -		\$ -	
Total Budget Allotments		\$ 3,668,113.00		\$ 3,314,658.00		\$ 3,737,544.00		\$ 3,228,737.00	\$ 13,949,052.00
Total Expenses	1	\$ (1,141,359.56)	4	\$ -	7	\$ -	10	\$ -	\$ (1,141,359.56)
	2	\$ -	5	\$ -	8	\$ -	11	\$ -	\$ -
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	\$ -
Encumbrances		\$ (31,656.00)		\$ -		\$ -		\$ -	\$ (31,656.00)
TOTAL REMAINING		\$ 2,495,097.44		\$ 3,314,658.00		\$ 3,737,544.00		\$ 3,228,737.00	\$ 12,776,036.44

Q1 Month 1 (as of 07/31/14)

INDIGENT LEGAL SERVICES	
Counsel Payments	\$ (1,047,381.94)
Somerset County	\$ (20,825.00)
Subpoena Witness Fees	\$ -
Private Investigators	\$ (20,878.48)
Mental Health Expert	\$ (12,399.48)
Transcripts	\$ (15,798.28)
Other Expert	\$ (9,643.08)
Air fare-out of state witness	\$ -
Process Servers	\$ (1,319.90)
Interpreters	\$ (618.30)
Misc Prof Fees & Serv	\$ (1,289.50)
SUB-TOTAL ILS	\$ (1,130,153.96)
OPERATING EXPENSES	
Service Center	\$ -
DefenderData	\$ (4,162.00)
Risk Management	\$ (887.07)
Mileage/Tolls/Parking	\$ (1,074.28)
Mailing/Postage/Freight	\$ (1,099.37)
Registration Fees-John & Ellie	\$ (444.00)
Legal Ad	\$ (899.22)
Office Supplies/Equip.	\$ (618.60)
Cellular Phones	\$ (115.99)
Subscriptions	\$ (120.00)
Office Equipment Rental	\$ (135.65)
OIT/TELCO	\$ (1,649.42)
SUB-TOTAL OE	\$ (11,205.60)
TOTAL	\$ (1,141,359.56)

INDIGENT LEGAL SERVICES

Q1 Allotment	\$ 3,668,113.00
Q1 Expenditures for Somerset cty PDP & Justice Works contracts	\$ (31,656.00)
Q1 Expenses as of 07/31/14	\$ (1,141,359.56)
Remaining Q1 Allotment as of 07/31/14	\$ 2,495,097.44

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY15 FUND ACCOUNTING
As of 07/31/14

Account 014 95F Z112 01 (Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY14 Total
Total Budget Allotments		\$ 149,124.00		\$ 149,124.00		\$ 149,124.00		\$ 149,125.00	\$ 596,497.00
Financial Order Adjustment	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Financial Order Adjustment	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Budget Order Adjustment	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
Financial Order Adjustment		\$ -	4	\$ -		\$ -		\$ -	
Total Budget Allotments		\$ 149,124.00		\$ 149,124.00		\$ 149,124.00		\$ 149,125.00	\$ 596,497.00
Collected Revenue from JB	1	\$ 51,555.85	4	\$ -	7	\$ -	10	\$ -	
Promissory Note Payments		\$ 200.00		\$ -		\$ -		\$ -	
Collected Revenue from JB	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Promissory Note Payments		\$ -		\$ -		\$ -		\$ -	
Discovery sanction payment		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
Promissory Note Payments		\$ -		\$ -		\$ -		\$ -	
TOTAL REVENUE COLLECTED		\$ 51,755.85		\$ -		\$ -		\$ -	\$ 51,755.85
Counsel Payments	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
REMAINING ALLOTMENT		\$ 149,124.00		\$ 149,124.00		\$ 149,124.00		\$ 149,125.00	\$ 596,497.00
Total Expenses	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
REMAINING CASH		\$ 51,755.85		\$ -		\$ -		\$ -	\$ 51,755.85

Q1 Month 1 (as of 07/31/14)	
DEFENDER DATA COUNSEL PAYMENTS	
	\$ -
SUB-TOTAL ILS	
OVERPAYMENT REIMBURSEMENTS	\$ -
Paper Voucher	\$ -
Somerset County CDs	\$ -
Private Investigators	\$ -
Mental Health Expert	\$ -
Transcripts	\$ -
Other Expert	\$ -
Process Servers	\$ -
SUB-TOTAL OE	\$ -
TOTAL	\$ -

INDIGENT LEGAL SERVICES	
FY14 Allotment	\$ 596,497.00
YTD Collected Revenue	\$ 51,755.85
YTD Expenses	\$ -
YTD Counsel Payments	\$ -
Q4 Remaining Unexpended Cash	\$ 51,755.85

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY15 FUND ACCOUNTING
AS OF 07/31/2014

Account 010 95F Z112 01									
(Personal Services)									
	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY15 Total
FY15 Allotment	\$	186,226.00	\$	181,742.00	\$	169,447.00	\$	139,222.00	\$ 676,637.00
Financial Order Adjustments	\$	-	\$	-	\$	-	\$	-	
Financial Order Adjustments	\$	-	\$	-	\$	-	\$	-	
Budget Order Adjustments			\$	-	\$	-	\$	-	
Total Budget Allotments	\$	186,226.00	\$	181,742.00	\$	169,447.00	\$	139,222.00	\$ 676,637.00
Total Expenses	1 \$	(66,591.80)	4 \$	-	7 \$	-	10 \$	-	
	2 \$	-	5 \$	-	8 \$	-	11 \$	-	
	3 \$	-	6 \$	-	9 \$	-	12 \$	-	
TOTAL REMAINING	\$	119,634.20	\$	181,742.00	\$	169,447.00	\$	139,222.00	\$ 610,045.20

Q1 Month 1 (as of 07/31/14)	
Per Diem Payments	\$ (220.00)
Salary	\$ (33,711.63)
Vacation Pay	\$ (1,748.33)
Holiday Pay	\$ (1,444.80)
Sick Pay	\$ (2,363.50)
Overtime Pay	\$ -
Health Insurance	\$ (9,057.26)
Dental Insurance	\$ (249.48)
Employer Retiree Health	\$ (5,543.48)
Employer Retirement	\$ (2,263.13)
Employer Group Life	\$ (313.20)
Employer Medicare	\$ (564.93)
Retiree Unfunded Liability	\$ (6,522.30)
Retro Pymt	\$ -
Perm Part Time Full Ben	\$ (2,589.76)
TOTAL	\$ (66,591.80)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY15 FUND ACCOUNTING
As of 07/31/14

Account 014 95F Z112 02 (Conference Account)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY14 Total
FY14 Carry Over		\$ 20,144.41							\$ -
Total Budget Allotments		\$ 4,000.00		\$ 20,000.00		\$ 4,000.00		\$ 4,000.00	\$ 32,000.00
Budget Order Adjustment									
Total Budget Allotments		\$ 4,000.00		\$ 20,000.00		\$ 4,000.00		\$ 4,000.00	\$ 32,000.00
Total Revenue	1	\$ 1,850.00	4	\$ -	7	\$ -	10	\$ -	
Billed Earned Revenue	1	\$ (150.00)	5	\$ -	8	\$ -	11	\$ -	
	2	\$ -	6	\$ -	9	\$ -	12	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
ACTUAL CASH BALANCE		\$ 21,844.41		\$ -		\$ -		\$ -	\$ 21,844.41
Total Expenses	1	\$ (76.04)	4	\$ -	7	\$ -	10	\$ -	
	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
TOTAL REMAINING		\$ 21,768.37		\$ 20,000.00		\$ 4,000.00		\$ 4,000.00	\$ 31,923.96

Q1 Month 1 (as of 07/31/14)

Collected Revenue	\$ 1,850.00
Billed Earned Revenue	\$ (150.00)
Training Manuals Printing	\$ -
Training Refreshments/Meals	\$ -
CLE App to the Bar	\$ (35.00)
Videographer	\$ -
Refund for non-attendance	\$ -
Office Supplies/Materials	\$ (41.04)
TOTAL EXPENSES	\$ (76.04)

FY15 Allotment	\$ 32,000.00
FY14 Carry Over	\$ 20,144.41
FY15 Collected Revenue	\$ 1,700.00
FY15 Expenses	\$ (76.04)
Unexpended Cash	\$ 21,768.37

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Number of Attorneys Rostered by Court

7/31/2014

Court	Rostered Attorneys
Alfred Superior Court	110
Auburn Superior Court	119
Augusta District Court	95
Augusta Superior Court	89
Bangor District Court	62
Belfast District Court	47
Belfast Superior Court	42
Biddeford District Court	138
Bridgton District Court	105
Calais District Court	13
Caribou District Court	17
Caribou Superior Court	19
Dover-Foxcroft District Court	27
Ellsworth District Court	49
Farmington District Court	29
Fort Kent District Court	9
Houlton District Court	17
Houlton Superior Court	19
Lewiston District Court	148
Lincoln District Court	30
Machias District Court	19
Machias Superior Court	16
Madawaska District Court	10

Court	Rostered Attorneys
Millinocket District Court	24
Newport District Court	39
Portland District Court	159
Presque Isle District Court	14
Rockland District Court	50
Rockland Superior Court	43
Rumford District Court	30
Skowhegan District Court	28
South Paris District Court	72
South Paris Superior Court	68
Springvale District Court	123
Unified Criminal Docket Bangor	62
Unified Criminal Docket Bath	89
Unified Criminal Docket Dover Foxcroft	26
Unified Criminal Docket Ellsworth	43
Unified Criminal Docket Farmington	30
Unified Criminal Docket Portland	148
Unified Criminal Docket Skowhegan	17
Waterville District Court	52
West Bath District Court	117
Wiscasset District Court	80
Wiscasset Superior Court	71
York District Court	114

(3.)
Somerset County Contract
Discussion

FEEDBACK REGARDING SOMERSET CONTRACT ISSUE

John D. Pelletier, Esq., Executive Director

At the Commission's request, I spoke to a former Superior Court Justice with years of recent experience sitting in Somerset County, a former District Court Judge with years of recent experience sitting in District Court in Skowhegan, and the Acting Director of the Division of Purchases.

The former Superior Court Justice stated that the remaining three lawyers in the bidder group are highly conscientious, honest, and of the highest integrity. The justice did not believe these attorneys ever gave short-shrift to any case due to the fixed fee nature of the contract under which they provided services. The justice also related the belief that the lawyers involved would provide an accurate and frank assessment if questioned about how the three lawyers were doing keeping up with the workload.

The justice felt that the two solo practitioners under the contract had the ability to expand their share of the work and acknowledged that the other attorney faced a bigger challenge in light of the recent disruption of his general practice law firm. The justice felt it was appropriate to allow the three attorneys to be given a trial period to determine whether three lawyers are sufficient and was comforted by the belief that the three lawyers involved would add a fourth lawyer if that was needed.

The former District Court Judge stated when the four lawyers who previously made up the provider group did a very good job and never made decisions about a case based on financial incentive. The judge did express concern that 25% of that resource was now gone. The judge pointed to practical concerns about three people being able to cover all the necessary court sessions, including, for example, in-custody arraignments that are done by video with the attorney at the jail on the same afternoon as a District Court criminal trial session. The judge also expressed concern that, with just three lawyers, the odds would be increased that during a trial term a lawyer would have to conduct back-to-back jury trials, a difficult situation lawyers often seek to avoid.

The Judge felt that a trial period would be appropriate, but did express concern about whether three lawyers would be sufficient for the long term. Finally, the judge expressed belief that the remaining lawyers would honestly assess the need for a fourth lawyer, but pointed out that their perspective might be different from the court's focus on the need to make full use of court time. The judge did not want there to be court down-time due to the inability of three lawyers to staff scheduled court sessions or conduct trials.

The Acting Director of the Division of Purchases felt that a contract provision could be crafted that would allow the Commission to assess the situation after a trial period and require, if necessary, that a fourth lawyer be added. His main concerns were that 1) the provision explicitly determine which party to the contract got to make that decision, and 2) the provision be clear that requiring a fourth attorney would not trigger an increase in the contract price.

B. Meet all MCILS CLE requirements.

16. **NOTICE TO MCILS:**

All notices to MCILS regarding this Agreement shall be made to the Agreement Administrator at: 154 State House Station, Augusta, Maine 04330-0154.

17. **FIRMS AND ATTORNEYS:**

A. The Provider includes the following firms, which include the following attorneys, who will provide services under this Agreement only in specific case types for which they have been rostered by MCILS:

Firm

Attorney

B. At the discretion of the Commission, it may conduct a review of the operation of this Agreement in [January, 2015][PJ1], and at reasonable intervals thereafter, to determine whether a total of three (3) lawyers constitutes a sufficient number of lawyers to meet the Provider's obligations under this Agreement. If the Commission determines, in its sole discretion, that three lawyers are insufficient, it may require the Provider to add a fourth lawyer to provide services under this Agreement subject to the requirements of paragraph C below. Any decision to require that a fourth lawyer be added shall be communicated to the Provider in writing. Failure by the Provider to add a fourth lawyer within a reasonable time after such notice shall constitute grounds for termination of this Agreement. Any requirement that a fourth lawyer be added shall not affect the contract price.

BC. All attorneys providing services under this Agreement must, at all times, be: (1) licensed to practice law in Maine; (2) meet all requirements set forth in current and future MCILS rules and standards; and (3) be rostered by MCILS in Somerset County Superior and District Court for all case types in which they will provide services under this Agreement.

- C. Upon written approval of MCILS, this Agreement may also include any other duly license attorney hired by the Provider while this Agreement is in force if said attorney meets all requirements in Paragraph B of this Section.

(4.)

**Attorney Removal Rule
Amendment Discussion**

Chapter 2: STANDARDS FOR QUALIFICATIONS OF ASSIGNED COUNSEL

Summary: This chapter establishes the standards prescribing minimum experience, training and other qualifications for contract counsel and assigned counsel to be eligible to accept appointments to represent indigent people, who are eligible for a constitutionally-required attorney.

SECTION 1. Application

All attorneys wishing to accept case assignments by the Commission must complete an application in the manner prescribed by the Commission. The Commission will not act on an application until it is complete. No attorney will be assigned a case until that attorney completes an application and is placed on the roster of attorneys eligible to receive assignments.

SECTION 2. Minimum Experience, Training And Other Eligibility Requirements

Any attorney wishing to accept case assignments from the Commission, serve as contract counsel or otherwise be approved by the Commission to accept assignments must satisfy the following conditions.

1. Licensed To Practice

a.) The attorney must be licensed to practice law in the State of Maine and be in good standing with the Maine Board of Overseers of the Bar.

b.) The attorney must promptly inform the Commission, in writing, of any complaint against the attorney filed with the Maine Board of Overseers of the Bar that has been set for a grievance or panel hearing or hearing before a single justice of the Supreme Judicial Court. Failure to comply with this requirement is grounds for removal from the roster.

c.) The attorney must promptly inform the Commission, in writing, of any criminal charge filed against the attorney in any jurisdiction and promptly inform the Commission of any disposition of such charge. Failure to comply with this requirement is grounds for removal from the roster. ~~An attorney charged with a crime shall also promptly inform all clients in assigned cases that the attorney has been charged with a crime and provide each client with the opportunity to request that the attorney withdraw from the case.~~

2. Attorney Cooperation with Procedures and Monitoring

The attorney must register with the Commission annually in a manner prescribed by the Commission. The attorney must comply with all applicable Commission rules and procedures. The attorney must comply with Commission monitoring and performance evaluations. The attorney must also comply with any Commission investigation of complaints, billing discrepancies, or other information that, in the view of the Executive

Director, concerns the question whether the attorney is fit to remain on the roster. Except as pertains to indigent cases assigned to the attorney, the Executive Director cannot require an attorney to disclose information that is privileged or made confidential by statute, by court rule or by court order.

SECTION 3. Office, Telephone, and Electronic Mail

The attorney must maintain an office or have the use of space that is reasonably accessible to clients and that permits the private discussion of confidential and other sensitive matters.

The attorney must maintain a telephone number, which shall be staffed by personnel available for answering telephone calls or an answering service, an answering machine or voicemail capability that ensures client confidentiality.

The attorney must maintain a confidential working e-mail account as a means of receiving information from and providing information to the Commission.

The attorney must keep the Commission and the courts in which the attorney represents indigent clients apprised of the attorney's work telephone number and postal electronic mail addresses. The attorney must ensure that the court has the ability to contact the attorney by mail and by telephone.

SECTION 4. Experience and Proficiency

The attorney shall demonstrate the necessary and sufficient experience and proficiency required to accept assignments as provided below.

1. Any attorney not previously having been accepted to receive assignments from the Commission must satisfactorily complete a Commission-sponsored or Commission-approved training course for the area of the law for which the attorney is seeking to receive assignments, including but not limited to, criminal defense, juvenile defense, civil commitment, child protective, or emancipation prior to being placed on the roster and receiving assignments; or
2. An attorney may be accepted for placement on the roster and receive assignments from the Commission without completing a Commission-sponsored or Commission-approved training course as provided above if the attorney demonstrates to the Commission a commitment to and proficiency in the practice of the area of law for which the Attorney is willing to accept assignments over the course of at least the three years prior to receiving assignments from the Commission.

SECTION 5. Training

The attorney shall annually complete 8 hours of continuing legal education (CLE) approved by the Commission.

The attorney shall meet any specific training requirements of any specialized panels, which may include but are not limited to homicide, child protective, or involuntary commitment, as is required by those panels.

SECTION 6. Removal or Suspension from the Roster

The Executive Director may remove indefinitely or suspend an attorney from the roster completely or from the roster for certain case types and court locations for any failure to comply with this or any other Commission rule. ~~The Executive Director may also remove an attorney from the roster completely or from the roster for certain case types and court locations if the Executive Director determines, based the nature of any criminal charge or on investigation by the Executive Director or the Executive Director's designee of any complaint or other information, that the attorney is no longer qualified to carry out the Commission's obligation to provide quality indigent legal services.~~ In addition, the Executive Director may remove indefinitely or suspend an attorney from the roster completely or from the roster for certain case types and court locations if the Executive Director determines that the attorney is no longer qualified to provide quality indigent legal services based the nature of any criminal charge or on investigation by the Executive Director or the Executive Director's designee of any complaint or other information. The Executive Director's decision to remove or suspend an attorney from the roster shall be in writing and shall reflect the Executive Director's reasoning in a manner sufficient to inform the attorney and the public of the basis for the Executive Director's action.

~~"Removal" includes both an indefinite removal and a period of suspension.~~ Attorneys removed indefinitely must re-apply to the Commission if they wish to receive assignments in the future. Attorneys suspended from the roster need not re-apply, but must demonstrate compliance with any conditions made part of a suspension. Removal or suspension may also include a requirement that the attorney immediately identify to the Commission all open assigned cases and file a motion to withdraw in each case.

The Executive Director's decision to remove or suspend an attorney may be appealed to the full Commission pursuant to 4 M.R.S.A. § 1804(3)(J) and Commission Rule 94-649 Chapter 201.

STATUTORY AUTHORITY: 4 M.R.S.A. § 1804(2)(B), 1805

Maine Revised Statutes

Title 4: JUDICIARY

Chapter 37: MAINE COMMISSION ON INDIGENT LEGAL SERVICES

§1806. INFORMATION NOT PUBLIC RECORD

Disclosure of information and records in the possession of the commission is governed by this section. [2011, c. 260, §1 (NEW).]

1. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Individual client information" means name, date of birth, social security number, gender, ethnicity, home address, home telephone number, home facsimile number, home e-mail address, personal cellular telephone number, personal pager number and any information protected under the attorney-client relationship. [2011, c. 260, §1 (NEW).]

B. "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address, personal cellular telephone number, personal pager number, date of birth and social security number. [2011, c. 260, §1 (NEW).]

C. "Request for funds for expert or investigative assistance" means a request submitted to the commission by an indigent party or by an attorney on behalf of an indigent client seeking authorization to expend funds for expert or investigative assistance, which includes, but is not limited to, the assistance of a private investigator, interpreter or translator, psychiatrist, psychologist or other mental health expert, medical expert and scientific expert. [2011, c. 260, §1 (NEW).]

D. "Case information" means:

- (1) The court in which a case is brought;
- (2) Any criminal charges or juvenile crime charges and the type, but not the contents, of any petition giving rise to a case;
- (3) The docket number;
- (4) The identity of assigned counsel and the date of assignment;
- (5) The withdrawal of assigned counsel and the date of withdrawal; and
- (6) Any order for reimbursement of assigned counsel fees. [2011, c. 547, §1 (NEW).]

[2011, c. 547, §1 (AMD) .]

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

A. Individual client information that is submitted by a commission-rostered attorney or a court is confidential, except that the names of criminal defendants and the names of juvenile defendants charged with offenses that if committed by an adult would constitute murder or a Class A, Class B or Class C crime are not confidential. [2011, c. 260, §1 (NEW).]

B. Information subject to the lawyer-client privilege set forth in the Maine Rules of Evidence, Rule 502 or that constitutes a confidence or secret under the Maine Rules of Professional Conduct, Rule 1.6 is confidential. [2011, c. 260, §1 (NEW).]

C. Personal contact information of a commission-rostered attorney is confidential. [2011, c. 260, §1 (NEW).]

D. Personal contact information of a member of the commission or a commission staff member is confidential [2011, c. 260, §1 (NEW).]

E. A request for funds for expert or investigative assistance that is submitted by an indigent party or by an attorney on behalf of an indigent client is confidential. The decision of the executive director of the commission hired pursuant to section 1804, subsection 1, or the executive director's designee, to grant or deny such a request is not confidential after a case has been completed. A case is completed when the judgment is affirmed on appeal or the period for appeal has expired. [2011, c. 260, §1 (NEW).]

F. Any information obtained or gathered by the commission when performing an evaluation of an attorney is confidential, except that it may be disclosed to the attorney being evaluated. [2011, c. 260, §1 (NEW).]

[2011, c. 260, §1 (NEW) .]

3. Confidential information disclosed by the Judicial Department. The Judicial Department may disclose to the commission confidential information necessary for the commission to carry out its functions, including the collection of amounts owed to reimburse the State for the cost of assigned counsel, as follows:

A. Case information and individual client information with respect to court proceedings that are confidential by statute or court rule in which one or more parties are represented by assigned counsel; and [2011, c. 547, §2 (NEW).]

B. The name, address, date of birth and social security number of any person ordered by the court to reimburse the State for some or all of the cost of assigned counsel. [2011, c. 547, §2 (NEW).]

This information remains confidential in the possession of the commission and is not open to public inspection, except that the names of criminal defendants and the names of juvenile defendants charged with offenses that if committed by an adult would constitute murder or a Class A, Class B or Class C crime are not confidential.

[2011, c. 547, §2 (NEW) .]

SECTION HISTORY

2011, c. 260, §1 (NEW). 2011, c. 547, §§1, 2 (AMD).

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Specialized Panel Rule Discussion

(5a.)

**Draft Amendments to
Existing Rule**

Chapter 3: ELIGIBILITY REQUIREMENTS FOR SPECIALIZED CASE TYPES

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.

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. Involuntary commitment

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; and
- C. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a sex offense.
- D. ~~At the applicant's discretion, he or she may~~ If the applicant seeks a waiver, the applicant shall submit 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 a sex offense. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author. 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; and
- C. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a serious violent felony.

D. ~~At the applicant's discretion, he or she may~~ If the applicant seeks a waiver, the applicant shall submit 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 a serious violent felony. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author. 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; and
- D. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with an OUI.
- E. ~~At the applicant's discretion, he or she may~~ If the applicant seeks a waiver, the applicant shall submit 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 an OUI. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author. 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; and
- D. Provide a letter explaining reasons for interest in and qualifications for

representing individuals charged with a domestic violence crime.

- E. ~~At the applicant's discretion, he or she may~~ If the applicant seeks a waiver, the applicant shall submit 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 a domestic violence crime. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author. 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. For civil offenses and misdemeanor cases:~~

- ~~1) — Have attended in the last three years at least two hours of CLE credit on one or more of the following topics related to juvenile defense including training and education regarding: placement options and dispositional alternatives, child development, adolescent mental health diagnosis and treatment, and the — collateral consequences of juvenile adjudications.~~

AB. 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;
- 23) Have tried at least 5 contested juvenile hearings (including but not limited to: detention hearings, evidentiary hearings, adjudication hearings, and dispositional hearings);
- 34) 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; and
- 45) Provide a letter explaining reasons for interest in and qualifications for representing juveniles in felony and sex offense cases.
- 56) ~~At the applicant's discretion, he or she may~~ If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice, that assert 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. Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.

- 67) 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.

6B. 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; and
- 5) Provide a letter explaining reasons for interest in and qualifications for representing juveniles in competency and bind-over hearings.
- 6) ~~At the applicant's discretion or upon request by the Executive Director, the applicant may~~ If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice, that assert 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. 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.~~

BA. Have conducted at least four contested hearings in civil or criminal cases within the last five years;

6B. 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;
DC. Provide a letter explaining reasons for interest in and qualifications for representing parents in protective custody proceedings; and

ED. ~~At the applicant's discretion, he or she may~~ If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice, that assert 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. Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.

FE. 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 in preparation of and with the termination of parental rights hearing.

~~8. **Involuntary Commitment.** In order to be rostered for Involuntary Commitment cases an attorney must:~~

~~A. Have at least one year of criminal or civil law practice experience;~~

~~B. Have conducted at least four contested hearings within the last five years;~~

~~C. Have attended in the last three years at least four hours of CLE credit on topics devoted to the representation of individuals with mental health issues, including training and education regarding placement options and dispositions, mental health diagnosis and treatment and the collateral consequences of involuntary commitments; and~~

~~D. Provide a letter explaining reasons for interest in and qualifications for representing individuals facing involuntary commitment.~~

~~E. At the applicant's discretion, he or she may submit letters of reference from attorneys with whom the applicant does not practice, that assert that the applicant is qualified to represent individuals facing involuntary commitment. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author. Letters of reference shall 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)

Specialized Panel Rule Discussion

**(5b.)
Draft Appellate &
Post-Conviction Sections**

5. **Law Court Appeals.** In order to be rostered for appeals to the Law Court 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 an order on a stage of the case that constitutes a disposition under Commission Rule 94-649 Chapter 301, Section 6(1)(B);
- B. Applicants having provided representation in three or more appeals, including appeal 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 provides representation in three or more appeals must submit copies of briefs that they have filed in any appeals, 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. Letters of reference shall be submitted upon the request of the Executive Director, or his or her designee. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.

5. **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 for a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice, that assert 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. Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.

(6.)
Budget Discussion

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE BROGAN, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: BUDGET MEMO
DATE: August 7, 2014

On July 30, 2014, the Commission received budget guidance documents indicating that any supplemental budget request, together with a proposed biennial budget must be filed with the Budget Office by September 1, 2014. I was on vacation the week of July 28th and will not have time to prepare budget documents for Commission review at the August meeting. As stated above, however, the documents need to be filed before the September Commission meeting.

SUPPLEMENTAL REQUEST

In January, 2014, we submitted a supplemental request of \$980,000 to cover increasing costs for FY'15, the fiscal year we are now in. (We had a separate request to fund an hourly rate increase for the private investigators). The supplemental budget enacted by the Legislature included \$490,000, one-half of the amount requested, for the Commission for FY'15. Based on the final six months of FY'14 and early indications of budget trends in FY'15, I believe the Commission needs the second half of the amount originally requested, but not more. Accordingly, I recommend submitting a supplemental budget request for FY'15 in the amount of \$490,000.

BIENNIAL BUDGET

The Commission has provisionally adopted a fee schedule amendment raising the hourly rate paid to attorneys to \$70.00/hr. during the first year of the next biennium and \$75.00/hr. during the second year. Our budget request should be adjusted to reflect these hourly rate increases.

In addition, independent of any increase in the hourly rate, the Commission has seen consistently rising costs during its first four years of operation. The percentage increases in our overall budget allotments over the course of these years has been as follows: FY'11/'12 – 13.6%, FY'12/'13 – 3.6%, FY'13/'14 – 7.4%. When calculating the budget proposal for the current biennium, the Commission used an annual inflation adjustment of 3.5% percent. I am seeking Commission input on what inflation factor I should use when putting together the proposal for the next biennium in light of the history reflected above.

Finally, the budget guidance requires the Commission to update the zero-based budget documents that were prepared for the last biennial budget process.

AUTHORIZATION

Given the time requirements, I am seeking Commission authorization to prepare and submit the required budget documents as set forth above and in light of the Commission discussion of the inflation factor for the biennial proposal.