

MCILS

**December 8, 2015
Commissioner's Meeting
Packet**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

DECEMBER 8, 2015
COMMISSION MEETING
JUDICIARY COMMITTEE ROOM, STATEHOUSE, AUGUSTA
AGENDA

- 1) Approval of November 10, 2015 Commission Meeting Minutes
- 2) Operations Reports Review
- 3) Discussion of LD 1433
- 4) Appellate Contracts
- 5) Public Comment
- 6) Set Date, Time and Location of Next Regular Meeting of the Commission
- 7) Executive Session, if needed (Closed to Public)

(1.)
November 10, 2015
Commission Meeting
Minutes

**Maine Commission on Indigent Legal Services – Commissioners Meeting
November 10, 2015**

Minutes

Commissioners Present: Steven Carey, William Logan, Susan Roy, Kenneth Spierer
MCILS Staff Present: John Pelletier, Ellie Maciag

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Approval of the October 13, 2015 Commission Meeting Minutes	No discussion of meeting minutes.	Commissioner Spierer moved for approval, Commissioner Roy seconded. All in favor. Approved.
Operations Reports Review	<p>Director Pelletier presented the October 2015 Operations Reports. 2,375 new cases were opened in the DefenderData system in October. This was a 278 case increase from September, and a relatively high month for new cases. The number of submitted vouchers in October was 2,637, a 191 voucher increase from September, totaling \$1,361,120, an increase of \$80,000 from September. In October, the Commission paid 2,101 vouchers totaling \$1,071,118, a decrease of 1,280 vouchers and \$600,000 from September. Additional funds were available in September so vouchers that were scheduled to be paid in October were paid in September. This accounted for the sharp decrease in the number of vouchers paid from the previous month. Director Pelletier anticipates that there will be no delay in attorney payments at the end of the quarter and does not foresee any need for a supplemental budget request. Director Pelletier noted that vouchers and costs continue to come in flat as compared to last year. He indicated that it was too early to say what is driving this trend, but pointed out that Commission costs lag behind any increase or decrease in the crime rate. The average price per voucher in October was \$509.81, up \$16.01 per voucher from September. The yearly voucher average continues to remain roughly 7% higher than this time last year. Director Pelletier noted that the most recent hourly rate increase of approximately 10% is working its way into the system.</p>	

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	<p>Appeal and Post-Conviction Review cases had the highest average vouchers in October. There were 6 vouchers exceeding \$5,000 paid in October. The monthly transfer from the Judicial Branch for counsel fees for October, which reflects September's collections, totaled \$46,384, up approximately \$2,500 from the previous month. Director Pelletier indicated that four months into the fiscal year, collection amounts are behind projections – roughly \$10,000 per month – and also behind where collection amounts were at the same time last year. He informed the Commissioners about a Judicial Branch policy change that took place between May and June of this year with regards to bail. Under the new policy, unpaid fines will now take precedence over counsel fees when applying bail. After learning about the change, Director Pelletier contacted Judicial Branch officials and informed them that this change will impact the Commission's budget.</p>	
Discussion of LD 1433	<p>Commissioner Spierer thanked Director Pelletier for soliciting additional comments about LD 1433 and thanked the many attorneys who submitted comments. Chair Carey pointed out that the overwhelming majority of responses were not in favor of the bill. One reoccurring theme in the responses focused on the fact that some costs are out of the Commission's control, including court scheduling and length of docket calls. Chair Carey suggested having discussions with the judicial branch about how its policies impact our agency. He also suggested the Commission educate the Legislature about all the factors that are outside the Commission's control that have an impact on our budget.</p>	
Appellate Contracts	<p>Director Pelletier alerted the Commissioners about a recent Law Court opinion regarding appeals in termination of parental rights cases. In the opinion, the Court found that challenges to the effectiveness of counsel can now be part of the appeal from an order terminating parental rights. This new procedure raises the question of whether parents should automatically get new counsel on appeal and, if so, whether the Commission should seek appellate attorneys to handle these cases under a contract. Director Pelletier noted that the Law Court set fairly tight deadlines that might not be workable under the current framework and that an appellate contract</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>might address any potential issues with complying with the new procedure. He sought guidance from the Commissioners about any potential next steps for an appellate contract. After a short discussion, it was decided that further information was needed before deciding whether to explore an appellate contract. Chair Carey and Director Pelletier will try to meet with the court to discuss the opinion and its ramifications. Chair Carey suggested the Commission start thinking about taking over the appointment function from the court now that the Commission has multiple specialized panels, making the appointment process and adhering to our rosters more time consuming for court staff.</p>	
Public Comment	<p><u>James P. Howaniec, Esq.</u>: Attorney Howaniec stated that he has practiced in Lewiston for 30 years and also served as Mayor of Lewiston. He stated that he had polled 25-30 local attorneys who do MCILS cases and that the attorneys he spoke with were uniformly opposed to LD 1433. He expressed concern about the bill's emphasis on contracts to deliver indigent legal services, stating that instituting such a system would radically change a system that already works well. He also expressed concern that the aim of the bill was to save money, which would increase the existing disparity in resources between the state and defense counsel and would devastate the ability of defense counsel to provide quality representation. He cautioned that LD 1433 would cause Maine to join states around the country in undermining the 6th amendment right to counsel enshrined in the United States Constitution.</p> <p>Attorney Howaniec also explained that the increasing costs of indigent legal services resulted from changes beyond the control of MCILS, including procedures developed by the courts that actually increase the time necessary to process cases, the need to research and address the myriad collateral consequences that now attach to criminal convictions, and inefficiencies caused by jail overcrowding and insufficient court staff. In view of these dynamics, he felt that any attempt to artificially cap costs would drive quality attorneys from the system, which even now does not adequately compensate attorneys for the work they perform.</p>	

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	<p><u>Jamesa J. Drake, Esq.</u>: Attorney Drake, an Adjunct Professor of Appellate Practice and Criminal Procedure at the University of Maine School of Law and a private practitioner in Auburn, spoke on her own behalf and on behalf of the Maine Association of Criminal Defense Lawyers. She addressed a recent Law Court ruling that authorized parents whose parental rights had been terminated to raise a claim of ineffective assistance of counsel on direct appeal, asserting that trial counsel now had a conflict of interest that requires the Commission to move swiftly to a system that provides new counsel for the any appeal from an order terminating parental rights.</p> <p>Professor Drake also expressed concern about how MCILS compensates lawyers engaged in appellate practice because such practice requires collaboration, both in individual cases and across the spectrum of cases. She expressed concern that consultation and advice from fellow attorneys about issues in a pending case or to prepare for oral argument, items necessary for quality appellate practice, cannot be billed by the consulting counsel and so do not take place. She also stated that absence of coordination in the current system of individual attorneys pursuing appeals in isolation prevents development of a cohesive appellate strategy to address recurring issues of concern. She suggested that a contract with a group of attorneys to provide appellate representation could address these concerns.</p> <p>Regarding LD 1433, Professor Drake conveyed the opposition of the Maine Association of Criminal Defense Lawyers to the bill, stating that the current system was preferable to that envisioned by the bill, despite that inadequacy of the current hourly rate and the lack of opportunity for collaboration mentioned above.</p> <p><u>Charles C. Soltan, Esq.</u>: Attorney Soltan practices public affairs law in Augusta in the firm of Soltan Bass, LLC, and spoke as the representative of the Maine Association of Criminal Defense Lawyers. Attorney Soltan stated that the specifics of LD 1433 have changed over time, but that the current version contained many serious flaws. First, the bill would undermine the independence of the Commission by granting the Governor authority to appoint, and sole authority to remove, a Chief</p>	

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	<p>Public Defender. The system would remove the Commission’s ultimate authority for delivery of indigent legal services and relegate the Commission to a role of simple oversight and suggestion with respect to the Chief Public Defender. Moreover, unlike the current independent Commission, the Chief Public Defender would be subject to a conflict of interest because that person’s tenure would be controlled by the Executive Branch.</p> <p>Attorney Soltan also pointed out his understanding that the proponents of the bill had previously discussed funding the new system at a level well below current funding. He noted that many aspects of Maine’s criminal justice system, including the courts and prosecutorial offices, suffered from underfunding. He cautioned that further diminishing the resources available to indigent defense, a crucial aspect of that system, could cripple the system as a whole. For these reasons, the Maine Association of Criminal Defense Lawyers was overwhelmingly against LD 1433.</p> <p><u>Robert J. Ruffner, Esq.:</u> Attorney Ruffner is the Founder/Director of the Maine Indigent Defense Center (MIDC) and a private practitioner in Portland. Attorney Ruffner noted that the MIDC and the University of Maine School of Law would be sponsoring a symposium in Augusta on December 4, 2015 to discuss LD 1433 and the best way to deliver indigent legal services in Maine. He acknowledged problems with LD 1433, including the involvement of the Governor in the hiring and firing of the Chief Public Defender, the proposed fee imposed on people applying for counsel at state expense, and provisions aimed at persistent pursuit of reimbursement for counsel fees from a population with meager resources. He also noted that while contracts can be a good model for delivering indigent legal services, the bill’s mandate that they be used “to the maximum extent possible” was inartfully drafted and should be changed.</p> <p>Attorney Ruffner also identified many good aspect of LD 1433, including the addition of an additional Deputy Director to the Commission staff and the requirement that contract be issued according to “best practices” with “weighted</p>	

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	<p>caseloads.” He stated that the bill would promote collaboration as mentioned earlier, could provide additional non-lawyers services such a social work assistance of indigent clients, and could promote a stronger voice on legislative issues on behalf of MCILS. He discounted concern based on litigation in other states that use contracts to deliver indigent legal services, stating that those states did not follow the best practices envisioned by the bill. Finally, he stated that the current system has negative consequences and improvements should not be resisted.</p> <p><u>Christopher R. Guillory, Esq.</u>: Attorney Guillory who practices in Saco, stated that he has been working on comparative analysis of the cost of indigent legal services among various states. He stated the current system in Maine has the lowest cost per capita in New England and the 3rd lowest in the nation. Attorney Guillory also stated that reliance on contracts would require attorneys to handle more and more cases with fewer and fewer resources. Maine would join other states in lurching from crises to crises with respect to indigent legal services. Finally, he stated that while lawyers currently remain underpaid for indigent work, a contract system would simply make the situation worse.</p>	
Executive Session	None	
Adjournment of meeting	The Commission voted to adjourn with the next meeting to be on December 8, 2015 at 9:30 a.m.	Commissioner Logan moved to adjourn. Commissioner Roy seconded. All in favor.

(2.)
Operations Reports
Review

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
SUBJECT: NOVEMBER 2015 OPERATIONS REPORTS
DATE: DECEMBER 2, 2015

Attached you will find the November, 2015 Operations Reports for your review and our discussion at the upcoming Commission meeting on December 8, 2015. A summary of the operations reports follows:

- 2,058 new cases were opened in the DefenderData system in November. This was a 317 case decrease from October.
- The number of vouchers submitted electronically in November was 2,448, a decrease of 189 vouchers from October, totaling \$1,298,363.52, a decrease of \$63,000 from October. In November, we paid 2,010 electronic vouchers totaling \$1,078,518.50, representing a decrease of 91 vouchers but an increase of \$7,000 compared to October.
- There were no paper vouchers submitted and paid in November.
- The average price per voucher in November was \$536.58, up \$26.77 per voucher over October. The year-to date average price per voucher stands at \$509.80, 7.1% higher than the average for all of FY'15.
- Appeal and Post-Conviction Review cases had the highest average vouchers in November. There were 5 vouchers exceeding \$5,000 paid in November. One case involved a 5-day Arson trial with a not guilty verdict. Two high profile cases involved alleged injury to a child. In one case, defense counsel obtained a rare disease diagnosis that resulted in a misdemeanor plea and family reunification. In the other, counsel litigated discovery issues for months to obtain a court order compelling production. Unfortunately, the produced material contained information requiring counsel to withdraw. One case involved two counts of kidnapping and a police standoff where counsel's work led to a county jail sentence for a defendant suffering from mental illness. The last case involved charges of burglary and theft against a person who was actually the victim of human trafficking. Counsel worked with the defendant over the course of 3 years as the client struggled to both cope with the client's past victimization and cooperate with federal and state authorities in a prosecution against the traffickers. The case against the defendant resulted in a deferred disposition.

In our All Other Account, the total expenses for the month of November were \$1,175,979.15. Of the amount, just under \$11,000 was devoted to the Commission's operating expenses.

In the Personal Services Account, we had \$52,356.41 in expenses for the month of November.

In the Revenue Account, our monthly transfer from the Judicial Branch for counsel fees for the month of November, which reflects October's collections, totaled \$48,960.09 up approximately \$2,300 from the previous month. Collections continue to run below the monthly amount projected for the year.

In our Conference Account, we collected \$625 in registration fees for November trainings, and paid \$1060.79 in expenses for those trainings, leaving the account balance at \$12,926.98.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Case Type

11/30/2015

DefenderData Case Type	Nov-15						Fiscal Year 2016			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
Appeal	8	20	\$ 25,238.34	19	\$ 19,451.54	\$ 1,023.77	54	102	\$ 112,957.13	\$ 1,107.42
Child Protection Petition	175	335	\$ 221,413.35	260	\$ 177,257.63	\$ 681.76	750	1,635	\$ 1,013,417.94	\$ 619.83
Drug Court	0	7	\$ 2,652.00	4	\$ 828.00	\$ 207.00	2	31	\$ 17,578.50	\$ 567.05
Emancipation	8	5	\$ 2,149.50	7	\$ 2,494.00	\$ 356.29	35	47	\$ 13,909.44	\$ 295.95
Felony	535	611	\$ 480,994.98	491	\$ 410,506.54	\$ 836.06	2,799	2,729	\$ 2,166,769.88	\$ 793.98
Involuntary Civil Commitment	73	60	\$ 12,568.66	53	\$ 11,753.24	\$ 221.76	330	306	\$ 71,526.56	\$ 233.75
Juvenile	78	79	\$ 36,168.74	59	\$ 28,092.71	\$ 476.15	461	431	\$ 187,080.20	\$ 434.06
Lawyer of the Day - Custody	212	165	\$ 35,781.08	168	\$ 37,983.78	\$ 226.09	1,080	939	\$ 221,331.21	\$ 235.71
Lawyer of the Day - Juvenile	34	36	\$ 8,234.20	38	\$ 8,107.64	\$ 213.36	210	187	\$ 38,528.22	\$ 206.03
Lawyer of the Day - Walk-in	95	100	\$ 26,749.48	83	\$ 22,284.76	\$ 268.49	549	511	\$ 127,023.64	\$ 248.58
Misdemeanor	643	710	\$ 284,672.63	552	\$ 221,167.67	\$ 400.67	3,498	3,123	\$ 1,201,522.82	\$ 384.73
Petition, Modified Release Treatment	0	5	\$ 1,704.13	4	\$ 1,466.67	\$ 366.67	4	23	\$ 8,466.10	\$ 368.09
Petition, Release or Discharge	0	0		0			1	2	\$ 466.75	\$ 233.38
Petition, Termination of Parental Rights	9	38	\$ 40,483.14	32	\$ 27,289.20	\$ 852.79	65	216	\$ 154,665.20	\$ 716.04
Post Conviction Review	0	5	\$ 6,735.58	4	\$ 6,145.86	\$ 1,536.47	33	24	\$ 42,754.64	\$ 1,781.44
Probation Violation	158	141	\$ 50,176.18	128	\$ 46,671.22	\$ 364.62	866	773	\$ 298,512.11	\$ 386.17
Represent Witness on 5th Amendment	3	0		3	\$ 438.00	\$ 146.00	11	9	\$ 1,732.42	\$ 192.49
Review of Child Protection Order	24	128	\$ 62,377.53	103	\$ 56,352.04	\$ 547.11	127	733	\$ 351,376.67	\$ 479.37
Revocation of Administrative Release	3	3	\$ 264.00	2	\$ 228.00	\$ 114.00	15	7	\$ 957.50	\$ 136.79
DefenderData Sub-Total	2,058	2,448	\$ 1,298,363.52	2,010	\$ 1,078,518.50	\$ 536.58	10,890	11,828	\$ 6,030,576.93	\$ 509.86
Paper Voucher Sub-Total	0	0	\$ -	0	\$ -	#DIV/0!	2	2	\$ 400.50	\$ 200.25
TOTAL	2,058	2,448	\$1,298,363.52	2,010	\$1,078,518.50	\$ 536.58	10,892	11,830	\$ 6,030,977.43	\$ 509.80

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
 FY16 FUND ACCOUNTING
 AS OF 11/30/2015

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		\$ -		\$ -		\$ -		\$ -	
Total Budget Allotments		\$ 4,463,505.00		\$ 4,407,485.00		\$ 4,558,465.00		\$ 4,916,287.00	\$ 18,345,742.00
Total Expenses	1	\$ (1,034,674.33)	4	\$ (1,209,786.02)	7	\$ -	10	\$ -	\$ (2,244,460.35)
	2	\$ (1,384,090.42)	5	\$ (1,175,979.15)	8	\$ -	11	\$ -	\$ (2,560,069.57)
	3	\$ (1,609,871.30)	6	\$ -	9	\$ -	12	\$ -	\$ (1,609,871.30)
Encumbrances		\$ (213,187.50)		\$ 47,375.00		\$ -		\$ -	\$ (165,812.50)
TOTAL REMAINING		\$ 221,681.45		\$ 2,069,094.83		\$ 4,558,465.00		\$ 4,916,287.00	\$ 11,765,528.28

Q2 Month 5 (as of 11/30/15)	
INDIGENT LEGAL SERVICES	
Counsel Payments	\$ (1,078,518.50)
Somerset County	\$ (22,687.50)
Subpoena Witness Fees	\$ -
Private Investigators	\$ (25,851.18)
Mental Health Expert	\$ (11,900.00)
Transcripts	\$ (3,883.07)
Other Expert	\$ (21,050.11)
Air fare-out of state witness	\$ -
Process Servers	\$ (814.69)
Interpreters	\$ (508.45)
Misc Prof Fees & Serv	\$ (145.00)
SUB-TOTAL ILS	\$ (1,165,358.50)
OPERATING EXPENSES	
Service Center	\$ -
DefenderData	\$ (5,147.50)
Trainer Fees (in error)	\$ -
Mileage/Tolls/Parking	\$ (1,250.51)
Mailing/Postage/Freight	\$ (1,135.87)
Bar Dues - John & Ellie	\$ -
VDT reimbursement	\$ -
Office Supplies/Equip.	\$ (799.12)
Cellular Phones	\$ (130.24)
Subscriptions	\$ -
Office Equipment Rental	\$ -
Notary Fees	\$ -
OIT/TELCO	\$ (2,157.41)
SUB-TOTAL OE	\$ (10,620.65)
TOTAL	\$ (1,175,979.15)

INDIGENT LEGAL SERVICES	
Q2 Allotment	\$ 4,407,485.00
Q2 Encumbrances for Somerset cty PDP & Justice Works contracts	\$ 47,375.00
Q2 Expenses as of 11/30/15	\$ (2,385,765.17)
Remaining Q2 Allotment as of 11/30/15	\$ 2,069,094.83

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY16 FUND ACCOUNTING
As of 11/30/15

Account 014 95F 2112 01 (Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY16 Total
Total Budget Allotments		\$ 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
Total Budget Allotments		\$ 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		\$ -		\$ -	
Collected Revenue from JB	1	\$ 54,101.64	4	\$ 46,384.74	7	\$ -	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		\$ -		\$ -	
Discovery sanction payment		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB	3	\$ 43,704.16	6	\$ -	9	\$ -	12	\$ -	
Promissory Note Payments		\$ 50.00		\$ -		\$ -		\$ -	
TOTAL CASH PLUS REVENUE COLLECTED		\$ 201,378.29		\$ 112,303.38		\$ -		\$ -	\$ 237,817.12
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	\$ -	9	\$ -	12	\$ -	
Other Expenses	**	\$ (3,802.16)		\$ -		\$ -		\$ -	
REMAINING ALLOTMENT		\$ 12,248.45		\$ 195,124.00		\$ 195,124.00		\$ 195,125.00	\$ 597,621.45
Overpayment Reimbursements	1	\$ (2,394.19)	4	\$ (295.00)	7	\$ -	10	\$ -	
	2	\$ (244.00)	5	\$ (532.00)	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
REMAINING CASH Year to Date		\$ 16,758.55		\$ 111,476.38		\$ -		\$ -	

Q2 Month 4 (as of 10/31/15)	
DEFENDER DATA COUNSEL PAYMENTS	\$ -
SUB-TOTAL ILS	\$ -
OVERPAYMENT REIMBURSEMENTS	\$ (532.00)
Paper Voucher	\$ -
Somerset County CDs	\$ -
Private Investigators	\$ -
Mental Health Expert	\$ -
Transcripts	\$ -
Other Expert	\$ -
StaCap Expense	\$ -
SUB-TOTAL OE	\$ (532.00)
TOTAL	\$ (532.00)

** StaCap pulled in October but charged against Q1 expenses

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY16 FUND ACCOUNTING
As of 11/30/15

Account 014 95F Z112 02 (Conference)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY16 Total
Total Budget Allotments		\$ 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
Total Budget Allotments		\$ 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		\$ -		\$ -	
Collected Revenue	1	\$ -	4	\$ 1,400.00	7	\$ -	10	\$ -	
Collected Revenue	2	\$ 22.50	5	\$ 625.00	8	\$ -	11	\$ -	
Collected Revenue	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
TOTAL CASH PLUS REVENUE COLLECTED		\$ 12,603.34		\$ 13,987.77		\$ -		\$ -	\$ 2,047.50
Total Expenses	1	\$ (99.00)	4	\$ -	7	\$ -	10	\$ -	
	2	\$ (530.29)	5	\$ (1,060.79)	8	\$ -	11	\$ -	
	3	\$ (11.28)	6	\$ -	9	\$ -	12	\$ -	
Encumbrances		\$ (3,385.00)							
REMAINING ALLOTMENT		\$ 7,555.43		\$ 16,939.21		\$ 18,000.00		\$ 22,000.00	\$ 64,494.64
REMAINING CASH Year to Date		\$ 11,962.77		\$ 12,926.98		\$ -		\$ -	

Q2 Month 5 (as of 11/30/15)	
Training Manuals Printing	\$ (445.19)
Training Refreshments/Meals	\$ (615.60)
Speaker Hotel Room & Lodging	\$ -
Refund(s) for non-attendance	\$ -
Office Supplies	\$ -
CLE App to the Bar	\$ -
State Cap Expense	\$ -
SUB-TOTAL OE	\$ (1,060.79)
TOTAL	\$ (1,060.79)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

FY16 FUND ACCOUNTING

AS OF 11/30/2015

Account 010 95F Z112 01 (Personal Services)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY16 Total
FY16 Allotment		\$ 197,643.00		\$ 197,641.00		\$ 174,658.00		\$ 181,575.00	\$ -
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustments				\$ -		\$ -		\$ -	
Total Budget Allotments		\$ 197,643.00		\$ 197,641.00		\$ 174,658.00		\$ 181,575.00	\$ 751,517.00
Total Expenses	1	\$ (73,500.45)	4	\$ (51,930.26)	7	\$ -	10	\$ -	
	2	\$ (49,758.60)	5	\$ (52,356.41)	8	\$ -	11	\$ -	
	3	\$ (48,847.23)	6	\$ -	9	\$ -	12	\$ -	
TOTAL REMAINING		\$ 25,536.72		\$ 93,354.33		\$ 174,658.00		\$ 181,575.00	\$ 475,124.05

Q2 Month 5 (as of 11/30/15)	
Per Diem Payments	\$ (220.00)
Salary	\$ (26,219.46)
Vacation Pay	\$ (392.98)
Holiday Pay	\$ (1,530.24)
Sick Pay	\$ (640.52)
Employee Hlth Svs/Workers Comp	\$ (74.00)
Health Insurance	\$ (9,993.46)
Dental Insurance	\$ (249.48)
Employer Retiree Health	\$ (3,068.45)
Employer Retirement	\$ (2,174.00)
Employer Group Life	\$ (218.24)
Employer Medicare	\$ (403.61)
Retiree Unfunded Liability	\$ (5,239.97)
Retro Pymt	\$ (110.40)
Perm Part Time Full Ben	\$ (1,821.60)
TOTAL	\$ (52,356.41)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Court

11/30/2015

Court	Nov-15						Fiscal Year 2016			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
ALFSC	54	145	\$ 113,366.74	110	\$ 96,061.39	\$ 873.29	421	822	\$ 632,848.21	\$ 769.89
AUBSC	19	58	\$ 52,339.70	60	\$ 45,814.25	\$ 763.57	166	394	\$ 282,084.71	\$ 715.95
AUGDC	48	63	\$ 40,075.52	51	\$ 26,906.60	\$ 527.58	215	327	\$ 148,903.85	\$ 455.36
AUGSC	37	77	\$ 41,376.10	62	\$ 40,741.96	\$ 657.13	246	363	\$ 248,959.08	\$ 685.84
BANDC	84	102	\$ 34,107.94	69	\$ 25,979.90	\$ 376.52	302	439	\$ 161,325.80	\$ 367.48
BANSC	2	1	\$ 825.20	0			8	10	\$ 2,286.15	\$ 228.62
BATSC	2	2	\$ 1,076.09	2	\$ 1,076.09	\$ 538.05	6	9	\$ 3,965.67	\$ 440.63
BELDC	6	16	\$ 9,977.04	14	\$ 8,694.57	\$ 621.04	36	135	\$ 63,089.58	\$ 467.33
BELSC	2	10	\$ 7,920.60	9	\$ 5,943.88	\$ 660.43	15	64	\$ 36,910.61	\$ 576.73
BIDDC	44	74	\$ 44,529.89	66	\$ 39,567.47	\$ 599.51	312	460	\$ 244,629.54	\$ 531.80
BRIDC	13	22	\$ 11,681.53	15	\$ 9,308.30	\$ 620.55	64	94	\$ 58,114.26	\$ 618.24
CALDC	4	7	\$ 3,032.85	4	\$ 1,231.25	\$ 307.81	25	53	\$ 31,372.92	\$ 591.94
CARDC	6	20	\$ 14,020.12	25	\$ 14,981.12	\$ 599.24	76	129	\$ 64,885.40	\$ 502.99
CARSC	12	28	\$ 17,072.25	15	\$ 10,013.53	\$ 667.57	85	161	\$ 95,540.73	\$ 593.42
DOVDC	5	19	\$ 4,759.10	8	\$ 1,627.00	\$ 203.38	13	67	\$ 18,538.80	\$ 276.70
DOVSC	1	0		0			2	0		
ELLDC	6	29	\$ 15,579.50	26	\$ 14,196.79	\$ 546.03	56	198	\$ 95,160.01	\$ 480.61
ELLSC	2	4	\$ 1,189.25	3	\$ 919.25	\$ 306.42	6	26	\$ 6,456.43	\$ 248.32
FARDC	5	13	\$ 6,093.69	13	\$ 7,036.76	\$ 541.29	39	54	\$ 36,883.17	\$ 683.02
FARSC	0	1	\$ 1,463.68	1	\$ 1,463.68	\$ 1,463.68	6	5	\$ 3,724.40	\$ 744.88
FORDC	10	9	\$ 6,612.11	6	\$ 1,743.26	\$ 290.54	38	56	\$ 22,659.30	\$ 404.63
HOUDC	37	43	\$ 16,068.72	38	\$ 14,669.93	\$ 386.05	204	230	\$ 87,994.08	\$ 382.58
HOUSC	3	9	\$ 4,772.46	5	\$ 2,607.30	\$ 521.46	40	58	\$ 37,864.35	\$ 652.83
LEWDC	58	93	\$ 52,228.61	90	\$ 36,346.25	\$ 403.85	453	647	\$ 286,807.59	\$ 443.29
LINDC	9	13	\$ 12,147.42	9	\$ 4,939.50	\$ 548.83	51	58	\$ 32,862.10	\$ 566.59
MACDC	2	8	\$ 4,020.60	12	\$ 7,873.19	\$ 656.10	54	109	\$ 40,996.85	\$ 376.12
MACSC	9	11	\$ 5,580.75	8	\$ 3,704.00	\$ 463.00	26	48	\$ 21,632.60	\$ 450.68
MADDC	4	3	\$ 1,074.64	3	\$ 1,074.64	\$ 358.21	18	15	\$ 4,417.62	\$ 294.51
MILDC	3	5	\$ 1,492.00	6	\$ 1,736.96	\$ 289.49	15	11	\$ 3,095.69	\$ 281.43
NEWDC	18	21	\$ 6,241.44	19	\$ 6,429.90	\$ 338.42	87	112	\$ 42,175.65	\$ 376.57
PORDC	49	110	\$ 55,398.04	106	\$ 58,501.17	\$ 551.90	372	572	\$ 287,339.55	\$ 502.34
PORSC	4	3	\$ 1,314.00	1	\$ 669.00	\$ 669.00	24	10	\$ 8,867.55	\$ 886.76
PREDC	27	41	\$ 14,442.09	28	\$ 10,103.42	\$ 360.84	126	214	\$ 74,474.30	\$ 348.01
ROCD	23	27	\$ 15,061.41	23	\$ 12,300.13	\$ 534.79	103	138	\$ 54,491.76	\$ 394.87
ROSC	6	19	\$ 13,569.56	12	\$ 7,495.56	\$ 624.63	51	71	\$ 55,973.61	\$ 788.36
RUMDC	5	20	\$ 11,711.84	14	\$ 6,663.84	\$ 475.99	64	69	\$ 30,198.02	\$ 437.65
SKODC	19	26	\$ 14,419.30	23	\$ 13,520.16	\$ 587.83	59	183	\$ 93,683.07	\$ 511.93
SKOSC	0	0		0			2	2	\$ 734.00	\$ 367.00
SOUDC	16	14	\$ 5,725.08	11	\$ 3,458.23	\$ 314.38	79	99	\$ 35,330.96	\$ 356.88
SOUSC	13	21	\$ 11,485.01	35	\$ 20,665.95	\$ 590.46	79	158	\$ 90,146.09	\$ 570.54
SPRDC	49	65	\$ 37,284.84	47	\$ 31,940.78	\$ 679.59	270	323	\$ 168,850.83	\$ 522.76
Law Ct	9	19	\$ 23,630.91	15	\$ 14,967.74	\$ 997.85	43	71	\$ 77,007.36	\$ 1,084.61
YORCD	112	60	\$ 28,867.11	50	\$ 23,513.75	\$ 470.28	596	147	\$ 65,755.31	\$ 447.32
AROCD	45	11	\$ 3,605.72	6	\$ 2,550.00	\$ 425.00	117	38	\$ 12,128.23	\$ 319.16
ANDCD	98	47	\$ 16,485.42	33	\$ 15,612.20	\$ 473.10	436	85	\$ 31,692.44	\$ 372.85
KENCD	124	98	\$ 39,442.93	87	\$ 30,604.59	\$ 351.78	587	367	\$ 118,863.13	\$ 323.88
PENCD	234	282	\$ 122,101.10	205	\$ 93,474.49	\$ 455.97	1,081	1,054	\$ 490,011.61	\$ 464.91
SAGCD	38	32	\$ 40,949.39	31	\$ 36,936.47	\$ 1,191.50	171	142	\$ 104,466.70	\$ 735.68
WALCD	22	24	\$ 7,224.26	14	\$ 6,242.74	\$ 445.91	148	82	\$ 28,928.44	\$ 352.79
PISCD	16	13	\$ 3,849.50	9	\$ 3,249.50	\$ 361.06	68	61	\$ 23,345.80	\$ 382.72
HANCD	46	56	\$ 26,250.00	50	\$ 23,367.14	\$ 467.34	291	252	\$ 101,180.62	\$ 401.51
FRACD	42	39	\$ 10,590.84	38	\$ 12,732.96	\$ 335.08	269	260	\$ 94,437.38	\$ 363.22
WASCD	54	66	\$ 15,814.20	26	\$ 6,580.20	\$ 253.08	190	62	\$ 14,923.45	\$ 240.70
CUMCD	315	269	\$ 157,302.87	247	\$ 137,414.50	\$ 556.33	1,573	1,360	\$ 749,237.81	\$ 550.91
KN OCD	57	40	\$ 20,431.10	34	\$ 18,336.82	\$ 539.32	260	151	\$ 64,452.35	\$ 426.84
SOMCD	0	0		0			3	5	\$ 3,113.30	\$ 622.66
OXFCD	43	20	\$ 5,547.35	20	\$ 5,504.40	\$ 275.22	212	70	\$ 18,875.40	\$ 269.65
LINCD	46	20	\$ 8,208.18	28	\$ 11,853.22	\$ 423.33	188	94	\$ 42,688.60	\$ 454.13
WATDC	13	39	\$ 21,143.26	25	\$ 14,258.79	\$ 570.35	93	180	\$ 86,862.54	\$ 482.57
WESDC	15	18	\$ 8,097.96	9	\$ 4,047.00	\$ 449.67	116	147	\$ 67,878.67	\$ 461.76
WISDC	4	21	\$ 13,047.77	16	\$ 6,622.50	\$ 413.91	52	84	\$ 40,543.05	\$ 482.66
WISSC	4	10	\$ 9,816.72	10	\$ 9,250.75	\$ 925.08	25	62	\$ 51,801.74	\$ 835.51
YORDC	5	12	\$ 4,820.22	8	\$ 3,391.78	\$ 423.97	57	61	\$ 26,108.11	\$ 428.00
TOTAL	2,058	2,448	\$ 1,298,363.52	2,010	\$ 1,078,518.50	\$ 536.58	10,890	11,828	\$ 6,030,576.93	\$ 509.86

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Number of Attorneys Rostered by Court

11/30/2015

Court	Rostered Attorneys	Court	Rostered Attorneys
Augusta District Court	102	South Paris District Court	62
Bangor District Court	55	Springvale District Court	119
Belfast District Court	53	Unified Criminal Docket Alfred	110
Biddeford District Court	134	Unified Criminal Docket Aroostook	23
Bridgton District Court	98	Unified Criminal Docket Auburn	106
Calais District Court	12	Unified Criminal Docket Augusta	93
Caribou District Court	19	Unified Criminal Docket Bangor	56
Dover-Foxcroft District Court	27	Unified Criminal Docket Bath	92
Ellsworth District Court	44	Unified Criminal Docket Belfast	47
Farmington District Court	28	Unified Criminal Docket Dover Foxcroft	24
Fort Kent District Court	11	Unified Criminal Docket Ellsworth	40
Houlton District Court	16	Unified Criminal Docket Farmington	29
Lewiston District Court	132	Unified Criminal Docket Machias	17
Lincoln District Court	30	Unified Criminal Docket Portland	144
Machias District Court	19	Unified Criminal Docket Rockland	41
Madawaska District Court	12	Unified Criminal Docket Skowhegan	20
Millinocket District Court	21	Unified Criminal docket Soputh Paris	102
Newport District Court	39	Unified Criminal Docket Wiscasset	70
Portland District Court	159	Waterville District Court	57
Presque Isle District Court	15	West Bath District Court	112
Rockland District Court	49	Wiscasset District Court	79
Rumford District Court	27	York District Court	106
Skowhegan District Court	30		

(3.)

Discussion of LD 1433

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: LD 1433
DATE: December 2, 2015

For the Commission's discussion, I have attached a copy of LD 1433 with comments pointing out differences between the bill and current law and highlighting issues raised by the provisions of the proposed legislation, which was originally distributed in the October meeting packet. I have also attached input from two attorneys received after the November meeting.

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PLEASE NOTE: Legislative Information *cannot* perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Create the Office of the Public Defender and Amend the Duties of the Commission on Indigent Legal Services

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 2 MRSA §6, sub-§12, as enacted by PL 2009, c. 419, §1, is repealed.

Sec. 2. 4 MRSA §1801, as enacted by PL 2009, c. 419, §2, is amended to read:

§ 1801. Maine Commission on Indigent Legal Services; established

The Maine Commission on Indigent Legal Services, established by Title 5, section 12004-G, subsection 25-A, is an independent commission whose purpose is to provide oversight of the Office of the Public Defender, ensuring efficient, high-quality representation to indigent criminal defendants, juvenile defendants and children and parents in child protective cases, consistent with federal and state constitutional and statutory obligations. The commission shall ~~work to ensure~~ oversee the delivery of indigent legal services by qualified and competent counsel in a manner that is fair and consistent throughout the State ~~and to ensure~~ while working with the Chief Public Defender to provide adequate funding ~~for~~ a statewide system of indigent legal services, which must be provided and managed in a fiscally responsible manner, free from undue political interference and conflicts of interest.

Sec. 3. 4 MRSA §1802, as amended by PL 2013, c. 159, §10, is further amended to read:

§ 1802. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

~~1. Assigned counsel. "Assigned counsel" means a private attorney designated by the commission to provide indigent legal services at public expense.~~

~~1-A. Appellate counsel. "Appellate counsel" means an attorney who is entitled to payment under Title 15, section 2115-A, subsection 8 or 9.~~

~~1-B. Civil party. "Civil party" means a party to a civil case described in subsection 4, paragraph B.~~

2. Commission. "Commission" means the Maine Commission on Indigent Legal Services under section 1801.

2-A. Conflict case. "Conflict case" means a case in which counsel in the Office of the Public Defender or contract counsel has a conflict of interest under rules adopted by the Supreme Judicial Court.

3. Contract counsel. "Contract counsel" means a private attorney under contract with

Comment [PJ1]: Changes Commission's role from providing Indigent Legal Services (ILS) to overseeing Office of Public Defender (OPD).

Comment [PJ2]: Changes Commission role from ensuring adequate funding to working with Chief Public Defender (CPD) to "provide" adequate funding.

Comment [PJ3]: Eliminates assigned counsel generally.

Comment [PJ4]: Without this, the new structure may not meet statutory requirements in appeals by the State in criminal cases.

Comment [PJ5]: Not sure why this is needed.

Comment [EM6]: Civil party is referenced below in 1804-A(1)(A).

Comment [PJ7]: Definition to determine when contract counsel would have a conflict.

~~the commission to provide indigent legal services~~ Office of the Public Defender to provide indigent legal services

Comment [P38]: Makes OPD, not Commission the contracting party.

3-A. Contracted professional services. "Contracted professional services" means nonattorney services under contract with the Office of the Public Defender that are necessary for an adequate defense.

- 4. Indigent legal services.** "Indigent legal services" means legal representation provided to:
- A. An indigent defendant in a criminal case in which the United States Constitution or the Constitution of Maine or federal or state law requires that the State provide representation;
 - B. An indigent party in a civil case in which the United States Constitution or the Constitution of Maine or federal or state law requires that the State provide representation; and
 - C. Juvenile defendants.

"Indigent legal services" does not include the services of a guardian ad litem appointed pursuant to Title 22, section 4105, subsection 1.

5. Office of the Public Defender. "Office of the Public Defender" means the office established under section 1807, which is responsible for administering indigent legal services.

6. Retained counsel. "Retained counsel" means a private attorney under contract with the Office of the Public Defender to handle conflict cases and cases that are outside the scope of contract counsel.

Comment [P39]: Substitutes "retained" for "assigned" regarding individual attorneys handling conflict cases.

7. Staff counsel. "Staff counsel" means an attorney in the Office of the Public Defender who provides indigent legal services under this chapter and is an employee of the State.

Sec. 4. 4 MRSA §1803, as enacted by PL 2009, c. 419, §2, is amended to read:

§ 1803. Maine Commission on Indigent Legal Services structure

1. Members; appointment; chair. The commission consists of 5 members appointed by the Governor and subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary matters and confirmation by the Legislature. The Governor shall designate one member to serve as chair of the commission. One of the members must be appointed from a list of qualified potential appointees provided by the President of the Senate. One of the members must be appointed from a list of qualified appointees provided by the Speaker of the House of Representatives. One of the members must be appointed from a list of qualified potential appointees provided by the Chief Justice of the Supreme Judicial Court.

In determining the appointments and recommendations under this subsection, the Governor, the President of the Senate, the Speaker of the House of Representatives and the Chief Justice of the Supreme Judicial Court shall consider input from persons and organizations with an interest in the delivery of indigent legal services.

The Chief Public Defender, or the Chief Public Defender's designee, is an ex officio, nonvoting member of the commission and may participate in all meetings of the commission.

Comment [PJ10]: Makes CPD a member, though non-voting, of the Commission.

2. Qualifications. ~~Individuals~~Of the individuals appointed to the commission ~~who are not attorneys, one~~ must have a background in accounting or finance. All other individuals appointed ~~who are not attorneys must have~~ demonstrated a commitment to quality/competent representation for persons who are indigent and must have the skills and knowledge required to ensure that quality-of-competent representation is provided in each area of relevant law. ~~No more than 3 members may be attorneys engaged in the active practice of law.~~

Comment [PJ11]: Requires financial background for at least one Commissioner and that person cannot be a lawyer.

Comment [PJ12]: Changes "quality" to "competent" regarding level of representation, but note that this applies to Commissioner qualifications, whereas §1801 maintains reference to "high-quality" representation.

An attorney appointed to the commission must have expertise in providing legal defense and the skills and knowledge required to ensure that competent representation is provided in each area of relevant law. No more than 3 members may be attorneys engaged in the active practice of law.

Comment [PJ13]: Creates requirement that attorney Commission members have defense experience.

3. Terms. Members of the commission are appointed for terms of 3 years each, except that of those first appointed the Governor shall designate 2 whose terms are only one year, 2 whose terms are only 2 years and one whose term is 3 years. A member may not serve more than 2 consecutive 3-year terms plus any initial term of less than 3 years.

A member of the commission appointed to fill a vacancy occurring otherwise than by expiration of term is appointed only for the unexpired term of the member succeeded.

4. Quorum. Three members of the commission constitutes a quorum. A vacancy in the commission does not impair the power of the remaining members to exercise all the powers of the commission.

5. Compensation. Each member of the commission is eligible to be compensated as provided in Title 5, chapter 379.

6. Assistance. The Chief Public Defender or the Chief Public Defender's designee shall provide staff assistance to the commission in carrying out its functions.

Comment [PJ14]: Doesn't seem appropriate to this section.

Sec. 5. 4 MRSA §1804, as amended by PL 2013, c. 159, §§11 to 13 and c. 368, Pt. RRR, §1 and affected by §4, is repealed.

Comment [PJ15]: Repeals current duties and responsibilities section.

Sec. 6. 4 MRSA §1804-A is enacted to read:

§ 1804-A. Maine Commission on Indigent Legal Services duties and responsibilities

1. Maine Commission on Indigent Legal Services standards. The commission shall develop standards governing the delivery of indigent legal services, including:

A. Standards governing eligibility for indigent legal services. The eligibility standards must take into account the possibility of a defendant's or civil party's paying counsel in periodic installments.

Comment [PJ16]: Puts partial indigency concept into the statute whereas now it is in the Rules of Criminal Procedure and Commission's Indigency guidelines

B. Standards prescribing minimum experience, training and other qualifications for attorneys providing public defender services, which must include standards to ensure that attorneys are capable of providing competent representation in the case types to which they are assigned, recognizing that competent representation in each type of case requires experience and specialized training in that field;

C. Standards for weighted caseloads based on recommendations from the Chief Public Defender and reviewed every 5 years or upon the recommendation of the Chief Public Defender;

D. Standards for the evaluation of contract counsel to be reviewed every 5 years or upon the recommendation of the Chief Public Defender;

E. Standards for independent, competent and efficient representation of clients whose cases present conflicts of interest;

F. Standards for the reimbursement of expenses incurred by retained counsel;

G. Standards regarding the determination of payments to the Office of the Public Defender that may be required of a defendant or civil party under section 1808. In developing the payment standards under this paragraph, the commission shall consider among other things the rates of private counsel and the type of case; and

H. Standards considered necessary and appropriate to ensure the delivery of adequate indigent legal services.

2. Maine Commission on Indigent Legal Services duties. The commission shall:

A. Oversee the Office of the Public Defender to ensure competent and efficient indigent legal services are provided;

B. Establish processes and procedures to ensure the Office of the Public Defender uses information technology and case management systems to accurately collect, record and report detailed expenditure and case load data;

C. Establish rates of compensation for retained counsel;

D. Establish contract guidelines as well as processes and procedures to review contracts entered into between the Office of the Public Defender and contract counsel using best practices for contracts providing indigent legal services. Both the contract guidelines and contract review process must be evaluated every 3 years or at the discretion of the commission;

E. Establish an application fee of no less than \$5, which may be graduated as provided under section 1808, subsection 4 based on a defendant's or civil party's ability to pay and which is administered by the Office of the Public Defender;

F. Submit to the Legislature, the Chief Justice of the Supreme Judicial Court and the Governor an annual report on the operation, needs and costs of the indigent legal services system, including an evaluation of contracts, services provided by contract counsel, retained counsel, any contracted professional services and cost containment measures;

Comment [PJ17]: Similar to existing statute, but as a drafting note – uses phrase “public defender services” even though term “indigent legal services” remains in the definition section.

Comment [PJ18]: This is new and presumably applies to workload under contracts.

Comment [PJ19]: Mandatory periodic review and evaluation standards.

Comment [PJ20]: Note there is no reference to reimbursing contract counsel for expenses incurred.

Comment [PJ21]: Not sure why going rate for private counsel is relevant to the obligation to re-pay. In any event, these standards would not be binding on the court, which maintains the determination of eligibility under this proposal.

Comment [PJ22]: “oversee” OPD – ensure “competent” services.

Comment [PJ23]: Similar to existing law

Comment [PJ24]: New requirement for contract procedures and review of those procedures. Does require use of “best practices?”

Comment [PJ25]: Requires application fee. Unclear if this is paid to MCILS – administrative issues – or the court, which would have its own issues.

G. Monitor and at the commission's discretion testify on legislative proposals that effect the quality and cost of the indigent legal services system. The commission may name a designee to perform this duty.

Comment [PJ26]: Does this refer to laws changing the Commission's statutes or substantive laws that might create more cases?

H. Prepare at the end of each legislative session a report on the relevant law changes to the indigent legal services system and the effect on the quality and cost of those changes.

Comment [PJ27]: Ditto comment 26.

I. Review the biennial budget request and any supplemental budget requests of the Chief Public Defender prior to their submission to the Department of Administrative and Financial Services, Bureau of the Budget.

Comment [EM28]: Right now does the Commission have more authority over the budget process? Under this proposal it will just have to "review" before submission.

J. Establish the minimum amount of malpractice insurance contract counsel and retained counsel must hold to be eligible to handle indigent defense cases.

Comment [PJ29]: New malpractice insurance requirement.

K. Develop a program, with the assistance of the Chief Public Defender, to allow law students opportunities within the indigent legal services system consistent with those available within the District Attorney's Offices.

Comment [PJ30]: DA interns actually try cases. Could this apply to constitutionally required representation.

L. Designate a member of the commission as a liaison to the Chief Public Defender's cost containment unit under section 1807, subsection 3, paragraph P.

Comment [PJ31]: Wouldn't the Commission oversee this unit? If so, why the need for a liaison?

M. Establish a process for a vote of no confidence in the Chief Public Defender.

Comment [PJ32]: In lieu of being able to fire the CPD.

N. Compile a list of grievances against the Chief Public Defender, to be provided to the Governor, if the commission takes a vote of no confidence in the Chief Public Defender under paragraph M; and

Comment [PJ33]: Ditto comment 32.

O. Perform all duties necessary and incidental to the performance of any duty set out in this chapter.

3. Maine Commission on Indigent Legal Services powers. The commission may:

Comment [PJ34]: Removes power to establish and maintain offices as necessary

A. Meet and conduct business at any place within the State;

B. Use voluntary and uncompensated services of private individuals and organizations as may from time to time be offered and needed;

C. Adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that rules adopted to establish standards under subsection 1, paragraph B and rates of compensation for retained counsel under subsection 2, paragraph C are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A;

D. Appear in court and before other administrative bodies represented by the commission's own attorneys; and

E. Take a vote of no confidence in the Chief Public Defender and provide a list of grievances to the Governor. A vote of no confidence under this paragraph is cause for dismissal of the Chief Public Defender by the Governor in accordance with section 1807, subsection 2, paragraph A.

Comment [PJ35]: Only added power.

4. Maine Commission on Indigent Legal Services restrictions. The commission may not make decisions regarding the handling of a case.

Comment [PJ36]: Prevents Commission from interfering authority of CPD to make decisions about the course of representation in individual cases.

Sec. 7. 4 MRSA §1805, as enacted by PL 2009, c. 419, §2, is repealed.

Sec. 8. 4 MRSA §1806, sub-§2, ¶E, as enacted by PL 2011, c. 260, §1, is amended to read:

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~~ Chief Public Defender or the Chief Public Defender'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.

Sec. 9. 4 MRSA §§1807 and 1808 are enacted to read:

§ 1807. Office of the Public Defender established; appointment and duties

1. Establishment. The Office of the Public Defender is established. The office consists of the Chief Public Defender, who is the head of the office, 2 Deputy Public Defenders, appointed in accordance with subsection 2, and counsel selected by the Chief Public Defender in accordance with the eligibility standards set forth under section 1804-A, subsection 1, paragraph B. The responsibilities of the Office of the Public Defender are exclusively concerned with the rights of persons described in section 1802, subsection 4.

Comment [PJ37]: The reference is to standards for counsel providing indigent legal services, which don't seem tailored to the selection of internal staff counsel.

2. Chief Public Defender. The provisions of this subsection apply to the Chief Public Defender.

Comment [PJ38]: Not sure what this means, but could be argued to undercut authority to pursue collections "against" indigent clients.

A. The Chief Public Defender is appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary matters and confirmation by the Legislature. The Chief Public Defender may be removed from office for cause by the Governor, and Title 5, section 931, subsection 2 does not apply. The Chief Public Defender must be an attorney or judge who has spent at least 5 years in the practice of criminal law or presiding over the adjudication of criminal cases. The term of office for the Chief Public Defender is 5 years. If a vacancy occurs during the term, the replacement is appointed to fill out the remaining part of the term.

Comment [PJ39]: Definite term. Appointment and removal be the Governor.

B. The Chief Public Defender, with the approval of the Governor, shall appoint 2 Deputy Public Defenders. The Deputy Public Defenders report to the Chief Public Defender and serve at the pleasure of the Chief Public Defender. One Deputy Public Defender must be an attorney or judge who has spent a substantial part of the last 5 years in the practice of criminal law or presiding over the adjudication of criminal cases. If a vacancy occurs in the Chief Public Defender position or if the Chief Public Defender is temporarily unavailable to perform the duties of the office, this Deputy Public Defender shall assume the duties of the Chief Public Defender until the vacancy is filled or the Chief Public Defender returns to work. The 2nd Deputy Public Defender must be an attorney or judge who has spent a substantial part of the last 5 years in the practice of civil law or presiding over civil cases.

Comment [PJ40]: Governor must approve in-house staff counsel.

Comment [PJ41]: Current staff attorney has civil service protections.

Comment [PJ42]: 5 years in defense practice requirement may exclude good candidates.

C. The salary of the Chief Public Defender is consistent with the salary of district attorneys within salary range 90 with the step within that salary range determined by the Maine Commission on Indigent Legal Services subject to the approval of the Governor.

The salary of the Deputy Public Defenders is within salary range 36.

D. The Chief Public Defender shall contract for or hire staff, including counsel who serve at the pleasure of the Chief Public Defender, necessary to perform the functions of the Office of the Public Defender and to implement the provisions of this chapter.

(1) The compensation of staff of the Office of the Public Defender is fixed by the Chief Public Defender with the approval of the Governor, but such compensation may not in the aggregate exceed the amount appropriated for those positions and may not result in an increased request to future Legislatures.

(2) Staff counsel is an employee of this State as defined in Title 5, section 20, subsection 1.

(3) Professional staff of the Chief Public Defender are not subject to the Civil Service Law.

E. The Office of the Public Defender may not represent more than one person when a conflict of interest exists under the code of professional conduct laid out by the Board of Overseers of the Bar.

F. The Chief Public Defender, Deputy Public Defenders and staff, contract counsel and retained counsel must be members in good standing of the bar of the State. A "member in good standing of the bar of the State":

(1) Is admitted to the practice of law in this State;

(2) Is presently registered with the Board of Overseers of the Bar as an active practitioner; and

(3) Has not been and is not currently disbarred or suspended from practice pursuant to chapter 17, subchapter 2 or Maine Bar Rule 7.2 or its successor.

G. The Chief Public Defender, the Deputy Public Defenders and staff counsel are designated as full-time officers of the State and may not:

(1) Appear as counsel in any civil or criminal case or controversy before the Supreme Judicial Court, Superior Courts or District Courts of the State or comparable courts in any other state or before the federal District Court or at any administrative hearing held by any state or federal agency other than in the capacity as a public defender attorney; or

(2) Engage in the private practice of law nor be a partner or associate of any person engaged in the private practice of law nor be a member or employee of a professional association

Comment [PJ43]: Current statute places the Executive Director salary in Range 52, which was determined to be consistent with the Chief of the AG's criminal Division.

Comment [PJ44]: Current deputy is in range 31.

Comment [PJ45]: Office staff currently are civil servants who do not work at the pleasure of the executive director.

Comment [PJ46]: This bill is ambiguous about what number and type of staff the OPD should consist of.

Comment [PJ47]: What is the "professional staff," and why shouldn't they have the protections of the civil service law.

Comment [EM48]: Does this mean that if two solo attorneys who have a contract represent co-defendants that one would have to be conflicted out to retained counsel even though contract counsel are at different firms?

Comment [PJ49]: This simply says that lawyers providing indigent legal services must have a license to practice.

engaged in the private practice of law.

Comment [PJ50]: Already applies to attorneys working for the state.

3. Chief Public Defender duties and responsibilities. The Chief Public Defender shall:

A. Provide legal representation to eligible persons consistent with federal and state constitutional and statutory obligations.

Comment [PJ51]: CPD, not Commission has obligation to provide representation.

B. To the maximum extent possible use contracts in providing indigent legal services as required in this section.

Comment [PJ52]: Mandate to maximize contract use = Legislative determination of the best delivery system.

C. Supervise the operation, activities, policies and procedures of the Office of the Public Defender and may expend such sums for expenses as may be necessary in the performance of the Chief Public Defender's duties, to be paid out of money appropriated by the Legislature for those purposes.

Comment [PJ53]: Gives CPD, not Commission authority over expenditures.

D. Be the chief legal officer of the Office of the Public Defender with the ultimate authority regarding the disposition of cases handled by the office.

Comment [PJ54]: Authorizes Intervention in individual cases and authority to dictate to all counsel how cases are handled. Contravenes independent judgment of individual lawyer representing an individual client.

E. In accordance with standards established under section 1804-A, subsection 1, paragraph A, verify or reassess indigency of a defendant or civil party the court has determined to be indigent. If the Chief Public Defender determines the defendant or civil party is not indigent in full or in part, the Chief Public Defender shall petition the court for whole or partial payment or repayment of all legal services under section 1808, subsection 2.

Comment [PJ55]: Well beyond capacity of current staff to do in every case. We can now approach the court with new information affecting the eligibility determination when such comes to light.

F. Determine when and where it is necessary to establish district offices for the Office of the Public Defender consistent with the policies and procedures of the Department of Administrative and Financial Services.

Comment [PJ56]: CPD, not Commission, determines when and where to open offices.

G. Coordinate the development and implementation of rules, policies, procedures, regulations and standards adopted by the commission to carry out the provisions of this chapter and comply with all applicable laws and standards.

H. Establish a trial and appellate case management system. The system must require the attorneys to record time spent on each case and to classify or describe the type of work done.

Comment [PJ57]: In place now. Does this mean that lawyers must keep a full record of their hours even if working on a flat fee contract?

I. Work jointly with other departments and agencies, including the Department of Health and Human Services, that hold data pertinent to determining indigency and establish information sharing agreements as necessary.

Comment [PJ58]: When are able to do this now and have begun the process.

J. Work jointly with other departments and agencies, including the Department of Health and Human Services, to identify opportunities to improve eligibility screening across State Government, including the use of private firms that use established, effective income and asset verification systems.

Comment [PJ59]: Possibility of using private entities to verify financial information.

K. Prepare and submit to the commission:

(1) A proposed biennial budget for the provision of indigent legal services, including supplemental budget requests as necessary;

(2) An annual report containing pertinent data on the operation, needs and costs of the indigent legal services system and the status of information sharing as required under paragraph I, including issues preventing the agreements from being implemented;

(3) A monthly report on case loads and the gross monthly total of bills approved for payment, including payments to contract counsel and retained counsel, and for contracted professional services, a summary of professional service requests denied and granted by the office, in accordance with section 1806, subsection 2, paragraph E and information on complaints made against counsel providing indigent legal services; and

(4) Any other information as the commission may require;

L. Develop and conduct regular training programs in compliance with the rules adopted by the commission as required by section 1804-A, subsection 1, paragraph B;

M. Assist the commission in developing standards for the delivery of adequate indigent legal services;

N. Maintain proper records of all financial transactions related to the operation of the commission and the notification of eligibility and assignment of counsel and subsequent related orders as submitted by the courts of this State;

O. Serve as an ex officio, nonvoting member of the commission and attend all commission meetings. The Chief Public Defender may delegate this responsibility;

P. Establish a cost containment unit within the Office of the Public Defender to include a member of the commission designated by the commission. The cost containment unit is responsible for monitoring efforts to recoup costs under section 1808, subsection 3, identifying ways to improve cost recoupment and issuing a quarterly summary of the expenses recouped over the period and the year to date to be provided to the commission. This function may be contracted out;

Q. Establish policies and procedures for managing case loads to implement the standards established by the commission under section 1804-A, subsection 1, paragraph C, including a method for accurately tracking and monitoring case loads;

R. Establish procedures to handle complaints about the performance of counsel providing indigent legal services;

S. Establish a process to provide services for conflict cases first through existing contract counsel, and only at last through the use of retained counsel; and

T. Perform duties as the commission may assign or are necessary and incidental to the performance of any duty set out in this chapter.

4. Chief Public Defender powers. The Chief Public Defender may:

Comment [PJ60]: ED does not now report to Commission on responses to requests for funds or attorney complaints. Amounts expended on experts and investigators are contained in monthly financial reports.

Comment [PJ61]: Not quality legal services

Comment [PJ62]: Huge task if CPD must maintain records of all eligibility determinations and assignments of counsel.

Comment [PJ63]: Would require new staff or expenditure on contract with private vendor.

Comment [PJ64]: No actual procedures currently established.

Comment [PJ65]: Private assigned counsel a last resort

Comment [EM66]: Does this conflict with 1807(2)(E)?

A. As the Chief Public Defender determines necessary, contract for the services of private attorneys in the delivery of indigent legal services, including establishment of a lawyer of the day, as provided in section 1804-A and in accordance with standards established by the commission and the contract policies established by the Department of Administrative and Financial Services. Any contract must require contract counsel and retained counsel to record time spent on each case and to classify or describe the type of work that was done.

Comment [PJ67]: Mandates time keeping on contract cases.

B. Require contract counsel and retained counsel to have at least the minimum level of malpractice insurance as established in section 1804-A, subsection 2, paragraph J.

Comment [PJ68]: Not currently required.

C. Delegate the legal representation of any person to any member of the Maine State Bar Association eligible under section 1804-A in accordance with standards established and maintained by the commission.

Comment [PJ69]: Allows representation to be "delegated" to counsel not otherwise engaged in indigent legal services. Not sure why MSBA membership is relevant.

D. Contract for and supervise personnel necessary to perform a function of the Office of the Public Defender and to implement the provisions of this chapter.

Comment [PJ70]: Does this mean office staff is contracted rather than hired?

E. Establish processes and procedures to acquire investigative or expert services that may be necessary for a case.

F. Enter into agreements with the Maine State Bar Association, local bar associations, law firms and private counsel for legal representation without compensation as a service to the State.

Comment [PJ71]: Does this raise quality of representation issues.

G. Apply for and accept on behalf of the Office of the Public Defender funds that may become available from any source, including government, nonprofit or private grants, gifts or bequests. These funds do not lapse at the end of any fiscal year but are carried forward to be used for the purpose originally intended; and

Comment [EM72]: Doesn't include law school.

H. Sponsor training activities and charge tuition to recoup the cost of the activities.

Comment [EM73]: Will each training have to pay for itself with registration fees?

5. **Legal counsel.** The Attorney General, at the request of the Chief Public Defender, shall furnish legal assistance, counsel or advice the Office of the Public Defender requires in the discharge of its duties.

A. The Attorney General may represent staff members of the Office of the Public Defender in litigation as appropriate.

B. In cases in which staff members of the Office of the Public Defender could be represented by either the Attorney General or counsel retained through malpractice insurance, the Attorney General shall determine who represents the staff members.

§ 1808. Indigency determinations; redeterminations; verification; collection

1. **Duties.** The Chief Public Defender shall establish a system to:

A. Verify the information used to determine indigency under the standards established by the commission pursuant to section 1804-A.

Comment [PJ74]: Commission is currently working on this.

B. Reassess indigency during the course of representation.

Comment [PJ75]: Beyond current staff capacity.

C. Record the amount of time spent on each case by the attorney appointed to that case and

Comment [PJ76]: Exists.

D. Receive from the court collections for the costs of representation from defendants or civil parties who are partially indigent or who have been otherwise determined to be able to reimburse the Office of the Public Defender for the cost of providing counsel.

2. Determination of a defendant's or civil party's eligibility. The Chief Public Defender shall provide to the court having jurisdiction over a proceeding information used to determine indigency under the standards established by the commission pursuant to section 1804-A for guidance to the court in determining a defendant's or civil party's financial ability to obtain counsel.

If the court does not order full payment for representation by the Office of the Public Defender, the Chief Public Defender shall investigate to determine the defendant's or civil party's financial condition and ability to make repayment and petition the court for a new repayment order at any time within 7 years of the original order.

Comment [PJ77]: Reassessment of ability to pay due to change of circumstances up to seven years after representation is beyond capacity of current staff.

3. Partial indigency and repayment. The provisions of this subsection apply to partial indigency and repayment.

A. If the court determines, in accordance with subsection 2, that a defendant or civil party is able to pay some, but not all, of the expenses of obtaining private counsel, the court shall order the defendant or civil party to pay a fixed contribution. The defendant's or civil party's full payment must be made to the court prior to the conclusion of the proceedings, unless otherwise ordered by the court. The clerk of court shall remit such payments to the Office of the Public Defender.

Comment [PJ78]: Court to collect all payment owed under a partial indigency order prior to disposition of the case or make a specific alternative order.

B. A defendant or civil party may not be required to repay for legal services an amount greater than the rate established pursuant to section 1804-A, subsection 2, paragraph C.

C. If a defendant is incarcerated in the State Prison, an order for repayment pursuant to this subsection may be suspended until the time of the defendant's release.

D. The Chief Public Defender may enter into contracts to secure the repayment of fees and expenses paid by the State as provided for in this section.

Comment [PJ79]: Can contract to pursue collection of partial indigency payments.

4. Application fee. An applicant seeking indigent legal services shall pay an application fee as set forth by the commission in section 1804-A, subsection 2, paragraph E. In a case involving a juvenile the application fee is the responsibility of the parent or legal guardian except that, when a juvenile is accused of a crime against the juvenile's parent or legal guardian or when legal guardianship rests with the State, the fee is waived.

Comment [PJ80]: Application fee.

The application fee may be waived by the court. A defendant or civil party may pay the fee in a lump sum or in installments. Full payment must be made to the court prior to the conclusion of the proceedings, unless otherwise ordered by the court.

Sec. 10. 5 MRSA §931, sub-§1, ¶L-3, as amended by PL 2003, c. 646, §1, is further amended to read:

L-3. The Executive Analyst of the Board of Environmental Protection; ~~and~~

Sec. 11. 5 MRSA §931, sub-§1, ¶M, as amended by PL 1987, c. 9, §2, is further amended to read:

M. Other positions in the Executive Branch made unclassified by law; ~~and~~

Sec. 12. 5 MRSA §931, sub-§1, ¶N is enacted to read:

N. The Deputy Public Defenders, staff counsel and other professional staff of the Office of the Public Defender.

Sec. 13. 5 MRSA §959, as enacted by PL 2009, c. 419, §3, is repealed.

Sec. 14. 36 MRSA §191, sub-§2, ¶ZZ is enacted to read:

ZZ. The disclosure by employees of the bureau to an authorized representative of the Office of the Public Defender for the administration of Title 4, section 1804-A, subsection 1, paragraph A for determining eligibility for indigent legal services under Title 4, chapter 37.

Sec. 15. **Maine Revised Statutes headnote amended; revision clause.** In the Maine Revised Statutes, Title 4, chapter 37, in the chapter headnote, the words "Maine commission on indigent legal services" are amended to read "office of the public defender and Maine commission on indigent legal services" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Comment [P181]: Commission access to Maine Revenue Service Information. This could be helpful.

SUMMARY

This bill establishes a statewide public defender system. The purposes of this bill are to:

1. Provide effective assistance of counsel to indigent criminal defendants, juvenile defendants and ~~children~~ and parents in child protective cases in courts of this State;
2. Ensure that the system is free from undue political interference and conflicts of interest;
3. Provide for the delivery of public defender services by qualified and competent counsel in a manner that is fair and consistent throughout the State;
4. Establish a system that uses state employees, contracted services and other methods of providing services in a manner that is responsive to and respectful of regional and community needs and interests;
5. Ensure that adequate public funding of the statewide public defender system is provided and the system is managed in a fiscally responsible manner; and
6. Ensure that a person using the services of a statewide public defender system pay reasonable costs for services provided by the system based on the person's financial ability to pay.

Comment [EM82]: Will GAL still be the responsibility of the court?

Comment [EM83]: Are civil commitment cases left out intentionally?

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November 22, 2015

John D. Pelletier Executive Director
Maine Commission on Indigent Legal Services
154 State House Station
Augusta ME 04333

Subject: LD 1433

Dear John:

As you know, Sherry and I are the law firm of Hainke and Tash. We do not think that changing the indigent representation system from the current MCILS system to having contracts with groups of attorneys with the lowest bid is a good idea. My understanding of LD 1433 is it allegedly will create a system that cost less than the current one. I have not seen any documentation of this.

We do not have staff and often work out of our home. We started working for Legal Services for the Elderly, in the 80's but funding problems caused cut backs, so we formed Hainke & Tash. We were committed to do doing the type of law that would do two things, help the underprivileged and get us in court. We have focused on this type of practice for a little more than 20 years. We get most of our revenue from court appointed cases. Over the years we have learned a lot about the laws related to representing the indigent. If we were to leave this practice, our clients would lose very experienced attorneys. Many of the DAs and AGs are DAs and AGs for life and have a lot of experience. In order to make things fair, the attorneys that represent the indigent also need to be experienced.

If indigent representation goes to the lowest bidder, the bidder will likely have to have attorneys who do not have experience, they will learn on the job. Most if not all attorneys who currently take court appointed cases supplement the court appointed income with private pay cases. A bidder will have attorneys similar to the DA's and AG's spending all their time on the court appointed work. There is not one DA or AG who is not packed to the gills with cases that cause them to work long hours, including weekends. The bidder's attorneys will be the same. They will not have time to do private pay work. That would be fine if all those attorneys hired by the bidder had that job for the rest of their careers but the lowest bidder could be a new group every few years or at least a new group of attorneys. The new attorneys that worked for the lower wages of the bidder, after a while will get a job with the AG and DA that pays better, or may join a firm, They do this to make enough to pay off their school loans. That may be tough on bidder's pay. If the bidder increases wages and benefits each year to retain employees they will no longer be the lowest bidder.

The world of private practice attorneys serving businesses and private pay clients, for the most part, does not include knowing what you need to know to advocate for the indigent. Very few attorneys can specialize in criminal, juvenile or mental health law on a private pay basis. No attorney can specialize in child protection law and make money. Our system must encourage attorneys to develop expertise in criminal law, child protective law, mental health law and juvenile law. The marketplace does not offer reimbursement for knowledge in these areas. The system must keep a growing group of experienced attorneys in these areas. The current MCILS does that . A bid for contract system will not.

It is up to law enforcement and the DA and DHHS workers to decide what citizens need to be punished, have their children taken away or who need to be confined to psychiatric hospitals against their will. The people making these decisions initially, no matter how well trained or well intentioned, make mistakes. Our courts are the place where we try to correct those mistakes. The courts are overcrowded and underfunded. The judges depend and trust experienced attorneys and depend on their representations. If we have our indigent citizens represented by the least experienced attorneys we will not have a just system.

Cordially,

Harold J. Hainke, Esq.
Maine Bar # 3712

Pelletier, John

From: earl brown <eabrow@yahoo.com>
Sent: Wednesday, November 18, 2015 2:59 PM
To: MCILS
Subject: Re: LD 1433 – Request for Additional Comments

Ditto Jeff Pickering & Randy Day.

Earl Brown
Attorney at Law
3 Mainewood Avenue
Orono, Maine 04473
(207) 992-6283

From: "mcils@maine.gov" <mcils@maine.gov>
To: eabrow@yahoo.com
Sent: Tuesday, October 27, 2015 10:00 AM
Subject: LD 1433 – Request for Additional Comments

Attorneys:

Thank you to those of you who responded to our original request for comments on this proposed legislation. The Commissioners have reviewed the comments received to date, but note that relatively few comments were submitted.

The Commissioners also noted that some of the comments reflected a misunderstanding of the bill, perhaps caused by the reference to a public defender office in the title of the bill. Despite the title, the bill does not call for creation of a public defender office employing paid attorneys. Rather, the bill calls for the use of contracts with private attorneys "to the maximum extent possible" to provide indigent legal services. Both the proposed bill and the current Commission statute are posted on our website at the following link: http://www.maine.gov/mcils/document_library/index.html.

The Commissioners invite additional comments from people who have not yet submitted comments and revised comments from anyone whose original submission may have misapprehended the nature of the proposal. Thank you for your interest in this matter.

John

(4.)
Appellate Contracts

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: APPELLATE CONTRACTS DISCUSSION
DATE: December 2, 2015

At the Commission meeting in November, the question was raised whether a recent Law Court opinion authorizing parents whose parental rights had been terminated to challenge the effectiveness of trial counsel on direct appeal created a conflict of interest precluding trial counsel from representing such parents on appeal. I have posed this question to counsel at the Board of Overseers of the Bar and to date have not had a response.