

**MCILS**

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

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**JANUARY 12, 2016  
COMMISSION MEETING  
19 UNION STREET, ROOM 111B, AUGUSTA  
AGENDA**

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- 1) Approval of December 8, 2015 Commission Meeting Minutes
- 2) Operations Reports Review
- 3) Discussion of LD 1433
- 4) Appellate Contracts
- 5) MCILS Response to current Drug Crisis
- 6) Public Comment
- 7) Set Date, Time and Location of Next Regular Meeting of the Commission
- 8) Executive Session, if needed (Closed to Public)

**(1.)**  
**December 8, 2015**  
**Commission Meeting**  
**Minutes**

**Maine Commission on Indigent Legal Services – Commissioners Meeting  
December 8, 2015**

**Minutes**

**Commissioners Present:** Steven Carey (telephonically), Marvin Glazier, William Logan, Susan Roy, Kenneth Spierer

**MCILS Staff Present:** John Pelletier, Ellie Maciag

<b>Agenda Item</b>	<b>Discussion</b>	<b>Outcome/Action Item/Responsible Party</b>
Approval of the November 10, 2015 Commission Meeting Minutes	No discussion of meeting minutes.	Commissioner Logan moved for approval, Commissioner Roy seconded. All present in person in favor. Approved.
Operations Reports Review	<p>Director Pelletier presented the November 2015 Operations Reports. 2,058 new cases were opened in the DefenderData system in November. This was a 317 case decrease from October. The number of submitted vouchers in November was 2,448, a 189 voucher decrease from October, totaling \$1,298,363, a decrease of \$63,000 from October. In November, the Commission paid 2,010 vouchers totaling \$1,078,518, a decrease of 91 vouchers, but an increase of \$7,000 from October. The average price per voucher in November was \$536.58, up \$26.77 per voucher from October. The year-to-date average voucher price is \$509.80, 7.1% higher than the average for all of FY'15, but still lower than the 9.1% hourly rate increase that went into effect in July. Appeal and Post-Conviction Review cases had the highest average vouchers in November. There were 5 vouchers exceeding \$5,000 paid in November. The monthly transfer from the Judicial Branch for counsel fees for November, which reflects October's collections, totaled \$48,960, up approximately \$2,300 from the previous month. Collection totals continue to run below the projected monthly totals for the year. Director Pelletier noted that the Commission often sees a sharp increase in collection amounts after the new year due to the tax offset.</p>	

<b>Agenda Item</b>	<b>Discussion</b>	<b>Outcome/Action Item/Responsible Party</b>
Discussion of LD 1433	<p>Chair Carey and Director Pelletier briefed the Commissioners on the recent symposium hosted by the Law School and the Indigent Defense Center on indigent legal service delivery systems and LD 1433. Representatives from New Hampshire and Massachusetts presented at the event and gave their perspective on how their states provide indigent legal services. Director Pelletier noted that each of these states have mature systems that have been constantly evolving and that Maine could not replicate these systems overnight.</p> <p>Director Pelletier updated the Commissioners on the schedule for the upcoming legislative session, including a January 6<sup>th</sup> informational meeting with the Judiciary Committee to apprise them about how indigent legal services are currently delivered. Commissioner Spirer inquired about whether the public comments concerning LD 1433 that the Commission has received would be available to the Judiciary Committee. Chair Carey and Director Pelletier indicated that the Commission could submit the comments to the Committee on the Commission's behalf. Director Pelletier also offered a few points about the proposed bill and some insight on how the current system is working. He highlighted several outstanding results that rostered attorneys recently obtained, which he noted is not a characteristic of an anemic indigent legal services system. Director Pelletier also relayed that the Commission does play an important role in addressing systemic problems in the criminal justice system (the Crime Lab DNA database error, for example), as well as advocating for policy changes.</p> <p>Due to Chair Carey appearing telephonically at the meeting, the Commissioners decided to wait until the January meeting to take a formal vote on whether to support LD 1433.</p>	
Appellate Contracts	A brief discussion ensued about the implications of the recent Law Court decision, which authorizes parents whose parental rights are terminated to challenge the effectiveness of trial counsel on direct appeal, and whether this change created a conflict of interest precluding trial counsel from representing the parent on appeal.	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>Director Pelletier had not yet received an answer from bar counsel at the Board of Bar Overseers asking for its view on any potential conflict. The Commissioners agreed that Commission staff should email all rostered parents attorneys and alert them about the Law Court decision. The Commissioners also agreed that they should continue to explore the possibility of an appellate contract, including looking at a draft RFP.</p>	
Public Comment	<p><u>LD 1433</u></p> <p><u>Maurice R. Porter, Esq.:</u> Attorney Porter addressed LD 1433 from his perspective as a former member of the Clifford Commission, whose report led to the creation of MCILS. He pointed out that the Clifford Commission considered a public defender system and chose to recommend the MCILS model. Attorney Porter also expressed concern about the bill’s reliance on contracts as the model for delivering indigent legal services, pointing out that a number of states using contracts are currently subject to litigation regarding the inadequacies of their indigent defense systems. His fear was that a contract model would lead to “conveyor belt” justice. Attorney Porter stated that Maine provides excellent representation to indigent people while remaining, based on his internet research, amongst the 5 lowest states in cost per capita. Finally, Attorney Porter returned to the deliberations of the Clifford Commission, stating that while that Commission moved to eliminate the conflict of interest inherent in the then-existing court-run system, there had been concern that loss of Judicial Branch oversight would diminish “clout” with the Legislature and imperil funding for indigent legal services. He stated that this fear had not come to fruition as MCILS has been successful in obtaining the necessary funding.</p> <p><u>Robert J. Ruffner, Esq.:</u> Attorney Ruffner thanked the Commission who had served as panelists at a symposium on LD 1433 that had taken place on December 4, 2015. He stated that MCILS had been a good first step in improving indigent legal services, but that LD 1433 represented an opportunity for an important next step. He urged the Commission to embrace the bill as a means to obtaining more staff. Attorney</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>Ruffner related that a former Chair of the Commission had opined at the recent symposium that Maine only satisfies 3 of the 10 ABA principals and stated that the Commission needs more staff to do the things it is not doing now. He stated that a position called Chief Public Defender would help raise awareness with the Legislature about what the Commission does. He stated that a Chief Public Defender can and should weigh in on substantive criminal law matters urging “smart on crime” approaches. Attorney Ruffner pointed out that the New Hampshire Public Defender system operates under a single contract, and that under the bill, the Commission can control the terms of contracts issued. Attorney Ruffner again pointed out that the Commission needs more staff, and so should not oppose the bill in total. He acknowledged that the bill would not save money, but that the Commission should use the bill to get more funding out of the Legislature.</p> <p><u>Christopher R. Guillory, Esq.:</u> Attorney Guillory stated that he attended the symposium and believed that the Commission meets more than 3 of the 10 ABA Principals. Attorney Guillory handed out a report on his cost research that demonstrated that Maine spends less per capita than almost all other states on indigent legal services. He said Maine should not be proud to spend so little, but that Maine attorneys provide excellent indigent legal services. Attorney Guillory also pointed out that New Hampshire, with a similar population and small geography spends more on just criminal defense than Maine does for its system that includes child protective cases, among others. He stated that he believes the bill is aimed at cost containment, but that Maine cannot ask lawyers to do more with less and still maintain a strong system.</p> <p><u>Termination of Parental Rights Appeals</u></p> <p><u>Robert J. Ruffner, Esq.:</u> Attorney Ruffner urged the Commission not to wait for an opinion from Bar Counsel, but to move forward with new counsel in all appeals from termination orders. He also urged the Commission to assign new counsel for appeals in all cases. He also urged the Commission to adopt contracts for appellate</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>representation.</p> <p><u>Christopher R. Guillory, Esq.</u>: Attorney Guillory stated that contracts are a model suited to appeals, and that a contract group could create efficiencies as compared to current practice even though those attorneys would not have been trial counsel.</p>	
Executive Session	The Commissioners entered into executive session to discuss personnel matters. No votes were taken.	
Adjournment of meeting	The Commission voted to adjourn with the next meeting to be on January 12, 2015 at 9:30 a.m.	Commissioner Glazier moved to adjourn. Commissioner Logan seconded. All present at the meeting in favor.

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

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**TO:** MCILS COMMISSIONERS  
**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR  
**SUBJECT:** DECEMBER 2015 OPERATIONS REPORTS  
**DATE:** JANUARY 7, 2016

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Attached you will find the December, 2015 Operations Reports for your review and our discussion at the upcoming Commission meeting on January 12, 2016. A summary of the operations reports follows:

- 2013 new cases were opened in the DefenderData system in December. This was a 45 case decrease from November.
- The number of vouchers submitted electronically in December was 2,535, an increase of 87 vouchers over November, totaling \$1,359,307.39, an increase of \$61,000 over November. In December, we paid 3,504 electronic vouchers totaling \$1,812,231.46, representing an increase of 1,494 vouchers and \$734,000 compared to November.
- There were two paper vouchers submitted and paid in December totaling \$5,925.28.
- The average price per voucher in December was \$518.58, down \$18.00 per voucher from November. The year-to-date average price per voucher stands at \$511.81, 7.6% higher than the average for all of FY'15.
- Appeal and Post-Conviction Review cases had the highest average vouchers in December. There were 14 vouchers exceeding \$5,000 paid in December. Two vouchers involved Murder charges, with one resulting in a guilty verdict after a 7-day trial and another where retained counsel entered the case after assigned counsel had worked on the case for two years. Two vouchers were from co-counsel who obtained a not guilty verdict on a Robbery charge after trial. A third voucher in a Robbery case involved dismissal of the Robbery charge at jury selection. Two other vouchers involved not guilty verdicts after trial, one on an Aggravated Assault charge and another on a felony OUI. Another voucher in an Aggravated Assault case involved dismissal of that charge in return for a plea to lesser charges. Other vouchers involved contested sentencings on charges of 1) Aggravated Assault, 2) Gross Sexual Assault, 3) Operating after Revocation involving Death and 4) Unlawful Trafficking in Drugs. One voucher involved a Post-Conviction Review proceeding where the underlying trial had lasted several weeks. Finally, one voucher involved a Child Protection Case where the attorney submitted a single invoice for work from the PPO through Termination.

In our All Other Account, the total expenses for the month of December were \$1,821,435.96. Of the amount, just under \$11,000 was devoted to the Commission's operating expenses. We ended the second quarter with a cash balance in the All Other account of \$271,346.37. For the first half of the current year, the unspent balance in the All Other account totals \$480,027.82.

In the Personal Services Account, we had \$74,897.31 in expenses for the month of December. The total for the month was higher than normal because checks for three pay periods were issued in December.

In the Revenue Account, our monthly transfer from the Judicial Branch for counsel fees for the month of December, which reflects November's collections, totaled \$41,462.08 down approximately \$7,500 from the previous month. Collections continue to run below the monthly amount projected for the year. In December, we paid vouchers totaling \$149,790.00 from the Revenue account through the DefenderData system.

In our Conference Account, we collected \$1,275 in registration fees for November trainings, and paid \$3,079.38 in expenses for those trainings, leaving the account balance at \$11,122.60.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Case Type

12/31/2015

DefenderData Case Type	Dec-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	10	12	\$ 14,927.58	18	\$ 26,928.97	\$ 1,496.05	66	120	\$ 139,886.10	\$ 1,165.72
Child Protection Petition	129	339	\$ 219,145.10	474	\$ 296,301.18	\$ 625.11	867	2,085	\$ 1,292,356.79	\$ 619.84
Drug Court	0	7	\$ 5,100.00	9	\$ 6,090.00	\$ 676.67	2	40	\$ 23,668.50	\$ 591.71
Emancipation	6	7	\$ 1,989.56	9	\$ 2,607.56	\$ 289.73	41	56	\$ 16,517.00	\$ 294.95
Felony	511	594	\$ 513,198.52	835	\$ 652,114.32	\$ 780.98	3,306	3,564	\$ 2,818,884.20	\$ 790.93
Involuntary Civil Commitment	80	64	\$ 16,143.44	84	\$ 20,785.02	\$ 247.44	406	390	\$ 92,311.58	\$ 236.70
Juvenile	83	106	\$ 37,075.78	152	\$ 59,443.92	\$ 391.08	546	583	\$ 246,524.12	\$ 422.85
Lawyer of the Day - Custody	249	235	\$ 52,340.78	288	\$ 63,703.34	\$ 221.19	1,328	1,248	\$ 290,884.55	\$ 233.08
Lawyer of the Day - Juvenile	41	43	\$ 9,153.30	56	\$ 12,035.54	\$ 214.92	252	243	\$ 50,563.76	\$ 208.08
Lawyer of the Day - Walk-in	129	100	\$ 24,390.83	138	\$ 34,023.27	\$ 246.55	678	628	\$ 155,196.91	\$ 247.13
Misdemeanor	608	672	\$ 280,543.29	957	\$ 386,733.45	\$ 404.11	4,099	4,080	\$ 1,588,256.27	\$ 389.28
Petition, Modified Release Treatment	0	7	\$ 2,566.50	8	\$ 2,977.48	\$ 372.19	4	31	\$ 11,443.58	\$ 369.15
Petition, Release or Discharge	0	0	\$	0	\$	\$	1	2	\$ 466.75	\$ 233.38
Petition, Termination of Parental Rights	13	36	\$ 31,689.49	55	\$ 60,241.09	\$ 1,095.29	80	279	\$ 221,205.85	\$ 792.85
Post Conviction Review	5	12	\$ 17,658.06	15	\$ 19,785.78	\$ 1,319.05	37	39	\$ 62,540.42	\$ 1,603.60
Probation Violation	126	162	\$ 66,383.35	212	\$ 82,377.25	\$ 388.57	996	985	\$ 380,889.36	\$ 386.69
Represent Witness on 5th Amendment	1	3	\$ 455.20	3	\$ 455.20	\$ 151.73	12	12	\$ 2,187.62	\$ 182.30
Review of Child Protection Order	19	133	\$ 64,512.61	187	\$ 83,558.09	\$ 446.83	153	936	\$ 445,997.53	\$ 476.49
Revocation of Administrative Release	3	3	\$ 2,034.00	4	\$ 2,070.00	\$ 517.50	19	11	\$ 3,027.50	\$ 275.23
<b>DefenderData Sub-Total</b>	<b>2,013</b>	<b>2,535</b>	<b>\$ 1,359,307.39</b>	<b>3,504</b>	<b>\$ 1,812,231.46</b>	<b>\$ 517.19</b>	<b>12,893</b>	<b>15,332</b>	<b>\$ 7,842,808.39</b>	<b>\$ 511.53</b>
Paper Voucher Sub-Total	2	2	\$ 5,925.28	2	\$ 5,925.28	\$ 2,962.64	4	4	\$ 6,325.78	\$ 1,581.45
<b>TOTAL</b>	<b>2,015</b>	<b>2,537</b>	<b>\$1,365,232.67</b>	<b>3,506</b>	<b>\$1,818,156.74</b>	<b>\$ 518.58</b>	<b>12,897</b>	<b>15,336</b>	<b>\$ 7,849,134.17</b>	<b>\$ 511.81</b>

MAINE COMMISSION ON INDIGENT LEGAL SERVICES  
 FY16 FUND ACCOUNTING  
 AS OF 12/31/2015

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		\$ -		\$ -		\$ -		\$ -	
<b>Total Budget Allotments</b>		<b>\$ 4,463,505.00</b>		<b>\$ 4,407,485.00</b>		<b>\$ 4,558,465.00</b>		<b>\$ 4,916,287.00</b>	<b>\$ 18,345,742.00</b>
Total Expenses	1	\$ (1,034,674.33)	4	\$ (1,209,786.02)	7	\$ -	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	\$ (1,821,435.96)	9	\$ -	12	\$ -	\$ (3,431,307.26)
Encumbrances		\$ (213,187.50)		\$ 71,062.50		\$ -		\$ -	\$ (142,125.00)
<b>TOTAL REMAINING</b>		<b>\$ 221,681.45</b>		<b>\$ 271,346.37</b>		<b>\$ 4,558,465.00</b>		<b>\$ 4,916,287.00</b>	<b>\$ 9,967,779.82</b>

Q2 Month 6 (as of 12/31/15)	
<b>INDIGENT LEGAL SERVICES</b>	
Counsel Payments	\$ (1,668,366.74)
Somerset County	\$ (23,717.50)
Subpoena Witness Fees	\$ (23.20)
Private Investigators	\$ (30,289.85)
Mental Health Expert	\$ (19,260.00)
Transcripts	\$ (26,234.85)
Other Expert	\$ (39,752.56)
Air fare-out of state witness	\$ -
Process Servers	\$ (1,211.07)
Interpreters	\$ (1,440.27)
Misc Prof Fees & Serv	\$ (180.00)
<b>SUB-TOTAL ILS</b>	<b>\$ (1,810,476.04)</b>
<b>OPERATING EXPENSES</b>	
Service Center	\$ -
DefenderData	\$ (4,589.25)
Trainer Fees (in error)	\$ -
Mileage/Tolls/Parking	\$ (1,038.64)
Mailing/Postage/Freight	\$ (82.21)
Bar Dues - John & Ellie	\$ -
VDT reimbursement	\$ -
Office Supplies/Equip.	\$ (265.38)
Cellular Phones	\$ (113.56)
Subscriptions	\$ -
Office Equipment Rental	\$ (279.54)
Notary Fees	\$ -
OIT/TELCO	\$ (4,591.34)
<b>SUB-TOTAL OE</b>	<b>\$ (10,959.92)</b>
<b>TOTAL</b>	<b>\$ (1,821,435.96)</b>

INDIGENT LEGAL SERVICES	
Q2 Allotment	\$ 4,407,485.00
Q2 Encumbrances for Somerset city PDP & Justice Works contracts	\$ 71,062.50
Q2 Expenses as of 12/31/15	\$ (4,207,201.13)
Remaining Q2 Allotment as of 12/31/15	\$ 271,346.37

\$ 271,346.37

MAINE COMMISSION ON INDIGENT LEGAL SERVICES  
 FY16 FUND ACCOUNTING  
 As of 12/31/15

Account 014 95F Z112 01 (Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY16 Total
<b>Total Budget Allotments</b>		\$ 180,124.00	\$	180,124.00	\$	180,124.00	\$	180,125.00	\$ 720,497.00
Financial Order Adjustment	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Financial Order Adjustment	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Budget Order Adjustment	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
Financial Order Adjustment	3	\$ 14,106.00	4	\$ 15,000.00	9	\$ 15,000.00	12	\$ 15,000.00	\$ 59,106.00
<b>Total Budget Allotments</b>		\$ 194,230.00	\$	195,124.00	\$	195,124.00	\$	195,125.00	\$ 779,603.00
Cash Carryover from Prior Quarter		\$ 59,106.00	\$	16,758.55	\$	-	\$	-	
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	\$ 41,462.08	9	\$ -	12	\$ -	
Promissory Note Payments		\$ 50.00	\$	50.00	\$	-	\$	-	
<b>TOTAL CASH PLUS REVENUE COLLECTED</b>		\$ 201,378.29	\$	153,815.46	\$	-	\$	-	\$ 279,329.20
Counsel Payments	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Other Expenses		\$ (90.50)	\$	-					
Counsel Payments	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Other Expenses		\$ (1.93)							
Counsel Payments	3	\$ (178,086.96)	6	\$ (149,790.00)	9	\$ -	12	\$ -	
Other Expenses	**	\$ (3,802.16)							
<b>REMAINING ALLOTMENT</b>		\$ 12,248.45	\$	45,334.00	\$	195,124.00	\$	195,125.00	\$ 447,831.45
Overpayment Reimbursements	1	\$ (2,394.19)	4	\$ (295.00)	7	\$ -	10	\$ -	
	2	\$ (244.00)	5	\$ (532.00)	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
<b>REMAINING CASH Year to Date</b>		\$ 16,758.55	\$	3,198.46	\$	-	\$	-	

Q2 Month 6 (as of 12/31/15)	
DEFENDER DATA COUNSEL PAYMENTS	\$ (149,790.00)
<b>SUB-TOTAL ILS</b>	
OVERPAYMENT REIMBURSEMENTS	\$ -
Paper Voucher	\$ -
Somerset County CDs	\$ -
Private Investigators	\$ -
Mental Health Expert	\$ -
Transcripts	\$ -
Other Expert	\$ -
StaCap Expense	\$ -
<b>SUB-TOTAL OE</b>	\$ -
<b>TOTAL</b>	\$ -

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

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**  
**FY16 FUND ACCOUNTING**  
As of 12/31/15

Account 014 95F Z112 02 (Conference)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY16 Total
<b>Total Budget Allotments</b>		<b>\$ 10,385.00</b>		<b>\$ 15,000.00</b>		<b>\$ 15,000.00</b>		<b>\$ 20,000.00</b>	<b>\$ 60,385.00</b>
Financial Order Adjustment	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Financial Order Adjustment	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Financial Order Adjustment	3	\$ 1,196.00	6	\$ 3,000.00	9	\$ 3,000.00	12	\$ 2,000.00	\$ 9,196.00
<b>Total Budget Allotments</b>		<b>\$ 11,581.00</b>		<b>\$ 18,000.00</b>		<b>\$ 18,000.00</b>		<b>\$ 22,000.00</b>	<b>\$ 69,581.00</b>
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	\$ 1,275.00	9	\$ -	12	\$ -	
<b>TOTAL CASH PLUS REVENUE COLLECTED</b>		<b>\$ 12,603.34</b>		<b>\$ 15,262.77</b>		<b>\$ -</b>		<b>\$ -</b>	<b>\$ 3,322.50</b>
Total Expenses	1	\$ (99.00)	4	\$ -	7	\$ -	10	\$ -	
	2	\$ (530.29)	5	\$ (1,060.79)	8	\$ -	11	\$ -	
	3	\$ (11.28)	6	\$ (3,079.38)	9	\$ -	12	\$ -	
Encumbrances		\$ (3,385.00)		\$ 2,325.00					
<b>REMAINING ALLOTMENT</b>		<b>\$ 7,555.43</b>		<b>\$ 16,184.83</b>		<b>\$ 18,000.00</b>		<b>\$ 22,000.00</b>	<b>\$ 63,740.26</b>
<b>REMAINING CASH Year to Date</b>		<b>\$ 11,962.77</b>		<b>\$ 11,122.60</b>		<b>\$ -</b>		<b>\$ -</b>	

Q2 Month 6 (as of 12/31/15)	
Training Manuals Printing	\$ (731.73)
Training Refreshments/Meals	\$ -
Media Northeast (encumbered Q1)	\$ (2,325.00)
Refund(s) for non-attendance	\$ -
Office Supplies	\$ -
CLE App to the Bar	\$ -
State Cap Expense	\$ (22.65)
<b>TOTAL</b>	<b>\$ (3,079.38)</b>

MAINE COMMISSION ON INDIGENT LEGAL SERVICES  
 FY16 FUND ACCOUNTING  
 AS OF 12/31/2015

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				\$ -		\$ -		\$ -	
<b>Total Budget Allotments</b>		<b>\$ 197,643.00</b>		<b>\$ 197,641.00</b>		<b>\$ 174,658.00</b>		<b>\$ 181,575.00</b>	<b>\$ 751,517.00</b>
Total Expenses	1	\$ (73,500.45)	4	\$ (51,930.26)	7	\$ -	10	\$ -	
	2	\$ (49,758.60)	5	\$ (52,356.41)	8	\$ -	11	\$ -	
	3	\$ (48,847.23)	6	\$ (74,897.31)	9	\$ -	12	\$ -	
<b>TOTAL REMAINING</b>		<b>\$ 25,536.72</b>		<b>\$ 18,457.02</b>		<b>\$ 174,658.00</b>		<b>\$ 181,575.00</b>	<b>\$ 400,226.74</b>

Q2 Month 6 (as of 12/31/15)	
Per Diem Payments	\$ (220.00)
Salary	\$ (36,964.98)
Vacation Pay	\$ (1,112.02)
Holiday Pay	\$ (4,628.40)
Sick Pay	\$ (947.40)
Employee Hlth Svs/Workers Comp	\$ (74.00)
Health Insurance	\$ (9,993.46)
Dental Insurance	\$ (249.48)
Employer Retiree Health	\$ (4,718.15)
Employer Retirement	\$ (3,388.45)
Employer Group Life	\$ (327.36)
Employer Medicare	\$ (640.64)
Retiree Unfunded Liability	\$ (8,057.13)
Retro Pymt	\$ (944.64)
Perm Part Time Full Ben	\$ (2,631.20)
<b>TOTAL</b>	<b>\$ (74,897.31)</b>

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Court

12/31/2015

Court	Dec-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	43	151	\$ 118,265.48	206	\$ 151,645.51	\$ 736.14	464	1,028	\$ 784,493.72	\$ 763.13
AUBSC	15	72	\$ 56,070.20	96	\$ 76,616.88	\$ 798.09	180	490	\$ 358,701.59	\$ 732.04
AUGDC	45	66	\$ 32,789.20	88	\$ 50,283.97	\$ 571.41	259	415	\$ 199,187.82	\$ 479.97
AUGSC	38	87	\$ 92,926.58	109	\$ 95,963.86	\$ 880.40	283	472	\$ 344,922.94	\$ 730.77
BANDC	37	80	\$ 29,098.50	130	\$ 45,325.24	\$ 348.66	339	569	\$ 206,651.04	\$ 363.18
BANSC	0	2	\$ 5,086.15	2	\$ 3,376.85	\$ 1,688.43	8	12	\$ 5,663.00	\$ 471.92
BATSC	2	0		0			8	9	\$ 3,965.67	\$ 440.63
BELDC	3	23	\$ 14,325.90	30	\$ 19,828.05	\$ 660.94	39	165	\$ 82,917.63	\$ 502.53
BELSC	5	9	\$ 13,223.53	14	\$ 12,004.68	\$ 857.48	20	78	\$ 48,915.29	\$ 627.12
BIDDC	51	61	\$ 28,019.08	92	\$ 46,729.69	\$ 507.93	360	552	\$ 291,359.23	\$ 527.82
BRIDC	9	12	\$ 4,381.89	22	\$ 8,865.14	\$ 402.96	73	116	\$ 66,979.40	\$ 577.41
CALDC	9	28	\$ 14,646.36	28	\$ 14,128.36	\$ 504.58	34	81	\$ 45,501.28	\$ 561.74
CARDC	12	21	\$ 11,911.84	25	\$ 17,284.12	\$ 691.36	88	154	\$ 82,169.52	\$ 533.57
CARSC	11	26	\$ 20,879.70	38	\$ 26,987.84	\$ 710.21	95	199	\$ 122,528.57	\$ 615.72
DOVDC	3	12	\$ 3,993.28	25	\$ 7,375.88	\$ 295.04	16	92	\$ 25,914.68	\$ 281.68
DOVSC	0	2	\$ 1,152.00	2	\$ 1,152.00	\$ 576.00	2	2	\$ 1,152.00	\$ 576.00
ELLDC	9	28	\$ 14,687.96	39	\$ 20,879.96	\$ 535.38	65	237	\$ 116,039.97	\$ 489.62
ELLSC	0	4	\$ 1,218.00	5	\$ 1,488.00	\$ 297.60	6	31	\$ 7,944.43	\$ 256.27
FARDC	6	13	\$ 16,064.98	13	\$ 8,456.65	\$ 650.51	45	67	\$ 45,339.82	\$ 676.71
FARSC	0	0		0			6	5	\$ 3,724.40	\$ 744.88
FORDC	5	8	\$ 4,336.06	10	\$ 8,461.47	\$ 846.15	43	66	\$ 31,120.77	\$ 471.53
HOUDC	32	52	\$ 23,720.21	68	\$ 29,144.46	\$ 428.60	235	298	\$ 117,138.54	\$ 393.08
HOUSC	1	9	\$ 10,902.77	15	\$ 13,567.43	\$ 904.50	41	73	\$ 51,431.78	\$ 704.54
LEWDC	67	101	\$ 41,693.10	143	\$ 69,330.79	\$ 484.83	520	790	\$ 356,138.38	\$ 450.81
LINDC	19	23	\$ 19,801.18	31	\$ 26,339.92	\$ 849.67	70	89	\$ 59,202.02	\$ 665.19
MACDC	8	8	\$ 3,318.60	10	\$ 3,948.60	\$ 394.86	62	119	\$ 44,945.45	\$ 377.69
MACSC	4	7	\$ 4,049.93	14	\$ 7,615.18	\$ 543.94	30	62	\$ 29,247.78	\$ 471.74
MADDC	4	3	\$ 904.72	3	\$ 904.72	\$ 301.57	22	18	\$ 5,322.34	\$ 295.69
MILDC	2	0		2	\$ 426.00	\$ 213.00	16	13	\$ 3,521.69	\$ 270.90
NEWDC	18	12	\$ 3,911.76	20	\$ 6,183.84	\$ 309.19	105	132	\$ 48,359.49	\$ 366.36
PORDC	80	108	\$ 48,096.47	144	\$ 70,014.20	\$ 486.21	449	716	\$ 357,353.75	\$ 499.10
PORSC	5	2	\$ 6,483.34	4	\$ 7,101.06	\$ 1,775.27	27	14	\$ 15,968.61	\$ 1,140.62
PREDC	11	41	\$ 17,456.49	62	\$ 25,580.10	\$ 412.58	137	276	\$ 100,054.40	\$ 362.52
RODC	40	26	\$ 11,530.24	38	\$ 16,121.52	\$ 424.25	143	176	\$ 70,613.28	\$ 401.21
RODC	6	15	\$ 17,270.79	23	\$ 16,930.74	\$ 736.12	57	94	\$ 72,904.35	\$ 775.58
RUMDC	12	18	\$ 9,954.80	26	\$ 15,352.70	\$ 590.49	76	95	\$ 45,550.72	\$ 479.48
SKODC	15	43	\$ 20,994.26	50	\$ 23,272.94	\$ 465.46	73	233	\$ 116,956.01	\$ 501.96
SKOSC	0	0		0			2	2	\$ 734.00	\$ 367.00
SOUDC	19	37	\$ 15,410.49	41	\$ 18,618.34	\$ 454.11	99	140	\$ 53,949.30	\$ 385.35
SOUSC	7	18	\$ 9,371.46	24	\$ 12,179.02	\$ 507.46	86	182	\$ 102,325.11	\$ 562.23
SPRDC	39	64	\$ 30,924.50	97	\$ 48,062.23	\$ 495.49	311	420	\$ 216,913.06	\$ 516.46
Law Ct	8	10	\$ 13,604.58	15	\$ 24,140.97	\$ 1,609.40	51	86	\$ 101,148.33	\$ 1,176.14
YORCD	126	65	\$ 38,968.76	82	\$ 47,256.52	\$ 576.30	723	229	\$ 113,011.83	\$ 493.50
ARODC	46	33	\$ 12,311.12	39	\$ 14,351.09	\$ 367.98	164	77	\$ 26,479.32	\$ 343.89
ANDCD	103	63	\$ 27,398.06	91	\$ 35,066.75	\$ 385.35	540	176	\$ 66,759.19	\$ 379.31
KENDC	144	107	\$ 36,943.58	141	\$ 51,876.29	\$ 367.92	732	508	\$ 170,739.42	\$ 336.10
PENCD	190	204	\$ 77,271.01	291	\$ 114,697.91	\$ 394.15	1,272	1,324	\$ 598,859.52	\$ 452.31
SAGCD	38	33	\$ 15,957.36	49	\$ 27,020.36	\$ 551.44	208	191	\$ 131,487.06	\$ 688.41
WALCD	34	29	\$ 11,207.20	45	\$ 14,977.76	\$ 332.84	182	127	\$ 43,906.20	\$ 345.72
PISCD	8	16	\$ 3,570.50	22	\$ 4,470.50	\$ 203.20	76	83	\$ 27,816.30	\$ 335.14
HANCD	46	36	\$ 15,643.50	52	\$ 24,179.50	\$ 464.99	336	325	\$ 131,210.12	\$ 403.72
FRACD	44	61	\$ 25,613.67	73	\$ 28,093.41	\$ 384.84	313	333	\$ 122,530.79	\$ 367.96
WASCD	47	32	\$ 8,324.40	86	\$ 21,467.40	\$ 249.62	237	148	\$ 36,390.85	\$ 245.88
CUMCD	294	302	\$ 180,942.62	414	\$ 243,166.08	\$ 587.36	1,868	1,774	\$ 992,403.89	\$ 559.42
KNOCD	39	35	\$ 21,692.18	50	\$ 26,065.50	\$ 521.31	298	201	\$ 90,517.85	\$ 450.34
SOMCD	2	0		0			5	5	\$ 3,113.30	\$ 622.66
OXFCD	47	22	\$ 6,003.10	32	\$ 8,664.45	\$ 270.76	259	102	\$ 27,539.85	\$ 270.00
LINCD	28	50	\$ 21,009.19	48	\$ 20,773.31	\$ 432.78	217	142	\$ 63,461.91	\$ 446.91
WATDC	24	67	\$ 31,228.20	82	\$ 37,003.83	\$ 451.27	117	262	\$ 123,866.37	\$ 472.77
WESDC	22	39	\$ 10,731.83	46	\$ 13,894.79	\$ 302.06	138	193	\$ 81,773.46	\$ 423.70
WISDC	11	16	\$ 4,727.38	26	\$ 12,736.13	\$ 489.85	63	110	\$ 53,279.18	\$ 484.36
WISSC	1	10	\$ 3,587.74	14	\$ 7,571.77	\$ 540.84	26	76	\$ 59,373.51	\$ 781.23
YORDC	19	12	\$ 5,848.36	17	\$ 7,209.20	\$ 424.07	74	78	\$ 33,317.31	\$ 427.15
<b>TOTAL</b>	<b>2,013</b>	<b>2,534</b>	<b>\$ 1,351,456.14</b>	<b>3,504</b>	<b>\$ 1,812,231.46</b>	<b>\$ 517.19</b>	<b>12,893</b>	<b>15,332</b>	<b>\$ 7,842,808.39</b>	<b>\$ 511.53</b>

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

**Number of Attorneys Rostered by Court**

**12/31/2015**

<b>Court</b>	<b>Rostered Attorneys</b>		<b>Court</b>	<b>Rostered Attorneys</b>
Augusta District Court	103		South Paris District Court	63
Bangor District Court	56		Springvale District Court	119
Belfast District Court	53		Unified Criminal Docket Alfred	111
Biddeford District Court	134		Unified Criminal Docket Aroostook	23
Bridgton District Court	98		Unified Criminal Docket Auburn	107
Calais District Court	12		Unified Criminal Docket Augusta	97
Caribou District Court	19		Unified Criminal Docket Bangor	57
Dover-Foxcroft District Court	28		Unified Criminal Docket Bath	95
Ellsworth District Court	45		Unified Criminal Docket Belfast	47
Farmington District Court	28		Unified Criminal DocketDover Foxcroft	24
Fort Kent District Court	11		Unified Criminal Docket Ellsworth	40
Houlton District Court	16		Unified Criminal Docket Farmington	29
Lewiston District Court	133		Inified Criminal Docket Machias	17
Lincoln District Court	30		Unified Criminal Docket Portland	147
Machias District Court	19		Unified Criminal Docket Rockland	41
Madawaska District Court	12		Unified Criminal Docket Skowhegan	21
Millinocket District Court	21		Unified Criminal docket Soputh Paris	103
Newport District Court	40		Unified Criminal Docket Wiscassett	72
Portland District Court	160		Waterville District Court	58
Presque Isle District Court	15		West Bath District Court	113
Rockland District Court	49		Wiscassett District Court	80
Rumford District Court	27		York District Court	106
Skowhegan District Court	30			

**(3.)**  
**Discussion of LD 1433**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**TO:** MCILS COMMISSIONERS  
**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR  
**CC:** ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR  
**SUBJECT:** LD 1433  
**DATE:** JANUARY 7, 2016

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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 three attorneys that were not included in the December meeting packet.

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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.

**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.

**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.~~

**Comment [PJ3]:** Eliminates assigned counsel generally.

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

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

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

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

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

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

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.

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

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

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

**Comment [PJ8]:** 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 [PJ9]:** 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;

**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.

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;

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

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

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

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;

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

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

**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.

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;

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

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;

**Comment [PJ23]:** Similar to existing law

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;

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

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;

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

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;

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.

**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.

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

**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.

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

**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.

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

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

**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.

**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.

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

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

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.

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

(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.

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

(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.

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

**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?

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.

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

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

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 [PJ81]:** 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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December 5, 2015

To: Senator David C. Burns, Senate Chair  
Representative Barry J. Hobbins, House Chair  
And Members of the Joint Standing Committee on the Judiciary

### *A study on the feasibility of proposed legislative Item LD1433*

#### **Purpose**

“You have the right to remain silent. Anything you say can and will be held against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, one will be appointed to you.” Whether it is from real life experience, school, or watching procedural crime dramas on television nearly everyone in today’s society is familiar with some form of the Miranda warnings.

States are required by law to provide counsel to indigent defendants who cannot afford their own attorney in the following types of cases: criminal cases in which there is a risk of jail<sup>1</sup>, *Scott v. Illionois*, 440 U.S. 367 (1979); *Gideon v. Wainwright*, 372 U.S. 335(1963); juvenile crimes, *In Re Gault*, 73 U.S. 1 (1967); mentally ill persons threatened with involuntary commitment, *Vitek v. Jones*, 445 U.S. 480 (1979); and to indigent parents in child protective and termination of parental rights cases *Lassiter v. Dep’t of Social Servs.*, 452 U.S. 18 (1981) and in Maine 22 M.R.S. § 4005(2) (2008). Thus Maine is required by both the United States Constitution, its own Constitution, and state statute to provide legal services to the indigent.

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<sup>1</sup> Me. Const. art. I, §6-A

Maine's Commission on Indigent Legal Services<sup>2</sup> (MCILS) currently oversees the delivery of constitutionally required court appointed legal services to the indigent. This is accomplished through a system where private attorneys are appointed by the courts in cases where there is a constitutional or statutory right to counsel and the defendant falls within financial guidelines made by the State. MCILS sets the standard for training and experience that attorneys must have before they can be appointed to cases by the courts. Attorneys that meet MCILS's standards are appointed directly by the courts and paid for their services at capped hourly rates that are set by the State.

The exception to this being in Somerset County where legal services to indigent criminal defendants are provided by a group of attorneys under a flat rate contract, paid from MCILS's budget, secured through a competitive bidding process renewed at 2 year intervals.

On May 26, 2015 LD 1433, "An Act To Create the Office of the Public Defender and Amend the Duties of the Commission on Indigent Legal Services", drafted by The Office of Policy and Management was introduced. The stated intentions of the bill are to create a new type of public defender system in Maine that would "do a better job and save taxpayer money".<sup>3</sup>

LD 1433 contains little information as to exactly what system of legal services will be provided to the state's citizens other than a notation in §1807(3)(B), stating the Chief Public Defender shall: "To the maximum extent possible use contracts in providing indigent legal services as required by this section."<sup>4</sup> The particulars as to what type of contracts will be required/encouraged/restricted/ or used are not included in the body of LD 1433. The only indication as to what the contracts contemplated by LD1433 may look like is drawn from a statement made by one of the bill's sponsors to the media, "We have a successful program in Somerset County where a group of lawyers contracted with the state. I think that is the approach to take."<sup>5</sup>

LD1433 would create a new bureaucracy to create and administer these contracts while the responsibility for determining the specific rules as to how those contracts are to be structured, awarded, administered, and overseen is left to be determined later by methods other than the legislative enactment of LD 1433. LD 1433 is also silent as whether these proposed contracts will cover only criminal cases or all the other types of cases in which there is a constitutionally guaranteed right to counsel for indigent individuals.

This paper will address the following questions. Should Maine consider changing its present system in favor or one closer mirroring those in other states? Would such a change save the state money over the short or long term? Would a contract model similar to that in place in Somerset County be feasible to employ statewide?

## Research

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<sup>2</sup> Maine Revised Statutes, Title 4, Chapter 37 §1801. Maine Commission on Indigent Legal Services; Established

<sup>3</sup> Bangor Daily News, Mal Leary, "LePage wants to modify legal services for poor Mainers", September 1, 2015.

<sup>4</sup> 127<sup>th</sup> Maine Legislature LD1433, §1807(3)(B).

<sup>5</sup> Bangor Daily News, Mal Leary, "LePage wants to modify legal services for poor Mainers", September 1, 2015.

While LD 1433 does not provide for the creation of a brick and mortar public defender program, a comparison of Maine's current system against systems used in other states is necessary to test the economic feasibility of Maine's current model.

In 2009 the Spangenberg Project prepared a report for the American Bar Association Standing Committee on Legal Aid and Indigent Defendants Bar Information Program that studied the delivery methods with which States (and the District of Columbia) provide indigent legal services to their populations and the costs associated with providing those services in the fiscal year for 2008.

The results of that study revealed that Maine ranked 47<sup>th</sup> in total spending on indigent legal services, with only South and North Dakota, Wyoming, and Hawaii spending less. Maine was also ranked 48<sup>th</sup> in per capita spending, with only Texas, Missouri, and Mississippi spending less.

Next I collected the newest available published budgetary data from other states to compare against Maine's expenditures. Due to the resources available data was only gathered for states with public defender programs funded wholly or nearly wholly by State resources (as opposed to county level funding). Within these parameters recent data was acquired from 23 states. The results were that Maine is spending less than any other state with new data available<sup>6</sup> with the exceptions of Hawaii<sup>7</sup>, Missouri<sup>8</sup>, and Arkansas<sup>9</sup>.

Additional analysis of the Spangenberg report shows that the District of Columbia along with ten other states (Alabama, Arizona, California, Minnesota, Nebraska, Nevada, New York, Virginia, Washington, and Nevada) were spending more per capita in 2008 on indigent legal services than Maine is currently spending in 2015.

A survey of recent budgetary data published directly by the states and/or their public defender programs reveals that at \$12.274/person<sup>10</sup> Maine spends less per capita on providing indigent legal services than any of its neighboring states in the Northeast.<sup>11</sup> Notable among these states are Delaware<sup>12</sup> and Vermont<sup>13</sup> who spend nearly twice as much as Maine per capita on indigent legal services. Additionally despite having smaller populations<sup>14</sup> both Delaware and New Hampshire's<sup>15</sup> Public defender programs required total budgets of \$21.9 million and \$23.9

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<sup>6</sup> See Figure 1, attached

<sup>7</sup> Hawaii Executive Biennium Budget, Fiscal Budget 2015-2017, Department of Budget and Finance (dept. where PD office's funding is located)

<sup>8</sup> Missouri Office of the State Public Defender, Financial Summary 2014

<sup>9</sup> Arkansas Department of Finance and Administration, published requested budgets for: Arkansas Supreme Court, Administrative Office of the Courts, Arkansas Court of Appeals, and Arkansas Public Defender Commission

<sup>10</sup> Based off budget figure of \$16,325,689 for Fiscal Year 2015 provided by Maine Commission on Indigent Legal Services (MCILS)

<sup>11</sup> See Figure 1, attached

<sup>12</sup> House Bill 225, 148<sup>th</sup> General Assembly of the Delaware State Legislature

<sup>13</sup> Vermont Office of the Defender General Fiscal Year 2015 Budget

<sup>14</sup> All population data based off U.S. Census Bureau Projections for 2014

<sup>15</sup> 22<sup>nd</sup> biennial report of State of New Hampshire Judicial Council FY2012-2013

million per year respectively, to run their public defender programs, substantially more than Maine's budget of \$16.3 million in 2015.

Of the three States for whom data was available that spend less per capita than Maine on indigent legal services, Hawaii, Missouri, and Arkansas, all are plagued by significant problems.

In 2009-2010 the Hawaii Public Defender's office was in a self-described crisis, with some public defenders handling close to 1000 cases per year with an average of 96 minutes to devote to each client.<sup>16</sup> In 2010 the Maui public Defender's office was short close to 1/3 of its attorneys leading Wendy Hudson, a supervising deputy public defender of the Maui office, to declare "We are in total triage mode."<sup>17</sup> This situation became so bad that the Maui Public Defender's office ceased to appear in two separate courtrooms in district court simply to allow them cut 450 cases a month from their caseloads.

Missouri is another state that has had a budget crisis in its public defender program that has severely limited their ability to deliver indigent legal services to the degree that the Missouri Public Defender Commission created an administrative rule in 2008 allowing Public Defender offices to turn down appointments to defendants in certain situations.<sup>18</sup> In 2014 a study by the ABA found that Missouri's public defenders were spending significantly less time on cases than was calculated as necessary to provide a "reasonably effective defense".<sup>19</sup>

Arkansas similarly is experiencing budgetary issues with not enough attorneys to cover the state's needs for indigent legal services. Many public defenders in Arkansas are carrying more than double the ABA's maximum recommended number of cases at any given point and some rural defenders cover cases in up to five separate counties simultaneously.<sup>20</sup>

In addition to the specific problems faced by the states spending less than Maine per capita on indigent legal services, sixth and fourteenth amendment issues have arisen throughout the country due to the falling standards in the public defender system. On June 17<sup>th</sup> of this year the ACLU filed suit against Idaho over the repeated failures and inability of the State to fix its public defender system.<sup>21</sup> Additionally civil rights lawsuits have been filed against states such as California, Washington, Mississippi, and New York for inadequacies in their public defender programs.

The ABA Ten principles of a Public Defense Delivery System, principle number eight, specifically disfavors the use of flat rate contracts by stating "Contracts with private attorneys

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<sup>16</sup> Greg Mebel, Why the Maui Public Defender's Office is Hurting and Why It's Bad For Us All, December 3, 2009, MauiTime.com

<sup>17</sup> Lila Fujimoto, Staffing Crisis forces Maui public defender's office into 'triage mode', January 10, 2010, The Maui News

<sup>18</sup> St. Louis Post Dispatch, Editorial: Missouri's Unconstitutional- and expensive- public defender crisis, August 5, 2012

<sup>19</sup> The Missouri Project: A Study of the Missouri Public Defender System and Attorney Workload Standards, Prepared by Rubin Brown on behalf of the American Bar Association's standing committee on legal aid and Indigent Defendant's, June 2014.

<sup>20</sup> Arkansas Times, "Arkansas public defenders stretched thin" David Koon, January 29, 2015.

<sup>21</sup> <https://www.aclu.org/news/aclu-sues-idaho-over-defective-public-defense-system>

for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual, or complex cases, and separately fund expert, investigative, and other litigation support services.”<sup>22</sup> Legislatures in both Idaho and Michigan have taken measures to prevent the use of flat fee contracts in providing indigent legal services and in Nevada<sup>23</sup>, South Dakota and Washington have banned the use of flat rate contracts through judicial action.<sup>24</sup>

## ANALYSIS

Currently Maine spends less per capita than 19 out of 22 other states where current data could be gathered. An additional ten states and the District of Colombia spent more per capita in 2008 than Maine does today on indigent legal services. And the three States with current data spending less per capita than Maine are all experiencing significant budget issues and have public defender systems already at the point of or nearing the point of collapse. Additionally Maine is spending significantly less per capita than any of its neighbor states in New England, or other states of comparable populations again with the exception of Hawaii.

It appears that there is a downward trend in states employing “traditional” Public Defender systems. This is because the traditional model seems especially susceptible to budget shortfalls that then lead to offices being understaffed and overburdened. This overburdening leads to defender’s with caseloads far in excess of the ABA recommended maximums of 150 felonies or 400 misdemeanors per year.<sup>25</sup> These excessive caseloads create situations similar to those seen in Missouri or Hawaii, where attorneys cannot devote the time necessary to adequately handle their cases in a responsible manner effectively striping those indigent defendants of their constitutional protections.

One of the consequences of inadequate legal is that it leads to more convictions and longer sentences than would have been imposed if the attorneys could devote proper resources to every case. More convictions and longer sentences lead to an increased burden of those states’ correctional systems.

In the traditional model of delivering indigent legal services through a public defender’s office there is a cycle where underfunding leads to less resources expended per case, leading to more convictions, which increases the needs of the correctional system, which in turn draws even more resources from the State, which is already struggling to adequately fund their indigent legal services programs. This cycle seems to be inherent in the traditional public defender model and will continue until the system becomes so overburdened that a civil rights lawsuit is filed requesting federal injunctions for relief and the state is forced to correct the problems.

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<sup>22</sup> ABA Ten Principles of Public Defense Delivery System(with commentary), February 2002.

<sup>23</sup> David Carroll, “Nevada Supreme Court bans flat fee contracting”, posted July 23 2015, Sixth amendment center, [www.Sixthamendment.org](http://www.Sixthamendment.org)

<sup>24</sup> 6<sup>th</sup> Amendment Center, “Abolishing Flat Fee Contracts for Public Defense Services”, Jon Mosher, July 1, 2014.

<sup>25</sup> ABA Ten Principles of Public Defense Delivery System(with commentary), February 2002.

The way Maine currently delivers indigent legal services avoids several of the weaknesses of the traditional models. By distributing work across a wide body of attorneys overburdening is eliminated. Further, by compensating attorneys at an hourly rate, with caps on maximum fees allowed by case types instead of flat rate contracts Maine has contained costs while cultivating a highly skilled group of defense attorneys committed to the assistance of indigent defendants.

In fiscal year 2010 in Maine the average cost of incarcerating an inmate in Maine was \$56,296.00 per year or an average of \$154.16 per day.<sup>26</sup> In theory if an attorney spends one extra hour negotiating with an ADA on a case and is able to reduce an offer for resolution from a 30 day jail sentence to a deal involving fine's, probation or other alternatives not involving jail time, the state will pay an additional \$60 in legal fees but will save over \$4,600 on correctional costs. At that metric if court appointed counsel in criminal cases can average 1 less day of incarceration per criminal defendant for every 2.5 hours of spent on a case then that lawyer has essentially paid for themselves through savings passed on to the state on correctional costs.

An additional strength of Maine's current system is the diversity of its court appointed attorneys in terms of age, experience, and knowledge. These experienced practitioners are invaluable both for the quality of their services and for the institutional knowledge they pass on through their guidance, advising, and mentorship of the younger generations of court appointed attorneys. Moving from an appointed system to a salaried or flat rate contract system would seriously affect this as many experienced practitioners, who have successful private practices, may not find it economically feasible to compete for contracts or salaried positions. This could lead to a considerable loss of institutional knowledge and experience among the attorneys providing indigent legal services to Maine.

In 1987 the rate of compensation for court appointed attorneys was raised from \$20 to \$40/hour and in 1999 the rate was raised from \$40 to \$50.<sup>27</sup> Currently the rate of compensation is \$60 via temporary rulemaking provisions. However each of these pay raises has actually represented a decrease in compensation when compared against inflation and the cost of living. \$50 in 1999 inflates to \$71.41 today and \$40 in 1987 adjusted for inflation would be \$83.78 today.<sup>28</sup>

I add this to highlight the fact that court appointed attorneys have continued to provide the same high quality of services to the state of Maine, despite the fact that the costs of maintaining a legal practice continue to rise with inflation while their rate of compensation has continued to decrease against inflation.

This is relevant to a discussion of LD1433 in that any change to a contract model requiring a competitive bidding component would likely drive the level of compensation for attorneys providing indigent legal services even lower. This could significantly reduce the

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<sup>26</sup> VERA Institute of Justice, Center on Sentencing and Corrections Fact Sheet. <http://www.vera.org/files/price-of-prisons-maine-fact-sheet.pdf>

<sup>27</sup> Report of the Maine Indigent Legal Services Commission February 2009, Robert W. Clifford, Associate Justice.

<sup>28</sup> Bureau of Labor and Statistics CPI inflation calculator, <http://data.bls.gov/cgi-bin/cpicalc.pl>

ability of private attorneys who provide indigent legal services to maintain the infrastructure required to continue providing those services to the State.

## CONCLUSIONS

First, Maine's current system of providing indigent legal services appears to be more cost effective than any of our neighboring states that use a centralized or traditional public defender model.

Second, that a flat rate contract system if implemented would very likely have negative effect upon the quality of indigent legal services available in Maine, and any decrease in the quality of services to indigent clients would likely cost the state far more in the long term on corrections than could be saved by short term reductions on legal services.

Third, that any significant changes to the present system of delivering indigent legal services should be carefully evaluated to determine the extent of any potential collateral consequences in the change of modality in which services are provided.

Fourth, Maine's indigent legal services are underfunded. The only states spending less per capita than Maine are in crisis or nearing collapse due to the overburdening of their public defender systems. Attempting to contain or cut costs in Maine's indigent legal services sector could have significant destabilizing effects on the State's ability to provide quality legal services to the indigent.

And finally that without significantly more information as to how the proposed changes in LD 1433 would be implemented and secured, and what effects those changes may have on both the quality and methodology with which indigent legal services are provided to the citizens of Maine, and how such changes may affect the sixth and fourteenth amendment rights of indigent defendants, this bill cannot even begin to be properly evaluated let alone considered for implementation.

Respectfully,

---

Christopher R. Guillory, Esq.  
Maine Bar ID: #5288

## FIGURE 1

Taken from published state budgetary data

State	Year data	Budget	Population	Cost per capita
Missouri	2014	38,363,840	6,063,589	6.326
Hawaii	2014	9,779,693	1,419,561	6.889
Arkansas	2014	32,988,520 *	2,966,369	11.12
Maine	2015	16,325,689	1,330,089	12.274
North Carolina	2014	124,722,591	9,943,964	12.54
New Jersey	2015	121,206,000	8,938,175	13.56
North Dakota	2015	10,433,427 *	739,482	14.109
Rhode Island	2014	14,716,365 *	1,055,173	14.16
Maryland	2014	93,482,000	5,976,407	15.64
Colorado	2014	83,814,870	5,355,866	15.649
West Virginia	2013	31,622,000	1,850,326	17.089
Connecticut	2015	63,023,379	3,596,677	17.522
New Hampshire	2013	23,930,223	1,326,813	18.03
Iowa	2015	57,600,000	3,107,126	18.538
Florida	2014	375,248,001	19,893,297	18.83
New Mexico	2014	42,024,600	2,085,572	20.15
Wyoming	2015	12,527,904	584,153	21.446
Vermont	2014	14,397,366	626,562	22.97
Delaware	2016	21,942,000	935,614	23.451
Montana	2014	27,535,242	1,023,579	26.9
Massachusetts	2015	191,431,395	6,745,408	28.3795
Oregon	2013-2015 *	127,079,475	3,970,239	32.008
Alaska	2016	33,817,000 *	736,732	45.901

\* Rhode Island Office of the Public Defender has a revised yearly budget of \$11,154,125 for 2014 and the court system maintains an additional budget of \$3,562,240 for Defense of Indigent Persons in the state Supreme Court's budget for cases where there is a conflict with the PD office.

\* Alaska's Public Defender Agency receives 18,198,600 per year while an additional 15,618,400 is allocated to the Office of Public Advocacy.

\*North Dakota budget is the 2015-2017 Biennium appropriation(\$20,866,854) halved.

\*Arkansas Public Defenders \$23,912,306, AOC neglect \$8,621,214, Supreme Court court appointed \$195,000, appeals appointed \$260,000

\*Oregon data is the 2013-2015 biennium budget (\$254,158,951) halved

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DEC 08 2015  
MCILS

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25 Pool Street  
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December 4, 2015

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

**Re: LD 1433.**

Dear John:

I am writing to express concerns about LD 1433, "An Act to Create the Office of the Public Defender and Amend the Duties of the Commission on Indigent Legal Services." Most of the input you have received from defense attorneys appears to focus on the bill's potential to lead to indigent defense contracts going to low bidders, for defense services to be rendered in bulk for a bulk rate of pay. If the bill is intended to lead to that result or will necessarily lead to that result, that alone is ample reason to oppose it, for the reasons many other defense attorneys have already expressed. But I am not sure the bill will necessarily lead to that result. My basic problem with this bill is that it is impossible to know how the system it would create would work in practice. Because of that, I don't believe the bill justifies itself. All it guarantees is some disruption of the status quo and the creation of a new layer of bureaucracy, but to what end? What exactly about the status quo needs to be fixed, and how exactly will this bill fix it? If those questions can't be satisfactorily answered, how do we know this bill won't create more problems than it will solve?

In describing some of the contradictions that bother me in LD 1433, below, I will refer to passages in the bill by their statutory designations within the bill. First of all, one of the bill's stated purposes (in its title) is to "Create the Office of the Public Defender." The bill does in fact create such an Office and it provides that the Office is to be staffed by a Chief Public Defender, two Deputy Public Defenders and "staff, including counsel...necessary to perform the functions of the Office of the Public Defender and to implement the provisions of this chapter." 4 M.R.S. §1807(2)(D). The bill defines the term "staff counsel" as "an attorney in the Office of the Public Defender who provides indigent legal services under this chapter and is an employee of the State." 4 M.R.S. §1802(7). The bill also provides that the Chief Public Defender has the responsibility to "[d]etermine 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.” 4 M.R.S. §1807(3)(F). From all this, it looks as if LD 1433 might allow the creation of a public defender’s office the likes of which is found everywhere else public defender’s offices exist, with an organizational head responsible for hiring attorneys to work as government-employed public defense counsel, in offices staffed by support personnel who are also government employees. That, however, is contradicted by the part of LD 1433 that states the Chief Public Defender is “[t]o the maximum extent possible use contracts providing indigent legal services as required in this section.” 4 M.R.S. §1807(3)(B). The bill does not say that the Chief Public Defender is to use contracts to provide indigent legal services to the greatest extent feasible, consistent with the purposes of providing effective assistance of counsel, rendered by qualified, competent counsel, while ensuring a fiscally responsible system free from undue political interference-- or anything of the sort. Instead, it says the Chief Public Defender is to use contracts “*to the maximum extent possible*” (emphasis added). Won’t it always be *possible* to provide indigent legal services by use of contracts? I think so, because as matters currently stand, every lawyer who provides indigent legal services in this State does so under a contractual agreement, with most agreeing to perform the work at a set hourly rate and the State agreeing to pay them that same hourly rate. Given that all indigent defense services are currently provided under contract, the maximum extent to which it is possible to provide indigent legal services under contract is very obviously 100%. That makes me wonder what the point is of all the language in the bill about the Chief Public Defender setting up offices and hiring staff counsel to provide indigent legal services, when doing that would cut against the Chief Public Defender’s mandate to provide indigent legal services using contracts “to the maximum extent possible.” That’s one thing that bothers me about the bill.

Because the Chief Public Defender is to use contracts to the maximum possible extent, and because it is possible to provide 100% of indigent legal services by contract, it looks as if LD 1433 might really only be about setting up a new bureaucratic system of contract administrators and calling them the “Office of the Public Defender.” If so, what’s the point? Is it simply to shift functions currently handled by the Maine Commission on Indigent Legal Services (MCILS) to a new bureaucratic entity named the Office of the Public Defender, or do LD 1433’s proponents envision the bill bringing about a new and different type of contractual arrangement? If the bill is intended to bring about a new and different type of contractual arrangement, what kind of arrangement is it intended to bring about, why is that new arrangement desirable, and how do we know the bill will actually achieve the desired end? A lot of people I know fear that the point is to bring about a statewide system of fixed bulk rate for bulk defense service contracts to be awarded to the lowest bidder. Maybe that is the intent, but again, I’m not sure.

While the bill takes a number of responsibilities from the MCILS, it leaves that entity with the responsibility to “[e]stablish 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.” 4 M.R.S. §1804-A(2)(D). Maybe this language should encourage those who otherwise fear the coming of bulk-rate/bulk-service/low-bidder contracts, because those types of contracts are clearly not consistent with “best practices for contracts providing indigent legal service.” In fact, as you are aware, those types of contracts have been banned in other jurisdictions for the damage they have caused to the system of providing constitutionally required indigent defense services. It is hard to see how the MCILS could approve of such contracts consistent with its mandate in 4 M.R.S. §1804-A(2)(D). But if MCILS guidelines would not include bulk-rate/bulk-service/low-bidder contracts, what

types of contractual guidelines would result from the mandate of §1804-A(2)(D)? To my knowledge, there has not been widespread criticism in other jurisdictions of contracts that involve attorneys agreeing to handle individual cases at a set hourly rate. Would MCILS set guidelines for the establishment of that type of contractual arrangement, paralleling the contractual arrangements already at work in Maine? If so, what is the point of LD 1433?

Then again, I am also not sure that the MCILS will be in control of the types of contracts used by the Office of the Public Defender, or that they will be able to ensure that the contracts the Office of the Public Defender uses will be consistent with “best practice standards.” Although the bill puts the MCILS in charge of establishing contract “guidelines,” it does not require the Chief Public Defender to follow those “guidelines.” Instead it gives the Chief Public Defender the power to “contract for the services of private attorneys in the delivery of indigent legal services...in accordance with the standards established by the [MCILS] and the contract policies established by the Department of Administrative and Financial Services.” 4 M.R.S. §1807(4)(A). The “standards” the MCILS is tasked with creating are set forth in 4 M.R.S. §1804-A(1) and include minimum training and qualification standards for attorneys, “weighted caseloads” standards, standards to evaluate contract counsel, etc. Those “standards” do not include the contract “guidelines” that the MCILS is to formulate under §1804-A(2)(D). From this, I take it that the Chief Public Defender will have the power to enter into contracts with attorneys who meet attorney training and certification standards set by the MCILS, under contractual policies established by the Department of Administrative and Financial Services. That would leave the Chief Public Defender free to reject or ignore contract “guidelines” formulated by the MCILS as long as the contract “standards” formulated by the Department of Administrative and Financial Services are followed. That makes me wonder whether the entity that will set the policies actually used for contracting with indigent defense counsel is an entity whose focus will be on the financial bottom line (as in low-bidder), as opposed to policies that promote the rendering of competent representation to the indigent (as in constitutional mandate). That, I don’t find encouraging.

The bill raises other concerns for me, too. For instance, the bill gives the Chief Public Defender the power to “[d]elegate 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 [MCILS].” 4 M.R.S. §1807(4)(C). In order to render indigent defense representation in Maine, an attorney will need to be a dues paying member of the Maine State Bar Association? Really? And then there’s the part about the Governor-- not the legislature, but the Governor-- having the power to remove the Chief Public Defender for cause. See 4 M.R.S. §1807(2)(A). Yet, one of the stated purposes of the bill, set forth as purpose number 2 in its “Summary,” is to “[e]nsure that the system is free from undue political interference and conflicts of interest.” Why give the Governor the power to meddle in the operations of the Office of the Public Defender, to the extent of having the power to remove the Chief Public Defender, given the potential for political interference and conflicts of interest inherent in such power? What if the Chief Public Defender, out of concern for competency of counsel, favors arrangements for the provision of indigent legal services that the Governor does not think are cost-effective enough? Would that be cause for removal?

Right now, we have a very good system of indigent defense representation in Maine. The system brings in new, young attorneys with tremendous energy and allows them to develop their skills. It also results in many very good attorneys choosing to stick around to handle serious,

difficult cases for the State, and to mentor younger attorneys, long after those experienced counsel could have walked away from the low-paying aggravation that often accompanies indigent defense work. Some attorneys are dedicated enough to continue on a steady diet of indigent defense representation for their entire careers. Most scale back on the court-appointed cases over time, or walk away from the work altogether at some point, but they have the choice to keep their hand in it on a relatively small scale if they wish. This bill has a potential to completely disrupt, and maybe entirely destroy, that existing system-- a system that has developed from grass roots, over a long period, and has been graced by the talents of many truly outstanding and dedicated attorneys. There is a strong potential for LD 1433 to move us to a much more industrial approach to the delivery of indigent defense services; an approach that consolidates those services into the hands of fewer attorneys who are willing, or are forced by unfortunate financial circumstances, to dine steadily on the paltry pickings of an indigent defense attorney. If we go down the road of widespread bulk-service/bulk-rate/low-bidder contracts, the project will fail as surely as it has everywhere else it has been tried. And after the project has crashed and burned, the marketplace of hundreds of attorneys who currently keep their hand in indigent representation in Maine will have been smashed-- it won't be there to clean up the mess. At that point, we might very well have to institute a full-bore, and expensive, actual public defender's office, with attorneys hired specifically for and trained in indigent defense, working on the State's payroll, in offices throughout the State, mirroring Maine's District Attorney system. Will that be the ultimate result of LD 1433? Who knows? And that is exactly the problem... No bill should pass unless it is aimed at clearly defined goals and unless its proponents have made a convincing case that it will achieve those goals. LD 1433 does not meet that test. With LD 1433, I think we are dealing with a pig in a poke. It will be interesting to see who's buying.

Sincerely,



Edmund Folsom

**Daniel J. Quinn**

**Attorney At Law**

P.O. Box 435 West Kennebunk, Maine 04094  
Tel/Fax 207-985-8637

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DEC 29 2015

MCILS

December 18, 2015

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

Re: LD 1433

Dear John:

I am writing to state my opposition to LD 1433. The reasons I oppose the bill are due to my concerns that it will result in substandard legal services for the indigent, and increase the costs for Maine taxpayers.

The proposal would create a system in which the indigent representation goes to the lowest bidder. That bidder will likely have attorneys without experience, and are learning on the job. The representation of the client will not be one on one as the current system promotes, but will be assembly line representation by numerous, different attorneys from larger law firms.

The current MCILS system provides a group of experienced attorneys that develop a one on one relationship with their clients in the areas of criminal law, child protection law, mental health law, and juvenile law.

Furthermore, the proposal does not offer any concrete evidence of any tax savings to the Maine tax payer.

In conclusion, I oppose this bill, LD 1433 because it will result in lowering the quality of the constitutionally mandated services for indigent defendants, and increase the tax burden on citizens of the State of Maine.

Please forward this correspondence to the appropriate Judiciary Committee, and State Legislators.

Sincerely,

  
Daniel J. Quinn

Maine Bar Association No. 8537

**Daniel J. Quinn, Esq.** P.O. Box 435, West Kennebunk, Maine 04094 Tel./Fax 207-985-8637

**(4.)**  
**Appellate Contracts**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**TO:** MCILS COMMISSIONERS  
**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR  
**CC:** ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR  
**SUBJECT:** APPELLATE CONTRACTS DISCUSSION  
**DATE:** January 7, 2016

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At the last Commissioner's meeting, staff was asked to email our rostered attorneys to make them aware of the recent law court case on termination of parental rights appeals and provide guidance on how to handle the new development whereby effectiveness of counsel could be challenged on direct appeal. A copy of the email sent out is attached.

Also at the last meeting, staff was asked to prepare a draft RFP for an appellate contract. Attached is a draft RFP that was included in the Commission's September packet, but discussion thereon was postponed to a later date.

The following sections give rise to issues regarding how to define what the Commission is looking for and how any resulting contract would be structured:

- Purpose and Background
- Eligibility to Submit Bids
- Number of Awards
- Scope of Services to be Provided
- Proposal Submission Requirements

Also, the State of Maine form does not seem to have a place to address how payment is calculated. Obviously, there could be a flat fee for the entire contract, but some states pay a flat fee per case, and others, an hourly rate per case. It may be worthwhile to discuss which, if any, of these is preferable and whether any such preference should be expressed in the RFP.

## Pelletier, John

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**From:** mcils@maine.gov  
**Sent:** Tuesday, December 22, 2015 9:38 AM  
**To:** Pelletier, John  
**Subject:** Appeals from Orders Terminating Parental Rights

Attorneys:

I am writing to ensure that child protective practitioners are aware of the recent Law Court case of *In re M.P.*, 2015 ME 138, and to address the obligations of trial counsel, in light of that decision, regarding appeals from orders terminating parental rights. In that case, the court recognized the right of a parent whose parental rights had been terminated to raise ineffective assistance of counsel as a ground for relief on direct appeal. The decision also provides that the appealing parent may supplement the record on the ineffectiveness claim by moving in the trial court under Rule 60 (b)(6) prior to or shortly after the appeal is filed.

The prospect of litigating trial counsel's effectiveness as part of the direct appeal obviously raises questions about the appropriate role of trial counsel with respect to the appeal from a termination order. It has been suggested to the Commission that the ability to raise an ineffectiveness claim on appeal creates a conflict of interest with respect to the appeal that precludes trial counsel from prosecuting the appeal in all cases. The Commission submitted this question to Bar Counsel, but under the current rules, Bar Counsel can only address specific questions about individual cases, rather than provide general advice unrelated to a particular case. Nevertheless, I reviewed the substance of the Commission's advice below with Deputy Bar Counsel, who had no objection to the Commission's position.

As always, upon receipt of a termination order entered over the client's objection, trial counsel must explain the client's appeal rights to the client. The Commission believes that in their explanation, trial counsel must advise the client that the client may challenge the effectiveness of trial counsel's representation during the termination proceeding as a potential ground for reversing the order and that new counsel could be appointed to raise that claim. If the client expresses a desire to raise an ineffectiveness claim or otherwise expresses dissatisfaction with counsel's representation, trial counsel should file a notice of appeal and transcript order to protect the client's rights and include therewith a motion to withdraw and substitute counsel for the appeal. If, however, the client, after proper advice as to the client's appeal rights, desires to have trial counsel prosecute the appeal and in trial counsel's independent professional judgment no actual conflict of interest exists, trial counsel may prosecute the appeal.

The Commission will continue to evaluate possible long-term responses to the Law Court's decision, but at present, the Commission believes that counsel should proceed as set forth above.

John

**STATE OF MAINE** [LM1]  
**Commission on Indigent Legal Services**

**RFP#** (this number will be assigned by the Division of Purchases) [LM2]

**(Insert RFP Title)**

**RFP Coordinator:** (Insert name and title)  
(Insert office address of RFP Coordinator)

Tel: (Insert phone #) E-mail: (Insert e-mail address)

**From the time this RFP is issued until award notification is made, all contact with the State regarding this RFP must be made through the aforementioned RFP Coordinator. No other person / State employee is empowered to make binding statements regarding this RFP. Violation of this provision may lead to disqualification from the bidding process, at the State's discretion.**

**Bidders' Conference:** (Insert date, time & location, or "not applicable")  
(Note: Bidders' conferences are optional, and not required to be held for every RFP process.)

**Deadline for Submitted Questions:** (Insert date), 5:00 p.m. local time

**Proposals Due:** (Insert date), not later than 2:00 p.m. local time

Submit to:

**Division of Purchases**  
**Burton M. Cross Building, 111 Sewall Street, 4<sup>th</sup> Floor**  
**9 State House Station, Augusta ME 04333-0009**

## TABLE OF CONTENTS

<b>PUBLIC NOTICE</b> .....	<b>2</b>
<b>PART I INTRODUCTION</b> .....	<b>3</b>
A.    PURPOSE AND BACKGROUND.....	3
B.    GENERAL PROVISIONS .....	3
C.    ELIGIBILITY TO SUBMIT BIDS .....	4
D.    CONTRACT TERM.....	4
E.    NUMBER OF AWARDS .....	4
<b>PART II SCOPE OF SERVICES TO BE PROVIDED</b> .....	<b>6</b>
<b>PART III KEY RFP EVENTS</b> .....	<b>78</b>
A.    TIMELINE OF KEY RFP EVENTS.....	78
B.    BIDDERS CONFERENCE .....	78
C.    QUESTIONS .....	78
D.    SUBMITTING THE PROPOSAL .....	89
<b>PART IV PROPOSAL SUBMISSION REQUIREMENTS</b> .....	<b>910</b>
A.    PROPOSAL FORMAT .....	910
B.    APPEAL DEPOSIT .....	1011
C.    PROPOSAL CONTENTS.....	1011
<b>PART V PROPOSAL EVALUATION AND SELECTION</b> .....	<b>1415</b>
A.    EVALUATION PROCESS - GENERAL INFORMATION.....	1415
B.    SCORING WEIGHTS AND PROCESS.....	1415
C.    SELECTION AND AWARD.....	1617
D.    APPEAL OF CONTRACT AWARDS .....	1617
<b>PART VI CONTRACT ADMINISTRATION AND CONDITIONS</b> .....	<b>1718</b>
A.    CONTRACT DOCUMENT .....	1718
B.    STANDARD STATE AGREEMENT PROVISIONS.....	1718
<b>PART VII LIST OF RFP APPENDICES AND RELATED DOCUMENTS</b> .....	<b>1920</b>
<b>PART VIII APPENDICES</b> .....	<b>2021</b>
PROPOSAL COVER PAGE.....	2021
COST PROPOSAL FORM.....	2223

**Public Notice**

(This is a template for your Department’s public notice / advertisement regarding the RFP.)

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**State of Maine  
Commission on Indigent Legal Services  
Public Notice for RFP# (Insert RFP# once provided)  
(Insert RFP title)**

The State of Maine, Commission on Indigent Legal Services (Department), is seeking to contract with licensed Maine attorneys to furnish indigent legal services on behalf of indigent clients. In accordance with State procurement practices, the Department is hereby announcing the publication of a Request for Proposals (RFP) #(insert RFP# once provided) for the purchase of the aforementioned (Insert the word “services” or “goods and services”, as applicable).

A copy of the RFP can be obtained by contacting the Department’s RFP Coordinator for this project: (Insert RFP Coordinator name and title). The RFP Coordinator can be reached at the following email address: (Insert RFP Coordinator email address) or mailing address: (Insert RFP Coordinator mailing address). The Department encourages all interested vendors to obtain a copy of the RFP and submit a competitive proposal.

(If your Department intends to hold a Bidders’ Conference, please insert a paragraph here providing the date, time, and location of the event.)

Proposals must be submitted to the State of Maine Division of Purchases, located at the Burton M. Cross Office Building, 111 Sewall Street, 4<sup>th</sup> Floor, 9 State House Station, Augusta, Maine, 04333-0009. Proposals must be submitted by 2:00 pm, local time, on (Insert date), when they will be opened at the Division of Purchases’ aforementioned address. Proposals not received at the Division of Purchases’ aforementioned address by the aforementioned deadline will not be considered for contract award.

\*\*\*\*\*

**State of Maine – Commission on Indigent Legal Services**  
**RFP# (Insert RFP# once provided)**  
**(Insert RFP title)**

**PART I INTRODUCTION**

**A. Purpose and Background**

The Commission on Indigent Legal Services (“Department”) is seeking contract proposals for licensed Maine attorneys to represent indigent clients in criminal appeals and child protection appeals to the Law Court as defined in this Request for Proposals (RFP) document. This document provides instructions for submitting proposals, the procedure and criteria by which the Provider(s) will be selected, and the contractual terms which will govern the relationship between the State of Maine (“State”) and the awarded Bidder(s).

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

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

(Insert a brief summary which describes the need for the service(s). You should also describe how the service ties into the Department/Office’s mission and goals. Also include some background information as to how and why this service came about -- for example, if it was mandated by statute -- the history of the service being provided in the State, etc. Think in terms of what introductory information would be beneficial for potential Bidders to provide their best, most well-informed response to your Department. Also remember that this is just an introduction – the full Scope of Services is provided in Part II of the RFP.)

**B. General Provisions**

1. Issuance of this RFP does not commit the Department to issue an award or to pay expenses incurred by a Bidder in the preparation of a response to this RFP. This includes attendance at personal interviews or other meetings and software or system demonstrations, where applicable.
2. All proposals should adhere to the instructions and format requirements outlined in this RFP and all written supplements and amendments (such as the Summary of Questions and Answers), issued by the Department. Proposals are to follow the format and respond to all questions and instructions specified below in the “Proposal Submission Requirements and Evaluation” section of this RFP.
3. Bidders shall take careful note that in evaluating a proposal submitted in response to this RFP, the Department will consider materials provided in the proposal, information obtained through interviews/presentations (if any), and internal Departmental information of previous contract history with the Bidder (if any). The Department also reserves the right to consider other reliable references and publicly available information in evaluating a Bidder’s experience and capabilities. The proposal shall be signed by a person authorized to legally bind the Bidder and shall contain a statement that the proposal and the pricing contained therein will remain valid and binding for a period of 180 days from the date and time of the bid opening.

4. The RFP and the selected Bidder's proposal, including all appendices or attachments, shall be the basis for the final contract, as determined by the Department.
5. Following announcement of an award decision, all submissions in response to this RFP will be considered public records available for public inspection pursuant to the State of Maine Freedom of Access Act (FOAA) (1 M.R.S. §§ 401 et seq.).
6. The Department, at its sole discretion, reserves the right to recognize and waive minor informalities and irregularities found in proposals received in response to this RFP.
7. The State of Maine Division of Purchases reserves the right to authorize other Departments to use the contract(s) resulting from this RFP, if it is deemed to be beneficial for the State to do so.
8. All applicable laws, whether or not herein contained, shall be included by this reference. It shall be Proposer's/Vendor's responsibility to determine the applicability and requirements of any such laws and to abide by them.

**C. Eligibility to Submit Bids**

Individual attorneys, groups of attorneys, groups of law firms, or groups of attorneys organized as a non-profit entity are invited to submit bids in response to this Request for Proposals provided that applicant attorneys are qualified and eligible to contract for appellate criminal and appellate child protection cases and are in good standing with the Maine Bar of Board Overseers.

(Modify the sentence above as needed. If there are specific requirements, such as licensure/certification, needed to perform the service(s) in question, please state those requirements here.)

**D. Contract Term**

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

Contract Renewal: Following the initial term of the contract, the Department may opt to renew the contract for (Insert number of renewals; the State's standard is three) renewal periods of one year each, subject to continued availability of funding and satisfactory performance.

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

<b>Period</b>	<b>Start Date</b>	<b>End Date</b>
Initial Period of Performance	(Insert date)	(Insert date)
Renewal Period #1	(Insert date)	(Insert date)
Renewal Period #2	(Insert date)	(Insert date)
Renewal Period #3	(Insert date)	(Insert date)

(The standard term for a State of Maine service contracts is one initial year of performance, followed by a maximum of three optional, renewal years – for a grand total of four years of performance. Alternatively, a two-year agreement may be established, with one 2-year renewal – again, for a grand total of four years of performance. If you believe that your requested services require or should have additional years of performance beyond a grand total of four years, please contact the Division of Purchases to discuss further. A Department may choose to use fewer than four years at its discretion.)

**E. Number of Awards**

The Department anticipates making (Insert “one” or “multiple”) award(s) as a result of this RFP process.

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

The Commission has compiled statistics on the average number of appeals for criminal and child protection matters based on data from the Law Court for the past three (3) years. In sum, there have been an average of 97 full criminal appeals and 55 child protection appeals per year from 2011 - 2014. In 2015, the pace of appeals to date, if continued for the balance of the year, would result in 125 criminal appeals and 85 child protection appeals. During the 2011 – 2014 period, memoranda in approximately 38 discretionary appeals were filed, with an average of 3 per year requiring full briefing. In 2015, the Law Court is on track to receive about 27 memoranda in discretionary appeals this year, with approximately four requiring full briefs.

(If there will be a particular structure to the way in which awards are made, please explain that in this section. If there are to be multiple awards, include a breakdown to show how the awards will be made. For example, by county, district, region, etc. If you are not sure if you want to make one or multiple awards, change the sentence above to read that “The Department reserves the right to make one or multiple awards, whichever is in the best interests of the State, as a result of this RFP process.”)

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

Representation of indigent clients on:

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

With respect to each case assigned under the contract, the applicant will perform the tasks necessary to provide high-quality appellate representation in accordance with the standards described in Part I, Section A.

Proposals should be for a period of one (1) year. Applicants may propose to provide representation in criminal appeals, child protective appeals or both. Applicants may propose to provide representation in all appeals for a single year, a proportion of appeals for one year (e.g. one-half) or for a specified number of appeals.

(Insert a summary of the specific tasks and objectives. State the desired outcomes very clearly, and if there are certain expectations or performance measures that must be met by the Bidders, define them. As much as possible, however, leave this section open for Bidders to demonstrate how they can/will deliver the services and meet your expectations. This will allow Bidders a better opportunity to demonstrate their understanding of the requested services as well as give reviewers more substantive material with which to score the proposals received. This section should also include a brief description of the location where the work will be performed. If the work can be performed at the Bidder's own facility, say so. If the work must be performed at a State facility, say so and give the address of the facility.)

(Note: If your requirements are primarily for information technology related goods and/or services, you may be required to obtain approval from the Office of Information Technology (OIT) prior to releasing this RFP. Also, you may be required to set up the contract which results from this RFP on a State of Maine BP54-IT contract template. This point is further addressed later in the RFP, in Part VI, under the "Contract Document" section.)

(Note: If your requirements involve the construction of public works, then it will have an effect on how your RFP should be written and processed. RFPs involving the construction of public works are not handled by the Division of Purchases, but instead should be processed through the Bureau of General Services' Planning, Design, and Construction Division. RFPs involving construction of "public works," defined at 26 M.R.S. § 1304(8), must comply with the prevailing wage and benefit statute, 26 M.R.S. § 1303. Before issuing such an RFP, the Department must obtain a determination of the fair minimum rate of wages and benefits from the Bureau of Labor Standards and attach that determination to the RFP. Also, as required by 26 M.R.S. § 1309, the contract resulting from the RFP must require the successful Bidder and any subcontractors to pay the fair minimum wages and benefits. Before writing an RFP with requirements involving the construction of public works, please contact the Bureau of General Services' Planning, Design, and Construction Division for guidance.)

## PART III KEY RFP EVENTS

### A. Timeline of Key RFP Events

Event Name	Event Date and Time
Bidders' Conference	(Insert date and start time)
Due Date for Receipt of Written Questions	(Insert date) at 5:00pm, local time
Due Date for Receipt of Proposals	(Insert date) at 2:00pm, local time
Estimated Contract Start Date (subject to change)	(Insert date)

### B. Bidders Conference

(Note: Bidders' conferences are optional and are not required to be held for every RFP process. If you do not intend to hold a Bidders' conference, then please delete everything below and write in this section that "The Department does not intend to hold a Bidders' Conference as part of this RFP process." Also, state "N/A" in the Event Date and Time section on the chart above.)

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

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

(Note: If your Department intends to hold a Bidders' conference, and you believe that it should be mandatory for Bidders to attend in order for their proposals to be evaluated, please contact the Division of Purchases for further discussion. Mandatory participation is not recommended, as it shows the interested Bidders the level of competition that they face and may, therefore, affect the proposal response that they provide.)

### C. Questions

#### 1. General Instructions

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

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

## D. Submitting the Proposal

1. **Proposals Due:** Proposals must be received no later than 2:00 p.m. local time, on the date listed in the timeline above, at which point they will be opened. Proposals received after the 2:00 p.m. deadline will be rejected without exception.
2. **Mailing/Delivery Instructions:** PLEASE NOTE: The proposals are not to be submitted to the RFP Coordinator at the requesting Department. The official delivery site is the State of Maine Division of Purchases (address shown below).
  - a. Only proposals received at the official delivery site prior to the stated deadline will be considered. Bidders submitting proposals are responsible for allowing adequate time for delivery. Proposals received after the 2:00 p.m. deadline will be rejected without exception. Postmarks do not count and fax or electronic mail transmissions of proposals are not permitted unless expressly stated in this RFP. Any method of hardcopy delivery is acceptable, such as US Mail, in-person delivery by Bidder, or use of private courier services.
  - b. The Bidder must send its proposal in a sealed package including one **original and** (Insert number of copies, usually one for each evaluation team member) **copies** of the complete proposal. Please clearly label the original. One electronic copy of the proposal must also be provided on CD or flash drive with the complete narrative and attachments in MS Word format. Any attachments that cannot be submitted in MS Word format may be submitted as Adobe (.pdf) files.
  - c. Address each package as follows (and be sure to include the Bidder's full business name and address as well as the RFP number and title):

Bidder Name/Return Address

Division of Purchases  
Burton M. Cross Building, 4<sup>th</sup> Floor  
111 Sewall Street  
9 State House Station  
Augusta ME 04333-0009

Re: RFP# (Insert RFP # assigned by the Division of Purchases)

## PART IV PROPOSAL SUBMISSION REQUIREMENTS

Proposal submissions must:

- 1) Identify the type and number of appellate cases for which the proposal is submitted (e.g. criminal appeals, child protective appeals or both);
- 2) Identify the number of attorneys available to prosecute the appeals and describe the attorneys' workload under the proposal in the context of other legal work performed by the attorneys sufficiently to assure the Commission that the proposal will not result in an excessive workload;
- 3) Identify the attorneys' experience and qualifications to prosecute appeals as proposed;
- 4) Identify the office space, technology, support staff and other resources available to support the provision of quality appellate representation;
- 5) Include at least three (3) references for review by MCILS;
- 6) Include one original motion or brief that was submitted to a court within the last six months from each attorney who will prosecute appeals under the proposal;
- 7) Include a current list of MCILS approved CLE credits to meet the minimum required 8 hours;
- 8) Document good standing with the Board of Overseers of the Bar;
- 9) Document applicable malpractice insurance in force.
- 10) Agree to monitoring and evaluation by MCILS to ensure private attorneys provide high-quality representation to indigent clients and are in compliance with attorney performance evaluation procedures as established by the Commission, including but not limited to audits of contracted counsels' finances for discrepancies.

**(IMPORTANT:** Please consider all of Part IV to be **completely customizable** to meet your Department's needs. Any text in black font within Part IV is provided only as an example, and should be tailored to the requirements of the Department for this specific RFP.)

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

### A. Proposal Format

(This list can and should be customized to the Department's preferences for proposal formatting. When considering proposal formatting needs/preferences, consider the nature of the services being requested in the RFP, and whether or not the Bidders interested in providing the requested services would have the administrative capacity to easily meet to all formatting preferences. If the requested services are relatively straightforward, then it is suggested that you keep the formatting preferences straightforward.)

1. For clarity, the proposal should be typed or printed. Proposals should be single-spaced with 1" margins on white 8 ½" x 11" paper using a font no smaller than 12 point Times New Roman or similar.
2. All pages should be numbered consecutively beginning with number 1 on the first page of the narrative (this does not include the cover page or table of contents pages) through to the end, including all forms and attachments. For clarity, the Bidder's name should appear on every page, including Attachments. Each Attachment must reference the section or subsection number to which it corresponds.

3. Bidders are asked to be brief and to respond to each question and instruction listed in the “Proposal Submission Requirements” section of this RFP. Number each response in the proposal to correspond to the relevant question or instruction of the RFP. The proposal should be limited to a maximum total of (Insert number of pages) pages. Pages provided beyond the aforementioned maximum amount will not be considered during evaluation.
4. The following proposal elements, if applicable/requested, will not be counted as part of the maximum total number of pages allowed for the proposal: proposal cover page, table of contents, financial forms, any required attachments, appendices, or forms provided by the Department in the RFP, organizational charts, job descriptions, or staff résumés. (This list may be edited as needed, based on the Department’s needs and request for attachments.)
5. The Bidder may not provide additional attachments beyond those specified in the RFP for the purpose of extending their response. Any material exceeding the proposal limit will not be considered in rating the proposals and will not be returned. Bidders shall not include brochures or other promotional material with their proposals. Additional materials will not be considered part of the proposal and will not be evaluated.
6. Include any forms provided in the application package or reproduce those forms as closely as possible. All information should be presented in the same order and format as described in the RFP.
7. It is the responsibility of the Bidder to provide all information requested in the RFP package at the time of submission. Failure to provide information requested in this RFP may, at the discretion of the Department’s evaluation review team, result in a lower rating for the incomplete sections and may result in the proposal being disqualified for consideration.  
(The point immediately below is required with the addition of certification language.)
8. Bidders should complete and submit the proposal cover page provided in Appendix A of this RFP and provide it with the Bidder’s proposal. The cover page must be the first page of the proposal package. It is important that the cover page show the specific information requested, including Bidder address(es) and other details listed. The proposal cover page shall be dated and signed by a person authorized to enter into contracts on behalf of the Bidder.

## **B. Appeal Deposit**

(This section is only to be used for RFPs that are expected to result in contracts over \$1,000,000 in value. It is not to be used in any other circumstances. If your RFP is not expected to result in a contract over \$1,000,000, then please delete this “Appeal Deposit” section.)

Each Bidder of this RFP must provide, with its proposal, a deposit in the amount of \$5,000.00 to offset expenses incurred by the State of Maine during the award process. This deposit must be payable to the Treasurer of the State of Maine in the form of a certified, cashier’s, or teller’s check.

In the event the award process for this RFP involves a hearing of appeal, expenses will be assessed if the appeal request is found to be without merit, or the hearing of appeal results in a validation of the Department’s award. Otherwise, deposits are refundable to all Bidders.

For the purposes of this Section, failure of the State of Maine to award a contract as a result of this RFP does not constitute grounds for assessing expenses.

## **C. Proposal Contents**

(As noted above, all sections of Part IV of this RFP template can be considered completely customizable to the Department’s needs, including this “Proposal Contents” section. The only requirement is that cost proposal information must be requested in some form.)

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

(Customize this section to only ask for the information you want to know about the bidders, and be sure to

avoid asking for the same information in different places. The text supplied below is to give you an idea of what you might want to ask for, not information you are required to get.)

**1. Overview of the Organization**

(Remove this question if it duplicates what you are asking for in subsequent questions.)

**2. Organization Location and Licensure**

(The following list provides examples of what your Department may want to request. Edit this list to fit your RFP needs/requirements. Remove any examples below that are either not applicable or irrelevant to your RFP and add any items not listed which you require.)

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

**3. Organizational Experience**

Briefly describe the history of the Bidder's organization, especially regarding skills pertinent to the specific work required by the RFP and any special or unique characteristics of the organization which would make it especially qualified to perform the required work activities. Include similar information for any subcontractors.

**4. Description of Experience with Similar Projects**

- a. Provide a description of five projects that occurred within the past five years which reflect experience and expertise needed in performing the functions described in the "Scope of Services" portion of this RFP. For each of the five examples provided, a contact person from the client organization involved should be listed, along with that person's telephone number. Please note that contract history with the State of Maine, whether positive or negative, may be considered in rating proposals even if not provided by the Bidder.
- b. If the Bidder has not provided similar services, note this, and describe experience with projects that highlight the Bidder's general capabilities.
- c. Indicate whether the applicant is currently rostered with the Commission to receive indigent clients, particularly whether the applicant has brought any appeals, either criminal or child protection, within the past three (3) years and the disposition for those cases.

**Section II Proposed Services**

**1. Services to be Provided**

(Be sure to tell bidders how you want them to respond, if there is an outline they should follow or if you want narrative responses or short answers. Make sure you can evaluate what you are asking a bidder to provide, and have a plan for how you will evaluate it.)

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

Present a statement of qualifications and short summary of relevant experience. The statement should include (1) all proposed attorneys names and State bar numbers, (2) the physical address of the office and technology available to staff, (3) all attorneys qualifications for the proposed case types including CLE information, attendance at MCILS sponsored trainings in the past calendar year, and how all attorneys meet the Commission's minimum eligibility requirements pursuant to Chapter 102 Criminal Proceedings and Chapter 103 Child Protective Proceedings, (5) applicants' criminal/child protection law and trial experience when appropriate, (6) any support staff employed by the applicant (including experts and investigators), (7) whether any applicant attorney has prior criminal and bar complaints within the last five years, and (8) applicants' appellate qualifications including, but not limited to, clerkships or similar employment at an appellate court, approval and acceptance for relevant specialized case types, and the number of appellate cases tried and the case disposition.

Discuss the Scope of Services referenced above in Part II of this RFP and what the Bidder will offer. Give particular attention to describing the methods and resources you will use and how you will accomplish the tasks involved. If subcontractors are involved, clearly identify the work each will perform.

## **2. Implementation - Work Plan**

(This is **optional** and should only be used if applicable. Do not ask for a Work Plan if your requested services are straightforward.)

Provide a realistic work plan for the implementation of the program through the first contract period. Display the work plan in a timeline chart. Concisely describe each program development and implementation task, the month it will be carried out and the person or position responsible for each task. If applicable, make note of all tasks to be delegated to subcontractors.

## **Section III Cost Proposal**

(It is strongly encouraged that you provide the Bidders with a cost proposal form to fill out – a placeholder for this form is provided in this RFP as Appendix B. Use of a cost proposal form is not required and may not fit every RFP situation, but if a form can be used, then it will help to ensure that your cost proposals are presented by all Bidders in a similar format and can be more easily compared on an 'apples-to-apples' basis. If you do not use a form, it may create more work for your Department's evaluation team. If the cost proposal for your RFP can be presented in one all-inclusive dollar amount, then a cost proposal form may not be necessary. If you have multiple cost elements or hourly rates to consider, then a cost proposal form would be applicable and helpful.)

### **1. General Instructions**

- a. The Bidder must submit a cost proposal that covers the entire period of the contract, including any optional renewal periods. Please use the expected contract start date of (Insert date) and an end date of (Insert date) in preparing this section.
- b. The cost proposal shall include the costs necessary for the Bidder to fully comply with the contract terms and conditions and RFP requirements.
- c. Failure to provide the requested information and to follow the required cost proposal format provided in Appendix B (Delete the red portion of the previous sentence if it not applicable to your RFP, but remember that use of a cost proposal form is strongly encouraged, as noted above) may result in the exclusion of the proposal from consideration, at the discretion of the Department.
- d. No costs related to the preparation of the proposal for this RFP or to the negotiation of the contract with the Department may be included in the proposal. Only costs to be incurred after the contract effective date that are specifically related to the implementation or operation of contracted services may be included.

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

The Bidder should fill out Appendix B, following the instructions detailed here and in the form. (Please modify this section to fit the type of cost proposal you are requiring, being as specific as possible about how bidders should respond.)

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

(Please note that “Section IV – Economic Impact...” is only applicable to RFPs for services with an expected value of \$100,000 or more. If the expected value of the RFP’s resulting service contract is less than \$100,000, then Section IV can be included at your Department’s discretion.)

In addition to all other information requested within this RFP, each Bidder must dedicate a section of its proposal to describing the Bidder’s economic impact upon and within the State of Maine. The use of economic impact in making contract award decisions is required in accordance with Executive Order 2012-004, which states that certain service contracts “...advertised for competitive bid shall include scoring criteria evaluating the responding Bidder’s economic impact on the Maine economy and State revenues.”

For the purposes of this RFP, the term “economic impact” shall be defined as any activity that is directly performed by or related to the Bidder and has a direct and positive impact on the Maine economy and public revenues within the State of Maine. Examples may include, but are not limited to, employment of Maine residents, subcontracting/partnering with Maine businesses, payment of State and Local taxes (such as corporate, sales, or property taxes), and the payment of State licensing fees for the Bidder’s business operations.

To complete the “economic impact” section of the Bidder’s proposal, the Bidder shall include no more than one page of typed text, describing the Bidder’s current, recent, or projected economic impact with the State of Maine, as defined above. The Bidder may include all details and information that it finds to be most relevant for this section.

### **Section V Required Proposal Attachments**

(Change the title above to “Section IV” if the preceding “Economic Impact...” section is removed.)

(List any proposal attachments below which are applicable to your RFP. The Appendix A and B provided with this RFP template do not need to be listed below. If you do not require any additional proposal attachments, please delete the sentence below and write “The Department does not require any specific attachments to be presented with the Bidders’ proposals.” If you have asked for certain parts of their response to be included as an attachment, include the words “other than as specified in the proposal contents”.)

The following documents must be attached to the back of each Bidder’s proposal in the order as numbered below. The required documents will be reviewed and rated by the Department’s evaluation team.

## PART V PROPOSAL EVALUATION AND SELECTION

**(IMPORTANT:** Please consider the vast majority of Part V to be **completely customizable** to meet your Department's needs. Any text in black font within Part V – with limited exceptions – is provided only as an example, and should be tailored to the requirements of the Department for this specific RFP. There are only three requirements in Part V that **should not be changed**: (1) the allocation of at least 25% of your evaluation points for scoring the cost proposal, (2) the use of “economic impact” as an evaluation factor (if the contract resulting from this RFP is expected to be over \$100,000 in value), and (3) the use of the consensus approach to scoring.)

Evaluation of the submitted proposals shall be accomplished as follows:

### A. Evaluation Process - General Information

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

### B. Scoring Weights and Process

1. **Scoring Weights:** The score will be based on a 100 point scale and will measure the degree to which each proposal meets the following criteria.  
(Reminder: The total of awarded points shown below must equal 100. Also, if you made changes to the Proposal Contents section in Part IV of this RFP, then be sure to update the number of sections and section titles listed below.)

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

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

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

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

#### **Section III. Cost Proposal (XX points) (Must be a minimum of 25 points out of 100)**

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

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

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

(Please note: This section is only applicable to RFPs that are expected to result in service contracts of \$100,000 or more in total value. If your RFP is expected to result in a service contract of less than \$100,000, then the “economic impact” section can be deleted or included at your Department’s discretion. If “economic impact” is used as an evaluation factor, the Department can allocate any point value that the Department feels is appropriate for that RFP’s specific competitive process.)

2. **Scoring Process:** The review team will use a consensus approach to evaluate the bids. Members of the review team will not score the proposals individually but instead will arrive at a consensus as to assignment of points on each category of each proposal. The contract award(s) will be made to the Bidder(s) receiving the highest number of evaluation points, based upon the proposals’ satisfaction of the criteria established in the RFP. The Economic Impact section will also be scored using a consensus approach, with the highest number of evaluation points being assigned to the Bidder(s) with the most economic impact, actual or feasible, as determined by the evaluation team. (Delete the preceding sentence, in red, if not applicable to this RFP.) The Cost section will be scored according to a mathematical formula described below.  
(The consensus approach to scoring is **strongly encouraged**. If you want to use a different method, please contact the Division of Purchases to discuss.)
3. **Scoring the Cost Proposal:** The total cost proposed for conducting all the functions specified in this RFP will be assigned a score according to a mathematical formula. The lowest bid will be awarded XX points (this should be the same value shown above for the Cost Proposal portion, unless you have other cost-related elements being considered). Proposals with higher bids values will be awarded proportionately fewer points calculated in comparison with the lowest bid.  
(If you have a situation/RFP where you believe the formula below will NOT work in scoring the cost section, please contact the Division of Purchases.)

The scoring formula is:

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

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

(You can choose to base the cost score on the formula only. If you wish to also allocate points to evaluate/score budget forms and supporting budget material, then you must make reference to that here.)

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

### **C. Selection and Award**

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

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

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

(Delete paragraph below if not applicable to your RFP)

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

## PART VI CONTRACT ADMINISTRATION AND CONDITIONS

### A. Contract Document

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

(Below is an example of the Riders that may be included in the final contract. Include on this list all of the forms applicable to the contract(s) that will result from the RFP.)

Rider A: Specification of Work to be Performed

Rider B: Method of Payment and Other Provisions

Rider C: Exceptions to Rider B

Rider D: (Optional; for use by Department)

Rider E: (Optional; for use by Department)

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

(Additional Riders can be added as needed by the Department.)

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

(If you intend to use a contract other than the standard BP54 – such as the BP54-IT for information technology related contracts – then the link above must be updated. Please contact the Division of Purchases for questions or assistance. For the vast majority of State contracts, the standard BP54 contract document is used.)

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

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

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

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

### B. Standard State Agreement Provisions

1. Agreement Administration

- a. Following the award, an Agreement Administrator from the Department will be appointed to assist with the development and administration of the contract and to act as administrator during the entire contract period. Department staff will be available after the award to consult with the successful Bidder in the finalization of the contract.
- b. In the event that an acceptable contract cannot be negotiated with the highest ranked Bidder, the Department may withdraw its award and negotiate with the next-highest ranked Bidder, and so on, until an acceptable contract has been finalized. Alternatively, the Department may cancel the RFP, at its sole discretion.

2. Payments and Other Provisions

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

**PART VII LIST OF RFP APPENDICES AND RELATED DOCUMENTS**

(This section may be used to list documents, applicable statutes, links to websites, etc. that the Department wants to include with the RFP. This section should be deleted if not used. Don't forget to include all listed appendices/attachments with your RFP, unless you are providing a website address where the Bidder can find the document on its own.)

1. Appendix A – State of Maine Proposal Cover Page
2. Appendix B – Cost Proposal Form

**PART VIII APPENDICES**  
**Appendix A**

**State of Maine**  
**Department of (Insert Department name)**  
**PROPOSAL COVER PAGE**

(Note: Use of this form is required with the addition of debarment certification.)

**RFP# (Insert RFP# assigned by Division of Purchases)**  
**(Insert RFP Title)**

Bidder's Organization Name:		
Chief Executive - Name/Title:		
Tel:	Fax:	E-mail:
Headquarters Street Address:		
Headquarters City/State/Zip:		
<i>(provide information requested below if different from above)</i>		
Lead Point of Contact for Proposal - Name/Title:		
Tel:	Fax:	E-mail:
Street Address:		
City/State/Zip:		

Proposed Cost:	
<i>The proposed cost listed above is for reference purposes only, not evaluation purposes. In the event that the cost noted above does not match the Bidder's detailed cost proposal documents, then the information on the cost proposal documents will take precedence.</i>	

- This proposal and the pricing structure contained herein will remain firm for a period of 180 days from the date and time of the bid opening.
- No personnel currently employed by the Department or any other State agency participated, either directly or indirectly, in any activities relating to the preparation of the Bidder's proposal.
- No attempt has been made or will be made by the Bidder to induce any other person or firm to submit or not to submit a proposal.
- The undersigned is authorized to enter into contractual obligations on behalf of the above-named organization.

**Debarment, Performance, and Non-Collusion Certification**

*By signing this document I certify to the best of my knowledge and belief that the aforementioned organization, its principals, and any subcontractors named in this proposal:*

- a. Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from bidding or working on contracts issued by any governmental agency.*
- b. Have not within three years of submitting the proposal for this contract been convicted of or had a civil judgment rendered against them for:
 
  - i. fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government transaction or contract.*
  - ii. violating Federal or State antitrust statutes or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;*
  - iii. are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and*
  - iv. have not within a three (3) year period preceding this proposal had one or more federal, state or local government transactions terminated for cause or default.**
- c. Have not entered into a prior understanding, agreement, or connection with any corporation, firm, or person submitting a response for the same materials, supplies, equipment, or services and this proposal is in all respects fair and without collusion or fraud. The above mentioned entities understand and agree that collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.*

**Failure to provide this certification may result in the disqualification of the Bidder’s proposal, at the discretion of the Department.**

*To the best of my knowledge all information provided in the enclosed proposal, both programmatic and financial, is complete and accurate at the time of submission.*

Name:	Title:
Authorized Signature:	Date:

**State of Maine**  
**Department of (Insert Department name)**  
**COST PROPOSAL FORM**

**RFP# (Insert RFP# assigned by Division of Purchases)**  
**(Insert RFP Title)**

(Part IV, Section III of this RFP template addresses the use of a cost proposal form. The use of this form is optional at the discretion of the Department, but its use is **strongly encouraged** so that you receive cost proposals that can be easily compared to one another on an 'apples-to-apples' basis. Due to all the possible variations in cost proposal forms, a detailed template cannot be provided for you. Please create a form that addresses all aspects of the cost information you need to see, in order to best evaluate the proposals received in response to this RFP. )

Bidder's Organization Name: \_\_\_\_\_

(Insert your Department's desired Cost Proposal Form here.)