

MCILS

**July 15, 2014
Commissioner's Meeting
Packet**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

**JULY 15, 2014
COMMISSION MEETING
AGENDA**

- 1) Approval of June 10, 2014 Commission Meeting Minutes
- 2) Operations Reports Review
- 3) Consideration of Adoption of Fee Schedule Amendment
- 4) Somerset County Contract
- 5) Attorney Removal Rule Amendment Discussion
- 6) Specialized Panel Rule Discussion
- 7) Appellate Panel Discussion
- 8) Conference Room Sound System
- 9) Public Comment
- 10) Set Date, Time and Location of Next Regular Meeting of the Commission
- 11) Executive Session, if needed (Closed to Public)

(1.)
June 10, 2014
Commission Meeting
Minutes

**Maine Commission on Indigent Legal Services – Commissioners Meeting
June 10, 2014**

Minutes

Commissioners Present: Steven Carey, Marvin Glazier, William Logan, Susan Roy, Kenneth Spierer
MCLS Staff Present: John Pelletier, Ellie Brogan

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Approval of the May 13, 2014 Commission Meeting Minutes	Copy of minutes received by all Commissioners.	Commissioner Spierer moved for the approval of the minutes. Commissioner Glazier seconded. All present voted in favor. Approved.
Operations Reports Review	<p>Director Pelletier presented the <u>May 2014 Operations Reports</u>. The number of new cases opened in DefenderData totaled 2,241 – a 361 case increase from April. Voucher costs continued to run high in May, with 2,390 vouchers paid totaling \$1,034,909. This was a 270 voucher and \$195,000 decrease from April. These high voucher costs have been consistent for some time now, so these “high” amounts might in fact be the new normal. In December, the Commission set the supplemental budget request at \$860,000, and it is on track to close out the fiscal year right on target. This third quarter had the highest Q3 voucher costs seen to date. The Commission has \$1,072,000 remaining in the All Other Account and \$149,000 in the Revenue Account. The average price per voucher in May was \$433.08, down \$29.19 per voucher from April. This brought the year-to-date voucher average down to \$430.79. This, however, is an increase from last year’s amount of \$411. Appeal and Post-Conviction Review cases were the highest average vouchers. Four vouchers exceeding \$5,000 were paid. The May transfer of counsel fees, which reflected April’s collections, totaled \$66,101.99, putting the Commission on track to collect \$50,000 or more in excess of the amount projected at the beginning of the year and for this to be its best year ever for revenue collection.</p>	
Rule-Making Discussion	<p>Chair Carey thanked the screeners for doing a great job.</p> <p>Director Pelletier suggested the Commissioners consider amending two rules – the Standards for Qualifications of Assigned Counsel and the Eligibility Requirements for</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>Specialized Panel. The need for changes to the qualification standards rule was triggered by an attorney who had repeatedly faced criminal charges and the current rule did not contain explicit authority to remove that attorney from the roster. Currently, removal from the rosters is based only on an attorney's failure to comply with certain training or the failure to file an annual renewal form. The renewal form requires certain information about disciplinary complaints and criminal convictions to be disclosed. The Commissioners were asked by the staff to discuss amending the rule to provide the Executive Director with the authority to remove an attorney from the rosters based on subjective factors such as evidence of unfitness or misconduct as well as the procedural framework to do so. The Commissioners discussed whether to add the following grounds for removal from the rosters to the rule: allegations of criminal conduct; ethical violations resulting in bar discipline; malfeasance with respect to client funds or Commission billing; lack of fitness due to cognitive impairment, physical infirmity, mental illness and/or substance abuse; and unsatisfactory performance. The discussion centered on any potential benefit of having notice about an allegation of criminal conduct, confidentiality issues surrounding medical records and mental health self-reporting compliance, what the investigation process would entail, and what action could be taken by the Executive Director once he or she has information concerning the unfitness or misconduct of an attorney. Proposed actions to be taken included (1) a requirement that the attorney notify clients about pending criminal charges and give the client the opportunity to get a new attorney; (2) restrict or suspend new appointments; and (3) removal from the rosters. Commissioner Glazier thought it would benefit the discussion if Director Pelletier drafted an amended rule for the next meeting. Director Pelletier indicated that he could draft an amended rule based on what the Commissioners had discussed so far.</p> <p>After implementing four of the eight specialized panels, Commission staff suggested some amendments to the specialized panel rule. These suggestions were the result of feedback from attorneys and observations from staff about how the process has worked to date, including attorney and court compliance for specialized panel case assignments. The Commissioners discussed each of the eight categories. For serious violent felonies, it was decided that aggravated trafficking would remain due to the mandatory minimum sentence for that offense, but that aggravated criminal trespass would be removed. For sex offenses, it was decided that two offenses – incest and violation of privacy – would now be classified as sex offenses due to the SORNA registration requirements for each,</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>and that two offenses – unlawful sexual touching and prohibited contact with a minor – would be removed from the sex offense category since there are no SORNA registration requirements for these two offenses. For OUI, it was decided that this panel would remain unchanged due to it being a specialized area of law. For juvenile, the six month experience requirement will be removed for misdemeanor and civil offenses, as well as the competency portion of the rule. A notice requirement was added to the bind-over portion. Juvenile felony and sex offense requirements remain unchanged. For child protective, the one year experience requirement was removed and a six month child protective experience requirement was added for termination of parental rights hearings. For domestic violence, the Commissioners were undecided on whether to keep it in the specialized panel rule. The homicide panel will remain unchanged. Upon review of the two sets of notes from the meeting, it is unclear whether the Commissioners intended to make any changes to the civil commitment roster. Staff will seek clarification at the next meeting. The Commissioners decided that for all the specialized panel case types, with the exception of homicide, the reference letter requirement would now become optional or upon request by the Executive Director. Due to time constraints, the discussion on the proposed appellate roster did not happen.</p>	
Juvenile Specialized Panel Update	<p>Because of time constraints due to the public hearing, the Commissioners did not discuss this agenda item. Instead, they agreed to rely on the materials in the Commission packet.</p>	
Contracts Update	<p>Because of time constraints due to the public hearing, the Commissioners did not discuss this agenda item. Instead, they agreed to rely on the materials in the Commission packet.</p>	
Public Comment	<p>None</p>	
Adjournment of meeting	<p>The Commission then voted to adjourn with the next meeting to be on July 15, 2014, at 9:30 am in the Judiciary Committee Room.</p>	<p>Commissioner Logan made a motion to adjourn. Commissioner Glazier seconded. All present voted in favor.</p>

(2.)
Operations Reports
Review

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
SUBJECT: JUNE 2014 OPERATIONS REPORTS
DATE: JULY 2, 2014

Attached you will find the June, 2014 Operations Reports for your review and our discussion at the upcoming Commission meeting on July 15, 2014. A summary of the operations reports follows:

- 2,163 new cases were opened in the DefenderData system in June. This was a 78 case decrease from May.
- The number of vouchers submitted electronically in June was 2,581, an increase of 129 vouchers over May, totaling \$1,271,076.16, an increase of \$157,500 over May. In June, we paid 2,513 electronic vouchers totaling \$1,190,312.30. This was a 123 voucher and \$55,000 increase over May. We ended the 2014 budget year having paid all expenses due.
- There was one paper voucher submitted and paid in June totaling \$794.44.
- The average price per voucher in June was \$473.47, up \$40.39 per voucher from May, bringing the voucher average for the entire fiscal year to \$434.60, up \$26.72 per voucher over the average for fiscal year 2013.
- Appeal and Post-Conviction Review cases had the highest average vouchers in June. There were 6 vouchers exceeding \$5,000 paid in June. These cases involved: 1) a guilty plea at jury selection on a murder case; 2) two interim bills in murder cases; 3) two vouchers from co-counsel in a vehicular manslaughter case where there was a conviction on manslaughter after a 6 day trial despite acquittal on an OUI charge – post verdict motions and sentencing remain; and 4) a conviction after a bench trial for attempted kidnapping of a child, but a favorable sentence for a client with mental illness.

In our All Other Account, the total expenses for the month of June were \$1,092,613.80. Of the amount, \$10,041.04 was devoted to the Commission's operating expenses.

In the Personal Services Account, we had \$45,309.02 in expenses for the month of June.

In the Revenue Account, our monthly transfer from the Judicial Branch for counsel fees for the month of June, which reflects May's collections, totaled \$53,257.53, bringing total collections received for the fiscal year to \$654,406.21, the highest total in the Commission's history. We expended \$203,379.68 from the revenue account to pay attorney vouchers in June.

In our Conference Account, we had both revenue and expenses associated with the June minimum standards training that left the account balance at \$21,144.41.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Case Type

6/30/2014

DefenderData Case Type	Jun-14						Fiscal Year 2014			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
Appeal	6	11	\$ 12,902.66	10	\$ 11,774.03	\$ 1,177.40	135	146	\$ 202,698.53	\$ 1,388.35
Child Protection Petition	181	413	\$ 201,603.34	370	\$ 174,592.05	\$ 471.87	1,936	3,757	\$ 1,900,281.25	\$ 505.80
Drug Court	0	8	\$ 3,300.00	6	\$ 3,695.00	\$ 615.83	1	78	\$ 38,529.92	\$ 493.97
Emancipation	8	5	\$ 736.68	2	\$ 975.00	\$ 487.50	94	83	\$ 21,763.90	\$ 262.22
Felony	529	583	\$ 487,392.29	594	\$ 467,140.57	\$ 786.43	6,167	6,305	\$ 4,305,938.81	\$ 682.94
Involuntary Civil Commitment	64	60	\$ 11,298.12	98	\$ 18,445.96	\$ 188.22	873	769	\$ 132,064.29	\$ 171.74
Juvenile	105	107	\$ 40,256.59	95	\$ 38,692.73	\$ 407.29	1,310	1,237	\$ 435,423.40	\$ 352.00
Lawyer of the Day - Custody	206	184	\$ 34,468.12	185	\$ 36,337.88	\$ 196.42	2,462	2,300	\$ 433,648.25	\$ 188.54
Lawyer of the Day - Juvenile	42	37	\$ 6,733.29	40	\$ 6,565.07	\$ 164.13	546	520	\$ 90,464.98	\$ 173.97
Lawyer of the Day - Walk-in	89	90	\$ 16,329.84	99	\$ 18,486.86	\$ 186.74	1,264	1,221	\$ 233,630.22	\$ 191.34
Misdemeanor	659	664	\$ 262,123.86	607	\$ 215,723.58	\$ 355.39	7,201	7,249	\$ 2,433,173.24	\$ 335.66
Petition, Modified Release Treatment	0	8	\$ 1,662.56	4	\$ 846.81	\$ 211.70	17	57	\$ 21,070.07	\$ 369.65
Petition, Release or Discharge	0	0		0			0	1	\$ 165.00	\$ 165.00
Petition, Termination of Parental Rights	24	37	\$ 34,493.70	34	\$ 33,216.22	\$ 976.95	234	507	\$ 342,617.79	\$ 675.77
Post Conviction Review	7	5	\$ 4,470.48	5	\$ 4,275.00	\$ 855.00	77	81	\$ 93,493.98	\$ 1,154.25
Probation Violation	178	168	\$ 54,660.17	163	\$ 55,282.82	\$ 339.16	1,872	1,717	\$ 567,408.85	\$ 330.47
Represent Witness on 5th Amendment	3	4	\$ 530.00	9	\$ 1,850.00	\$ 205.56	25	19	\$ 4,412.50	\$ 232.24
Review of Child Protection Order	58	194	\$ 97,099.26	189	\$ 100,100.58	\$ 529.63	582	1,999	\$ 937,483.03	\$ 468.98
Revocation of Administrative Release	4	3	\$ 1,035.20	3	\$ 1,517.70	\$ 505.90	40	45	\$ 12,995.29	\$ 288.78
DefenderData Sub-Total	2,163	2,581	\$ 1,271,076.16	2,513	\$ 1,189,517.86	\$ 473.35	24,836	28,091	\$ 12,207,265.30	\$ 484.56
Paper Voucher Sub-Total	1	1	\$ 794.44	1	\$ 794.44	\$ 794.44	26	26	\$ 12,463.95	\$ 479.38
TOTAL	2,164	2,582	\$1,271,870.60	2,514	\$1,190,312.30	\$ 473.47	24,862	28,117	\$ 12,219,727.25	\$ 434.60

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
 FY14 FUND ACCOUNTING
 AS OF 06/30/2014

Account 010 95F 2112 01 (All Other)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY14 Total
FY14 Professional Services Allotment		\$ 2,906,477.00		\$ 2,760,552.00		\$ 3,046,863.00		\$ 3,051,713.00	
FY14 General Operations Allotment		\$ 35,362.00		\$ 35,361.00		\$ 35,362.00		\$ 35,359.00	
Financial Order Adjustment						\$ 350.00		\$ 400.00	
Financial Order Adjustment						\$ 430,000.00		\$ (430,000.00)	
Financial Order Adjustment								\$ 810,000.00	
Financial Order Adjustment								\$ 50,000.00	
Financial Order Adjustment									
Total Budget Allotments		\$ 2,941,839.00		\$ 2,795,913.00		\$ 3,512,575.00		\$ 3,517,472.00	\$ 12,767,799.00
Total Expenses	1	\$ (979,565.86)	4	\$ (1,364,192.49)	7	\$ (1,602,204.20)	10	\$ (1,325,468.67)	\$ (5,271,431.22)
	2	\$ (1,057,090.90)	5	\$ (1,057,861.53)	8	\$ (985,065.42)	11	\$ (1,161,264.53)	\$ (4,261,282.38)
	3	\$ (719,557.24)	6	\$ (435,733.98)	9	\$ (987,180.38)	12	\$ (1,092,613.80)	\$ (3,235,085.40)
Encumbrances		\$ (185,625.00)		\$ 61,875.00		\$ 61,875.00		\$ 61,875.00	\$ -
TOTAL REMAINING		\$ 0.00		\$ -		\$ -		\$ -	\$ 0.00

Q4 - Month 12 (as of 06/30/14)	
INDIGENT LEGAL SERVICES	
Counsel Payments	\$ (986,932.62)
Somerset County	\$ (21,150.00)
Subpoena Witness Fees	\$ -
Private Investigators	\$ (19,112.44)
Mental Health Expert	\$ (5,220.00)
Transcripts	\$ (20,565.92)
Other Expert	\$ (25,452.38)
Air fare-out of state witness	\$ -
Process Servers	\$ (693.66)
Interpreters	\$ (363.24)
Misc Prof Fees & Serv	\$ (3,082.50)
SUB-TOTAL ILS	\$ (1,082,572.76)
OPERATING EXPENSES	
Service Center	\$ -
DefenderData	\$ (4,195.00)
Ergonomic Eval/Modification	\$ -
Mileage/Tolls/Parking	\$ (1,726.43)
Mailing/Postage/Freight	\$ (442.38)
Notary Fee	\$ (50.00)
Legal Ad	\$ -
Office Supplies/Equip.	\$ (93.45)
Cellular Phones	\$ (136.76)
Maine Bar Directories	\$ -
Office Equipment Rental	\$ (140.45)
OIT/TELCO	\$ (3,256.57)
SUB-TOTAL OE	\$ (10,041.04)
TOTAL	\$ (1,092,613.80)

INDIGENT LEGAL SERVICES	
Q4 Allotment	\$ 3,517,472.00
Q4 Expenditure for Somerset city PDP contract from Q1 Allotment	\$ 61,875.00
Q4 Expenses as of 06/30/14	\$ (3,579,347.00)
Remaining Q4 Allotment as of 06/30/14	\$ -

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY14 FUND ACCOUNTING
 As of 06/30/14

Account 014 95F Z112 01		Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY14 Total
(Revenue)										
Total Budget Allotments		1	\$ 149,124.00	4	\$ 149,124.00	7	\$ 149,124.00	10	\$ 149,125.00	\$ 596,497.00
Financial Order Adjustment		2		5		8		11		
Budget Order Adjustment		3		6		9	43,367.00	12		80,000.00
Financial Order Adjustment			\$ (32,332.00)		\$ (11,035.00)					
Total Budget Allotments			\$ 116,792.00		\$ 138,089.00		\$ 192,491.00		\$ 229,125.00	\$ 676,497.00
FY13 Carryover			\$ 775.00							
Collected Revenue from JB		1	\$ 35,123.80	4	\$ 31,677.47	7	\$ 42,313.67	10	\$ 75,424.36	
Promissory Note Payments							200.00		\$ 200.00	
Collected Revenue from JB		2	\$ 38,666.27	5	\$ 63,710.67	8	\$ 60,808.05	11	\$ 66,101.99	
Promissory Note Payments			\$ 200.00		\$ 800.00		\$ 200.00		\$ 200.00	
Discovery sanction payment					\$ 300.00					
Collected Revenue from JB		3	\$ 43,621.87	6	\$ 41,975.79	9	\$ 98,449.74	12	\$ 53,257.53	
Promissory Note Payments							200.00		\$ 200.00	
TOTAL REVENUE COLLECTED			\$ 118,386.94		\$ 138,463.93		\$ 202,171.46		\$ 195,383.88	\$ 654,406.21
Counsel Payments		1		4		7		10		
		2	\$ -	5		8		11		
		3	\$ (116,791.19)	6	\$ (138,088.93)	9	\$ (192,488.16)	12	\$ (203,379.68)	
REMAINING ALLOTMENT			\$ 0.81		\$ 0.07		\$ 2.84		\$ 25,745.32	\$ 25,749.04
Total Expenses		1	\$ -	4	\$ (150.00)	7	\$ (790.00)	10	\$ (160.00)	
		2	\$ (360.00)	5	\$ (225.00)	8	\$ (180.00)	11	\$ (7.50)	
		3	\$ (1,235.75)	6		9	\$ (550.00)	12		
REMAINING CASH			\$ -		\$ -		\$ 8,163.30		\$ (8,163.30)	\$ 0.00
Q4 Month 12 (as of 06/30/14)										
DEFENDER DATA COUNSEL PAYMENTS			\$ 203,379.68							
SUB-TOTAL IIS										
OVERPAYMENT REIMBURSEMENTS			\$ -							
Paper Voucher										
Somerset County CDS										
Private Investigators										
Mental Health Expert										
Transcripts										
Other Expert										
Process Servers										
SUB-TOTAL OE			\$ -							
TOTAL			\$ -							

INDIGENT LEGAL SERVICES	
FY14 Allotment	\$ 676,497.00
YTD Collected Revenue	\$ 654,406.21
YTD Expenses	\$ (3,658.25)
YTD Counsel Payments	\$ (650,747.96)
Q4 Remaining Unexpended Cash	\$ -

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
 FY14 FUND ACCOUNTING
 AS OF 06/30/2014

Account 010 95F 2112 01 (Personal Services)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY14 Total
FY14 Allotment		\$ 167,116.00		\$ 184,094.00		\$ 156,652.00		\$ 148,503.00	\$ 656,365.00
Financial Order Adjustments		\$ (3,569.00)		\$ 1,423.00		\$ (2,890.00)		\$ (9,179.00)	
Financial Order Adjustments		\$ (17,708.00)		\$ (37,263.00)		\$ (15,987.00)		\$ 19,495.00	
Budget Order Adjustments				\$ (3,508.00)					
Total Budget Allotments		\$ 145,839.00		\$ 144,746.00		\$ 137,775.00		\$ 158,819.00	\$ 587,179.00
Total Expenses									
	1	\$ (59,858.17)	4	\$ (44,039.57)	7	\$ (44,762.34)	10	\$ (45,977.69)	
	2	\$ (42,837.33)	5	\$ (41,836.86)	8	\$ (48,169.82)	11	\$ (46,789.37)	
	3	\$ (43,143.13)	6	\$ (58,868.88)	9	\$ (44,842.18)	12	\$ (45,309.02)	
TOTAL REMAINING		\$ 0.37		\$ 0.69		\$ 0.66		\$ 20,742.92	\$ 20,744.64
Q4 Month 12 (as of 06/30/14)									
Per Diem Payments		\$ (275.00)							
Salary		\$ (20,565.62)							
Vacation Pay		\$ (1,602.03)							
Holiday Pay		\$ (1,430.56)							
Sick Pay		\$ (1,695.44)							
Overtime Pay		\$ -							
Health Insurance		\$ (8,858.18)							
Dental Insurance		\$ (236.34)							
Employer Retiree Health		\$ (2,534.27)							
Employer Retirement		\$ (1,493.88)							
Employer Group Life		\$ (208.80)							
Employer Medicare		\$ (355.70)							
Retiree Unfunded Liability		\$ (4,143.60)							
Retro Pymt		\$ -							
Perm Part Time Full Ben		\$ (1,909.60)							
TOTAL		\$ (45,309.02)							

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY14 FUND ACCOUNTING
As of 06/30/14

Account: 014 95F Z112 02 (Conference Account)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY14 Total
FY13 Carry Over		\$ 19,602.53							\$ -
Total Budget Allotments		\$ 4,000.00		\$ 12,000.00		\$ 4,000.00		\$ 12,000.00	\$ 32,000.00
Budget Order Adjustment									\$ 32,000.00
Total Budget Allotments		\$ 4,000.00		\$ 12,000.00		\$ 4,000.00		\$ 12,000.00	\$ 32,000.00
Actual Collected Earned Revenue	1	\$ 25.00	4	\$ 150.00	7	\$ 200.00	10	\$ 1,050.00	
	2	\$ 850.00	5	\$ 1,000.00	8		11	\$ 700.00	
	3	\$ 225.00	6	\$ 3,275.00	9		12	\$ 1,750.00	\$ 27,077.53
ACTUAL CASH BALANCE		\$ 20,702.53		\$ 4,425.00		\$ 200.00		\$ 1,750.00	\$ 27,077.53
Total Expenses	1	\$ (437.97)	4	\$ (1,453.93)	7	\$ (2,291.33)	10	\$ -	
	2	\$ (81.99)	5		8		11	\$ (1,100.00)	
	3		6	\$ (1,120.40)	9		12	\$ (447.50)	
TOTAL REMAINING		\$ 20,182.57		\$ 1,850.67		\$ 2,108.67		\$ 13,952.50	\$ 31,480.04

Q4 Month 12 (as of 06/30/14)	
Collected Revenue	\$ 700.00
Training Manuals Printing	\$ -
Training Refreshments/Meals	\$ (347.50)
CLE App to the Bar	\$ -
Videographer	\$ -
Refund for non-attendance	\$ (100.00)
TOTAL EXPENSES	\$ (447.50)

FY14 Allotment	\$ 32,000.00
FY13 Carry Over	\$ 19,602.53
FY14 Collected Revenue	\$ 7,475.00
FY14 Expenses	\$ (6,933.12)
Unexpended Cash	\$ 20,144.41

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Court

6/30/2014

Court	Jun-14						Fiscal Year 2014			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
ALFSC	116	199	\$ 141,314.13	183	\$ 122,927.34	\$ 671.73	1,742	1,818	\$ 1,158,888.07	\$ 637.45
AUBSC	80	96	\$ 62,996.62	106	\$ 58,505.33	\$ 551.94	1,109	1,217	\$ 651,166.96	\$ 535.06
AUGDC	62	77	\$ 27,839.67	87	\$ 33,393.67	\$ 383.84	857	1,145	\$ 424,419.16	\$ 370.67
AUGSC	96	122	\$ 83,762.77	100	\$ 73,389.76	\$ 733.90	1,067	1,126	\$ 556,988.93	\$ 494.66
BANDC	73	123	\$ 46,442.32	126	\$ 47,262.24	\$ 375.10	803	1,229	\$ 392,840.20	\$ 319.64
BANSC	2	2	\$ 1,881.60	1	\$ 265.00	\$ 265.00	35	35	\$ 35,668.42	\$ 1,019.10
BATSC	4	9	\$ 3,669.38	11	\$ 10,354.91	\$ 941.36	78	125	\$ 90,994.05	\$ 727.95
BELDC	26	42	\$ 18,498.94	34	\$ 12,892.55	\$ 379.19	304	416	\$ 158,729.71	\$ 381.56
BELSC	24	26	\$ 18,296.10	21	\$ 12,912.78	\$ 614.89	226	257	\$ 134,673.72	\$ 524.02
BIDDC	90	102	\$ 44,149.02	92	\$ 33,498.68	\$ 364.12	1,031	1,148	\$ 438,809.26	\$ 382.24
BRIDC	18	15	\$ 8,770.95	16	\$ 12,640.16	\$ 790.01	204	256	\$ 103,673.02	\$ 404.97
CALDC	11	22	\$ 11,182.67	31	\$ 13,383.66	\$ 431.73	189	215	\$ 87,710.88	\$ 407.96
CARDC	16	32	\$ 14,619.78	19	\$ 12,182.02	\$ 641.16	213	288	\$ 118,902.74	\$ 412.86
CARSC	26	44	\$ 14,566.41	49	\$ 16,720.07	\$ 341.23	370	406	\$ 198,747.63	\$ 489.53
DOVDC	6	20	\$ 5,298.84	37	\$ 9,141.40	\$ 247.06	79	169	\$ 48,276.24	\$ 285.66
DOVSC	0	1	\$ 337.00	1	\$ 337.00	\$ 337.00	16	25	\$ 11,087.26	\$ 443.49
ELLDC	29	51	\$ 25,568.39	52	\$ 28,720.39	\$ 552.32	408	647	\$ 309,172.43	\$ 477.86
ELLSC	9	8	\$ 9,195.00	10	\$ 3,246.50	\$ 324.65	155	214	\$ 139,827.77	\$ 653.40
FARDC	14	19	\$ 5,883.86	16	\$ 6,153.10	\$ 384.57	122	209	\$ 92,446.76	\$ 442.33
FARSC	1	5	\$ 1,690.26	4	\$ 3,234.78	\$ 808.70	40	139	\$ 98,027.81	\$ 705.24
FORDC	4	11	\$ 3,879.78	6	\$ 2,000.34	\$ 333.39	73	78	\$ 30,334.40	\$ 388.90
HOUDC	56	54	\$ 16,806.41	42	\$ 12,746.39	\$ 303.49	421	433	\$ 131,621.19	\$ 303.98
HOUSC	15	33	\$ 25,007.68	20	\$ 9,968.08	\$ 498.40	176	153	\$ 79,711.07	\$ 520.99
LEWDC	114	168	\$ 69,842.00	142	\$ 62,325.34	\$ 438.91	1,497	1,691	\$ 639,408.85	\$ 378.12
LINDC	10	20	\$ 10,144.30	12	\$ 6,592.06	\$ 549.34	151	189	\$ 70,424.35	\$ 372.62
MACDC	24	29	\$ 9,321.76	32	\$ 15,424.18	\$ 482.01	316	346	\$ 124,653.83	\$ 360.27
MACSC	15	13	\$ 7,266.60	16	\$ 8,933.60	\$ 558.35	180	181	\$ 70,749.53	\$ 390.88
MADDC	1	1	\$ 170.68	1	\$ 170.68	\$ 170.68	24	30	\$ 7,502.26	\$ 250.08
MILDC	4	7	\$ 1,260.92	2	\$ 290.00	\$ 145.00	25	20	\$ 5,012.26	\$ 250.61
NEWDC	31	32	\$ 14,150.29	35	\$ 10,950.12	\$ 312.86	304	377	\$ 118,477.54	\$ 314.26
PORDC	120	121	\$ 58,848.32	134	\$ 49,966.96	\$ 372.89	1,122	1,358	\$ 573,669.82	\$ 422.44
PORSC	7	1	\$ 1,522.50	2	\$ 990.00	\$ 495.00	54	40	\$ 16,752.50	\$ 418.81
PREDC	35	50	\$ 22,766.31	39	\$ 16,700.19	\$ 428.21	274	385	\$ 148,476.12	\$ 385.65
RODC	41	64	\$ 14,612.36	55	\$ 12,605.26	\$ 229.19	554	652	\$ 215,086.00	\$ 329.89
ROSC	13	34	\$ 15,637.68	39	\$ 17,682.98	\$ 453.41	342	411	\$ 250,244.93	\$ 608.87
RUMDC	13	17	\$ 10,912.40	18	\$ 9,276.46	\$ 515.36	132	179	\$ 78,277.33	\$ 437.30
SKODC	16	53	\$ 19,026.66	42	\$ 14,608.42	\$ 347.82	146	384	\$ 173,773.25	\$ 452.53
SKOSC	2	0		0			9	7	\$ 4,265.00	\$ 609.29
SOUDC	31	24	\$ 7,606.08	31	\$ 9,186.94	\$ 296.35	312	373	\$ 115,637.67	\$ 310.02
SOUSC	32	29	\$ 20,976.47	34	\$ 56,239.83	\$ 1,654.11	416	477	\$ 253,374.34	\$ 531.18
SPRDC	51	58	\$ 27,460.04	68	\$ 30,476.48	\$ 448.18	655	756	\$ 302,037.45	\$ 399.52
Law Ct	4	8	\$ 9,078.66	8	\$ 8,949.03	\$ 1,118.63	89	96	\$ 132,665.52	\$ 1,381.93
PENCD	272	210	\$ 120,063.51	188	\$ 80,810.43	\$ 429.84	2,345	2,322	\$ 883,396.03	\$ 380.45
SAGCD	24	19	\$ 8,516.34	21	\$ 10,117.44	\$ 481.78	213	130	\$ 53,128.94	\$ 408.68
PISCD	15	12	\$ 1,735.00	14	\$ 2,075.00	\$ 148.21	198	182	\$ 30,202.50	\$ 165.95
HANCD	43	32	\$ 12,876.06	36	\$ 13,777.81	\$ 382.72	279	176	\$ 65,103.12	\$ 369.90
FRACD	27	29	\$ 12,734.57	34	\$ 9,805.26	\$ 288.39	423	349	\$ 101,522.89	\$ 290.90
CUMCD	302	281	\$ 139,843.36	282	\$ 142,013.87	\$ 503.60	3,279	3,104	\$ 1,571,358.39	\$ 506.24
SOMCD	3	1	\$ 2,432.50	1	\$ 2,432.50	\$ 2,432.50	13	7	\$ 5,752.06	\$ 821.72
WATDC	54	48	\$ 15,227.51	61	\$ 16,613.18	\$ 272.35	552	747	\$ 224,931.47	\$ 301.11
WESDC	27	28	\$ 10,871.18	27	\$ 10,040.16	\$ 371.86	393	494	\$ 144,181.78	\$ 291.87
WISDC	21	26	\$ 8,779.52	26	\$ 8,038.00	\$ 309.15	309	345	\$ 92,355.52	\$ 267.70
WISSC	17	35	\$ 18,343.64	31	\$ 19,900.67	\$ 641.96	302	304	\$ 159,141.30	\$ 523.49
YORDC	16	18	\$ 7,391.36	18	\$ 6,648.86	\$ 369.38	210	231	\$ 82,983.07	\$ 359.23
TOTAL	2,163	2,581	\$ 1,271,076.16	2,513	\$ 1,189,517.86	\$ 473.35	24,836	28,091	\$ 12,207,263.30	\$ 434.56

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Number of Attorneys Rostered by Court

6/30/2014

Court	Rostered Attorneys
Alfred Superior Court	111
Auburn Superior Court	119
Augusta District Court	95
Augusta Superior Court	90
Bangor District Court	64
Belfast District Court	47
Belfast Superior Court	42
Biddeford District Court	142
Bridgton District Court	106
Calais District Court	13
Caribou District Court	16
Caribou Superior Court	19
Dover-Foxcroft District Court	26
Ellsworth District Court	48
Farmington District Court	30
Fort Kent District Court	7
Houlton District Court	16
Houlton Superior Court	18
Lewiston District Court	149
Lincoln District Court	29
Machias District Court	18
Machias Superior Court	16
Madawaska District Court	8

Court	Rostered Attorneys
Millinocket District Court	23
Newport District Court	37
Portland District Court	161
Presque Isle District Court	14
Rockland District Court	50
Rockland Superior Court	43
Rumford District Court	30
Skowhegan District Court	28
South Paris District Court	71
South Paris Superior Court	67
Springvale District Court	126
Unified Criminal Docket Bangor	63
Unified Criminal Docket Bath	87
Unified Criminal Docket Dover-Foxcroft	25
Unified Criminal Docket Ellsworth	42
Unified Criminal Docket Farmington	31
Unified Criminal Docket Portland	152
Unified Criminal Docket Skowhegan	17
Waterville District Court	53
West Bath District Court	116
Wiscasset District Court	77
Wiscasset Superior Court	68
York District Court	116

(3.)
Consideration of Adoption
of Fee Schedule
Amendment

Maine Commission on Indigent Legal Services

Proposed Rule – Amendment to Chapter 301: Fee Schedule and Administrative Procedures for Payment of Commission Assigned Counsel

Response to Public Comments

1.) **The hourly rate of pay for assigned counsel should be increased to \$70/hr. effective July 1, 2015 and \$75/hr. effective July 1, 2016.** Avery T. Day, Esq., Pierce Atwood, Maine State Bar Association (MSBA); George T. (Toby) Dilworth, Esq., Drummond Woodsum, Maine Association of Criminal Defense Lawyers (MACDL); Maurice R. Porter, Esq., George A. Hess, Esq., The Hess Law Firm

a.) **The current rate, even considering the pending \$5/hr. increase, is inadequate and undermines the State's ability to meet its constitutional obligation to ensure adequate representation for those entitled to indigent legal services.** Toby Dilworth, Esq., MACDL; Maurice Porter, Esq.; Avery Day, Esq., MSBA.

b.) **Assigned counsel run small businesses and support to those businesses fuels economic activity and civic involvements that benefits Maine's economy and communities.** George Hess, Esq.; Toby Dilworth, Esq., MACDL

c.) **History reflects that increases to the rate of pay for assigned counsel have been long delayed and smaller than proposed, leaving the rate of pay substantially eroded by inflation and significantly less than many law firms pay for paralegal services.** Maurice Porter, Esq.; George Hess, Esq.; Toby Dilworth, Esq., MACDL

MCILS Response:

The Commission shares the concern that an inadequate rate of pay for assigned counsel undermines its ability to meet its obligation to provide quality representation to people entitled to indigent legal services. The Commission also agrees that the history regarding attempts to adjust the rate of pay for assigned counsel has left the current rate inadequate and demands steady progress toward the goal of paying assigned counsel a rate that reflects the importance of their work when compared to the rate of pay for other types of legal services. The current proposal is but a step along that path. Finally, the Commission notes that its attorneys use payment for indigent legal services to support the small businesses they operate, providing employment and economic activity that benefits the communities they work in and the State as a whole.

2.) **The proposed rate increase is inadequate and renders the defense bar underfunded in light of the salary, benefits, and administrative support available to publicly funded prosecution offices. The rate should be increased to \$90/hr. effective July 1, 2015 and \$100/hr. effective July 1, 2016.** Robert J. Ruffner, Esq., Maine Indigent Defense Center.

MCILS Response:

As stated above, the proposed rate increase set forth in the rule amendment falls below the level that would reflect the true value and importance of the work done by its dedicated assigned counsel. Nevertheless, budget practicalities require incremental progress toward that goal. The Commission believes that the proposed rule strikes the right balance between the need to provide truly adequate compensation for indigent legal services and the budget realities faced by the State of Maine.

3.) The current rate of pay is adequate because 1) attorneys have an obligation to represent poor people for no fee or at a reduced fee, 2) the taxpayers who would fund an increase are already overburdened, and 3) there are plenty of experienced lawyers who are willing to represent poor people for free or at reduced rates. James P. Dunleavy, Sr., Esq., Dunleavy Law Offices, P.A.

MCILS Response:

The Commission believes that providing constitutionally required indigent legal services is an obligation of the State and should not rest on the largess of practicing attorneys. Based on recent developments, the Commission is concerned that the current rate is inadequate to attract and retain experienced counsel and that inaction would leave the Commission unable to meet its obligation to people in need of indigent legal services.

Commentators:

Avery T. Day, Esq., Pierce Atwood, Maine State Bar Association (both orally and by written comments received June 10, 2014);
George T. (Toby) Dilworth, Esq, Drummond Woodsum, Maine Association of Criminal Defense Lawyers (both orally and by written comments received June 10, 2014);
James P. Dunleavy, Sr., Esq., Dunleavy Law Offices, P.A. (written comments received June 5, 2014);
George A. Hess, Esq., The Hess Law Firm (written comments received June 16, 2014);
Maurice R. Porter, Esq., (written comments received June 3, 2014);
Robert J. Ruffner, Esq., Maine Indigent Defense Center (written comments received June 10, 2014)

Chapter 301: FEE SCHEDULE AND ADMINISTRATIVE PROCEDURES FOR PAYMENT OF COMMISSION ASSIGNED COUNSEL

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

SECTION 1. DEFINITIONS

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

SECTION 2. HOURLY RATE OF PAYMENT

Effective July 1, 2013:

A rate of Fifty Dollars (\$50.00) per hour is authorized for time spent on an assigned case.

Effective July 1, 2014:

A rate of Fifty-Five Dollars (\$55.00) per hour is authorized for time spent on an assigned case.

Effective July 1, 2015:

A rate of Seventy Dollars (\$70.00) per hour is authorized for time spent on an assigned case.

Effective July 1, 2016:

A rate of Seventy-Five Dollars (\$75.00) per hour is authorized for time spent on an assigned case.

SECTION 3. EXPENSES

1. **Routine Office Expenses.** Routine Office expenses are considered to be included in the hourly rate. Routine office expenses, including but not limited to postage, express postage, regular telephone, cell telephone, fax, office overhead, utilities, secretarial

services, routine copying (under 100 pages), local phone calls, parking (except as stated below), and office supplies, etc., will not be reimbursed.

2. **Itemized Non-Routine Expenses.** Itemized non-routine expenses, such as discovery from the State or other agency, long distance calls (only if billed for long distance calls by your phone carrier), collect phone calls, extensive copying (over 100 pages), printing/copying/ binding of legal appeal brief(s), relevant in-state mileage (as outlined below), tolls (as outlined below), and fees paid to third parties. Necessary parking fees associated with multi-day trials and hearings will be reimbursed, but must be approved in advance by the Executive Director.
3. **Travel Reimbursement.** Mileage reimbursement shall not exceed the applicable State rate. Mileage reimbursement will be paid for travel to and from courts other than an attorney's home district and superior court. Mileage reimbursement will not be paid for travel to and from an attorney's home district and superior courts. Tolls will be reimbursed, except that tolls will not be reimbursed for travel to and from attorney's home district and superior court. All out-of-state travel or any overnight travel must be approved by the MCILS in writing prior to incurring the expense. Use of the telephone, video equipment, and email in lieu of travel is encouraged as appropriate.
4. **Itemization of Claims.** Claims for all expenses must be itemized.
5. **Discovery Materials.** The MCILS will reimburse only for one set of discovery materials. If counsel is permitted to withdraw, appropriate copies of discovery materials must be forwarded to new counsel forthwith.
6. **Expert and Investigator Expenses.** Other non-routine expenses for payment to third parties, which historically required preapproval by the Court before July 1, 2010 (e.g., investigators, interpreters, medical and psychological experts, testing, depositions, etc.) are required to be approved in advance by MCILS. Funds for third-party services will be provided by the MCILS only upon written request and a sufficient demonstration of reasonableness, relevancy, and need in accordance with the MCILS rules and procedures governing requests for funds for experts and investigators. See Chapter 302 Procedures Regarding Funds for Experts and Investigators.
7. **Witness, Subpoena, and Service Fees.** In criminal and juvenile cases, witness, subpoena, and service fees will be reimbursed only pursuant to M.R. Crim. P. 17(b). It is unnecessary for counsel to advance these costs, and they shall not be included as a voucher expense. Fees for service of process by persons other than the sheriff shall not exceed those allowed by 30-A M.R.S. § 421. The same procedure shall be followed in civil cases.

SECTION 4. MAXIMUM FEES

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

1. **Trial Court Criminal Fees**

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

Effective July 1, 2013:

- 1) ~~Murder. Fee to be set by the Executive Director on a case by case basis.~~
- 2) ~~Class A. \$2,500~~
- 3) ~~Class B and C (against person). \$1,875~~
- 4) ~~Class B and C (against property). \$1,250~~
- 5) ~~Class D and E (Superior or Unified Criminal Court). \$625~~
- 6) ~~Class D and E (District Court). \$450~~
- 7) ~~Post-Conviction Review. \$1,000~~
- 8) ~~Probation Revocation. \$450~~
- 9) ~~Miscellaneous (i.e. witness representation on 5th Amendment grounds, etc.) \$450~~
- 10) ~~Juvenile. \$450~~

Effective July 1, 2014:

- 1) Murder. Fee to be set by the Executive Director on a case by case basis.
- 2) Class A. \$2,750
- 3) Class B and C (against person). \$2,062.50
- 4) Class B and C (against property). \$1,375
- 5) Class D and E (Superior or Unified Criminal Court). \$687.50
- 6) Class D and E (District Court). \$495
- 7) Post-Conviction Review. \$1,100
- 8) Probation Revocation. \$495
- 9) Miscellaneous (i.e. witness representation on 5th Amendment grounds, etc.) \$495

10) **Juvenile.** \$495

Effective July 1, 2015:

- 1) Murder. Fee to be set by the Executive Director on a case by case basis.
- 2) Class A. \$3,500
- 3) Class B and C (against person). \$2,625
- 4) Class B and C (against property). \$1,750
- 5) Class D and E (Superior or Unified Criminal Court). \$875
- 6) Class D and E (District Court). \$630
- 7) Post-Conviction Review. \$1,400
- 8) Probation Revocation. \$630
- 9) Miscellaneous (i.e. witness representation on 5th Amendment grounds, etc.) \$630
- 10) Juvenile. \$630

Effective July 1, 2016:

- 1) Murder. Fee to be set by the Executive Director on a case by case basis.
- 2) Class A. \$3,750
- 3) Class B and C (against person). \$2,813
- 4) Class B and C (against property). \$1,875
- 5) Class D and E (Superior or Unified Criminal Court). \$938
- 6) Class D and E (District Court). \$675
- 7) Post-Conviction Review. \$1,500
- 8) Probation Revocation. \$675

9) Miscellaneous (i.e. witness representation on 5th Amendment grounds, etc.) \$675

10) Juvenile. \$675

- B. In cases involving multiple counts against a single defendant, the maximum fee shall be that which applies to the most serious count. In cases where a defendant is charged with a number of unrelated offenses, Counsel is expected to coordinate and consolidate services as much as possible.
- C. Criminal and juvenile cases will include all proceedings through disposition as defined in Section 5.1.A below. Any subsequent proceedings, such as probation revocation, will require new application and appointment.
- D. When doing so will not adversely affect the attorney-client relationship, Commission-assigned counsel are urged to limit travel and waiting time by cooperating with each other to stand in at routine, non-dispositive matters by having one attorney appear at such things as arraignments and routine non-testimonial motions, instead of having all Commission-assigned counsel in an area appear.
- E. Upon written request to MCILS, assistant counsel may be appointed in a murder case or other complicated cases:
- 1) the duties of each attorney must be clearly and specifically defined and counsel must avoid unnecessary duplication of effort;
 - 2) each attorney must submit a voucher to MCILS. Counsel should coordinate the submission of voucher so that they can be reviewed together. Co-counsel who practice in the same firm may submit a single voucher that reflects the work done by each attorney.

2. District Court Child Protection

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

Effective July 1, 2013:

- 1) ~~Child protective cases (each stage). \$750~~
- 2) ~~Termination of Parental Rights (with a hearing). \$1,050~~

Effective July 1, 2014:

- 1) **Child protective cases (each stage). \$825**
- 2) **Termination of Parental Rights (with a hearing). \$1,155**

Effective July 1, 2015:

- 1) **Child protective cases (each stage). \$1,050**
- 2) **Termination of Parental Rights (with a hearing). \$1,470**

Effective July 1, 2016:

- 1) **Child protective cases (each stage). \$1,125**
- 2) **Termination of Parental Rights (with a hearing). \$1,575**

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

3. **Other Superior Court and District Court Civil**

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

Effective July 1, 2013:

- ~~1) **Application for Involuntary Commitment. \$350**~~
- ~~2) **Petition for Emancipation. \$350**~~
- ~~3) **Petition for Modified Release Treatment. \$350**~~
- ~~4) **Petition for Release or Discharge. \$350**~~

Effective July 1, 2014:

- 1) **Application for Involuntary Commitment. \$385**
- 2) **Petition for Emancipation. \$385**

- 3) **Petition for Modified Release Treatment. \$385**
- 4) **Petition for Release or Discharge. \$385**

Effective July 1, 2015:

- 1) **Application for Involuntary Commitment. \$490**
- 2) **Petition for Emancipation. \$490**
- 3) **Petition for Modified Release Treatment. \$490**
- 4) **Petition for Release or Discharge. \$490**

Effective July 1, 2016:

- 1) **Application for Involuntary Commitment. \$525**
- 2) **Petition for Emancipation. \$525**
- 3) **Petition for Modified Release Treatment. \$525**
- 4) **Petition for Release or Discharge. \$525**

4. **Law Court**

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

Effective July 1, 2013:

- 1) ~~**Appellate work following the grant of petition for certificate of probable cause. \$1,000**~~

Effective July 1, 2014:

- 1) **Appellate work following the grant of petition for certificate of probable cause. ~~\$1,000~~ \$1,400**

Effective July 1, 2015:

- 1) Appellate work on an appeal as of right or following the grant of petition for certificate of probable cause. \$1,960

Effective July 1, 2016:

- 1) Appellate work on an appeal as of right or following the grant of petition for certificate of probable cause. \$2,100

- B. Expenses shall be reimbursed for printing costs and mileage to oral argument at the applicable state rate. Vouchers for payment of counsel fees and expenses must be submitted, including an itemization of time spent.

SECTION 5: MINIMUM FEES

Effective July 1, 2013:

- ~~1. Attorneys may charge a minimum fee of \$125 for appearance as Lawyer of the Day. Vouchers seeking the minimum fee shall show the actual time expended and the size of the minimum fee adjustment rather than simply stating that the minimum fee is claimed. In addition to previously scheduled representation at initial appearance sessions, Lawyer of the Day representation includes representation of otherwise unrepresented parties at the specific request of the court on a matter that concludes the same day. Only a single minimum fee may be charged regardless of the number of clients consulted at the request of the court.~~

Effective July 1, 2014:

1. Attorneys may charge a minimum fee of \$137.50 for appearance as Lawyer of the Day. Vouchers seeking the minimum fee shall show the actual time expended and the size of the minimum fee adjustment rather than simply stating that the minimum fee is claimed. In addition to previously scheduled representation at initial appearance sessions, Lawyer of the Day representation includes representation of otherwise unrepresented parties at the specific request of the court on a matter that concludes the same day. Only a single minimum fee may be charged regardless of the number of clients consulted at the request of the court.

Effective July 1, 2015:

1. Attorneys may charge a minimum fee of \$175 for appearance as Lawyer of the Day. Vouchers seeking the minimum fee shall show the actual time expended and the size of the minimum fee adjustment rather than simply stating that the minimum fee is claimed. In addition to previously scheduled representation at initial appearance sessions, Lawyer of the Day representation includes representation of otherwise unrepresented parties at the specific request of the court on a matter that concludes the same day. Only a single

minimum fee may be charged regardless of the number of clients consulted at the request of the court.

Effective July 1, 2016:

1. Attorneys may charge a minimum fee of \$188 for appearance as Lawyer of the Day. Vouchers seeking the minimum fee shall show the actual time expended and the size of the minimum fee adjustment rather than simply stating that the minimum fee is claimed. In addition to previously scheduled representation at initial appearance sessions, Lawyer of the Day representation includes representation of otherwise unrepresented parties at the specific request of the court on a matter that concludes the same day. Only a single minimum fee may be charged regardless of the number of clients consulted at the request of the court.

SECTION 6: ADMINISTRATION

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

- 2) Order after Jeopardy Hearing
 - 3) Order after each Judicial Review
 - 4) Order after a Cease Reunification Hearing
 - 5) Order after Permanency Hearing
 - 6) Order after Termination of Parental Rights Hearing
 - 7) Law Court Appeal
2. Unless otherwise authorized in advance, all vouchers must be submitted using the MCILS electronic case management program and comply with all instructions for use of the system.
 3. All time on vouchers shall be detailed and accounted for in .10 of an hour increments. The purpose for each time entry must be self-evident or specifically stated. Use of the comment section is recommended.
 4. All expenses claimed for reimbursement must be fully itemized on the voucher. Copies of receipts for payments to third parties shall be retained and supplied upon request.
 5. Legal services provided in the district court for cases subsequently transferred to the superior court shall be included in the voucher submitted to the MCILS at disposition of the case.

STATUTORY AUTHORITY: 4 M.R.S. §§ 1804(2)(F), (3)(B), (3)(F) and (4)(D)

| EFFECTIVE DATE: OCTOBER 5, 2013

**(4.)
Somerset County Contract**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE BROGAN, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: SOMERSET COUNTY CONTRACT DISCUSSION
DATE: July 10, 2014

In response to our RFP for indigent legal services in Somerset County, we received only a single bid that was submitted by the current contract provider. A conditional award has been issued to the bidder. This is not a guaranteed award, but is contingent upon successful negotiation of a final contract.

After the bid was received, the Executive Director learned that one of the four provider attorneys listed in the bid, John Alsop, Esq., had taken a job as a homicide prosecutor in the Office of the Attorney General, and hence, could no longer provide services under the contract. As a result, the Executive Director sought clarification from the bidder "whether the remaining members of the bidder group intend to shoulder the contract load with the three remaining attorneys or whether the bidder group intends to bring on a fourth attorney subject to the proposal's requirements for qualifications." The bidder forwarded a response dated June 20, 2014. Copies of the request for information and the bidder's response are attached.

In light of this change of circumstances and considering the bidder's response, the Executive Director is in need of guidance from the Commission whether or not to seek, during contract negotiations pursuant to the conditional award, agreement on a requirement that at least four attorneys provide services under the contract. I have also attached a copy of the conditional award letter as well as the communication forwarding the letter.

Finally, pending negotiation of a final contract, the existing contract has been extended by agreement through August 31, 2014.

Pelletier, John

From: Pelletier, John
Sent: Monday, June 16, 2014 8:33 AM
To: Phil Mohlar (philmohtar@beeline-online.net)
Subject: MCILS RFP

Phil:

The Commission is in the process of evaluating the Somerset County Private Defenders Program bid in response to the RFP for defense services in Somerset County. I am writing to ask clarifying questions with respect to your proposal to assist us in our evaluation.

The proposal identified four attorneys who would perform services under the contract. It has come to the Commission's attention through public sources that one of those attorneys has taken a job with the Office of the Attorney General and, as a result, will be unable to provide defense services under the contract. The Commission wants to know whether the remaining members of the bidder group intend to shoulder the contract load with the three remaining attorneys or whether the bidder group intends to bring on a fourth attorney subject to the proposal's requirements for qualifications.

The Commission understands that the circumstances described above have arisen suddenly and that the bidder group may require additional time to determine its response to these new circumstances. Accordingly, the Commission is prepared to extend the existing contract under the existing terms for a period of two months while the bidder group determines how it wishes to respond and the Commission continues to evaluate the bid proposal under these new circumstances.

Thank you for your cooperation.

John

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

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Philip Mohlar

June 20, 2014

John Pelletier, Esquire
Maine Commission on Indigent Legal Services
171 State House Station
Augusta, ME 04333

RE: Somerset County Private Defender's Program

Dear John:

I am replying to your email of Monday, June 16, 2014. That email requested that the Somerset County Private Defender's Program respond to the Commission to address the fact that John Alsop, who was an attorney with the program at the time of the bid, is no longer with the program. Specifically, your email indicates that the Commission wants to know whether the remaining members of the bidder group intend to shoulder the contract load or plan to bring on a fourth attorney.

While John Alsop's decision to take a job with the state was rather sudden, the remaining members of the group, Peter Barnett, John Martin and myself, have discussed this development at some length. At the moment, there are no plans to bring on a fourth attorney. Rather, the intent has been to shoulder the current contract load with the three remaining attorneys. I am happy to share the defender's programs' thoughts on why we have approached things in this way.

First, while John Alsop leaving the program does reduce the number of attorney's participating from 4 to 3, his leaving does not change the number of "conflict entities" that exist in the program. That number remains 3, in light of the fact that John Alsop was a partner of mine, meaning that we were one entity for conflict purposes. Further, the attorneys participating in the program retain the ability under Commission guidelines to address all cases that may require appointed counsel. Accordingly, John Alsop's leaving the program has not created conflict situations or limited our flexibility in terms of how cases can be assigned.

Of greater concern to the program has been the issue of how to deal with the workload that John Alsop previously carried. Over the past several years, work has been allocated amongst the contract providers by assignment of cases. My firm has handled 40% of the cases, while John Martin and Peter Barnett have handled 30% of the assigned cases. In part due to the vagaries of the work that is required for cases, and also reflecting the fact that different attorneys handle cases in different ways and work at different rates, the actual time that the program attorneys have allocated to the project has varied over the years. I also note that the attorneys participating in the program have different methods of keeping track of their time on project cases. That fact, together with the fact that payment in the defender's program is not based on reported billed hours probably results in an underreporting in the number of hours that are expended on the project. However, even keeping that fact in mind

reflects that the number of hours that would need to be made up by those members of the program remaining after John Alsop's departure is probably less than 10 hours per week. (I note that this estimate does not take into account murder, manslaughter or other cases, which can dramatically skew program time commitments.)

Both Peter Barnett and John Martin dedicate a significant majority of their practice to handling of program cases. Having said that, both of those attorneys have significant time available to expand the percentage of the project that they handle. Both attorneys have expressed a willingness to take on an additional percentage of the project if it turns out it is not feasible for me to pick up John Alsop's work and continue to handle 40% of the project cases. Given how recently John Alsop has departed, I have not yet been able to develop a feel for how his departure will affect other areas of my practice. It is conceivable that I may find myself with more non-project cases or fewer non-project cases. If it turns out that my practice becomes too busy with other cases, then I would be looking to lower my percentage of project cases and switch them to Attorneys Barnett and Martin.

Having discussed this issue in detail and based on our past experiences, all three attorneys in the program believe it is well within our capability to handle the existing project caseload without the need to add a fourth attorney. Having said that, if things develop in such a way that we feel that we are not capable of keeping up with the workload, the program would look to add a fourth attorney to the program. We recognize that any attorney that we would bring in to the program would have to pass muster with the Commission. Whether the addition of fourth attorney would take place through seeking a fourth entity to join the existing three entities, or through one of the existing entities hiring another attorney has not been specifically discussed. However, either option would be available should the need for a fourth attorney present itself.

I also think it is relevant to note that the two assistant district attorneys in Somerset County handle all criminal cases in the county regardless of whether they involve pro se defendants, appointed project counsel or retained defense attorneys. They receive little assistance from other attorneys in the prosecutorial district coming to Somerset County and handling cases. Accordingly, you have 2 attorneys for the state handling a workload that is larger than the workload that the 3 project members are handling. While it is true that the District Attorney's Office operates with a much larger budget than the defender's program, (There will be more expenses, at least based on the 2014 fiscal year budget that is in excess of \$386,000, which I do not believe includes the salaries of the assistant district attorneys, who are funded through the Attorney General's Office.), the fact remains that they are operating with fewer attorneys to handle more cases.

I hope that this information is responsive to your Commission's request. As reflected by the fact that we entered a bid for the project, we are definitely interested in continuing forward with the program's work. If the Commission has further questions or requires more specific information, please let me know. We would make ourselves available to meet with the Commission to discuss the matter further or to address any specific concerns that may exist. The bottom line is that we have considered the issue raised in your email and are confident that we can continue to supply quality legal services to indigent defendants in Somerset County without adding a fourth attorney. In the event our analysis is wrong, we are fully prepared to add a fourth attorney. I think that the track

John Pelletier, Esquire
June 20, 2014
Page Three

record of the project and its attorneys over the years reflects our success in providing quality legal services to indigent defendants.

To the extent that the Commission's continuing review of our bid may require additional time before a final decision is made, the program is prepared to extend the existing contract for a period of time. Our preference would be to do so on a month to month basis, as opposed to a longer period of time. Further, given that the financial aspects of the contract play out over a longer term basis, we suggest that if there are any forthcoming murder or manslaughter cases, the project would pick those cases up during the extension, but would be released from an ongoing obligation to cover them under the project in the event that we are not ultimately awarded the bid.

Sincerely yours,

SOMERSET COUNTY PRIVATE DEFENDER PROGRAM

By _____
Philip Mohlar, Esq.

PM/nla

Pelletier, John

From: Pelletier, John
Sent: Thursday, July 10, 2014 9:55 AM
To: Phil Mohlar (philmohtar@beeline-online.net)
Subject: Notice of Conditional Contract Award under RFP # 201404725
Attachments: Signed Award Letter.pdf

Attorney Mohlar:

Attached please find a Notice of Conditional Award with respect to the above-captioned RFP. The original will follow by regular mail.

Per my email to you dated June 16, 2014 presenting clarifying questions with respect to your bid, the Commission is aware that one attorney listed as providing services in the bid document is no longer available to do so. The Commission requested the bidder's intention with respect to whether an additional lawyer would be brought in as a provider or whether the bidder intended to fulfill the contract with the remaining attorney service providers. The Commission received your response dated June 20, 2014.

The full Commission will consider your response at its meeting on July 15, 2014. The meeting is in the Judiciary Committee room on the fourth floor of the Statehouse and will begin at 9:30 a.m. I expect that the Commission will be considering whether or not to seek, during contract negotiations pursuant to this condition award, agreement on a requirement that at least four attorneys provide services under the contract. One or more representatives of your bid group are welcome to attend.

Let me know if you have any questions.

John

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

Tel: 207 287-3254
Fax: 207 287-3293
email: john.pelletier@maine.gov



STATE OF MAINE
MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Paul R. LePage
Governor

John D. Pelletier,
Esq. Executive Director

Sent via email 7/10/14

Phil Mohlar, Esq.
Somerset county Private Defender's Program
P.O. Box 189
Skowhegan, ME 04976

SUBJECT: Notice of Conditional Contract Award under RFP # 201404725,
Somerset County Indigent Legal Services

Dear Attorney Mohlar:

This letter is in regard to the subject Request for Proposals (RFP), issued by the Maine Commission on Indigent Legal Services for Somerset County Indigent Legal Services. The Commission has evaluated the proposals received using the evaluation criteria identified in the RFP, and the Commission is hereby announcing its conditional contract award to the following bidder:

- Somerset county Private Defender's Program

The bidder listed above received the evaluation team's highest ranking. The Department will be contacting the aforementioned bidder soon to negotiate a contract. As provided in the RFP, the Notice of Conditional Contract Award is subject to execution of a written contract and, as a result, this Notice does NOT constitute the formation of a contract between the Department and the apparent successful vendor. The vendor shall not acquire any legal or equitable rights relative to the contract services until a contract containing terms and conditions acceptable to the Commission is executed. The Commission further reserves the right to cancel this Notice of Conditional Contract Award at any time prior to the execution of a written contract as set forth in Chapter 110, Section (3) of the Rules of the Department of Administrative and Financial Services, Division of Purchases.

As stated in the RFP, following announcement of this award decision, all submissions in response to the RFP are 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.; 5 M.R.S. § 1825-B (6).

This award decision is conditioned upon final approval by the State Procurement Review Committee and the successful negotiation of a contract. A Statement of Appeal Rights has been provided with this letter; see below.

Thank you for your interest in doing business with the State of Maine.

Sincerely,



John D. Pelletier, Esq.
Executive Director
287-3254
john.pelletier@maine.gov

STATEMENT OF APPEAL RIGHTS

Any person aggrieved by an award decision may request an appeal hearing. The request must be made to the Director of the Bureau of General Services, in writing, within 15 days of notification of the contract award as provided in 5 M.R.S. § 1825-E (2) and the Rules of the Department of Administrative and Financial Services, Bureau of General Services, Division of Purchases, Chapter 120, § (2) (2).

(5.)

**Attorney Removal Rule
Amendment Discussion**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE BROGAN, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: AMENDMENT AUTHORIZING REMOVAL OF ATTORNEYS FROM THE ROSTER
DATE: July 10, 2014

Attached is a draft revision of Chapter 2: STANDARDS FOR QUALIFICATIONS OF ASSIGNED COUNSEL that addresses the Executive Director's authority to remove an attorney from the roster for malfeasance or lack of fitness. The draft is based on the discussion on this issue at the last Commission meeting. The draft also makes non-substantive stylistic changes and removes an outdated provision.

Chapter 2: STANDARDS FOR QUALIFICATIONS OF ASSIGNED COUNSEL

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

SECTION 1. Application

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

SECTION 2. Minimum Experience, Training And Other Eligibility Requirements

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

1. Licensed To Practice

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

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

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

1. ~~Licensed To Practice~~

~~The attorney must be licensed to practice law in the State of Maine. The attorney must be in good standing with the Maine Board of Overseers of the Bar and must promptly inform the Commission of a complaint against him or her before the Maine Board of Overseers of the Bar that has been set for a grievance or panel hearing. The attorney must inform the Commission within 30 days of any criminal conviction or any other resolution of a criminal charge in any jurisdiction that is not an outright dismissal or~~

~~acquittal, including but not limited to a deferred disposition pursuant 17-A-M.R.S.A. §1348-A or a Maine Rule of Criminal Procedure 11B filing of a criminal charge against the attorney.~~

2. Attorney Cooperation with Procedures and Monitoring

The attorney must register with the Commission annually in a manner prescribed by the Commission. The attorney must comply with all applicable Commission rules and procedures. The attorney must comply with Commission monitoring, and performance evaluations. The attorney must also comply with any, and Commission investigations of any complaints, including billing discrepancies, by the Commission or its designee, or other information that, in the view of the Executive Director, concerns the question whether the attorney is fit to remain on the roster. Except as pertains to indigent cases assigned to the attorney, the Executive Director cannot require an attorney to disclose information that is privileged or made confidential by statute, by court rule or by court order.

SECTION 3. Office, Telephone, and Electronic Mail

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

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

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

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

SECTION 4. Experience and Proficiency

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

~~1. For the first year of the Commission's operation, which is July 2010 to June 30, 2011, if the attorney has been assigned cases by the judicial branch prior to July 1, 2010, the attorney must satisfactorily complete a Commission-approved training course for the area of the law for which the attorney is willing to accept appointments, including but not limited to, criminal defense, juvenile defense, civil commitment or child protective, within 12 months of first assignments from the Commission; or~~

~~21.~~ After the first year of the Commission's operation, aAny attorney not previously having been accepted to receive appointments- assignments from the Commission must satisfactorily complete a Commission-sponsored or Commission-approved training

course for the area of the law for which the attorney is ~~willing seeking to accept~~ appointments receive assignments, including but not limited to, criminal defense, juvenile defense, civil commitment, ~~or child protective, or emancipation prior to being placed on~~ the roster and receiving to accepting assignments; or

32. An attorney may be accepted ~~to for placement on the roster and~~ receive assignments from the Commission without completing a Commission-sponsored or Commission-approved training course as provided above if the attorney demonstrates to the Commission a commitment to and proficiency in the practice of the area of law for which the Attorney is willing to accept ~~appointments assignments~~ over the course of at least the three years prior to receiving ~~appointments assignments~~ from the Commission.

SECTION 5. Training

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

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

SECTION 6. Removal from the Roster

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

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

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

EFFECTIVE DATE:

— June 25, 2010

(6.)
Specialized Panel Rule
Discussion

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE BROGAN, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: DRAFT AMENDMENT TO SPECIALIZED PANEL RULE
DATE: July 10, 2014

Attached is a draft revision of Chapter 3: ELIGIBILITY REQUIREMENTS FOR SPECIALIZED CASE TYPES based on our discussion at the last Commission meeting. Note that the draft contains two additions to the list of sex offenses that involve crimes subject to sex offender registration requirements. The draft also notes areas where the staff believed that its record of the Commission discussion was ambiguous, and so was not certain how to draft a particular provision.

02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

94-649 MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Chapter 3: ELIGIBILITY REQUIREMENTS FOR SPECIALIZED CASE TYPES

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

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

1. **Contested Hearing.** "Contested Hearing" means a hearing at which a contested issue is submitted to the court for resolution after evidence is taken or witnesses are presented.

2. **Domestic Violence.** "Domestic Violence" means:
 - A. Offenses denominated as Domestic Violence under 17-A M.R.S.A. §§ 207-A, 209-A, 210-B, 210-C, and 211-A;
 - B. Any class D or E offense alleged to have been committed against a family or household member or dating partner;
 - C. The class D offense of stalking under 17-A M.R.S.A. § 210-A;
 - D. Violation of a protection order under 17-A M.R.S.A. § 506-B.
 - E. "Domestic Violence" includes crimes involving substantially similar conduct in another jurisdiction.
 - F. "Domestic Violence" also includes Criminal Conspiracy under 17-A M.R.S.A. § 151, Criminal Attempt under 17-A M.R.S.A. § 152, and Criminal Solicitation under 17-A M.R.S.A. § 153 to commit any of the offenses listed above.

3. **Serious Violent Felony.** "Serious Violent Felony" means:
 - A. An offense under 17-A M.R.S.A. §§ 152-A (Aggravated Attempted Murder), 208

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(Aggravated Assault), 208-B (Elevated Aggravated Assault), 208-C (Elevated Aggravated Assault on a Pregnant Person), 301 (Kidnapping), 401(1)(B)(1), (2), or (3) (Burglary with a Firearm, Burglary with Intent to Inflict Bodily Harm, and Burglary with a Dangerous Weapon), 651 (Robbery), 802 (Arson), 803-A (Causing a Catastrophe), 1105-A (Aggravated Trafficking of Scheduled Drugs), 1105-B (Aggravated Trafficking of Counterfeit Drugs), and 1105-C (Aggravated Furnishing of Scheduled Drugs).

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B. "Serious Violent Felony" includes crimes involving substantially similar conduct in another jurisdiction.

C. "Serious Violent Felony" also includes Criminal Conspiracy under 17-A M.R.S.A. § 151, Criminal Attempt under 17-A M.R.S.A. § 152, and Criminal Solicitation under 17-A M.R.S.A. § 153 to commit any of the offenses listed above.

4. Sex Offense. "Sex Offense" means:

A. ~~An offense under 17-A M.R.S.A. §§ 251-259-A (Sexual Assaults), §§ 281-285 (Sexual Exploitation of Minors), § 556 (incest), § 511(1)(D) (Violation of Privacy), § 852 (Aggravated Sex Trafficking), and § 855 (Patronizing Prostitution of Minor or Person with Mental Disability).~~

Comment [A1]: Two non-SORNA offenses were removed

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Comment [A2]: These two offenses were not discussed at the June meeting, but both have SORNA registration requirements.

B. "Sex Offense" includes crimes involving substantially similar conduct in another jurisdiction.

C. "Sex Offense" also includes Criminal Conspiracy under 17-A M.R.S.A. § 151, Criminal Attempt under 17-A M.R.S.A. § 152, and Criminal Solicitation under 17-A M.R.S.A. § 153 to commit any of the offenses listed above.

5. Specialized Case Types. "Specialized Case Types" means those cases that are complex in nature due to the allegations against the person as well as the severity of the consequences if a conviction occurs. They include the following case types:

- A. Homicide, including OUI manslaughter
- B. Sex offenses
- C. Serious violent felonies
- D. Operating under the influence
- E. Domestic violence
- F. Juvenile defense
- G. Protective custody matters
- H. Involuntary commitment

SECTION 2. Powers and Duties of the Executive Director

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

SECTION 3. Minimum Eligibility Requirements for Specialized Case Types.

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

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

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

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

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

- A. Have at least two years of criminal law practice experience;
- B. Have tried as first chair at least four criminal or civil cases in the last ten years, at least two of which were jury trials and at least two of which were criminal trials; and
- C. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a serious violent felony.
- D. At the applicant's discretion, he or she may submit letters of reference from

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attorneys with whom the applicant does not practice, that assert that the applicant is qualified to represent individuals charged with a serious violent felony. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author. Letters of reference shall be submitted upon the request of the Executive Director, or his or her designee.

4. **Operating Under the Influence.** In order to be rostered for OUI cases an attorney must:

- A. Have at least one year of criminal law practice experience;
- B. Have tried before a judge or jury as first chair at least two criminal cases, and conducted at least two contested hearings within at least the last ten years;
- C. Have obtained in the last three years at least four hours of CLE credit on topics relevant particularly to OUI defense; and
- D. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with an OUI,
- E. At the applicant's discretion, he or she may submit letters of reference from attorneys with whom the applicant does not practice, that assert that the applicant is qualified to represent individuals charged with an OUI. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author. Letters of reference shall be submitted upon the request of the Executive Director, or his or her designee.

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5. **Domestic Violence.** In order to be rostered for domestic violence cases an attorney must:

- A. Have at least one year of criminal law practice experience;
- B. Have tried before a judge or jury as first chair at least two criminal cases and conducted at least two contested hearings within at least the last ten years;
- C. Have obtained in the last three years at least four hours of CLE credit on topics related to domestic violence defense which included training on the collateral consequences of such convictions; and
- D. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a domestic violence crime,
- E. At the applicant's discretion, he or she may submit letters of reference from attorneys with whom the applicant does not practice, that assert that the applicant

Comment [A3]: The two sets of notes from the meeting were in conflict about whether the Commissioners wanted to keep or delete this case type from the specialized panel rule.

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is qualified to represent individuals charged with a domestic violence crime. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author. Letters of reference shall be submitted upon the request of the Executive Director, or his or her designee.

6. **Juvenile Defense.** In order to be rostered for juvenile defense cases an attorney must:

A. For civil offenses and misdemeanor cases:

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

Deleted: Have at least 6 months criminal or civil law practice experience or have completed a legal internship at a district attorney's office or have completed a legal internship in a juvenile law clinic;="

B. For felony cases and sex offense cases:

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

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Executive Director.

C. For Bind-over Hearings:

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- 1) Have at least two years of juvenile law practice experience;
- 2) Have handled at least 20 juvenile cases to conclusion in the past ten years;
- 3) Have tried at least 10 contested juvenile hearings (including but not limited to: detention hearings, evidentiary hearings, adjudication hearings, and dispositional hearings in the past ten years);
- 4) Have attended in the last three years at least eight hours of CLE credit that cover all of the following topics devoted to juvenile defense including training and education regarding placement options and dispositional alternatives, child development, adolescent mental health diagnosis and treatment, issues and case law related competency, bind-over procedures, and the collateral consequences of juvenile adjudications; and
- 5) Provide a letter explaining reasons for interest in and qualifications for representing juveniles in competency and bind-over hearings,

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6) At the applicant's discretion or upon request by the Executive Director, the applicant may submit letters of reference from attorneys with whom the applicant does not practice, that assert that the applicant is qualified to represent juveniles in bind-over hearings. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author. Letters of reference shall be submitted upon the request of the Executive Director, or his or her designee.

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

A.

Deleted: Have at least one year of criminal or civil law experience,

- B. Have conducted at least four contested hearings within the last five years;
- C. Have attended in the last three years at least four hours of CLE credit on topics related to the representation of parents in protective custody proceedings;
- D. Provide a letter explaining reasons for interest in and qualifications for representing parents in protective custody proceedings; and

E. At the applicant's discretion, he or she may submit letters of reference from attorneys with whom the applicant does not practice, that assert that the applicant is qualified to represent parents in protective custody cases. The letters of reference must be submitted directly to the Executive Director, or his or her

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designee, by the author. Letters of reference shall be submitted upon the request of the Executive Director, or his or her designee.

- F. If a Petition to Terminate Parental Rights is filed and the attorney of record has not previously tried as a first or second chair a termination of parental rights hearing, or has less than 6 months of child protection experience, then the attorney of record must file a request with the MCILS for a more experienced attorney to serve as a second chair to assist the attorney of record in preparation of and with the termination of parental rights hearing.

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

Comment [A4]: The two sets of notes from the meeting were not clear about whether the Commissioners wanted to keep or delete this case type from the specialized panel rule.

- A. Have at least one year of criminal or civil law practice experience;
B. Have conducted at least four contested hearings within the last five years;
C. Have attended in the last three years at least four hours of CLE credit on topics devoted to the representation of individuals with mental health issues, including training and education regarding placement options and dispositions, mental health diagnosis and treatment and the collateral consequences of involuntary commitments; and
D. Provide a letter explaining reasons for interest in and qualifications for representing individuals facing involuntary commitment,
E. At the applicant's discretion, he or she may submit letters of reference from attorneys with whom the applicant does not practice, that assert that the applicant is qualified to represent individuals facing involuntary commitment. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author. Letters of reference shall be submitted upon the request of the Executive Director, or his or her designee.

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SECTION 4. Waiver of Certain Eligibility Requirements

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

the indigent people whose charges or litigation matters are covered by this rule.

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

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

(7.)
Appellate Panel
Discussion

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE BROGAN, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: POTENTIAL APPELLATE PANEL DISCUSSION
DATE: July 10, 2014

At the last Commission meeting, discussion of a potential appellate panel was deferred to the upcoming meeting. The staff did receive feedback from one Commissioner regarding the memo presented at that time, but we still feel in need of further guidance before attempting to craft a draft rule. I have attached the memo presented last time, as well as a copy of Commissioner Logan's feedback.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE BROGAN, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: DISCUSSION – CREATION OF AN APPEALS ROSTER
DATE: May 2, 2014

ROSTER OF APPELLATE ATTORNEYS

At the invitation of Supreme Court Justice Ellen Gorman, Ellie and I met with Justice Gorman, Justice Alexander, and Law Court Clerk Matthew Pollack to discuss their request that MCILS create a roster of appellate attorneys. The Law Court often encounters confusion and lack of communication regarding appeals where trial counsel is no longer representing the appellant.

Under the Rules of Criminal Procedure, and by statute in child protective cases, trial counsel continues on appeal unless allowed to withdraw by the court. The need to assign new counsel arises when either trial counsel does not want to do the appeal or the appellant wants a new lawyer on appeal. Currently in such situations, the trial court is supposed to make the assignment of substitute counsel. The Law Court finds that sometimes they receive a file with an order allowing trial counsel to withdraw, but there has been no assignment of substitute counsel. At other times, the trial court has assigned substitute counsel, but there is no indication in the file to that effect, so the Law Court is under the misimpression that trial counsel is appellate counsel.

To remedy this situation, the Law court is considering changing current practice so that whenever trial counsel will not be representing the appellant, the Law court will the assign the new attorney. Because they will be assuming this function, they would like an MCILS roster of appellate attorneys to work from.

We also discussed briefly the criteria for placing an attorney on the appellate roster. They expressed concern about having experience doing appeals be the principal requirement because, at least in the view of the Justices that we met with, some attorneys who are often assigned as substitute counsel do a poor job. Ellie and I related the Commission's view that placement on the roster does not guarantee that a lawyer will receive assignments and that the court could exercise discretion in determining who to assign. That suggestion was welcomed, but the Justices also inquired whether the court itself could determine who would be on the roster. We let them know that courts do not currently determine who is on MCILS rosters and that their suggestion would have to be discussed with the Commissioners.

Although the possibility was discussed, the Justices present were not in favor of a rule that appellate counsel should always be different from trial counsel. We noted that if the default position is that

trial counsel continues on appeal, many attorneys who might not be on the appellate roster would continue to do appeals. The response we received was that they see fewer problems with trial counsel continuing on appeal and that problems were more prevalent when new counsel was assigned for the appeal. Hence, their desire that we create a roster of qualified attorneys that they could use to assign counsel when trial counsel is no longer in the case.

The justices did raise an additional point about the current presumption that trial counsel continues on appeal unless granted leave to withdraw. While, as stated above, the Justices did not want to prohibit trial counsel from doing the appeal, they were considering whether to change the rule so that trial counsel's responsibility would end with the trial. Under such a system, trial counsel could apply to continue on appeal, but unless trial counsel affirmatively expressed interest, the Law Court would automatically find new counsel for the appeal. The Justices inquired whether lawyers generally would prefer such a system and asked that we seek feedback from our rostered attorneys on the question.

Finally, the Justices requested that they be kept apprised and that they be allowed provide input with respect to any deliberations the Commission might undertake with respect to the creation of an appellate roster.

(8.)
Conference Room
Sound System

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE BROGAN, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: INTERNET BROADCAST SYSTEM
DATE: July 10, 2014

I have obtained information regarding the cost of equipping the conference room at 19 Union Street with an internet broadcast capability. I have attached a rate sheet from InfoME, the State's provider for this service. It appears that we would need a subscription of \$700 per month, plus we would need to purchase the microphones. Note that the rate sheet contemplates streaming both video and audio. There is no lower priced option for audio only.

Note that the Commission cannot reliably schedule its meetings in the Judiciary Committee room when the Legislature is in session. We could meet in the 19 Union Street conference room without broadcast capability, or we could seek an alternative place to meet. The Commission should formulate a plan because even if used without broadcasting capability, the conference room at 19 Union Street would need to be scheduled well in advance.

InforME Live Media Services Rate Sheet

April 2010

Live media services will be provided to agencies under an InforME Service Level Agreement. This agreement will specify terms of service and fees, and must be signed by the agency and InforME and approved by the InforME contract administrator. Any applicable service fees will be billed to the agency on a monthly basis.

Monthly Streaming Media Subscription A:

This package pricing is intended for agencies with a moderate level of regularly scheduled or monthly events for streaming. The flat monthly fee provides use of a content delivery network including necessary bandwidth, with a maximum level of bandwidth. If the monthly bandwidth allowance is exceeded, the agency will incur additional per-user-minute fees.

Monthly Fee: \$700

- Includes 2,000 GB data transfer (bandwidth)
- Per-gigabyte overage charge for bandwidth usage: \$0.35

Monthly Streaming Media Subscription B:

This package pricing is intended for agencies with high-viewership or a high level of monthly events for streaming. The flat monthly fee provides use of a streaming server including necessary bandwidth, with a maximum level of bandwidth. If the monthly bandwidth allowance is exceeded, the agency will incur additional per-user-minute fees.

Monthly Fee: \$1,600

- Includes 5,000 GB data transfer (bandwidth)
- Per-gigabyte overage charge for bandwidth usage: \$.035

Pay-Per-Use Media Streaming:

This option is for agencies with limited or one-time needs to stream events. Pricing is based on a flat event fee plus a fee based the number of user-minutes incurred during the event. A user-minute is one minute of audio or video content consumed by one viewer/listener during the event. User minutes for an event are calculated by the length of the event multiplied by the number of viewer/listeners for the event.

- \$300 per event plus \$0.02 per user-minute

Additional Fees:

Real-time captioning services: \$340 per hour of content
Captioning is required for all streamed events by Executive Branch agencies, per state policy.

An additional \$30 fee per hour of content applies if you wish to keep the text transcription file. Note: The transcription file is not a final, edited transcription; it is the actual text from the real-time captioning and may contain errors.

Optional Services:

Archiving of recordings: \$50 flat fee per recording
Archiving provides the downloadable recording within the Agency's administrative site for 15 days.

Rental of Pre-configured Media Laptop: \$150 per day

Pricing Examples

Pricing Example 1 – Tier 1 One Time Event:

Example Event: 2 hour public meeting with approximately 50 viewers

Streaming Fee: \$420

Captioning Fee: \$680

Copy of Transcript (optional): \$60

Archiving Fee (optional): \$50

Equipment Fee (optional): \$150

Total Example Event Fees: \$1,360

(\$13 per user hour)

(Does not include fees associated with video/audio equipment, set up, recording, etc)

Pricing Example 2 – Monthly Subscription A:

Example with four 2-hour meetings per month with approximately 50 viewers each

Streaming Fee: \$700 (monthly charge)

Captioning Fees: \$2,720

Copies of Transcripts (optional): \$240

Archiving Fees (optional): \$200

Equipment Fees (optional): \$600

Total Example Month Fees: \$4,060

(\$10 per user hour)

(Does not include fees associated with video/audio equipment, set up, recording, etc)