

MCILS

June 10, 2014

**Commissioner's Meeting
Packet**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

**JUNE 10, 2014
COMMISSION MEETING
AGENDA**

- 1) Approval of May 13, 2014 Commission Meeting Minutes
- 2) Operations Reports Review
- 3) Rule-Making Discussion
- 4) Juvenile Specialized Panel Update
- 5) Contracts Update
- 6) Public Comment
- 7) Set Date, Time and Location of Next Regular Meeting of the Commission
- 8) Executive Session, likely needed (Closed to Public)

(1.)
May 13, 2014
Commission Meeting
Minutes

**Maine Commission on Indigent Legal Services – Commissioners Meeting
May 13, 2014**

Minutes

Commissioners Present: Steven Carey, Marvin Glazier, Kenneth Spirer

MCILS Staff Present: John Pelletier, Executive Director

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Approval of the April 8, 2014 Commission Meeting Minutes	Copy of minutes received by all Commissioners.	Commissioner Glazier moved for the approval of the minutes. Commissioner Spirer seconded. All present voted in favor. Approved.
Operations Reports Review	Director Pelletier presented the <u>April 2014 Operations Reports</u> . The number of new cases opened in DefenderData totaled 1,880 – a 585 case decrease from March, which had been the highest monthly total in more than 12 months. Voucher costs continued to run high, with 2,661 vouchers paid in April totaling \$1,230,090 – a 57 voucher and \$136,000 increase over March. The average price per voucher was \$462.27, an increase of \$42.11 per voucher over March. The yearly price per voucher is rose to \$430, while last year’s price per voucher was \$411. Appeal and Post-Conviction Review cases were the highest average vouchers. Nine vouchers exceeding \$5,000 were paid. The April transfer of counsel fees, which reflected March’s collections, totaled \$75,424, down from the previous month’s record collection total but still well above our average monthly collections for the year.	
Rule-Making Discussion	For the rule-making portion of the agenda, the staff had provided the Commissioners with three “issue papers” outlining potential modifications, and issues related thereto, of the Commission’s attorney eligibility rules. These involved issues related to: 1) creation of a process for removing attorneys from the roster on the basis of lack of fitness or misconduct; 2) modification of the specialized panel rule to address practical issues regarding their structure and implementation; and 3) the creation of an appellate roster and qualifications therefor. The Commissioners quickly arrived at a consensus that discussion of these substantive issues would be better left to a meeting at which all Commissioners could be in attendance. It was decided that these items would be moved	Commissioner Glazier moved to propose a fee schedule amendment raising the hourly rate to \$70.00/hr. beginning July 1, 2015 and \$75.00/hr. beginning July 1, 2016 and send it out to public comment. Commissioner

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>to the agenda for the June meeting.</p> <p>The staff had also drafted a with a proposed fee schedule amendment that raised the hourly rate to \$70.00/hr. beginning July 1, 2015 and \$75.00/hr. beginning July 1, 2016. Director Pelletier pointed out that amendment of the fee schedule was now designated as major-substantive rule-making requiring legislative review and approval of any proposed fee increase. He also pointed out that initiating the rule-making promptly would give the Commission ample time to work through the rule-making process prior to the Legislature's return and would also provide a basis for calculation of a proposed biennial budget that will need to be submitted in the fall.</p> <p>Chair Carey pointed out that the proposed amendment was identical to the amendment crafted in 2012-2013 after extensive information gathering and a full rule-making process. He suggested that the considerations that led to the earlier proposal remained in place, namely, the need to ensure that assigned counsel receive reasonable compensation while balancing the demand on limited State resources. The other Commissions agreed. Chair Carey went on to suggest that perhaps the Commission should propose a straight increase to \$75.00/hr. rather than an incremental process. Commissioners Glazier and Spirer both responded that an incremental proposal would be more appropriate given the budget demands on the Legislature.</p> <p>The Commission then voted unanimously to send the proposed rule as drafted out to public comment. Director Pelletier pointed out that he had prepared proposed rule-making documents for submission to the Secretary of State's office that day, which would allow a public hearing to be held on June 10, 2014. The Commissioners agreed that the hearing should be set for 11:00 a.m. that day.</p> <p>Commissioner Spirer then suggested that the Commission contemplate ways to work with practicing attorneys to improve the coordination and effectiveness of attorney presentations to the Legislature during its deliberations on any proposed rate increase.</p>	<p>Spirer seconded. All present voted in favor.</p>
Budget Discussion	<p>Director Pelletier reported that a financial order necessary to transfer \$50,000.00 from the Commission's Personal Services account to the All Other account, as authorized by the supplemental budget for 2014, had been submitted to the Budget Office and was pending review by the Governor on May 8, 2014. He also reported that due to a recent substantial</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>increase in collection of reimbursements, a financial order to increase the allotment in the Revenue account by \$80,000.00 had been submitted to the Budget Office so that the Commission could spend all sums collected during the current fiscal year. That financial order was also slated for review by the Governor on May 8th.</p> <p>Director Pelletier stated that with the infusions to our All Other account and increased spending authority for our Revenue account, the Commission remains on track to cover all of its costs for the balance of the fiscal year.</p> <p>Finally, Director Pelletier pointed out that the supplemental budget for fiscal year 2015 was recently enacted over the Governor's veto. That budget contained \$490,000.00 for MCILS, one-half of our supplemental budget request for FY' 15, intended to cover the projected shortfall in the Commission's baseline budget for the first half of fiscal year 2015. The budget also contained \$17,500.00, also one-half of the amount we requested, to fund a \$5.00/hr. increase in the rate of pay for private investigators. The budget contains language stipulating that the increase for payments to private investigators is to be effective on January 1, 2015.</p> <p>Chair Carey thanked the Legislature as a whole and the members of the Appropriations Committee who worked on Commission budget issues for their support during the recent legislative session.</p>	
<p>Juvenile Specialized Panel</p>	<p>The initial deadline for juvenile panel applications has passed and 100 applications have been received. Justiceworks is working on the DefenderData changes necessary to implement the new rosters with an implementation target of early June.</p> <p>Director Pelletier related his concern that to date, only a single attorney from Aroostook County had submitted an application. The Commissioners agreed that Director Pelletier should reach out to lawyers in Aroostook County to encourage them to submit applications. Commissioner Glazier also encouraged the staff to get the word out about training necessary to meet the juvenile panel requirements, whether the replay of the MCILS advanced juvenile training or other relevant trainings.</p>	
<p>Training</p>	<p>The training schedule for the balance of this calendar year has been set.</p> <p>The Commission will be: 1) presenting minimum standards video replays on June 12, 23,</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>and 24; 2) co-sponsoring a Civil Commitment training with the Disability Rights Center to be presented on July 25th at the Penobscot Judicial Center in Bangor; 3) presenting a video replay of our Advanced Juvenile training on September 18th in Augusta; 4) presenting an Advanced Criminal training on October 23rd and 24th at the Haraseeket Inn in Freeport; 5) presenting minimum standards video replays for criminal, child protective and emancipation in November on dates to be determined; and 6) presenting a live Juvenile Law minimum standards training in conjunction with the Maine State Bar Association as part of the Bridging the Gap program on December 4th.</p> <p>The Commissioners expressed pleasure that the Commission planned to work with the Disability Rights Center, whose Executive Director Kim Moody had served as an original member of the Commission. Chair Carey also said he was excited about the agenda for the advanced criminal training and was looking forward to providing that training to Commission attorneys. Finally, Chair Carey and Director Pelletier will be speaking on MCILS issues at the MACDL training on June 12, 2014.</p>	
Contract Update	The Somerset County RFP has been published with bids due on May 16 th . In addition, after Chair Carey and Director Pelletier met with the purchasing office, the Commission was granted permission to negotiate an extension of the Justiceworks contract without having to go through the RFP process.	
Public Comment	None	
Adjournment of meeting	<p>The Commission then voted to adjourn with the next meeting to be on June 10, 2014, at in the Judiciary Committee Room. In light of the public hearing scheduled for 11:00 a.m., the Commissioners determined that the June 10th Commission meeting will begin one-half hour earlier than usual at 9:00 a.m.</p> <p>Commissioner Glazier also noted that he would have a schedule conflict were the August meeting to occur on the regular schedule and that the November meeting would fall on Veteran's Day. Chair Carey asked that all Commissioners bring their calendars to the next meeting so the Commission can work out its meeting schedule for the balance of the year.</p>	Commissioner Glazier made a motion to adjourn. Commissioner Spirer seconded. All present voted in favor.

(2.)
Operations Reports
Review

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
SUBJECT: MAY 2014 OPERATIONS REPORTS
DATE: JUNE 3, 2014

Attached you will find the May, 2014 Operations Reports for your review and our discussion at the upcoming Commission meeting on June 10, 2014. A summary of the operations reports follows:

- 2,241 new cases were opened in the DefenderData system in May. This was a 361 case increase over April.
- The number of vouchers submitted electronically in May was 2,453, an increase of 82 vouchers over April, totaling \$1,114,331.69, an increase of \$30,000 from April. In May, we paid 2,390 electronic vouchers totaling \$1,034,909.09. This was a 270 voucher and \$195,000 decrease from April. Our current budget posture shows us on track of cover all our expenses in the current fiscal year.
- There was one paper voucher submitted and paid in May totaling \$584.60.
- The average price per voucher in May was \$433.08, down \$29.19 per voucher from April, bringing the year-to-date voucher average to \$430.79.
- Appeal and Post-Conviction Review cases had the highest average vouchers in May. There were 4 vouchers exceeding \$5,000 paid in May. These cases involved: 1) an acquittal on a kidnapping charge after a 5 day trial; 2) the denial of a petition to terminate parental rights after a 3 day trial; 3) the reversal of a Gross Sexual Assault conviction on appeal; and 4) an appeal in which a gross sexual assault conviction was affirmed.

In our All Other Account, the total expenses for the month of May were \$1,161,264.53. Of the amount, \$9,856.21 was devoted to the Commission's operating expenses.

In the Personal Services Account, we had \$46,789.37 in expenses for the month of May.

In the Revenue Account, our monthly transfer from the Judicial Branch for counsel fees for the month of May, which reflects April's collections, totaled \$66,101.99, putting us on track to collect \$50,000.00 or more in excess of the amount projected at the beginning of the year.

In our Conference Account, we began receiving registration fees for our June minimum standards training, but we paid expenses associated with videotaping an OUI seminar co-

sponsored with the York Bar Association during May, leaving the account balance at \$19,891.91.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Case Type

5/31/2014

DefenderData Case Type	May-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	10	14	\$ 22,732.99	18	\$ 35,414.83	\$ 1,967.49	127	133	\$ 188,769.50	\$ 1,419.32
Child Protection Petition	171	361	\$ 187,976.10	311	\$ 173,871.14	\$ 559.07	1,789	3,438	\$ 1,753,270.20	\$ 509.97
Drug Court	0	8	\$ 5,125.00	10	\$ 4,020.00	\$ 402.00	1	72	\$ 34,834.92	\$ 483.82
Emancipation	8	5	\$ 1,420.00	6	\$ 1,100.00	\$ 183.33	86	81	\$ 20,788.90	\$ 256.65
Felony	562	568	\$ 396,802.71	535	\$ 335,010.88	\$ 626.19	5,648	5,713	\$ 3,839,423.24	\$ 672.05
Involuntary Civil Commitment	123	84	\$ 15,823.16	70	\$ 11,449.33	\$ 163.56	809	671	\$ 113,618.33	\$ 169.33
Juvenile	88	77	\$ 33,956.64	94	\$ 35,443.89	\$ 377.06	1,208	1,142	\$ 396,730.67	\$ 347.40
Lawyer of the Day - Custody	246	230	\$ 45,685.04	218	\$ 41,697.04	\$ 191.27	2,257	2,115	\$ 397,310.37	\$ 187.85
Lawyer of the Day - Juvenile	47	45	\$ 7,503.65	39	\$ 6,500.37	\$ 166.68	504	480	\$ 83,899.91	\$ 174.79
Lawyer of the Day - Walk-in	122	113	\$ 21,184.02	116	\$ 21,507.26	\$ 185.41	1,176	1,123	\$ 215,293.36	\$ 191.71
Misdemeanor	621	570	\$ 187,436.78	607	\$ 197,778.82	\$ 325.83	6,543	6,641	\$ 2,217,299.66	\$ 333.88
Petition, Modified Release Treatment	1	1	\$ 141.81	3	\$ 2,270.00	\$ 756.67	18	53	\$ 20,223.26	\$ 381.57
Petition, Release or Discharge	0	0		0			0	1	\$ 165.00	\$ 165.00
Petition, Termination of Parental Rights	23	35	\$ 28,492.80	45	\$ 32,681.81	\$ 726.26	212	456	\$ 302,812.39	\$ 664.06
Post Conviction Review	12	7	\$ 7,882.84	5	\$ 6,832.20	\$ 1,366.44	70	76	\$ 89,218.98	\$ 1,173.93
Probation Violation	153	152	\$ 55,549.77	148	\$ 55,137.68	\$ 372.55	1,690	1,552	\$ 511,501.03	\$ 329.58
Represent Witness on 5th Amendment	8	5	\$ 1,320.00	0			22	10	\$ 2,562.50	\$ 256.25
Review of Child Protection Order	41	176	\$ 94,205.88	163	\$ 73,923.84	\$ 453.52	491	1,779	\$ 818,545.63	\$ 460.12
Revocation of Administrative Release	5	2	\$ 1,092.50	2	\$ 270.00	\$ 135.00	40	42	\$ 11,477.59	\$ 273.28
DefenderData Sub-Total	2,241	2,453	\$ 1,114,331.69	2,390	\$ 1,034,909.09	\$ 433.02	22,691	25,578	\$ 11,017,745.44	\$ 430.75
Paper Voucher Sub-Total	1	1	\$ 584.60	1	\$ 584.60	\$ 584.60	25	25	\$ 11,669.51	\$ 466.78
TOTAL	2,242	2,454	\$1,114,916.29	2,391	\$1,035,493.69	\$ 433.08	22,716	25,603	\$ 11,029,414.95	\$ 430.79

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
 FY14 FUND ACCOUNTING
 AS OF 05/31/2014

Account 010 95F Z112 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	
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		\$ (2,142,471.60)
Encumbrances		\$ (185,625.00)		\$ 61,875.00		\$ 61,875.00		\$ 41,250.00	\$ (20,625.00)
TOTAL REMAINING		\$ 0.00		\$ -		\$ -		\$ 1,071,988.80	\$ 1,071,988.80

Q4 Month 11 (as of 05/31/14)	
INDIGENT LEGAL SERVICES	
Counsel Payments	\$ (1,035,493.69)
Somerset County	\$ (21,170.00)
Subpoena Witness Fees	\$ -
Private Investigators	\$ (21,928.77)
Mental Health Expert	\$ (25,825.00)
Transcripts	\$ (19,760.62)
Other Expert	\$ (23,318.75)
Air fare-out of state witness	\$ -
Process Servers	\$ (773.60)
Interpreters	\$ (2,161.59)
Misc Prof Fees & Serv	\$ (976.30)
SUB-TOTAL ILS	\$ (1,151,408.32)
OPERATING EXPENSES	
Service Center	\$ -
DefenderData	\$ (3,784.00)
Ergonomic Eval/Modification	\$ (400.00)
Mileage/Tolls/Parking	\$ (1,298.25)
Mailing/Postage/Freight	\$ (1,545.85)
Notary Fee	\$ (50.00)
Legal Ad	\$ (269.10)
Office Supplies/Equip.	\$ (506.85)
Cellular Phones	\$ (135.74)
Maine Bar Directories	\$ (98.00)
Office Equipment Rental	\$ (130.09)
OIT/TELCO	\$ (1,638.33)
SUB-TOTAL OE	\$ (9,856.21)
TOTAL	\$ (1,161,264.53)

INDIGENT LEGAL SERVICES	
Q4 Allotment	\$ 3,517,472.00
Q4 Expenditure for Somerset cty PDP contract from Q1 Allotment	\$ 41,250.00
Q4 Expenses as of 05/31/14	\$ (2,486,733.20)
Remaining Q4 Allotment as of 05/31/14	\$ 1,071,988.80

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY14 FUND ACCOUNTING
As of 05/31/14

Account 014 95F Z112 01 (Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY14 Total
Total Budget Allotments		\$ 149,124.00		\$ 149,124.00		\$ 149,124.00		\$ 149,125.00	\$ 596,497.00
Financial Order Adjustment	1		4		7		10		
Financial Order Adjustment	2		5		8		11		
Budget Order Adjustment	3		6		9	\$ 43,367.00	12		
Financial Order Adjustment		\$ (32,332.00)	4	\$ (11,035.00)	7		10		
Total Budget Allotments		\$ 116,792.00		\$ 138,089.00		\$ 192,491.00		\$ 149,125.00	\$ 596,497.00
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		
Promissory Note Payments						\$ 200.00			
TOTAL REVENUE COLLECTED		\$ 118,386.94		\$ 138,463.93		\$ 202,171.46		\$ 141,926.35	\$ 600,948.68
Counsel Payments	1		4		7		10		
	2	\$ -	5		8		11		
	3	\$ (116,791.19)	6	\$ (138,088.93)	9	\$ (192,488.16)	12		
REMAINING ALLOTMENT		\$ 0.81		\$ 0.07		\$ 2.84		\$ 149,125.00	\$ 149,128.72
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		\$ 141,526.35	\$ 149,689.65

Q4 Month 11 (as of 05/31/14)	
DEFENDER DATA COUNSEL PAYMENTS	\$ -
SUB-TOTAL ILS	
OVERPAYMENT REIMBURSEMENTS	\$ (7.50)
Paper Voucher	
Somerset County CDs	
Private Investigators	
Mental Health Expert	
Transcripts	
Other Expert	
Process Servers	
SUB-TOTAL OE	\$ (7.50)
TOTAL	\$ (7.50)

INDIGENT LEGAL SERVICES	
FY14 Allotment	\$ 596,497.00
YTD Collected Revenue	\$ 600,948.68
YTD Expenses	\$ (3,658.25)
YTD Counsel Payments	\$ (447,368.28)
Q3 Remaining Unexpended Cash	\$ 149,922.15

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
 FY14 FUND ACCOUNTING
 AS OF 05/31/2014

Account 010 95F Z112 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)		\$ -		\$ -	
Budget Order Adjustments									
Total Budget Allotments		\$ 145,839.00		\$ 148,254.00		\$ 153,762.00		\$ 139,324.00	\$ 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		
TOTAL REMAINING		\$ 0.37		\$ 3,508.69		\$ 15,987.66		\$ 46,556.94	\$ 66,053.66

Q4 Month 11 (as of 05/31/14)	
Per Diem Payments	\$ (165.00)
Salary	\$ (21,674.21)
Vacation Pay	\$ (1,717.02)
Holiday Pay	\$ (1,430.56)
Sick Pay	\$ (1,904.62)
Overtime Pay	\$ -
Health Insurance	\$ (8,858.18)
Dental Insurance	\$ (236.34)
Employer Retiree Health	\$ (2,543.95)
Employer Retirement	\$ (1,497.98)
Employer Group Life	\$ (205.03)
Employer Medicare	\$ (378.06)
Retiree Unfunded Liability	\$ (4,159.42)
Retro Pymt	\$ (78.40)
Perm Part Time Full Ben	\$ (1,940.60)
TOTAL	\$ (46,789.37)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY14 FUND ACCOUNTING
As of 05/31/14

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									
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		
	2	\$ 850.00	5	\$ 1,000.00	8		11	\$ 1,050.00	
	3	\$ 225.00	6	\$ 3,275.00	9		12		
ACTUAL CASH BALANCE		\$ 20,702.53	\$	4,425.00	\$	200.00	\$	1,050.00	\$ 26,377.53
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		
TOTAL REMAINING		\$ 20,182.57	\$	1,850.67	\$	2,108.67	\$	13,000.00	\$ 31,480.04

Q4 Month 11 (as of 05/31/14)

Collected Revenue	\$ 1,050.00
Training Manuals Printing	\$ -
Training Refreshments/Meals	\$ -
CLE App to the Bar	\$ -
Videographer	\$ (1,100.00)
Refund for non-attendance	\$ -
TOTAL EXPENSES	\$ (1,100.00)

FY14 Allotment	\$ 32,000.00
FY13 Carry Over	\$ 19,602.53
FY14 Collected Revenue	\$ 6,775.00
FY14 Expenses	\$ (6,485.62)
Unexpended Cash	\$ 19,891.91

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Court

5/31/2014

Court	May-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	126	137	\$ 93,264.08	158	\$ 107,776.41	\$ 682.13	1,599	1,635	\$ 1,035,960.73	\$ 633.62
AUBSC	96	118	\$ 65,902.17	97	\$ 48,540.55	\$ 500.42	1,026	1,111	\$ 592,661.63	\$ 533.45
AUGDC	71	112	\$ 46,205.64	117	\$ 46,345.79	\$ 396.12	801	1,058	\$ 391,025.49	\$ 369.59
AUGSC	76	111	\$ 51,114.08	117	\$ 47,901.13	\$ 409.41	963	1,026	\$ 483,599.17	\$ 471.34
BANDC	79	130	\$ 39,090.56	114	\$ 31,214.40	\$ 273.81	731	1,103	\$ 345,577.96	\$ 313.31
BANSC	4	3	\$ 640.00	4	\$ 1,813.40	\$ 453.35	33	34	\$ 35,403.42	\$ 1,041.28
BATSC	7	9	\$ 8,757.49	8	\$ 2,813.06	\$ 351.63	74	114	\$ 80,639.14	\$ 707.36
BELDC	22	37	\$ 18,199.91	46	\$ 20,869.85	\$ 453.69	278	382	\$ 145,837.16	\$ 381.77
BELSC	17	14	\$ 7,250.12	19	\$ 10,800.27	\$ 568.44	201	236	\$ 121,760.94	\$ 515.94
BIDDC	120	90	\$ 33,586.41	102	\$ 37,561.60	\$ 368.25	953	1,056	\$ 405,310.58	\$ 383.82
BRIDC	11	17	\$ 15,170.09	18	\$ 11,065.45	\$ 614.75	193	240	\$ 91,032.86	\$ 379.30
CALDC	16	25	\$ 9,159.79	19	\$ 6,341.52	\$ 333.76	178	184	\$ 74,327.22	\$ 403.95
CARDC	13	34	\$ 14,687.95	32	\$ 12,695.43	\$ 396.73	197	269	\$ 106,720.72	\$ 396.73
CARSC	42	48	\$ 19,238.03	40	\$ 20,068.05	\$ 501.70	344	357	\$ 182,027.56	\$ 509.88
DOVDC	14	28	\$ 6,851.20	10	\$ 2,983.44	\$ 298.34	73	132	\$ 39,134.84	\$ 296.48
DOVSC	1	1	\$ 130.00	2	\$ 290.00	\$ 145.00	16	24	\$ 10,750.26	\$ 447.93
ELLDC	31	50	\$ 34,842.86	34	\$ 24,414.98	\$ 718.09	379	595	\$ 280,452.04	\$ 471.35
ELLSC	4	11	\$ 6,152.75	16	\$ 9,076.75	\$ 567.30	146	204	\$ 136,581.27	\$ 669.52
FARDC	16	15	\$ 14,622.36	17	\$ 17,336.26	\$ 1,019.78	108	193	\$ 86,293.66	\$ 447.12
FARSC	2	5	\$ 7,683.50	5	\$ 5,461.94	\$ 1,092.39	39	135	\$ 94,793.03	\$ 702.17
FORDC	7	5	\$ 1,195.00	5	\$ 1,065.00	\$ 213.00	69	72	\$ 28,334.06	\$ 393.53
HOUDC	41	37	\$ 11,074.88	35	\$ 10,008.43	\$ 285.96	365	391	\$ 118,874.80	\$ 304.03
HOUSC	23	13	\$ 6,971.65	20	\$ 9,926.13	\$ 496.31	163	133	\$ 69,742.99	\$ 524.38
LEWDC	127	148	\$ 61,871.23	128	\$ 48,374.19	\$ 377.92	1,393	1,549	\$ 577,083.51	\$ 372.55
LINDC	8	4	\$ 1,467.76	6	\$ 1,537.52	\$ 256.25	141	177	\$ 63,832.29	\$ 360.63
MACDC	28	35	\$ 14,570.12	31	\$ 8,122.89	\$ 262.03	292	314	\$ 109,229.65	\$ 347.87
MACSC	13	22	\$ 9,590.30	18	\$ 5,625.97	\$ 312.55	164	165	\$ 61,815.93	\$ 374.64
MADDC	1	1	\$ 316.36	1	\$ 316.36	\$ 316.36	23	29	\$ 7,331.58	\$ 252.81
MILDC	2	0		0			21	18	\$ 4,722.26	\$ 262.35
NEWDC	23	37	\$ 8,107.92	25	\$ 7,328.08	\$ 293.12	273	342	\$ 107,527.42	\$ 314.41
PORDC	125	110	\$ 44,830.26	116	\$ 54,934.88	\$ 473.58	1,001	1,224	\$ 523,702.86	\$ 427.86
PORSC	5	6	\$ 2,952.50	5	\$ 2,930.00	\$ 586.00	50	39	\$ 16,255.00	\$ 416.79
PREDC	28	19	\$ 6,494.59	24	\$ 9,618.59	\$ 400.77	239	346	\$ 131,775.93	\$ 380.86
RODC	61	45	\$ 14,292.94	63	\$ 19,596.26	\$ 311.05	513	597	\$ 202,480.74	\$ 339.16
ROSC	18	37	\$ 18,493.74	39	\$ 22,015.48	\$ 564.50	328	372	\$ 232,561.95	\$ 625.17
RUMDC	21	15	\$ 4,723.36	7	\$ 2,597.90	\$ 371.13	126	161	\$ 69,000.87	\$ 428.58
SKODC	10	36	\$ 15,516.88	43	\$ 18,467.49	\$ 429.48	130	342	\$ 159,164.83	\$ 465.39
SKOSC	2	1	\$ 20.00	0			9	7	\$ 4,265.00	\$ 609.29
SOUDC	31	34	\$ 9,345.70	28	\$ 8,935.56	\$ 319.13	284	342	\$ 106,450.73	\$ 311.26
SOUSC	44	32	\$ 49,560.51	25	\$ 13,509.06	\$ 540.36	375	443	\$ 197,134.51	\$ 445.00
SPRDC	60	65	\$ 28,629.43	46	\$ 18,962.80	\$ 412.23	617	688	\$ 271,560.97	\$ 394.71
Law Ct	8	10	\$ 11,512.99	13	\$ 22,829.35	\$ 1,756.10	85	88	\$ 123,716.49	\$ 1,405.87
PENCD	209	200	\$ 77,547.41	210	\$ 65,715.35	\$ 312.93	2,073	2,134	\$ 802,585.60	\$ 376.09
SAGCD	17	12	\$ 5,242.60	13	\$ 7,127.50	\$ 548.27	188	109	\$ 43,011.50	\$ 394.60
PISCD	20	16	\$ 2,365.00	14	\$ 1,805.00	\$ 128.93	183	168	\$ 28,127.50	\$ 167.43
HANCD	32	31	\$ 10,944.00	34	\$ 18,205.00	\$ 535.44	236	140	\$ 51,325.31	\$ 366.61
FRACD	66	50	\$ 9,678.74	33	\$ 5,556.90	\$ 168.39	396	315	\$ 91,717.63	\$ 291.17
CUMCD	312	272	\$ 133,872.99	275	\$ 127,836.35	\$ 464.86	2,978	2,821	\$ 1,428,852.02	\$ 506.51
SOMCD	0	0		0			8	6	\$ 3,319.56	\$ 553.26
WATDC	35	82	\$ 24,252.13	71	\$ 21,515.32	\$ 303.03	501	686	\$ 208,318.29	\$ 303.67
WESDC	31	19	\$ 4,640.44	20	\$ 3,906.22	\$ 195.31	366	467	\$ 134,141.62	\$ 287.24
WISDC	25	22	\$ 4,597.48	20	\$ 5,381.11	\$ 269.06	291	319	\$ 84,317.52	\$ 264.32
WISSC	14	27	\$ 22,801.29	34	\$ 22,458.12	\$ 660.53	282	273	\$ 139,240.63	\$ 510.04
YORDC	26	15	\$ 4,302.50	13	\$ 3,330.00	\$ 256.15	196	213	\$ 76,334.21	\$ 358.38
TOTAL	2,241	2,453	\$ 1,114,331.69	2,390	\$ 1,034,909.09	\$ 433.02	22,691	25,578	\$ 11,017,745.44	\$ 430.75

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Number of Attorneys Rostered by Court

5/31/2014

Court	Rostered Attorneys
Alfred Superior Court	108
Auburn Superior Court	117
Augusta District Court	93
Augusta Superior Court	88
Bangor District Court	64
Belfast District Court	48
Belfast Superior Court	43
Biddeford District Court	138
Bridgton District Court	104
Calais District Court	13
Caribou District Court	17
Caribou Superior Court	19
Dover-Foxcroft District Court	27
Ellsworth District Court	48
Farmington District Court	32
Fort Kent District Court	8
Houlton District Court	16
Houlton Superior Court	18
Lewiston District Court	146
Lincoln District Court	29
Machias District Court	18
Machias Superior Court	16
Madawaska District Court	9

Court	Rostered Attorneys
Millinocket District Court	23
Newport District Court	38
Portland District Court	159
Presque Isle District Court	14
Rockland District Court	49
Rockland Superior Court	42
Rumford District Court	31
Skowhegan District Court	29
South Paris District Court	69
South Paris Superior Court	66
Springvale District Court	122
Unified Criminal Docket Bangor	64
Unified Criminal Docket Bath	87
Unified Criminal Docket Dover Foxcroft	25
Unified Criminal Docket Ellsworth	42
Unified Criminal Docket Farmington	32
Unified Criminal Docket Portland	150
Unified Criminal Docket Skowhegan	18
Waterville District Court	55
West Bath District Court	114
Wiscasset District Court	73
Wiscasset Superior Court	65
York District Court	113

(3.)
Rule-Making Discussion

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE BROGAN, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: DISCUSSION - REMOVING ATTORNEYS FROM THE ROSTER
DATE: April 30, 2014

It has come to the attention of staff that our current statute and rules do not contain explicit authority to remove attorneys from the roster. Because no explicit authority exists, to date, removal has occurred based only on an attorney's failure to comply with objective requirements of existing rules that mandate either certain training or the filing of an annual renewal form. The staff is concerned about its ability to remove attorneys from the roster based on subjective factors such as evidence of unfitness or misconduct and recommends that the Commission consider amending its eligibility rules to provide explicit authority and a procedural framework for doing so. The balance of this memo is intended to provide a basis for discussion of the issues involved in crafting such a rule.

STATUTORY FRAMEWORK

The Commission's governing statute provides that the Commission shall develop "standards considered necessary and appropriate to ensure the delivery of adequate indigent legal services" and requires the Executive Director to "ensure that the provision of indigent legal services complies with all constitutional, statutory and ethical standards." 4 M.R.S.A. § 1804(2)(A), 1805(1). These statutes would support a rule allowing the Executive Director to remove attorneys based on evidence of unfitness or misconduct.

I do not believe that eligibility to provide indigent legal services constitutes a license, but statutory provisions governing licensing by administrative agencies provide relevant guidance. The Administrative Procedures Act states that:

When licensing is required as a matter of constitutional right or by statute to be preceded by notice and opportunity for hearing, the provisions of subchapter IV concerning adjudicatory proceedings shall apply. 5 M.R.S.A. § 10001.

Because no statute requires an adjudicatory proceeding regarding eligibility to provide indigent legal services, none is required before the Executive Director may remove an attorney from the roster.¹

¹ Note that our statute does provide for an appeal to the Commission for attorneys aggrieved by a rostering decision of the Executive Director, and our rule governing those appeals meets the adjudicatory proceedings requirements of the Administrative Procedures Act. See, 4 M.R.S.A. § 1804(3)(J); Chapter 201: Appeals of Decisions of the Executive Director.

With respect to licensing decisions that do not require adjudicatory proceedings, the Administrative Procedures Act states:

Any licensing decision not involving an adjudicatory proceeding, as defined in section 8002, subsection 1, shall be made in writing and shall be made only on the basis of evidence relevant to the case. When the requested license is denied, or only conditionally approved, the decision shall contain or reflect the agency's reasoning, in a manner sufficient to inform the applicant and the public of the basis for the agency's action. 5 M.R.S.A. § 10005.

This statute requires only that the decision of the Executive Director be based on “relevant” evidence and that it be in writing. I recommend that the Commission adhere to these requirements with respect to any rule specifically authorizing the Executive Director to remove attorneys from the roster.

GROUNDINGS FOR REMOVAL

The Commission will need to determine the grounds upon which attorneys can be removed from the roster. Below for consideration is a list of potential grounds for removal and discussion of issues that arise with respect to some of them:

- Allegations of Criminal Conduct. Note that criminal defense attorneys feel strongly about the presumption of innocence and the need for a conviction before any allegation can be considered proven. Should conviction be required?² If not, are formal charges required? What about the period between an arrest and release on bail with a summons to court and the filing of a formal complaint or indictment?
- Ethical Violations resulting in Bar Discipline. Should a determination of an ethical violation that does not result in suspension or disbarment nevertheless support removal from the roster? What about allegations of ethical violation that have been publicly disclosed with respect to ongoing, but not yet concluded, disciplinary proceedings? What about evidence of ethical violations that have not resulted in disciplinary proceedings?
- Malfeasance with Respect to Client Funds or MCILS Billing. Would evidence of intentional fraud be required or could evidence negligence suffice?
- Lack of Fitness due to Cognitive Impairment, Physical Infirmary, Mental Illness and/or Substance Abuse. Would documentation such as records of evaluation or treatment be required? If so, should attorneys be required to submit such documentation to the Commission?

² Note that our current rule only requires an attorney to provide the Commission with notice of criminal charges upon conviction. Chapter 2: Standards for Qualifications of Assigned Counsel.

- Unsatisfactory Performance. Would evidence of repeated sub-par representation be required or might a single instance suffice?

PROCEDURAL FRAMEWORK

Based on the statute described above, I believe that any decision of the Executive Director to remove an attorney from the roster should be provided to the attorney in writing and explain the basis of the decision.

The main question is whether the attorney should be given notice that such a decision is being contemplated and an opportunity to respond to the information that raised the concern before any decision is made. Notice and opportunity to be heard are the fundamental elements of due process. On the other hand, circumstances might arise that require immediate action. In such a case, the attorney could be provided an opportunity to comment before a final appealable decision is made.

Another issue is whether the authority to remove an attorney extends to having the attorney withdraw from all pending assigned cases.

Finally, any rule should address the extent, if any, that information gathered must be shared with the attorney in question beyond the extent that it is referred to in any removal decision.

INVESTIGATION/DISCLSOURE

Any rule regarding removal of attorneys should explicitly identify an attorney's obligation to inform the Commission of allegations of misconduct. For example, disclosure of allegations of criminal conduct is not currently required unless a conviction results. Also, should prompt disclosure of mental health or substance abuse treatment be required?

With respect to disclosure requirements, should failure to comply be grounds for removal from the roster?

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE BROGAN, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: DISCUSSION – MODIFICATIONS TO SPECIALIZED PANEL RULE
DATE: May 2, 2014

For the purpose of facilitating discussion, this memo addresses procedural and substantive issues with respect to the operation of the specialized panel rule.

SERIOUS VIOLENT FELONIES

Should the aggravated drug offenses remain serious violent felonies? Although these charges carry mandatory minimum sentences, the substance of the drug offense charged is identical to the non-aggravated counterpart. The aggravating factors involve ancillary facts, such as the quantity of drugs, the age of the person to whom drugs are trafficked or furnished, prior drug convictions of the defendant, the presence of a firearm, and injury or death from the conduct involved. Although serious, these offenses do not fit the common understanding of “violent” conduct. Perhaps because of this, clerks and judges often assign such cases to attorneys who are not on the serious violent felony panel.

Should aggravated criminal trespass remain a serious violent felony? This charge involves a trespass in a dwelling where the trespasser commits a crime while in the dwelling. It is similar to a burglary, except that the intent to commit the crime need not be proven to have existed at the time of the entry. Burglaries of dwellings are not serious violent felonies unless possession of a firearm is alleged.

Finally, should the text of the rule include offense names for serious violent felonies as well as the statutory sections?

SEX OFFENSES

Two offenses currently classified as sex offenses, Unlawful Sexual Touching and Prohibited Contact with a Minor, do not involve any registration requirement under SORNA. Only a limited aspect of the latter offense is a Class C felony, all other charges are misdemeanors. Should these offenses remain classified as sex offenses?

Two offenses currently not classified as sex offense due carry SORNA consequences, Incest and the version of Violation of Privacy that has come to be known as “up-skirting.” Should these crimes be classified as sex offenses?

OUI AND DOMESTIC VIOLENCE CASES

As the number of specialized case types expands, clerks and judges will face challenges ensuring that assigned counsel have the appropriate eligibility. This is especially true with the expansion of the UCD process that calls for the defendant to be given the name of the assigned attorney at the initial appearance. Consideration should be given to whether any gains that would flow from these panels would outweigh the burden on court staff to identify the correct lawyers and on MCILS staff to deal with assignments that are not in accord with the roster.

JUVENILE SPECIALIZED PANEL

Should the minimum standards training be sufficient to qualify for assignments in juvenile misdemeanor and civil cases? Currently, when attorneys seek to get on the rosters, they typically take the minimum standards training for multiple case types at the same time. Under the current rule, minimum standards training qualifies an attorney for many adult felony and almost all misdemeanor criminal cases. If the six months in practice requirement that currently exists in the rule is maintained, new attorneys who take both the criminal and juvenile training at the same time could lose the benefit of that training with the passage of time before they could start doing juvenile cases. Otherwise, they would have to stagger the trainings. If the minimum standard trainings are as the title implies, should they qualify the attorney to take cases immediately?

As the Commission has discussed previously, the category for cases involving bind-over and competence has issues with ensuring compliance. Even if DefenderData is modified so that an attorney can indicate the presence of these issues at the time a case is created, it is entirely possible that a case could be created and an assignment approved, only to have bind-over or competence come up at a later point. In that case, the staff would not know that the issue arose unless the attorney notified the Commission.

If this panel is maintained, should the rule explicitly require disclosure to the Commission that such an issue has arisen and should failure to disclose grounds for removing an attorney from the juvenile roster?

CHILD PROTECTIVE PANEL

For the reason's addressed above, should the one year in practice requirement be maintained?

Also, is the requirement that experienced counsel be brought into the case when a petition to terminate parental rights is filed likely to be of any benefit to the client? Most termination cases are concluded by agreement of the parents, and often the work most needed to avoid termination must take place during the early phases of the case, well before a petition for termination is filed.

CIVIL COMMITMENT PANEL

For the reason's addressed above, should the one year in practice requirement be maintained?

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 an offense under 17-A

M.R.S.A. §§ 152-A, 208, 208-B, 208-C, 301, 401(1)(B)(1), (2), or (3), 402-A (1)(A), 651, 802, 803-A, 1105-A, 1105-B, and 1105-C. “Serious Violent Felony” includes crimes involving substantially similar conduct in another jurisdiction. “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 an offense under Chapter 11 of the Criminal Code, 17-A M.R.S.A. §§ 251-261, or under Chapter 12 of the Criminal Code, 17-A M.R.S.A. §§ 281-285. “Sex Offense” includes crimes involving substantially similar conduct in another jurisdiction. “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;
 - C. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a sex offense; and
 - D. 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 a sex offense. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.

3. **Serious Violent Felonies**. In order to be rostered for serious violent felony cases an attorney must:
 - A. Have at least two years of criminal law practice experience;
 - B. Have tried as first chair at least four criminal or civil cases in the last ten years, at least two of which were jury trials and at least two of which were criminal trials;
 - C. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a serious violent felony; and
 - D. 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 a serious violent felony. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.

4. **Operating Under the Influence**. In order to be rostered for OUI cases an attorney must:
 - A. Have at least one year of criminal law practice experience;
 - B. Have tried before a judge or jury as first chair at least two criminal cases, and conducted at least two contested hearings within at least the last ten years;
 - C. Have obtained in the last three years at least four hours of CLE credit on topics

relevant particularly to OUI defense;

- D. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with an OUI; and
- E. 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 an OUI. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.

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

- A. Have at least one year of criminal law practice experience;
- B. Have tried before a judge or jury as first chair at least two criminal cases and conducted at least two contested hearings within at least the last ten years;
- C. Have obtained in the last three years at least four hours of CLE credit on topics related to domestic violence defense which included training on the collateral consequences of such convictions;
- D. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a domestic violence crime; and
- E. 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 a domestic violence crime. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.

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

- A. For civil offenses and misdemeanor cases:
 - 1) 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;
 - 2) 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.

B. For felony cases and sex offense cases:

- 1) Have at least one year of juvenile law practice experience;
- 2) Have handled at least 10 juvenile cases to conclusion;
- 3) Have tried at least 5 contested juvenile hearings (including but not limited to: detention hearings, evidentiary hearings, adjudication hearings, and dispositional hearings);
- 4) Have attended in the last three years at least four hours of CLE credit on two or more of the following topics related to juvenile defense including training and education regarding placement options and dispositions, child development, adolescent mental health diagnosis and treatment, and the collateral consequences of juvenile adjudications;
- 5) Provide a letter explaining reasons for interest in and qualifications for representing juveniles in felony and sex offense cases; and
- 6) 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 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.

C. For Competency to Stand Trial Hearings and Bindover Hearings:

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

letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.

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

- A. 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. 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 parents in protective custody. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.
- 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 then the attorney of record must file a request with the MCILS for a more experienced attorney to serve as a second chair to assist the attorney of record in preparation of and with the termination of parental rights hearing.

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

- A. Have at least one year of criminal or civil law practice experience;
- B. Have conducted at least four contested hearings within the last five years;
- C. Have attended in the last three years at least four hours of CLE credit on topics devoted to the representation of individuals with mental health issues, including training and education regarding placement options and dispositions, mental health diagnosis and treatment and the collateral consequences of involuntary commitments;
- D. Provide a letter explaining reasons for interest in and qualifications for representing individuals facing involuntary commitment; and
- E. 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 facing involuntary commitment. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author.

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)

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.

(4.)
Juvenile Specialized Panel
Update

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE BROGAN, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: JUVENILE SPECIALIZED PANEL UPDATE
DATE: June 5, 2014

We are planning to implement the Juvenile Specialized panel on July 1st, as Justiceworks continues to work on the upgrades necessary to do so, and the staff needs time to manually set the new eligibility for each person who applied.

I reached out to juvenile attorneys in Aroostook County, and we have begun receiving additional applications for the juvenile panel. As Ellie and I set the new eligibilities for the lawyers who have applied, we will review the resulting rosters to identify any other locations in need of additional juvenile attorneys.

(5.)
Contracts Update

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE BROGAN, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: CONTRATS UPDATE
DATE: June 5, 2014

Director Pelletier has executed an extension of the Justiceworks contract and submitted it to the Purchasing Office for approval. The price per newly created case has increased to from \$1.50 to \$1.75, consistent with what Justiceworks now charges other users for the web-based application. Consistent with the request Purchasing, the new term is for 12 months, with two 12 month extensions available at the option of the Commission.

All bids received in response to the RFP for Somerset County will be reviewed and scored by Director Pelletier and Chair Carey on June 10, 2014.