

**MCILS**

**March 8, 2016  
Commissioner's Meeting  
Packet**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**MARCH 8, 2016**

**COMMISSION MEETING**

**19 UNION STREET, ROOM 110, AUGUSTA**

**AGENDA**

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- 1) Approval of January 12, 2015 Commission Meeting Minutes
- 2) Operations Reports Review
- 3) Discussion of LD 1433
- 4) Appellate Contracts
- 5) Public Comment
- 6) Set Date, Time and Location of Next Regular Meeting of the Commission
- 7) Executive Session, if needed (Closed to Public)

**(1.)**  
**January 12, 2016**  
**Commission Meeting**  
**Minutes**

**Maine Commission on Indigent Legal Services – Commissioners Meeting  
January 12, 2016**

**Minutes**

**Commissioners Present:** Steven Carey, Marvin Glazier, Susan Roy, Kenneth Spirer

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

<b>Agenda Item</b>	<b>Discussion</b>	<b>Outcome/Action Item/Responsible Party</b>
Approval of the December 8, 2015 Commission Meeting Minutes	No discussion of meeting minutes.	Commissioner Glazier moved for approval, Commissioner Spirer seconded. All present in favor. Approved.
Operations Reports Review	<p>Director Pelletier presented the December 2015 Operations Reports. 2,013 new cases were opened in the DefenderData system in December. This was a 45 case decrease from November. The number of submitted vouchers in December was 2,535, an increase of 87 vouchers from November, totaling \$1,359,307, an increase of \$61,000 from November. In December, the Commission paid 3,504 vouchers totaling \$1,812,231, an increase of 1,494 vouchers and \$734,000 from November. Director Pelletier explained that the payment totals were unusually high because the Commission normally carries two weeks' worth of vouchers into the next quarter, but this month staff paid all vouchers that were submitted through December 30. At the mid-way point in the current fiscal year, the unspent balance in the All Other account totals \$480,027. The average price per voucher in November was \$518.58, down \$18.00 per voucher from December. The year-to-date average voucher price is \$511.81, 7.6% higher than the average for all of FY'15, but still lower than the 9.1% hourly rate increase that went into effect in July. Appeal and Post-Conviction Review cases had the highest average vouchers in December. There were 14 vouchers exceeding \$5,000 paid in December. The monthly transfer from the Judicial Branch for counsel fees for December, which reflects November's collections, totaled \$41,462, down approximately \$7,500 from the previous month.</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>Collection totals continue to run below the projected monthly totals for the year. Director Pelletier noted that the downturn in collections totals coincided with the Judicial Branch administrative order that gave preference to fines before counsel fees when applying bail.</p>	
<p>Discussion of LD 1433</p>	<p>The Commissioners discussed LD 1433. The Commissioners were in agreement that under the proposed bill, the Commission would lose its independence and would no longer be the entity responsible for providing indigent legal services. That responsibility would fall instead to a chief public defender – a person appointed by the governor and subject to removal only by the governor. The Commissioners all agreed that the Commission had made many great improvements to the system since its inception, including an online voucher system, useful attorney trainings, funding expert and investigator requests, and increasing counsel fee collection totals, but that more work needs to be done. Chair Carey suggested staff start work on an attorney evaluation program, look for ways to improve the Commission’s institutional role in the legal community (UCD committee meetings, rules of criminal procedure committee membership), and to think about whether additional staff is needed.</p> <p>Director Pelletier suggested that one provision of the bill would be useful to the Commission – Section 14 of the bill which would grant the Commission access to Maine Revenue Service data.</p>	<p>All present voted to oppose LD 1433.</p>
<p>Appellate Contracts</p>	<p>After a brief discussion about how best to deal with appellate representation in child protective cases where ineffective assistance of counsel claims will be raised, the Commissioners asked staff to continue work on a potential appellate contract RFP and report back about options and issues for further discussion at the next meeting.</p>	
<p>MCILS Response to Current Drug Crisis</p>	<p>At the January 6<sup>th</sup> informational hearing, Rep. Hobbins suggested that the Commission utilize the lawyer of the day sessions to steer people suffering from drug addiction into treatment. Chair Carey asked Commission staff to put together reference materials for lawyer of the day attorneys. Director Pelletier informed the</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	Commissioners about a proposed bill this session that would establish a law enforcement assisted diversion program. He suggested that the proposed bill be amended to include a Commission representative.	
Public Comment	<p><u>Robert J. Ruffner, Esq.</u>: Attorney Ruffner stated that contracts should be structured to require attorney accounting of the time devoted to a case, with payment tied to the work done rather than a flat fee per case or per number of cases. He also said that under state purchasing rules, cost need not be the determining factor over factors such as attorney experience and resources.</p> <p>Attorney Ruffner stated that the Lawyer for the Day provides an opportunity to identify cases for diversion, especially if supported with additional resources in a holistic defense model. Attorney Ruffner described a model for holistic defense that he had hoped to implement on a broader scale, but said even on a limited scale, social work interns had been helpful with many of his clients. He opined that the capacity for social work case management would benefit indigent legal services, whether or not part of a contract for those services.</p>	
Executive Session	none	
Adjournment of meeting	The Commission voted to adjourn with the next meeting to be on February 9, 2016 at 9:30 a.m.	Commissioner Spierer moved to adjourn. Commissioner Roy seconded. All present at the meeting in favor.

**(2-A)**

**January 2016 Operations Reports**

**(2-B)**

**February 2016 Operations Reports**

**(2-A)**  
**January 2016 Operations Reports**

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MAINE COMMISSION ON INDIGENT LEGAL SERVICES

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**TO:** MCILS COMMISSIONERS  
**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR  
**SUBJECT:** JANUARY 2015 OPERATIONS REPORTS  
**DATE:** FEBRUARY 2, 2016

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Attached you will find the January, 2016 Operations Reports for your review and our discussion at the upcoming Commission meeting on February 9, 2016. A summary of the operations reports follows:

- 2,218 new cases were opened in the DefenderData system in January. This was a 205 case increase over December.
- The number of vouchers submitted electronically in January was 2,636, an increase of 101 vouchers over December, totaling \$1,384,836.01, an increase of \$25,000 over December. In January, we paid 1,500 electronic vouchers totaling \$786,747.68, representing a decrease of 2,004 vouchers and \$1,025,000 compared to December.
- There was one paper voucher submitted and paid in January totaling \$192.00.
- The average price per voucher in January was \$524.28, up \$5.70 per voucher over December.
- Appeal and Post-Conviction Review cases had the highest average vouchers in January. There were 8 vouchers exceeding \$5,000 paid in January. Three vouchers involved murder charges to which the defendant pled guilty. One voucher involved multiple counts of Gross Sexual Assault that were dismissed in return for a plea to an offense that does not require sex offender registration. Two vouchers involved trials: one on an Aggravated Assault charge that ended in a mistrial; then counsel had to withdraw (went to work in DA's office) prior to the second trial and another on an Aggravated Trafficking charge that resulted in a guilty verdict. Another voucher involved a charge of Criminal Threatening with a Dangerous Weapon where Veteran's Court was explored before the defendant ultimately pled guilty. The final voucher involved the trial of a Petition to Terminate Parental Rights where the lawyer billed the appeal to the Law Court on the same voucher.

In our All Other Account, the total expenses for the month of January were \$896,072.76. Of the amount, just under \$11,000 was devoted to the Commission's operating expenses.

In the Personal Services Account, we had \$52,614.99 in expenses for the month of January.

In the Revenue Account, our monthly transfer from the Judicial Branch for counsel fees for the month of January, which reflects December's collections, totaled \$47,755.12 up approximately \$6,000 from the previous month. Collections continue to run below the monthly amount projected for the year.

In our Conference Account, we had no training related transactions, but we paid the quarterly StaCap fee of \$65.26, leaving the account balance at \$11,057.34.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Case Type

1/31/2016

DefenderData Case Type	Jan-16						Fiscal Year 2016			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
Appeal	7	20	\$ 25,635.29	9	\$ 12,328.99	\$ 1,369.89	77	137	\$ 165,275.50	\$ 1,206.39
Child Protection Petition	151	334	\$ 201,438.12	178	\$ 98,665.18	\$ 554.30	1,001	2,219	\$ 1,365,873.39	\$ 615.54
Drug Court	2	5	\$ 2,382.00	2	\$ 1,044.00	\$ 522.00	4	42	\$ 24,712.50	\$ 588.39
Emancipation	13	7	\$ 1,600.00	4	\$ 1,234.50	\$ 308.63	54	60	\$ 17,751.50	\$ 295.86
Felony	566	677	\$ 534,854.57	406	\$ 327,651.89	\$ 807.02	3,867	3,970	\$ 3,140,503.65	\$ 791.06
Involuntary Civil Commitment	69	76	\$ 19,420.82	42	\$ 11,897.32	\$ 283.27	475	432	\$ 104,208.90	\$ 241.22
Juvenile	66	60	\$ 23,129.04	39	\$ 16,933.54	\$ 434.19	611	622	\$ 263,457.66	\$ 423.57
Lawyer of the Day - Custody	220	205	\$ 44,829.08	115	\$ 24,130.48	\$ 209.83	1,548	1,363	\$ 315,015.03	\$ 231.12
Lawyer of the Day - Juvenile	42	34	\$ 7,514.92	22	\$ 5,106.72	\$ 232.12	294	265	\$ 55,670.48	\$ 210.08
Lawyer of the Day - Walk-in	150	108	\$ 26,706.36	58	\$ 14,583.27	\$ 251.44	828	686	\$ 169,780.18	\$ 247.49
Misdemeanor	676	698	\$ 278,597.06	410	\$ 160,061.82	\$ 390.39	4,766	4,489	\$ 1,747,436.09	\$ 389.27
Petition, Modified Release Treatment	0	3	\$ 536.00	2	\$ 380.50	\$ 190.25	4	33	\$ 11,824.08	\$ 358.31
Petition, Release or Discharge	0	1	\$ 9,871.38	0			1	2	\$ 466.75	\$ 233.38
Petition, Termination of Parental Rights	19	43	\$ 33,550.72	23	\$ 15,642.14	\$ 680.09	99	325	\$ 239,955.35	\$ 738.32
Post Conviction Review	7	6	\$ 13,530.68	3	\$ 9,987.58	\$ 3,329.19	44	42	\$ 72,528.00	\$ 1,726.86
Probation Violation	179	191	\$ 78,974.99	103	\$ 39,747.37	\$ 385.90	1,176	1,088	\$ 420,636.73	\$ 386.61
Represent Witness on 5th Amendment	5	2	\$ 389.48	0			17	12	\$ 2,187.62	\$ 182.30
Review of Child Protection Order	43	165	\$ 81,505.50	84	\$ 47,352.38	\$ 563.72	209	1,034	\$ 509,245.16	\$ 492.50
Revocation of Administrative Release	3	1	\$ 370.00	0			23	11	\$ 3,027.50	\$ 275.23
<b>DefenderData Sub-Total</b>	<b>2,218</b>	<b>2,636</b>	<b>\$ 1,384,836.01</b>	<b>1,500</b>	<b>\$ 786,747.68</b>	<b>\$ 524.50</b>	<b>15,098</b>	<b>16,832</b>	<b>\$8,629,556.07</b>	<b>\$ 512.69</b>
<b>Paper Voucher Sub-Total</b>	<b>1</b>	<b>1</b>	<b>\$ 192.00</b>	<b>1</b>	<b>\$ 192.00</b>	<b>\$ 192.00</b>	<b>5</b>	<b>5</b>	<b>\$ 6,517.78</b>	<b>\$ 1,303.56</b>
<b>TOTAL</b>	<b>2,219</b>	<b>2,637</b>	<b>\$1,385,028.01</b>	<b>1,501</b>	<b>\$786,939.68</b>	<b>\$ 524.28</b>	<b>15,103</b>	<b>16,837</b>	<b>\$ 8,636,073.85</b>	<b>\$ 512.92</b>

MAINE COMMISSION ON INDIGENT LEGAL SERVICES  
 FY16 FUND ACCOUNTING  
 AS OF 01/31/2016

Account 010 95F Z112 01 (All Other)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY16 Total
FY15 Professional Services Allotment		\$ 4,428,945.00		\$ 4,364,292.00		\$ 4,515,272.00		\$ 4,873,093.00	
FY15 General Operations Allotment		\$ 34,560.00		\$ 34,560.00		\$ 34,560.00		\$ 34,560.00	
Financial Order Adjustment		\$ -		\$ 8,633.00		\$ 8,633.00		\$ 8,634.00	
Financial Order Adjustment		\$ -		\$ -		\$ -		\$ -	
<b>Total Budget Allotments</b>		<b>\$ 4,463,505.00</b>		<b>\$ 4,407,485.00</b>		<b>\$ 4,558,465.00</b>		<b>\$ 4,916,287.00</b>	<b>\$ 18,345,742.00</b>
Total Expenses	1	\$ (1,034,674.33)	4	\$ (1,209,786.02)	7	\$ (896,072.76)	10	\$ -	\$ (3,140,533.11)
	2	\$ (1,384,090.42)	5	\$ (1,175,979.15)	8	\$ -	11	\$ -	\$ (2,560,069.57)
	3	\$ (1,609,871.30)	6	\$ (1,821,435.96)	9	\$ -	12	\$ -	\$ (3,431,307.26)
Encumbrances		\$ (213,187.50)		\$ 71,062.50		\$ 23,687.50		\$ -	\$ (118,437.50)
<b>TOTAL REMAINING</b>		<b>\$ 221,681.45</b>		<b>\$ 271,346.37</b>		<b>\$ 3,686,079.74</b>		<b>\$ 4,916,287.00</b>	<b>\$ 9,095,394.56</b>

Q3 Month 7 (as of 01/31/16)	
<b>INDIGENT LEGAL SERVICES</b>	
Counsel Payments	\$ (786,939.68)
Somerset County	\$ (22,687.50)
Subpoena Witness Fees	\$ (62.67)
Private Investigators	\$ (20,574.15)
Mental Health Expert	\$ (28,093.58)
Transcripts	\$ (5,947.00)
Other Expert	\$ (19,274.18)
Air fare-out of state witness	\$ -
Process Servers	\$ (455.98)
Interpreters	\$ (1,146.50)
Misc Prof Fees & Serv	\$ -
<b>SUB-TOTAL ILS</b>	<b>\$ (885,181.24)</b>
<b>OPERATING EXPENSES</b>	
Service Center	\$ (794.50)
DefenderData	\$ (4,501.75)
Parking Permit Fee-Auburn	\$ (540.00)
Mileage/Tolls/Parking	\$ (1,381.60)
Mailing/Postage/Freight	\$ (340.91)
Bar Dues - John & Ellie	\$ -
Annual Report Print Cost	\$ (7.55)
Office Supplies/Eqp.	\$ (738.50)
Cellular Phones	\$ (277.56)
Subscriptions	\$ -
Office Equipment Rental	\$ (134.07)
Notary Fees	\$ -
OIT/TELCO	\$ (2,175.08)
<b>SUB-TOTAL OE</b>	<b>\$ (10,891.52)</b>
<b>TOTAL</b>	<b>\$ (896,072.76)</b>

INDIGENT LEGAL SERVICES	
Q3 Allotment	\$ 4,558,465.00
Q3 Encumbrances for Somerset cty PDP & Justice Works contracts	\$ 23,687.50
Q3 Expenses as of 01/31/16	\$ (896,072.76)
Remaining Q3 Allotment as of 01/31/16	\$ 3,686,079.74

MAINE COMMISSION ON INDIGENT LEGAL SERVICES  
 FY16 FUND ACCOUNTING  
 As of 01/31/16

Account 014 95F Z112 01 (Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY16 Total
<b>Total Budget Allotments</b>		\$ 180,124.00		\$ 180,124.00		\$ 180,124.00		\$ 180,125.00	\$ 720,497.00
Financial Order Adjustment	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Financial Order Adjustment	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Budget Order Adjustment	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
Financial Order Adjustment	3	\$ 14,106.00	4	\$ 15,000.00	9	\$ 15,000.00	12	\$ 15,000.00	\$ 59,106.00
<b>Total Budget Allotments</b>		\$ 194,230.00		\$ 195,124.00		\$ 195,124.00		\$ 195,125.00	\$ 779,603.00
Cash Carryover from Prior Quarter		\$ 59,106.00		\$ 16,758.55		\$ 0.44		\$ -	
Collected Revenue from JB	1	\$ 54,101.64	4	\$ 46,384.74	7	\$ 47,754.68	10	\$ -	
Promissory Note Payments		\$ 50.00		\$ -		\$ -		\$ -	
Collected Revenue from JB	2	\$ 44,316.49	5	\$ 48,960.09	8	\$ -	11	\$ -	
Promissory Note Payments		\$ 50.00		\$ 200.00		\$ -		\$ -	
Discovery sanction payment		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB	3	\$ 43,704.16	6	\$ 41,462.08	9	\$ -	12	\$ -	
Promissory Note Payments		\$ 50.00		\$ 50.00		\$ -		\$ -	
<b>TOTAL CASH PLUS REVENUE COLLECTED</b>		\$ 201,378.29		\$ 153,815.46		\$ 47,755.12		\$ -	\$ 327,083.88
Counsel Payments	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Other Expenses		\$ (90.50)		\$ -		\$ -		\$ -	
Counsel Payments	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Other Expenses		\$ (1.93)		\$ -		\$ -		\$ -	
Counsel Payments	3	\$ (178,086.96)	6	\$ (149,790.00)	9	\$ -	12	\$ -	
Other Expenses	**	\$ (3,802.16)		\$ (3,198.02)		\$ -		\$ -	
<b>REMAINING ALLOTMENT</b>		\$ 12,248.45		\$ 42,135.98		\$ 195,124.00		\$ 195,125.00	\$ 444,633.43
Overpayment Reimbursements	1	\$ (2,394.19)	4	\$ (295.00)	7	\$ -	10	\$ -	
	2	\$ (244.00)	5	\$ (532.00)	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
<b>REMAINING CASH Year to Date</b>		\$ 16,758.55		\$ 0.44		\$ 47,755.12		\$ -	

Q3 Month 7 (as of 01/31/16)	
DEFENDER DATA COUNSEL PAYMENTS	\$ -
<b>SUB-TOTAL ILS</b>	
OVERPAYMENT REIMBURSEMENTS	\$ -
Paper Voucher	\$ -
Somerset County CDs	\$ -
Private Investigators	\$ -
Mental Health Expert	\$ -
Transcripts	\$ -
Other Expert	\$ -
StaCap Expense	\$ -
<b>SUB-TOTAL OE</b>	\$ -
<b>TOTAL</b>	\$ -

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

0.44

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

Account 014 95FZ112 02 (Conference)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY16 Total
<b>Total Budget Allotments</b>		\$ 10,385.00		\$ 15,000.00		\$ 15,000.00		\$ 20,000.00	\$ 60,385.00
Financial Order Adjustment	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Financial Order Adjustment	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Financial Order Adjustment	3	\$ 1,196.00	6	\$ 3,000.00	9	\$ 3,000.00	12	\$ 2,000.00	\$ 9,196.00
<b>Total Budget Allotments</b>		\$ 11,581.00		\$ 18,000.00		\$ 18,000.00		\$ 22,000.00	\$ 69,581.00
Cash Carryover from Prior Quarter		\$ 12,580.84		\$ 11,962.77		\$ 11,122.60		\$ -	
Collected Revenue	1	\$ -	4	\$ 1,400.00	7	\$ -	10	\$ -	
Collected Revenue	2	\$ 22.50	5	\$ 625.00	8	\$ -	11	\$ -	
Collected Revenue	3	\$ -	6	\$ 1,275.00	9	\$ -	12	\$ -	
<b>TOTAL CASH PLUS REVENUE COLLECTED</b>		\$ 12,603.34		\$ 15,262.77		\$ 11,122.60		\$ -	\$ 3,322.50
Total Expenses	1	\$ (99.00)	4	\$ -	7	\$ (65.26)	10	\$ -	
	2	\$ (530.29)	5	\$ (1,060.79)	8	\$ -	11	\$ -	
	3	\$ (11.28)	6	\$ (3,079.38)	9	\$ -	12	\$ -	
Encumbrances		\$ (3,385.00)		\$ 2,325.00					
<b>REMAINING ALLOTMENT</b>		\$ 7,555.43		\$ 16,184.33		\$ 18,000.00		\$ 22,000.00	\$ 63,740.26
<b>REMAINING CASH Year to Date</b>		\$ 11,962.77		\$ 11,122.60		\$ 11,057.34		\$ -	

Q2 Month 6 (as of 12/31/15)	
Training Manuals Printing	\$ -
Training Refreshments/Meals	\$ -
Media Northeast (encumbered Q1)	\$ -
Refund(s) for non-attendance	\$ -
Office Supplies	\$ -
CLE App to the Bar	\$ -
State Cap Expense	\$ (65.26)
<b>TOTAL</b>	\$ (65.26)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES  
 FY16 FUND ACCOUNTING  
 AS OF 01/31/2016

Account 010 95F Z112 01 (Personal Services)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY16 Total
FY16 Allotment		\$ 197,643.00		\$ 197,641.00		\$ 174,658.00		\$ 181,575.00	\$ -
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustments				\$ -		\$ -		\$ -	
<b>Total Budget Allotments</b>		<b>\$ 197,643.00</b>		<b>\$ 197,641.00</b>		<b>\$ 174,658.00</b>		<b>\$ 181,575.00</b>	<b>\$ 751,517.00</b>
Total Expenses	1	\$ (73,500.45)	4	\$ (51,930.26)	7	\$ (52,614.99)	10	\$ -	
	2	\$ (49,758.60)	5	\$ (52,356.41)	8	\$ -	11	\$ -	
	3	\$ (48,847.23)	6	\$ (74,897.31)	9	\$ -	12	\$ -	
<b>TOTAL REMAINING</b>		<b>\$ 25,536.72</b>		<b>\$ 18,457.02</b>		<b>\$ 122,043.01</b>		<b>\$ 181,575.00</b>	<b>\$ 347,611.75</b>

Q3 Month 7 (as of 01/31/16)	
Per Diem Payments	\$ (275.00)
Salary	\$ (23,648.56)
Vacation Pay	\$ (1,674.08)
Holiday Pay	\$ (3,085.60)
Sick Pay	\$ (676.77)
Employee Hlth Svs/Workers Comp	\$ (74.00)
Health Insurance	\$ (9,993.46)
Dental Insurance	\$ (249.48)
Employer Retiree Health	\$ (3,082.52)
Employer Retirement	\$ (2,194.04)
Employer Group Life	\$ (218.24)
Employer Medicare	\$ (408.26)
Retiree Unfunded Liability	\$ (5,263.98)
Retro Pymt	\$ -
Perm Part Time Full Ben	\$ (1,771.00)
<b>TOTAL</b>	<b>\$ (52,614.99)</b>

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Court

1/31/2016

Court	Jan-16						Fiscal Year 2016			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
ALFSC	59	139	\$ 115,036.56	84	\$ 59,917.32	\$ 713.30	523	1,113	\$ 844,623.79	\$ 758.87
AUBSC	23	69	\$ 54,148.69	32	\$ 33,191.10	\$ 1,037.22	203	522	\$ 391,892.69	\$ 750.75
AUGDC	40	67	\$ 32,761.34	28	\$ 14,643.88	\$ 523.00	296	443	\$ 213,831.70	\$ 482.69
AUGSC	46	51	\$ 51,789.67	30	\$ 33,256.89	\$ 1,108.56	329	502	\$ 378,179.83	\$ 753.35
BANDC	59	98	\$ 33,224.63	39	\$ 13,054.52	\$ 334.73	397	608	\$ 219,705.56	\$ 361.36
BANSC	1	1	\$ 884.90	0			9	12	\$ 5,663.00	\$ 471.92
BATSC	3	0		0			11	9	\$ 3,965.67	\$ 440.63
BELDC	7	13	\$ 6,282.50	9	\$ 4,362.04	\$ 484.67	46	174	\$ 87,279.67	\$ 501.61
BELSC	1	8	\$ 3,219.52	2	\$ 527.60	\$ 263.80	20	80	\$ 49,442.89	\$ 618.04
BIDDC	79	73	\$ 35,055.95	44	\$ 16,994.80	\$ 386.25	435	595	\$ 308,141.28	\$ 517.88
BRIDC	10	22	\$ 10,869.22	14	\$ 7,064.66	\$ 504.62	82	130	\$ 74,044.06	\$ 569.57
CALDC	0	7	\$ 7,319.92	7	\$ 5,556.56	\$ 793.79	34	88	\$ 51,057.84	\$ 580.20
CARDC	10	12	\$ 4,595.94	5	\$ 2,153.44	\$ 430.69	98	159	\$ 84,322.96	\$ 530.33
CARSC	10	18	\$ 13,090.74	11	\$ 9,602.58	\$ 872.96	105	210	\$ 132,131.15	\$ 629.20
DOVDC	2	20	\$ 4,876.00	3	\$ 1,614.50	\$ 538.17	18	95	\$ 27,529.18	\$ 289.78
DOVSC	0	0		0			2	2	\$ 1,152.00	\$ 576.00
ELLDC	8	22	\$ 14,817.76	12	\$ 5,105.36	\$ 425.45	73	249	\$ 121,145.33	\$ 486.53
ELLSC	2	5	\$ 1,730.00	2	\$ 1,178.00	\$ 589.00	8	33	\$ 9,122.43	\$ 276.44
FARDC	8	12	\$ 7,030.50	14	\$ 14,903.22	\$ 1,064.52	53	81	\$ 60,243.04	\$ 743.74
FARSC	3	3	\$ 578.32	2	\$ 308.84	\$ 154.42	9	7	\$ 4,033.24	\$ 576.18
FORDC	7	10	\$ 5,221.34	3	\$ 1,951.28	\$ 650.43	50	69	\$ 33,072.05	\$ 479.31
HOUDC	30	55	\$ 22,427.89	37	\$ 14,310.25	\$ 386.76	264	335	\$ 131,448.79	\$ 392.38
HOUSC	6	24	\$ 29,231.74	13	\$ 11,902.04	\$ 915.54	47	86	\$ 63,333.82	\$ 736.44
LEWDC	77	166	\$ 63,333.74	91	\$ 37,081.84	\$ 407.49	596	881	\$ 393,220.22	\$ 446.33
LINDC	8	25	\$ 13,933.71	6	\$ 3,774.58	\$ 629.10	77	95	\$ 62,976.60	\$ 662.91
MACDC	4	8	\$ 2,969.00	7	\$ 2,285.00	\$ 326.43	67	126	\$ 47,230.45	\$ 374.84
MACSC	3	8	\$ 3,208.10	4	\$ 720.00	\$ 180.00	32	66	\$ 29,967.78	\$ 454.06
MADDC	7	3	\$ 959.36	1	\$ 341.36	\$ 341.36	29	19	\$ 5,663.70	\$ 298.09
MILDC	3	4	\$ 1,956.47	1	\$ 60.00	\$ 60.00	19	14	\$ 3,581.69	\$ 255.84
NEWDC	13	17	\$ 7,377.95	5	\$ 1,318.65	\$ 263.73	116	137	\$ 49,678.14	\$ 362.61
PORDC	71	107	\$ 61,010.19	76	\$ 40,034.64	\$ 526.77	518	792	\$ 397,388.39	\$ 501.75
PORSC	1	4	\$ 2,768.00	3	\$ 810.00	\$ 270.00	28	17	\$ 16,778.61	\$ 986.98
PREDC	23	25	\$ 12,209.63	14	\$ 6,920.98	\$ 494.36	160	290	\$ 106,975.38	\$ 368.88
ROCD	14	23	\$ 12,831.74	15	\$ 6,777.14	\$ 451.81	157	191	\$ 77,390.42	\$ 405.19
RODC	7	10	\$ 8,103.03	7	\$ 13,663.90	\$ 1,951.99	64	101	\$ 86,568.25	\$ 857.11
RUMDC	6	15	\$ 7,657.26	7	\$ 2,703.50	\$ 386.21	82	102	\$ 48,254.22	\$ 473.08
SKODC	9	40	\$ 24,748.12	22	\$ 13,673.70	\$ 621.53	82	255	\$ 130,629.71	\$ 512.27
SKOSC	0	1	\$ 4,713.70	1	\$ 4,713.70	\$ 4,713.70	2	3	\$ 5,447.70	\$ 1,815.90
SOUDC	12	13	\$ 8,087.12	10	\$ 3,370.68	\$ 337.07	111	150	\$ 57,319.98	\$ 382.13
SOUSC	12	32	\$ 18,650.68	25	\$ 14,310.56	\$ 572.42	97	207	\$ 116,635.67	\$ 563.46
SPRDC	78	69	\$ 31,582.30	34	\$ 17,269.10	\$ 507.91	388	454	\$ 234,182.16	\$ 515.82
Law Ct	8	13	\$ 19,739.71	5	\$ 6,226.15	\$ 1,245.23	60	91	\$ 107,374.48	\$ 1,179.94
YORCD	173	160	\$ 76,645.13	97	\$ 45,728.72	\$ 471.43	901	326	\$ 158,740.55	\$ 486.93
ARODC	36	18	\$ 11,209.74	13	\$ 4,876.24	\$ 375.10	200	90	\$ 31,355.56	\$ 348.40
ANDCD	103	77	\$ 26,486.16	37	\$ 15,548.52	\$ 420.23	644	213	\$ 82,307.71	\$ 386.42
KENCD	135	88	\$ 42,224.53	43	\$ 23,183.32	\$ 539.15	870	551	\$ 193,922.74	\$ 351.95
PENCD	210	232	\$ 99,814.28	152	\$ 58,258.06	\$ 383.28	1,481	1,476	\$ 657,117.58	\$ 445.20
SAGCD	22	33	\$ 28,142.16	22	\$ 18,177.68	\$ 826.26	230	213	\$ 149,664.74	\$ 702.65
WALCD	31	30	\$ 11,155.54	20	\$ 9,344.18	\$ 467.21	214	147	\$ 53,250.38	\$ 362.25
PISCD	9	13	\$ 3,324.08	11	\$ 3,024.08	\$ 274.92	85	94	\$ 30,840.38	\$ 328.09
HANCD	57	80	\$ 31,996.50	62	\$ 25,580.50	\$ 412.59	393	387	\$ 156,790.62	\$ 405.14
FRACD	36	42	\$ 17,801.71	18	\$ 10,860.55	\$ 603.36	349	351	\$ 133,391.34	\$ 380.03
WASCD	37	31	\$ 7,448.20	14	\$ 3,724.60	\$ 266.04	273	162	\$ 40,115.45	\$ 247.63
CUMCD	342	298	\$ 172,496.82	150	\$ 87,863.57	\$ 585.76	2,208	1,924	\$ 1,080,267.46	\$ 561.47
KNOCD	70	47	\$ 22,447.52	26	\$ 11,378.38	\$ 437.63	368	227	\$ 101,896.23	\$ 448.88
SOMCD	1	0		0			6	5	\$ 3,113.30	\$ 622.66
OXFCD	67	37	\$ 12,543.68	23	\$ 7,260.44	\$ 315.67	328	125	\$ 34,800.29	\$ 278.40
LINCD	37	40	\$ 20,622.66	25	\$ 10,669.80	\$ 426.79	254	167	\$ 74,131.71	\$ 443.90
WATDC	21	35	\$ 14,451.31	23	\$ 8,114.31	\$ 352.80	138	285	\$ 131,980.68	\$ 463.09
WESDC	24	29	\$ 10,787.04	20	\$ 6,347.06	\$ 317.35	162	213	\$ 88,120.52	\$ 413.71
WISDC	4	6	\$ 1,622.45	4	\$ 1,262.45	\$ 315.61	67	114	\$ 54,541.63	\$ 478.44
WISSC	4	10	\$ 5,001.62	5	\$ 2,103.28	\$ 420.66	30	81	\$ 61,476.79	\$ 758.97
YORDC	29	18	\$ 8,581.94	10	\$ 5,787.58	\$ 578.76	100	88	\$ 39,104.89	\$ 444.37
<b>TOTAL</b>	<b>2,218</b>	<b>2,636</b>	<b>\$ 1,384,836.01</b>	<b>1,500</b>	<b>\$ 786,747.68</b>	<b>\$ 524.50</b>	<b>15,098</b>	<b>16,832</b>	<b>\$ 8,629,556.07</b>	<b>\$ 512.69</b>

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

**Number of Attorneys Rostered by Court**

01/31/2016

<b>Court</b>	<b>Rostered Attorneys</b>	<b>Court</b>	<b>Rostered Attorneys</b>
Augusta District Court	102	South Paris District Court	62
Bangor District Court	56	Springvale District Court	118
Belfast District Court	52	Unified Criminal Docket Alfred	110
Biddeford District Court	133	Unified Criminal Docket Aroostook	23
Bridgton District Court	97	Unified Criminal Docket Auburn	105
Calais District Court	12	Unified Criminal Docket Augusta	96
Caribou District Court	19	Unified Criminal Docket Bangor	57
Dover-Foxcroft District Court	29	Unified Criminal Docket Bath	94
Ellsworth District Court	45	Unified Criminal Docket Belfast	46
Farmington District Court	28	Unified Criminal DocketDover Foxcroft	24
Fort Kent District Court	11	Unified Criminal Docket Ellsworth	40
Houlton District Court	16	Unified Criminal Docket Farmington	29
Lewiston District Court	131	Inified Criminal Docket Machias	17
Lincoln District Court	31	Unified Criminal Docket Portland	146
Machias District Court	19	Unified Criminal Docket Rockland	40
Madawaska District Court	12	Unified Criminal Docket Skowhegan	21
Millinocket District Court	22	Unified Criminal docket Soputh Paris	101
Newport District Court	41	Unified Criminal Docket Wiscassett	70
Portland District Court	159	Waterville District Court	58
Presque Isle District Court	15	West Bath District Court	113
Rockland District Court	48	Wiscassett District Court	78
Rumford District Court	26	York District Court	106
Skowhegan District Court	30		

**(2-B)**  
**February 2016 Operations Reports**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**TO:** MCILS COMMISSIONERS  
**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR  
**SUBJECT:** FEBRUARY 2016 OPERATIONS REPORTS  
**DATE:** MARCH 2, 2016

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Attached you will find the February, 2016 Operations Reports for your review and our discussion at the upcoming Commission meeting on March 8, 2016. A summary of the operations reports follows:

- 2,239 new cases were opened in the DefenderData system in February. This was a 21 case increase over January.
- The number of vouchers submitted electronically in February was 2,601, a decrease of 35 vouchers from January, totaling \$1,345,070.20, a decrease of \$40,000 from January. In February, we paid 2,367 electronic vouchers totaling \$1,245,502.48, representing an increase of 867 vouchers and \$459,000 compared to January.
- There were no paper vouchers submitted and paid in February.
- The average price per voucher in February was \$526.19, up \$1.91 per voucher over January.
- Appeal and Petition for Release - NCR cases had the highest average vouchers in February. There were 10 vouchers exceeding \$5,000 paid in February. Three vouchers involved murder charges, one an appeal by counsel who did not handle the trial, one an interim voucher, and one where the client retained counsel 26 months into the case. Two vouchers involved trials, one a high profile aggravated assault case that resulted in a not guilty verdict, and one a trial in a welfare fraud case involving voluminous records and a client with cognitive impairment. Another voucher involving a welfare fraud charge resulted in a sentence without jail or restitution when counsel worked to demonstrate the vulnerable circumstances of the defendant. One voucher involved an Arson case in which the defendant was a victim of human trafficking, and the lawyer worked to secure treatment and safe housing for the client, as well as facilitate her participation in a federal prosecution of the trafficker. Another voucher involved a Petition for Discharge on behalf of a person found not criminally responsible by reason of insanity where the client was shot during a police encounter during the pendency of the case. The last two vouchers involved a contested sentencing in a serious home invasion and sex offense case, and a plea at jury selection on a witness tampering charge.

In our All Other Account, the total expenses for the month of February were \$1,333,137.69. Of the amount, under \$10,000 was devoted to the Commission's operating expenses.

In the Personal Services Account, we had \$53,480.85 in expenses for the month of February.

In the Revenue Account, we did not receive our monthly transfer from the Judicial Branch for counsel fees for the month of February, which would have involved January's collections. We were informed, however, that the amount collected in January totaled \$43,023.74, down approximately \$4,000 from the previous month. Collections continue to run below the monthly amount projected for the year.

In our Conference Account, we had no activity in February, leaving the account balance at \$11,057.34.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Case Type

2/29/2016

DefenderData Case Type	Feb-16						Fiscal Year 2016			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
Appeal	10	19	\$ 38,380.06	22	\$ 46,342.79	\$ 2,106.49	86	159	\$ 211,371.89	\$ 1,329.38
Child Protection Petition	218	394	\$ 258,065.46	353	\$ 233,784.20	\$ 662.28	1,205	2,548	\$ 1,585,778.15	\$ 622.36
Drug Court	1	3	\$ 1,872.00	5	\$ 2,574.00	\$ 514.80	4	47	\$ 27,286.50	\$ 580.56
Emancipation	5	5	\$ 1,558.40	5	\$ 1,158.90	\$ 231.78	59	65	\$ 18,910.40	\$ 290.93
Felony	536	581	\$ 447,129.59	541	\$ 421,829.64	\$ 779.72	4,404	4,512	\$ 3,564,868.58	\$ 790.09
Involuntary Civil Commitment	75	58	\$ 14,469.36	48	\$ 10,830.66	\$ 225.64	549	480	\$ 115,039.56	\$ 239.67
Juvenile	78	95	\$ 42,942.27	60	\$ 19,003.18	\$ 316.72	686	682	\$ 282,460.84	\$ 414.17
Lawyer of the Day - Custody	224	220	\$ 50,296.51	202	\$ 46,944.59	\$ 232.40	1,772	1,565	\$ 361,959.62	\$ 231.28
Lawyer of the Day - Juvenile	37	41	\$ 7,881.52	41	\$ 8,318.72	\$ 202.90	332	306	\$ 63,989.20	\$ 209.12
Lawyer of the Day - Walk-in	102	108	\$ 26,856.54	112	\$ 27,773.99	\$ 247.98	930	798	\$ 197,554.17	\$ 247.56
Misdemeanor	731	686	\$ 263,033.32	617	\$ 237,708.86	\$ 385.27	5,493	5,104	\$ 1,984,449.16	\$ 388.80
Petition, Modified Release Treatment	0	6	\$ 3,281.35	4	\$ 1,183.35	\$ 295.84	4	37	\$ 13,007.43	\$ 351.55
Petition, Release or Discharge	0	0		1	\$ 9,872.88	\$ 9,872.88	1	3	\$ 10,339.63	\$ 3,446.54
Petition, Termination of Parental Rights	21	43	\$ 30,956.44	37	\$ 30,030.73	\$ 811.64	125	377	\$ 281,833.33	\$ 747.57
Post Conviction Review	11	7	\$ 5,724.10	5	\$ 4,274.60	\$ 854.92	55	45	\$ 73,874.31	\$ 1,641.65
Probation Violation	158	167	\$ 68,678.33	158	\$ 67,805.31	\$ 429.15	1,335	1,249	\$ 489,530.83	\$ 391.94
Represent Witness on 5th Amendment	3	1	\$ 645.84	3	\$ 1,035.32	\$ 345.11	20	15	\$ 3,222.94	\$ 214.86
Review of Child Protection Order	26	163	\$ 82,609.11	151	\$ 74,444.76	\$ 493.01	241	1,194	\$ 585,968.51	\$ 490.76
Revocation of Administrative Release	3	4	\$ 690.00	2	\$ 586.00	\$ 293.00	25	13	\$ 3,613.50	\$ 277.96
<b>DefenderData Sub-Total</b>	<b>2,239</b>	<b>2,601</b>	<b>\$ 1,345,070.20</b>	<b>2,367</b>	<b>\$ 1,245,502.48</b>	<b>\$ 526.19</b>	<b>17,326</b>	<b>19,199</b>	<b>\$ 9,875,058.55</b>	<b>\$ 514.35</b>
<b>Paper Voucher Sub-Total</b>	<b>0</b>	<b>0</b>	<b>\$ -</b>	<b>0</b>	<b>\$ -</b>	<b>#DIV/0!</b>	<b>5</b>	<b>5</b>	<b>\$ 6,517.78</b>	<b>\$ 1,303.56</b>
<b>TOTAL</b>	<b>2,239</b>	<b>2,601</b>	<b>\$1,345,070.20</b>	<b>2,367</b>	<b>\$1,245,502.48</b>	<b>\$ 526.19</b>	<b>17,331</b>	<b>19,204</b>	<b>\$ 9,881,576.33</b>	<b>\$ 514.56</b>

MAINE COMMISSION ON INDIGENT LEGAL SERVICES  
 FY16 FUND ACCOUNTING  
 AS OF 02/29/2016

Account 010 95F Z112 01 (All Other)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY16 Total
FY15 Professional Services Allotment		\$ 4,428,945.00		\$ 4,364,292.00		\$ 4,515,272.00		\$ 4,873,093.00	
FY15 General Operations Allotment		\$ 34,560.00		\$ 34,560.00		\$ 34,560.00		\$ 34,560.00	
Financial Order Adjustment		\$ -		\$ 8,633.00		\$ 8,633.00		\$ 8,634.00	
Financial Order Adjustment		\$ -		\$ -		\$ -		\$ -	
<b>Total Budget Allotments</b>		<b>\$ 4,463,505.00</b>		<b>\$ 4,407,485.00</b>		<b>\$ 4,558,465.00</b>		<b>\$ 4,916,287.00</b>	<b>\$ 18,345,742.00</b>
Total Expenses	1	\$ (1,034,674.33)	4	\$ (1,209,786.02)	7	\$ (896,072.76)	10	\$ -	\$ (3,140,533.11)
	2	\$ (1,384,090.42)	5	\$ (1,175,979.15)	8	\$ (1,333,137.69)	11	\$ -	\$ (3,893,207.26)
	3	\$ (1,609,871.30)	6	\$ (1,821,435.96)	9	\$ -	12	\$ -	\$ (3,431,307.26)
Encumbrances		\$ (213,187.50)		\$ 71,062.50		\$ 47,375.00		\$ -	\$ (94,750.00)
<b>TOTAL REMAINING</b>		<b>\$ 221,681.45</b>		<b>\$ 271,346.37</b>		<b>\$ 2,376,629.55</b>		<b>\$ 4,916,287.00</b>	<b>\$ 7,785,944.37</b>

Q3 Month 8 (as of 02/29/16)	
<b>INDIGENT LEGAL SERVICES</b>	
Counsel Payments	\$ (1,245,502.48)
Somerset County	\$ (23,327.50)
Subpoena Witness Fees	\$ (112.16)
Private Investigators	\$ (22,442.25)
Mental Health Expert	\$ (20,428.16)
Transcripts	\$ (1,140.00)
Other Expert	\$ (10,001.89)
Air fare-out of state witness	\$ -
Process Servers	\$ (371.53)
Interpreters	\$ (407.40)
Misc Prof Fees & Serv	\$ -
<b>SUB-TOTAL ILS</b>	<b>\$ (1,323,733.37)</b>
<b>OPERATING EXPENSES</b>	
Service Center	\$ -
DefenderData	\$ (4,867.50)
Parking Permit Fee-Auburn	\$ -
Mileage/Tolls/Parking	\$ (737.00)
Mailing/Postage/Freight	\$ (912.68)
Bar Dues - John & Ellie	\$ -
Annual Report Print Cost	\$ -
Office Supplies/Equip.	\$ (357.43)
Cellular Phones	\$ (180.15)
Subscriptions	\$ -
Office Equipment Rental	\$ (175.05)
Notary Fees	\$ -
OIT/TELCO	\$ (2,174.51)
<b>SUB-TOTAL OE</b>	<b>\$ (9,404.32)</b>
<b>TOTAL</b>	<b>\$ (1,333,137.69)</b>

INDIGENT LEGAL SERVICES	
Q3 Allotment	\$ 4,558,465.00
Q3 Encumbrances for Somerset city PDP & Justice Works contracts	\$ 47,375.00
Q3 Expenses as of 02/29/16	\$ (2,229,210.45)
Remaining Q3 Allotment as of 02/29/16	\$ 2,376,629.55

\$ -

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**  
**FY16 FUND ACCOUNTING**  
As of 02/29/16

Account 014 95F Z112 01 (Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY16 Total
<b>Total Budget Allotments</b>		\$ 180,124.00		\$ 180,124.00		\$ 180,124.00		\$ 180,125.00	\$ 720,497.00
Financial Order Adjustment	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Financial Order Adjustment	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Budget Order Adjustment	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
Financial Order Adjustment	3	\$ 14,106.00	4	\$ 15,000.00	9	\$ 15,000.00	12	\$ 15,000.00	\$ 59,106.00
<b>Total Budget Allotments</b>		\$ 194,230.00		\$ 195,124.00		\$ 195,124.00		\$ 195,125.00	\$ 779,603.00
Cash Carryover from Prior Quarter		\$ 59,106.00		\$ 16,758.55		\$ 0.44		\$ -	
Collected Revenue from JB	1	\$ 54,101.64	4	\$ 46,384.74	7	\$ 47,754.68	10	\$ -	
Promissory Note Payments		\$ 50.00		\$ -		\$ -		\$ -	
Collected Revenue from JB	2	\$ 44,316.49	5	\$ 48,960.09	8	\$ -	11	\$ -	
Promissory Note Payments		\$ 50.00		\$ 200.00		\$ -		\$ -	
Discovery sanction payment		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB	3	\$ 43,704.16	6	\$ 41,462.08	9	\$ -	12	\$ -	
Promissory Note Payments		\$ 50.00		\$ 50.00		\$ -		\$ -	
<b>TOTAL CASH PLUS REVENUE COLLECTED</b>		\$ 201,378.29		\$ 153,815.46		\$ 47,755.12		\$ -	\$ 327,083.88
Counsel Payments	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Other Expenses		\$ (90.50)		\$ -		\$ -		\$ -	
Counsel Payments	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Other Expenses		\$ (1.93)		\$ -		\$ -		\$ -	
Counsel Payments	3	\$ (178,086.96)	6	\$ (149,790.00)	9	\$ -	12	\$ -	
Other Expenses	**	\$ (3,802.16)		\$ (3,198.02)		\$ -		\$ -	
<b>REMAINING ALLOTMENT</b>		\$ 12,248.45		\$ 42,135.98		\$ 195,124.00		\$ 195,125.00	\$ 444,633.43
Overpayment Reimbursements	1	\$ (2,394.19)	4	\$ (295.00)	7	\$ -	10	\$ -	
	2	\$ (244.00)	5	\$ (532.00)	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
<b>REMAINING CASH Year to Date</b>		\$ 16,758.55		\$ 0.44		\$ 47,755.12		\$ -	

Q3 Month 8 (as of 02/29/16)	
DEFENDER DATA COUNSEL PAYMENTS	\$ -
<b>SUB-TOTAL ILS</b>	
OVERPAYMENT REIMBURSEMENTS	\$ -
Paper Voucher	\$ -
Somerset County CDs	\$ -
Private Investigators	\$ -
Mental Health Expert	\$ -
Transcripts	\$ -
Other Expert	\$ -
StaCap Expense	\$ -
<b>SUB-TOTAL OE</b>	\$ -
<b>TOTAL</b>	\$ -

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

\*\* NO ACTIVITY

MAINE COMMISSION ON INDIGENT LEGAL SERVICES  
 FY16 FUND ACCOUNTING  
 As of 02/29/16

Account 014 95F Z112 02 (Conference)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY16 Total
<b>Total Budget Allotments</b>		\$ 10,385.00		\$ 15,000.00		\$ 15,000.00		\$ 20,000.00	\$ 60,385.00
Financial Order Adjustment	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Financial Order Adjustment	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Financial Order Adjustment	3	\$ 1,196.00	6	\$ 3,000.00	9	\$ 3,000.00	12	\$ 2,000.00	\$ 9,196.00
<b>Total Budget Allotments</b>		\$ 11,581.00		\$ 18,000.00		\$ 18,000.00		\$ 22,000.00	\$ 69,581.00
Cash Carryover from Prior Quarter		\$ 12,580.84		\$ 11,962.77		\$ 11,122.60		\$ -	
Collected Revenue	1	\$ -	4	\$ 1,400.00	7	\$ -	10	\$ -	
Collected Revenue	2	\$ 22.50	5	\$ 625.00	8	\$ -	11	\$ -	
Collected Revenue	3	\$ -	6	\$ 1,275.00	9	\$ -	12	\$ -	
<b>TOTAL CASH PLUS REVENUE COLLECTED</b>		\$ 12,603.34		\$ 15,262.77		\$ 11,122.60		\$ -	\$ 3,322.50
Total Expenses	1	\$ (99.00)	4	\$ -	7	\$ (65.26)	10	\$ -	
	2	\$ (530.29)	5	\$ (1,060.79)	8	\$ -	11	\$ -	
	3	\$ (11.28)	6	\$ (3,079.38)	9	\$ -	12	\$ -	
Encumbrances		\$ (3,385.00)		\$ 2,325.00					\$ (1,060.00)
<b>REMAINING ALLOTMENT</b>		\$ 7,555.43		\$ 16,184.83		\$ 18,000.00		\$ 22,000.00	\$ 63,740.26
<b>REMAINING CASH Year to Date</b>		\$ 11,962.77		\$ 11,122.60		\$ 11,057.34		\$ -	

Q3 Month 8 (as of 02/29/16)	
Training Manuals Printing	\$ -
Training Refreshments/Meals	\$ -
Media Northeast (encumbered Q1)	\$ -
Refund(s) for non-attendance	\$ -
Office Supplies	\$ -
CLE App to the Bar	\$ -
State Cap Expense	\$ -
<b>TOTAL</b>	\$ -

\*\* NO ACTIVITY

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

FY16 FUND ACCOUNTING

AS OF 02/29/2016

Account 010 95F Z112 01 (Personal Services)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY16 Total
FY16 Allotment		\$ 197,643.00		\$ 197,641.00		\$ 174,658.00		\$ 181,575.00	\$ -
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustments				\$ -		\$ -		\$ -	
<b>Total Budget Allotments</b>		<b>\$ 197,643.00</b>		<b>\$ 197,641.00</b>		<b>\$ 174,658.00</b>		<b>\$ 181,575.00</b>	<b>\$ 751,517.00</b>
Total Expenses	1	\$ (73,500.45)	4	\$ (51,930.26)	7	\$ (52,614.99)	10	\$ -	
	2	\$ (49,758.60)	5	\$ (52,356.41)	8	\$ (53,480.85)	11	\$ -	
	3	\$ (48,847.23)	6	\$ (74,897.31)	9	\$ -	12	\$ -	
<b>TOTAL REMAINING</b>		<b>\$ 25,536.72</b>		<b>\$ 18,457.02</b>		<b>\$ 68,562.16</b>		<b>\$ 181,575.00</b>	<b>\$ 294,130.90</b>

Q3 Month 8 (as of 02/29/16)	
Per Diem Payments	\$ -
Salary	\$ (25,960.61)
Vacation Pay	\$ (709.84)
Holiday Pay	\$ (1,542.80)
Sick Pay	\$ (719.95)
Employee Hlth Svs/Workers Comp	\$ (74.00)
Health Insurance	\$ (9,993.46)
Dental Insurance	\$ (249.48)
Employer Retiree Health	\$ (3,167.69)
Employer Retirement	\$ (2,239.31)
Employer Group Life	\$ (218.24)
Employer Medicare	\$ (420.64)
Retiree Unfunded Liability	\$ (5,409.43)
Retro Pymt	\$ -
Perm Part Time Full Ben	\$ (2,775.40)
<b>TOTAL</b>	<b>\$ (53,480.85)</b>

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Court

2/29/2016

Court	Feb-16						Fiscal Year 2016			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
ALFSC	37	96	\$ 73,881.23	101	\$ 83,084.85	\$ 822.62	559	1,214	\$ 927,708.64	\$ 764.18
AUBSC	32	72	\$ 42,492.87	66	\$ 38,214.19	\$ 579.00	236	588	\$ 430,106.88	\$ 731.47
AUGDC	43	65	\$ 36,079.06	82	\$ 43,047.82	\$ 524.97	338	524	\$ 256,384.52	\$ 489.28
AUGSC	37	58	\$ 46,252.08	48	\$ 54,478.58	\$ 1,134.97	366	550	\$ 432,658.41	\$ 786.65
BANDC	47	92	\$ 31,745.66	87	\$ 30,472.25	\$ 350.26	443	695	\$ 250,177.81	\$ 359.97
BANSC	0	4	\$ 3,262.80	2	\$ 1,747.00	\$ 873.50	9	14	\$ 7,410.00	\$ 529.29
BATSC	1	3	\$ 1,548.98	1	\$ 531.74	\$ 531.74	12	10	\$ 4,497.41	\$ 449.74
BELDC	4	25	\$ 13,641.41	17	\$ 9,675.99	\$ 569.18	50	191	\$ 96,955.66	\$ 507.62
BELSC	0	9	\$ 10,773.99	12	\$ 9,711.43	\$ 809.29	20	92	\$ 59,154.32	\$ 642.98
BIDDC	52	72	\$ 36,280.94	54	\$ 31,116.67	\$ 576.23	484	649	\$ 339,257.95	\$ 522.74
BRIDC	6	14	\$ 8,080.30	15	\$ 5,889.43	\$ 392.63	88	145	\$ 79,933.49	\$ 551.27
CALDC	3	0		3	\$ 4,082.96	\$ 1,360.99	36	90	\$ 54,810.80	\$ 609.01
CARDC	8	22	\$ 13,648.09	18	\$ 9,240.35	\$ 513.35	106	177	\$ 93,563.31	\$ 528.61
CARSC	5	14	\$ 9,622.19	13	\$ 7,875.50	\$ 605.81	109	223	\$ 140,006.65	\$ 627.83
DOVDC	1	12	\$ 5,623.01	23	\$ 7,506.93	\$ 326.39	19	118	\$ 35,036.11	\$ 296.92
DOVSC	1	0		0			3	2	\$ 1,152.00	\$ 576.00
ELLDC	7	25	\$ 19,554.76	20	\$ 16,964.90	\$ 848.25	80	269	\$ 138,110.23	\$ 513.42
ELLSC	3	1	\$ 642.00	4	\$ 1,194.00	\$ 298.50	10	37	\$ 10,316.43	\$ 278.82
FARDC	12	19	\$ 23,812.42	13	\$ 7,141.74	\$ 549.36	65	94	\$ 67,384.78	\$ 716.86
FARSC	0	1	\$ 794.50	1	\$ 269.48	\$ 269.48	9	8	\$ 4,302.72	\$ 537.84
FORDC	3	7	\$ 3,552.40	11	\$ 5,063.90	\$ 460.35	53	80	\$ 38,135.95	\$ 476.70
HOUDC	38	46	\$ 17,058.22	45	\$ 16,573.10	\$ 368.29	302	380	\$ 148,021.89	\$ 389.53
HOUSC	2	6	\$ 3,825.63	13	\$ 17,709.86	\$ 1,362.30	49	99	\$ 81,043.68	\$ 818.62
LEWDC	102	141	\$ 64,193.55	131	\$ 58,585.59	\$ 447.22	694	1,012	\$ 451,805.81	\$ 446.45
LINDC	11	20	\$ 8,910.69	28	\$ 12,162.44	\$ 434.37	88	123	\$ 75,139.04	\$ 610.89
MACDC	5	13	\$ 6,322.00	8	\$ 6,417.50	\$ 802.19	72	134	\$ 53,647.95	\$ 400.36
MACSC	3	5	\$ 2,176.70	8	\$ 4,369.20	\$ 546.15	35	74	\$ 34,336.98	\$ 464.01
MADDC	3	10	\$ 2,713.44	10	\$ 2,503.44	\$ 250.34	32	29	\$ 8,167.14	\$ 281.63
MILDC	2	4	\$ 906.00	6	\$ 2,598.47	\$ 433.08	21	20	\$ 6,180.16	\$ 309.01
NEWDC	20	32	\$ 11,867.34	28	\$ 12,185.83	\$ 435.21	136	165	\$ 61,863.97	\$ 374.93
PORDC	108	118	\$ 70,083.35	99	\$ 58,548.27	\$ 591.40	623	891	\$ 455,936.66	\$ 511.71
PORSC	1	6	\$ 3,821.96	3	\$ 3,814.06	\$ 1,271.35	29	20	\$ 20,592.67	\$ 1,029.63
PREDC	19	53	\$ 17,941.43	45	\$ 16,115.90	\$ 358.13	178	335	\$ 123,091.28	\$ 367.44
ROCD	20	19	\$ 5,031.10	19	\$ 9,240.60	\$ 486.35	177	210	\$ 86,631.02	\$ 412.53
RODC	12	12	\$ 12,439.54	9	\$ 7,977.76	\$ 886.42	76	110	\$ 94,546.01	\$ 859.51
RUMDC	8	18	\$ 9,727.12	12	\$ 6,903.68	\$ 575.31	90	114	\$ 55,157.90	\$ 483.84
SKODC	25	45	\$ 23,174.70	32	\$ 18,716.16	\$ 584.88	107	287	\$ 149,345.87	\$ 520.37
SKOSC	1	0		0			3	3	\$ 5,447.70	\$ 1,815.90
SOUDC	8	11	\$ 6,384.36	13	\$ 9,951.30	\$ 765.48	117	163	\$ 67,271.28	\$ 412.71
SOUSC	8	14	\$ 8,047.23	15	\$ 9,289.65	\$ 619.31	104	222	\$ 125,925.32	\$ 567.23
SPRDC	49	71	\$ 36,417.02	61	\$ 26,951.60	\$ 441.83	437	515	\$ 261,133.76	\$ 507.06
Law Ct	7	13	\$ 29,665.44	15	\$ 37,146.62	\$ 2,476.44	67	106	\$ 144,521.10	\$ 1,363.41
YORCD	127	94	\$ 48,703.56	106	\$ 50,235.40	\$ 473.92	1,031	432	\$ 208,975.95	\$ 483.74
AROCD	51	31	\$ 13,931.00	18	\$ 10,329.42	\$ 573.86	252	108	\$ 41,684.98	\$ 385.97
ANDCD	128	83	\$ 36,275.53	73	\$ 26,715.97	\$ 365.97	774	286	\$ 109,023.68	\$ 381.20
KENCD	140	124	\$ 40,830.57	119	\$ 40,150.89	\$ 337.40	1,012	671	\$ 234,568.63	\$ 349.58
PENCD	249	232	\$ 102,521.57	202	\$ 84,170.45	\$ 416.69	1,730	1,707	\$ 749,376.03	\$ 439.00
SAGCD	48	34	\$ 21,336.81	25	\$ 21,665.11	\$ 866.60	278	238	\$ 171,329.85	\$ 719.87
WALCD	34	28	\$ 13,797.70	27	\$ 6,835.60	\$ 253.17	248	174	\$ 60,085.98	\$ 345.32
PISCD	15	14	\$ 2,642.00	8	\$ 1,488.00	\$ 186.00	100	102	\$ 32,328.38	\$ 316.94
HANCD	58	47	\$ 22,670.02	29	\$ 11,503.76	\$ 396.68	452	387	\$ 160,206.38	\$ 413.97
FRACD	42	54	\$ 22,959.97	56	\$ 19,338.26	\$ 345.33	391	407	\$ 152,729.60	\$ 375.26
WASCD	31	28	\$ 8,775.15	24	\$ 5,889.60	\$ 245.40	305	187	\$ 46,335.05	\$ 247.78
CUMCD	313	313	\$ 164,561.47	295	\$ 168,428.90	\$ 570.95	2,519	2,219	\$ 1,248,696.36	\$ 562.73
KNOCD	54	58	\$ 21,740.36	35	\$ 20,267.90	\$ 579.08	422	262	\$ 122,164.13	\$ 466.28
SOMCD	0	1	\$ 132.00	1	\$ 132.00	\$ 132.00	6	6	\$ 3,245.30	\$ 540.88
OXFCD	67	38	\$ 15,199.06	30	\$ 10,760.68	\$ 358.69	395	155	\$ 45,560.97	\$ 293.94
LINCD	48	36	\$ 25,011.08	39	\$ 21,644.60	\$ 554.99	302	206	\$ 95,776.31	\$ 464.93
WATDC	23	43	\$ 23,436.41	31	\$ 14,907.13	\$ 480.88	161	316	\$ 146,887.81	\$ 464.83
WESDC	29	41	\$ 15,550.05	25	\$ 8,699.23	\$ 347.97	191	238	\$ 96,819.75	\$ 406.81
WISDC	11	11	\$ 8,301.34	6	\$ 1,930.66	\$ 321.78	78	120	\$ 56,472.29	\$ 470.60
WISSC	5	4	\$ 7,328.06	7	\$ 8,974.34	\$ 1,282.05	35	88	\$ 70,451.13	\$ 800.58
YORDC	12	19	\$ 7,370.98	20	\$ 6,363.84	\$ 318.19	112	108	\$ 45,468.73	\$ 421.01
<b>TOTAL</b>	<b>2,239</b>	<b>2,601</b>	<b>\$ 1,345,070.20</b>	<b>2,367</b>	<b>\$ 1,245,502.48</b>	<b>\$ 526.19</b>	<b>17,326</b>	<b>19,199</b>	<b>\$9,875,058.55</b>	<b>\$ 514.35</b>

## MAINE COMMISSION ON INDIGENT LEGAL SERVICES

### Number of Attorneys Rostered by Court

02/29/2016

<b>Court</b>	<b>Rostered Attorneys</b>
Augusta District Court	101
Bangor District Court	55
Belfast District Court	52
Biddeford District Court	133
Bridgton District Court	96
Calais District Court	12
Caribou District Court	20
Dover-Foxcroft District Court	29
Ellsworth District Court	45
Farmington District Court	28
Fort Kent District Court	12
Houlton District Court	17
Lewiston District Court	128
Lincoln District Court	31
Machias District Court	19
Madawaska District Court	13
Millinocket District Court	22
Newport District Court	41
Portland District Court	158
Presque Isle District Court	16
Rockland District Court	47
Rumford District Court	25
Skowhegan District Court	30

<b>Court</b>	<b>Rostered Attorneys</b>
South Paris District Court	60
Springvale District Court	118
Unified Criminal Docket Alfred	110
Unified Criminal Docket Aroostook	24
Unified Criminal Docket Auburn	103
Unified Criminal Docket Augusta	95
Unified Criminal Docket Bangor	55
Unified Criminal Docket Bath	93
Unified Criminal Docket Belfast	46
Unified Criminal Docket Dover Foxcroft	24
Unified Criminal Docket Ellsworth	40
Unified Criminal Docket Farmington	28
Unified Criminal Docket Machias	18
Unified Criminal Docket Portland	145
Unified Criminal Docket Rockland	40
Unified Criminal Docket Skowhegan	21
Unified Criminal docket Soputh Paris	100
Unified Criminal Docket Wiscasset	69
Waterville District Court	58
West Bath District Court	111
Wiscasset District Court	77
York District Court	106

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

**TESTIMONY ON BEHALF OF THE COMMISSIONERS OF  
THE MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

**L.D. 1433**

**Steven M. Carey, Esq., Commission Chair**

**January 14, 2016**

Senator Burns, Representative Hobbins, and members of the Joint Standing Committee on Judiciary, my name is Steve Carey, I am a resident of Cumberland and a Partner at The Carey Law Firm, P.A. in Portland. I am here today in my position as the Chair of the Maine Commission on Indigent Legal Services to testify in opposition to L.D. 1433. Our Commissioners have voted 4-0, with one Commissioner being absent, to oppose this bill.

The Maine Commission on Indigent Legal Services is an independent commission whose purpose is to provide efficient, high-quality representation to indigent individuals who are entitled to counsel at state expense under the United States Constitution or under the Constitution or statutes of Maine. The Commission currently uses assigned private attorneys and contract counsel to provide representation to criminal defendants, juvenile defendants, parents in child protective cases, and people facing involuntary commitment to a psychiatric hospital who are indigent.

Our Commissioners and the Commission staff have been working hard over the past several years to comply with the Commission's duties outlined in our enabling statute. The Commission established minimum standards and training requirements that attorneys must meet prior to accepting any assignments. Rosters of qualified attorneys were created and submitted to the Courts. Attorneys must be appointed off of these rosters. For several categories of the more complex cases the Commission passed a rule requiring additional training and experience. Standards of Practice were established to provide guidance for attorneys handling criminal cases,

juvenile cases, and child protective matters. A state of the art on-line system was set up for submission of attorney vouchers and payment. Attorneys are paid faster and consistently under our system. Staff developed minimum standards trainings courses and organized advanced training courses. The Commission has provided over 50 low-cost live or video replay trainings throughout the State. There are clear procedures for applying for funds for investigators and experts, and a process for review and appeal of a decision of the Executive Director.

The Legislature created the Commission only five years ago in order to address the previous system's lack of independence from the Judicial Branch. Our Commissioners, our staff, and the overwhelming majority of our rostered attorneys are extremely proud of the system we have built. L.D. 1433 would dismantle all that work by establishing a system run by a Chief Public Defender, whose position is entangled in the Executive Branch. Under the bill the Chief Public Defender is appointed by the Governor and may be removed from office only by the Governor.

Jonathan LaBonte, the Director of the Governor's Office of Policy and Management, stated in a Bangor Daily News article yesterday that the aim of this bill is to provide cost predictability, quality assurance, and an increase in indigent advocacy. I would like to address those areas in reference to the current system.

Over the past five years the Commission has developed a better understanding of what the accurate costs of the system are. We thank the members of the Judiciary Committee, members of the Appropriations Committee, and the Governor for your support of our budget needs during that time. I am extremely proud to say that this year the Commission is on pace to finish the fiscal year with a surplus in funding. This bill calls for an increase use of contracts as a way to provide cost predictability. The Commission already has the authority to use contracts

and has a long standing contract that covers criminal and juvenile assignments in Somerset County. For the past several months the Commissioners have been in ongoing discussions to determine if the expansion of contracts in particular areas of the State or for particular case types are appropriate.

As far as the idea of quality assurance is concerned our rostered attorneys are more qualified, better trained, and more closely supervised today than they ever were under the previous system. That said the Commission is aware more could be done and we are committed to continue to approve its oversight of the attorneys in our system.

The Commission staff has been diligent in advocating to the Legislature for attachment of fiscal notes to any new laws or changes to existing laws that would affect the Commission's budget. We will continue to do so and will testify if necessary on any new laws that may affect the Commission.

Although the Commission is opposing L.D. 1433 there are a few provisions of note in the bill that could be a benefit to the system that is currently in place. First, the bill requires that one of the non-attorney commissioners have a background in accounting or finance. Having a commissioner with a background in accounting or finance would be a benefit when addressing budget submissions and discussing contracts. Second, the bill adds an additional attorney position to the Office of the Public Defender. An additional attorney on staff at the Commission would allow the Commission to increase attorney supervision and evaluation. Lastly, there is a provision in the bill allowing the Office of the Public Defender access to information at the Maine Revenue Service. Access to this information would greatly assist the Commission's ability to determine or investigate eligibility for services.

On behalf of the Maine Commission on Indigent Legal Services I would like to thank you the chairs and members of this Committee for allowing me the opportunity to speak to you today. We look forward to working with this Committee, the Courts, and the Governor's Office to continue to build and improve the system to meet the needs of Maine's indigent population.

Respectfully,

Steven M. Carey, Esq.

**TESTIMONY ON BEHALF OF THE MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

**LD 1433**

**John D. Pelletier, Esq., Executive Director**

**January 14, 2016**

Senator Burns, Representative Hobbins, and members of the Joint Standing Committee on Judiciary, my name is John Pelletier, and I am the Executive Director of the Maine Commission on Indigent Legal Services. I am here today to testify in opposition to L.D. 1433.

**L.D. 1433 Undermines the Independence of Indigent Legal Services.**

The Clifford Commission, which recommended creation of the Maine Commission on Indigent Legal Services (MCILS), adopted as its central tenet that the delivery of indigent legal services should be independent.<sup>1</sup> When the Legislature created the Commission, it mandated that indigent legal services be “free from undue political interference.” 4 M.R.S.A § 1801. L.D. 1433 undermines the independence of the indigent legal services system by reducing the role of the existing independent Commission and placing responsibility for delivering indigent legal services in a Chief Public Defender who is nominated by, and can only be removed by, the Chief Executive.

Under current law, five Commissioners who are appointed by the Governor and approved by the Senate are responsible for the delivery of indigent legal services. The Commissioners serve definite terms, and if their terms expire without a replacement being nominated, they continue to serve until a replacement is nominated and confirmed. The Commission is independent of the Executive Branch and the Judicial Branch and must work with the

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<sup>1</sup> Independence is the first of the American Bar Association’s “Ten Principals of a Public Defense Delivery System.”

Legislature, as does all of state government, to ensure adequate funding for indigent legal services.

L.D. 1433 reduces the role of the Commission from one of ultimate responsibility for indigent legal services to one of “oversight” of the Office of the Public Defender. Under the bill, it is the Chief Public Defender who is ultimately responsible for providing indigent legal services. Although nominated by the Governor and subject to confirmation by the Legislature, the Chief Public Defender can be removed from office only by the Chief Executive and not by the Commission. A system whereby a Chief Public Defender is responsible for delivering indigent legal services, but is subject to removal by the Chief Executive, is not independent from at least the potential of undue political influence.<sup>2</sup>

**Contracts Will Either Not Stabilize Costs or Do So With Unacceptable Consequences.**

L.D. 1433 mandates that the Chief Public Defender “to the maximum extent possible use contracts” to provide indigent legal services. The Commission understands that the aim of this provision is to stabilize costs, which have regularly increased both during the Commission’s tenure and while the Judicial Branch operated the system. In the Commission’s view, a system relying on contracts will not stabilize costs or will do so with unacceptable consequences.

Contracts, along with public defender offices and private assigned counsel, are one of the methods used throughout the country to provide indigent legal services. Experience elsewhere has demonstrated that flat fee contracts are not the best method for providing services.<sup>3</sup> Instead,

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<sup>2</sup> In the current system, the independent body, the Commission, is ultimately responsible for the delivery of indigent legal services and the administrator of the system, the Executive Director, serves at the pleasure of the Commission.

<sup>3</sup> For example, Nevada, Michigan, and South Dakota have all recently banned flat fee contracts as a means of providing indigent legal services based on concerns about the adequacy of representation provided under such contracts. See <http://sixthamendment.org/abolishing-flat-fee-contracts-for-public-defense-services/>. Commentators particularly object to flat fee contracts that require attorneys to pay for experts and investigators out of the contract amount. L.D. 1433 permits assigned counsel in conflict of interest cases to request funds for experts and investigators, but no such provision exists for contract counsel, suggesting that contract counsel would be required to pay for experts and investigators out of the contract amount.

contracts should be tailored to the fluctuating demand for services. In some jurisdictions, contracts call for payment of a fixed amount per case. In others, contracts are created with a target number of cases in mind, and a process is in place to reconcile the payment amount at the end of a given period based on whether more or fewer than the target number of cases materialized. Because the number of cases always fluctuates, contract costs also fluctuate, so total costs remain unpredictable.

Flat fee contracts renewed every few years could stabilize costs. Often, however, lawyers must deal with increasing caseloads for fixed compensation, which can undermine the quality of services. In addition, flat fee contracts have the potential to over-compensate attorneys when the predicted number of cases upon which the contract is based fails to materialize. In fact, the Commission is currently experiencing an unexpected slow-down in the number of cases, and this has resulted in unspent surpluses that, depending on what the balance of the fiscal year brings, might be returned to the general fund. If a statewide system of flat fee contracts were in place, no savings would be generated from the slow-down in cases.

In sum, contracts that are tied to the actual workload do not bring cost stability, and flat fee contracts, while stable, can either undermine the quality of services by undercompensating counsel or result in over-payment for services. The current system, in contrast, is closely attuned to the demand for services and pays for the services needed, no more and no less.

**A Contact System Will Reduce the Quality of Representation and Undermine Commission Oversight of Attorney Performance.**

Under the current system, outside of the largest urban centers many highly qualified, experienced attorneys with diverse practices devote a portion of their practice to indigent legal services. These attorneys generally do not handle a high volume of indigent cases; rather, they handle a limited number of serious and complex cases or cases involving the most challenging

clients. These are among the very best attorneys providing indigent legal services, which they do as a public service rather than as a principal means of generating income. The Commission is very concerned that these attorneys will decline to submit bids that commit them to a certain number of contracted cases. Instead, they will simply focus on the more lucrative areas of their practice, and the indigent legal services system will lose the benefit of their participation. The loss of such attorneys will no doubt diminish the quality of services overall.

In the urban centers, the Commission believes many lawyers who handle the most difficult and serious cases would likely seek contracts to continue doing that work. Those who were not among the winning bidders, however, would lose access to indigent cases and have to re-orient their practices to other areas of the law. Again, the Commission is concerned that the system would lose many of its most skilled attorneys, thereby reducing overall quality.

In sum, the Commission believes that a contract system would concentrate the cases in fewer hands, but at the cost of many of the most skilled and experienced lawyers leaving the system.

Regarding oversight, the current system of payment requires all attorneys to submit a detailed accounting of their work in every case. These attorney vouchers provide the Commission staff with direct insight into how cases are handled. Commission staff has used this insight, fortunately infrequently, to intervene with attorneys to address perceived practice issues. In contrast, at least with respect to the one current contract that the Commission has in place, Commission staff has little information about how individual cases are handled or case outcomes. Instead, the Commission receives periodic reports about the number of cases handled and hours devoted to each case.

During its five years of existence, the Commission has focused on attorney training, budget stabilization, and improving compensation for assigned counsel. The Commission is now poised to focus on more systematic evaluation of attorney performance. The Commission believes that moving to a contract system and away from a system of hourly compensation based on detailed submissions in each case would handicap, rather than enhance, the Commission's ability to evaluate and improve attorney performance.

**L.D. 1433 Fails to Account For its Proposed Staff Increase and Treats Staff of the Office of the Public Defender Unfairly.**

The Commission currently employs two attorneys, the Executive Director and the Deputy Executive Director. The bill calls for three attorneys, the Chief Public Defender and two Deputy Public Defender positions. By its term, however, the bill neither accounts for the increased headcount nor appropriates money to fund the additional position.

Currently, all Commission employees other than the Executive Director are in classified state jobs, and all employees other than the Deputy Director (our accountant and financial screeners) are in the Professional/Technical salary specification. The bill states that the "Professional staff of the Chief Public Defender are not subject to the Civil Service Law." The Commission believes that stripping its employees of civil service protections is unfair and cannot comprehend why the bill would propose doing so.

**L.D. 1433 Creates Expectations Regarding Indigency Determinations That Are Unrealistic and Certainly Could Not Be Accomplished by Existing Staff.**

Every day in roughly 40 courthouses around the state, approximately 100 people are found indigent and assigned counsel. Most applications are screened by Commission staff who make recommendations to the Court regarding whether a person is entitled to counsel and if so, whether the person should be required to make payments toward the cost of their representation.

The Court, however, makes the final determination of eligibility. The bill requires the Chief Public Defender to 1) verify the information used to make the indigency determination, 2) reassess indigency during the course of representation, and 3) if the person is not ordered to repay the cost of their representation, investigate the person's financial situation and petition the Court to retroactively order repayment up to 7 years after the case has ended. These tasks could only be accomplished, if at all, by a greatly expanded Commission staff.

That said, the Commission's current staff works diligently with the Courts to obtain reimbursement of counsel fees whenever possible. In fiscal year 2014-2015, the Commission collected reimbursements exceeding \$775,000, more than 50% more than the highest reimbursement amount ever collected when the Judicial Branch operated the system. Regarding information verification, the Commission does not have the resources to verify 100 applications per day, but we have hired a part-time financial screener whose sole job will be to verify information on both applications flagged by screeners in the field for further scrutiny, as well as on randomly sampled application. If this effort proves fruitful, the Commission will approach the Legislature for resources to expand this project.

Finally, reassessing indigency, whether during the representation or long after the matter is closed, would necessarily require the Court to act on whatever information the Commission could collect. The Commission believes that the financial burden that such a process would create for both the Commission and the Court would outweigh any potential financial benefit from increased reimbursements.

### **Conclusion**

For the reasons stated above, the Maine Commission on Indigent Legal Services opposes L.D. 1433. Maine's indigent legal services system is not perfect, and the Commission is

committed to continuing work on improving the system. On the other hand, Maine's system is far from in crisis. Indigent people in Maine Courts receive quality representation from lawyers committed to the defense of their liberty. And despite increases in costs, Maine's system remains among the least expensive in the country. There is simply no need for a radical overhaul of a system put in place just a few years ago.

The record of the Commission is one of steady progress. Faced with less than nine months before it was to assume responsibility for providing indigent legal services, the Commission created rules for attorney eligibility, installed a state of the art voucher payment system, and provided Courts with rosters of eligible attorneys. The result was a nearly seamless transition from the Judicial Branch beginning day one.

In its first year, the Commission provided training to lawyers handling indigent cases on an unprecedented scale. The Commission also created enhanced standards for lawyers handling the most serious and complex criminal cases. For the first year, and several thereafter, inadequate transitional budgets and increasing costs necessitated Commission advocacy with the Chief Executive and the Legislature to stabilize the budget through supplemental appropriations. Nevertheless, the costs of indigent legal services have been fully funded each year under the Commission's watch, and after years of extended payment delays when the Judicial Branch was responsible for payment, Commission assigned counsel have been paid in a timely fashion. When Commission operations began, the rate of pay for assigned counsel had remained unchanged at \$50/hr. since 1999. Through Commission efforts, and with the help of the Legislature, the rate increased to \$55/hr. on July 1, 2014 and to \$60/hr. on July 1, 2015.

With the foundation now established, the Commission looks forward to tackling additional challenges to be as efficient with taxpayer dollars as possible while ensuring that indigent people receive the highest quality representation in defense of their liberties.

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**TO:** SEN. DAVID C. BURNS, REP. BARRY J. HOBBS, CHAIRS,  
JOINT STANDING COMMITTEE ON JUDICIARY

**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR

**SUBJECT:** MAINE'S CURRENT INDIGENT LEGAL SERVICES SYSTEM

**DATE:** JANUARY 6, 2016

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**INTRODUCTION:**

The Maine Commission on Indigent Legal Services is responsible for meeting the State's constitutional obligation to provide indigent legal services. The Commission consists of five members appointed by the Governor and confirmed by the Senate. The Commission staff includes an Executive Director, a Deputy Executive Director, an accountant, and 6 full-time and 3 part-time financial screeners. The Commission also has an administrative support position that has been vacant for some time.

The Commission is charged by statute with providing "efficient, high-quality representation" to indigent people in cases for which the person has a right to counsel at state expense under the Constitution of the United States or the Constitution or laws of Maine. These primarily involve criminal, juvenile, child protection, and involuntary psychiatric commitment cases. With the exception of a longstanding contract for representation in criminal and juvenile cases in Somerset County, the Commission provides indigent legal services through a system of private assigned counsel. Under the Commission's supervision, more than 500 attorneys across the state represent indigent clients in individual cases, for which they are compensated at a rate of \$60/hr. based on invoices that are submitted to the Commission for review and payment.

## CRIMINAL CASES:

The Commission provides Lawyer of the Day services at all criminal initial appearance sessions<sup>1</sup> in courts throughout the state. Any person scheduled for an initial appearance may consult the Lawyer of the Day for legal advice regarding their constitutional rights, the evidence in their case, and how they should plead. The Lawyer of the Day generally has access to copies of the state's evidence (discovery) and the prosecutor's recommended sentence should the person decide to plead guilty. If requested to do so, the lawyer can negotiate with the prosecutor regarding any recommended sentence.

The Lawyer of the Day plays an important role in fulfilling the constitutional right to counsel by ensuring that no one charged with a crime must choose whether or not to give up their rights and plead guilty without at least the opportunity to speak to a lawyer. The Lawyer of the Day also enhances efficiency by facilitating the disposition of cases where the client wishes to do so. While Lawyers of the Day were involved at many initial appearance sessions prior to the Commission's creation, the Commission implemented complete coverage of initial appearance sessions shortly after it became responsible for indigent legal services.

For cases that are not resolved at the initial appearance session, people who ask for a lawyer and qualify financially are assigned an attorney from the Commission's roster of eligible attorneys. The attorney obtains the discovery from the state, meets with the client to review the discovery, and provides a copy of that discovery to the defendant. The attorney ensures that the client is aware of their constitutional rights with respect to the charge and of the consequences of any conviction. In modern practice, criminal convictions also carry numerous collateral

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<sup>1</sup> There are two types of initial appearance sessions, in-custody and walk-in. In-custody initial appearances involve people who, because they have been arrested and not sooner released, must have an initial appearance within 48 hours of arrest. Walk-ins involve people appearing in response to a summons issued either in the community or after a person has been arrested and promptly made bail.

consequences with respect to such things as immigration status, the right to possess a firearm, the ability to obtain federal benefits, including student loans and subsidized housing, and enhanced penalties should additional convictions occur in the future.

The attorney must also evaluate the evidence against the defendant, whether that evidence was legally obtained or might be subject to suppression and whether that evidence supports the charges actually filed or only some lesser or different charge. The attorney also assesses the role that substance abuse or mental health issues may have played in the events giving rise to the charges and often facilitates the evaluation and treatment of these issues. This can involve the direct transfer of an incarcerated defendant to in-patient treatment for substance abuse or obtaining a psychological evaluation to investigate potential defenses to the charge or identify treatment recommendations that could become part of any sentence imposed.

Once the case assessment is complete, the attorney explains the client's options to the client, who may wish to contest the case to the fullest or seek resolution through negotiation with the prosecutor. Often a combination of these strategies is pursued leading to more favorable recommendations from the state as a result of efforts to suppress evidence or other pre-trial litigation. In addition, assigned counsel frequently improve outcomes for the client by being prepared to take cases to trial, leading to resolution on the eve of, or even during, jury selection. Barring a resolution, the case proceeds to trial, and possibly sentencing. If a conviction occurs and the client seeks to appeal, generally trial counsel will prosecute the appeal unless the defendant requests new counsel for the appeal.

There are two primary characteristics of the representation provided by assigned counsel under the current system. First, just as with retained representation, an individual attorney forms a relationship with the client, and the course of the representation is guided only by the lawyer's

professional judgment and the client's wishes. Representation is not shared among a group of attorneys or passed from one attorney to another for different phases of the case. Second, because the attorney is paid by the hour, the attorney is secure in the knowledge that the attorney will receive appropriate compensation even if the nature of the case demands extraordinary attorney time to obtain a just result on behalf of the client.

**JUVENILE CASES:**

Procedurally, juvenile cases are similar to adult cases in that Lawyers of the Day are available at initial appearances and individual attorneys are assigned in cases not resolved at initial appearance. Under the current system, the financial eligibility of juveniles is based on the parents' income. The Commission advises courts, however, that they should assign counsel without regard to the parents' income if the case involves a conflict of interest, such as where the alleged victim is a parent or a sibling of the juvenile.

Due to the remedial nature of the Juvenile Code, representing juveniles requires a heightened focus on the needs of the juvenile. When juveniles cannot live at home, it often falls to the attorney to identify and obtain alternate placement for the juvenile. Treatment needs must be assessed and resources identified to pay for needed treatment. This often involves navigating, or even litigating, complex eligibility criteria to allow a juvenile to participate in programs provided by the Department of Health and Human Services.

Attorneys representing juveniles must also focus on the collateral consequences of juvenile adjudications to avoid serious handicaps for juveniles once they become adults. Assigned counsel are keenly aware that although Maine has no sex offender registry for juveniles, sex offense adjudications can result in juveniles having to register, even after they become adults, if they move to other states. Case disposition data show that in cases charging

juveniles with sex offenses, assigned counsel are routinely successful in obtaining dispositions that do not involve adjudication of a sex offense. Assigned counsel are also highly effective at resisting attempts to transfer juvenile cases to adult court for trial and sentencing, a practice that is much more common in other states and that has been shown to actually increase the odds of the juvenile re-offending.

**CHILD PROTECTION CASES:**

Most, but not all, child protection cases begin when the Department of Health and Human Services obtains an emergency order to take custody of a child that the Department alleges is subject to abuse or neglect. When that happens, the parents are entitled to a prompt hearing in the District Court. When these hearings are scheduled, counsel is automatically assigned to represent each parent, and the assigned attorney is sent a copy of the Department's application for the emergency order. Assigned counsel must review the application, attempt to contact the client, obtain whatever additional information is available from the Department, and prepare for a hearing to take place within a matter of days. After the initial hearing on the emergency order, the parents must apply for assigned counsel and submit financial information demonstrating eligibility if they want to continue to be represented by assigned counsel.

Although some child protection cases involve vigorously contesting the Department's evidence of abuse or neglect, most involve working with the parent to do what it takes to regain custody of the their child. This involves helping the parent to recognize the deficiencies that led the Department to act in the first place, and working with the parent to remedy those deficiencies. At times, the attorney must assist the client to overcome denial and seek needed treatment. At others times, the attorney must intercede with the Department, with the court's assistance if necessary, to ensure that the Department actually provides the services it has agreed

to provide as a condition of returning custody of the child to the client.

Child protection cases are time consuming because they can continue for many months or even years and involve multiple court hearings and interdisciplinary team meetings with the goal of reuniting families. Assigned counsel play a major role in assisting parents to make changes that will allow them to raise their children in healthy environments. As a result, a large percentage of child protection cases are ultimately dismissed with custody returned to the parents.

### **INVOLUNTARY COMMITMENT CASES:**

People who are involuntarily committed to a psychiatric hospital through the so-called blue-paper process are entitled to a prompt hearing before a judge. Courts near the major psychiatric hospitals generally schedule such hearing weekly and place cases on the weekly docket based on the date of the initial commitment. The court then assigns a single attorney to represent all of the people scheduled for hearing on a given date.

The assigned attorney must review the commitment paperwork, meet with the client, review the hospital record, and if possible, contact the client's family or other community resources. The process also involves an evaluation of the patient by an outside psychologist, so the attorney must review that person's report and speak to that person prior to the hearing. On the day of the hearings, the attorney represents each client on the schedule for that day.

### **SPECIALTY COURTS:**

Specialty courts in Maine include the Drug Court, the Co-Occurring Disorders Court, and the Veterans Court. Each court has a multi-disciplinary team that assists the judge with management of the court, including admission decisions, sanction and rewards policies, and termination decisions. Each team includes a defense attorney from the Commission roster, and

the Commission pays that attorney the regular hourly rate for their time expended as a member of the specialty court team.

**CONTRACT COUNSEL:**

The contract for criminal and juvenile cases in Somerset County is a flat fee contract held by a group of three separate law firms operating as the Somerset County Private Defenders Program. While the lawyers composing the Private Defenders Program have changed over the years, the same entity has held the contract since the 1990's and, to my knowledge, has been the only bidder in response to periodic RFP's for this work.

Representation is provided by contract attorneys as described above. The assignment of individual attorneys to individual cases, however, is done by administrative staff within one of the law firms rather than by the court. Because payment is made monthly on the basis of the contract amount, detailed vouchers are not submitted to the Commission on individual cases. Instead, overall statistics on cases handled and hours worked are provided to the Commission pursuant to the contract.

**ATTORNEY ELIGIBILITY:**

The Commission governs the eligibility of attorneys to receive assignments in indigent legal services cases. Currently, more than 500 attorneys around the state are eligible to receive assignments in one or more types of indigent cases. All eligible attorneys are in private practice, and for almost all of these attorneys, indigent cases make up only a part of an otherwise diverse legal practice. Some attorneys in the more urban areas work exclusively on indigent legal services cases.

To become eligible to receive assignments, attorneys must apply in accordance with Commission rules. During the first year of Commission operations (July 1, 2010 – June 30,

2011), all attorneys who had been receiving assignments on indigent cases under the court-managed system were eligible to be placed on the roster. To remain on the roster beyond the first year, however, the attorney had to complete Commission-sponsored minimum standards training or apply for a waiver of that training based on more than three (3) years' experience. The Commission presented three-day minimum standards trainings during February and May of 2011 that were attended by more than 300 practicing attorneys. About 150 attorneys were granted waivers at that time. Moreover, once admitted to the Commission roster, an attorney must file an annual renewal form that, among other things, demonstrates that the attorney attended at least eight (8) hours of continuing legal education related to indigent cases during the previous year.

Currently, lawyers just entering law practice, as well as practicing attorneys without sufficient experience to qualify for a waiver, must attend minimum standards training to become eligible to receive assignments in indigent cases. The Commission presents these trainings twice a year, in November and June, to accommodate attorneys newly admitted to practice after having taken the bar exam in July or February. The Minimum Standards Training consists of full day presentations on Criminal Law, Juvenile Law, and Child Protection Law, as well as shorter presentations on Emancipation and Involuntary Commitment cases. The trainings primarily consist of video replays of previously recorded live trainings. Videos of the day-long presentations are refreshed every third year based on a collaboration between the Commission and the Maine State Bar Association whereby the Commission presents and records a live training on either Criminal, Juvenile, or Child Protective law as part of the Bar Association's annual Bridging the Gap program.

In Criminal and Juvenile law, however, the minimum standards training does not support

eligibility for the most serious and complex cases. For criminal cases, the Commission has promulgated enhanced training and experience qualifications for Homicide, Sex Offense, and Serious Violent Felony cases. For Juvenile cases, enhanced requirements exist for felony cases and cases involving bind-over (transfer to adult court) proceedings. Attorneys seeking assignments in these specialized case types must file a separate application with the Commission demonstrating the required experience and training.<sup>2</sup>

Eligibility requirements did not exist prior to the Commission's creation. When the court operated the system, any attorney could simply contact a court clerk's office and ask to receive assignments. During deliberations about the Commission's creation and during Commission rulemaking on its eligibility rules, differing views were expressed regarding the proper scope of Commission-imposed eligibility requirements. When the Commission was created, Maine had a long tradition of young lawyers gaining experience through court-appointed cases. A number of people, including judges, cautioned that the Commission should not interfere with that system. Others bemoaned the lack of standards that allowed new attorneys to gain experience potentially at the expense of indigent people with serious liberty interests at risk. The Commission has tried to strike an appropriate balance between these competing views and continues to review and refine its position.

Although the Commission governs attorney eligibility, its small staff cannot be present in over forty courthouses around the state, so as a practical matter, judges and clerks assign

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<sup>2</sup> The Commission has also promulgated specialized requirements for criminal domestic violence and OUI cases and for child protective cases. These requirements have not been implemented because cumbersome provisions in the original rule burden staff unnecessarily. The Commission has modified its specialized panel rule to streamline its operation and expand its scope to additional areas. As the rule is major-substantive, it has been presented to the Legislature, but was carried over from last session to the current session. The Commission is hoping that the amended rule will be approved this session so it can move forward with implementing all of the specialized requirements contained therein.

individual attorneys to cases. Under the Rules of Unified Criminal Procedure, however, the Commission has authority to overrule an assignment if, for example, a lawyer is assigned who is not on the Commission roster or, more commonly, a rostered attorney is assigned to a specialized case for which the attorney lacks sufficient experience. The Commission regularly exercises this authority to substitute counsel when, for one reason or another, an inexperienced attorney is assigned to a serious or complex matter.

**EXPERTS AND INVESTIGATORS, ETC.:**

Attorneys in assigned cases often require the assistance of experts, private investigators, and other non-lawyer professionals to provide effective representation. Once such a need is identified in a particular case, the attorney must apply to the Commission for authorization to expend funds on the required services. The Executive Director and Deputy Executive Director review and respond to these requests, almost always within one (1) business day of receipt. Once the authority to retain the services is granted, the lawyer is responsible for engaging the needed services. After performing the work, the service provider submits a bill to the attorney. The attorney then reviews the invoice and sends it to the Commission with a certification that the work has been performed and was satisfactory. The Commission then processes the invoice for payment directly to the provider.

Expert assistance is vital in many types of indigent legal services cases, and the Commission provides the expert resources necessary to effectively review and, if appropriate, challenge complex evidence. Assigned counsel regularly obtain expert assistance with respect to DNA evidence, accident reconstruction, fire investigation, adult and pediatric pathology, computer forensics (e.g. images or messages on computers or cell phones), immigration consequences of criminal convictions, fingerprint and ballistics analysis, cell phone location

data, and forensic accounting. With respect to mental health evaluations, assigned counsel often utilize the expertise of the State Forensic Service for assistance in cases, but many cases require the services of private psychologists or psychiatrists as well.

Over the years, assigned counsel have proven very resourceful in identifying high-quality, nationally regarded experts to assist in their cases. By working with these attorneys and experts, the Commission staff has compiled a substantial database of available experts and now regularly responds to attorneys seeking assistance in identifying an expert for a particular case.

For private investigator assistance, the Commission maintains a roster of eligible investigators who have agreed to work on indigent cases for \$30/hr., well below the going rate for investigators in private cases. To be eligible, an investigator must apply to the Commission and provide proof of an active license. The work of private investigators regularly leads to dismissed or reduced charges in cases across the state. In fact, in a recent discussion with the Executive Director, one elected District Attorney recently marveled at the speed and effectiveness of Commission rostered investigators in bringing new information to light that affected law enforcement's view of a case.

In addition to experts and investigators, the Commission also provides for interpreter services, the preparation of transcripts, and payment for the service of subpoenas by local Sheriff's offices.

These services support the attorneys in the field, but payment for these services falls to the Commission. The Commission's accounting staff tracks the myriad vendors just described and processes their invoices with extraordinary skill and efficiency. Billing errors are promptly identified and remedied, billing inquiries are dealt with immediately or within hours, and payments are processed within 15 days of receipt by the Commission.

## **TRAINING:**

In addition to the minimum standards training discussed, the Commission regularly organizes and presents training designed for lawyers working on indigent cases and offers these trainings at well below the usual cost for attorney continuing education credits. For much of this training, the Commission relies on experienced practitioners who share their experience and wisdom on various topics. Other trainings involve national recognized experts who have come to Maine to share expertise on specific issues. In the past three years, the Commission has sponsored trainings on domestic violence cases, advanced juvenile law, and advanced criminal law (2 days) using unpaid local attorneys. The Commission also brought in outside experts to address 1) the obligation of the state to turn over exculpatory evidence in criminal cases, 2) methods to discover and demonstrate undue influence by adults questioning children about alleged sex crimes, and 3) involuntary commitment cases.

## **FINANCIAL SCREENERS:**

The Commission currently employs 6 full-time and 2 part-time financial screeners who work in court houses throughout Maine to help determine the financial eligibility of people applying for counsel at state expense. The Commission has recently hired a third part-time financial screener who starts work later this month whose sole job will be to investigate and verify financial information that has been provided by people applying for assigned counsel.

Pursuant to the Rules of Unified Criminal Procedure, the court is the ultimate decision-maker with respect to whether a person qualifies for assigned counsel, and if so, whether that person should be ordered to make periodic payments to reimburse the state for some or all of the cost of their representation. A person applying for assigned counsel must complete and sign a financial affidavit. Financial screeners interview applicants with respect to their financial status,

help them to complete the required form, and make a recommendation to the judge whether the person qualifies or not and whether the person should be required to make periodic payments. The financial screeners' recommendations are based upon financial guidelines that the Commission has promulgated, and most judges largely follow the recommendations of the screeners. As stated above, however, the court ultimately decides whether a person is indigent, and due to separation of powers, the Commission's guidelines are not actually binding on the court.

When people are ordered to make periodic payments, the financial screeners monitor the payments and pursue collection efforts with people who are delinquent. In addition, people who are delinquent on counsel fee payment orders are reported to Maine Revenue Services and have their state income tax refunds intercepted and applied to counsel fees. Finally, the Legislature has decided that regardless of whether a person has been ordered to make periodic payments, if a person represented by assigned counsel has posted bail, that bail can be set off to reimburse the state for the cost of their representation. Counsel fee reimbursements are initially paid to the court, but the funds are transferred monthly to the Commission for use to pay the cost of indigent legal services. In fiscal year 2015, the Commission collected over \$775,000.00 in counsel fee reimbursements.

#### **VOUCHER PAYMENTS:**

Assigned counsel bill for their work on indigent cases using the Commission's state of the art electronic billing system. The attorney vouchers contain individual time entries that describe the work performed and account for time in increments of one-tenth of an hour. Allowable expenses are also included on the vouchers. The voucher payment system also allows Commission staff to return vouchers to the attorneys for further explanation of unusual entries

and to correct errors that are identified. Although the Commission does not presently have a formal system for evaluating attorney performance, the Commission is able to monitor both attorney practices and results obtained through the voucher payment system.

The Commission's fee schedule governs payments to attorneys. The schedule fixes the hourly rate - currently \$60/hr., lists what expenses may be reimbursed, and sets overall fee caps for all types of individual cases.<sup>3</sup> Attorneys may be reimbursed in excess of the cap, but only if they justify to the Commission the specific circumstances of the case that necessitated the additional work. With the exception of appeals, which are very labor intensive, the average cost per voucher remains well below the cap amount across the board.

For fiscal year 2015, the Commission's Executive Director and Deputy Executive Director reviewed and approved 31,588 vouchers. The average cost per voucher for all cases totaled \$475.78.

### **BUDGETS:**

The Commission prepares proposed biennial and supplemental budgets for submission to the Budget Office and the Legislature. As was the case when the Judicial Branch operated the system, costs have risen from year to year based on factors beyond the Commission's control such as the sudden rise in the number of child protection cases, the enactment of new laws with enhanced penalties, and the increasing complexity of cases due to changes in technology (e.g., a huge increase in video and voice recordings) and changes in the characteristics of the clientele (e.g., the increase prevalence of mental illness). The Commission's budget proposal for the current biennium, which was adopted by the Legislature, built in cost increases based on the

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<sup>3</sup> The fee cap amount has risen as the hourly rate increased from \$50/hr. to \$55/hr. and then to \$60/hr., but with the exception of appeals, the caps have remained unchanged in terms of billable hours from the fee caps that had existed when the Judicial Branch operated the system.

history the Commission had observed during its first four years. During the first half of the current fiscal year, however, the number of cases had moderated significantly. While costs are up slightly for the first half of this fiscal year compared to the first half of the previous fiscal year, the amount of the increase can almost entirely be accounted for by the increased hourly rate that took effect on July 1, 2015. Controlling for the increased rate of pay, costs are actually flat or up only slightly. As a result, the Commission finished the first half of the current fiscal year with unspent funds of just under \$500,000.00 in the All Other account.

The budget for staff salaries for the current fiscal year totals \$760,268.00 and accounts for just under 4% of the Commission's total general fund budget. Operating expenses for technology, including the electronic billing system described above, office equipment and supplies, travel, postage, etc. regularly total less than 1% of the Commission's all other budget. The balance of the Commission's budget is spent directly of indigent legal services.

**INSTITUTIONAL ROLE BEYOND INDIGENT LEGAL SERVICES:**

Since its inception, the Commission has become the chief advocate for adequate funding of Maine's indigent legal services system. When the Commission began operating, it quickly became apparent that increasing costs in the system would out-strip the Commission's original budget allotment. Nevertheless, through the Commission's advocacy and the Legislature's recognition of the state's constitutional obligation to provide indigent legal services, adequate supplemental funding has been obtained so that the costs of indigent legal services have been fully funded throughout the Commission's existence and payments have been made in a timely fashion. Moreover, in the eleven years prior to the Commission's creation, the hourly rate paid to assigned counsel remained unchanged at \$50/hr. Again, through the Commission's advocacy and with the Legislature's cooperation, as of July 1, 2015, the attorneys experienced their second

\$5/hr. increase in the hourly rate in 13 months.

With respect to criminal justice policy, the Commission's most formal role to date has been with respect to identifying the costs, i.e., fiscal notes, of various criminal law initiatives. In addition, the Commission was formally invited to participate in the Chief Justice's multi-disciplinary task force on pre-trial practices in the criminal justice system. Less formally, both the Commission chair and the Commission's Executive Director serve on the Criminal Law Advisory Commission, which plays a prominent role in advising the Legislature on criminal justice policy.

The Commission also plays an institutional role addressing systemic issues. The Commission is taking a leading role with respect to a newly recognized issue involving DNA evidence dating back to 2005. The Commission has been deeply involved with planning to notify defendants whose cases may have been affected and will play a clearing-house role helping to connect affected defendants with counsel who can advise them on what, if anything, should be done in their cases. In the child protective arena, the Commission is actively considering whether a recent Law Court decision regarding appeals in termination of parental rights cases requires a system-wide change in the way counsel are assigned to such appeals. Finally, the Commission provides a central resource for inquiries from attorneys in other states representing people with charges in Maine and for citizens inquiring about the status of individual cases and the process for obtaining assigned counsel.

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

# **RFP for Appellate Contract – Options and Issues to Consider**

## **The types of entities that could submit bids**

- Individual attorneys
- Group of attorneys (not affiliated as a firm)
- Individual law firm
- Two or more law firms
- Non-profit entity
- Law school clinic

## **Types of cases subject to bid**

- Child protective
- Criminal (direct appeal)
- Post-conviction review
- A mix of both criminal and child protective in one bid

## **Number of Awards**

Average number of Law Court appeals per year from 2011 to 2014:

- o 97 full criminal
- o 38 discretionary appeals filed, with an average of 3 per year requiring full briefing
- o 55 child protective

## **Caseload Standards for Appellate Counsel**

National Advisory Commission on Criminal Justice Standards recommended levels of

- 150 felonies
- 400 non-traffic misdemeanors
- 200 juvenile court cases
- 200 mental health cases, or
- 25 non-capital appeals per attorney per year

These caseload limits reflect the maximum caseloads for fulltime defense attorneys, practicing with adequate support staff, who are providing representation in cases of average complexity in each case type specified. If a defender or assigned counsel is carrying a mixed caseload which

includes cases from more than one category of cases, these standards should be applied proportionally.

**Types of Contracts** (excerpt from DOJ report on contracting for indigent defense services)

- *Fixed-Fee, All Cases*—specifies the total amount of compensation the lawyer will receive for work on all cases he or she is assigned during a specified contract period. The number of cases assigned to the attorney is not capped; he or she is expected to accept all appointments that arise except those in which there is a conflict of interest.
- *Fixed-Fee, Specific Type of Case*—establishes the total amount of compensation the lawyer will receive, but it specifies a particular type of case as well (e.g., all misdemeanors). There is no limit to the number of cases an attorney will be assigned during the contract period.
- *Flat Fee, Specific Number of Cases*—pays a flat fee for all work completed based on a specific number of cases the attorney agrees to accept during the contract period.
- *Flat Fee Per Case*—establishes a fee by case type (e.g., \$150 per misdemeanor), and the attorney agrees to take all cases of that type that arise during the contract period.
- *Hourly Fee With Caps*—pays the attorney an hourly fee established in the contract but includes a cap on the total amount of compensation he or she can receive. Once the ceiling is reached, the attorney may be required to perform additional work without compensation.
- *Hourly Fee Without Caps*—pays the attorney an hourly fee established in the contract, but also covers the actual expenses of each case.

In jurisdictions using fixed-fee and flat fee, specific number of cases contracts, the funder knows in advance the total costs associated with representation, regardless of fluctuations or peculiarities in charging practices, caseloads, or case type during the course of the contract. As a result, these types of contracts appeal to funders. The regularity of payment appeals to some attorneys, too. These systems have been criticized by many observers, however, because of the pressure they create to resolve cases as early as possible.

Under flat fee per case and hourly fee contracts, total costs to funders can vary over of the course of the contract, depending on variables outside the control of the contracting attorney and the funder. As a result, some funders have concluded that these types of contracts do not adequately guarantee the contract's maximum cost.

**(5.)**  
**Budget Testimony**  
**March 7, 2016**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**TO:** HON. JAMES HAMPER, SENATE CHAIR  
HON. MARGARET R. ROTUNDO, HOUSE CHAIR  
JOINT STANDING COMMITTEE ON APPROPRIATIONS AND FINANCIAL  
AFFAIRS

**FROM:** JOHN D. PELLETIER, EXECUTIVE DIRECTOR

**SUBJECT:** TESTIMONY WITH RESPECT TO LD 1606

**DATE:** MARCH 7, 2016

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LD 1606 calls for the transfer of funds into the Budget Stabilization Fund. The Commission understands that as the Committee considers whether to transfer surplus funds into the stabilization fund and, if so, how much to transfer, now is the appropriate time to bring our agency's need for supplemental funding during the current biennium to the Committee's attention.

**FY'16 – Projected Surplus** **\$839,265**

The biennial budget contained two initiatives regarding the Commission's All-Other budget: one-time funding to cover anticipated increased costs of indigent legal services in the amount of \$2,900,000 and funds to increase the hourly rate paid to assigned counsel from \$55/hr. to \$60/hr. in the amount of \$1,470,790.

The increase in the hourly rate was implemented effective 7/1/15. The anticipated increase in costs unrelated to the pay raise, however, has not materialized to the extent projected. As a result, the Commission ended the second quarter of FY'16 with an unspent surplus of \$493,027.82. The trend of lower than anticipated costs has continued through the first two months of the third quarter, and at this time, the Commission projects that it will end FY'16 with an unspent surplus of \$839,265.

**FY'17 – Supplemental Need** **\$3,043,567**

As stated above, the biennial budget contained two initiatives for FY'16, one to cover increased costs and one to fund the pay raise. For FY'17, the budget contained an initiative to fund the pay raise through FY'17, but despite the Commission's request, no funds were allocated to cover projected cost increases. At the beginning of FY'16, the Commission calculated its supplemental need for FY'17 to be \$3,528,064. Given that costs are increasing more slowly than anticipated, the Commission now projects its supplemental need for FY'17 to be \$3,043,567.

The Commission urges the Committee to act now to appropriate the funds needed for FY'17 for two reasons. First, the State's constitutional obligation to provide indigent legal services is fulfilled through the work of over 500 attorneys, most of whom work in small firms throughout the state. For their work representing the indigent, these attorneys receive an hourly rate far below the market rate for similar attorney services. Acting now to appropriate the necessary funds for FY'17 will at least provide assurance to these dedicated practitioners that the Commission has sufficient funds to pay for their services in a timely manner throughout the next fiscal year.

Second, the Commission understands that an appropriation for FY'17, if passed this session, will become part of the Commission's baseline budget for the next biennium. The Commission's current allocation for FY'17 is unrealistically low. If that figure remains the baseline budget for the next biennium, the next Legislature will be unnecessarily faced with large gaps in the Commission's budget that will need to be filled to meet the State's obligation to provide indigent legal services.

Accordingly, the Commission requests that the Committee use LD 1606 as a vehicle to address the Commission's FY'17 supplemental need.