

MAINE STATE LEGISLATURE

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MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: SEN. LINDA VALENTINO, REP. CHARLES PRIEST, CHAIRS,
JOINT STANDING COMMITTEE ON JUDICIARY

FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR

SUBJECT: ANNUAL REPORT

DATE: JANUARY 8, 2014

SUMMARY

Over the course of the last year, the Commission provided indigent legal services in over 27,000 cases. The Commission also provided training to indigent legal services attorneys and maintained its roster qualification system designed to ensure quality legal representation for people in need of indigent legal services. During FY'13, the Commission's costs exceeded projections only slightly, and with the help of the Legislature, the Commission was able to cover all costs incurred during the fiscal year. In addition, the Commission collected \$587,563 in reimbursements from people who were entitled to indigent legal services, but who were able to contribute to the cost of their representation. This money was used to defray the overall cost to the general fund of indigent legal services. Finally, the Commission worked with the Legislature to obtain an increase in the hourly rate paid to attorneys providing indigent legal services for the first time in 15 years. Beginning July 1, 2014, the rate will increase from \$50/hour to \$55/hour.

The Commission believes that the people of Maine can be proud of the robust indigent legal services system it operates. In recent months, Commission attorneys have obtained not guilty verdicts in numerous serious cases, including allegations of Murder, Attempted Murder, Manslaughter, Robbery, Arson, and Gross Sexual Assault. In addition, through thorough investigation and vigorous motion practice, Commission lawyers have also obtained dismissals in serious cases involving Robbery, Gross Sexual Assault, and Elevated Aggravated Assault. In the child protective system, Commission lawyers not only contest allegations of abuse or neglect where appropriate, but they also routinely work closely with their clients to remedy parenting issues and reunify families. On the other end of the process, the Commission's lawyer of the day system, which now covers all courts, ensures that people charged with crimes in Maine have the opportunity to consult with a lawyer at their first appearance in court. Despite dire press accounts across the nation of an indigent legal system in crises, Maine's system remains a vigorous defender of the fundamental rights of indigent people.

CURRENT BUDGET STATUS

Over the first half of the fiscal year, the Commission has seen costs running significantly over projections. At the end of the second quarter, the Commission had accumulated a shortfall

totaling \$430,000.00. On the prudent assumption that this cost trend will continue for the balance of this fiscal year and into the next, the Commission has submitted a supplemental budget request to the Appropriations Committee of \$860,000.00 for the current fiscal year and \$1,015,000.00 for FY'15. Attached is a copy of the supplemental budget request document submitted to the Appropriations Committee.

STAFFING

The biennial budget contained reclassifications for three central office positions, essentially upgrading the Deputy Director and accountant positions to more accurately reflect the level of work actually being performed and downgrading the administrative assistant position. The Commission has worked with the Bureau of Human Resources (BHR), and the reclassifications were approved and implemented in September.

The biennial budget also contained 1.5 additional financial screener positions. These are part-time positions, two of which will be used to expand financial screening into counties that do not currently have such services. One position will be in Aroostook County and one position will cover Hancock and Washington Counties. The third position will be based in Augusta and will provide investigative resources to screeners in the field who determine that an application requires further scrutiny. These positions have recently been approved by BHR, and we are awaiting hiring freeze waivers on the Aroostook and Hancock/Washington positions before posting these jobs for applications.

TRAINING

The Commission continues to offer minimum standards training to lawyers joining the system. These trainings cover the areas of criminal law, juvenile law, child protective law, and emancipation and involve three full days. We offer these training twice per year to accommodate new admittees to the bar who take the bar exam in either summer or winter. In 2013, we also sponsored an advanced juvenile law training in Augusta in May and offered a video replay of this training in Bangor in September. In addition, the Commission worked with the Judicial Branch on its two-day training for child protective lawyers, with Director Pelletier organizing and moderating two litigation skills panels and Chair Steven Carey presenting on two additional panels. The Commission is planning to sponsor a two-day advance criminal training during 2014.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: SEN. DAWN HILL, REP. MARGARET ROTUNDO, CHAIRS,
JOINT STANDING COMMITTEE ON APPROPRIATIONS

FROM: JOHN D. PELLETER, EXECUTIVE DIRECTOR

SUBJECT: SUPPLEMENTAL BUDGET REQUEST

DATE: JANUARY 3, 2014

SUPPLEMENTAL BUDGET REQUEST

FY'14:	\$860,000.00
FY'15:	\$1,015,000.00

DISCUSSION:

FY'14

Over the course of the first two quarters of FY'14, the Commission has accumulated a shortfall of \$430,000.00. Projecting that the trend of increased costs will continue over the balance of the fiscal year, the Commission estimates that it will need a supplemental appropriation of \$860,000.00 to cover all costs incurred during FY'14.

This shortfall results primarily from an increase in the average cost per case. Compared to the same period in FY'13, the average cost per attorney voucher, while still very low, has increased from \$399.18 to 424.97 in the first half of FY'14. The Commission attributes the increasing cost per case to: 1) an increase in the number of serious cases -- during this period, Murder cases were up 11%, Gross Sexual Assaults were up 23%, and Aggravated Assaults were up by 44%; and 2) the increasing complexity of cases, which in turn results from changing demographics and the increasing use of technology by law enforcement. Serious and increasingly complex cases also create additional costs for investigators, interpreters, transcripts, and experts.

A significant percentage of cases now present language barriers and the potential for immigration consequences. Language barriers require lawyers to engage interpreters so that they can communicate effectively with their clients. The Commission must pay for interpreter services, and the use of interpreters makes communication with the client more time consuming. Cases with potential immigration consequences (often accompanied by language barriers) require additional attorney time for research, expert consultation, and negotiation with the attorney for the state.

In addition, cases now routinely involve video evidence, audio or video recordings of witness interviews, and cell phone location and communication evidence. Unlike documentary evidence,

which experienced counsel can quickly glance through to identify the portions needing more careful review, electronic evidence must be reviewed in its entirety, and the lawyer has no way to speed up the process. Electronically recorded interviews in serious, complex cases can run many hours, and effective use of such interviews often necessitates preparation of a transcript of the interview. Cell phone evidence requires expert assistance for data retrieval and analysis.

The Commission believes that these factors are likely to continue to increase costs for the balance of FY'14. Hence, as stated above, we predict the mid-year shortfall of \$430,000.00 to continue to accumulate at the same pace, bringing the total additional funds needed to cover FY'14 costs to \$860,000.00. Of course, the Commission will continue to monitor its costs as we get into the second half of the fiscal year, and should the trend of increased costs moderate, the Commission will promptly inform the Committee of any change in its predicted end-of-year shortfall.

FY'15

The Commission's supplemental budget request for FY'15 totals \$1,015,000.00. This figure assumes the cost trend observed over the last six months continues into FY'15, and the amount is adjusted to reflect the \$5.00/hour increase in the rate paid to attorneys that will take effect on July 1, 2014. The figure also includes \$35,000 to fund a \$5.00/hour increase in the rate paid to private investigators working on indigent legal services cases.

The Commission currently pays private investigators \$25.00/hour. This rate of pay was initially established by the Judicial Branch in 1985, at a time when attorneys received \$40/hour for indigent legal services. Two private investigator organizations approached the Commission seeking an increase in the rate of pay. Given the length of time that the rate of pay has remained unchanged and the indispensable work private investigators perform on indigent legal services cases, the Commission believes a \$5.00/hour increase -- to \$30/hour -- is appropriate at this time.

Scenarios for Addressing the Shortfall

As the Committee is aware, indigent legal services are constitutionally required. Were the Commission to be unable to provide indigent legal services, the state would be unable to prosecute and incarcerate criminals, protect children from abuse and neglect, or involuntarily commit people with acute mental illness to psychiatric hospitals for needed treatment.

Faced with the necessity of providing indigent legal services, the Commission could delay payment to attorneys at the end of FY'14, causing attorneys who have worked on behalf of indigent clients to wait up to six weeks for payment on cases that have already concluded. Not only would this hurt dedicated lawyers willing to work for much less than market rates and the small businesses they run, but pushing the shortfall into FY'15 would exacerbate the projected shortfall in that year's budget.

The Commission cannot achieve savings in other areas of its budget. In personal services, six of the Commission's nine staff are in revenue generating positions, and the three central office staff are essential to maintain operations. In the all other budget, only 1% of that budget is spent on operational costs, including technology, to support the system and its employees. The balance is

spent on indigent legal services, and those costs are addressed above.

The Commission respectfully requests that the sums identified above be appropriated so that the Commission can continue to provide quality indigent legal services across the state.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
INDIGENCY STATISTICS

ALL SCREENERS	Indigent	Partial	Denied	TOTAL	%Indigent	%Partial	%Denied
Fiscal Year 2014	3812	1115	929	5856	65%	19%	16%

MIDCOAST	Indigent	Partial	Denied	TOTAL	%Indigent	%Partial	%Denied
July	108	86	24	218	50%	39%	11%
August	93	81	22	196	47%	41%	11%
September	85	66	24	175	49%	38%	14%
October	91	50	19	160	57%	31%	12%
November	90	68	17	175	51%	39%	10%
December	98	45	21	164	60%	27%	13%
January				0	#DIV/0!	#DIV/0!	#DIV/0!
February				0	#DIV/0!	#DIV/0!	#DIV/0!
March				0	#DIV/0!	#DIV/0!	#DIV/0!
April				0	#DIV/0!	#DIV/0!	#DIV/0!
May				0	#DIV/0!	#DIV/0!	#DIV/0!
June				0	#DIV/0!	#DIV/0!	#DIV/0!
TOTAL:	565	396	127	1088	52%	36%	12%

Screener covers Belfast District and Superior Courts, Rockland District and Superior Courts, Wiscasset District and Superior Courts, Bath Superior Court, West Bath District Court and Two Bridges Regional Jail

ANDROSCOGGIN	Indigent	Partial	Denied	TOTAL	%Indigent	%Partial	%Denied
July	121	21	8	150	81%	14%	5%
August	145	42	9	196	74%	21%	5%
September	99	26	3	128	77%	20%	2%
October	108	29	4	141	77%	21%	3%
November	101	29	0	130	78%	22%	0%
December	107	20	8	135	79%	15%	6%
January				0	#DIV/0!	#DIV/0!	#DIV/0!
February				0	#DIV/0!	#DIV/0!	#DIV/0!
March				0	#DIV/0!	#DIV/0!	#DIV/0!
April				0	#DIV/0!	#DIV/0!	#DIV/0!
May				0	#DIV/0!	#DIV/0!	#DIV/0!
June				0	#DIV/0!	#DIV/0!	#DIV/0!
TOTAL:	681	167	32	880	77%	19%	4%

Screener covers Lewiston District Court, Auburn Superior Court, South Paris District and Superior Courts, and Androscoggin County Jail.

KENNEBEC	Indigent	Partial	Denied	TOTAL	%Indigent	%Partial	%Denied
July	89	20	5	114	78%	18%	4%
August	74	18	4	96	77%	19%	4%
September	51	10	3	64	80%	16%	5%
October	no screener during this month			0	#VALUE!	#DIV/0!	#DIV/0!
November (partial Screener coverage)	34	9	0	43	79%	21%	0%
December	71	19	1	91	78%	21%	1%
January				0	#DIV/0!	#DIV/0!	#DIV/0!
February				0	#DIV/0!	#DIV/0!	#DIV/0!
March				0	#DIV/0!	#DIV/0!	#DIV/0!
April				0	#DIV/0!	#DIV/0!	#DIV/0!
May				0	#DIV/0!	#DIV/0!	#DIV/0!
June				0	#DIV/0!	#DIV/0!	#DIV/0!
TOTAL:	319	76	13	408	78%	19%	3%

Screener covers Augusta District and Superior Courts, Waterville District Court and Kennebec County Jail

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
INDIGENCY STATISTICS

PENOBSCOT	Indigent	Partial	Denied	TOTAL	%Indigent	%Partial	%Denied
July	93	18	20	131	71%	14%	15%
August	92	27	17	136	68%	20%	13%
September	119	27	75	221	54%	12%	34%
October	121	14	59	194	62%	7%	30%
November	109	38	66	213	51%	18%	31%
December	122	31	46	199	61%	16%	23%
January				0	#DIV/0!	#DIV/0!	#DIV/0!
February				0	#DIV/0!	#DIV/0!	#DIV/0!
March				0	#DIV/0!	#DIV/0!	#DIV/0!
April				0	#DIV/0!	#DIV/0!	#DIV/0!
May				0	#DIV/0!	#DIV/0!	#DIV/0!
June				0	#DIV/0!	#DIV/0!	#DIV/0!
TOTAL:	656	155	283	1094	60%	14%	26%

Screener covers Penobscot County Unified Criminal Docket & Bangor District Court

YORK	Indigent	Partial	Denied	TOTAL	%Indigent	%Partial	%Denied
July	147	53	24	224	66%	24%	11%
August	149	60	14	223	67%	27%	6%
September	123	52	17	192	64%	27%	9%
October	142	45	14	201	71%	22%	7%
November	115	52	10	177	65%	29%	6%
December	127	48	14	189	67%	25%	7%
January				0	#DIV/0!	#DIV/0!	#DIV/0!
February				0	#DIV/0!	#DIV/0!	#DIV/0!
March				0	#DIV/0!	#DIV/0!	#DIV/0!
April				0	#DIV/0!	#DIV/0!	#DIV/0!
May				0	#DIV/0!	#DIV/0!	#DIV/0!
June				0	#DIV/0!	#DIV/0!	#DIV/0!
TOTAL:	656	257	69	982	67%	26%	7%

Screener covers Biddeford District Court, Springvale District Court, York County Superior Court and York County Jail

CUMBERLAND CTY	Indigent	Partial	Denied	TOTAL	%Indigent	%Partial	%Denied
July	189	3	35	227	83%	1%	15%
August	216	17	47	280	77%	6%	17%
September	195	12	13	220	89%	5%	6%
October	120	24	3	147	82%	16%	2%
November (partial Screener coverage)	49	5	1	55	89%	9%	2%
December (partial Screener coverage)	166	3	23	192	86%	2%	12%
January				0	#DIV/0!	#DIV/0!	#DIV/0!
February				0	#DIV/0!	#DIV/0!	#DIV/0!
March				0	#DIV/0!	#DIV/0!	#DIV/0!
April				0	#DIV/0!	#DIV/0!	#DIV/0!
May				0	#DIV/0!	#DIV/0!	#DIV/0!
June				0	#DIV/0!	#DIV/0!	#DIV/0!
TOTAL:	935	64	122	1121	83%	6%	11%

Screener covers Cumberland County Unified Court and Cumberland County Jail