

MAINE STATE LEGISLATURE

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MAINE COMMISSION ON INDIGENT LEGAL SERVICES

January 11, 2023

Governor Janet Mills
Chief Justice Valerie Stanfill, Maine Supreme Judicial Court
Senator Anne Carney, Senate Chair of the Judiciary Committee
Representative Matt Moonen, House Chair of the Judiciary Committee

All via Email and Hand Delivery

Re: **Annual Report of the Maine Commission on Indigent Legal Services**
4 M.R.S.A. §1804(3)(H)

Governor Mills, Chief Justice Stanfill, Senator Carney, and Representative Moonen:

The Maine Commission on Indigent Legal Services, (“MCILS”), by and through its Executive Director, Justin Andrus, respectfully presents its annual report. Pursuant to 4 M.R.S.A. §1804(3)(H):

By January 15th of each year, [the Commission shall] submit to the Legislature, the Chief Justice of the Supreme Judicial Court and the Governor an annual report on the operation, needs and costs of the indigent legal services system. The report must include:

- (1) An evaluation of contracts; services provided by contract counsel and assigned counsel; any contracted professional services; and cost containment measures; and
- (2) An explanation of the relevant law changes to the indigent legal services covered by the commission and the effect of the changes on the quality of representation and costs.

Overview

The Maine Commission on Indigent Legal Services is an independent commission whose purpose is to provide efficient, high-quality representation to indigent criminal defendants, juvenile defendants and children and parents in child protective cases, consistent with federal and state constitutional and statutory obligations. The Commission is charged to work to ensure the delivery of indigent legal services by qualified and competent counsel in a manner that is fair and consistent throughout the State and to ensure adequate funding of a statewide system of indigent legal services, which must be provided and managed in a fiscally responsible manner, free from undue political interference and conflicts of interest.

Historically, MCILS has provided legal services through a system of private assigned counsel representing indigent people facing a loss of liberty in cases brought by the State of Maine. The Commission sets standards for attorneys providing indigent legal services, and attorneys are assigned to individual cases by the court from lists of eligible counsel created and maintained by the Commission. The Commission also provides funds for investigative and expert services necessary for the representation of indigent clients. The work of the Commission is funded by an annual appropriation from the Legislature.

In 2022, MCILS was authorized to hire employed public defenders for the first time. Those defenders began their work in December, adding an important capability to the resources available to consumers of indigent legal services.

In calendar year 2022, 322 MCILS-approved assigned counsel opened 31,956 assignments, averaging 99 assignments per counsel. Each individual assigned counsel is a private attorney admitted to practice in the State of Maine who has agreed to provide the services necessary to permit the State to discharge its constitutional and statutory obligations to every citizen, part-time resident, and visitor to the State. Every person who has reason to come within the jurisdiction of the State of Maine is among the constituency those counsel serve. MCILS thanks each of them for staying the course under extremely trying conditions.

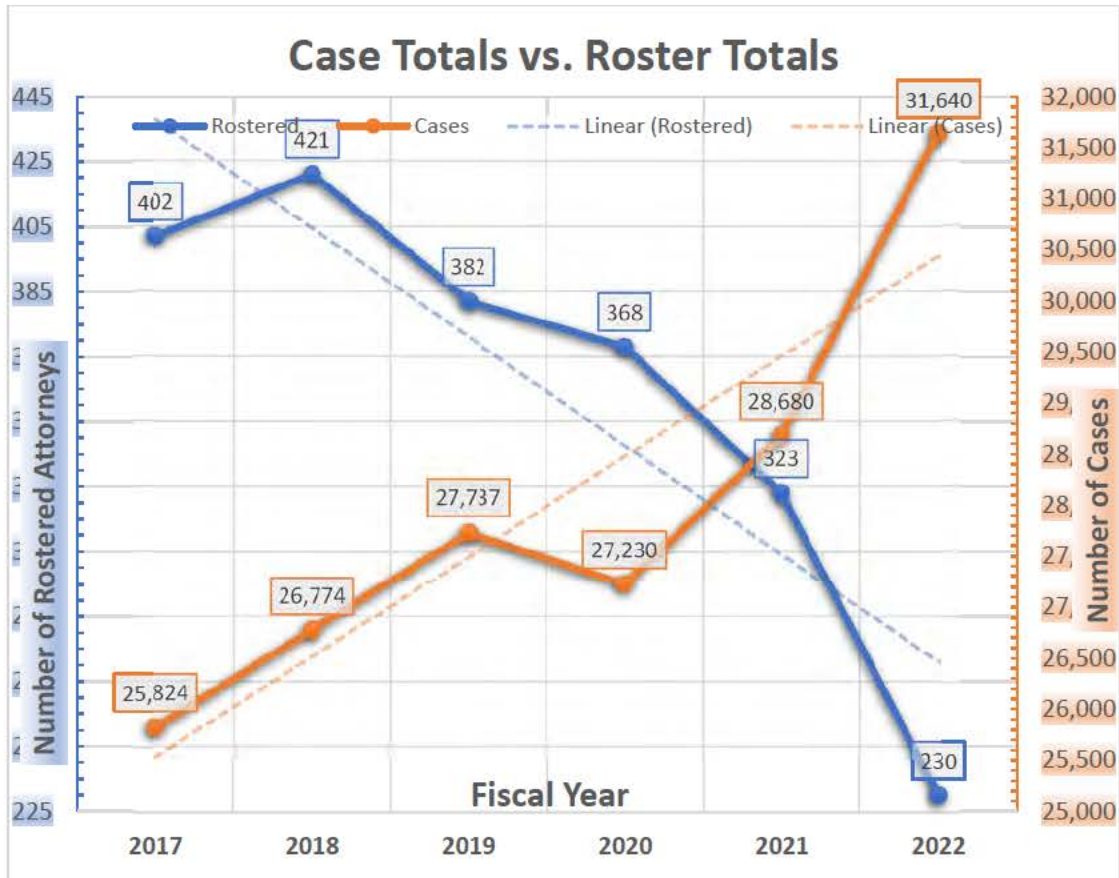
MCILS continued its evolution throughout 2022. We are happy to report that in September the Government Oversight Committee met with us and determined that

it was appropriate to draw its formal investigation to a close. We look forward to continuing our development to ensure the availability of constitutionally and statutorily mandated counsel to all consumers of indigent legal services.

1. An evaluation of contracts; services provided by contract counsel and assigned counsel; any contracted professional services; and cost containment measures

For the first 11 months of 2022, MCILS continued to rely exclusively on services provided by assigned counsel to provide direct client services. After the addition of five employed public defenders in December, that reliance is no longer categorical, though it remains the case that the vast majority of matters are and will be served by assigned counsel. In 2022, MCILS again saw a decline in the number of counsel seeking assignments to serve indigent clients. As of January 9, 2022, the number of private attorneys willing serve clients through resolution of their matters had fallen to 148, of whom 64 are willing to accept criminal assignments and 72 are willing to accept Child Protective assignments.

The following table shows the relative changes in the number of cases counsel are being asked to service against the change in the number of available counsel, as of the end of the fiscal year in June 2022. Since this report was generated an additional 82 attorneys have become at least temporarily unavailable to consumers of indigent legal services.



While it has been clear for some time that the State cannot continue to rely on the assigned counsel bar to meet the constitutional and statutory requirements to provide counsel for consumers of indigent legal services under the existing compensation scheme, the changes over this calendar year continue to underscore that reality. It is time for the State to bring the assigned counsel bar into parity with the prosecution bar, and to expand the employed defender bar to provide at minimum a significant proportion of the necessary services.

Attorney Costs: With respect to existing operations, MCILS is meeting its immediate task of providing service within its budget. As of January 10, 2023, there were 195 attorneys actively seeking assignments overall, including both those willing to accept case assignments and those serving in limited roles such as the lawyer of the day program. This represents a decrease of 30% from the 279 attorneys seeking assignments at the time of the 2022 report. There are now counties in which there are no attorneys seeking cases for many specific case types. For example, by December 31, 2022 there were no local attorneys seeking any cases other than Homicides in Washington County; by January 10, 2023 there were also no attorneys seeking any cases other than Homicides in Kennebec County. MCILS continues to seek a significant increase in the number of cases its eligible attorneys are asked to service when compared to pre-pandemic levels.

MCILS has submitted a biennial budget request that would begin to address the needs of consumers of indigent legal services. Memoranda supporting that budget request, together with the formal submission to the Budget office are attached to this report, and should be considered part.

The following table sets out the case statistics by case-type for 2022:

	New Cases	Vouchers Paid	Approved Paid	Average Amount
Appeal	156	189	\$345,831.86	\$1,829.80
Central Office Resource Counsel	1	0		
Child Protection Petition	2,271	4,247	\$3,181,198.05	\$749.05
Drug Court	36	135	\$208,709.74	\$1,546.00
Emancipation	69	57	\$23,097.98	\$405.23
Felony	7,662	7,345	\$6,280,551.80	\$855.08
Involuntary Civil Commitment	1,126	961	\$287,160.95	\$298.81
Juvenile	896	806	\$598,443.07	\$742.49
Lawyer of the Day - Custody	2,863	2,658	\$862,298.33	\$324.42
Lawyer of the Day - Juvenile	312	290	\$85,363.89	\$294.36
Lawyer of the Day - Walk-in	1,854	1,761	\$606,205.63	\$344.24
Misdemeanor	12,305	10,717	\$4,167,739.42	\$388.89
Petition for Modified Release Treatment	11	53	\$38,219.50	\$721.12
Petition for Release or Discharge	4	10	\$5,789.85	\$578.99
Petition for Termination of Parental Rights	307	838	\$823,755.65	\$983.00
Post-Conviction Review	61	81	\$216,019.50	\$2,666.91
Probate	51	45	\$59,103.45	\$1,313.41
Probation Violation	1,296	1,260	\$649,736.49	\$515.66
Represent Witness on Fifth Amendment Issue	19	16	\$7,486.05	\$467.88
Resource Counsel Criminal	5	26	\$5,044.00	\$194.00
Resource Counsel Juvenile	2	4	\$2,774.00	\$693.50
Resource Counsel Protective Custody	0	3	\$480.00	\$160.00
Review of Child Protection Order	639	1,962	\$1,257,013.39	\$640.68
Revocation of Administrative Release	10	12	\$3,132.75	\$261.06
Summary	31,956	33,476	\$19,715,155.35	\$588.93

The total cost of direct payments to attorneys of \$19,715,155 is an increase from \$16,536,620 in 2022. MCILS attributes this difference to both the increase in the hourly rate from \$60 to \$80 per hour in 2021, and the increase in caseload over prior years. In calendar year 2019, the last pre-pandemic period for comparison, direct payments to attorneys totaled \$17,299,475. Because MCILS uses arrears billing, and because the change in the hourly rate did not go into effect until July 2021, the impact of the rate change is not yet fully realized in the total.

Contracts: Other than services MCILS receives from the State directly, there are two outside contracts. The first is a contract with an attorney skilled in immigration law. Immigration counsel is available to confer with MCILS counsel on any case in which there may be immigration consequences. Because immigration law is complicated, and changes frequently, and because conviction or even a charge for many crimes may have immigration consequences, this service is essential to MCILS operations. The services immigration counsel provides vary from month to month, but the effective cost to MCILS is much less than it would cost to engage immigration counsel on an *ad hoc* basis at a typical hourly rate.

The second contract is between MCILS and Justice Works, an outside vendor that provides the MCILS case management and billing system. This contract was the product of competitive bidding in 2016, and is in its last extension. MCILS relies on this service for the core of its financial relationship with assigned counsel. MCILS is working with MaineIT to identify a successor product.

Cost Containment: In 2022, MCILS continued the cost containment measures implemented in 2021. Those focused on publishing detailed expectations for attorney billing and ensuring that attorney vouchers and non-counsel invoices receive effective review. MCILS has also reinforced its billing and payment timing rules. Because adequate services both from counsel and from non-counsel providers is a constitutional guarantee, cost containment for MCILS means ensuring that payments are appropriate, rather than trying to eliminate services to reduce the overall cost.

For FY2022, MCILS operated within its budget. We are postured to remain within our budget for FY2023 as well.

2. An explanation of the relevant law changes to the indigent legal services covered by the commission and the effect of the changes on the quality of representation and costs.

During 2022, MCILS participated in the legislative process, particularly with respect to proposed protections ensuring constitutionally and statutorily required adequate contact with counsel; and, with respect to the development of a pilot program to provide pre-petition representation to Department involved families. Other than the budget language creating our five new employed defender positions, however, there were no significant statutory changes that directly impacted the provision of indigent legal services.

Respectfully submitted,

/s/ Justin W. Andrus
Justin W. Andrus, Esq.
Executive Director
MCILS

cc: Commissioners
MCILS Staff
MCILS Eligible Counsel
MCILS Interested Party Distribution List