

# THE MAINE COMMISSION ON INDIGENT LEGAL SERVICES (MCILS)

## FUNDING REQUESTS

John D. Pelletier, Esq. Executive Director

### BUDGET OVERVIEW

The provision of indigent legal services is a constitutional obligation of the State. The budget for indigent legal services has two prominent features. First, recent history shows that the cost of indigent legal services goes up from year to year. Second, the drivers of cost increases for indigent legal services are beyond the control of the agency providing those services.

Attached are two documents that show the cost of indigent legal services from fiscal year 2000 through fiscal year 2014.<sup>1</sup> The multicolored document reflects a 10-year period when the Judicial Branch oversaw indigent legal services.<sup>2</sup> During that period, costs increased year-over-year in all but FY'10, increasing by more than \$800,000 four times and by more than \$1.2 million twice. The second document, entitled "Four-Year Trend Data," shows the cost of providing indigent legal services during the four years that the MCILS has operated the system. The MCILS data reflect a cost trend similar to that seen when the Judicial Branch oversaw the system.<sup>3</sup>

The increased costs reflected in these documents result from societal trends and policy decisions that are beyond the control of either the Judicial Branch or MCILS. For example, 1) technology improvements have enabled police and prosecutors to identify violations of bail conditions much more readily, resulting in a very large increase in the number of new criminal cases relating to violation of bail conditions; 2) the recent proliferation of audio and video recordings increases the hours required by defense counsel to review and analyze evidence and often requires expenditures to transcribe such recordings; 3) the proliferation of criminal code provisions that increase the class of a crime based on prior convictions makes representation on the enhanced crime more expensive in general and often generates specific costs for attorney hours and transcripts necessary to challenge the constitutionality of the prior convictions; 4) the recent rise in the prevalence of child abuse and neglect, which declined in the late 2000's, has resulted in substantial increases in the number of child protection cases brought by DHHS in recent years; 5) the increased prevalence of mental illness among criminal defendants makes cases more complicated and increases costs for mental health experts; 6) the increased use of cell-phone location data by prosecutors has resulted much more complicated cases and the need for expert assistance unheard of a few years ago; 7) the new Mainer population presents cases

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<sup>1</sup> Note that the documents do not contain data for FY'10, the last year that the Judicial Branch oversaw indigent legal services prior to the Commission's creation and operation of the system.

<sup>2</sup> This document is provided to illustrate cost trends. The actual costs are not a direct comparison to Commission costs because the Judicial Branch data reflects costs for the guardian ad litem system in child protection cases that did not transition to the Commission and remains funded within the Judicial Branch budget.

<sup>3</sup> Note that during the entire period covered by these two documents, the rate of pay for assigned counsel was \$50.00/hr., which had been constant since 1997. For FY'15, the rate of pay increased to \$55.00/hr., and the increased rate should be considered when assessing increased costs for FY'15.

that are complicated by immigration consequences and the need for interpreter services; and 8) jail consolidation has increased lawyer time and travel costs associated with representing a defendant housed far from the court in which the defendant is charged.

Other examples of cost drivers could be cited, but suffice it to say that the cost of indigent legal services has and will increase based on factors beyond MCILS control.

### **SUPPLEMENTAL BUDGET NEED FOR FY'15 - \$1,678,000**

On September 2, 2014, the Commission submitted to the Budget Office a supplemental budget request for FY'15 totaling \$818,000. Our justification for that request is attached.

During the first half of FY'15, however, our costs exceeded our original budget projections. Attached is a document entitled "Voucher Trends" that compares vouchers submitted in the first half of FY'15 with the same data for the first half of FY'14. As you can see, the Commission has seen double digit increases in all of its major voucher categories and with respect to a number of specific major crimes.<sup>4</sup> As a result of the large increase of voucher submissions, costs ran over projections, and the Commission ended the second quarter with a shortfall of \$430,000.00.<sup>5</sup> The Commission expects that costs for the remainder of FY'15 will exceed projections by a similar amount. Accordingly, the Commission believes that it will need supplemental funding of \$860,000.00 in addition to the original request of \$818,000, bringing the total supplemental need to **\$1,678,000.00**.

### **BIENNIAL BUDGET REQUEST**

The Commission's biennial budget request has two components. First, it seeks to build-in the annual increase in costs that the Commission has experienced in hopes of avoiding the heretofore annual need for supplemental funding. Second, despite the recent increase of \$5.00/hr. in the rate of pay for assigned counsel, the Commission continues to believe that the hourly rate is inadequate to support the work necessary to provide quality indigent legal services and to recognize the importance of the work performed by dedicated attorneys throughout the state. Moreover, the rate of compensation endangers the Commission's ability to attract and retain the experienced, qualified counsel necessary to providing quality indigent legal services.

### **PROJECTED INCREASED COSTS**

Regarding the budget need based on projected annual increases, in its first four years of operation, costs for indigent legal services have risen by an average of 8.2% per year. Accordingly, the Commission has incorporated this rate of increase into its cost projections in hopes of fully funding Commission operations and ending the need for yearly supplemental funding that the Commission has encountered to date. In assessing the amounts below, note that

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<sup>4</sup> The document also reflects a 10.4% increase in the cost per voucher. Note, however, that the rate of pay for counsel increased by 10% beginning on July 1, 2014. The increase in the rate of pay was built in to our budget projections and when the rate increase is considered, the cost per voucher has remained relatively stable.

<sup>5</sup> The Commission strives to pay vouchers 14 days after they are submitted by the attorney. As a result of the shortfall, attorney vouchers submitted on or after December 1, 2014 were not paid until the beginning of January.

the increases are over the Commission's baseline budget, but the baseline budget amount is significantly less than the Commission's final allocation for FY'14 or our projected need for FY'15.<sup>6</sup>

	FY'16	FY'17
Baseline Budget	\$13,949,052	\$13,949,052
Additional funds needed to cover projected increased costs	\$2,928,164	\$4,278,341

#### INCREASED HOURLY RATE

Regarding an increase in the hourly rate paid to attorneys providing indigent legal services, that rate is governed by a Fee Schedule rule promulgated by the Commission. The Commission's statute makes any rulemaking with respect to the hourly rate major substantive. The Commission has provisionally adopted an amendment to the Fee Schedule that would raise the hourly rate to \$70.00/hr. for FY'16 and \$75.00/hr. for FY'17 and beyond. This provisionally adopted major substantive rule has been submitted to the Legislative Counsel and has been referred to the Judiciary Committee for its review. Note that even if the proposed rates were implemented, the rate paid to attorneys providing constitutionally required legal services would still be well below what large law firms charge their clients for paralegal services.

	FY'16	FY'17
Additional funds needed To cover proposed increase In the hourly rate	\$4,424,371	\$6,371,094
<b>Total Biennial Budget Change Request</b>	<b>\$7,352,535</b>	<b>\$10,649,436</b>

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<sup>6</sup> The budget justification sent to the Budget Office in September included both a supplemental request and a biennial request. As stated above, a copy is attached. Projections for the biennial budget were based on our assumptions for FY'15. As discussed above, the projection of our total need for FY'15 has increased since September. The biennial budget amounts contained herein have been adjusted from the September document to reflect the increase in what we expect total costs to be for all of FY'15.

MAINE JUDICIAL BRANCH  
EXPENDITURES FOR INDIGENT LEGAL SERVICES, Attorneys & Other expenses TREND, FY'00 - FY'09

KEY:  
TOTAL EXPEND REIMBURSEMENTS  
GEN FUND EXPEND. NON-ATTY. COSTS

ILS-1 - Trend  
FY'00 - FY'09  
AOC/saw 10.1.09

**ADULT CRIMINAL & JUVENILE OFFENSES (includes "Lawyer of the Day")**

	FY'00	FY'01	FY'02	FY'03	FY'04	FY'05	FY'06	FY'07	FY'08 (1.)	FY'09 (2.)	% change 1 yr. '08-'09
LAW COURT: expenditures	\$51,441	\$35,010	\$50,834	\$39,809	\$42,532	\$52,456	\$44,022	\$59,078	\$42,655	\$72,395	
LAW COURT: # vouchers	99	58	74	58	63	77	61	71	57	95	
Avg Cost per Law Ct vouch:	\$520	\$604	\$687	\$686	\$675	\$681	\$722	\$832	\$745	\$766	
SUPERIOR COURT: expenditures	\$2,036,328	\$2,131,982	\$2,516,220	\$2,907,249	\$3,086,462	\$2,909,544	\$3,480,002	\$3,728,155	\$4,457,238	\$4,419,832	
SUPERIOR COURT: # vouchers	4,456	4,126	4,580	5,556	6,119	5,916	6,589	7,602	9,031	9,009	
Avg Cost per Super Ct vouch:	\$457	\$517	\$549	\$523	\$504	\$492	\$528	\$490	\$494	\$491	
Unified Crim Docket: expenditures										\$230,794	
SUPERIOR COURT: # vouchers										690	
Avg Cost per Super Ct vouch:										\$334	
NOTE: UCD, which opened in Nov. 2008, includes all Criminal cases in Cumberland County. These cases would have been previously filed in Portland District or Superior.											
DISTRICT COURT Expenditures:	\$1,744,991	\$2,142,646	\$2,314,435	\$2,505,356	\$2,352,169	\$2,437,730	\$2,381,694	\$2,373,701	\$2,526,152	\$2,378,723	
DISTRICT COURT # vouchers:	8,816	9,160	9,664	10,329	9,812	9,770	9,314	9,348	9,677	9,392	
Avg Cost per Dist Ct vouch:	\$198	\$234	\$239	\$243	\$240	\$250	\$256	\$254	\$261	\$253	
Contracts with coalitions of attorneys in Somerset County (and Franklin County in FY'05-06 only), for representation in all criminal cases in the District & Superior Courts in those counties:											
CONTRACTED COUNSEL:	\$174,000	\$194,000	\$201,800	\$201,800	\$218,646	\$244,840	\$262,040	\$223,706	\$225,000	\$254,583	
SUBTOT. ALL CR & JV:	\$4,006,760	\$4,503,638	\$5,083,289	\$5,654,213	\$5,699,809	\$5,644,570	\$6,167,757	\$6,384,640	\$7,251,045	\$7,356,326	1.5%
REIMBURSEMENTS:	-\$439,954	-\$367,827	-\$463,113	-\$474,711	-\$494,149	-\$392,211	-\$421,020	-\$425,581	-\$446,447	-\$506,597	13.5%
% of costs reimbursed:	11.0%	8.2%	9.1%	8.4%	8.7%	6.9%	6.8%	6.7%	6.2%	6.9%	
NET COST TO GEN FUND FOR CR & JV At	\$3,740,806	\$4,329,811	\$4,821,976	\$5,381,302	\$5,424,306	\$5,497,199	\$6,008,777	\$6,182,765	\$7,029,598	\$7,104,312	1.1%
NOTE: Reimbursements paid by defendants ordered to pay part of their defense costs are used as funds to pay court-appointed attorneys (off-setting costs to General Fund)											
<b>CHILD PROTECTIVE:</b> (see next page for Detail by Child, Parent or Other representation)											
DISTRICT COURT Expenditures:	\$3,667,536	\$4,282,998	\$4,647,351	\$5,161,370	\$5,471,555	\$5,421,921	\$5,058,990	\$5,043,455	\$5,160,705	\$4,734,387	
DISTRICT COURT # vouchers:	9,510	10,319	10,223	10,793	11,561	11,136	10,586	10,202	10,415	9,911	
LAW COURT Expenditures:	\$51,530	\$33,125	\$26,368	\$19,950	\$25,752	\$25,007	\$30,796	\$27,342	\$23,683	\$40,194	
LAW COURT # vouchers:	74	51	33	28	34	30	39	31	32	52	
TOTAL CP \$	\$3,719,066	\$4,316,122	\$4,673,719	\$5,181,320	\$5,497,307	\$5,446,928	\$5,089,786	\$5,070,797	\$5,184,388	\$4,774,581	-7.9%
Avg Cost per CP voucher	\$388	\$416	\$456	\$479	\$474	\$488	\$479	\$496	\$496	\$479	-3.4%
<b>MENTAL HEALTH</b>											
DIST. CT. MH Expenditures:	\$62,448	\$58,233	\$62,059	\$60,875	\$59,008	\$72,837	\$82,380	\$110,227	\$110,709	\$124,066	12.1%
DIST. CT. # MH vouchers:	589	511	568	593	574	594	584	703	694	767	10.5%
Avg Cost per Dist Ct MH vouch:	\$106	\$114	\$109	\$103	\$103	\$123	\$141	\$157	\$160	\$162	1.4%
<b>TOTAL EXPENDITURES FOR ATTORNEYS:</b>											
District Court	\$5,474,975	\$6,483,877	\$7,023,844	\$7,727,601	\$7,882,732	\$7,932,489	\$7,523,063	\$7,527,383	\$7,797,566	\$7,237,175	
Superior Court	\$2,036,328	\$2,131,982	\$2,516,220	\$2,907,249	\$3,086,462	\$2,909,544	\$3,480,002	\$3,728,155	\$4,457,238	\$4,419,832	
Unified Crim Docket/Cumb. County										\$230,794	
Law Court	\$102,972	\$68,134	\$77,202	\$59,758	\$68,284	\$77,463	\$74,817	\$86,420	\$66,338	\$112,589	
Contract Counsel	\$174,000	\$194,000	\$201,800	\$201,800	\$218,646	\$244,840	\$262,040	\$223,706	\$225,000	\$254,583	
COUNTING RECONCILIATION (a.):	-\$11,369	-\$487	-\$12,956	-\$5,568	-\$3,431	-\$69,533	\$10,343	-\$13,028	\$82,617	\$19,044	
TOTAL	\$7,788,274	\$8,877,993	\$9,819,066	\$10,896,408	\$11,256,124	\$11,164,335	\$11,339,923	\$11,565,664	\$12,546,142	\$12,254,973	-2.3%
REIMBURSEMENTS (b.):	-\$439,954	-\$367,827	-\$463,113	-\$474,711	-\$494,149	-\$392,211	-\$421,020	-\$425,581	-\$446,447	-\$506,597	13.5%
NET COST TO GEN FUND FOR ATTY's (c.):	\$7,359,689	\$8,510,653	\$9,368,909	\$10,427,265	\$10,765,406	\$10,841,657	\$10,908,560	\$11,153,111	\$12,182,312	\$11,729,332	-3.7%
NON-ATTORNEY COSTS (d.):	\$1,108,600	\$1,197,820	\$1,307,027	\$1,087,779	\$1,069,846	\$1,121,561	\$1,154,685	\$1,232,991	\$1,515,060	\$1,350,392	-10.9%
GRAND TOTAL (inc. reimburse.) (e)	\$8,896,874	\$10,075,813	\$11,126,093	\$11,984,187	\$12,325,970	\$12,285,896	\$12,494,608	\$12,798,655	\$14,061,202	\$13,605,365	-3.2%
GRAND TOTAL: NET GEN.FUND (f)	\$8,468,289	\$9,708,473	\$10,675,936	\$11,515,044	\$11,835,252	\$11,963,218	\$12,063,245	\$12,386,102	\$13,697,372	\$13,079,724	-4.5%

NOTES:

## Maine Commission on Indigent Legal Services

### Four-year Trend Data

	<u>FY'11</u>	<u>FY'12</u>	<u>FY'13</u>	<u>FY'14</u>
<u>All Other Allotment</u>	\$10,097,996.00	\$11,473,123	\$11,882,677	\$12,767,799
		+13.6%	+3.6%	+7.4%
Vouchers Paid	25,041	27,626	28,153	28,117
Cost per Voucher	\$389.63	\$404.89	\$407.88	\$434.60
Reimbursements	\$400,227	\$640,827	\$595,444	\$654,406

THE MAINE COMMISSION ON INDIGENT LEGAL SERVICES

VOUCHER TRENDS - FIRST HALF OF FY'15

	7/1/2013 – 12/31/2013	7/1/2014 – 12/31/2014	Change
<b>General</b>			
Vouchers Submitted	13,573	15,264	+12.5
Cost per Voucher	\$424.97	\$469.14	+10.4%
Felony vouchers	2,964	3,494	+17.9%
Misdemeanor Vouchers	3,535	3,945	+11.6%
Child Protective Vouchers	2,969	3,375	+13.7%
Juvenile Vouchers	611	678	+10.5%
<b>Specific Crimes</b>			
Murder	31	32	+3.2%
Robbery	101	155	+53.5%
Gross Sexual Assault	121	138	+14.0%
Aggravated Assault	191	196	+2.6%
Burglary	795	625	-21.4%
Aggravated Trafficking	133	152	+14.3%
Trafficking	272	311	+14.3%

# MAINE COMMISSION ON INDIGENT LEGAL SERVICES

## Budget Request Summary

<b>FY'15 Supplemental</b>	<b>1,678,000</b>	
	<b>FY-16</b>	<b>FY-17</b>
Baseline Budget	\$13,949,052	\$13,949,052
Additional funds needs To cover projected Increased costs*	\$2,928,164	\$4,278,341
Additional funds needed To cover proposed increase In the hourly rate**	\$4,424,371	\$6,371,094
<b>Total Biennial Budget Request</b>	<b>\$7,352,535</b>	<b>\$10,649,436</b>

\*In its first four years of operation, costs for indigent legal services have risen by an average of 8.2% per year, similar to the pattern of increases experienced when the system was operated by the Judicial Branch. The Commission has incorporated this rate of increase into its cost projections in hopes of fully funding Commission operations and ending the need for yearly supplemental funding that the Commission has encountered to date.

\*\*The hour rate paid to counsel providing indigent legal services was set at \$50/hr. in 1997 and remained unchanged until July 1, 2014, a period of 17 years. Considering inflation, the current rate of \$55/hr. continues to provide substantially less compensation than attorneys received in 1997 and is substantially less than the rate charged for paralegal services by most law firms. Moreover, the rate of compensation endangers the Commission's ability to attract and retain the experienced, qualified counsel necessary to providing quality indigent legal services. Accordingly, the Commission believes the hourly rate should be increased to \$70/hr. beginning July 1, 2015 and to \$75/hr. beginning July 1, 2016. The funding request set forth above reflects these proposed rate increases.

MCILS BUDGET SUMMARY (with 1,678,000 FY15 Supplemental)

FY14 AO Final Allocation	\$12,767,799		
	FY15	FY16	FY17
AO Baseline	\$13,949,052	\$13,949,052	\$13,949,052
AO need \$55/hr	\$15,627,052	\$16,877,216 8% projected increase over '15	\$18,227,394 8% projected increase over '16
Vouchers @ \$55/hr	\$15,021,013	\$16,222,694	\$17,520,510
Voucher increase @ \$70/hr		\$4,424,371	
Voucher increase @ \$75/hr			\$6,371,094
AO need with increase		\$21,301,587	\$24,598,488
Biennial Budget Change Request		\$7,352,535	\$10,649,436



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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**TO:** MELISSA GOTT, STATE BUDGET OFFICER  
CARLISLE McLEAN, ESQ., CHIEF LEGAL COUNSEL TO THE GOVERNOR

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

**SUBJECT:** MCILS BUDGET JUSTIFICATION  
FY'15 SUPPLEMENTAL BUDGET REQUEST  
FY'16-17 BIENNIAL BUDGET REQUEST

**DATE:** SEPTEMBER 2, 2014

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**FY'15 SUPPLEMENTAL BUDGET REQUEST - \$818,000**

Unmet Supplemental Request from January, 2014 - **\$490,000**

In January, 2014, the Commission submitted a supplemental budget request to the Legislature in the amount of \$980,000 based on trend data showing increasing costs for indigent legal services during the first half of FY'14. In response, the Legislature appropriated an additional \$490,000 for MCILS for FY'15. Cost data for the second half of FY'14 were consistent with the increase seen earlier in the year. As a result, the Commission continues to be in need of the full amount requested in January, i.e. an additional \$490,000.

Moreover, the Commission now projects that it will need an additional \$328,000 over the amount set forth above to cover costs projected for FY'15. That amount is broken down as follows:

Excess carryover from FY'14 - **\$252,000**

Due to the payment schedule for attorney vouchers submitted to the Commission (vouchers submitted during the final two weeks of any quarter are paid during the subsequent quarter), each year costs incurred in one fiscal year are paid during the next. At the end of FY'14, the Commission carried forward into the current fiscal year \$252,000 more in attorney vouchers than had been carried forward from FY'13 into FY'14. This excess carryover did not cause a substantial delay in payments at the end of FY'14 because a large supplemental appropriation at the end of FY'13 had allowed the Commission to carry an unusually small amount into FY'14. The excess carryover, however, when included in projections for FY'15, would cause a substantial delay in payments at the end of FY'15. Accordingly, the Commission needs \$252,000 to cover the excess carryover from FY'14.

Specific Increased Cost Items – **\$76,000**

The Commission recently put the longstanding contract for indigent legal services in Somerset County out to bid by RFP. Only the incumbent provider submitted a bid, and that bid reflected a

10% increase over the previous contract amount, which mirrors the recent 10% increase in the hourly rate paid to attorneys on individual assigned cases. The increased Somerset contract cost for FY'15 equals \$20,625.

As noted in the supplemental request the Commission made in January, costs for non-counsel services necessary for effective representation have risen significantly as the number of serious cases and the complexity of cases in general has increased. Moreover, the Legislature has approved a \$5/hr. increase in the rate paid to private investigators (\$25/hr. to \$30.00) effective January 1, 2015, and the Commission projects that the new rate will be applied to more investigator hours than originally predicted. The increased non-counsel cost projected for FY'15 equals \$39,000.

The Legislature authorized new financial screener positions that have increase our operating expenses, as has the renewal at a slightly higher rate of our contract for the attorney voucher payment system. Accordingly, we project operational expenses to increase by \$16,000.

Finally, note that the Commission has had increasing success collecting reimbursements from people ordered to pay some or all of the cost of their representation. In FY'14, the Commission collected \$654,406, the highest amount since the Commission's inception. The amounts stated above, however, remain necessary despite improving collections.

#### **BIENNIAL BUDGET REQUEST - FY'16 – 17**

**FY'16 - \$ 6,168,602**

**FY'17 - \$9,283,804**

The amounts set forth above reflect funds requested in addition to the Commission's baseline budget for FY'16 and FY'17. The requested increases are based on two principal components: 1) the history of the increasing cost for indigent legal services, both since the inception of the Commission and previously when these costs were borne by the Judicial Branch; and 2) the Commission's belief that the current hourly rate of \$55/hr. paid to assigned counsel is inadequate and should be raised to \$70/hr. for FY'16 and \$75/hr. for FY'17.

#### **Increasing Costs**

Since the Commission's inception, the cost of providing indigent legal services has increased each year. The percentage increases have been as follows: FY'11/12 – 13.6%; FY12/13 – 3.6%; FY'13/14 – 7.4% (see attached document entitled Four Year Cost Trend). The trend is not dissimilar to the trend that existed when these costs were borne by the Judicial Branch (see attached Judicial Branch 10-year cost data). The average yearly increase for the first four years of the Commission's existence equals 8.2%. In August, the Commission decided that based on this history, Commission budget projections for FY'16 and FY'17 should reflect 8% cost increases for each year.

#### **Increased Hourly Rate**

As stated above, the Commission believes that the current hourly rate of \$55/hr. paid to assigned

counsel is inadequate and should be raised to \$70/hr. for FY'16 and \$75/hr. for FY'17. Toward that end, the Commission has adopted an amendment to its Fee Schedule rule to raise the rate as just described. The Commission understands that the Legislature has recently made the Fee Schedule a major substantive rule and that any actual increase will require the approval of and funding by the Legislature. The Commission's budget request reflects the amounts needed to fund the proposed hourly rate increase.

The attached projection spreadsheets and summary of our "All Other Need" reflect separately the amounts necessary to meet our increased projected costs and the amounts necessary to fund the proposed rate increase.

I look forward to discussing these budget requests with you and will be glad to provide any additional information you may request.