

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2023 to December 31, 2023**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A(5)*

**Agency name:** **Maine Commission on Indigent Legal Services**  
**Umbrella-Unit:** **94-649**  
**Statutory authority:** 4 M.R.S.A. §§ 1804 (2)(C), (2)(G), and (4)(D)  
**Chapter number/title:** **Ch. 4, Caseload Standards for Assigned Counsel and Contract Counsel**  
**Filing number:** **2023-135**  
**Effective date:** 1/1/2024  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The purpose of this rule is to implement 4 MRS § 1804(2)( C) by prescribing “standards for assigned counsel and contract counsel caseloads” for attorneys accepting assignments to represent consumers of indigent legal services. The objective is to ensure that attorneys are not overscheduled or overworked and are able to provide effective, high quality, representation to each client.

**Basis statement:**

The Commission is charged with providing “... 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.” 4 M.R.S. § 1801. MCILS is statutorily obligated to develop standards for the caseloads of assigned and contract counsel. 4 M.R.S. § 1804(2)©. The right to effective counsel is protected by the United States Constitution and the Constitution of Maine. For counsel to provide high-quality, effective representation, their caseloads must be at a level that allows them to dedicate sufficient time and resources to every case. Chapter 4 is promulgated to ensure that the Commission fulfills its statutory and constitutional obligations by setting maximum caseload standards to ensure the delivery of highquality representation to indigent persons.

The implementation of this Chapter will further reduce the number of attorneys available to accept indigent cases during a time when Maine is experiencing a critical shortage of such attorneys. Additionally, there are technical and administrative barriers which the Commission needs to overcome to enforce this Chapter. Therefore, the Commission has voted to pass this Chapter with an effective date of January 1, 2024. The intent of the Commission is to provide attorneys, Commission staff, courts, and other interested parties sufficient time to prepare for the implementation of this Chapter.

After the Commission voted to pass Chapter 4 on July 21, 2023, the Commission received feedback from the Attorney General’s Office. Based on that feedback, the Commission made the following non-substantive changes to ensure that consistent language was used throughout the Rule: changed “MCILS” to “Commission” throughout the Rule, changed “PC” to “child protective”, added the word “Judicial” to “Supreme Court of Maine”, added “Maximum Active” to “Caseload Limit”, and “Maximum Annual” to “Hours Limit”. The Commission also deleted “than the 12 months indicated in Section 4(8)” from Section 7E)(vi), which was inadvertently left in the Rule after the former Section 4(B) was deleted from an earlier draft. Finally, the Commission corrected a typographical error in the statutory authority, which included an extra letter “A”.

**Fiscal impact of rule:**

None

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**Umbrella-Unit:** **94-649**  
**Statutory authority:** 4 MRS §§ 1804(2)(F), (3)(B), (3)(F), (4)(D); PL 2021 ch. 398 §A-22  
**Chapter number/title:** **Ch. 301**, Fee Schedule and Administrative Procedures for Payment of Commission Assigned Counsel  
**Filing number:** **2023-028**  
**Effective date:** 2/24/2023  
**Type of rule:** Major Substantive  
**Emergency rule:** Yes

**Principal reason or purpose for rule:**

Pursuant to 4 M.R.S.A. § 1804(3)(F), the Commission is required to establish the rate of compensation for assigned counsel. Currently, assigned counsel are paid \$80.00 per hour. This emergency amendment raises the hourly rate paid to attorneys as authorized by the Legislature. Basis statement:

Since July 1, 2021, MCILS Rules Chapter 301, Section 2, has authorized a rate of Eighty Dollars (\$80.00) per hour for time spent on an assigned case. Court appointed counsel operating under the MCILS system have been withdrawing from that system in part because the rate of payment for work on assigned cases did not permit counsel to operate cost efficiently. MCILS relies on appointed counsel to discharge its constitutional and statutory obligations. In Sec. Q-1 of the supplemental appropriations bill passed by the Legislature for fiscal year 2023, the Legislature authorized MCILS to engage in rulemaking to raise the rate up to \$150.00 per hour. Section 2 must be amended to permit MCILS to pay appointed counsel the \$150.00 per hour authorized by the Legislature. Without immediate action to implement the legislatively authorized rate increase, the Commission is in jeopardy of losing additional lawyers off the roster and imperiling the continued operation of the assigned counsel system.

**Fiscal impact of rule:**

As compared to the existing rule, the rate increase contained in this emergency rulemaking will increase the cost of providing indigent legal services by approximately \$6 million in fiscal year 2023.

Nearly all of the attorneys who provide indigent legal services operate small businesses that employ people and spend money in their local economy. The hourly rate paid to attorneys supports these small businesses and economic activity in their localities, and the increase in the hourly rate will enhance the economic impact of these businesses on the local and state economies.

Attorneys providing indigent legal services will be affected by the increase in the hourly rate of compensation. People receiving indigent legal services will be affected to the extent that the increased rate of pay provides additional resources to attorneys providing representation and helps retain and attract experienced and skilled attorneys able to provide quality representation. This emergency rulemaking will benefit the State by ensuring that MCILS acts in accordance with the directive of the Legislature to set the rate of pay for assigned counsel in accordance with the amounts appropriated for that purpose.

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**Umbrella-Unit:** **94-649**  
**Statutory authority:** 4 MRS §§ 1804(2)(F), (3)(B), (3)(F), (4)(D)  
**Chapter number/title:** **Ch. 301**, Fee Schedule and Administrative Procedures for Payment of Commission Assigned Counsel  
**Filing number:** **2023-122**  
**Effective date:** 9/1/2023  
**Type of rule:** Major Substantive  
**Emergency rule:** No

**Principal reason or purpose for rule:**

Pursuant to 4 M.R.S.A. § 1804(3)(F), the Commission is required to establish the rate of compensation for assigned counsel. This proposed rule amendment makes permanent the emergency rule adopted in 2023 which raised the hourly rate paid to counsel to \$150.00 per hour.

**Basis statement:**

Since July 1, 2021, MCILS Rules Chapter 301, Section 2, has authorized a rate of Eighty Dollars (\$80.00) per hour for time spent on an assigned case. Court appointed counsel operating under the MCILS system have been withdrawing from that system in part because the rate of payment for work on assigned cases did not permit counsel to operate cost efficiently. MCILS relies on appointed counsel to discharge its constitutional and statutory obligations. In Sec. Q-1 of the supplemental appropriations bill passed by the Legislature for fiscal year 2023, the Legislature authorized MCILS to engage in rulemaking to raise the rate up to \$150.00 per hour. Section 2 must be amended to permit MCILS to pay appointed counsel the \$150.00 per hour authorized by the Legislature. Without immediate action to implement the legislatively authorized rate increase, the Commission is in jeopardy of losing additional lawyers off the roster and imperiling the continued operation of the assigned counsel system.

**Fiscal impact of rule:**

This permanent rule will increase the cost of providing indigent legal services by approximately \$6 million in fiscal year 2023.

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**Agency name:** **Maine Commission on Indigent Legal Services**  
**Umbrella-Unit:** **94-649**  
**Statutory authority:** 4 M.R.S.A. §§ 1804(2)F), (3)(B), and(4)(D)  
**Chapter number/title:** **Ch. 301-A**, Payment for Attending and Reimbursement of Expenses  
Incidental to Attending Trainings  
**Filing number:** **2023-186**  
**Effective date:** 10/2/2023  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The Commission is statutorily obligated to develop, “Standards for the reimbursement of expenses incurred by assigned counsel and contract counsel, including attendance at training events provided by the commission ... “ 4 M.R.S. §1804(2)(F). Chapter 301-A is promulgated to satisfy the Commission’s statutory duty to develop said standards.

**Basis statement:**

The Commission is charged with providing “... 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.” 4 M.R.S. § 1801. The right to effective counsel is protected by the United States Constitution and the Constitution of Maine. For counsel to provide high-quality, effective representation, they must continue their legal education and stay current with changes in the law. The Commission is statutorily obligated to develop, “Standards for the reimbursement of expenses incurred by assigned counsel and contract counsel, including attendance at training events provided by the commission ... “ 4 M.R.S. §1804(2)(F). Chapter 301-A is promulgated to satisfy the Commission’s mandates to ensure the delivery of high-quality legal services and develop standards for the reimbursement of expenses counsel incur incidental to attending trainings provided by the Commission.

**Fiscal impact of rule:**

\$300,000