

**94-649 Maine Commission on Public Defense Services
(Formerly Maine Commission on Indigent Legal Services)**

94-649 Maine Commission on Indigent Legal Services

2024-023: Chapter 301, Fee Schedule and Administrative Procedures for Payment of Court or Commission Assigned Counsel

Statutory Authority:	4 M.R.S. §§ 1804(2)(F), (3)(B), (3)(F), and (4)(D)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	<i>No fiscal impact.</i>
Principal purpose:	<i>Pursuant to 4 M.R.S.A. § 1804(3)(B) the Commission is obligated to “[d]evelop and maintain an assigned counsel voucher review and payment authorization system that includes disposition information[.] This proposed rule would allow the fee amounts that trigger presumptive review to be revised following the recent increase to the hourly rate paid to assigned counsel. The proposed rule also provides a graduated penalty for late submitted vouchers.</i>
Basis Statement:	<i>The Commission is statutorily obligated to “Establish rates of compensation for assigned counsel...” (4 M.R.S. §1804(3)(F)) and develop “Standards for the reimbursement of expenses incurred by assigned counsel and contract counsel ...” 4 M.R.S. §1804(2)(F). Chapter 301 is promulgated to satisfy the Commission’s statutory duty to satisfy these obligations. Chapter 301 sets rates of compensation and procedures for payment to private assigned counsel, establishes rules for the reimbursement of eligible expenses, and sets fee amounts that trigger presumptive voucher review.</i>

94-649 Maine Commission on Indigent Legal Services

2024-077: Chapter 3, Eligibility Requirements for Specialized Case Types

Statutory Authority:	4 M.R.S. §§ 1804(2)(B), (2)(G), (3)(E), and (4)(D)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	<i>No fiscal impact.</i>
Principal purpose:	<i>Pursuant to 5 M.R.S.A. § 1804(3)(E) the Commission is obligated to “ensure that attorneys are qualified and capable of providing quality representation in the case types to which they are assigned, recognizing that quality representation in each case specialized case type requires counsel with experience and specialized training in that field.”</i>
Basis Statement:	<p><i>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 also statutorily obligated to develop standards for “minimum experience, training and other qualifications for contract counsel and assigned counsel...” 4 M.R.S. § 1804(B). The right to effective counsel is protected by the United States Constitution and the Constitution of Maine.</i></p> <p><i>Chapter 3 is promulgated to ensure that the Commission fulfills its statutory and constitutional obligations to ensure the delivery of high-quality representation to indigent persons by setting eligibility standards for determining which attorneys are qualified to represent clients in specialized cases.</i></p>

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2024-115: Chapter 2, Standards for Qualifications of Contract and Assigned Counsel

Statutory Authority:	4 M.R.S. § 1804(2)(B), (2)(G), and (4)(D)
Type:	Routine Technical
Emergency?:	No
Fiscal impact:	<i>No fiscal impact</i>
Principal purpose:	<i>Pursuant to 5 M.R.S.A. § 1804(2)(B) the Commission is required to promulgate standards for the qualifications assigned counsel. This rule sets forth those eligibility standards and the amendment enhances the Commission’s authority to track and regulate attorney eligibility when events giving rise to questions about attorney’s fitness to provide quality indigent legal services occur.</i>
Basis Statement:	<p><i>The Commission is charged with providing “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.” 4 M.R.S.A. § 1801. The Commission is also obligated to adopt certain rules, including “Standards prescribing minimum experience, training and other qualifications for contract counsel, assigned counsel and public defenders.” 4 M.R.S.A. § 1804(2)(B).</i></p> <p><i>This Chapter establishes the standards prescribing minimum experience, training, and other qualifications for contract counsel and assigned counsel to be Eligible to receive assignments to represent indigent people who are entitled to a statutorily and/or constitutionally required attorney.</i></p> <p><i>No public comments on the rule were received.</i></p>

94-649 Maine Commission on Indigent Legal Services

2024-174: Chapter 3, Eligibility Requirements for Specialized Panels

Statutory Authority: 4 M.R.S.A. §§ 1804(2)(B), (2)(G), (3)(E), and (4)(D)

Type: Routine Technical

Emergency?: Yes

Fiscal Impact: *No fiscal impact.*

Principal purpose: *Pursuant to 4 M.R.S.A. § 1804(3)(E) the Commission is obligated to “ensure that attorneys are qualified and capable of providing quality representation in the case types to which they are assigned, recognizing that quality representation in each case specialized case type requires counsel with experience and specialized training in that field.”*

Basis Statement: *Findings of Emergency:
WHEREAS, 5 MRS section 8054 authorizes emergency rulemaking by state agencies to avoid immediate threats to public health, safety or general welfare;
WHEREAS, demand for attorneys to provide indigent criminal defense services has outpaced the supply of attorneys doing this work;
WHEREAS, there are nearly 1000 cases in Maine where someone is entitled to court appointed counsel and no counsel is available;
WHEREAS, in response to challenges brought by defendants that allege violations of the Sixth Amendment to the U.S. Constitution, courts have now begun finding violations of Sixth Amendment rights and as a remedy modifying bail conditions or dismissing individual cases; and
WHEREAS, recent events in Auburn in the Hinckley case have gained notoriety in the media and the violence there and comments by some officials could undermine the public confidence in the criminal justice system.
NOW to address the above emergency, the Maine Commission on Public Defense Services finds emergency rulemaking pursuant to section 8054 is necessary and proper. In order to increase the flexibility to make experienced counsel available to those without counsel, the Commission finds that altering chapter 3 of the Commission Rules is necessary to address the immediate threat to public welfare caused by the current situation. Specifically, the Commission makes the following findings. First, that it is necessary to increase the scope of the discretion afforded the Executive Director to grant waivers of certain requirements under chapter 3 in order for counsel to take particular case types. Second, chapter 3 was recently amended to change all of the years of practice experience from years of criminal law experience to years of criminal defense experience. This has the effect of making waivers necessary for some attorneys that would otherwise have many years of criminal law experience and only a limited portion of that criminal law experience as criminal defense practice. The Commission finds that altering the years of practice requirement would provide greater flexibility to the bar to participate at a greater level.
In order to address the emergency identified above, the Commission adopts the following emergency rulemaking procedure. Because there was already a July 22 Commission meeting scheduled at the June meeting, the Commission finds that taking up the emergency rulemaking at that pre-existing meeting time best balances the need to quickly adopt the emergency rule with the need for public input into the proposed changes. Therefore, notice will be given for public hearing for July 22 at*

*1:00pm, and an abbreviated comment period will end prior to the meeting at 9:00am
Monday, July 22.*

94-649 Maine Commission on Public Defense Services

2024-204: Chapter 301, Fee Schedule and Administrative Procedures for Payment of Court or Commission-Assigned Counsel

Statutory Authority:	4 M.R.S.A. §§ 1804(2)(F), (3)(B), (3)(F), and (4)(D)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	[N]one
Principal purpose:	<i>Pursuant to 4 M.R.S.A. § 1804(3)(B) the Commission is obligated to “[d]evelop and maintain an assigned counsel voucher review and payment authorization system that includes disposition information[.]”</i>
Basis Statement:	<i>The Commission is statutorily obligated to “Establish rates of compensation for assigned counsel...” (4 M.R.S. §1804(3)(F)) and develop “Standards for the reimbursement of expenses incurred by assigned counsel and contract counsel ...” 4 M.R.S. §1804(2)(F). Chapter 301 is promulgated to satisfy the Commission’s statutory duty to satisfy these obligations. Chapter 301 sets rates of compensation and procedures for payment to private assigned counsel, establishes rules for the reimbursement of eligible expenses, and sets fee amounts that trigger presumptive voucher review.</i>

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2024-205: Chapter 4, Caseload Standards for Assigned Counsel and Contract Counsel

Statutory Authority:	4 M.R.S.A. §§ 1804 (2)(C), (2)(G), and (4)(D)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	<i>No fiscal impact.</i>
Principal purpose:	<i>Pursuant to 4 M.R.S.A. § 1804(3)(B) the Commission is obligated to “[d]evelop and maintain an assigned counsel voucher review and payment authorization system that includes disposition information[.]”</i>
Basis Statement:	<i>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. PDS is statutorily obligated to develop standards for the caseloads of assigned and contract counsel. 4 M.R.S. § 1804(2)(C). 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 high-quality representation to indigent persons.</i>

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2024-206: Chapter 301-A, Payment for Attending and Reimbursement of Expenses Incidental to Attending Trainings

Statutory Authority:	4 M.R.S.A. §§ 1804(2)(F), (3)(B), and (4)(D)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	None
Principal purpose:	<i>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.</i>
Basis Statement:	<i>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.</i>

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2024-207: Chapter 302, Procedures Regarding Funds for Experts and Investigators

Statutory Authority:	4 M.R.S.A. § 1804(3)(L) and (4)(D)
Type:	Routine Technical
Emergency?:	No
Fiscal Impact:	<i>No fiscal impact.</i>
Principal purpose:	<i>Pursuant to 4 M.R.S.A. § 1804(3)(L) the Commission is obligated to “[e]stablish processes and procedures to acquire investigative and expert services that may be necessary for a case, including contracting for such services[.]”</i>
Basis Statement:	<i>Pursuant to 4 M.R.S.A. § 1804(3)(L) the Commission is obligated to “[e]stablish processes and procedures to acquire investigative and expert services that may be necessary for a case, including contracting for such services[.]” This amended rule provides that the request for funds must be filed according to the procedure directed by the Executive Director. This change would create flexibility on how the information is received by the Commission staff.</i>