
MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: SENTATOR ANNE CARNEY

FROM: JUSTIN W. ANDRUS, (INTERIM) EXECUTIVE DIRECTOR

SUBJECT: MCILS INITIATIVES

DATE: 3/5/2021

Senator Carney, this memorandum follows our conversation of this morning. The Commission appreciates your attention to our budget needs. In follow up to that conversation, I have prepared the following material. I believe it reflects the substance of our discussion about the minimum steps that would have the maximal positive impact on Commission operations. I have also been asked to consider what the Commission might accomplish with staff increases in other increments and will address that question in another memorandum. The ideas set forth here represent my best ideas for what could be accomplished at staff increases of six, seven, and ten.

In reviewing this material, please consider that I believe the following steps would be helpful from my desk as (Interim) Executive Director, but that the MCILS budget proposal must come from the Commission itself. These elements thus reflect my individual professional perspective on how to achieve the most with the least. It remains my perspective that the Commission must be fully funded to a degree exceeding these steps to achieve full compliance with the Sixth Amendment and State of Maine Constitutional and Statutory mandates.

Deputy Director Maciag and I have worked as quickly as possible to prepare this material for the Committee. In preparing for our conversation, and then in preparing this memorandum, I have relied on my own experience and observation at the Commission. My opinions as to how to meet the Commission's obligations are informed by the Sixth Amendment Center Report; the OPEGA Report; the ABA Principles; and, other sources. I have relied heavily on the Massachusetts Committee for Public Counsel Services standards and policies as representing a gold-standard for public defense systems. The information and ideas I have shared with you represent my best effort at a clean sheet look at meeting Commission obligations. I will beg your forbearance if we identify additional information for presentation to you at the work session.

The current central office staff of the Commission consists of four people: Executive Director; Deputy Director; Accounting Technician; and, an Office Associate. The Commission is also supported by nine Financial Screeners who work outside the office and report to the Deputy Director. The three initiatives presented here would support the ability of the Commission to provide constitutionally and statutorily required services by expanding both the scope of oversight it could provide, and the depth of its engagement with its contract attorneys.

The first proposed element adds six staff to the Commission. Four would be attorneys. Two would be paralegals. Those six individuals would be divided into three teams of two, each with a lead attorney, a second attorney, and a paralegal. We have determined the cost of this element assuming that each lead attorney is senior to each second attorney.

National standards for defense attorney supervision calls for a ratio of no more than ten defense attorneys working under one supervisor. There are currently approximately 325 attorneys providing representation on behalf of the Commission. Deputy Director Maciag and I proctored the minimum standards training for approximately 25 individuals seeking to become rostered attorneys on March 4th and, for approximately 20 individuals seeking to become rostered attorneys in child protective cases on March 5th. There was some overlap between those groups. Assuming that we would thus have between 325 and 350 rostered attorneys in the near future the standards would call for us to have 32 - 35 supervisors.

Element one of the proposal we discussed provides two attorney supervisors and a paralegal to fulfill all of the supervision and quality assurance functions necessary to the provision of constitutionally acceptable representation. Those attorneys would be responsible for preparing and presenting training; maintaining rosters of eligibility for specialized case types; ensuring compliance with documentation standards; reviewing documentation and attorney work product, together with any necessary interviewing, to ensure that attorneys are providing constitutionally adequate representation; and, investigating complaints.

At the staffing level specified in element one, it will be possible to provide significantly improved training; to properly maintain the rosters; and, to have a meaningful investigation process to address complaints regarding an attorney's performance. It would not be reasonably possible to provide acceptable supervision in or out of the courtroom, or to ensure full compliance with documentation and performance standards.

With respect to the audit function, the fiscal year 2018 to fiscal year 2020 average case volume was 27,083 cases per year. A genuine audit of an attorney's financial compliance in a specific case would require obtaining and reviewing documents directly related to the case; potentially obtaining collateral documents to determine whether the attorney invoice accurately reflects work done; and, would also likely involve communication with collateral contacts. I anticipate that a meaningful audit of a single case would likely occupy one full workday of hours, even though those hours might not all be worked on the same day. At the average case rate described above, it would take 1.35 staff per 1% of the total case volume to provide the audit function on a random basis. It would require an additional 5 staff per 4% of the caseload for each additional volume of random auditing to be performed. Based on my experience to date, which is limited in time, I anticipate up to 26 audits triggered by complaints in any given year. I anticipate that complaint generated audits would lead to full audits of an attorney's practice over a given period of time, rather than remaining limited to a single case. To perform a reasonable audit of an attorney's entire practice would, I estimate, take between one and three weeks per attorney. In addition to random audits and complete triggered audits, we would also have audit activity related to the risk triggers. I cannot yet quantify the extent to which risk triggers will impact the audit function in full because our software vendor has not yet updated our software to permit me to assess that need. Altogether, however, I anticipate that a fully staffed audit office would require 4 full time employees at a 1% random audit density. Element one of this proposal does provide a better audit function than we have today but would fall short of meeting our full audit needs in the future.

Element 1:

Description: Establishes six positions: four Public Service Manager II attorney positions; and, two paralegal positions within the Commission plus associated all other costs.

Justification: This initiative establishes positions to support and enhance the ability of the Commission to provide constitutionally and statutorily required services by expanding both the scope of oversight it could provide, and the depth of its engagement with its contract attorneys. These six positions would be divided into two divisions within the Commission. Each would consist of two attorneys and one paralegal. One division would be responsible for performing audits of attorney billing and non-counsel invoicing. The other would be responsible for providing supervision, training, and quality assurance investigation.

	Part A Initiatives & Other FY 22	Part A Initiatives & Other FY 23
Positions		
Legislative Count	6.00	6.00
Total	6.00	6.00
Appropriations and Allocations		
Personal Services	658,116.00	682,868.00
All other	47,073.44	27,573.44
Total	705,189.44	710,441.44

Element 2 is designed to increase the operational efficiency and tempo of the Commission executive staff by providing direct support to the executive director and the deputy director. At this time communication and information distribution duties occupy a disproportionately high number of executive staff hours. The office specialist contemplated at element 2 could receive communications from outside the Commission; research the needs of those calling and emailing executive staff; and, after discussion and under direction from the executive staff could communicate responses and decisions back out. As many of the communications the Commission receives are simultaneously necessary to the ability of an individual attorney to represent an individual client and disruptive to the ability of the Commission staff to engage in projects uninterrupted, adding an individual in this role would result in a significant net savings of time, exceeding the actual time the communications require by illuminating the time required to resume interrupted tasks.

Element 2:

Description: Establishes one position: Office Specialist II position within the Commission plus associated all other costs.

Justification: This initiative establishes one position to support and enhance the ability of the Commission to provide constitutionally and statutorily required services by assisting the Executive Director and Deputy Director with the communication and implementation of management activities permitting the executive staff to ensure timely attention to operational needs.

	Part A Initiatives & Other FY 22	Part A Initiatives & Other FY 23
Positions		
Legislative Count	1.00	1.00
Total	1.00	1.00
Appropriations and Allocations		
Personal Services	87,871.00	91,109.00
All other	7,642.24	4,392.24
Total	95,513.24	95,501.24

Element 3 builds on element one by making the quality assurance function of the Commission more robust. With the addition of the staff members contemplated by element 3, the attorney supervision elements described above would be restructured. There would be one attorney staff member responsible for the supervision division. The supervision division would then be divided into 3 subdivisions. Two would consist of an attorney working with a paralegal. One would consist of an attorney working individually. The first subdivision would be responsible for training period and the second subdivision would be responsible for quality assurance through direct supervision and monitoring. The third subdivision would be responsible for investigating complaints regarding attorney performance.

Element 3:

Description: Establishes three positions: two Public Service Manager II attorney positions; and, one paralegal position within the Commission plus associated all other costs.

Justification: This initiative establishes positions to support and enhance the ability of the Commission to provide constitutionally and statutorily required services by expanding both the scope of oversight it could provide, and the depth of its engagement with its contract attorneys. These three positions would, with the six positions described in element one, further enhance the two proposed divisions within the Commission. The audit division would consist of two attorneys and one paralegal. The supervision division would consist of one supervising attorney, and then be further divided into three subdivisions. Training and supervision subdivisions would consist of one attorney and one paralegal each. An investigation subdivision would consist of one attorney.

	Part A Initiatives & Other FY 22	Part A Initiatives & Other FY 23
Positions		
Legislative Count	3.00	3.00
Total	3.00	3.00
Appropriations and Allocations		
Personal Services	320,397.00	332,685.00
All other	31,483.00	18,483.96
Total	351,880.00	351,168.96