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March 1, 2021

Sen Cathy Breen, Chair  
Rep. Teresa Pierce, Chair  
Joint Standing Committee on Appropriations & Financial Affairs  
Maine State Legislature  
100 State House Station  
Augusta, ME 04333  
Sen. Anne Carney, Chair  
Rep. Thom Harnett, Chair  
Joint Standing Committee on Judiciary  
Maine State Legislature  
100 State House Station  
Augusta, ME 04333

**RE: *LD 221, 2022-2023 Biennial Budget Proposal, Funding for the Maine Commission on Indigent Legal Services (MCILS)***

Dear Sen. Breen, Rep. Pierce and Members of the Appropriations Committee; Sen. Carney, Rep. Harnett, and Members of the Judiciary Committee:

My name is Kristine Hanly and I am writing to express my significant concern with the funding level contained in the Budget with respect to the Maine Commission on Indigent Legal Services. In order to provide the Constitutionally required effective assistance of counsel to indigent Mainers, funding levels for MCILS need to be substantially increased. For this reason, I **oppose** the current funding level contained in the Budget related to MCILS. I **support** the entirety of the MCILS proposal for additional funding.

By way of brief background, after graduating from the University of Maine School of Law in 2009, I have dedicated my practice to criminal defense. I own a small law firm in Portland Maine. Hanly Law currently employs two additional attorneys and two staff members. I am the Chair of the

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Criminal Law section of the MSBA, I serve on the Law Court's Advisory Committee for the Maine Rules of Criminal Procedure, and I currently serve as the defense attorney liaison to the Cumberland County Adult Drug Court. I am a panel member of the CJA and accept court appointed cases in Federal Court. I am writing to urge the full funding of MCILS' entire budget request including the increase of central office staff, funding an appellate division and increasing the rates paid to attorneys. Other than my role as the defense attorney liaison to the Adult Drug Treatment Court, I currently only accept a few court appointments as necessary to continue to provide continuity of services for clients with whom I have previously worked. Prior to pausing my court appointments, I have provided services within the MCILS system since its inception in 2010. I am hopeful that my personal experience and my familiarity with the system can be helpful to the Committee.

I know that rostered attorneys have borne the brunt of a lot of recent bad press regarding poor billing practices. I understand that the Executive Branch and perhaps the legislature is concerned about adding funding to a system that appears to have problems with financial oversight. To that point, there are a number of fairly simple systemic changes MCILS can implement to better control financial oversight of the billing practices. Since taking over as the Interim Executive Director, Justin Andrus has already implemented a number of these changes. I would urge the Committee not to allow the financial oversight concerns to sour your view on the quality of the majority of attorneys who make up the roster of court-appointed counsel. I think it is possible to recognize that the system as a whole needs to be better without necessarily disparaging the individual members of that system.

I would like to say that the majority of my colleagues are extremely hardworking, dedicated and zealous advocates for their indigent clients. Most attorneys do not accept court appointments in an effort to be high-paid attorneys; the current rate of pay does not allow for that outcome. These wonderful advocates are doing great work in spite of the system, out of dedication to their clients. While I have no doubt that the majority of my colleagues provide excellent work, I use the phrase "in spite of" because unfortunately, if MCILS remains underfunded and understaffed, they do not have the man-power to actually confirm that the attorneys are providing Constitutionally adequate representation. Nor do they have the appropriate funding to train, support and cultivate new attorneys to ensure a pipeline of available attorneys to Constitutionally adequate representation.

Increased financial oversight is only a part of the reason additional funding is required. In order to satisfy its Constitutional obligation, the State should fully fund a system that allows for the appropriate training, oversight and support of the attorneys providing the services to indigent legal clients. The system should not be reliant on the altruistic nature of the majority of the practitioners who work tirelessly for their clients despite the low pay, long hours and the personal toll this work can take on practitioners. For most of us who have ever represented this population, we recognize that we are usually the last thin line between these clients and personal ruin. Most indigent clients do not have a discrete legal problem that can easily be untangled from the circumstances of their life. The system should be funded well enough so that MCILS has the oversight capacity to confirm the quality of the representation provided by these zealous advocates.

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If MCILS has the full 10 staff positions, it can implement and most importantly, oversee and review more stringent qualifications for attorneys on the roster. With extra staff, MCILS can confirm the appropriate skill-level of rostered attorneys and weed out the few outliers that don't have the requisite skill, either in general, or for the specific case-types for which they are rostered. Without the appropriate staff, the system is propped up by the altruistic ideals of the attorneys who do this work. I am confident that with more oversight, MCILS would be able to show that the vast majority of attorneys doing this work are the excellent attorneys we believe them to be. That MCILS doesn't have the staff capacity to confirm this notion is a problem. This lack of capacity leads to the potential for the wholesale undervaluing of counsel, erodes public confidence in the attorneys and has a detrimental effect on the indigent clients for whom the system is supposed to serve.

In addition to confirming the skill-level of the current roster, with the appropriate level of funding MCILS can also provide appropriate training and support to attorneys. Enhanced training would help confirm and/or create a base-level of skill, but could and should also support more seasoned attorneys as they hone their skills in more difficult case-types. The appropriate staff-level would also allow for more hands-on review of attorneys once they are on the roster to confirm that best practices are being followed. This hands-on review would include additional financial oversight as well.

With respect to the rate increase, I defer to and fully support the Sixth Amendment Center's report as to why it is Constitutionally required. In addition to the Constitutional requirement, there is the practical effect that a higher rate will result in more quality work. Seasoned attorneys would have more incentive to remain on the roster or come back to the roster if there were not such a large financial disparity between their private practice and their court-appointed practice. Incentivizing more seasoned attorneys to return to the roster will relieve pressure on the system in a number of ways. Those attorneys can focus on the more difficult case-types for which their experience is required to provide effective legal services, while allowing newer attorneys to handle less complicated matters while gaining necessary experience. Experienced attorneys can also leverage their skill-set to be more efficient without compromising the quality of work they provide. Retaining experienced attorneys will help lower the caseload of each individual attorney, and can provide mentorship and guidance to the newer attorneys in the system.

In law firms the general rule of thumb is that in a healthy business, 1/3 of revenue goes to the attorney(s), 1/3 goes to taxes and 1/3 goes to the office overhead. It is important to remember that the \$60/hour rate is not what attorneys actually take home. Because court appointed attorneys are contract attorneys, they pay quarterly estimated taxes out of that rate, they pay for health insurance out of that rate, they pay for their staff (if they can afford staff) and the rest of their office overhead out of that rate. (MCILS require certain minimum office standards in order to be compliant with the rules.). In addition to appropriately valuing the important work that these attorneys do, there is likely to be a positive local economic impact to a rate increase as well. A likely result of an increased rate is not that attorneys will "pocket" the difference. A likely result is that attorneys will take steps to enhance their

business by hiring staff, renting office space and purchasing additional professional services all of which will have a positive impact on the local economy.

The budget discussion has also raised vigorous debate about whether a Public Defender System should be implemented. Some of my colleagues take this discussion personally, as working for indigent clients is not just their way of making money, but is their chosen professional vocation. It is hard when it feels like one's life's work is being disregarded and disrespected. With respect to whether a Public Defender Office is warranted or not, MCILS is the current system for provision of indigent legal services. The Constitution requires that the MCILS be appropriately staffed and funded now.

I would respectfully caution against comparing apples and oranges. Amongst some proponents, a Public Defender System is being held up as the panacea to the perceived problems with MCILS. A Public Defender System will only solve these problems if it is also adequately funded. Comparing the current, underfunded MCILS system with a hypothetical fully funded PD office will of course yield unfavorable results for MCILS. MCILS has been woefully underfunded for its entire existence. It needs to be adequately funded, now, regardless of whether there are plans to change the system in the future. Only when the current system is functioning with enough funding to have a full complement of staff to oversee, train, supervise and pay the current attorneys can the decision-makers compare the merits of a roster system with a public defender system. A public defender system will also not have any bearing on the provision of services to parents in Protective Custody proceedings. I will defer to my colleagues who currently practice in that arena to explain the challenges inherent in that practice.

Finally, whenever I discuss indigent legal offense, I can't help but point out that the State is Constitutionally required to provide indigent legal services to those that are charged with a crime that carries a risk of jail. This is necessarily a reactionary function. MCILS has to provide for the representation of *every* Mainer who is indigent and who faces a risk of jail. MCILS has no say over what charges are brought; that function remains within the discretion of the Prosecution. If the legislature would like to reduce the budget of the system as a whole, they can look at eliminating mandatory minimum sentences which trigger a risk of jail in cases that may otherwise not have a risk of jail, they can look at decriminalizing certain statutes so that clients are not swept up into the system and finally they can look at alternatives to incarceration. (An example taken from my personal experience is that the Adult Drug Treatment Court costs approximately \$1,400 per person per year and greatly reduces the rate of recidivism of that participant. A participant is healthier and the community is safer upon their release, than a similarly situated client who is incarcerated at the rate of approximately \$44,000 per year per person. This is but one of many examples where providing treatment or community support would greatly reduce our overall budget.) The DOC budget proposal requests 421 million dollars to supervise and incarcerate Mainers. The Long Creek budget requests 27 million dollars to incarcerate 23 juveniles. The majority of Mainers who find themselves in the criminal justice system have substance use disorders, mental health diagnoses or both. The majority of juveniles who find themselves in the juvenile justice system could benefit from a more supportive home life. If only a fraction of these budgets were reinvested into enhanced community support and

treatment of mental health and substance use disorders, the entire system will reap the benefits of healthier Mainers and lower costs across the board, including in the provision of indigent legal services. In the meantime, the State is Constitutionally required to provide effective representation to every indigent citizen that finds himself or herself at risk of jail. The Appropriations Committee should fund MCILS' entire original request in order to do so.

Sincerely,

/s/ Kristine C. Hanly  
Kristine C. Hanly, Esq.

cc: File