

**TITLE 4
JUDICIARY**

**CHAPTER 37
MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

§1801. Maine Commission on Indigent Legal Services; established

The Maine Commission on Indigent Legal Services, established by Title 5, section 12004-G, subsection 25-A, is an independent commission whose purpose is to provide 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. The commission shall work to ensure the delivery of indigent legal services by qualified and competent counsel in a manner that is fair and consistent throughout the State and to ensure adequate funding of a statewide system of indigent legal services, which must be provided and managed in a fiscally responsible manner, free from undue political interference and conflicts of interest.

§1802. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Assigned counsel. "Assigned counsel" means a private attorney designated by the commission to provide indigent legal services at public expense.

1-A. Appellate counsel. "Appellate counsel" means an attorney who is entitled to payment under Title 15, section 2115-A, subsection 8 or 9.

2. Commission. "Commission" means the Maine Commission on Indigent Legal Services under section 1801.

3. Contract counsel. "Contract counsel" means a private attorney under contract with the commission to provide indigent legal services.

4. Indigent legal services. "Indigent legal services" means legal representation provided to:

A. An indigent defendant in a criminal case in which the United States Constitution or the Constitution of Maine or federal or state law requires that the State provide representation;

B. An indigent party in a civil case in which the United States Constitution or the Constitution of Maine or federal or state law requires that the State provide representation;

C. Juvenile defendants; and

D. An indigent defendant or party or a juvenile for the purpose of filing, on behalf of that indigent defendant or party or juvenile, a petition for certiorari to the Supreme Court of the United States from an adverse decision of the Law Court on a case for which services were previously provided to that defendant or party or juvenile pursuant to paragraph A, B or C.

"Indigent legal services" does not include the services of a guardian ad litem appointed pursuant to Title 22, section 4105, subsection 1.

§1803. Commission structure

1. Members; appointment; chair. The commission consists of 9 members appointed by the Governor and subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary matters and confirmation by the Legislature. The Governor shall designate one member to serve as chair of the commission. The membership consists of the following:

- A. One member from a list of qualified potential appointees, provided by the President of the Senate;
- B. One member from a list of qualified potential appointees, provided by the Speaker of the House of Representatives;
- C. Three members from a list of qualified potential appointees, provided by the Chief Justice of the Supreme Judicial Court;
- D. One member with experience in administration and finance;
- E. One member with experience providing representation in child protection proceedings;
- F. One member from a list of qualified potential appointees who are attorneys engaged in the active practice of law and provide indigent legal services, provided by the president of the Maine State Bar Association. This member is a nonvoting member of the commission; and
- G. One member from a list of qualified potential appointees who are attorneys engaged in the active practice of law and provide indigent legal services, provided by the president of a statewide organization, other than the Maine State Bar Association, that represents criminal defense attorneys. This member is a nonvoting member of the commission.

In determining the appointments and recommendations under this subsection, the Governor, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Judicial Court, the president of the Maine State Bar Association and the president of the statewide organization that represents criminal defense attorneys shall consider input from individuals and organizations with an interest in the delivery of indigent legal services. Recommendations provided by the president of the Maine State Bar Association and the president of the statewide organization representing criminal defense attorneys must consist of attorneys providing indigent legal services as a majority of their law practices.

2. Qualifications. Individuals appointed to the commission must have demonstrated a commitment to quality representation for persons who are indigent and have the knowledge required to ensure that quality of representation is provided in each area of law. No more than 7 members may be attorneys engaged in the active practice of law. A person who is a sitting judge, prosecutor or law enforcement official, or an employee of such a person, may not be appointed to the commission. A voting member and the immediate family members living in the same household as the member may not receive compensation from the commission, other than that authorized in Title 5, section 12004-G, subsection 25-A, while the member is serving on the commission.

The limitations on members receiving compensation from the commission do not apply to any member serving on the commission as of April 1, 2018 for the duration of the member's term.

3. Terms. Members of the commission are appointed for terms of 3 years each, except that of those first appointed the Governor shall designate 2 whose terms are only one year, 2 whose terms are only 2 years and one whose term is 3 years. A member may not serve more than 2 consecutive 3-year terms plus any initial term of less than 3 years.

A member of the commission appointed to fill a vacancy occurring otherwise than by expiration of term is appointed only for the unexpired term of the member succeeded.

4. Quorum. A quorum is a majority of the current voting members of the commission . A vacancy in the commission does not impair the power of the remaining members to exercise all the powers of the commission.

5. Compensation. Each member of the commission is eligible to be compensated as provided in Title 5, chapter 379.

§1804. Commission responsibilities

1. Executive director. The commission shall hire an executive director. The executive director must have experience in the legal field, including, but not limited to, the provision of indigent legal services.

2. Standards. The commission shall develop standards governing the delivery of indigent legal services, including:

A. Standards governing eligibility for indigent legal services. The eligibility standards must take into account the possibility of a defendant's or civil party's ability to make periodic installment payments toward counsel fees;

B. Standards prescribing minimum experience, training and other qualifications for contract counsel and assigned counsel;

C. Standards for assigned counsel and contract counsel case loads;

D. Standards for the evaluation of assigned counsel and contract counsel. The commission shall review the standards developed pursuant to this paragraph every 5 years or upon the earlier recommendation of the executive director;

E. Standards for independent, quality and efficient representation of clients whose cases present conflicts of interest;

F. Standards for the reimbursement of expenses incurred by assigned counsel and contract counsel; and

G. Other standards considered necessary and appropriate to ensure the delivery of adequate indigent legal services.

3. Duties. The commission shall:

A. Develop and maintain a system that uses appointed private attorneys, contracts with individual attorneys or groups of attorneys and consider other programs necessary to provide quality and efficient indigent legal services;

B. Develop and maintain an assigned counsel voucher review and payment authorization system that includes disposition information;

C. Establish processes and procedures consistent with commission standards to ensure that office and contract personnel use information technology and case load management systems so that detailed expenditure and case load data are accurately collected, recorded and reported;

D. Develop criminal defense, child protective and involuntary commitment representation training and evaluation programs for attorneys throughout the State to ensure an adequate pool of qualified attorneys;

E. Establish minimum qualifications 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 of these types of cases requires counsel with experience and specialized training in that field;

- F. Establish rates of compensation for assigned counsel;
- G. Establish a method for accurately tracking and monitoring case loads of assigned counsel and contract counsel;
- H. By January 15th of each year, submit to the Legislature, the Chief Justice of the Supreme Judicial Court and the Governor an annual report on the operation, needs and costs of the indigent legal services system. The report must include:
 - (1) An evaluation of: contracts; services provided by contract counsel and assigned counsel; any contracted professional services; and cost containment measures; and
 - (2) An explanation of the relevant law changes to the indigent legal services covered by the commission and the effect of the changes on the quality of representation and costs.

The joint standing committee of the Legislature having jurisdiction over judiciary matters may report out legislation on matters related to the report;

- I. Approve and submit a biennial budget request to the Department of Administrative and Financial Services, Bureau of the Budget, including supplemental budget requests as necessary;
- J. Develop an administrative review and appeal process for attorneys who are aggrieved by a decision of the executive director, or the executive director's designee, determining:
 - (1) Whether an attorney meets the minimum eligibility requirements to receive assignments or to receive assignments in specialized case types pursuant to any commission rule setting forth eligibility requirements;
 - (2) Whether an attorney previously found eligible is no longer eligible to receive assignments or to receive assignments in specialized case types pursuant to any commission rule setting forth eligibility requirements; and
 - (3) Whether to grant or withhold a waiver of the eligibility requirements set forth in any commission rule.

All decisions of the commission, including decisions on appeals under subparagraphs (1), (2) and (3), constitute final agency action. All decisions of the executive director, or the executive director's designee, other than decisions appealable under subparagraphs (1), (2) and (3), constitute final agency action;

- K. Pay appellate counsel;
- L. Establish processes and procedures to acquire investigative and expert services that may be necessary for a case, including contracting for such services;
- M. Establish procedures for handling complaints about the performance of counsel providing indigent legal services; and
- N. Develop a procedure for approving requests by counsel for authorization to file a petition as described in section 1802, subsection 4, paragraph D.

4. Powers. The commission may:

- A. Establish and maintain a principal office and other offices within the State as it considers necessary;
- B. Meet and conduct business at any place within the State;
- C. Use voluntary and uncompensated services of private individuals and organizations as may from time to time be offered and needed;

- D. Adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, **except that rules adopted to establish standards under subsection 2, paragraph B** and rates of compensation for assigned counsel and contract counsel under subsection 2, paragraph F are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A; and
- E. Appear in court and before other administrative bodies represented by its own attorneys.

§1805. Executive director

The executive director of the commission hired pursuant to section 1804, subsection 1 shall:

- 1. Compliance with standards.** Ensure that the provision of indigent legal services complies with all constitutional, statutory and ethical standards;
- 2. Development of standards.** Assist the commission in developing standards for the delivery of adequate indigent legal services;
- 3. Delivery and supervision.** Administer and coordinate delivery of indigent legal services and supervise compliance with commission standards;
- 4. Most effective method of delivery.** Recommend to the commission the most effective method of the delivery of indigent legal services in furtherance of the commission's purposes;
- 5. Training for counsel.** Conduct regular training programs for counsel providing indigent legal services;
- 6. Personnel.** Subject to policies and procedures established by the commission, hire or contract professional, technical and support personnel, including attorneys, considered reasonably necessary for the efficient delivery of indigent legal services;
- 7. Submissions to commission.** Prepare and submit to the commission:
 - A. A proposed biennial budget for the provision of indigent legal services, including supplemental budget requests as necessary;
 - A-1. A monthly report on the amount of revenue collected from counsel fee collections, including counsel expenses recouped each month and for the year to date;
 - B. An annual report containing pertinent data on the operation, needs and costs of the indigent legal services system;
 - B-1. A monthly report on the number of cases opened, the number of vouchers submitted, the amount of vouchers paid, the amount of payments to contract counsel, the number of requests for professional services, the amount of payments for professional services and information on any complaints made against assigned or contract counsel; and
 - C. Any other information as the commission may require;
- 8. Develop and implement.** Coordinate the development and implementation of rules, policies, procedures, regulations and standards adopted by the commission to carry out the provisions of this chapter and comply with all applicable laws and standards;
- 9. Records.** Maintain proper records of all financial transactions related to the operation of the commission;
- 10. Other funds.** Apply for and accept on behalf of the commission funds that may become available from any source, including government, nonprofit or private grants, gifts or

bequests. These non-General Fund funds do not lapse at the end of the fiscal year but must be carried forward to be used for the purpose originally intended;

10-A. Reimbursement of expenses. Administer and improve reimbursement of expenses incurred by assigned counsel and contract counsel as described in section 1805-A;

11. Meetings of commission. Attend all commission meetings, except those meetings or portions of the meetings that address the question of appointment or removal of the executive director; and

12. Other assigned duties. Perform other duties as the commission may assign.

§1805-A. Indigency determinations; redeterminations; verifications; collections

1. Duties. The executive director shall administer and improve reimbursement of expenses incurred by assigned counsel and contract counsel by:

- A. Establishing procedures to ensure that the eligibility of defendants and civil parties is verified and reviewed randomly and when circumstances have changed, information has changed, additional information is provided or as otherwise needed;
- B. Petitioning the court to reassess the indigency of a defendant or civil party if the executive director determines that indigency should be reassessed;
- C. Providing to the commission recommendations to improve reimbursement of expenses;
- D. Requiring that the amount of time spent on each case by assigned counsel or contract counsel is recorded separately for each case; and
- E. Receiving from the courts collections for the costs of representation from defendants or civil parties who are found to be partially indigent or who have otherwise been determined to be able to reimburse the commission for expenses incurred by assigned counsel or contract counsel.

2. Determination of defendant's or civil party's eligibility. The executive director shall provide the court having jurisdiction over a proceeding information used to determine indigency for guidance to the court in determining a defendant's or civil party's financial ability to obtain private counsel.

3. Partial indigency and reimbursement. This subsection applies to partial indigency and reimbursement of expenses incurred by assigned counsel or contract counsel.

- A. If the court determines that a defendant or civil party is unable to pay to obtain private counsel but is able to contribute to payment of assigned counsel or contract counsel, the court shall order the defendant or civil party to make installment payments up to the full cost of representation or to pay a fixed contribution. The court shall remit payments received to the commission.
- B. A defendant or civil party may not be required to pay for legal services in an amount greater than the expenses actually incurred.
- C. Upon petition of a defendant or civil party who is incarcerated, the court may suspend an order for reimbursement issued pursuant to this subsection until the time of the defendant's or civil party's release.
- D. The executive director may enter into contracts to secure the reimbursement of fees and expenses paid by the commission as provided for in this section.

§1806. Information not public record

Disclosure of information and records in the possession of the commission is governed by this section.

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Individual client information" means name, date of birth, social security number, gender, ethnicity, home address, home telephone number, home facsimile number, home e-mail address, personal cellular telephone number, personal pager number and any information protected under the attorney-client relationship.

B. "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address, personal cellular telephone number, personal pager number, date of birth and social security number.

C. "Request for funds for expert or investigative assistance" means a request submitted to the commission by an indigent party or by an attorney on behalf of an indigent client seeking authorization to expend funds for expert or investigative assistance, which includes, but is not limited to, the assistance of a private investigator, interpreter or translator, psychiatrist, psychologist or other mental health expert, medical expert and scientific expert.

D. "Case information" means:

- (1) The court in which a case is brought;
- (2) Any criminal charges or juvenile crime charges and the type, but not the contents, of any petition giving rise to a case;
- (3) The docket number;
- (4) The identity of assigned counsel and the date of assignment;
- (5) The withdrawal of assigned counsel and the date of withdrawal; and
- (6) Any order for reimbursement of assigned counsel fees.

2. Confidential information. The following information and records in the possession of the commission are not open to public inspection and do not constitute public records as defined in Title 1, section 402, subsection 3.

A. Individual client information that is submitted by a commission-rostered attorney or a court is confidential, except that the names of criminal defendants and the names of juvenile defendants charged with offenses that if committed by an adult would constitute murder or a Class A, Class B or Class C crime are not confidential.

B. Information subject to the lawyer-client privilege set forth in the Maine Rules of Evidence, Rule 502 or that constitutes a confidence or secret under the Maine Rules of Professional Conduct, Rule 1.6 is confidential.

C. Personal contact information of a commission-rostered attorney is confidential.

D. Personal contact information of a member of the commission or a commission staff member is confidential.

E. A request for funds for expert or investigative assistance that is submitted by an indigent party or by an attorney on behalf of an indigent client is confidential. The decision of the executive director of the commission hired pursuant to section 1804, subsection 1, or the executive director's designee, to grant or deny such a request is not confidential after a case

has been completed. A case is completed when the judgment is affirmed on appeal or the period for appeal has expired.

F. Any information obtained or gathered by the commission when performing an evaluation or investigation of an attorney is confidential, except that it may be disclosed to the attorney being evaluated or investigated.

3. Confidential information disclosed by the Judicial Department. The Judicial Department may disclose to the commission confidential information necessary for the commission to carry out its functions, including the collection of amounts owed to reimburse the State for the cost of assigned counsel, as follows:

A. Case information and individual client information with respect to court proceedings that are confidential by statute or court rule in which one or more parties are represented by assigned counsel; and

B. The name, address, date of birth and social security number of any person ordered by the court to reimburse the State for some or all of the cost of assigned counsel.

This information remains confidential in the possession of the commission and is not open to public inspection, except that the names of criminal defendants and the names of juvenile defendants charged with offenses that if committed by an adult would constitute murder or a Class A, Class B or Class C crime are not confidential.

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