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STATE OF MAINE
ONE HUNDRED AND THIRTY-FIRST LEGISLATURE
COMMITTEE ON JUDICIARY

TO: Senator Peggy Rotundo, Senate Chair
Representative Melanie F. Sachs, House Chair
Joint Standing Committee on Appropriations and Financial Affairs

FROM: Senator Anne M. Carney, Senate Chair AC
Representative Matthew W. Moonen, House Chair MM
Joint Standing Committee on Judiciary

DATE: March 17, 2023

RE: Recommendations on the two questions posed by the Appropriations and Financial Affairs Committee Regarding the Governor's Proposed Biennial Budget, LD 258

We are writing to relay the Judiciary Committee's recommendations regarding the two items that the Appropriations and Financial Affairs Committee asked us to consider during our report to you on the Governor's Proposed Biennial Budget (LD 258) this past Monday, March 13, 2023. The Judiciary Committee met on Thursday, March 16, 2023 to discuss and vote on these issues. Members of the committee who were unable to attend all or a part of the work session were provided an opportunity to vote after the meeting.

Issue 1: What is the best process for coordinating the Maine Commission on Indigent Legal Services' budget requests related to proposed increases in the assigned counsel reimbursement rate and budget requests by the Maine Judicial Branch for the concomitant funding required to increase the reimbursement rate paid to guardians ad litem in child protection proceedings?

For the reasons set forth in our original biennial budget report-back memorandum dated March 9, 2023, a majority of the Judiciary Committee continues to believe that it is essential to retain parity between the reimbursement rate paid by MCILS to parents' attorneys in child protection proceedings and the reimbursement rate paid by the Judicial Branch to attorney guardians ad litem in the same child protection proceedings. We have attached to this memorandum for your review a letter submitted by Barbara Cardone, Director of Legal Affairs and Public Relations for the Maine Judicial Branch, explaining why the Judicial Branch also believes that it is important to maintain parity between the reimbursement rates. Barbara Cardone also assured the Judiciary Committee that the Judicial Branch supports the current statute, 4 M.R.S. §1556(2)(I), which provides that "the hourly rate of compensation" paid by the Judicial Branch for guardians ad litem in child protection proceedings "may not be less than the rate of compensation established by [MCILS]" for assigned counsel. This statute does not require the Judicial Branch to adopt the rate established by MCILS, but instead gives the Judicial Branch flexibility to adopt its own rate, provided the rate is no lower than the rate established by MCILS.

The Judiciary Committee recognizes the importance of ensuring that the Judicial Branch receives notice whenever MCILS proposes to increase the reimbursement rate for assigned counsel, however, to ensure that the Judicial Branch has the opportunity to submit a budget request to the Governor for the funding necessary to increase the reimbursement rate for guardians ad litem. A majority of the Judiciary Committee (Carney, Moonen, Lee, Sheehan, Bailey, Moriarty, Kuhn and Galgay Reckitt) therefore supports including a new initiative that would amend 4 M.R.S. §1804, the statutory duties of the Maine Commission on Indigent Legal Services (MCILS), to require that MCILS notify the Chief Justice of the Supreme Judicial Court whenever the commission votes in favor of submitting a budget request to the Governor for additional funds to increase the rate of compensation for assigned counsel. The initiative would also require MCILS to notify the Chief Justice of the Supreme Judicial Court whenever the commission provisionally adopts, finally adopts or adopts on an emergency basis a new or amended major substantive rule establishing the rate of compensation for assigned counsel.

A minority of the Judiciary Committee (Andrews, Poirier and Henderson) continues to believe that the rate of reimbursement for guardians ad litem in child protection proceedings should not be tied by statute to the rate of reimbursement for assigned counsel established by MCILS. These members of the committee therefore recommend that the Legislature include a new initiative within the biennial budget repealing 4 M.R.S. §1556(2)(I).

Issue 2: Should the biennial budget include funding to sustain Assistant District Attorney positions that may otherwise be lost across the State due to the anticipated reduction in federal STOP grant funding?

In response to a request for further information on this subject, District Attorney Meagan Maloney submitted a letter to the Judiciary Committee explaining that federal STOP grant funding has enabled the District Attorneys' Offices within prosecutorial district 1 (York County), district 3 (Oxford, Franklin and Androscoggin Counties), district 4 (Kennebec and Somerset Counties) and district 5 (Penobscot and Piscataquis Counties) each to create a sexual assault and domestic violence unit staffed by a specially trained Assistant District Attorney to handle these critically important cases. Due to confirmed reductions in available federal STOP grant funding, however, the State will no longer be able to maintain two of these specialized Assistant District Attorney positions.

A majority of the Judiciary Committee (Carney, Moonen, Lee, Dana, Sheehan, Poirier, Bailey, Moriarty, Kuhn and Galgay Reckitt) strongly recommends that the Appropriations and Financial Affairs Committee include a new initiative within the biennial budget to fund two Assistant District Attorney specialist positions to handle sexual assault and domestic violence cases to replace the positions that will be lost due to the decrease in federal STOP grant funding. Upon consultation with our fiscal analyst, it is our understanding that this initiative is likely to require a General Fund appropriation of $239,772 in FY 24, and $252,390 in FY 25 (per position cost of $119,886 in FY 24 and $126,195 in FY 25).

A minority of the Judiciary Committee (Andrews and Henderson) recommends that the new initiative to provide state funding for these positions not be added to the biennial budget because these positions most likely only came into being in 2020.

Please find attached the new initiative language for your consideration as well as copies of the letters from Barbara Cardone of the Maine Judicial Branch and from District Attorney Maegan Maloney. Please do not hesitate to contact us if you have any questions.

Majority Report: Carney, Moonen, Lee, Sheehan, Bailey, Moriarty, Kuhn and Galgay Reckitt

Add the following language part to the biennial budget.

Sec. ? 4 MRSA §1804 is amended to read:

§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, including attendance at training events provided by the commission; 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 may employ attorneys, use appointed private attorneys and contract with individual attorneys or groups of attorneys. The commission shall 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. The commission shall notify the Chief Justice of the Supreme Judicial Court whenever the commission votes in favor of submitting a budget request to the Governor for additional funds to increase the rate of compensation for assigned counsel and whenever the commission provisionally adopts, as described in Title 5, section 8072, subsection 1, finally adopts, as described in Title 5, section 8072, subsection 8, or adopts on an emergency basis, as described in Title 5, section 8073, a new or amended rule establishing the rate of compensation for assigned counsel and contract 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;

N. Develop a procedure for approving requests by counsel for authorization to file a petition as described in section 1802, subsection 4, paragraph D; and

O. Establish a system to audit financial requests and payments that includes the authority to recoup payments when necessary. The commission may summon persons and subpoena witnesses and compel their attendance, require production of evidence, administer oaths and examine any person under oath as part of an audit. Any summons or subpoena may be served by registered mail with return receipt. Subpoenas issued under this paragraph may be enforced by the Superior Court.

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 rates of compensation for assigned counsel and contract counsel under subsection 3, paragraph F are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A and notice of provisional adoption, final adoption and emergency adoption of rules establishing rates of compensation for assigned counsel must be provided to the Chief Justice of the Supreme Judicial Court as required by subsection 3, paragraph F.; and

E. Appear in court and before other administrative bodies represented by its own attorneys.

Minority Report: Andrews, Poirier and Henderson

Add the following language part to the biennial budget.

Sec. ?. 4 MRSA §1556, sub-§2, ¶I is repealed.

JUD Committee Members Absent: Haggan, Dana and Lyford

New initiative re: Assistant District Attorney positions	JUD Vote: 10-2

Majority Report: Carney, Moonen, Lee, Dana, Sheehan, Poirier, Bailey, Moriarty, Kuhn and Galgay Reckitt

Add the following new initiative to the biennial budget

> **Initiative**: Provides funding for 2 Assistant District Attorney positions, to be located in prosecutorial district 1, 3, 4 or 5, to prosecute sexual assault and domestic violence cases.
>
> Upon consultation with our fiscal analyst, it is our understanding that this initiative is likely to require a General Fund appropriation of $239,772 in FY 24, and $252,390 in FY 25 (per position cost of $119,886 in FY 24 and $126,195 in FY 25).

Minority Report: Andrews and Henderson

Do not include this new initiative in the budget.

JUD Committee Members Absent: Haggan and Lyford

State of Maine Judicial Branch
Administrative Office of the Courts – Office of Court Operations
1 Court Street, Suite 301, Augusta, Maine 04330

Judicial Branch Position on Parity between rates for GALs and MCILS attorneys

By statute, both parents and children involved in child protection cases are entitled to legal representation. Parents are entitled to a court-appointed attorney, and children are entitled to a guardian ad litem. 22 MRSA § 4005. All GALs paid to do child protective work must be attorneys. Me Rule GAL 2(a)(2). The Judicial Branch believes that maintaining parity among the practitioners appointed to a child protection case is critical to maintaining a pool of attorneys to serve as advocates for the parents and GALs for the children.

The hourly rate for court-paid GALs is governed by an administrative order: The Revised Fee Schedule for Guardians Ad Litem and Court Appointed Workers' Compensation Attorneys in All Courts (AO JB-05-5). AO JB-05-5 specifically provides that attorneys serving as GALs are to be paid the same rates at attorneys appointed by MCILS. There is also a statute in place that provides that a GAL in a child protective case may not be paid less than the rate set for an MCILS attorney representing a parent. 4 MRSA § 1556 (2)(I).

The Judicial Branch believes that paying GALs less than their MCILS counterparts will result in a shortage of GALs and hobble the ability of the courts to handle the increasing, and increasingly complex, docket of protective custody cases. Many of the GALs credentialed to accept appointments in child protection cases also accept appointments to represent parents. Being in the same pool allows an attorney the flexibility to accept appointments as a GAL *or* as a parent's attorney. Even if an attorney rostered as a GAL is not currently also rostered as an MCILS attorney, it will take little effort for the attorney to join the MCILS roster, since the skill set is the same.

The Judicial Branch intends to keep in place its administrative order requiring parity in these rates, and we think that the provision in Title 4, section 1556 (2)(I) should also remain in place. This statutory provision allows the three branches of government to work together to implement the policy of parity. We ask that the Legislature vote to leave the provision of Title 4, section 1556 (2)(I) in place.

Barbara A. Cardone
Director of Legal Affairs and Public Relations
Maine Judicial Branch
207-213-2803

AJ/jf

STATE OF MAINE

KATHRYN SLATTERY
DISTRICT I

JACQUELINE SARTORIS
DISTRICT II

NEIL MCLEAN
DISTRICT III

MAEGHAN MALONEY
DISTRICT IV

R. CHRISTOPHER ALM
DISTRICT V

NATASHA IRVING
DISTRICT VI

ROBERT GRANGER
DISTRICT VII

TODD R. COLLINS
DISTRICT VIII

OFFICES OF THE DISTRICT ATTORNEYS

March 16, 2023

Dear Chairs Carney and Moonen and Honorable Members of the Judiciary Committee,

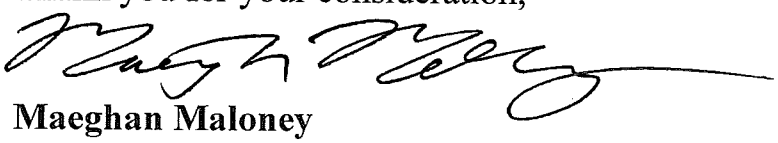
Thank you for this opportunity to update you on the loss of Sexual Assault and DV prosecutors. I know you all care enormously about combating sexual assault and domestic violence. In the press of budget documents, it is easy to lose sight of a big change happening next year: TWO STOP grant positions will be eliminated.

The State of Maine receives enough STOP grant money from the federal government to fund 2 STOP grant prosecutors. We currently have 4 STOP grant positions. This was due to a one-time infusion of funds that enabled us to switch our Traffic Safety grant positions to STOP grant positions so that no one had to be fired. For the last 3 years, the STOP grant prosecutors in York, Androscoggin, Oxford, Franklin, Kennebec, Somerset, Piscataquis, and Penobscot have worked together to draft a statewide best practices manual for sexual assault, DV, stalking, elder abuse, and child pornography cases. All four districts (1, 3, 4, and 5) used the STOP money to create Sexual Assault/DV units in our offices and restricted the caseloads to enable greater focus.
Future years will not include additional money, the Traffic Safety grant is not returning, and therefore next year we will go from 4 STOP grant positions to only 2. (If we are able to hire people at the low end of the spectrum and we do not receive COLAs and merits, we may be able to keep three ADAs on the STOP grant for one more year, but more realistically, we are hopeful State employees will receive COLAs and merits in which case we will only have enough STOP money for two ADAs next year.) We are Desperate to have funding for at least 2 sexual assault/DV ADAs to be able to continue this vital work and to not have to fire anyone. Our original budget request, accepted by the Attorney General and added to his budget, was for 6 sexual assault/DV ADAs to enable the entire state to focus on sexual assault and DV crimes.
I have read the Governor included another drug prosecutor in her budget bringing the state-wide total to NINE drug prosecutors. Where we put our money reflects our values

and currently our state budget is saying we want more drug prosecution and less sexual assault and domestic violence prosecution. In order to mirror the number of drug prosecutors, we would need SEVEN additional ADA Sexual Assault/DV prosecutors.

In summary:
--There are currently 4 Sexual Assault/DV prosecutor positions funded by a federal STOP grant;
--Next year there will be enough STOP grant funding for 2 Sexual Assault/DV prosecutor positions;
--To mirror the number of drug prosecutors, our state needs a total of 7 Sexual Assault/DV prosecutors (one in each district and a coordinator—just like the drug prosecutors)
--Finally, the AG's Office alerted me on Monday that funding will be gone in October for an ADA position in Cumberland County paid for by Covid funds. Therefore, the total number of positions losing funding (2 STOP grant and 1 Covid grant) is THREE.

Thank you for your consideration,



Maeghan Maloney
District Attorney
Kennebec and Somerset Counties