



January 25, 2023

Sen. Margaret Rotundo, Chair
Rep. Melanie Sachs, Chair
Joint Standing Committee on Appropriations
& Financial Affairs
Maine State Legislature
100 State House Station
Augusta, ME 04333

Sen. Anne Carney, Chair
Rep. Matt Moonen, Chair
Joint Standing Committee on the Judiciary
Maine State Legislature
100 State House Station
Augusta, ME 04333

Re: *Additional funding for MCILS included in LD 206, the Governor's proposed 2023 Supplemental Budget*

Dear Sen. Rotundo, Rep. Sachs, and Members of the Appropriations and Financial Affairs Committee, Sen. Carney, Rep. Moonen, and Members of the Judiciary Committee:

On behalf of the Board of Governors of the Maine State Bar Association, we write in qualified support of the additional \$1 million in funding for the Maine Commission on Indigent Legal Services (MCILS) included in Part A, page 30, of LD 206, the Governor's proposed Supplemental Budget. In supporting additional funding for MCILS, we also raise concerns about implementing policy in this supplemental budget to use "tiered rates" for attorneys participating in the MCILS roster.

About us. The Maine State Bar Association is a statewide trade association chartered in 1891 by the Maine Legislature. The Association currently represents approximately 3,000 attorneys in the State in both public service and private practice. The Association maintains 28 separate sections covering nearly every field of law practiced in Maine, from Administrative Law to Workers' Compensation Law. Access to justice is a key element of our mission, hence our strong and longstanding interest in the MCILS system.

Additional MCILS funding is critical. The mission of MCILS is to ensure access to justice and to our legal system for all Mainers, regardless of their income. At this time, the system is unable to meet that mission, given current funding levels. The Association strongly supports additional funding for MCILS for the remainder of this biennium for this important purpose, though we understand this proposed short term appropriation is a small portion of what MCILS needs. We look forward to the discussions regarding the Biennial Budget proposal, when the full budgetary needs of MCILS can be addressed.

The current system's struggle is evident from the dramatic decline in the size of the MCILS roster for attorneys participating in the defense of indigent Mainers. A key element of increasing the roster is raising reimbursement rates for attorneys. In fact, the Commission itself has recommended rates of \$150 per hour to support the attorneys, as well as the firms and support staff behind the attorneys. Our

Association has also supported such an increase. With more money added to the MCCLS budget, the ability to meet this important need is expanded.

Proposed tiered rate schedule. The Association and its members have recently become aware that a conversation has commenced regarding paying participating MCCLS attorneys a "tiered rate" where compensation would be based on the nature of each case. For a variety of reasons, it is not clear that such a system is advisable or even workable. For this reason, it is premature to adopt a tiered rate schedule in this Supplemental Budget and to rush such a system into place. Rather, this is discussion would be better held in the context of the Biennial Budget that will be taken up by this Committee later in the session. There have been several concerns and issues that have been brought to our attention about the proposed tiered rate schedule.

First, there is a significant timing question. As we understand it, the current software utilized by MCCLS may not be capable of implementing a tiered rate schedule. Such a tiered rate schedule would be required to be entered by hand, or MCCLS would need to update its software. Importantly, the time and effort to procure, install, train, test, and implement a new software system is likely to take many months, if not years. That is often the nature of implementing new software systems.

Second, it is not clear that paying attorneys lower rates for certain activities will meet our State's goal of attracting attorneys to join the MCCLS roster, and thereby meeting our Sixth Amendment requirements. While it is true that some subject matters are less complex than others, the support staff and resources involved in assisting the participating attorneys is likely to cost the same regardless of the particular subject matter of a case. Very simply, these "back office" and overhead costs don't go down even though a matter may be less complex.

Likewise, lower rates for certain services create a larger opportunity cost for participating attorneys. Every time an attorney considers taking on an MCCLS case, the attorney must consider the opportunity cost of not taking on other work that they are unable to perform while working on these MCCLS cases. Whether the attorneys are working on complex or less complex matters for MCCLS, they are giving up the same amount of time and revenues per hour, regardless. But the opportunity cost is higher when the MCCLS rate is lower.

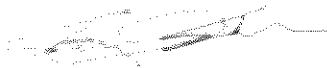
Third, anecdotally, the Association understands that MCCLS has been providing statewide training for attorneys to join the system in an attempt to attract new practitioners into the system. While laudable, it is our understanding that there have been relatively few participants, and even fewer attorneys have joined the MCCLS roster as a result of such training. This signifies that training alone is not enough. We need to do more, including making participation in the MCCLS system affordable for attorneys.

Looking ahead. As we have in the past, our Association is committed to working with stakeholders and Association members to ensure a legal system that provides adequate legal defense to all Mainers, including, and specifically in this context, indigent Mainers. We are hosting a panel discussion on this subject at our Winter Bar Meeting later this week, and we are committed to remaining actively engaged in conversations regarding this critical issue. Over the coming weeks and months, we hope to gather additional information from attorneys and other stakeholders that we can share with the Legislature and Administration as it considers how best to ensure the success of our system of indigent legal defense.

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Conclusion. For these reasons, we strongly support the additional \$1 million in funding for MCILS that is included in the Governor's proposed Supplemental Budget, but oppose the addition of specific language surrounding tiered rates for attorneys. Thank you for the opportunity to provide these comments on LD 206. If you have questions or need additional information, please do not hesitate to let us know.

Sincerely,



Stacy O. Stitham
President, Board of Governors

cc: Angela Armstrong, Executive Director
Rachel Okun, Chair, MSBA Legislative Committee
James I. Cohen, Verrill Dana, LLP
Clara McConnell, Maine Street Solutions

