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**MCILS ATTORNEY AVAILABILITY**

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**TO:** GOC

**FROM:** JUSTIN ANDRUS, EXECUTIVE DIRECTOR

**SUBJECT:** MCILS ATTORNEY AVAILABILITY

**DATE:** 9/20/2022

**CC:** COMMISSION, INTERESTED PARTIES

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Table 1: MCILS counsel available to staff cases through completion (excludes counsel who serve only in Lawyer of the Day; Treatment Courts; or, similar)

<b>MCILS Case Available Counsel</b>		
May 2019		410
January 2022		280
June 2 2022		234
September 13 2022		171
September 20 2022		163

Table 2: Pending UCD caseload as of 9/9/2022 (excludes civil violations)

	<u>2022</u>	<u>2021</u>	<u>2019</u>
Felony	7,648	7,103	4,373
Misdemeanor	19,956	19,403	12,615
Total	27,604	26,506	16,988
	<b>2022/prior:</b>	<b>104%</b>	<b>162%</b>

Table 3: Cases opened

<u>FY</u>	<u>Cases Opened</u>	<u>2023 / prior year</u>
2019	27,324	130%
2020	27,190	131%
2021	28,595	125%
2022	31,606	113%
2023	35,360	

**Note:** For MCILS to achieve an assignment to attorney ratio equal to May 2019 today would require 528 attorneys in the system. The system requires 387 additional attorneys to return to that ratio. That case ratio accounts for attorneys who do not serve consumers of indigent legal services full-time, but does not account for the proposed MCILS caseload standards.

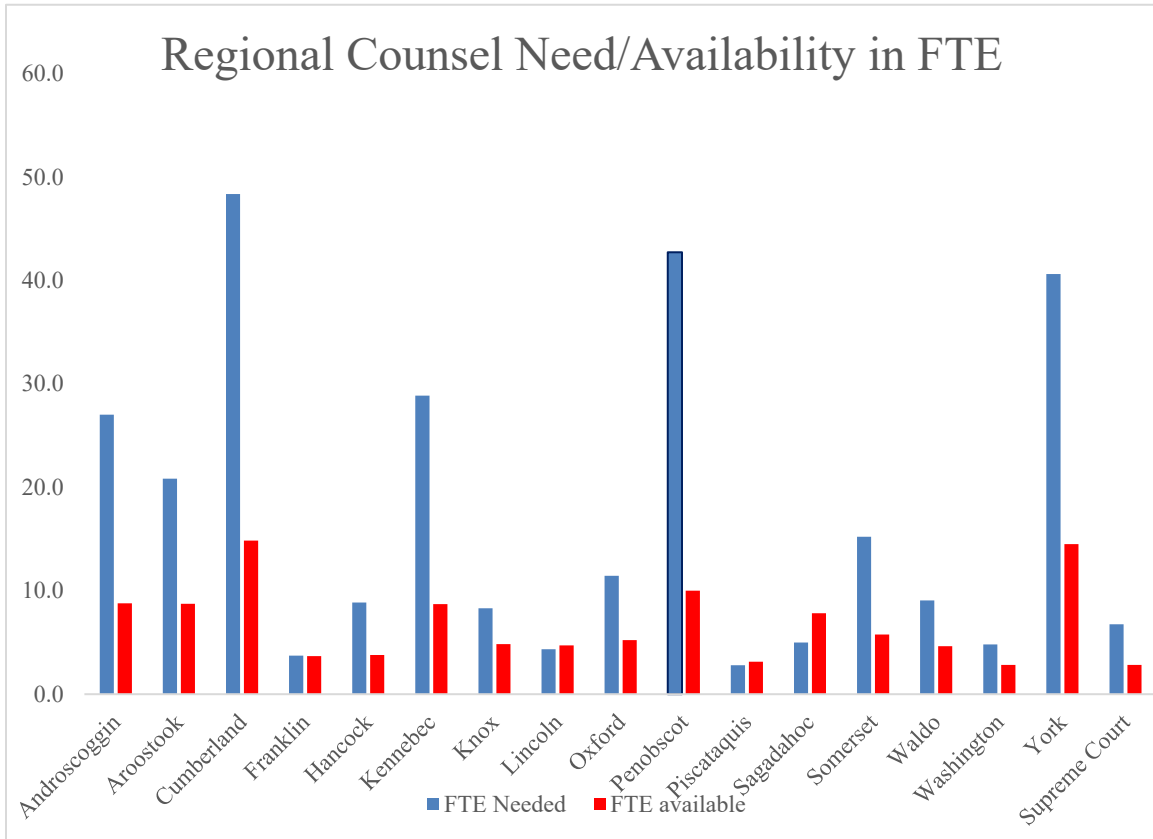
As of September 13, 2022:

- 374 current or former MCILS attorneys reported 25,298 open matters for consumers of indigent legal services. This includes cases that are still open for attorneys who have not renewed their participation in the MCILS program; those who have renewed but who are not accepting cases; and those who are accepting cases.
- 171 attorneys accepting assignments to represent consumers of indigent legal services reported 14,700 open matters.<sup>1</sup>
- 53 attorneys (31%) were carrying caseloads that would exceed the protective caseload standard developed by MCILS staff.
- Those 53 attorneys were responsible for 9,878 (67%) of the total open caseload being carried by the then remaining available counsel pool.
- 7 of the remaining available attorneys were carrying 25% of the total available attorney caseload.
- Of the 171 attorneys indicating willingness to receive assignments to cases, 81 (47%) were accepting half-FTE caseloads. 47 (27%) were accepting quarter-FTE caseloads. As a result, the 171-attorney count substantially overstates the depth of the remaining available counsel pool.
- Of the 31,607 matters opened by MCILS counsel in FY'22, 26,617 were for representation in a substantive matter (as opposed to Lawyer of the Day or other time-limited assignments). For the next 12 months, assuming conservatively that the FY'22 caseloads held, and based on the average case complexity of those substantive assignments, MCILS would need 288 FTE attorneys to staff those cases *if those attorneys had no existing caseload*. In reality, we project a 12% increase in the number of cases MCILS will be called on to staff.

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<sup>1</sup> Note that in the week between September 13<sup>th</sup> and September 20<sup>th</sup>, the attorney count decreased to 163. This analysis was performed before September 20<sup>th</sup>.

Table 4: MCILS projects the following need and availability for attorneys in the next year



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**MCILS TRAINING AND SUPERVISION DIVISION**

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**TO:** GOC

**FROM:** JUSTIN ANDRUS / T&S DIRECTOR GUILLORY

**SUBJECT:** TRAINING AND SUPERVISION ACTIVITIES

**DATE:** 9/20/2022

**CC:** COMMISSION, INTERESTED PARTIES

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Since commencing its work on or about December 1, 2021, some of the activities of the Training and Supervision Division have included:

- Processed 17,792 eligible case assignments between 12/1/2021 and 9/8/2022.
- Detected and addressed 230 ineligible assignments of counsel, 31 of which resulted in counsel applying and becoming rostered for the relevant specialty panel.
- Processed 105 applications for initial indigent case assignments and specialty panels.
- Hosted 6 original continuing legal education presentations, including two with an ethics component at no cost to rostered attorneys.
- Hosted multiple presentations of our Minimum Standards Trainings.
- Approved 29 third party CLE's for MCILS credit.
- Provided assigned counsel with free and unlimited access to the NAPD online training library.
- Created and implemented a policy and procedure for handling complaints received by Training and Supervision Staff.
- Performed 27 Training and Supervision assessments in response to received complaints, including, where appropriate, remediation through the Resource Counsel program.
- Designed workflow and rules for implementation of a Duty Lawyer of the day program. Designed protocols for pre-arraignment assignments of counsel to correspond to that program.

- Created a phone line for use with the Duty Lawyer of the day program and general MCILS assistance for the public.
- Received and logged 603 calls to the Duty Lawyer of the Day/Helpline between 2/14/2022 and 9/8/2022.
- Authorized 58 assignments of counsel utilizing MCILS's internal assignment of counsel mechanism.
- Located counsel for hand placement of cases through the courts.
- Tracked assignment issues across multiple counties aggregating data on cases resulting in denial of counsel to clients.
- Collaborated in authoring a billing and case entry guidance document.
- Revised initial and specialty panel applications.
- Developed Training and Supervision policy roadmap for presentation to the Commission.
- Conducted CLE survey of assigned counsel to identify training needs and opportunities.
- Developed draft policies for Caseload Limits, conducting supporting research on various systems and other states methodologies.
- Drafted supporting memoranda for advancing caseload limits including multiple iterations of data analysis generated from internal data and comparative analysis against other information generated through research and development.
- Developed draft policies for structuring both assigned counsel and public defender systems.
- Developed draft supervision policies for both assigned counsel and public defender systems.
- Developed draft policies regarding assignment of counsel systems.
- Developed draft policies for training programs and policies.
- Developed draft policies for amending standards of practice.
- Developed draft policy for annual attorney evaluations.
- Developed draft policy for replacing the current rostering and specialty panel system.

- Complete research projects assigned by the Commissioners regarding proposed policies. Most recently staff compiled over 2200 pages of research in response to a request for information by a Commissioner.
- Developed a pilot program for matching counsel seeking trial experience and counsel seeking attorneys willing to act as second chairs at trials.

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**MCILS ASSIGNED COUNSEL PAY DISPARITY**

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**TO:** GOC

**FROM:** JWA

**SUBJECT:** MCILS ASSIGNED COUNSEL PAY DISPARITY

**DATE:** 9/20/2022

**CC:** COMMISISON, INTERESTED PARTIES

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MCILS assigned counsel are paid \$80 per hour to represent consumers of indigent legal services. The following table demonstrates that even the least expensive Assistant District Attorney has an effective hourly rate of \$74.53, without financial responsibility for staff or an office. When staff costs are considered, the effective hourly rates for a prosecutor range from a minimum of \$132.19 to \$183.50 for an experienced elected District Attorney. MCILS will not successfully attract and retain attorney talent absent pay parity.

<u>State employee costs<sup>1</sup></u>	<u>Annual</u>	<u>Effective Hourly<sup>2</sup></u>
Elected District Attorney (new state hire)	\$ 178,712	\$ 102.94
Elected District Attorney (6-year salary)	\$ 218,452	\$ 125.84
Assistant District Attorney (new state hire)	\$ 129,383	\$ 74.53
Assistant District Attorney (experienced)	\$ 200,743	\$ 115.64
Legal Secretary (step 3/new state hire)	\$ 100,096	\$ 57.66
 <b><u>Parity hourly rate analysis with staff</u></b>		
Elected District Attorney (new state hire)	\$ 278,808	<b>\$ 160.60</b>
Elected District Attorney (6-year salary)	\$ 318,548	<b>\$ 183.50</b>
Assistant District Attorney (new state hire)	\$ 229,479	<b>\$ 132.19</b>

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<sup>1</sup> The annual costs presented represent the sum of the relevant salary, benefits package, and ancillary costs associated with each position, based on the most recent data available to MCILS.

<sup>2</sup> Accounts for State benefit package including paid State holidays, vacation, sick leave, and personal time for which prosecutors are paid, but for which assigned counsel receive no consideration.



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**MCILS AUDIT DIVISION**

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**TO:** GOC

**FROM:** JUSTIN ANDRUS / AUDIT COUNSEL WASHER

**SUBJECT:** AUDIT DIVISION ACTIVITIES

**DATE:** 9/20/2022

**CC:** COMMISSION, INTERESTED PARTIES

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Since commencing its work on or about December 1, 2021, some of the activities of the Audit Division have included:

Data Review and Processing

- Developed and implemented supervision workflow to address high daily hours alerts using a risk-based approach to prioritize alerts most likely to contain misstatements whether due to fraud or error.
- Reviewed and recorded approximately 2,309 high daily hours alerts since October 26, 2021, including 254 alerts for days with hours reported over 16 hours.
- Reviewed and processed 28,472 individual vouchers representing approximately \$16,438,465.16 in contract counsel fees and reimbursements.
- Of those 28,472 individual vouchers, we have sent approximately 15,770 back to the relevant attorney for further information or correction.
- Recorded approximately 90 data entry errors since March 11, 2022, that resulted in contract counsel reducing the hours originally reported. Those errors total approximately 269 attorney work hours.
- Implemented an interim billing scheme which increased the quality of agency data by providing closer in time information regarding the services provided to indigent Mainers.
- Developed and implemented a scheme for recording desirable or positive outcomes contract counsel have obtained for their indigent clients.
- Recorded desirable outcomes since March 11, 2022.

#### Data Management and Report Generation

- Developed the capability to restructure and produce systems data in new ways not previously possible.
- Developed 35 persistent SQL queries to generate reports using the data housed in the agency's case management software that are otherwise not available.
- Developed a query that reliably tracks attorney caseloads according to the May 2022 proposed caseload standard through thorough and iterative testing.
- Developed the ability to generate and retain local back-ups of agency data stored by our external case management software provider.
- Established a system for generating redundant back-ups of systems data.
- Reduced manual effort necessary to conduct data analysis by designing reports responsive to the Training and Supervision Division's needs.
- The agency updated and modernized the website using a modular, open-source content management system that provides greater flexibility as the agency grows and changes.
- Prepared a site redesign that contemplates agency workflow changes to streamline current processes and provides new content delivery methods to provide contract counsel with more accessible resources and training content.

#### Audit Structure

- Developed draft risk-based audit program incorporating random statistical sampling and non-statistical sampling procedures to provide reasonable assurance that agency billing data is free from material misstatements.
- Engaged in self-directed education regarding audit standards and procedures.
- Regularly review and test systems data to take corrective action where necessary and to provide greater assurance that the data is free from misstatements.

#### Rules Application and Implementation

- Developed and implemented comprehensive written billing guidance to standardize attorney billing practices across a diverse group of contract counsel.
- Revised how the annual renewal is managed by using our modular content management system to manage the forms and data collected.
- Individually reviewed and processed 354 attorney renewal applications resulting in over 270 successful attorney renewals.
- Strictly implemented Chapter 301 (fee rule) by consistently enforcing the various nuances of that rule resulting in greater assurance that the agency, as well as contract counsel, are in compliance with the tenets of that rule.

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**SUPPLEMENTAL BUDGET REQUEST**

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**TO:** COMMISSION

**FROM:** JWA

**SUBJECT:** STAFF RECOMMENDED SUPPLEMENTAL BUDGET REQUEST

**DATE:** 9/19/2022

**CC:** INTERESTED PARTIES

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The deadline for submitting a supplemental budget request for the remainder of FY23 is October 3, 2022. Staff recommends submitting a supplemental request in the amount of \$13,309,440 to support a raise for assigned counsel to \$150 per hour. Staff have considered other initiatives, and have concluded that the window of opportunity to deploy other initiatives during FY23 is too narrow to warrant pursuing those other initiatives at this point.

Staff have calculated the recommended initiative price based on FY22 hours, and expected cost for the period October 3, 2022 to June 30, 2023, as set out in the table below.

The Commission should not view this proposal as adequate to resolve the ongoing issues in staffing, but staff believe that the proposed raise will support the program by permitting existing counsel to use paralegals and other employees or contractors as force modifiers, and that we may be able to regain some who have left at the enhanced rate.

FY22 Hours Billed		256,939
%year 10/3/22 to 6/30/23		74%
Hours Expected 10/3/22 to 6/30/23		190,135
Expected cost @ \$80/hr	\$	15,210,789
Expected cost @ \$150/hr	- \$	28,520,229
<b>New appropriation</b>	<b>\$</b>	<b>13,309,440</b>