EXHIBIT 1

SETTLEMENT AGREEMENT

I. Definitions

A. "The Action" is *Robbins, et al. v. Maine Commission on Indigent Legal Services, et al.* ("MCILS"), originally filed in March 2022 in Kennebec County Superior Court, Dkt. No. KENSC-CV-22-54.

B. "Effective Date" is the date upon which the Court issues final approval of this Settlement Agreement.

C. "Plaintiffs," "Settlement Class," "Class," or "Class members" means the Named Plaintiffs and all members of certified class as defined in the Court's July 15, 2022 Order granting certification.

D. "Defendants" are the expressly named Defendants in this Action: the Maine Commission on Indigent Legal Services, the Commissioners of the Maine Commission on Indigent Legal Services, in their official capacities, and the Executive Director of the Maine Commission on Indigent Legal Services, in his/her official capacity. "Defendants" includes the successors in office of the commissioners and Executive Director. "Defendants" as used in this Agreement does not include the State of Maine or any governmental entity or officeholder other than those expressly named as Defendants in this Action.

E. "Parties" are all Plaintiffs and Defendants in the Action.

F. "Class Counsel" are the attorneys representing the Plaintiffs and the Settlement Class in this Action.

G. "Defendants' Counsel" are the attorneys representing the Defendants in this Action.

H. "Remaining Claims" are the Plaintiffs' claims in Count I of the Complaint in this Action, which remain pending following the Court's June 2, 2022 Order on Defendants' Motion to Dismiss.

I. "Counsel" refers to all rostered private counsel handling MCILS cases and all employed public defenders handling MCILS cases.

J. "Execution Date" is the date on which this Agreement is signed by the Parties or their designated representatives.

II. Term, Effect, and Dispute Resolution

A. The Parties stipulate to the dismissal of the Remaining Claims without prejudice four (4) years from the Effective Date.

B. This settlement will be binding upon the Settlement Class.

C. In consideration of the reforms implemented by Defendants and in order to allow the continued progress of reforms to the operations of MCILS, the Parties consent to a stay in this litigation for a period of four (4) years from the Effective Date.

D. Except as provided in Section II.E and II.F below, Plaintiffs will not reassert or revive the Remaining Claims (*i.e.*, Plaintiffs' claims of constructive denial of counsel against State officials tasked with identifying, training, supervising, and evaluating counsel available for appointment by the District or Superior Court pursuant to 15 M.R.S.A. §810 and M. R. U. Crim. P. 44) against Defendants for four (4) years after the Effective Date.

E. If the Court determines that there has been a material and unremedied breach of this Agreement as set forth in Section II.I below, Plaintiffs may resume litigation of the Remaining Claims against only the breaching Defendants.

F. Nothing in this Agreement prevents Settlement Class Members from asserting claims other than those expressly included within the limitations of Section II.D above. By way of example, as long as the claims are supported by the law and the facts, Settlement Class Members retain the right to assert claims including but not limited to the following:

1. Claims against any entities or individuals other than the Defendants expressly named in this Action, including claims against the State of Maine or against any government agencies or officeholders other than the Defendants expressly named as Defendants in this Action (see "Definitions" above);

2. Claims regarding ineffective assistance of counsel in connection with Settlement Class Members' individual cases, including claims for habeas relief;

3. Claims regarding actual denial of counsel or non-representation (*e.g.*, failure to appoint counsel for an indigent criminal defendant), whether those claims seek individual or class-based relief.

G. Plaintiffs will not appeal the Court's June 2, 2022 Order dismissing Count II of their Complaint, except that Plaintiffs retain their appeal rights in the event the stay of this litigation is lifted due to a material and unremedied breach of the Agreement and the Parties resume litigation to a final judgment in the Superior Court, as set forth in Section II.I below.

H. Dispute Resolution. If a dispute arises regarding either Party's compliance with any provision of the Agreement, then the Party asserting noncompliance shall first send written notice to the other Party specifying the concern and requesting an opportunity to meet and confer. The Parties shall schedule a mutually convenient time, place, and manner to confer, within 14 business days, to seek resolution of the dispute. This informal dispute resolution procedure is a condition precedent to seeking judicial intervention with respect to a dispute regarding compliance with this Agreement. To facilitate open discussion, the Parties' communications and all

information exchanged during this informal dispute resolution process shall be deemed to be part of confidential settlement negotiations pursuant to M. R. Evid. 408 and shall not be disclosed or used by one Party against the other unless mutually agreed, in writing, between the Parties. Any agreement generated by this informal dispute resolution process to resolve a dispute shall be reduced to writing.

I. Lifting of Stay. If the Parties have not resolved an allegation of non-compliance raised as provided in Section II.H within thirty (30) days after Defendants' receipt of the notice of alleged non-compliance, Plaintiffs may seek leave from the Court to resume litigation in the Action based on a material and unremediated breach of §§VI – XII of this Agreement ("Performance Metrics"). Within twenty-one (21) days of Plaintiffs' request to the Court for leave, Defendants may file an objection to Plaintiffs' request. The Parties will seek and/or consent to the Court's prompt consideration of the request. The Parties agree that, absent consent from Defendants to Plaintiffs' request for leave to lift the stay, the standard determining whether the stay approved by the Court should be lifted, in consideration of the breach, is whether the Court, upon consideration of the Parties' written submissions and with the taking of testimony and other evidence as determined necessary by the Court, the Court finds, by a preponderance of the evidence, that Defendants have materially breached the Performance Metrics and failed to remediate that breach.

III. Path for Class Members to Seek Emergency Relief. The Parties agree to the following:

A. Effective November 3, 2023, the Court issued a Standing Order on Initial Assignment of Counsel to the Unified Criminal Docket ("Standing Order"). ***See* Attachment A**. Under the Standing Order, "the court shall determine the status of a criminal defendant's constitutionally protected right to counsel by bringing before the court (A) any defendant who is entitled to an assigned attorney and remains in custody awaiting assignment, or (B) any defendant who expressed an intent to retain counsel or seek an indigency determination," on the following schedule:

1. In-custody defendants shall be brought before the court no later than 7 days after the initial appearance.
2. Out of custody defendants shall be brought before the court no later than 30 days before the dispositional conference, if the defendant has neither (a) filed a financial affidavit for indigency determination nor (b) retained counsel and filed counsel's entry of appearance.

B. Defendants will authorize compensation for Counsel serving as Lawyer of the Day to attend the court appearances identified in the Standing Order.

C. Defendants will issue non-rulemaking guidance applicable to all Counsel serving as Lawyer-of-the-Day addressing expectations that Counsel representing Settlement Class Members at the court appearances identified in the Standing Order assert all reasonable claims for emergency relief for denial of counsel on

behalf of Class Members, including but not limited to: motions for bail review; habeas corpus relief; 4 M.R.S.A. §7; and/or dismissal of charges. Defendants will support and monitor Counsel to facilitate their compliance with the Guidance.

D. Through the regulatory rulemaking process, Defendants will issue Practice Standards to guide the performance of all Counsel serving as Lawyer-of-the-Day at the court appearances required by the Standing Order.

IV. Advocacy Regarding Funding. Defendants have undertaken a good-faith effort to advocate for the advancement of appropriate legislation, including the legislative approval of funding for, the commitments as described in Section IV.A. Defendants will undertake a good-faith effort to advocate for the advancement of appropriate legislation, including the legislative approval of funding for, the commitments described in IV.B and IV.C below:

A. Upcoming Legislative Sessions (Summary).
MCILS will be asking for headcount for an Aroostook office and use existing funding to pay for it, beginning as soon as the budget is approved. For fiscal year 2025, MCILS will seek funding to create one office covering Penobscot and Piscataquis counties to begin July 1, 2024; create one office covering Androscoggin, Franklin and Oxford counties to begin September 1, 2024; create one office covering Hancock and Washington counties to begin January 1, 2025; and create one office covering Sagadahoc, Lincoln, Knox, and Waldo counties to begin April 1, 2025. The Executive Director will prepare the biennial budget request for funding in fiscal year 2026 to include a final office covering York and Cumberland counties.

B. Upcoming Legislative Sessions (FY '24 Supplemental Budget Request).
To maintain and improve access to indigent defense services, the Commission voted on October 11, 2023 to submit a Supplemental Budget Request in fall 2023 seeking $3.2 million in supplemental funding in FY '24 for:

1. The creation of 2 new public defender offices (Aroostook and Penobscot/Piscataquis Counties).
2. The hiring of 1 paralegal and 1 investigator for the Rural Defender Unit and 1 investigator for the Kennebec Public Defender Office.
3. The creation of positions for 4 new public defender offices (Washington/Hancock, Androscoggin/Franklin/Oxford, Midcoast, and Cumberland/York), who will be hired in FY25.
4. Additional central office staff for administrative support for the Audit and Training & Supervision Divisions, and the creation of a Director of Systems/Data Infrastructure position.
5. The increased personal services costs to fund a salary reclassification for RDU attorney to be in line with their state counterparts (has been authorized by BHR).

C. Future Legislative Sessions (FY '25 onward). To continue to improve access to indigent defense services, Defendants intend to advocate for the following:

1. In FY '25, $5.7 million in additional funding to fund positions in four additional new public defender offices (in Washington/Hancock, Androscoggin/Franklin/Oxford, Midcoast, and Cumberland/York).
2. In FY '25 and future sessions, creation of additional fully staffed trial-level public defenders' offices as appropriate; and
3. In FY '25 and future sessions, creation of new Post-Conviction Review and Appellate public defender units as appropriate.

D. Prior Legislative Session (FY '24). In spring 2023, Defendants successfully advocated for the following legislative reforms to improve the structure and funding of Maine's indigent defense system, located in Comm. Amend. A to LD 258, "An Act Making Unified Appropriations and Allocations from the General Fund and Other Funds," at p. 188 – 189.[1] MCILS has hired a District Defender to oversee the Capital Region Public Defender's Office, former deputy district attorney Frayla Tarpinian. Attorney Tarpinian started in the position on November 6, 2023. The two Assistant Defender I positions have been filled by Andrew Dawson and Hillary Knight. Hiring is underway for the additional three (3) Assistant Defender II positions. The Bureau of Human Resources has not yet approved the FJAs submitted in late August for the two paralegals and office manager: those positions cannot be posted yet. The Public Defender Office will temporarily be housed in MCILS office space on State Street until it can move into permanent space in early February on Sewall Street in Augusta. Legislative funding and authorization for that office, staff, and associated costs are in addition to:

1. Continued funding of the Rural Defender Unit, established in 2022, consisting of a District Defender, 5 trial-level public defenders and funding for associated costs;
2. Creation of a new Deputy Executive Director position at MCILS, focused on training and supervision of Counsel; and
3. $150/hour for all appointed counsel.

V. **Advocacy Regarding Statutory Initiatives.** The Parties have successfully undertaken good-faith efforts to advocate for the enactment of additional statutory initiatives to facilitate the effective provision of indigent legal services, as reflected in LD 565, "An Act to Improve Maine's System for Protecting Sixth Amendment Rights," signed into law by Governor Janet Mills on June 28, 2023. In sum, LD 565:

A. Requires all jails to provide bi-weekly reports to the Commission regarding their pretrial detention populations to assist the Commission in facilitating prompt assignment of counsel in all pending cases;

B. Requires Defendants to enact rules on topics including caseloads, eligibility standards, and attorney evaluation: a judicially enforceable requirement; and

C. Confirms that MCILS rules apply to public defenders as well as contract and assigned counsel.

VI. Best Efforts on Legislative Measures and Appropriations

A. Throughout the period of this Agreement, the Parties will continue to use their best efforts to identify and advocate for the enactment of any additional legislative measures necessary and appropriate to implement the terms of the Settlement, including

1. Any additional statutory reforms necessary for Defendants to fulfill their obligations or meet any of the metrics under this agreement; and
2. Any additional budgetary appropriations necessary for Defendants to fulfill their obligations or meet any of the metrics under this agreement, including, but not limited to, funding for employed or contractual positions to implement standards for supervision and regular evaluation of counsel against those performance standards (§X) and training (§XI).

VII. Rulemaking Procedure

A. Within ten (10) months from the Effective Date, Plaintiffs will provide Defendants with draft rules:

1. Providing revised minimum qualifications to serve as Counsel; and revised eligibility standards to serve as Counsel for specialized case types. 4 M.R.S. § 1804(2)(B); 1804(3)(E).
2. Requiring all Counsel to perform conflict checks before representation and standards for adequate representation of clients whose cases present conflicts of interest. See 4 M.R.S. §1804(2)(E).
3. Regarding handling complaints regarding performance of Counsel.
4. Regarding initial and regular ongoing training. See 4 M.R.S. §1804(3)(D).

B. Within eighteen (18) months of the Effective Date, Plaintiffs will provide Defendants with draft rules:

1. Providing performance standards for all Counsel for each of the following practice areas: juvenile practice; adult criminal practice; child protective practice; involuntary commitment practice; appellate practice; post-conviction practice; Lawyer of the Day practice. See 4 M.R.S. §1804(2)(D), 3(D).
2. Providing standards for supervision and regular evaluation of Counsel against those performance standards. See 4 M.R.S. §1804(2)(D), 3(D).
3. Providing caseload standards specific to the Lawyer of the Day (LOD) program.

C. In order for Plaintiffs to prepare draft rules on the topics identified above, a material component of this Agreement necessary to effectuate a fair, reasonable, and adequate settlement, Plaintiffs require data and information in Defendants' possession, within six (6) months from the Effective Date, Defendants will provide the following data and information to Plaintiffs:

1. The number of rostered attorneys currently accepting new MCILS cases, for each case-type currently delineated by MCILS;
2. The number of attorneys, for the past two years, that have failed to meet MCILS's current Standards for Qualification of Assigned Counsel, 94-649 C.M.R. c. 2, §§1-6, how MCILS learned about the failure, and the consequence (if any) MCILS imposed on the attorney;
3. The number of attorneys, for the past two years, who have waived into the rosters for specialized case types, broken down by type of waiver;
4. Materials used in MCILS's most recent minimum standards trainings
5. The number of attorneys MCILS has evaluated in the past two years, the results of the evaluations and the process of the evaluations.
6. For each attorney suspended or removed from MCILS's roster in the past two years: a description of how MCILS learned the information leading to suspension or removal; how MCILS investigated the allegations resulting in suspension or removal;, and whether the attorney was suspended or removed from the MCILS roster.
7. For the past year, the number of times a rostered attorney has withdrawn from representation in an MCILS case and the length of time that passed before a new attorney was appointed to the case, and barriers to prompter reassignment (if any)
8. Twenty applications, selected at random, for inclusion on MCILS rosters within the past two years
9. MCILS's current timekeeping requirements and procedures
10. Number of attorneys currently rostered to serve as Lawyer of the Day, broken down by court.

D. MCILS's provision of all documents identified in §§VII.C.1 – 10, above is expressly conditioned upon the following confidentiality provisions:

1. Class Counsel will not use or disclose those documents for any purpose whatsoever other than to prepare draft rules on the topics addressed in §VII.A.
2. Class Counsel shall not disclose or permit the disclosure of any documents to any third person or entity except as set forth in subparagraphs (a) – (d). Subject to these requirements, the following categories of persons may be allowed to review documents provided pursuant to §§VII.C.1 – 10:
    a. Parties' Counsel. Class Counsel, Defendants' Counsel, and employees of those attorneys who have responsibility for the preparation and trial of the action;

    b. Contractors. Those persons specifically engaged for the limited purpose of making copies of documents or organizing or processing documents but only after each such person has

completed the certification contained in Attachment B, Acknowledgment of Understanding and Agreement to Be Bound.

c. Consultants and Experts. Consultants, investigators, or experts (hereinafter referred to collectively as "experts") employed by the Parties or attorneys for the Parties to assist in the preparation and trial of this action but only after such persons have completed the certification contained in Attachment B, Acknowledgment of Understanding and Agreement to Be Bound; and

d. Others by Consent. Other persons only by written consent of the producing party or upon order of the Court and on such conditions as may be agreed or ordered. All such persons shall execute the certification contained in Attachment B, Acknowledgment of Understanding and Agreement to Be Bound.

E. Within 6 months of receipt of proposed rules identified in Section VII.B., Defendants will issue notices of rulemaking hearings under 5 M.R.S. § 8053 for rules addressing the subject matter identified in Section VII.A.

F. Rules adopted pursuant to this paragraph are intended by the Parties to be judicially enforceable, consistent with LD 565. Rules adopted pursuant to this subsection 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.

G. Defendants will issue regulatory agendas under 5 M.R.S. § 8060 as necessary to promulgate rules under this Agreement.

VIII. Metrics re Caseloads/Workloads

A. 6 months from Effective Date: Defendants will ensure that the caseloads of all Counsel can be accurately tracked and recorded consistent with (proposed) 94-649 CMR ch.4. The tracking system will be based both on reporting from Counsel and from judicial-branch data on the number of cases handled by Counsel.

1. Defendants have issued final rules establishing caseload standards for all Counsel. See 4 M.R.S. §1804(2)(C), (3)(G).
2. Defendants will issue a written report on what (if any) additional statutory changes or budgetary initiatives are necessary to comply with those caseload standards.

B. 2 years from Effective Date:

1. No more than 25% of Counsel included on the roster(s) for representation of indigent defendants who have been indicted for a crime punishable by imprisonment are operating with waivers from the caseload limits, such that 75% or more of Counsel are operating within the caseload limits.

a. Until such time that MCILS alters the current "case type" roster categories, the "case types" from which the determination of compliance with caseload standards for §§VIII.B.1, 2, and 3 will be made are:

(i) "Cases with Drug Offense";

(ii) "Homicide Cases";

(iii)"Operating Under the Influence Cases";

(iv)"Other Felony Cases";

(v) "Serious Violent Felony Cases"; and

(vi)"Sexual Offense Cases".

2. Recognizing that new national recommendations on caseload standards are being issued in 2023, Defendants will engage in a mandatory re-evaluation of their initial proposed caseloads standards in 2025 and evaluate whether those caseloads should be amended. Based on that review, MCILS will issue a written recommendation on whether the caseload standards should be amended. As part of this mandatory re-evaluation process, Defendants will consider, at minimum, the new national recommendations on caseload standards.

C. 3 years from Effective Date and thereafter:

1. No more than 10% of Counsel are operating with waivers from the caseload limits, such that 90% or more of Counsel are operating within the caseload limits.

IX. Metrics re Minimum Qualifications and Conflicts of Interest

A. 1 year from Effective Date:

1. Defendants will issue final rules establishing:

a. Revised minimum qualifications standards for all Counsel, including standards for minimum experience and initial training. See 4 M.R.S. §1804(2)(B).

b. Revised minimum eligibility standards for attorneys to serve as Counsel for specialized case types. See 4 M.R.S. §1804(2)(B), 3(E).

c. Standards requiring all Counsel to perform conflict checks before representation and standards for adequate representation of clients whose cases present conflicts of interest. See 4 M.R.S. §1804(2)(E).

2. At minimum, these qualifications, eligibility, and conflicts standards will

a. Include written procedures for implementing and enforcing these qualifications standards.

b. Involve consideration of Massachusetts CPCS standards to the extent applicable. https://www.publiccounsel.net/assigned-counsel-manual/

c. Involve consideration of the existing eligibility requirements set forth in 94-649 C.M.R. ch. 3.

d. Take into account Plaintiffs' proposed standards provided to Defendants under this Agreement and recommendations of the consultants engaged under this Agreement.

e. Ensure that cases assigned to Counsel who do not meet the qualifications standards for that case type will be promptly rejected and reassigned unless Counsel obtains a waiver of the qualifications standards, and direct Counsel to promptly withdraw.

(i) MCILS will grant waivers only in extraordinary circumstances where doing so is necessary to protect a client's interest.

(ii) Waivers will be granted on a case-by-case basis (*i.e.*, they will allow an attorney to handle a specific case or cases, not to exceed the caseload limits generally).

(iii) Waivers will be capped based on the percentages set forth below (*i.e.*, after three years from the Effective Date, only 25% of Counsel may be operating outside the qualifications and eligibility standards at any given time).

f. Require that all participating attorneys agree, as a condition of accepting cases, to comply with all MCILS rules.

3. Defendants will issue a written report on what (if any) additional statutory changes or budgetary initiatives are necessary to comply with those qualification standards

B. 2 years from Effective Date:

1. 85% of Counsel new to the roster meet qualifications standards

2. 50% of Counsel on existing roster (as of the date standards are issued) meet qualifications standards

C. 3 years from Effective Date and thereafter:

1. 75% of all Counsel meet qualifications standards

X. Metrics re Performance Standards & Evaluation

A. Within 3 months of the Effective Date, Defendants will initiate system-wide evaluation procedures consisting of the following:

1. Plaintiffs and Defendants will jointly establish a schedule for observation of court proceedings in each of the eight prosecutorial districts to be completed within 12 months of the Effective Date of this Agreement. Those court proceedings will include Lawyer of the Day appearances.

2. On a quarterly basis, Defendants will collect and review system-wide data as outlined in Section XIII below, including concerning (i) the number of Counsel requests made for investigations and experts; (ii) the number of motions filed on substantive issues; (iii) the frequency with which cases are resolved by outright dismissal or nonconviction disposition; (iv) the frequency of pleas to a lesser charge; (v) the number of trials conducted and the outcome of the trials; and (vi) to the extent available from the Judicial Branch, outcomes of the weekly status conferences outlined in Section III above, including but not limited to modifications to bail; release; and dismissal of charges.
3. No later than 18 months after the Effective Date of this Agreement, the Parties will confer regarding areas in which the Parties agree that systemic improvements can be implemented through training and jointly agree to the subject matter and/or specific training to be provided in order to prioritize topics of concern arising out of the court observations, and system-wide data outlined above.
4. No later than two years after the Effective Date, Defendants will, based on the Parties' jointly identified areas of concern following observation, implement changes to Defendants' training program to focus on those areas of concern which the Parties agree could be constructively addressed by additional training.
5. Following the initial period of court observations, review of system-wide data, and training implementation, the Parties agree to continue joint observations of court proceedings and review of system-wide data. Defendants shall continually evaluate and, where supported by court observations and system-wide data, revise the training offered by MCILS to address identified areas of concern.
6. Conferences between the Parties and, when directed by the Executive Director, court observations, will include MCILS training staff.

B. <u>2 Years from the Effective Date of this Agreement:</u>

1. Defendants will issue final rules establishing:
    a. Performance standards for all Counsel for each of the following practice areas: juvenile practice; adult criminal practice; child protective practice; involuntary commitment practice; appellate practice; post-conviction practice; Lawyer of the Day practice. See 4 M.R.S. §1804(2)(D), 3(D).
    b. Standards for supervision and regular evaluation of Counsel against those performance standards. See 4 M.R.S. §1804(2)(D), 3(D).
    c. Standards for handling complaints regarding the performance of counsel.
2. At minimum, these final rules will:

a. Include written procedures for implementing and enforcing these standards.

b. Involve consideration of Massachusetts CPCS standards to the extent applicable. https://www.publiccounsel.net/wp-content/uploads/Assigned-Counsel-Manual.pdf

c. Involve consideration of MCILS's existing performance standards, 94-649 C.M.R. ch. 102.

d. Take into account Plaintiffs' proposed standards provided to Defendants under this Agreement and recommendations of the consultants engaged under this Agreement.

e. Require attorneys to agree that, by accepting MCILS-assigned cases, they agree to abide by the applicable performance standards.

3. Defendants will issue a written report on what (if any) additional statutory changes or budgetary initiatives are necessary to comply with these standards for performance, supervision and evaluation, and complaint investigation

C. 3 years from Effective Date and each year thereafter, Defendants will initiate individual evaluation of rostered counsel on a randomized basis, consisting of:

1. 20% of Counsel new to handling MCILS cases (defined as Counsel who have been handling MCILS cases for fewer than 5 years total), and 5% of experienced Counsel (defined as Counsel who have been handling MCILS cases for 5 years or more total) will have been randomly selected for evaluation and evaluated by MCILS against applicable performance standards in the past 12 months.

   a. Evaluation will at minimum include review of: Counsel's submitted time records for the past twelve months; three randomly-selected case files for cases handled by Counsel in the past twelve months; three samples of Counsel's written work-product (for example, substantive motions) filed in the past twelve months; and at least one in-person court observation of Counsel.

   b. MCILS staff will meet with Counsel selected for evaluation.

   c. Evaluation criteria will be drawn from MCILS's enacted rules on performance standards and will focus on:

      (i) Prompt and consistent client communication, including initial client interviews with client and communication with client concerning possible dispositions and plea negotiations;
      (ii) Pretrial preparation, including witness interviews and appropriate use of investigators and experts;
      (iii) Frequency and quality of legal research and filing of memoranda of law;
      (iv) Conduct of trials and litigation of substantive motions;

(v) Billing practices, including whether counsel are maintaining contemporaneous time records showing time spent on each task for each case;
(vi) Cooperation with Defendants' training, supervision, evaluation, and complaint investigation procedures;
(vii) Lack of substantiated client complaints.

d. MCILS staff will provide a written evaluation based on the above evaluation criteria and meet with Counsel to discuss that evaluation.

e. If an attorney has been evaluated as meeting performance standards, then the attorney will be exempt from selection for random evaluation for the next 3 years.

2. 95% of all complaints regarding Counsel's performance in past 12 months will have been investigated and resolved by MCILS staff.

3. 95% of Counsel found to not meet performance standards as a result of their evaluation will be either:

   a. removed from the roster, or

   b. placed on a probationary period, provided with additional training and supervision for at least the next 12 months, and subject to a new evaluation at the conclusion of that 12 months.

4. Defendants will issue a written report on what (if any) additional statutory changes or budgetary initiatives are necessary to comply with these standards for performance, supervision and evaluation, and complaint investigation.

XI. Metrics re Training

A. 1 year from Effective Date

1. Defendants will issue final rules establishing standards for initial and regular ongoing training, supplemental to 94-649 CMR ch. 2, §5. See 4 M.R.S. §1804(3)(D).

2. At minimum, standards will

   a. Provide for a substantial portion of trainings to occur in-person.
   b. Provide that counsel will be compensated for their time spent in trainings.
   c. Provide that the content and frequency of trainings be re-evaluated by Defendants on an annual basis based on the outcome of the system-wide and individual evaluations outlined in Section X above and the system-wide data collected under Section XIII below.
   d. Include written procedures for implementing and enforcing these training standards.

e. Require that newly rostered attorneys without criminal defense experience complete a robust onboarding training analogous the "zealous advocacy training" provided by the Massachusetts Committee for Public Counsel Services. https://www.publiccounsel.net/assigned-counsel-manual/

f. Require that attorneys participate in at least 8 hours of annual training to remain on the MCILS roster.

g. Involve consideration of the Massachusetts CPCS standards to the extent applicable. https://www.publiccounsel.net/assigned-counsel-manual/

h. Take into account Plaintiffs' proposed standards provided to Defendants under this Agreement.

3. Defendants will issue a written report on what (if any) additional statutory changes or budgetary initiatives are necessary to comply with training standards

B. 2 years from Effective Date

Subject to the legislative appropriation of funding for training staff consistent with the FY '24-'25 request of MCILS:

1. 85% of Counsel new to the roster have met training standards in past 12 months
2. 50% of Counsel on existing roster (as of the date standards are issued) have met training standards in the past 12 months

C. 3 years from Effective Date

Subject to the legislative appropriation of funding for training staff consistent with the FY '24-'25 request of MCILS:

1. 85% of all Counsel have met training standards in the past 12 months

XII. Metrics re Lawyer of the Day

A. While operating under the present, case-specific electronic docket access afforded to MCILS by the Judicial Branch, Defendants will continue to coordinate with the Judicial Branch, including individual courts and/or clerks, to facilitate the presence of qualified counsel to serve as Lawyer of the Day.

B. Once MCILS has, in the discretion of the Executive Director, obtained timely access to data reflecting the performance of Counsel serving as Lawyer of the Day, Defendants will adopt performance standards for Lawyers of the Day and include the Lawyers of the Day in the supervision addressed in §X, above.

1. Defendants will issue a written report on what (if any) additional statutory changes or budgetary initiatives are necessary to comply with those standards.

2. Defendants will take into account Plaintiffs' proposed standards provided to Defendants under this Agreement.

XIII. Data Collection and Reporting

A. The Parties jointly agree that thorough, accurate, and up-to-date data collection and analysis of Maine's indigent defense system is critical to Defendants' ability to perform its obligations as required by statute and this Agreement. To that end:

1. Defendants will engage a consultant to advise the Parties on data collection and analysis.
2. Defendants will engage the consultant and Defendants will pay the costs of the consultant. Defendants will seek grant funding to cover all or some of the costs of retaining the consultant, including available federal grant funding for indigent defense through the Byrne-Jag program and the BJA Strengthening the Sixth Program.
3. By the Effective Date, the Parties will confer in good faith and agree on the contents of the Request for Proposals ("RFP") to be issued relative to the consultant. Neither Party will have supervisory authority over the consultant. The consultant will maintain the confidentiality of all confidential information they obtain.

B. In order to permit Plaintiffs to assess compliance with the provisions of this Agreement, Defendants will:

1. To the extent available from the Judicial Branch, Defendants will provide reports to Plaintiffs regarding Settlement Class Members awaiting appointment of counsel, including: the name of each affected Class Member, the docket number, the charges pending, the court in which charges are pending, whether the Class Member is in custody, where they are in custody, their last court date, and their next court date.
2. Promptly provide to Plaintiffs copies of the following documents upon their finalization and any subsequent amendment:
    a. The reports identified above on what (if any) statutory changes or budgetary initiatives are necessary to implement and enforce with the newly issued standards
    b. Copies of all rules regarding which Defendants plan to issue notices of rulemaking hearings under 5 M.R.S. § 8053.
3. Provide quarterly reports to Plaintiffs containing:
    a. To the extent made reasonably available to MCILS, meaning in a form/manner not requiring individual access and review of the dockets of individual cases to which MCILS rostered counsel has been assigned by MCILS, data concerning case assignments (number and types of cases) and caseloads of each public defender and private contract attorney

b. Data concerning (i) the number of counsel requests made for investigations and experts; (ii) the number of motions filed on substantive issues; (iii) the frequency with which cases are resolved by outright dismissal or nonconviction disposition; (iv) the frequency of please to a lesser charge; (v) the number of trials conducted and the outcome of the trials; and (vi) to the extent available from the Judicial Branch, outcomes of the status conferences outlined in Section III above, including but not limited to modifications to bail; release; and dismissal of charges.

c. The number of complaints received concerning contract or employed counsel and how those complaints were resolved

d. Copies of all new policies or procedures.

XIV. Court Review and Approval. This Settlement Agreement is subject to approval by the Court pursuant to M. R. Civ. P. 23 in the context of the Action.

A. The Parties will use their best efforts to effectuate this Settlement Agreement, including cooperating in promptly seeking the Court's approval of the Settlement Agreement, the giving of appropriate Class Notice under M. R. Civ. P. 23(d) and (e), and the implementation of a four-year stay of the Remaining Claims, as follows:

1. Within seven (7) days after the Execution Date, the Parties will jointly file with the Court a stipulation for suspension of all litigation deadlines pending approval of this Agreement.

2. Within twenty-eight (28) days of the Execution Date, Class Counsel and Defendants' Counsel will file this Agreement with the Court and will file a joint motion for the Court to direct notice of the settlement to the class, requesting that the Court:

a. Determine, preliminarily, that it is likely to be able to approve this Agreement, justifying dissemination of Class Notice;

b. Schedule a Final Approval Hearing to:
- **(i)** determine, finally, whether the Settlement Class satisfy the applicable requirements of M. R. Civ. P. 23(a) and 23(b)(2) and should be finally certified for purposes of judgment;
- **(ii)** review objections, if any, regarding the settlement;
- **(iii)** consider further the fairness, reasonableness, and adequacy of the settlement; and
- **(iv)** consider whether the Court will issue the Final Order and Judgment Approving Settlement and issuing a four-year stay of the action;

c. Set a briefing schedule for the Final Approval Hearing;

d. Consider and determine that the proposed Class Notice and Notice Program, including the deadline for members of the Settlement Class to assert objection(s) ("Objection Deadline"), comply with the guidance of M. R. Civ. P. 23(e) , due process, and provide appropriate notice;

e. Direct Class Counsel and Defendants' Counsel to cause the Class Notice to be distributed on or before the Notice Date in the manner set forth in the Notice Program, the cost of which will be paid by Defendants;

f. Require any member of the Settlement Class who wishes to object to the fairness, reasonableness, or adequacy of the settlement to submit to Class Counsel, postmarked on or before the Objection Deadline, a statement of his or her objection, as well as the specific reason(s), if any, for each objection, including any legal support that the Settlement Class member wishes to bring to the Court's attention and any evidence that the Settlement Class member wishes to introduce in support of his/her objection, and to state whether the Settlement Class member and/or his/her counsel wish to make an appearance at the Final Approval Hearing, or be barred from separately objecting;

g. Require Class Counsel to file with the Court all objections received by the Objection Deadline.

h. Suspend and extend all applicable pretrial deadlines in the Action so that the Parties will in no way be prejudiced by their efforts to resolve the Action by means of this settlement; and

i. Establish the date and time of:
(i) the Final Approval Hearing;
(ii) the Notice Date; and
(iii)the Objection Deadline.

3. Within fourteen (14) calendar days after the Court's order directing notice to the Class of this Agreement, Class Counsel and Defendants' Counsel will cause the Court-approved Class Action Settlement Notice to be distributed to the members of the Settlement Class, in accordance with the Notice Program.

4. Members of the Settlement Class will have sixty (60) days, or such other time as the Court may provide, after the date of the Class Action Settlement Notice to object to the settlement.

5. Within twenty-one (21) calendar days after the Objection Deadline, Plaintiffs and Defendants will file a joint motion for final approval of this Agreement and the Parties' settlement. Such Final Order and Judgment Approving Settlement will:

   a. Confirm the final certification of the Settlement Class;

   b. Confirm that the Settlement Class comply with all requirements of M. R. Civ. P. 23(b), including confirmation of the adequacy of Plaintiffs as representatives of the Settlement Class;

   c. Confirm that the Notice Program complied in all respects with the requirements of due process and M. R. Civ. P. 23 by providing appropriate notice to the Settlement Class;

   d. Determine that this Agreement was entered into in good faith, is reasonable, fair, and adequate, and is in the best interest of the Settlement Class;

   e. Make all appropriate and necessary findings of fact required to enter a final judgment pursuant to M. R. Civ. P. 58;

   f. Issue a four-year stay of the Remaining Claims and bar Plaintiffs and all members of the Settlement Class from reasserting the Remaining Claims or substantially similar claims against Defendants for a period of four (4) years from the Date of Final Approval, unless as expressly permitted by the Court because the Court has determined that there has been a material and unremedied breach of this Agreement;

   g. Order that each party will bear its own fees and costs in connection with the Action and the settlement thereof, except as provided in Section XX below;

   h. Address any disputes regarding the construction and/or enforcement of this Agreement pursuant to the procedures set forth in Section II.H and II.I, above.

B. The Parties will exercise their best efforts to schedule the Fairness Hearing within thirty (30) days after the Objection Deadline.

C. In the event that the Court does not approve the Settlement Agreement, then the Parties will meet and confer for a period of 30 days to determine whether to enter into a modified agreement prior to the resumption of litigation. If the Parties have not entered into a modified agreement within such 30-day period, then the Parties

will seek a Court conference for the purpose of establishing a new Scheduling Order.

XV. **No Admission of Liability.** This Settlement Agreement is a compromise of disputed claims and does not constitute an admission by Defendant to any of the claims or allegations asserted by Plaintiffs in the underlying lawsuit: claims which Defendants expressly deny.

XVI. **Construction.** This Agreement has been negotiated and prepared among each of the Parties and their respective attorneys. The Parties accordingly agree that this Agreement shall be construed and interpreted without regard to the party drafting this Agreement, reflecting the involvement of all Parties in the drafting of this Agreement.

XVII. **Choice of Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Maine.

XVIII. **Advice of Counsel**. The Parties represent that they know and understand the contents of this Agreement and that this Agreement has been executed voluntarily. The Parties each further represent that they have had an opportunity to consult with an attorney of their choosing and that they have been fully advised by the attorney with respect to their rights and obligations under this Agreement.

XIX. **Entire Agreement.** No promise, inducement, understanding or agreement not expressly stated herein has been made by or on behalf of either Party. This Agreement contains the entire agreement of the Parties related to the subject matter of this Agreement.

XX. **Attorneys' Fees and Costs.** In resolution of Plaintiffs' claim for attorneys' fees, costs, and expenses, Plaintiffs accept and Defendants will cause to be paid, $295,000.00 ("Fees Settlement Amount"). That payment will be effected by depositing the Fees Settlement Amount in an interest-bearing escrow account within 30 days of the Effective Date. The Fees Settlement Amount, plus accrued interest, will be paid to Plaintiffs' counsel within 30 days of the dismissal of the Action at the end of the four-year stay of litigation. If the Court lifts the stay prior to dismissal and the Parties resume litigation of the Action, then this provision for payment of the Fees Settlement Amount is void and has no effect, and Plaintiffs' claim for attorneys' fees will, instead, be decided by the Court in the ordinary course of litigation.

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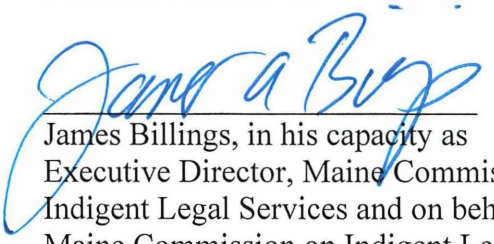
SEEN AND AGREED TO:

FOR PLAINTIFFS

FOR DEFENDANTS



James Billings, in his capacity as Executive Director, Maine Commission on Indigent Legal Services and on behalf of The Maine Commission on Indigent Legal Services, duly authorized

_____

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Jordan Bock, Esq.
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Counsel for Plaintiffs

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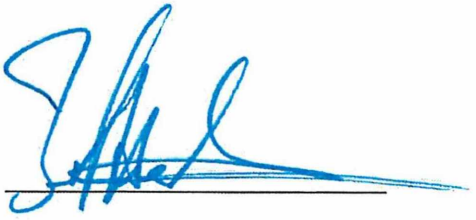

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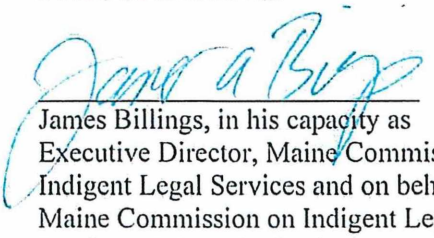

James Billings, in his capacity as
Executive Director, Maine Commission on
Indigent Legal Services and on behalf of The
Maine Commission on Indigent Legal
Services, duly authorized

ATTACHMENT A

STATE OF MAINE
KENNEBEC, ss

SUPERIOR COURT
Docket No. KENSC-CV-22-54

ANDREW ROBBINS, et al.,

Plaintiffs,

v.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES, et al.,

Defendants

ACKNOWLEDGMENT
AND
AGREEMENT TO BE BOUND

The undersigned hereby acknowledges that he/she has read the Confidentiality Order dated _____ in the above-captioned action and attached hereto, understands the terms thereof, and agrees to be bound by its terms. The undersigned submits to the jurisdiction of the Kennebec County Superior Court in matters relating to the Confidentiality Order and understands that the terms of the Confidentiality Order obligate him/her to use documents designated CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER in accordance with the Order solely for the purposes of the above-captioned action, and not to disclose any such documents or information derived directly therefrom to any other person, firm or concern.

The undersigned acknowledges that violation of the Confidentiality Order may result in penalties for contempt of court.

Name: _____

Job Title: _____

Employer: _____

Business Address: _____

_____

_____

Date: _____ _____
Signature