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MAINE STATE LEGISLATURE
GOVERNMENT OVERSIGHT COMMITTEE

Date: November 20, 2020
To: Government Oversight Committee 130th Maine Legislature
From: Senator Justin Chenette, Representative Anne Marie Mastraccio and
Members, Government Oversight Committee
**RE: OPEGA Evaluation of the Maine Commission on Indigent Legal Services
(Part I)**

As members of the Government Oversight Committee of the 129th Legislature, we received presentation of a report evaluating the Maine Commission on Indigent Legal Services (MCILS) on November 9, 2020. This report is the first of 2 to be completed by the Office of Program Evaluation and Government Accountability (OPEGA). We send this communication to establish a trail of expectations in response to OPEGA's report and to express our belief that the issues presented in this report are of great concern and that the 130th Legislature's attention to these concerns is not only warranted, but critical. We anticipate that you will be the committee to hold a public comment period on this report and we submit this communication to you as a form of testimony. Although addressing the findings cited in the report can be accomplished by the Commission within their existing statutory authority, it may be prudent for the next Legislature to compel action through legislation.

OPEGA's report highlights a weak oversight structure within the organization that has multiple negative impacts. This weak oversight structure is a systemic issue resulting in the failure of the organization to meet parts of its statutory purpose, as well as other requirements in law meant to ensure MCILS provides high quality legal representation to indigent or partially indigent defendants in Maine. For example, the report finds that there is no mechanism for assessing the quality of representation – a central element to MCILS's purpose. Further, the report cites that the Commission has neglected to comply with requirements in law related to, or in support of, MCILS's

purpose. Some of those neglected provisions require the development of standards for addressing conflicts of interest among rostered attorneys and standards for appropriate counsel caseloads. OPEGA's evaluation outlines the elements of a strategic plan as a way to address this systemic problem. This plan provides a holistic approach that would focus on the organization's statutory purpose and additional requirements in law and result in a strengthened oversight structure.

OPEGA's evaluation also describes several concerning issues with the systems and procedures used by MCILS to process payments and expenditures associated with providing attorneys to low income defendants. The evaluation finds these systems and procedures are inadequate to meet the organization's financial responsibilities and describes ways in which they could be improved, which are summarized below.

- Establish clear policies and procedures to govern/guide attorney billing practices.
- Address the quality and reliability of the data in the Defender Data system by way of better communication to attorneys on how to enter time-events, employing technology within the system to establish internal controls, and to correct mistakes in the data (not just the invoice total) when they are discovered.
- Establish a more efficient and effective process of voucher review - which places a focus on addressing high daily and high annual work hours, utilizes technology to identify and correct outlying billing entries and employs risk-based auditing techniques.
- Develop a broader audit/review procedure for non-counsel invoices that would better identify and correct instances of non-compliance.
- Institute formal audit procedures to serve as a more effective control than current methods and would ensure consistency in enforcement of non-compliance.

We encourage you to look to OPEGA's report and we recommend ongoing oversight of MCILS's efforts to correct the inadequacies and, if necessary, introduction of legislation to compel them to make improvements by a date certain.