

TO: JOINT STANDING COMMITTEE ON JUDICIARY
FROM: MAINE COMMISSION ON INDIGENT LEGAL SERVICES
SUBJECT: COMMISSION OVERVIEW
DATE: JANUARY 20, 2021

The Maine Commission on Indigent Legal Services is an independent commission. Its purpose is to provide efficient, high-quality representation to indigent criminal defendants, juvenile defendants and children and parents in child protective cases, as required by federal and state constitutional and statutory obligations. 4 MRS § 1801. As the statute specifies, financial stewardship and high-quality representation are not separate goals, but the two faces of a single goal. A number of high-quality reports have highlighted how the Commission, and the State of Maine, have not yet met the expectations of the statute.

After the 2017 [report](#) of the Working Group to Improve the Provision of Indigent Legal Services, the 128th Legislature overhauled the Commission’s governing statute and funded a major third-party review of the right to counsel in Maine by the Sixth Amendment Center. That report recommended significant changes to the Commission, the Legislature and the Judiciary. Specifically, the [report](#) raised significant questions about existing financial practices, detailed chronic under-funding of indigent defense, and recommended that the State fund a public defender system for the trial courts in one county, as a pilot, and for statewide appeals and post-conviction review.

In 2019, Governor Mills made new appointments of all existing Commissioners, with one spot left vacant. The last Legislature tasked the Legislature’s Office of Program Evaluation & Government Accountability to evaluate the Commission’s structure of oversight and the adequacy of its systems and procedures to administer payments and expenditures. Its deep analysis detailed the areas in which the Commission could improve and highlighted that they affect both sides of the Commission’s goal—both its charge to responsibly steward public resources and provide high-quality representation. It provided several [recommendations](#) for the proper oversight of public funds, and the proper staffing, procedures and investments in information technology to achieve that goal. The report also found that the financial accountability issues detailed by the Sixth Amendment Center report were overstated.

The Commission is in the midst of sweeping change, for example:

- Its Interim Executive Director started on Tuesday, and the Commission currently seeks a permanent Executive Director.
- It requested a budget, as outlined in the Sixth Amendment Center report, to meet both sides of its statutory mission. The requested budget would enable the Commission to meet its share of the recommendations of both the Sixth Amendment Center and OPEGA reports, including oversight of the quality of representation by assigned counsel and contract counsel, the creation of a Public Defender office for Kennebec County and the creation of a statewide Public Defender for appeals and post-conviction review.

- It has inventoried existing statutory requirements that have not yet been implemented, and rules that it has not been enforcing. For example, it has been paying vouchers submitted beyond the 90-day deadline after a matter has concluded. The Commission has notified rostered attorneys that the practice will end on April 1, 2021 and at next week's meeting expects to begin the rule making process to provide for discretion in its proper place—by rule. As another example, after a decade, the Commission still has not promulgated standards for the evaluation of assigned counsel and contract counsel. *See* 4 MRS § 1804(2)(D).
- Its Practice Standards subcommittee, comprised largely of volunteer, rostered attorneys, has proposed sweeping revisions to the Commission's rules governing practice standards, and the Commission is finalizing rule making on the first set of these changes.
- The Commission's Financial Responsibility subcommittee has begun its determination of the first set of changes recommended by OPEGA that the Commission should implement.
- The Commission is readying an application to the Effective Administration of Criminal Justice Training and Technical Assistance program of the United States Department of Justice, Bureau of Justice Assistance for a 12-month in-depth review.
- The Training subcommittee sought an RFP to hire a consultant to develop and implement a comprehensive new lawyer training program for attorneys seeking to become rostered to accept child protective, criminal, and juvenile cases. A consultant has been hired and the five-day training is scheduled for this fall.
- The Commission has worked with the courts, jails and other stakeholders to ensure that the justice and corrections systems' response the COVID-19 pandemic does not worsen access to justice; that inmates privileged communications with counsel are not illegally recorded; that accused defendants have access to counsel when considering a plea bargain made by a prosecutor; and, that incarcerated juveniles retain representation while they are incarcerated, among other issues.

The Commission stands ready to work with this Committee, the rest of the Legislature, the Judiciary and the Chief Executive to meet the obligations of statute and the Sixth Amendment to the US Constitution.