STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. KEN 25-137

ANDREW ROBBINS, et al.

Plaintiffs - Appellees

v.

STATE OF MAINE, et al.

Defendants - Appellants.

ON APPEAL FROM THE KENNEBEC COUNTY SUPERIOR COURT

JOINT APPENDIX
VOLUME I

Sean D. Magenis
Assistant Attorney General
Office of the Attorney General
6 State House Station
Augusta, Maine 04333-0006
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TABLE OF CONTENTS

Page

DOCKET RECORD A004

COMBINED ORDER ON ALL PENDING MOTIONS A067

ORDER AFTER PHASE ONE TRIAL (COUNTS I, III, AND V) A092

COMBINED ORDER ON PARTIALLY DISPOSITIVE MOTIONS A141

ORDER ON PLAINTIFFS' MOTION TO AMEND CLASS DEFINITION ... A182

FIRST AMENDED COMPLAINT A193

CLASS ACTION COMPLAINT A248

MCPDS MOTION FOR SUMMARY JUDGMENT ON COUNTS I & II A283

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT A301

PLAINTIFFS' MOTION TO AMEND CLASS DEFINITION A305

MCPDS STATEMENT OF MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON COUNTS I & II A312

PLAINTIFFS' RESPONSE TO MCPDS STATEMENT OF MATERIAL FACTS A315

PLAINTIFFS' STATEMENT OF ADDITIONAL MATERIAL FACTS A319

MCPDS RESPONSE TO PLAINTIFFS' STATEMENT OF ADDITIONAL MATERIAL FACTS A321

PLAINTIFFS' STATEMENT OF MATERIAL FACTS A324

MCPDS OPPOSITION AND GENERAL OBJECTION TO PLAINTIFFS' STATEMENT OF MATERIAL FACTS[1]. A353

[1] Pursuant to this Court's Order of July 24, 2025, "MCPDS OPPOSITION AND GENERAL OBJECTION TO PLAINTIFFS' STATEMENT OF MATERIAL FACTS," comprising 237 pages, is omitted from the paper version of this Appendix.

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SUPERIOR COURT
KENNEBEC, ss.
Docket No AUGSC-CV-2022-00054

DOCKET RECORD

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Filing Document: COMPLAINT Minor Case Type: GENERAL INJUNCTIVE RELIEF
Filing Date: 03/01/2022

Docket Events:

03/01/2022 FILING DOCUMENT - COMPLAINT FILED ON 03/01/2022

03/01/2022 Party(s): ANDREW ROBBINS
ATTORNEY - RETAINED ENTERED ON 03/01/2022
Plaintiff's Attorney: ZACHARY L HEIDEN

03/01/2022 Party(s): BRANDY GROVER
ATTORNEY - RETAINED ENTERED ON 03/01/2022
Plaintiff's Attorney: ZACHARY L HEIDEN

03/01/2022 Party(s): RAY MACK
ATTORNEY - RETAINED ENTERED ON 03/01/2022
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03/01/2022 Party(s): MALCOLM PEIRCE
ATTORNEY - RETAINED ENTERED ON 03/01/2022
Plaintiff's Attorney: ZACHARY L HEIDEN

03/01/2022 Party(s): LANH DANH HUYNH
ATTORNEY - RETAINED ENTERED ON 03/01/2022
Plaintiff's Attorney: ZACHARY L HEIDEN

03/01/2022 Party(s): ANDREW ROBBINS
MOTION - MOTION TO ADMIT VISIT. ATTY FILED ON 01/03/2022
WITH MEMORANDUM OF LAW, DRAFT ORDER, NOTICE OF HEARING

03/01/2022 Party(s): ANDREW ROBBINS
MOTION - MOTION TO ADMIT VISIT. ATTY GRANTED ON 03/01/2022
COPIES TO PARTIES/COUNSEL

03/01/2022 Party(s): ANDREW ROBBINS
MOTION - OTHER MOTION FILED ON 03/01/2022
PL MOTION FOR CLASS CERTIFICATION AND INCORPORATED MEMORANDUM OF LAW

Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES,RAY MACK

03/31/2022 SUMMONS/SERVICE - ACCEPTANCE OF SERVICE SERVED ON 03/15/2022
ON AL DEF

03/31/2022 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES,RAY MACK
SUMMONS/SERVICE - ACCEPTANCE OF SERVICE FILED ON 03/21/2022
Defendant's Attorney: SEAN D MAGENIS
FOR ALL DEF

03/31/2022 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES
ATTORNEY - RETAINED ENTERED ON 03/21/2022
Defendant's Attorney: SEAN D MAGENIS

04/12/2022 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES
MOTION - MOTION TO DISMISS FILED ON 04/08/2022
Defendant's Attorney: SEAN D MAGENIS
WITH MEMORANDUM OF LAW, DRAFT ORDER, NOTICE OF HEARING

04/12/2022 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES
OTHER FILING - OPPOSING MEMORANDUM FILED ON 04/08/2022
Defendant's Attorney: SEAN D MAGENIS
OPPOSITION TO PLTFS MOTION FOR CLASS CERTIFICATION

04/14/2022 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
MOTION - MOTION FOR ENLARGEMENT OF TIME FILED WITH AFFIDAVIT ON 04/12/2022
TO ENLARGE FILING DEADLINES FOR REPLY IN SUPPORT OF MOTION FOR CLASS ACT AND OPP TO MOTION TO DISMISS

04/15/2022 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 04/15/2022
M MICHAELA MURPHY , JUSTICE
COPIES TO PARTIES/COUNSEL ORAL ARGUMENTS ON ALL PENDING MOTION TO BE HELD ON 5/26/22 AT 9:00 AM

04/15/2022 HEARING - OTHER MOTION SCHEDULED FOR 05/26/2022 at 09:00 a.m.
ON ALL PENDING MOTIONS

04/15/2022 HEARING - OTHER MOTION NOTICE SENT ON 04/15/2022
ON ALL PENDING MOTIONS

04/20/2022 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES
OTHER FILING - OTHER DOCUMENT FILED ON 04/19/2022
Defendant's Attorney: SEAN D MAGENIS
AMENDING THE CAPTION OF THE CASE ANDREW ROBBINS, BRANDY GROVER, RAY MACK, MALCOLM PIERCE AND LANH DANH HUYNHV MAINE COMMISSION ON INDIGENT LEGAL SERVICES JUSTIN ANDRUS, JOSHUA TARDY DONALD ALEXANDER, MEEGAN BURBANK, MICHAEL CAREY, ROGET KATZ, MATTHEW MORGAN AND RONALD SCHNEIDER

05/13/2022 Party(s): ANDREW ROBBINS

OTHER FILING - OPPOSING MEMORANDUM FILED ON 05/13/2022
Plaintiff's Attorney: ZACHARY L HEIDEN
PL OPP TO DEF MOTION TO DISMISS

05/13/2022 Party(s): ANDREW ROBBINS
OTHER FILING - REPLY MEMORANDUM FILED ON 05/13/2022
Plaintiff's Attorney: ZACHARY L HEIDEN
REPLY IN SUPPOSRT OF PL MOTION FOR CLASS CERTIFICATION

05/13/2022 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
OTHER FILING - ENTRY OF APPEARANCE FILED ON 05/13/2022
ENTRY OF APPEARANCE AS CO COUNSEL FOR PL ANDREW ROBBINS, BRANDY GROVER, RAY MACK, MALCOLM PEIRCE AND LANH DANH HUYNH

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05/13/2022 Party(s): MALCOLM PEIRCE
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Plaintiff's Attorney: CAROL J GARVAN

05/24/2022 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES
OTHER FILING - REPLY MEMORANDUM FILED ON 05/24/2022
DEF REPLY TO PL OPP TO DEF MOTION TO DISMISS

06/02/2022 ORDER - COURT ORDER ENTERED ON 06/02/2022
M MICHAELA MURPHY , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO PARTIES/COUNSEL THE STATES MOTION TO DISMISS IS GRANTED INPART AND DENIED IN PART PL COUNT II IS DISMISSED. THE STATE MUST FILE AN ANSWER TO COUNT I NO LATER THE 6/20/22.OA ON THE FULLY BRIEFED MOTION FOR CLASS CERT SHALL BE SCHEDULED AS SOON AS PRACTIVABLE AFTER THAT DATE

06/09/2022 HEARING - OTHER MOTION HELD ON 05/26/2022
ON ALL PENDING MOTIONS

06/09/2022 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES
MOTION - MOTION TO DISMISS OTHER DECISION ON 06/02/2022

M MICHAELA MURPHY , JUSTICE
THE STATES MOTION TO DISMISS IS GRANTED IN PART AND DENIED IN PART PL COUNT II IS DISMISSED. THE STATE MUST FILE AN ANSWER TO COUNT I NO LATERTHAN 6/20/22

06/10/2022 HEARING - OTHER HEARING SCHEDULED FOR 06/22/2022 at 10:00 a.m.
NOTICE TO PARTIES/COUNSEL PL MOTION FOR CLASS CERTIFICATION

06/10/2022 HEARING - OTHER HEARING NOTICE SENT ON 06/10/2022 at 10:00 a.m.
ORAL ARGUMENTS

06/16/2022 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES
RESPONSIVE PLEADING - ANSWER FILED ON 06/15/2022
Defendant's Attorney: SEAN D MAGENIS

06/22/2022 HEARING - OTHER HEARING HELD ON 06/22/2022

07/12/2022 HEARING - OTHER MOTION SCHEDULED FOR 07/25/2022 at 11:00 a.m.
SCHEDULING CONFERENCE

07/12/2022 HEARING - OTHER MOTION NOTICE SENT ON 07/12/2022
SCHEDULING CONFERENCE

07/13/2022 ORDER - COURT ORDER ENTERED ON 07/13/2022
M MICHAELA MURPHY , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT.
COPIES TO PARTIES/COUNSEL PL MOTION FOR CLASS CERTIFICATION IS GRANTED COURT APPOINTS INDIVIDUALS AS CLASS COUNSEL: ZACHARY HEIDEN, ANAHITA SOTOOHI, MATT WARNER, ANNE SEDLACK, KEVIN MARTIN GERARD CEDRONE AND JORDAN BOCK

07/21/2022 OTHER FILING - OTHER DOCUMENT FILED ON 07/19/2022
TRANSCRIPT REQUEST FILED ONLINE DIRECTLY TO TRANSCRIPT OFFICE 7/19/22 SENT TO CTA CATHERINE SMITH FOR PROCESSING 7/20/22 PROCESSING COMPLETED 7/20/22 BY CTA CATHERINE SMITH

07/25/2022 HEARING - OTHER MOTION HELD ON 07/25/2022
M MICHAELA MURPHY , JUSTICE
SCHEDULING CONFERENCE

09/12/2022 ORDER - SCHEDULING ORDER ENTERED ON 08/04/2022
M MICHAELA MURPHY , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT.
COPIES TO PARTIES/COUNSEL DIS 4/3/23, ADR NOT 2/3/23, REPORT 4/3/23, JT REQ 4/3/23, EST TIME JT 4/18/23, WIT/EXH LIST 4/18/23, MOTIONS 5/15/23

09/12/2022 DISCOVERY FILING - DISCOVERY DEADLINE ENTERED ON 04/03/2023

09/12/2022 ASSIGNMENT - SINGLE JUDGE/JUSTICE ASSIGNED TO JUSTICE ON 08/04/2022
M MICHAELA MURPHY , JUSTICE

10/05/2022 ORDER - COURT ORDER ENTERED ON 10/04/2022
M MICHAELA MURPHY , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT.
COPIES TO PARTIES/COUNSEL JUDICIAL SETTLEMENT CONFERENCE
WITH ACTIVE RETIRED J WARREN INITIAL CONFERENCE 10/12/22 AT 10:00 AM
CUMBERLAND SUPERIOR COURT

10/21/2022 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES
OTHER FILING - OTHER DOCUMENT FILED ON 10/20/2022
Defendant's Attorney: SEAN D MAGENIS
NOTICE OF SUBSTITUTION

10/21/2022 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES
OTHER FILING - OTHER DOCUMENT FILED ON 10/20/2022
Defendant's Attorney: SEAN D MAGENIS
AMENDED NOTICE OF SUBSTITUTION

10/21/2022 Party(s): ANDREW ROBBINS
OTHER FILING - OTHER DOCUMENT FILED ON 10/19/2022
RETURNED ORDER FOR JSC TO CAROL GARVAN ESQ

11/18/2022 HEARING - REQUEST TELEPHONE CONFERENCE SCHEDULED FOR 11/28/2022 at 12:00 p.m.

11/18/2022 HEARING - REQUEST TELEPHONE CONFERENCE NOTICE SENT ON 11/18/2022

11/28/2022 HEARING - REQUEST TELEPHONE CONFERENCE HELD ON 11/28/2022
M MICHAELA MURPHY , JUSTICE

11/28/2022 ORDER - COURT ORDER ENTERED ON 11/28/2022
M MICHAELA MURPHY , JUSTICE
PARTIES HAVE DISCOVER DISPUTES WHICH MAY REQUIRE COURT INTERVENTION. COUNSEL WILL FILE RULE 26G LETTERS WITH THE COURT ELECTRONICALLY AND THE COURT WILL CONDUCT A RULE 26G CONFERENCE BYN PHONE AT 2:00 ON DECEMBER 6, 2022. CLERK TO SEND NOTICE AND SAME CONFERENCE NUMBER TO BE USED. IF DISPUTE IS NOT RESOLVED AFTER CONFERENCE THE COURT WILL SET UP A BRIEFING SCHEDULE FOR MOTIONS TO BE FILED.

11/28/2022 HEARING - 26(G) CONFERENCE SCHEDULED FOR 12/06/2022 at 02:00 p.m.
NOTICE TO PARTIES/COUNSEL
COURT TO CONDUCT CONFERENCE WITH BCD CONFERENCE LINE. ATTORNEYS NOTIFIED.

11/28/2022 HEARING - 26(G) CONFERENCE NOTICE SENT ON 11/28/2022

12/07/2022 HEARING - 26(G) CONFERENCE HELD ON 12/06/2022

12/07/2022 ORDER - CONFERENCE REPORT & ORDER ENTERED ON 12/06/2022
M MICHAELA MURPHY , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT.
COPIES TO PARTIES/COUNSEL PL HAVE LEAVE TO FILE A MOTION TO COMPEL DIS BY 12/16/22. OPP BY DEF DEF SHALL BE FILED BY 1/06/23 WITH REPLY BY 1/13/23
PL WILL ALSO BE FILING A MOTION TO EXTEND DEADLINE TO DES EXPERTS WHICH WILL BE UNOPPOSED

12/14/2022 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
MOTION - MOTION FOR ENLARGEMENT OF TIME FILED ON 12/14/2022
Plaintiff's Attorney: ZACHARY L HEIDEN
CONSENT MOTION TO ENLARGE EXPERT DISCOVERY DEADLINES

12/20/2022 Party(s): ANDREW ROBBINS
MOTION - MOTION TO COMPEL FILED ON 12/19/2022
Plaintiff's Attorney: ZACHARY L HEIDEN
WITH MEMORANDUM OF LAW, DRAFT ORDER, NOTICE OF HEARING

12/21/2022 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 12/21/2022
M MICHAELA MURPHY , JUSTICE
COPIES TO PARTIES/COUNSEL

12/22/2022 ORDER - COURT ORDER ENTERED ON 12/22/2022
M MICHAELA MURPHY , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO PARTIES/COUNSEL AMENDED ORDER GRANTING CONSENT MOTION TO ENLARGE THE EXPERT DISCOVERY DEADLINES BY 3/3/23 PL SHALL SERVE THEIR EXPERT ON DEF BY 4/3/23 DEF SHALL SERVE THEIR EXPERT ON PL

01/06/2023 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES
OTHER FILING - OPPOSING MEMORANDUM FILED ON 01/06/2023
Defendant's Attorney: SEAN D MAGENIS

01/13/2023 Party(s): ANDREW ROBBINS
OTHER FILING - REPLY MEMORANDUM FILED ON 01/13/2023
Plaintiff's Attorney: ZACHARY L HEIDEN
REPLY IN SUPPORT OF MOTION TO COMPEL

02/03/2023 Party(s): ANDREW ROBBINS
OTHER FILING - REPLY MEMORANDUM FILED ON 02/03/2023
Plaintiff's Attorney: CAROL J GARVAN
SUP REPLY IN SUPPORT OF PL MOTION TO COMPEL

02/07/2023 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES
MOTION - MOTION TO IMPOUND FILED ON 02/06/2023
Defendant's Attorney: SEAN D MAGENIS
WITH MEMORANDUM OF LAW, DRAFT ORDER, NOTICE OF HEARING DEF MOTION TO IMPOUND OR SEAL EXHIBITS TO PL SUPP REPLY IN SUPPORT OF PL MOTION TO COMPEL

02/10/2023 HEARING - MOTION TO COMPEL SCHEDULED FOR 02/06/2023 at 09:00 a.m.

02/10/2023 HEARING - MOTION TO COMPEL NOTICE SENT ON 02/09/2023

02/10/2023 HEARING - MOTION TO COMPEL HELD ON 02/10/2023

PRESENT VIA ZOOM JORDAN BOCK ESQ, ANAHITA SOTOOHI ESQ, CAROL GARVAN ESQ
GERARD CEDRONE ESQ, JUSTIN ANDRUS, SEAN MAGENIS AAG, ZACH HEIDEN AAG

02/16/2023 Party(s): ANDREW ROBBINS
MOTION - MOTION TO COMPEL OTHER DECISION ON 02/10/2023
M MICHAELA MURPHY , JUSTICE
MOTION IS GRANTED IN PART.PL SHALL BY 2/13/23 SUBMIT A LIST OF SECOND TERMS TO DEF. DEF SHALL RESPOND BY 2/17/23. ANY AGREED UPON SEARCH TERMS SHALL BE SUBMITTED TO EXEC DIR OIT. ANY TERMS NOT AGREEN TO SHALL BE PRESENTED TO COURT FOR RESOLUTION. ONCE THE COURT IS INFORMED AS TO RESULTS OF THE OIT SEARCH AND IF THERE ARE OUTSTANDING ISSUES RE SEARCH TERMS, ANOTHER HEARING ON THEMOTION TO COMPEL WILL BE SET BY THE COURT

03/14/2023 ORDER - COURT ORDER ENTERED ON 12/22/2022
M MICHAELA MURPHY , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT.
COPIES TO PARTIES/COUNSEL
EDITED BY J MURPHY, DEADLINES TO BE: PL 4/3/23 FOR EXPERT-WITNESS DESIGNATION DEF 5/3/23 FOR EXPERT-WITNESS DESIGNATION

03/15/2023 HEARING - OTHER HEARING SCHEDULED FOR 03/15/2023 at 10:00 a.m.
NOTICE TO PARTIES/COUNSEL

03/15/2023 HEARING - OTHER HEARING NOTICE SENT ON 03/15/2023

03/15/2023 HEARING - OTHER HEARING NOT HELD ON 03/15/2023

03/15/2023 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES
MOTION - MOTION STAY OF PROCEEDINGS FILED ON 03/13/2023
WITH MEMORANDUM OF LAW, DRAFT ORDER, NOTICE OF HEARING JOINT REQUEST FOR STAY.

03/16/2023 HEARING - OTHER MOTION SCHEDULED FOR 04/07/2023 at 10:00 a.m.
MOTION FOR TEMPORARY STAY

03/16/2023 HEARING - OTHER MOTION NOTICE SENT ON 03/16/2023
MOTION FOR TEMPORARY STAY

03/16/2023 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES
MOTION - MOTION STAY OF PROCEEDINGS GRANTED ON 03/16/2023
M MICHAELA MURPHY , JUSTICE
COPIES TO PARTIES/COUNSEL

05/10/2023 CASE STATUS - CASE FILE LOCATION ON 05/10/2023
M MICHAELA MURPHY , JUSTICE
IN CHAMBERS

06/16/2023 CASE STATUS - CASE FILE RETURNED ON 06/15/2023

06/21/2023 HEARING - OTHER HEARING SCHEDULED FOR 06/23/2023 at 10:00 a.m. in Room No. 5
NOTICE TO PARTIES/COUNSEL

06/21/2023 HEARING - OTHER HEARING NOTICE SENT ON 06/21/2023
SENT ELECTRONICALLY

06/21/2023 HEARING - OTHER MOTION HELD ON 04/07/2023
M MICHAELA MURPHY , JUSTICE
Defendant Present in Court
MOTION FOR TEMPORARY STAY

06/23/2023 HEARING - OTHER HEARING HELD ON 06/23/2023
M MICHAELA MURPHY , JUSTICE

06/23/2023 HEARING - PRETRIAL/STATUS SCHEDULED FOR 07/28/2023 at 10:00 a.m. in Room No. 4
NOTICE TO PARTIES/COUNSEL BY ZOOM

06/23/2023 HEARING - PRETRIAL/STATUS NOTICE SENT ON 06/23/2023

07/21/2023 HEARING - PRETRIAL/STATUS CONTINUED ON 07/21/2022
M MICHAELA MURPHY , JUSTICE

07/21/2023 HEARING - PRETRIAL/STATUS SCHEDULED FOR 08/02/2023 at 03:30 p.m.
NOTICE TO PARTIES/COUNSEL VIA ZOOM

07/21/2023 HEARING - PRETRIAL/STATUS NOTICE SENT ON 07/21/2023

08/02/2023 HEARING - PRETRIAL/STATUS HELD ON 08/02/2023
CR 6

08/22/2023 Party(s): ANDREW ROBBINS,MAINE COMMISSION OF INDIGENT LEGAL SERVICES,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK,MICHAEL CAREY,ROGER KATZ,MATTHEW MORGAN-SUBSTITUTED,RONALD SCHEIDER-SUBSTITUED
MOTION - MOTION FOR LEAVE FILED ON 08/21/2023
MOTION FOR LEAVE TO FILE MOTION IN EXCESS OF PAGE LIMIT

08/22/2023 Party(s): ANDREW ROBBINS,MAINE COMMISSION OF INDIGENT LEGAL SERVICES,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK,MICHAEL CAREY,ROGER KATZ,MATTHEW MORGAN-SUBSTITUTED,RONALD SCHEIDER-SUBSTITUED
MOTION - OTHER MOTION FILED ON 08/21/2023
JOINT MOTION TO CONDUCT PRELIMINARY REVIEW OF CLASS ACTION SETTLEMENT

08/23/2023 Party(s): ANDREW ROBBINS,MAINE COMMISSION OF INDIGENT LEGAL SERVICES,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK
MOTION - MOTION FOR LEAVE FILED ON 08/23/2023
M MICHAELA MURPHY , JUSTICE
Defendant's Attorney: SEAN D MAGENIS
Plaintiff's Attorney: ZACHARY L HEIDEN

MOTION FOR LEAVE TO FILE MOTION IN EXCESS OF PAGE LIMIT

08/23/2023 Party(s): ANDREW ROBBINS,MAINE COMMISSION OF INDIGENT LEGAL SERVICES,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK
MOTION - MOTION FOR LEAVE GRANTED ON 08/23/2023
M MICHAELA MURPHY , JUSTICE

08/25/2023 HEARING - PRETRIAL/STATUS SCHEDULED FOR 08/30/2023 at 10:00 a.m. in Room No. 3
M MICHAELA MURPHY , JUSTICE
NOTICE TO PARTIES/COUNSEL EMAILED PER J MURPHY
IN PERSON CONFERENCE SCHEDULED AT J MURPHYS REQUEST

08/25/2023 HEARING - PRETRIAL/STATUS NOTICE SENT ON 08/25/2023
M MICHAELA MURPHY , JUSTICE
EMAILED PER J MURPHYS REQUEST

08/31/2023 HEARING - PRETRIAL/STATUS HELD ON 08/30/2023
M MICHAELA MURPHY , JUSTICE
2 HOUR HEARING HELD

09/06/2023 HEARING - OTHER HEARING HELD ON 08/30/2023
M MICHAELA MURPHY , JUSTICE
Defendant Present in Court
3 HOUR HEARING

09/07/2023 MOTION - OTHER MOTION FILED ON 09/06/2023
REC/FIL MOTION FOR TRANSCRIPT AT STATE EXPENSE FILED BY PORTLAND PRESS HERALD BY JULIA ARENSTAM PPH

09/07/2023 MOTION - OTHER MOTION GRANTED ON 09/07/2023
M MICHAELA MURPHY , JUSTICE
REC/FIL MOTION FOR TRANSCRIPT AT STATE EXPENSE FILED BY PORTLAND PRESS HERALD BY JULIA ARENSTAM PPH

09/07/2023 ORDER - TRANSCRIPT ORDER ENTERED ON 09/06/2023
M MICHAELA MURPHY , JUSTICE
COPIES TO PARTIES/COUNSEL. SENT TO OTO THIS DAY

09/07/2023 HEARING - OTHER HEARING SCHEDULED FOR 09/15/2023 at 10:00 a.m. in Room No. 3
NOTICE TO PARTIES/COUNSEL SCHEDULING STATUS CONFERENCE
IN PERSON OPEN COURT- FOR UNDETERMINED AMOUNT OF TIME
PENNY CARVER, COURT REPORTER PRESENT

09/07/2023 HEARING - OTHER HEARING NOTICE SENT ELECTRONICALLY ON 09/07/2023
NOTICE TO COUNSEL SENT VIA EMAIL

09/08/2023 HEARING - OTHER HEARING NOTICE SENT ON 09/08/2023
TAMARA RUEDA , CLERK IV

09/13/2023 OTHER FILING - OTHER DOCUMENT FILED ON 09/13/2023
TRANSCRIPT AND AUDIO ORDER FORM FILED BY SEAN MAGENIS, AAG REQUESTING CD OFHEARING HELD 8/30/23. CD COMPLETED AND MAILED WITH $25 INVOICE 9/13/2023 BY CTA CATHERINE SMITH

09/13/2023 Party(s): ANDREW ROBBINS,MAINE COMMISSION OF INDIGENT LEGAL SERVICES,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK,MICHAEL CAREY,ROGER KATZ,MATTHEW MORGAN-SUBSTITUTED,RONALD SCHEIDER-SUBSTITUED
MOTION - OTHER MOTION DENIED ON 09/13/2023
M MICHAELA MURPHY , JUSTICE
JOINT MOTION TO CONDUCT PRELIMINARY REVIEW OF CLASS ACTION SETTLEMENT

09/13/2023 ORDER - COURT ORDER ENTERED ON 09/13/2023
M MICHAELA MURPHY , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO PARTIES/COUNSEL DENIED ORDER ON JOINT MOTION FOR PRELIMINARY SETTLEMENT APPROVAL

09/15/2023 HEARING - OTHER HEARING HELD ON 09/15/2023
M MICHAELA MURPHY , JUSTICE

09/15/2023 HEARING - OTHER HEARING SCHEDULED FOR 09/29/2023 at 10:00 a.m. in Room No. 2
M MICHAELA MURPHY , JUSTICE
NOTICE TO PARTIES/COUNSEL IN PERSON

09/15/2023 HEARING - OTHER HEARING NOTICE SENT ON 09/15/2023

09/29/2023 Party(s): ANDREW ROBBINS,MAINE COMMISSION OF INDIGENT LEGAL SERVICES,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK
OTHER FILING - TRANSCRIPT ORDER FORM FILED ON 09/29/2023
M MICHAELA MURPHY , JUSTICE

09/29/2023 Party(s): ANDREW ROBBINS,MAINE COMMISSION OF INDIGENT LEGAL SERVICES,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK
OTHER FILING - TRANSCRIPT ORDER FORM SENT TO REPORTER/ER ON 09/29/2023
M MICHAELA MURPHY , JUSTICE
REQUESTED FROM CAROL GARVAN, ESQ/ACLU OF MAINE

10/06/2023 OTHER FILING - TRANSCRIPT ORDER FORM FILED ON 10/06/2023
EXPEDITED REQUEST FROM CAROL GARVIN ESQ FROM ACLU

10/06/2023 OTHER FILING - TRANSCRIPT ORDER FORM SENT TO REPORTER/ER ON 10/06/2023
SENT TO PENNY CARVER AND OTO THIS DAY

10/06/2023 HEARING - SETTLEMENT CONFERENCE SCHEDULED FOR 10/13/2023 at 08:30 a.m. in Room No. 4
NOTICE TO PARTIES/COUNSEL WITH JUSTICE BILLINGS

10/06/2023 HEARING - SETTLEMENT CONFERENCE NOTICE SENT ON 10/04/2023
BY CHANDRA PITCHER VIA EMAIL

10/06/2023 HEARING - SETTLEMENT CONFERENCE SCHEDULED FOR 11/03/2023 at 08:30 a.m. in Room No. 6
NOTICE TO PARTIES/COUNSEL WITH JUSTICE BILLINGS

10/06/2023 HEARING - SETTLEMENT CONFERENCE NOTICE SENT ON 10/04/2023
SENT BY CHANDRA PITCHER VIA EMAIL TO THE PARTIES

10/13/2023 HEARING - SETTLEMENT CONFERENCE HELD ON 10/13/2023
DANIEL I BILLINGS , JUSTICE

11/28/2023 MOTION - OTHER MOTION FILED ON 11/28/2023
Defendant's Attorney: SEAN D MAGENIS
SUPPLEMENTAL JOINT MOTION TO CONDUCT PRELIMINARY REVIEW OF AMENDED CLASS ACTION SETTLEMENT, DIRECT NOTICE TO CLASS MEMBERS OF AMENDED PROPOSED SETTLEMENT AND MAKE FURTHER ORDERS AS PART OF THE SETTLEMENT APPROVAL PROCESS

11/30/2023 HEARING - OTHER HEARING SCHEDULED FOR 12/15/2023 at 10:30 a.m. in Room No. 1
NOTICE TO PARTIES/COUNSEL ORAL ARGUMENT
IN PERSON

11/30/2023 HEARING - OTHER HEARING NOTICE SENT ON 11/30/2023

11/30/2023 HEARING - SETTLEMENT CONFERENCE HELD ON 11/03/2023

11/30/2023 HEARING - OTHER HEARING HELD ON 09/29/2023

12/08/2023 OTHER FILING - OTHER DOCUMENT FILED ON 11/27/2023
LETTER FROM THOMAS PROIA COPIES MAILED TO COUNSEL ON RECORD 12/8/23

01/08/2024 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK
OTHER FILING - TRANSCRIPT ORDER FORM FILED ON 01/03/2024
Plaintiff's Attorney: SEAN D MAGENIS
TRANSCRIPT AND AUDIO ORDER FORM
REC'D 01/19/24

01/08/2024 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK
OTHER FILING - TRANSCRIPT ORDER FORM SENT TO REPORTER/ER ON 01/08/2024
M MICHAELA MURPHY , JUSTICE
CD COMPLETED AND MAILED 1/9/24 BY CTA CATHERINE SMITH

01/12/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH

MOTION - MOTION FOR ENLARGEMENT OF TIME FILED ON 01/11/2024

Plaintiff's Attorney: ZACHARY L HEIDEN

CONSET MOTION TO ENLARGE DEADLINE FOR PARTIES TO FILE SUPPLEMENTAL BRIEFINGIN SUPPORT OF JOINT MOTION TO CONDUCT PRELIMINARY REVIEW OF CLASS ACTION SETTLEMENT

01/17/2024 HEARING - PRETRIAL/STATUS SCHEDULED FOR 02/02/2024 at 09:00 a.m. in Room No. 4

M MICHAELA MURPHY , JUSTICE

NOTICE TO PARTIES/COUNSEL
IN PERSON CONFERENCE

01/17/2024 HEARING - PRETRIAL/STATUS NOTICE SENT ON 01/17/2024

01/17/2024 HEARING - OTHER HEARING HELD ON 01/17/2024

M MICHAELA MURPHY , JUSTICE

01/19/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH

MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 01/19/2024

M MICHAELA MURPHY , JUSTICE

COPIES TO PARTIES/COUNSEL
PARTIES HAVE UNTIL JANUARY 22, 2024 TO FILE AND SERVE SUPPLEMENTAL BRIEFING

01/22/2024 Party(s): ANDREW ROBBINS

LETTER - TO PARTY(S) SENT ON 01/22/2024

I NOAH BREWINGTON WISH TO BE CALLED AS A WITNESS IN THIS CASE

01/23/2024 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK,MICHAEL CAREY,ROGER KATZ,MATTHEW MORGAN-SUBSTITUTED,RONALD SCHEIDER-SUBSTITUED

OTHER FILING - REPLY MEMORANDUM FILED ON 01/22/2024

Plaintiff's Attorney: SEAN D MAGENIS

MEMORANDUM IN FURTHER SUPPORT OF THE PARTIES SUPPLEMENTAL JOINT MOTION REGARDING SETTLEMENT APPROVAL

02/01/2024 Party(s): ANDREW ROBBINS,MAINE COMMISSION OF INDIGENT LEGAL SERVICES,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK,MICHAEL CAREY,ROGER KATZ,MATTHEW MORGAN-SUBSTITUTED,RONALD SCHEIDER-SUBSTITUED

OTHER FILING - OTHER DOCUMENT FILED ON 12/14/2023

M MICHAELA MURPHY , JUSTICE

MEDIA NOTIFICATION REQUEST FOR COVERAGE OF COURT PROCEEDINGS ON 12/15/23 GRANTED 12/5/23 J. MURPHY

02/16/2024 Party(s): ANDREW ROBBINS,MAINE COMMISSION OF INDIGENT LEGAL SERVICES,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK,MICHAEL CAREY,ROGER KATZ,MATTHEW MORGAN-SUBSTITUTED,RONALD SCHEIDER-SUBSTITUED

MOTION - OTHER MOTION FILED ON 02/14/2024

Defendant's Attorney: SEAN D MAGENIS

Plaintiff's Attorney: ZACHARY L HEIDEN
SECOND AMENDED JOINT MOTION TO CONDUCT PRELIMINARY REVIEW OF SECOND AMENDEDCLASS ACTION SETTLEMENT, DIRECT NOTICE TO CLASS MEMBERS OF AMENDED PROPOSED SETTLEMENT

02/16/2024 Party(s): ANDREW ROBBINS,MAINE COMMISSION OF INDIGENT LEGAL SERVICES,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK,MICHAEL CAREY,ROGER KATZ,MATTHEW MORGAN-SUBSTITUTED,RONALD SCHEIDER-SUBSTITUED
OTHER FILING - OTHER DOCUMENT FILED ON 02/14/2024
Defendant's Attorney: SEAN D MAGENIS

Plaintiff's Attorney: ZACHARY L HEIDEN
NOTICE OF WITHDRAWAL OF AMENDED JOINT MOTION TO CONDUCT PRELIMINARY REVIEW OF AMENDED CLASS ACTION SETTLEMENT (NOVEMBER 28, 2023)

02/27/2024 HEARING - PRETRIAL/STATUS SCHEDULED FOR 03/15/2024 at 09:00 a.m. in Room No. 3
M MICHAELA MURPHY , JUSTICE
NOTICE TO PARTIES/COUNSEL
IN PERSON CONFERENCE

02/27/2024 HEARING - PRETRIAL/STATUS NOTICE SENT ELECTRONICALLY ON 02/27/2024
M MICHAELA MURPHY , JUSTICE

02/27/2024 HEARING - PRETRIAL/STATUS NOTICE SENT ON 02/27/2024
M MICHAELA MURPHY , JUSTICE

02/27/2024 ORDER - COURT ORDER ENTERED ON 02/27/2024
M MICHAELA MURPHY , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT.
COPIES TO PARTIES/COUNSEL
COMBINED ORDER

02/28/2024 HEARING - PRETRIAL/STATUS HELD ON 02/02/2024
M MICHAELA MURPHY , JUSTICE

03/11/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
MOTION - MOTION FOR LEAVE FILED ON 03/08/2024
M MICHAELA MURPHY , JUSTICE
PLT MOT FOR LEAVE TO AMEND AND SUPPLEMENT COMPLAINT

03/11/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
LETTER - REQUEST FOR PROTECTION FILED ON 03/08/2024
Plaintiff's Attorney: CAROL J GARVAN
TRIAL PROTECTION DATES 6/24/24-7/5/24

03/11/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
MOTION - MOTION TO INTERVENE FILED ON 03/11/2024
M MICHAELA MURPHY , JUSTICE

WITH MEMORANDUM OF LAW, DRAFT ORDER, NOTICE OF HEARING
PLT PETITION TO INTERVENE DANIEL FELDMAN

03/11/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
OTHER FILING - ENTRY OF APPEARANCE FILED ON 03/11/2024
ENTRY OF APPEARANCE CLERK SHALL ENTER MY APPEARANCE AS A SELF REPRESENTED PLAINTIFF DANIEL FELDMAN

03/15/2024 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK,MICHAEL CAREY,ROGER KATZ,MATTHEW MORGAN-SUBSTITUTED,RONALD SCHEIDER-SUBSTITUED
MOTION - OTHER MOTION FILED ON 03/15/2024
Defendant's Attorney: SEAN D MAGENIS
DEF CONSENT MOT TO EXCEED PAGE LIMITS

03/15/2024 HEARING - PRETRIAL/STATUS HELD ON 03/15/2024
M MICHAELA MURPHY , JUSTICE

03/22/2024 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK,MICHAEL CAREY,ROGER KATZ,MATTHEW MORGAN-SUBSTITUTED,RONALD SCHEIDER-SUBSTITUED
APPEAL - NOTICE OF APPEAL FILED ON 03/15/2024
Defendant's Attorney: SEAN D MAGENIS

03/22/2024 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK,MICHAEL CAREY,ROGER KATZ,MATTHEW MORGAN-SUBSTITUTED,RONALD SCHEIDER-SUBSTITUED
LETTER - REQUEST FOR PROTECTION FILED ON 03/15/2024
Defendant's Attorney: SEAN D MAGENIS
PROTECTION DATE THIRD AND FOURTH WEEK OF JULY

03/22/2024 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK,MICHAEL CAREY,ROGER KATZ,MATTHEW MORGAN-SUBSTITUTED,RONALD SCHEIDER-SUBSTITUED
MOTION - MOTION TO DISMISS FILED ON 03/20/2024
WITH MEMORANDUM OF LAW, DRAFT ORDER, NOTICE OF HEARING
MOT TO D/M APPEAL

03/22/2024 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK,MICHAEL CAREY,ROGER KATZ,MATTHEW MORGAN-SUBSTITUTED,RONALD SCHEIDER-SUBSTITUED
APPEAL - NOTICE OF APPEAL SENT TO LAW COURT ON 03/22/2024
M MICHAELA MURPHY , JUSTICE

03/22/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
OTHER FILING - REPLY MEMORANDUM FILED ON 03/22/2024

Plaintiff's Attorney: ZACHARY L HEIDEN

03/22/2024 MOTION - OTHER MOTION FILED ON 03/22/2024
Plaintiff's Attorney: ZACHARY L HEIDEN
PLT MOT FOR LEAVE TO EXCEED PAGE LIMITS

03/22/2024 MOTION - OTHER MOTION FILED ON 03/22/2024
MOT FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF CLASS OF INDIGENT ACCUSED

03/22/2024 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK,MICHAEL CAREY,ROGER KATZ,MATTHEW MORGAN-SUBSTITUTED,RONALD SCHEIDER-SUBSTITUED
OTHER FILING - REPLY MEMORANDUM FILED ON 03/22/2024
BRIEF OF AMICUS CURIAE A PREVIOUSLY NAMED DEFENDANT IN SUPPORT OF CLASS OF INDIGENT ACCUSED

04/02/2024 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES
OTHER FILING - OPPOSING MEMORANDUM FILED ON 03/15/2024
REC/FIL DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO LEAVE TO AMEND AND SUPPLEMENT THE COMPLAINT S/ SEAN MAGENIS AAG

04/02/2024 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK,MICHAEL CAREY,ROGER KATZ,MATTHEW MORGAN-SUBSTITUTED,RONALD SCHEIDER-SUBSTITUED
MOTION - OTHER MOTION GRANTED ON 03/15/2024
M MICHAELA MURPHY , JUSTICE
DEF CONSENT MOT TO EXCEED PAGE LIMITS

04/08/2024 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK,MICHAEL CAREY,ROGER KATZ,MATTHEW MORGAN-SUBSTITUTED,RONALD SCHEIDER-SUBSTITUED
OTHER FILING - OPPOSING MEMORANDUM FILED ON 04/01/2024
DEFT'S OPPOSTION TO PETITION TO INTERVENE S/ SEAN MAGENIS ESQ

04/12/2024 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES
OTHER FILING - TRANSCRIPT ORDER FORM FILED ON 04/08/2024

04/12/2024 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES
OTHER FILING - TRANSCRIPT ORDER FORM SENT TO REPORTER/ER ON 04/12/2024
TAMARA RUEDA , CLERK IV
OTO

04/12/2024 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES
OTHER FILING - OPPOSING MEMORANDUM FILED ON 04/09/2024
REC/FIL DEFENDANT'S OPPOSITION TO MOTION FOR LEAVE TO FILE AMICUS BRIEF S/ SEAN MAGENIS AAG

04/12/2024 OTHER FILING - OTHER DOCUMENT FILED ON 04/11/2024

REC'D PLAINTIFF'S PROPOSED PHASE 1 SCHEDULING ORDER S/ ZACHARY HEIDEN ESQ AND KEVIN MARTIN ESQ

04/12/2024 OTHER FILING - OTHER DOCUMENT FILED ON 04/12/2024
REC'D DEFT'S PROPOSED SCHEDULING ORDER S/SEAN MAGENIS ESQ

05/07/2024 APPEAL - MANDATE/ORDER DISMISSED ON 05/01/2024
APPEAL DISMISSED

05/08/2024 HEARING - PRETRIAL/STATUS SCHEDULED FOR 05/13/2024 at 09:00 a.m. in Room No. 3
NOTICE TO PARTIES/COUNSEL CONFERENCE WITH COUNSEL ONLY
VIA ZOOM MEETING ID 991 8305 7511 PASSCODE 635234

05/08/2024 HEARING - PRETRIAL/STATUS NOTICE SENT ELECTRONICALLY ON 05/07/2024

05/13/2024 HEARING - PRETRIAL/STATUS HELD ON 05/13/2024
CR 3 BY ZOOM

05/13/2024 ORDER - COURT ORDER ENTERED ON 05/13/2024
M MICHAELA MURPHY , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT.
COPIES TO PARTIES/COUNSEL PRELIMINAY SCHEDULING ORDER FOR PHASE 1 TRIAL

05/13/2024 ORDER - SCHEDULING ORDER ENTERED ON 05/13/2024
M MICHAELA MURPHY , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT.
COPIES TO PARTIES/COUNSEL

05/13/2024 DISCOVERY FILING - DISCOVERY DEADLINE ENTERED ON 09/13/2024

05/17/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
RESPONSIVE PLEADING - RESPONSE FILED ON 05/15/2024
Plaintiff's Attorney: ZACHARY L HEIDEN
PLT TAKE NO POSITION ON DANIEL FELDMAN'S MOTION TO INTERVENE FILED 3/11/2024 OR ROBERT CUMMINS'S MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF FILED 3/20/24.

05/21/2024 LETTER - FROM NON-PARTY FILED ON 05/13/2024
LETTER FROM FRANCIS ENWONWN FILING A CLASE ACTION LAW SUITE FOR FAILING TO APPOINT COUNSEL FOR HIS LEGAL NEEDS IN A CRIMINAL MATTER PER JUSTICE MURPHY LETTER AND DOCUMENTS SENT TO ATTY MAGIS , HEIDEN AND PARSONS FOR POSITIONS.

05/21/2024 MOTION - MOTION TO INTERVENE FILED WITH AFFIDAVIT ON 05/13/2024
FILED BY FRANCIS ENWONWN PRO SE

05/21/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
LETTER - FROM PARTY FILED ON 05/17/2024
REC'D LETTER FROM ZACH HEIDEN ESQ STATING THE PLAINTIFF'S TAKES NO POSITION ON DANIEL D FELDMAN'S MOTION TO INTERVENE FILED ON MARCH 11, 2024 OR ROBERT

CUMMINS'S MOTION FOR LEAVE T FILE AMICUS CURIE BRIEF (FILED MARCH 20 2024) S/ZACH HEIDEN ESQ

05/23/2024 MOTION - OTHER MOTION FILED ON 03/08/2024
REC/FIL PLAINTIFF'S MOTION FOR LEAVE TO AMEND AND SUPPLEMENT THE COMPLAINT S/ ZACH HEIDEN ESQ, MATT WARNER ESQ AND KEVIN MARTIN ESQ

05/23/2024 MOTION - OTHER MOTION OTHER DECISION ON 05/23/2024
M MICHAELA MURPHY , JUSTICE
REC/FIL PLAINTIFF'S MOTION FOR LEAVE TO AMEND AND SUPPLEMENT THE COMPLAINT S/ ZACH HEIDEN ESQ, MATT WARNER ESQ AND KEVIN MARTIN ESQ PLAINTIFF'S MOTION IS GRANTED IN PART AND DENIED IN PART

05/23/2024 ORDER - COURT ORDER ENTERED ON 05/23/2024
M MICHAELA MURPHY , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO PARTIES/COUNSEL ORDER ON PLAINTIFF'S MOTION FOR LEAVE TO AMEND & SUPPL COMPLAINT

06/06/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
SUPPLEMENTAL FILING - AMENDED COMPLAINT FILED ON 05/31/2024
PLAINTIFF'S FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND CASE ACTION PETITION FOR HABEAS RELIEF ANE EXHIBITS 1-7 TO THE FIRST AMENDED ACTION COMPLAINT. S/ZACH HEIDEN ESQ

06/06/2024 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES
OTHER FILING - OPPOSING MEMORANDUM FILED ON 06/03/2024
Defendant's Attorney: SEAN D MAGENIS
DEFS OPPOSITION TO MITION TO INTERVENE BY

06/13/2024 Party(s): AARON FREY, AAG
MOTION - MOTION FOR ENLARGEMENT OF TIME FILED ON 06/12/2024
Defendant's Attorney: VALERIE A WRIGHT
UNOPPOSED MOTION TO ENLARGE DEADLINE TO ANSWER AMENDED COMPLAINT WITH PROPOSED ORDER

06/13/2024 Party(s): TROY MORTON
RESPONSIVE PLEADING - ANSWER FILED ON 06/11/2024
Defendant's Attorney: JOHN HAMER

06/13/2024 Party(s): MATTHEW MORGAN-SUBSTITUTED
ATTORNEY - RETAINED ENTERED ON 06/11/2024

06/13/2024 Party(s): SHERIFF PENOBSCOT COUNTY
ATTORNEY - RETAINED ENTERED ON 06/11/2024
Attorney: JOHN HAMER

06/13/2024 Party(s): ERIC SAMPSON
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Defendant's Attorney: PETER MARCHESI

Party(s): ERIC SAMPSON
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Defendant's Attorney: PETER MARCHESI

Party(s): PETER JOHNSON
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Defendant's Attorney: PETER MARCHESI

Party(s): KEVIN JOYCE
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Defendant's Attorney: PETER MARCHESI

Party(s): SCOTT NICHOLS
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Defendant's Attorney: PETER MARCHESI

06/13/2024 Party(s): SCOTT KANE
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Defendant's Attorney: PETER MARCHESI

06/13/2024 Party(s): KENNETH MASON
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Defendant's Attorney: PETER MARCHESI

Party(s): PATRICK POLKY
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Defendant's Attorney: PETER MARCHESI

Party(s): TODD BRACKET
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Defendant's Attorney: PETER MARCHESI

Party(s): CHRISTOPHER WAINWRIGHT
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Defendant's Attorney: PETER MARCHESI

Party(s): TROY MORTON
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Defendant's Attorney: PETER MARCHESI

Party(s): ROBERT YOUNG
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Defendant's Attorney: PETER MARCHESI

Party(s): JOEL MERRY
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Defendant's Attorney: PETER MARCHESI

Party(s): DALE LANCASTER
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Defendant's Attorney: PETER MARCHESI

Party(s): JASON TRUNDY
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Defendant's Attorney: PETER MARCHESI

06/13/2024 Party(s): BARRY CURTIS
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Defendant's Attorney: PETER MARCHESI

Party(s): WILLIAM KING
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Defendant's Attorney: PETER MARCHESI

Party(s): SHERIFF OF ANDROSCOGGIN COUNTY
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Attorney: PETER MARCHESI

Party(s): SHERIFF AROOSTOOK COUNTY
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Attorney: PETER MARCHESI

Party(s): SHERIFF CUMERLAND COUNTY
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Attorney: PETER MARCHESI

Party(s): SHERIFF FRANKLIN COUNTY
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Attorney: PETER MARCHESI

Party(s): SHERIFF HANCOCK COUNTY
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Attorney: PETER MARCHESI

Party(s): SHERIFF KENNEBEC COUNTY
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Attorney: PETER MARCHESI

Party(s): SHERIFF KNOX COUNTY
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Attorney: PETER MARCHESI

Party(s): SHERIFF LINCOLN COUNTY
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Attorney: PETER MARCHESI

06/13/2024 Party(s): SHERIFF OXFORD COUNTY
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Attorney: PETER MARCHESI

Party(s): SHERIFF PENOBSCOT COUNTY
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Attorney: PETER MARCHESI

Party(s): SHERIFF PISCATAQUIS COUNTY
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Attorney: PETER MARCHESI

Party(s): SHERIFF SAGADAHOC COUNTY
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Attorney: PETER MARCHESI

Party(s): SHERIFF SOMERSET COUNTY
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Attorney: PETER MARCHESI

Party(s): SHERIFF WALDO COUNTY
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Attorney: PETER MARCHESI

Party(s): SHERIFF WASHINGTON COUNTY
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Attorney: PETER MARCHESI

Party(s): SHERIFF YORK COUNTY
ATTORNEY - RETAINED ENTERED ON 06/12/2024
Attorney: PETER MARCHESI

06/13/2024 Party(s): ERIC SAMPSON,ERIC SAMPSON,SHERIFF OF ANDROSCOGGIN COUNTY,PETER JOHNSON,SHERIFF AROOSTOOK COUNTY,KEVIN JOYCE,SHERIFF CUMERLAND COUNTY,SCOTT NICHOLS,SHERIFF FRANKLIN COUNTY,SCOTT KANE,SHERIFF HANCOCK COUNTY,KENNETH MASON,SHERIFF KENNEBEC COUNTY,PATRICK POLKY,SHERIFF KNOX COUNTY,TODD BRACKET,SHERIFF LINCOLN COUNTY,CHRISTOPHER WAINWRIGHT,SHERIFF OXFORD COUNTY,TROY MORTON,SHERIFF PENOBSCOT COUNTY,ROBERT YOUNG,SHERIFF PISCATAQUIS COUNTY,JOEL MERRY,SHERIFF SAGADAHOC COUNTY,DALE LANCASTER,SHERIFF SOMERSET COUNTY,JASON TRUNDY,SHERIFF WALDO COUNTY,BARRY CURTIS,SHERIFF WASHINGTON COUNTY,WILLIAM KING,SHERIFF YORK COUNTY
RESPONSIVE PLEADING - ANSWER & AFFIRMATIVE DEFENSE FILED ON 06/12/2024
Defendant's Attorney: PETER MARCHESI

06/20/2024 Party(s): TROY MORTON,SHERIFF PENOBSCOT COUNTY
SUMMONS/SERVICE - ACCEPTANCE OF SERVICE SERVED ON 06/05/2024

06/20/2024 Party(s): TROY MORTON,SHERIFF PENOBSCOT COUNTY
SUMMONS/SERVICE - ACCEPTANCE OF SERVICE FILED ON 06/14/2024
Defendant's Attorney: JOHN HAMER

06/20/2024 Party(s): WILLIAM KING,SHERIFF YORK COUNTY
SUMMONS/SERVICE - ACCEPTANCE OF SERVICE SERVED ON 06/05/2024

06/20/2024 Party(s): WILLIAM KING,SHERIFF YORK COUNTY
SUMMONS/SERVICE - ACCEPTANCE OF SERVICE FILED ON 06/14/2024
Defendant's Attorney: TYLER SMITH

06/20/2024 Party(s): SCOTT KANE,SHERIFF HANCOCK COUNTY
SUMMONS/SERVICE - ACCEPTANCE OF SERVICE SERVED ON 06/06/2024

06/20/2024 Party(s): SCOTT KANE,SHERIFF HANCOCK COUNTY
SUMMONS/SERVICE - ACCEPTANCE OF SERVICE FILED ON 06/14/2024
Defendant's Attorney: MICHAEL LICHTENSTEIN

06/20/2024 Party(s): ERIC SAMPSON,SHERIFF OF ANDROSCOGGIN COUNTY
SUMMONS/SERVICE - ACCEPTANCE OF SERVICE SERVED ON 06/06/2024

06/20/2024 Party(s): ERIC SAMPSON,SHERIFF OF ANDROSCOGGIN COUNTY
SUMMONS/SERVICE - ACCEPTANCE OF SERVICE FILED ON 06/14/2024
Defendant's Attorney: MICHAEL LICHTENSTEIN

06/20/2024 Party(s): KEVIN JOYCE,KENNETH MASON,PATRICK POLKY,TODD BRACKET,CHRISTOPHER WAINWRIGHT,JOEL MERRY,DALE LANCASTER,JASON TRUNDY,BARRY CURTIS
SUMMONS/SERVICE - ACCEPTANCE OF SERVICE SERVED ON 06/06/2024
Defendant's Attorney: MICHAEL LICHTENSTEIN
ACCEPTANCE OF SERVICE OF COMPLAINT AND WAIVER OF SERVICE OF SUMMONS

06/20/2024 Party(s): KEVIN JOYCE,KENNETH MASON,PATRICK POLKY,TODD BRACKET,CHRISTOPHER WAINWRIGHT,JOEL MERRY,DALE LANCASTER,JASON TRUNDY,BARRY CURTIS
SUMMONS/SERVICE - ACCEPTANCE OF SERVICE FILED ON 06/14/2024

06/20/2024 Party(s): SHERIFF OF ANDROSCOGGIN COUNTY,SHERIFF CUMERLAND COUNTY,SHERIFF KENNEBEC COUNTY,SHERIFF KNOX COUNTY,SHERIFF LINCOLN COUNTY,SHERIFF OXFORD COUNTY,SHERIFF PISCATAQUIS COUNTY,SHERIFF SAGADAHOC COUNTY,SHERIFF SOMERSET COUNTY,SHERIFF WALDO COUNTY,SHERIFF WASHINGTON COUNTY
SUMMONS/SERVICE - ACCEPTANCE OF SERVICE SERVED ON 06/06/2024

06/20/2024 Party(s): SHERIFF OF ANDROSCOGGIN COUNTY,SHERIFF CUMERLAND COUNTY,SHERIFF KENNEBEC COUNTY,SHERIFF KNOX COUNTY,SHERIFF LINCOLN COUNTY,SHERIFF OXFORD COUNTY,SHERIFF PISCATAQUIS COUNTY,SHERIFF SAGADAHOC COUNTY,SHERIFF SOMERSET COUNTY,SHERIFF WALDO COUNTY,SHERIFF WASHINGTON COUNTY
SUMMONS/SERVICE - ACCEPTANCE OF SERVICE FILED ON 06/14/2024
Defendant's Attorney: MICHAEL LICHTENSTEIN

06/20/2024 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES
SUMMONS/SERVICE - ACCEPTANCE OF SERVICE SERVED ON 06/03/2024

06/20/2024 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES
SUMMONS/SERVICE - ACCEPTANCE OF SERVICE FILED ON 06/14/2024
Defendant's Attorney: CHRISTOPHER C TAUB

06/20/2024 Party(s): SCOTT NICHOLS
SUMMONS/SERVICE - ACCEPTANCE OF SERVICE SERVED ON 06/03/2024

06/20/2024 Party(s): SCOTT NICHOLS
SUMMONS/SERVICE - ACCEPTANCE OF SERVICE FILED ON 06/14/2024

Defendant's Attorney: ERICA M JOHANSON

06/20/2024 Party(s): WILLIAM KING,SHERIFF YORK COUNTY
RESPONSIVE PLEADING - ANSWER & AFFIRMATIVE DEFENSE FILED ON 06/14/2021
Defendant's Attorney: TYLER SMITH
RESPONDENT WILLIAM KING'S ANSWER AND AFFIRMATIVE DEFENSES TO FIRST AMENDED CLASS ACTION COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND CLASS ACTION PETITION FOR HABEAS RELIEF.

06/20/2024 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES
RESPONSIVE PLEADING - ANSWER FILED ON 06/14/2024
Defendant's Attorney: SEAN D MAGENIS
AND PAUL SUITTER BAR # 5736

06/21/2024 Party(s): SCOTT NICHOLS
RESPONSIVE PLEADING - RESPONSE FILED ON 06/17/2024
ANSWER OF RESPONDENT SCOTT NICHOLS

06/26/2024 Party(s): OFFICE OF THE ATTORNEY GENERAL
ATTORNEY - RETAINED ENTERED ON 06/24/2024
Defendant's Attorney: VALERIE A WRIGHT

06/26/2024 Party(s): OFFICE OF THE ATTORNEY GENERAL
MOTION - MOTION TO DISMISS FILED ON 06/24/2024
WITH MEMORANDUM OF LAW, DRAFT ORDER, AND EXHIBIT A AND A PROPOSED ORDER

06/26/2024 Party(s): SCOTT NICHOLS,SHERIFF FRANKLIN COUNTY
RESPONSIVE PLEADING - ANSWER TO AMENDED PLEADING FILED ON 06/17/2024

06/26/2024 Party(s): SCOTT NICHOLS
ATTORNEY - RETAINED ENTERED ON 06/17/2024
Defendant's Attorney: ERICA M JOHANSON

06/26/2024 Party(s): SHERIFF FRANKLIN COUNTY
ATTORNEY - RETAINED ENTERED ON 06/17/2024
Attorney: ERICA M JOHANSON

07/03/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
OTHER FILING - OPPOSING MEMORANDUM FILED ON 07/03/2024
PLAINITIFF'S OPPOSITION TO MOTION TO DISMISS THE STAT OF MAINE AND MCILS AS DEFENDANTS. S. ZACHARY HEIDEN ESQ

07/08/2024 HEARING - OTHER HEARING SCHEDULED FOR 07/31/2024 at 09:00 a.m. in Room No. 3
NOTICE TO PARTIES/COUNSEL FOR ORAL AGRUMENT ON ALL PENDING MOTIONS

07/08/2024 HEARING - OTHER HEARING NOTICE SENT ON 07/08/2024
NOTCE MAILED TO ATTY SMITH ON 7/22/24.

07/12/2024 Party(s): OFFICE OF THE ATTORNEY GENERAL

ATTORNEY - RETAINED ENTERED ON 07/11/2024
Defendant's Attorney: SCOTT W BOAK

07/12/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
OTHER FILING - OPPOSING MEMORANDUM FILED ON 07/12/2024
OPPOSITION TO MOTION TO DISMISS BY THE MAINE ATTORNEY GENERAL S. ZACHARY HEIDEN ESQ

07/18/2024 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES
RESPONSIVE PLEADING - RESPONSE FILED ON 07/17/2024
Defendant's Attorney: HALLIDAY MONCURE
MAINE COMMISSION ON INDIGENT LEGAL SERVICES REPLY TO PLTS OPPOSITION TO THE MAINE COMMISSION ON INDIGENT LEGAL SERVICES MOTION TO DISMISS AND STATE OF MAINE'S REPLY IN SUPPORT OF MOTION TO DISMISS

07/18/2024 Party(s): OFFICE OF THE ATTORNEY GENERAL
RESPONSIVE PLEADING - RESPONSE FILED ON 07/17/2024
Plaintiff's Attorney: PAUL SUITTER
STATE OF MAINE'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS

07/22/2024 Party(s): WILLIAM KING
ATTORNEY - RETAINED ENTERED ON 07/22/2024
Defendant's Attorney: TYLER SMITH

07/24/2024 HEARING - 26(G) CONFERENCE SCHEDULED FOR 07/31/2024 at 11:30 a.m. in Room No. 3
NOTICE TO PARTIES/COUNSEL

07/24/2024 HEARING - 26(G) CONFERENCE NOTICE SENT ON 07/24/2024

07/25/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
RESPONSIVE PLEADING - RESPONSE FILED ON 07/23/2024
Plaintiff's Attorney: ZACHARY L HEIDEN
PLTS OBJECTIONS TO DEF.S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS PROPOUNDED UPON PLTS FILED VIA EMAIL

07/29/2024 Party(s): AARON FREY, AAG
ATTORNEY - RETAINED ENTERED ON 07/26/2024
Defendant's Attorney: VALERIE A WRIGHT

07/29/2024 Party(s): AARON FREY, AAG
OTHER FILING - REPLY MEMORANDUM FILED ON 07/26/2024
REPLY TO PLAINTIFF'S OPPOSTION TO DISMISS BY THE ATTORNEY GENERAL S/ VALERIE WRIGHT AAG

07/29/2024 LETTER - FROM NON-PARTY FILED ON 07/26/2024
LETTER FROM FRANCIS ENWONWU PRO SE ASKING FOR A WRIT TO BE ISSUED SO HE CAN PARTICIPATE IN THE JULY 31 ORAL ARGUMENTS

08/06/2024 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES

OTHER FILING - OTHER DOCUMENT FILED ON 08/05/2024
Defendant's Attorney: SEAN D MAGENIS
NOTICE OF SUBSTITUION FILED BY THE AAG MAGENIS; JAMES BILLINGS IN HIS OFFICIAL CAPACITY AS EXEC. DIRECTOR OF MAINE COMMISSION OON PUBLIC DEFENSESJOSHUA TARTY AS CHAIR OF THE MAINE COMMISSION OF PUBLIC DEFENS SERVICES; DONALD ALEXANDER, RANDALL BATES MEEGAN BURBANK, MICHAEL CONTARA, MICHAEL CAREY, ROGER KATZ, KIMBERLY MONAGHAN AND DAVID SOUCY IN THEIR OFFICIAL CAPACITIES AS COMMISSIONERS OF THE MAINE COMMISSION ON PUBLIC DEFENSE SERVICE.

08/06/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE
MOTION - OTHER MOTION FILED ON 08/02/2024
Plaintiff's Attorney: ZACHARY L HEIDEN
MOTION FOR PROTECTIVE ORDER AND TO EXCLUDE EVIDENCE REGARING PREJUDICE TO INDIVIDUAL CLASS MEMBERS FILED BY COUNSEL FOR THE PTLS.

08/07/2024 Party(s): MAINE COMMISSION ON PUBLIC DEFENSE SERVICES
ATTORNEY - RETAINED ENTERED ON 08/05/2024
Defendant's Attorney: SEAN D MAGENIS

08/12/2024 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES,MAINE COMMISSION ON PUBLIC DEFENSE SERVICES
RESPONSIVE PLEADING - RESPONSE FILED ON 08/09/2024
Defendant's Attorney: SEAN D MAGENIS
DEFS OPPOSITION TO PLTS MOTION FOR PROTECTIVE ORDER AND TO EXCLUDE EVIDENCE REGARDING PREJUDIC TO INDIVIDUAL CLASS MEMBER WITH EXHIBITS A-E TO DEFS OPPOSITION TO PLTS MOTION FOR PROTECTION ORDER AND TO EXCLUDE EVIDENCE REGARDING PREJUDICE TO INDIVIDUAL CLASS MEMBERS FILED BY AAG MAGENIS.

08/13/2024 HEARING - OTHER MOTION SCHEDULED FOR 08/16/2024 at 11:00 a.m. in Room No. 3
M MICHAELA MURPHY , JUSTICE
SCHEDULE CONFERENCE AND MOTION FOR PROTECTIVE ORDER

08/13/2024 HEARING - OTHER MOTION NOTICE SENT ELECTRONICALLY ON 08/13/2024
M MICHAELA MURPHY , JUSTICE
SCHEDULE CONFERENCE AND MOTION FOR PROTECTIVE ORDER VIA ZOOM

08/13/2024 HEARING - OTHER MOTION NOTICE SENT ON 08/13/2024
SCHEDULE CONFERENCE AND MOTION FOR PROTECTIVE ORDER

08/13/2024 ORDER - COURT ORDER ENTERED ON 08/13/2024
M MICHAELA MURPHY , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO PARTIES/COUNSEL ELECTRONICALLY THIS DATE. ORDER ON PENDING MOTIONS TO DISMISS MAILED ON 8/14/24. AG MOTION TO DISMISSGRANTED AS TO PARTY IN CT 1&2; MCPD MOTION TO DISMISS IV IS GRANTED; STATESMOTION TO DISMISS COUNT V IS DENIED; STATE IS DESIGNATION AS PARTY IN INTEREST WITH RESPECT TO COUNT III; STATE SHALL FILE ANSWER TO AMENDED COMPLAINTWITHIN 14 DAYS OF THIS ORDER.

08/14/2024 Party(s): ANDREW ROBBINS,MAINE COMMISSION OF INDIGENT LEGAL SERVICES,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK
RESPONSIVE PLEADING - RESPONSE FILED ON 08/14/2024

Plaintiff's Attorney: ZACHARY L HEIDEN
PLTS REPLY IN SUPPORT OF ITS MOTION FOR PROTECTIVE ORDER AND TO EXCLUDE EVIDENCE REGARDING PREJUDICE TO INDIVIDUAL CLASS MEMBERS FILED.

08/14/2024 OTHER FILING - OTHER DOCUMENT FILED ON 08/14/2024
18 PAGE HAND WRITTEN CORRESPONDENCE FILED BY FRANCIS OBIORA ENWONWM WHO IS IN THE CUMBERLAND COUNTY JAIL. COPY OF THIS FILING MAILED TO ALL COUNSEL OF RECORD

08/15/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
MOTION - OTHER MOTION FILED ON 08/15/2024
Plaintiff's Attorney: ZACHARY L HEIDEN
PLAINTIFFS MOTION TO AMEND THE CLASS DEFINITION.

08/15/2024 OTHER FILING - OTHER DOCUMENT FILED ON 08/14/2024
AUDIO ORDER COMPLETED AND FORWARDED TO OTO ON 8/14/24 BY CTA SANDRA BOURGET

08/21/2024 ORDER - COURT ORDER ENTERED ON 08/20/2024
M MICHAELA MURPHY , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. ORDER ON MOTION FOR PROTECTIVE ORDER-PLTS HAVE 10 DAYS FROM THE DATE OF THIS ORDER TO ANSWER THE REQUEST FOR ADMISSIONS AND REQUEST FOR PRODUCTION OF DOCUMENTS PURSUANT TO THE PROVISION OF RULE 3 AS DISCUSSED HEREIN. THE MOTION FOR PROTECTIVE ORDER IS THEREFORE GRANTED IN PART AND DENIED IN PART8/21/24: COPY OF ORDER MAILED TO ALL COUNSEL OF RECORD THIS DATE.

08/21/2024 HEARING - OTHER MOTION HELD ON 08/16/2024
M MICHAELA MURPHY , JUSTICE
SCHEDULE CONFERENCE AND MOTION FOR PROTECTIVE ORDER

08/21/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE
MOTION - OTHER MOTION OTHER DECISION ON 08/20/2024
M MICHAELA MURPHY , JUSTICE
MOTION FOR PROTECTIVE ORDER AND TO EXCLUDE EVIDENCE REGARING PREJUDICE TO INDIVIDUAL CLASS MEMBERS FILED BY COUNSEL FOR THE PTLS. MOTION FOR PROTECTIVE ORDER GRANTED IN PART AND DENIED IN PART.

08/22/2024 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES
OTHER FILING - TRANSCRIPT ORDER FORM FILED ON 08/14/2024
Defendant's Attorney: SEAN D MAGENIS
WITH CD OF THE 7/31/24 ORAL ARGUMENT

08/22/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
MOTION - MOTION TO AMEND PLEADING FILED ON 08/19/2024
Defendant's Attorney: ZACHARY L HEIDEN
WITH PROPOSED ORDER AND EXHIBITS
MOTION TO AMEND THE CLASS DEFINITION VIA EMAIL
ORIGINAL FILING REC'D ON 8/15/24

08/22/2024 ORDER - COURT ORDER ENTERED ON 08/14/2024

M MICHAELA MURPHY , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO PARTIES/COUNSEL 8/22/24 VIA MAIL ORDER OF SUBSTITUED JIM BILLINGS IS SUBSTITUTED FOR JUSTIN ANDRUS; RANDALL BATES, KIMBERLY MONAGHAN AND DAVID SOUCY ARE SUBSTITUTED AS DEFS FOR RONALD SCHNEIDER, ROBERT CUMMINS AND MATTHEW MORGAN

08/22/2024 HEARING - OTHER MOTION SCHEDULED FOR 09/13/2024 at 09:00 a.m.
M MICHAELA MURPHY , JUSTICE
SCHEDULING AND PENDING MOTIONS ZOOM HTTPS://COURTS-MAINE-GOV.ZOOM.US/J/96825125735 MEETING ID 968 2512 5735 PASSCODE 513415

08/22/2024 HEARING - OTHER MOTION NOTICE SENT ON 08/22/2024
SCHEDULING AND PENDING MOTIONS

09/06/2024 Party(s): OFFICE OF THE ATTORNEY GENERAL
RESPONSIVE PLEADING - RESPONSE FILED ON 09/05/2024
Defendant's Attorney: SEAN D MAGENIS
OPPOSITION TO PLTS MOTION TO AMEND CLASS FILED BY AAG MAGENIS.

09/11/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
RESPONSIVE PLEADING - RESPONSE FILED ON 09/11/2024
Plaintiff's Attorney: ZACHARY L HEIDEN
PLT'S REPLY IN SUPPOIRT OF MITON TO AMEND THE CLASS DEFINITION AND PLT'S PRETRIAL STATUS REPORT FILED BY COUNSEL.

09/11/2024 Party(s): LANH DANH HUYNH
OTHER FILING - TRANSCRIPT ORDER FORM FILED ON 09/11/2024
Plaintiff's Attorney: CAROL J GARVAN
OF HEARING ON 8/16/24

09/12/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
RESPONSIVE PLEADING - RESPONSE FILED ON 09/11/2024
Plaintiff's Attorney: CAROL J GARVAN
PLTS REPLY IN SUPPORT OF MOTION TO AMEND THE CLASS DEFINITION FILED BY PLT WITH PLAINTIFFS PRETRIAL STATUS REPORT VIA HAND DELIVERY AND EMAIL

09/17/2024 Party(s): OFFICE OF THE ATTORNEY GENERAL
RESPONSIVE PLEADING - RESPONSE FILED ON 09/12/2024
Defendant's Attorney: SEAN D MAGENIS
REESPONCE TO PLTS SEPT. 11 FILING

09/17/2024 ORDER - SCHEDULING ORDER ENTERED ON 09/17/2024
M MICHAELA MURPHY , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO PARTIES/COUNSEL ELECTRONICALLY THIS DATE.

09/17/2024 DISCOVERY FILING - DISCOVERY DEADLINE ENTERED ON 11/08/2024

09/26/2024 HEARING - OTHER MOTION HELD ON 09/13/2024
M MICHAELA MURPHY , JUSTICE
SCHEDULING AND PENDING MOTIONS ZOOM HTTPS://COURTS-MAINE-GOV.ZOOM.US/J/96825125735 MEETING ID 968 2512 5735 PASSCODE 513415

09/26/2024 ORDER - COURT ORDER ENTERED ON 09/26/2024
M MICHAELA MURPHY , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO COUNSEL OF RECORD VIA EMAIL AND USPS THIS DATE. THIS ORDER IS SUBJECT TO THE MAINE RULES OF CIVIL PROCEDURE ON MATTER OF PROCEDURE AND CALCULATION OF TIME PERIODS. FORMS AND TIMING OF DESIGNATION APARTY MAY DESIGNATE DOCUMENTS AS CONFIDENTIAL AND RESTRICTED IN DISCLOSURE UNDER THIS ORDER BY PLACING OR AFFIXING THE WORDS "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER ON THE DOCUMENT (CONT)

09/26/2024 ORDER - COURT ORDER ENTERED ON 09/26/2024
M MICHAELA MURPHY , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO PARTIES/COUNSEL 9/26/24. (C0NT) SCOPE: ALL DOCUMENTS PRODUCED IN THE COURSE OF DISCOVERY INCLUDING INITIAL DISCLOSURES, ALL RESPONSES TO DISCOVERY REQUESTS, ALL DEPOSITION TESTIMONY AND EXHIBITS....SHALL BE SUBJECTTO THIS ORDER CONCERING CONFIDENTIAL INFORMATION AS SET FORTH BELOW. THIS ORDER IS SUBJECT TO THE MAINE RULES OF CIVIL PROCEDURE ON MATTERS OF PROCEDURE AND CALCULATION OF TIME PERIODS.

09/26/2024 ORDER - COURT ORDER ENTERED ON 09/26/2024
M MICHAELA MURPHY , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO PARTIES/COUNSEL 9/26/24. DOCUMENT WHICH MAY BE DESIGNATED CONFIDENTIAL SUBJEC TO PROTECTIVE ORDER; DEPOSITIONS; PROTECTION OF CONFIDENITAL MATERIAL A. GENERAL PROTECTIONS B. LIMITED THIRD PARTY DISCLOSURES 1. COUNSEL 2. PARTIES 3. COURT REPORTERS AND RECORDERS 4. CONTRACTORS 5 CONSULTANTSAND EXPERTS 6. OTHERS BY CONSENT C CONTROL OF DOCUMENTS; D COPIES 6. FILING OF CONFIDENTIAL-SUBJECT TO PROT.ORDER

09/26/2024 ORDER - COURT ORDER ENTERED ON 09/26/2024
M MICHAELA MURPHY , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO PARTIES/COUNSEL 9/26/24. NO GREATER PROTECTION OF SPECIFIC DOCUMENTS; CHALLENGES BY A PARTY TO DESIGNATION AS CONFIDEENTIAL OR REDACTIONS; USE OF CONFIDENTIAL DOCUMENT OR INFORMATION AT TRIAL; OBLIGATIONS ON CONCLUSTIONS OF LITIGATION ORDER REMAINS IN EFFECT RETURN OF CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER DOCUMENTS; ORDER SUBJECT TO MODIFICATION;NO PRIOR JUDICIAL DETERMINATION; PERSONS BOUND

09/26/2024 ORDER - COURT ORDER ENTERED ON 09/26/2024
M MICHAELA MURPHY , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO PARTIES/COUNSEL 9/26/24. ORDER ON PRODUCTION OF JUDICAL BRANCH DATA-DATA TO BE PRODUCED, CONSISTING OF NON-PUBLIC INFORMATION PROTECTED FROM DISCLOSURE BY MAINE LAW INCLUDING BUT NOT LIMITED TO 4 MRSA SEC. 1806(3) SHALL BE SUBJECT TO AND MAINTAINED BY PLTS IN A MANNER WHICH WILL PRESERVE ITS CONFIDENTIALITY CONSENT CONFIDENTIALITY ORDER JOINTLY FILED BY THE PARTIES ON 11/21/22 AND ENTERED BY COURT 9/26/24.

09/26/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
MOTION - OTHER MOTION GRANTED ON 09/26/2024
M MICHAELA MURPHY , JUSTICE
PLAINTIFFS MOTION TO AMEND THE CLASS DEFINITION. GRANTED IN PART. CASE-MANAGEMENT SUBCLASS MEETS THE CRITERIA SET FORTH IN RULES 23(A) AND (B) AND 23(B)(2) AND WILL NOW BE TREATED AS A CLASS PURSUANT TO RULE 23(C)(4)(B). THE DEFINITION FOR THE SUBCLASS IS AMENDED AS SET FORTH ABOVE PURSUANT TO RULE 23(C)(1). CLERK IS DIRECTED TO DOCKET BY REFERENCE PURSUANT TO RULE 79(A) OF THE MAINE RULES OF CIVIL PROCEDURE. 9/26/24: COPY EMAILED AND USPS TO COUNSEL

09/30/2024 HEARING - 26(G) CONFERENCE HELD ON 07/31/2024
M MICHAELA MURPHY , JUSTICE

09/30/2024 Party(s): OFFICE OF THE ATTORNEY GENERAL
MOTION - MOTION TO DISMISS OTHER DECISION ON 08/13/2024
M MICHAELA MURPHY , JUSTICE
AG'S MOTION TO DISMISS IS GRANTED, AND HE WILL BE DISMISSED AS A PARTY FROM COUNTS I AND II; MCPD'S MOTION TO DISMISS IV IS GRANTED;STATE'S MOTION TO DISMISS IS DENIED; STATE OF MAINE IS DESIGNATED AS A PARTY IN INTEREST WITH RESPECT TO COUNT III; THE STATE SHALL FILE THEIR ANSWER TO THE AMENDED COMPLAINT WITHIN 14 DAYS FROM THE DATE OF THIS ORDER. COPIES TO COUNSEL OF RECORD ELECTRONICALLY AND VIA USPS ON 8/13/24

10/01/2024 HEARING - OTHER HEARING HELD ON 07/31/2024

10/01/2024 Party(s): AARON FREY, AAG
JURY FILING - DEMAND FOR JURY TRIAL FILED ON 10/01/2024
Defendant's Attorney: SEAN D MAGENIS
WITH 300.00 FILING FEE.

10/02/2024 ORDER - COURT ORDER ENTERED ON 10/02/2024
M MICHAELA MURPHY , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO PARTIES/COUNSEL ORDER TO CORRECT CLERICAL ERROR - THE CLERK IS DIRECTED TO DOCKET FORTHWITH THE COPY OF THE NOTOICE OF APPEAL WITH WAS REC'D ELECTRONICALLY BY THE CLERK'S OFFICE AT THE SAME TIME AS THE HARD COPIES WERE FILED,SO AS TO MEK THE STATE'S APPEAL EFFECTIVE AS OF AUGUST 16 2024

10/02/2024 Party(s): OFFICE OF THE ATTORNEY GENERAL
OTHER FILING - OTHER DOCUMENT FILED ON 08/16/2024
NOTICE OF WITHDRAWAL AND REQUEST TO BE ADDED TO SERVICE LIST S/ PAUL SUITTER AAG

10/02/2024 Party(s): STATE OF MAINE AS TO COUNT III
ATTORNEY - RETAINED ENTERED ON 08/16/2024
Attorney: PAUL SUITTER

10/02/2024 Party(s): STATE OF MAINE AS TO COUNT III
APPEAL - NOTICE OF APPEAL FILED ON 08/16/2024 at 10:18 a.m.
10/3/24 COPY OF NOTICE OF APPEAL EMAILED TO COUNSEL OF RECORD

10/02/2024 Party(s): JOSHUA TARDY
ATTORNEY - RETAINED ENTERED ON 08/16/2024
Defendant's Attorney: SEAN D MAGENIS

Party(s): DONALD ALEXANDER
ATTORNEY - RETAINED ENTERED ON 08/16/2024
Defendant's Attorney: SEAN D MAGENIS

Party(s): MEEGAN BURBANK
ATTORNEY - RETAINED ENTERED ON 08/16/2024
Defendant's Attorney: SEAN D MAGENIS

10/02/2024 Party(s): MICHAEL CAREY
ATTORNEY - RETAINED ENTERED ON 08/16/2024
Defendant's Attorney: SEAN D MAGENIS

Party(s): ROGER KATZ
ATTORNEY - RETAINED ENTERED ON 08/16/2024
Defendant's Attorney: SEAN D MAGENIS

10/02/2024 Party(s): JIM BILLINGS
ATTORNEY - RETAINED ENTERED ON 08/16/2024
Defendant's Attorney: SEAN D MAGENIS

Party(s): MICHAEL CANTARA
ATTORNEY - RETAINED ENTERED ON 08/16/2024
Defendant's Attorney: SEAN D MAGENIS

10/02/2024 ORDER - COURT ORDER ENTERED ON 09/26/2024
M MICHAELA MURPHY , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. CONSENT CONFIDENTIALITY ORDER ISSUED 9/26/24

10/03/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
OTHER FILING - OTHER DOCUMENT FILED ON 12/08/2023
Plaintiff's Attorney: ZACHARY L HEIDEN
NOTICE OF SUBSTITUTION OF DEFS UNDER RULE 25(D)(1) JIM BILLINGS SUBSTITUTED FOR JUSTIN ANDRUS; RANDAL BATES, KIMBERLY MONAGHANAND DAVID SOUCY SHOULD BE SUBSTITUTED AS DEFS FOR FORMER COMMISSIONERS RONALD SCHNEIDER, ROBERT CUMMINS AND MATTHEW MORGAN.

10/03/2024 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES
MOTION - MOTION TO IMPOUND GRANTED ON 10/02/2024
M MICHAELA MURPHY , JUSTICE
COPIES TO PARTIES/COUNSEL

10/03/2024 Party(s): ANDREW ROBBINS
MOTION - OTHER MOTION GRANTED ON 07/13/2022
M MICHAELA MURPHY , JUSTICE
PL MOTION FOR CLASS CERTIFICATION AND INCORPORATED MEMORANDUM OF LAW

10/03/2024 ORDER - COURT ORDER ENTERED ON 12/21/2022
M MICHAELA MURPHY , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT.
COPIES TO PARTIES/COUNSEL CONSENT CONFIDENTIALITY ORDER FILED

10/03/2024 Party(s): ANDREW ROBBINS,MAINE COMMISSION OF INDIGENT LEGAL SERVICES,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK,MICHAEL CAREY,ROGER KATZ,MATTHEW MORGAN-SUBSTITUTED,RONALD SCHEIDER-SUBSTITUED
MOTION - MOTION FOR LEAVE GRANTED ON 08/23/2023
M MICHAELA MURPHY , JUSTICE

10/03/2024 MOTION - OTHER MOTION MOOT ON 10/03/2024
M MICHAELA MURPHY , JUSTICE
SUPPLEMENTAL JOINT MOTION TO CONDUCT PRELIMINARY REVIEW OF AMENDED CLASS ACTION SETTLEMENT, DIRECT NOTICE TO CLASS MEMBERS OF AMENDED PROPOSED SETTLEMENT AND MAKE FURTHER ORDERS AS PART OF THE SETTLEMENT APPROVAL PROCESS

10/03/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
OTHER FILING - OTHER DOCUMENT FILED ON 12/08/2023
ANDREW ROBBINS, BRANDY GROVER, RAY MAC, MALCOLM PIERCE, LANH DANH HYNH NOTICE OF SUBSTITUTION UNDER RULE 25(D)(1)

10/03/2024 Party(s): ANDREW ROBBINS,MAINE COMMISSION OF INDIGENT LEGAL SERVICES,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK,MICHAEL CAREY,ROGER KATZ,MATTHEW MORGAN-SUBSTITUTED,RONALD SCHEIDER-SUBSTITUED
MOTION - OTHER MOTION DENIED ON 02/27/2024
M MICHAELA MURPHY , JUSTICE
SECOND AMENDED JOINT MOTION TO CONDUCT PRELIMINARY REVIEW OF SECOND AMENDEDCLASS ACTION SETTLEMENT, DIRECT NOTICE TO CLASS MEMBERS OF AMENDED PROPOSED SETTLEMENT

10/03/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
OTHER FILING - OTHER DOCUMENT FILED ON 03/11/2024
PETITION TO INTERVENE FILED BY COUNSEL FOR PLT.

10/03/2024 Party(s): STATE OF MAINE AS TO COUNT III
APPEAL - NOTICE OF APPEAL SENT TO REPORTER/ER ON 10/03/2024

10/03/2024 Party(s): STATE OF MAINE AS TO COUNT III
APPEAL - NOTICE OF APPEAL SENT TO LAW COURT ON 10/03/2024

10/07/2024 TRIAL - BENCH SCHEDULED FOR 12/09/2024 at 08:30 a.m.
BETWEEN 12/9 AND 12/20/24

10/07/2024 TRIAL - BENCH NOTICE SENT ON 10/18/2024

10/11/2024 HEARING - PRETRIAL/STATUS HELD ON 10/11/2024
M MICHAELA MURPHY , JUSTICE
TELEPHONE CONFERENCE WITH COUNSEL GARVIN, HEIDEN, WARNER, JANDL, MARTIN,HAIMER, WICKENSTEIN, JOHANSON, SMITH, MAGENIS AND TABITHA TARDIFF REGARDING TRIAL PLAN

10/16/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
MOTION - OTHER MOTION FILED ON 10/15/2024
PLTS MOTION TO STRIKE DEFS JURY TRIAL DEMAND AS TO COUNT I

10/16/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
MOTION - MOTION TO AMEND PLEADING FILED ON 10/15/2024
PLTS MOTION TO AMEND SCHEDULING ORDER AS TO EXPERT WITNESS DESIGNATION FILED BY PLTS SERVE THEIR EXPERT WITNESS DESIGNATION ON DEFS BY OCT. 15, 2024

10/18/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
MOTION - MOTION TO AMEND PLEADING GRANTED ON 10/18/2024
M MICHAELA MURPHY , JUSTICE
BY AGREEMENT OF THE PARTIES, DEADLINE TO FILE ALL MOTIONS RE: SUMMARY FOR SUMMARY JUDGMENT IS NOW 11/15/24. 10/18/24: COPY OF ORDER MAILED TO COUNSEL OF RECORD THIS DATE.

10/18/2024 Party(s): JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS
ATTORNEY - RETAINED ENTERED ON 10/18/2024
Defendant's Attorney: SEAN D MAGENIS

10/18/2024 Party(s): RONALD SCHEIDER-SUBSTITUED
ATTORNEY - RETAINED ENTERED ON 10/18/2024
Defendant's Attorney: SEAN D MAGENIS

10/18/2024 Party(s): MATTHEW MORGAN-SUBSTITUTED
ATTORNEY - RETAINED ENTERED ON 10/18/2024
Defendant's Attorney: SEAN D MAGENIS

10/18/2024 Party(s): ROBERT CUMMINS-SUBSTITUTED
ATTORNEY - RETAINED ENTERED ON 10/18/2024
Defendant's Attorney: SEAN D MAGENIS

10/18/2024 Party(s): RANDALL BATES
ATTORNEY - RETAINED ENTERED ON 10/18/2024
Defendant's Attorney: SEAN D MAGENIS

10/18/2024 Party(s): KIMBERLY MONAGHAN
ATTORNEY - RETAINED ENTERED ON 10/18/2024
Defendant's Attorney: SEAN D MAGENIS

10/18/2024 Party(s): DAVID SOUCY

ATTORNEY - RETAINED ENTERED ON 10/18/2024
Defendant's Attorney: SEAN D MAGENIS

10/18/2024 HEARING - PRETRIAL/STATUS SCHEDULED FOR 11/22/2024 at 03:00 p.m. in Room No. 3
NOTICE TO PARTIES/COUNSEL 11/18/24 ELECTRONICALLY VIA ZOOM HTTPS//COURTS.MAINE-MAINE-GOV.ZOOM/J/93222930705 MEETING ID: 9322293 0705 PASSCODE 750903

10/18/2024 HEARING - PRETRIAL/STATUS NOTICE SENT ON 10/18/2024

10/23/2024 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES
RESPONSIVE PLEADING - RESPONSE FILED ON 10/23/2024
Defendant's Attorney: SEAN D MAGENIS
DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO AMEND SCHEDULING ORDER AS TO EXPERT WITNESSES

10/28/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
MOTION - MOTION TO AMEND PLEADING GRANTED ON 10/28/2024
M MICHAELA MURPHY , JUSTICE
ORDER AMENDING SCHEDULING ORDER REGARDING EXPERT DEADLINE IS GRANTED; PLTS SHALL SERVE THEIR EXPERT-WITNESS DESIGNATION ON DEFS BY 10/15/24. COPY OF ORDER TO ALL PARTIES THIS DATE ELECTRONICALLY AND VIA USPS AS WELL

10/29/2024 ORDER - COURT ORDER ENTERED ON 10/24/2024
ANDREW HORTON , ASSOCIATE JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO PARTIES/COUNSEL 10/29/24 ORDER PERMITTING TIRAL COURT ACTION: IT IS ORDERED THAT THE PROVISIONS OF MRAPP.3(B) ARE SUSPENDED. THE TRIAL COURT MAY TAKE ANY ACTION ON AND MAY PROCEED WITH ITS MATTER IN THE USUAL COURSE AS THOUGH NO APPEAL HAD BEEN TAKEN. THIS ORDER IS EFFECTIVE RETROATIVELY AS NECESSARY TO VALIDATE ANY ACTION AFTER THE STATE FILED ITS NOTICE OF APPEAL(CONT

10/29/2024 ORDER - COURT ORDER ENTERED ON 10/24/2024
ANDREW HORTON , ASSOCIATE JUSTICE
ORDER PERMITTING TRIAL COURT ACTION (CONT) BUT BEFORE THE DATE OF THIS ORDER. 10/29/24: COPIES OR ORDER TO COUNSEL ELECTRONICALLY AND USPS THIS DATE

10/29/2024 Party(s): OFFICE OF THE ATTORNEY GENERAL
RESPONSIVE PLEADING - RESPONSE FILED ON 10/28/2024
Defendant's Attorney: SEAN D MAGENIS
DEFENDANTS RESPONSE TO PLTS MOTION TO AMEND SCHEDULING ORDER AS TO EXPERT WITNESSES FILED

10/31/2024 MOTION - MOTION TO QUASH SUBPOENA FILED ON 10/30/2024
MOTION TO QUASH/MODIFY SUBVPOENA WITH INCORPORATED MEMO OF LAW FILED BY BARBARA CARDONE, DIRECTOR OF LEGAL AFFAIRS AND PUBLIC RELATIONS, MAINE JUDICIAL BRANCH

11/01/2024 HEARING - MOTION TO QUASH SUBPOENA SCHEDULED FOR 11/04/2024 at 02:30 p.m. in Room No. 3
FOLLOWING THIS HEARING THERE WILL BE A CONFERENCE REGARDING THE APPEAL

11/01/2024 HEARING - MOTION TO QUASH SUBPOENA NOTICE SENT ELECTRONICALLY ON 11/01/2024

11/04/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
RESPONSIVE PLEADING - RESPONSE FILED ON 11/01/2024
Plaintiff's Attorney: ZACHARY L HEIDEN
RESPONSE TO MOTION TO QUASH OR MODIFY SUBPOENA FILED BY COUNSEL FOR THE PLTS

11/04/2024 Party(s): OFFICE OF THE ATTORNEY GENERAL
MOTION - OTHER MOTION FILED ON 11/01/2024
Defendant's Attorney: PAUL SUITTER
MOTION FOR CARIFICATION OF ORDER PERMITTING TRIAL COURT ACTION FILED

11/04/2024 OTHER FILING - TRANSCRIPT FILED ON 11/01/2024
Defendant's Attorney: PAUL SUITTER
REQUEST FOR TRANSCRIPT FILED 11/4/24: ORDER FORM EMAILED TO OTO ELECTRONICALLY. TRANSCRIPT ORDER COMPLETED AND FORWARDED TO OTO BY CTA SANDRA BOURGET ON 11/4/24

11/04/2024 HEARING - MOTION TO QUASH SUBPOENA CONTINUED ON 11/04/2024
M MICHAELA MURPHY , JUSTICE

11/04/2024 HEARING - MOTION TO QUASH SUBPOENA SCHEDULED FOR 11/12/2024 at 01:00 p.m.
M MICHAELA MURPHY , JUSTICE
VIA TELEPHONE 1-888-450-5996 PASSCODE 9152301#

11/06/2024 Party(s): AARON FREY, AAG,OFFICE OF THE ATTORNEY GENERAL
RESPONSIVE PLEADING - RESPONSE FILED ON 11/05/2024
Defendant's Attorney: SEAN D MAGENIS
OPPOSITION TO PLTS MOTION TO STRIKE DEFS JURY TRIAL DEMAND AS TO COUNT I FILED

11/06/2024 OTHER FILING - OTHER DOCUMENT FILED ON 11/06/2024
ANDREW HORTON , ASSOCIATE JUSTICE
ORDER ON MOTION FOR CCLARIFICATION OF ORDER

11/06/2024 HEARING - OTHER HEARING SCHEDULED FOR 11/08/2024 at 08:30 a.m.
CONFERENCE VIA ZOOM FOR ORDER ON MOTION FOR CLARIFICATION OF ORDER VIA ZOOM; LINK ON THE JUDGES BOOK FOR THIS DATE AND TIME

11/12/2024 HEARING - OTHER HEARING HELD ON 11/08/2024
M MICHAELA MURPHY , JUSTICE

11/12/2024 Party(s): ANDREW ROBBINS,MAINE COMMISSION OF INDIGENT LEGAL SERVICES,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK
MOTION - OTHER MOTION FILED ON 11/12/2024
JOINT MOTION TO AMEND SCHEDULING ORDER AND AMENDED SCHEDULING ORDER FOR JUSTICE MURPHY TO SIGN.

11/14/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
RESPONSIVE PLEADING - RESPONSE FILED ON 11/12/2024
Plaintiff's Attorney: ZACHARY L HEIDEN
ATTY. GARVAN & SOTOOHI. PLT. REPLY IN SUPPORT OF MOTION TO STRIKE DEFS JURY TRIAL DEMAND AS TO CT 1

11/14/2024 Party(s): ERIC SAMPSON,ERIC SAMPSON,PETER JOHNSON,KEVIN JOYCE,SCOTT NICHOLS,SCOTT KANE,KENNETH MASON,PATRICK POLKY,TODD BRACKET,CHRISTOPHER WAINWRIGHT,TROY MORTON,ROBERT YOUNG,JOEL MERRY,DALE LANCASTER,JASON TRUNDY,BARRY CURTIS,WILLIAM KING
MOTION - OTHER MOTION FILED ON 11/13/2024
Defendant's Attorney: MICHAEL LICHTENSTEIN
MOTION FOR CLARIFICATION ON BEHALF OF THE SHERIFFS

11/14/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
RESPONSIVE PLEADING - RESPONSE FILED ON 11/14/2024
Plaintiff's Attorney: ZACHARY L HEIDEN
CAROL GARVAN AND ANAHITA SOTOOHI CORRECTED SINGLE SIDED FILING OF PLTS. REPLY IN SUPPORT OF MOTION TO STRIKE DEFS JURY DEMAND AS TO COUNT I FILED BY COUNSEL FOR THE PLTS

11/18/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
OTHER FILING - WITNESS & EXHIBIT LIST FILED ON 11/15/2024
Plaintiff's Attorney: ZACHARY L HEIDEN

11/18/2024 TRIAL - JURY TRIAL SCHEDULED FOR 01/09/2025
JURY SELECTION 1/9/24 AND 1/10/24

11/18/2024 TRIAL - JURY TRIAL NOTICE SENT ON 11/18/2024
ELECTRONICALLY AND USPS THIS DATE. JURY SELECTION

11/18/2024 TRIAL - JURY TRIAL NOTICE SENT ON 11/18/2024

11/18/2024 HEARING - OTHER MOTION SCHEDULED FOR 01/23/2025 at 08:30 a.m. in Room No. 3
COUNT III (HABEUS)

11/18/2024 HEARING - OTHER MOTION NOTICE SENT ON 11/18/2024
COUNT III (HABEUS)

11/18/2024 HEARING - OTHER MOTION SCHEDULED FOR 11/24/2024
COUNT III HABEUS

11/18/2024 HEARING - OTHER MOTION NOTICE SENT ON 11/18/2024
COUNT III HABEUS

11/19/2024 HEARING - MOTION TO QUASH SUBPOENA NOT HELD ON 11/18/2024
M MICHAELA MURPHY , JUSTICE

11/19/2024 MOTION - MOTION TO QUASH SUBPOENA MOOT ON 11/18/2024
M MICHAELA MURPHY , JUSTICE
MOTION IS MOOT AS PARTIES HAVE RESOLVED THE ISSUE PRESENTED. COPY OF ORDER TO COUNSEL ELECTRONICALLY 11/18/24; VIA USPS 11/19/24.

11/19/2024 HEARING - OTHER MOTION NOT HELD ON 11/19/2024
M MICHAELA MURPHY , JUSTICE
COUNT III HABEUS

11/19/2024 Party(s): ERIC SAMPSON,ERIC SAMPSON,PETER JOHNSON,KEVIN JOYCE,SCOTT NICHOLS,SCOTT KANE,KENNETH MASON,PATRICK POLKY,TODD BRACKET,CHRISTOPHER WAINWRIGHT,TROY MORTON,ROBERT YOUNG,JOEL MERRY,DALE LANCASTER,JASON TRUNDY,BARRY CURTIS,WILLIAM KING
MOTION - OTHER MOTION GRANTED ON 11/18/2024
M MICHAELA MURPHY , JUSTICE
MOTION FOR CLARIFICATION ON BEHALF OF THE SHERIFFS THE COURT APPROVES THIS REQUEST REGARDING THE ROLE THE SHERIFFS WILL PLAY AT ANY TRIAL IN COUNT III. THE COURT UNDERSTANDS THAT HE PARTIES WILL DISMISS THIS FURTHER AT ANY PRETRIAL CONFERENCE. COPY OF ORDER SENT ELECTRONICALLY TO COUNSEL OF RECORD 11/18/24; 11/19/24 USPS

11/19/2024 Party(s): ANDREW ROBBINS,MAINE COMMISSION OF INDIGENT LEGAL SERVICES,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK
MOTION - OTHER MOTION GRANTED ON 11/18/2024
M MICHAELA MURPHY , JUSTICE
JOINT MOTION TO AMEND SCHEDULING ORDER AND AMENDED SCHEDULING ORDER FOR JUSTICE MURPHY TO SIGN. WITNESS AND EXHIBIT EXCHANGE 11/15/24; PRETRIAL CONFERENCE

11/19/2024 TRIAL - BENCH NOT HELD ON 11/19/2024

11/19/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
OTHER FILING - OTHER DOCUMENT FILED ON 11/18/2024
PLT FOURTH SET OF INTERROGATORIES TO THE MCPDC DEFS (PHASE 1)

11/19/2024 Party(s): STATE OF MAINE AS TO COUNT III
OTHER FILING - TRANSCRIPT ORDER FORM FILED ON 11/19/2024
Defendant's Attorney: PAUL SUITTER

11/20/2024 MOTION - OTHER MOTION MOOT ON 11/20/2024
M MICHAELA MURPHY , JUSTICE
MOT FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF CLASS OF INDIGENT ACCUSED COPY OF ORDER MAILED TO COUNSEL OF RECORD THIS DATE.

11/22/2024 Party(s): OFFICE OF THE ATTORNEY GENERAL
MOTION - OTHER MOTION OTHER DECISION ON 11/04/2024
ANDREW HORTON , ASSOCIATE JUSTICE

MOTION FOR CARIFICATION OF ORDER PERMITTING TRIAL COURT ACTION FILED ORDER ON MOTION FOR CLARIFICATION OF ORDER....THIS ORDER DOES NOT DIRECT THE SUPERIOR COURT TO TAKE ANY PARTICULAR ACTION AND DOES NOT PROHIBIT THE SUPERIOR COURT FROM TAKING ANY PARTICULAR ACTION.

11/22/2024 ORDER - COURT ORDER ENTERED ON 11/04/2024
ANDREW HORTON , ASSOCIATE JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. FROM LAW COURT ORDER ON MOTION FOR CLARIFICATION OF ORDER; ORDER DATED 10/24/24 IS AMENDED: THIS ORDER DOES NOT DIRECT THE SUPEIOR COURT TO TAKE ANY PARTICULAR ACTION AND DOES NOT PROHIBIT THE SUPERIOR COURT FROM TAKING ANY PARTICULAR ACTION.

11/22/2024 Party(s): AARON FREY, AAG
MOTION - MOTION FOR ENLARGEMENT OF TIME MOOT ON 11/22/2024
M MICHAELA MURPHY , JUSTICE

11/22/2024 MOTION - OTHER MOTION GRANTED ON 03/15/2024
M MICHAELA MURPHY , JUSTICE
PLT MOT FOR LEAVE TO EXCEED PAGE LIMITS

11/22/2024 ORDER - COURT ORDER ENTERED ON 01/22/2024
M MICHAELA MURPHY , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO PARTIES/COUNSEL 11/22/24 VIA EMAIL AND USPS ORDER ON MOTION TO WITHDRAW FILED BY ATTY. CEDRONE WILL BE DEPARTING GOODWIN PROCTER, LLP EFFECTIVE 11/30/24.

11/22/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
MOTION - MOTION PARTIAL SUMMARY JUDG FILED WITH AFFIDAVIT ON 11/22/2024

11/25/2024 Party(s): OFFICE OF THE ATTORNEY GENERAL
MOTION - MOTION TO CONTINUE FILED ON 11/22/2024
Defendant's Attorney: PAUL SUITTER
AS TO COUNT V WITH INCORPORATED MEMOR OF LAW PROPOSED ORDER AND EXHIBIT A CONDENSED TRANSCRIPT AND STATEMENT OF MATERIAL FACTS NO IN GENUINE ISSUE WITH EXHIBIT A AND B

11/25/2024 Party(s): OFFICE OF THE ATTORNEY GENERAL
MOTION - MOTION SUMMARY JUDGMENT FILED ON 11/22/2024
Defendant's Attorney: PAUL SUITTER
OF COUNT V WITH PROPOSED ORDER

11/25/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
MOTION - MOTION IN LIMINE FILED ON 11/25/2024
Plaintiff's Attorney: ZACHARY L HEIDEN
TO EXLUDE EVIDENCE OF PRIOR CONVICTIONS, PRIOR ARRESTS, BAD ACTS AND PENDING CRIMINAL CHARGES

11/25/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH

MOTION - MOTION PARTIAL SUMMARY JUDG FILED ON 11/22/2024

Plaintiff's Attorney: ZACHARY L HEIDEN

WITH MEMORANDUM OF LAW, STATEMENT OF MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT; MEMO OF LAW IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT WITH PROPOSED ORDER AND AFFIDAVITS AND DEPOSITIONS OF PARTIES(19)

11/25/2024 Party(s): OFFICE OF THE ATTORNEY GENERAL

MOTION - MOTION SUMMARY JUDGMENT FILED ON 11/22/2024

Defendant's Attorney: SEAN D MAGENIS

ON COUNT I AND II OF PLTS. AMENDED COMPLAINT, STATEMENT OF MATERIAL FACT IN SUPPORT.

11/25/2024 Party(s): OFFICE OF THE ATTORNEY GENERAL

MOTION - MOTION PARTIAL SUMMARY JUDG FILED ON 11/22/2024

Defendant's Attorney: SEAN D MAGENIS

FOR PARTIAL SUMMARY JUDMGENT ON RELIEF DEMANDED IN COUNTS I AND II WITH EXHIBITS, STATEMENT OF MATERIAL FACTS

11/25/2024 Party(s): OFFICE OF THE ATTORNEY GENERAL

MOTION - OTHER MOTION FILED ON 11/22/2024

Plaintiff's Attorney: SEAN D MAGENIS

MOTION TO LIMIT TESTIMONY OF RACHEL CASEY WITH EXHIBITS

11/25/2024 Party(s): OFFICE OF THE ATTORNEY GENERAL

MOTION - OTHER MOTION FILED ON 11/22/2024

Defendant's Attorney: SEAN D MAGENIS

MOTION TO EXCLUDE EXPERT TISTIMONY OF LEGAL MATTERS WITH EXHIBITS

11/25/2024 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES

ATTORNEY - RETAINED ENTERED ON 11/22/2024

Defendant's Attorney: ALEXANDER BEALS

11/25/2024 HEARING - PRETRIAL/STATUS HELD ON 11/22/2024

M MICHAELA MURPHY , JUSTICE

ON THE RECORD COURTROOM # 1

11/25/2024 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH

OTHER FILING - OTHER DOCUMENT FILED ON 11/22/2024

Plaintiff's Attorney: ZACHARY L HEIDEN

ALL COUNSEL FOR THE PLTS-STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT

11/26/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH

MOTION - MOTION TO INTERVENE DENIED ON 11/20/2024

M MICHAELA MURPHY , JUSTICE

COPIES TO PARTIES/COUNSEL 11/26/24. CLERK MAY NOTE THIS ON THE DOCKET PURSUANT TO RULE 79(A) OF THE MAINE RULES.

11/26/2024 MOTION - MOTION TO INTERVENE DENIED ON 11/20/2024

M MICHAELA MURPHY , JUSTICE

COPIES TO PARTIES/COUNSEL 11/26/24. CLERK IS DIRECTED TO INCORPORATE THIS ORDER BY REFERENCE PURSUANT TO MRCIV.P 79(A) OF THE MAINE RULES.

11/26/2024 ORDER - COURT ORDER ENTERED ON 11/26/2024

M MICHAELA MURPHY , JUSTICE

ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. ORDER ON DEFS CONSENT TO MOTION TO ENLARGE DEADLINE TO RESPOND TO COMPLAINTIS GRANTED; DEFS DEADLINE TO RESPOND TO THE COMPLAINT IS HEREBY ENLARGED TO 12/9/24. 11/26/24: COPY SENT ELECTRONICALLY AND USPS.

11/26/2024 ORDER - COURT ORDER ENTERED ON 11/21/2024

M MICHAELA MURPHY , JUSTICE

ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. ORDER ON PLTS MOTION TO EXCEED PAGE LIMITS IS HEREBY GRANTED. ALL PARTIES SHALL BE PERMITTED TO FILE MEMORANDA IN SUPPORT OF THEIR MOTIONS FOR SUMMARY JUDGMENT THAT ARE NOT LONGER THAN 25 PAGES. 11/26/24: COPY TO COUNSEL OF RECORD ELECTRONICALLY AND VIA USPS

11/26/2024 Party(s): ANDREW ROBBINS

ATTORNEY - RETAINED ENTERED ON 11/21/2021

Plaintiff's Attorney: ALEXANDRA HARRIMAN

Party(s): BRANDY GROVER

ATTORNEY - RETAINED ENTERED ON 11/21/2024

Plaintiff's Attorney: ALEXANDRA HARRIMAN

Party(s): RAY MACK

ATTORNEY - RETAINED ENTERED ON 11/21/2024

Plaintiff's Attorney: ALEXANDRA HARRIMAN

Party(s): MALCOLM PEIRCE

ATTORNEY - RETAINED ENTERED ON 11/21/2024

Plaintiff's Attorney: ALEXANDRA HARRIMAN

Party(s): LANH DANH HUYNH

ATTORNEY - RETAINED ENTERED ON 11/21/2024

Plaintiff's Attorney: ALEXANDRA HARRIMAN

12/02/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH

MOTION - MOTION FOR WITHDRAWAL OF CNSL FILED ON 11/27/2024

WITH MEMORANDUM OF LAW, DRAFT ORDER, NOTICE OF HEARING WITHDRAWL OF GERARD CEDRONE- PRO HAC VICE

12/17/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE

RESPONSIVE PLEADING - RESPONSE FILED ON 12/13/2024

Plaintiff's Attorney: ZACHARY L HEIDEN

OPPOSITION TO MCPDS DEFS MOTION FOR SUMMARY JUDGMENT ON LIABLITIY COUNTS I & II

12/17/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE

RESPONSIVE PLEADING - RESPONSE FILED ON 12/13/2024

Plaintiff's Attorney: ZACHARY L HEIDEN

RESPONSE TO MCPDS DEFS STATEMENT OF MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON COUNTS I & IIOF PLTS. AMENDED COMPLAINT

12/17/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH

OTHER FILING - OTHER DOCUMENT FILED ON 12/13/2024

Plaintiff's Attorney: ZACHARY L HEIDEN

PLST STATEMENT OF ADDITIONAL MATERIAL FACTS IN OPPOSITION TO MCPDS DEFS MOTION FOR SUMMARY JUDMGNT ON COUNT I &II AS TO LIABILTIY

12/17/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH

OTHER FILING - AFFIDAVIT FILED ON 12/13/2024

Plaintiff's Attorney: ZACHARY L HEIDEN

SUPPLEMENT AFFIDAVIT OF ELEANOR SHEA AND ITS EXHIBITS

12/17/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH

RESPONSIVE PLEADING - RESPONSE FILED ON 12/13/2024

Plaintiff's Attorney: ZACHARY L HEIDEN

PLTS OPPOSITION TO DEF. MOTION FOR PARTIAL SUMMARY JUDGMENT ON RELIEF DEMANDED IN COUNSE I AND II OF THE AMENDED COMPLAINT

12/17/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH

RESPONSIVE PLEADING - RESPONSE FILED ON 12/13/2024

Plaintiff's Attorney: ZACHARY L HEIDEN

PLTS RESPOSE TO MCPDS DEFS STATEMENT OF MATERIAL FACTS IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT ON RELIEF DEMANDED IN COUNTS I & II OF AMENDED COMPLAINT. PLTS. OPPOSITION TO STATE OF MAINE'S MOTION FOR SUMMARY JUDGMENT WITH INCORPORATED MEMORANDUM OF LAW. PLTS RESPONSE TO DEF. STATE OF MAINE RULE 56(H)(I) STATEMENT OF MATERIAL FACTS NOT IN GENUINE ISSUE; PLTS OBJ. TO DEFS. STATE OF MAINE MOTION TO CONTINUE TRIAL.

12/17/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH

RESPONSIVE PLEADING - RESPONSE FILED ON 12/13/2024

Plaintiff's Attorney: ZACHARY L HEIDEN

PLTS OPPOSITION TO DEFS MOTION TO EXCLUDE TESTIMONY ON APPLICABLE PRINCIPLES OF THE LAW AND PLTS OPPOSITION TO DEFS MOTION TO LIMIT THE TESTIMONY.

12/17/2024 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK,MICHAEL CAREY,ROGER KATZ,MATTHEW MORGAN-SUBSTITUTED,RONALD SCHEIDER-SUBSTITUED,AARON FREY, AAG,ERIC SAMPSON,ERIC SAMPSON,PETER JOHNSON,KEVIN JOYCE,SCOTT NICHOLS,SCOTT KANE,KENNETH MASON,PATRICK POLKY,TODD BRACKET,CHRISTOPHER WAINWRIGHT,TROY MORTON,ROBERT YOUNG,JOEL MERRY,DALE LANCASTER,JASON TRUNDY,BARRY CURTIS,WILLIAM KING,OFFICE OF THE ATTORNEY GENERAL,MAINE COMMISSION ON PUBLIC DEFENSE SERVICES,JIM BILLINGS,ROBERT CUMMINS-SUBSTITUTED,RANDALL BATES,KIMBERLY MONAGHAN,DAVID

SOUCY,MICHAEL CANTARA
RESPONSIVE PLEADING - RESPONSE FILED ON 12/13/2024
Defendant's Attorney: SEAN D MAGENIS
DEFS OPPOSITION TO PLTS MOTION FOR SUMMARY JUDGMENT

12/17/2024 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK,MICHAEL CAREY,ROGER KATZ,MATTHEW MORGAN-SUBSTITUTED,RONALD SCHEIDER-SUBSTITUED,AARON FREY, AAG,ERIC SAMPSON,ERIC SAMPSON,PETER JOHNSON,KEVIN JOYCE,SCOTT NICHOLS
RESPONSIVE PLEADING - RESPONSE FILED ON 12/13/2024
Defendant's Attorney: SEAN D MAGENIS
OPPOSITION TO PLTS MOTION IN LIMINE TO EXCLUDE EVIDENCE OF PRIOR CONVICTIONS, PRIOR ARRESTS, BAD ACTS OR PENDING CRIMINAL CHARGES

12/17/2024 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK,MICHAEL CAREY,ROGER KATZ,MATTHEW MORGAN-SUBSTITUTED,RONALD SCHEIDER-SUBSTITUED,AARON FREY, AAG,ERIC SAMPSON,ERIC SAMPSON,PETER JOHNSON,KEVIN JOYCE,SCOTT NICHOLS,SCOTT KANE,KENNETH MASON,PATRICK POLKY,TODD BRACKET,CHRISTOPHER WAINWRIGHT,TROY MORTON,ROBERT YOUNG,JOEL MERRY,DALE LANCASTER,JASON TRUNDY,BARRY CURTIS,WILLIAM KING,OFFICE OF THE ATTORNEY GENERAL,MAINE COMMISSION ON PUBLIC DEFENSE SERVICES,JIM BILLINGS,ROBERT CUMMINS-SUBSTITUTED,RANDALL BATES,KIMBERLY MONAGHAN,DAVID SOUCY,MICHAEL CANTARA
RESPONSIVE PLEADING - RESPONSE FILED ON 12/13/2024
Defendant's Attorney: SEAN D MAGENIS
DEFS. OPPOSING STATEMENT OF MATERIAL FACTS WITH EXHIBITS A-N

12/17/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
MOTION - MOTION FOR WITHDRAWAL OF CNSL GRANTED ON 12/11/2024
M MICHAELA MURPHY , JUSTICE
COPIES TO PARTIES/COUNSEL 12/17/24

12/20/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
RESPONSIVE PLEADING - RESPONSE FILED ON 12/20/2024
RECEIVED/FILED PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT S/ ZACHAREY HEIDEN ESQ

12/20/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
RESPONSIVE PLEADING - RESPONSE FILED ON 12/20/2024
REC/FIL PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR PARITIAL SUMMARY JUDGEMENT AS TO DEFENDANTS STATE OF MAINE S/ ZACH HEIDEN ESQ

12/20/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
RESPONSIVE PLEADING - RESPONSE FILED ON 12/20/2024
PLAINTIFF'S REPLY TO DEFT'S RESPONSE TO PLAINTIFF'S STATEMENTS OF MATERIAL FACTS S/ ZACHARY HEIDEN ESQ

12/20/2024 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH

RESPONSIVE PLEADING - RESPONSE FILED ON 12/20/2024

REC/FIL PLAINTIFF'S REPLY IN SUPPORT OF MOTION IN LIMINE TO EXCLUDE EVIDENCE OF PRIOR CONVICTIONS , PRIOR ARRESTS, BAD ACTS OR PENDING CRIMINAL CHARGES S/ZACHARY HEIDEN ESQ

01/02/2025 TRIAL - BENCH SCHEDULED FOR 01/24/2025 at 08:30 a.m. in Room No. 3

01/02/2025 HEARING - OTHER HEARING SCHEDULED FOR 01/06/2025 at 01:00 p.m.

NOTICE TO PARTIES/COUNSEL 12/31/24 ELECTRONICALLY.

01/03/2025 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH

MOTION - MOTION PARTIAL SUMMARY JUDG GRANTED ON 01/03/2025

M MICHAELA MURPHY , JUSTICE

COPIES TO PARTIES/COUNSEL 1/3/25PTLS. MOTION FOR PARTIAL SUMMARY JUDGMENT IS GRANTED ON THE ISSUE OF LIABLITLY ONLY. THE COURT WILL CONDUCT FURTHER PROCEEDINGS TO CONSIDER THE ARGUMENTS OF THE PARTIES ON THE ISSUE OF REMEDY.2/21/25: MOTION FOR PARTIAL SUMMARY JUDGMENT ON RELIEF DEMANED IN COUNTS I AND II IS DENIED.

01/03/2025 Party(s): OFFICE OF THE ATTORNEY GENERAL

MOTION - MOTION SUMMARY JUDGMENT DENIED ON 01/03/2025

M MICHAELA MURPHY , JUSTICE

COPIES TO PARTIES/COUNSEL 1/3/25. THE MCPDS DEFS MOTION FOR SUMMARY JUDGMENT ON COUNT I IS DENIED. MOTION FOR PARTIAL SUMMARY JUDGMENT ON RELIEF DEMEANTED IN COUNT I AND II IS DENIED.

01/03/2025 Party(s): OFFICE OF THE ATTORNEY GENERAL

MOTION - MOTION SUMMARY JUDGMENT GRANTED ON 01/03/2025

M MICHAELA MURPHY , JUSTICE

COPIES TO PARTIES/COUNSEL ELECTRONICALLY & VIA MAIL 1/3/25 ON COUNT II THE MCPDS DEFS MOTION FOR SUMMARY JUDGMENT IS GRANTED AND PLTS MOTION ON THE ISSUED OF LIABILITY OF DENIED. ON COUNT III, THE HABEUSPROCEEDING WILL PROCEED BEFORE THE COURT ON 1/22-24, 2025. THE LEGAL FINDINGS MADE IN THIS ORDER MAY BE APPLIED TO ANY ORDER ISSUED ON COUNT III AFTER HEARING AND ARGUMENT.

01/03/2025 Party(s): OFFICE OF THE ATTORNEY GENERAL

MOTION - MOTION SUMMARY JUDGMENT OTHER DECISION ON 01/03/2025

M MICHAELA MURPHY , JUSTICE

ON SOVEREIGN IMMUNITY IS DEFERRED AND THE MOTION TO CONTINUE TRIAL ON COUNTV ONLY IS GRANTED IN PART TO GIVE THE STATE OF MAINE A BRIEF PERIOD TO CONDUCT DISCOVERY FOR REASONS STATED ABOVE. 1/3/25: COPIES TO COUNSEL OF RECORD ON 1/3/25 ELECTRONICALLY AND USPS 1/3/25.

01/03/2025 ORDER - COURT ORDER ENTERED ON 01/03/2025

M MICHAELA MURPHY , JUSTICE

ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO PARTIES/COUNSEL COMBINED ORDER ON PARTIALLY DISPOSITION MOTIONS COUNT I PLTS MOTION FOR PARTIAL IS GRANTED ON LIABITLITY ONLY; DEFS MOTION FOR MSJ COUNT I IS DENIED. COUNT II DEFS MSJ IS GRANTED & THE PLTS MOTION ON ISSUE OF LIABILITY IS DENIED. COUNT III, THE HABEUS WILL PROCEED

BEFORE THE COURT ON 1/22-24 LEGAL FINDINGS MADE IN THIS ORDER MAY BE APPLIED

01/03/2025 ORDER - COURT ORDER ENTERED ON 01/03/2025
M MICHAELA MURPHY , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO PARTIES/COUNSEL 1/3/25 ELECTRONIALLY AND USPS(C0NT) MAY BE APPPLIED TO ANY ORDER ISSUED ON COUNT III AFTER HEARING & ARGUMENT. COUNT V MOTION FOR SUMMARY JUDGMENT FILED BY THE STATE ON SOVEREIGHN IMMUUNITY IS DEFERRED AND MOTION TO CONTINUE TRIAL ON COUNT V ONLY IS GRANTED IN PART TO GIVE THE STATE A BRIEF PERIOD TO CONDUCT DISCOVERY FOR REASONS STATED ABOVE

01/06/2025 HEARING - OTHER HEARING HELD ON 01/06/2025
M MICHAELA MURPHY , JUSTICE
ORDER ISSUED THIS DATE. SEE DOCKET ENTRY FOR COURT ORDER

01/06/2025 ORDER - COURT ORDER ENTERED ON 01/06/2025
M MICHAELA MURPHY , JUSTICE
BY 1/8/25 PLTS WILL FILE WITNESS LIST AND MOTION REGARDING REMEDIES SOUGHT IN COUNT I AND III. BY 1/20/25 MCPDS DEFS AND STATE OF MAINE WILL RESPOND TO PLTS MOTION. WITNESS LISTS FROM DEFS ARE DUE 1/17/25. ON COUNT 5 STATESHALL PROMULGATE INTERROGATORIES BY 1/8/25, & PLTS WILL RESPOND BY 1/17/25.SUPPLEMENTAL FILING ON COUNT 5 WILL BE DISCUSSED AND SCHEDULED ON THE MORNING OF 1/22/25. CASE SET FOR TRIAL PROCEEDINGS 1/22/25-1/24/25. NOTICE TO FOLLOW. COPIES TO ALL COUNSEL OF RECORD THIS DATE

01/06/2025 TRIAL - BENCH SCHEDULED FOR 01/22/2025 at 08:30 a.m. in Room No. 3

01/06/2025 TRIAL - BENCH SCHEDULED FOR 01/23/2025 at 09:00 a.m. in Room No. 3

01/06/2025 TRIAL - BENCH SCHEDULED FOR 01/24/2025 at 09:00 a.m. in Room No. 3

01/07/2025 TRIAL - BENCH NOTICE SENT ON 01/07/2025

01/09/2025 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE
MOTION - OTHER MOTION FILED ON 01/08/2025
Plaintiff's Attorney: ZACHARY L HEIDEN
MOTION FOR DECLARATORY AND INJUNCTIVE RELIEF AND HABEAS REMEDIES FILED

01/09/2025 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
OTHER FILING - WITNESS & EXHIBIT LIST FILED ON 01/08/2025
Plaintiff's Attorney: ZACHARY L HEIDEN

01/16/2025 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
OTHER FILING - EXHIBIT LIST FILED ON 01/15/2025
Plaintiff's Attorney: ZACHARY L HEIDEN
CAROL GARVAN, ANAHITA SOTOOHI, MATT WARNER ALEX HARRIMAN AND KEVIN MARTIN AND JORDAN BOCK AMENDED EXHIBIT LIST

01/17/2025 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE
MOTION - OTHER MOTION FILED ON 01/16/2025

Plaintiff's Attorney: ZACHARY L HEIDEN
FOR SAMANTHA JANDL. MOTION FOR PRO HAC VICE ADMISSION.

01/17/2025 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
OTHER FILING - EXHIBIT LIST FILED ON 01/17/2025
Plaintiff's Attorney: ZACHARY L HEIDEN
PLTS SECOND AMENDED EXHIBIT LIST FILED BY COUNSEL FOR PLTS.

01/17/2025 Party(s): MAINE COMMISSION ON PUBLIC DEFENSE SERVICES
OTHER FILING - WITNESS LIST FILED ON 01/17/2025
Defendant's Attorney: SEAN D MAGENIS
DEFS WITNESS LIST

01/17/2025 Party(s): MAINE COMMISSION ON PUBLIC DEFENSE SERVICES
MOTION - OTHER MOTION FILED ON 01/17/2025
Defendant's Attorney: SEAN D MAGENIS
MOTION TO ALTER OR AMEND COMBINED ORDER ON PARTIALLY DISPOSITIVE MOTIONS AND PROPOSED ORDER

01/17/2025 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
OTHER FILING - OTHER DOCUMENT FILED ON 01/17/2025
LETTER FILED REGARDING DECISIONS ON PENDING MOTIONS/STRUCTURE OF HEARING/ EXHIBITS AND DEPOSITION DESIGNATION FILED BY COUNSEL FOR THE PLTS.

01/21/2025 Party(s): OFFICE OF THE ATTORNEY GENERAL
RESPONSIVE PLEADING - RESPONSE FILED ON 01/21/2025
Defendant's Attorney: PAUL SUITTER
PII STATE OF MAINE'S RESPONSE TO PLTS MOTION FOR HABEAS REMEDIES FILED BY ATTY SUITTER

01/21/2025 Party(s): OFFICE OF THE ATTORNEY GENERAL,MAINE COMMISSION ON PUBLIC DEFENSE SERVICES
RESPONSIVE PLEADING - RESPONSE FILED ON 01/21/2025
Defendant's Attorney: SEAN D MAGENIS
DEFS OPPOSITION TO PLTS MOTION REGARDING RELIEF ON COUNT I OF PLTS AMENDED COMPLAINT.

01/21/2025 Party(s): OFFICE OF THE ATTORNEY GENERAL,MAINE COMMISSION ON PUBLIC DEFENSE SERVICES
MOTION - OTHER MOTION FILED ON 01/17/2025
Defendant's Attorney: PAUL SUITTER
STATE OF MAINE PARTY IN INTEREST ON COUNT III NOTICE REGARDING WITNESSES FILED

01/22/2025 OTHER FILING - OTHER DOCUMENT FILED ON 01/21/2025
M MICHAELA MURPHY , JUSTICE
MEDIA REQUESING COVERAGE OF PROCEEDING FILED BY PORTLAND PRESS HERALD. EMAILED BACK TO JULIA ARENSTAM WITH ZOOM LINK 1/21/25

01/22/2025 OTHER FILING - OTHER DOCUMENT FILED ON 01/22/2025

M MICHAELA MURPHY , JUSTICE

MEDICA REQUEST FILED BY MAINE PUBLIC RADIO ON 1/22/25; APPROVED AND EMAILEDBACK TO SUSAN SHARON WITH ZOOM LINK

01/22/2025 OTHER FILING - OTHER DOCUMENT FILED ON 01/22/2025

M MICHAELA MURPHY , JUSTICE

MEDIA REQUEST FILED BY MAINE MONITOR; EMAILED APPROVED BACK TO STEPHANIE MCFEETERS WITH ZOOM LINK THIS DATE.

01/22/2025 Party(s): ANDREW ROBBINS,MAINE COMMISSION OF INDIGENT LEGAL SERVICES,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK,SCOTT NICHOLS

OTHER FILING - ENTRY OF APPEARANCE FILED ON 01/21/2025

Defendant's Attorney: ROY PIERCE

01/22/2025 ORDER - COURT ORDER ENTERED ON 01/21/2025

M MICHAELA MURPHY , JUSTICE

ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO PARTIES/COUNSEL 1/22/25: COPY OF ORDER MAILED TO SAMANTHA JANDL THIS DATE.

01/22/2025 OTHER FILING - OTHER DOCUMENT FILED ON 01/21/2025

M MICHAELA MURPHY , JUSTICE

MEDIA REQUEST FILED AND APPROVED FOR WMTW-TV FOR VIDEO, AUDIO AND STILL/ VIDEO. COPY IN HAND TO MEDIA.

01/23/2025 Party(s): ERIC SAMPSON,ERIC SAMPSON,PETER JOHNSON,KEVIN JOYCE,SCOTT NICHOLS,SCOTT KANE,KENNETH MASON,PATRICK POLKY,TODD BRACKET,CHRISTOPHER WAINWRIGHT,TROY MORTON,ROBERT YOUNG,JOEL MERRY,DALE LANCASTER

RESPONSIVE PLEADING - RESPONSE FILED ON 01/23/2025 at 11:27 a.m.

Defendant's Attorney: MICHAEL LICHTENSTEIN

RESPONSE OF THE SHERIFFS FILED BY ATTY LICHTENSTEIN. AND PETER MARCHESI TO THE MOTION FOR DECLARATORY AND INJUNCTIVE RELIEF AND HABEAS REMEDIES

01/23/2025 Party(s): WILLIAM KING

RESPONSIVE PLEADING - RESPONSE FILED ON 01/23/2025

Defendant's Attorney: TYLER SMITH

RESPONSE TO PLTS MOTION FOR DECLARATORY AND INJUNCTIVE RELIEF AND HABEAS REMEDIES

01/24/2025 OTHER FILING - OTHER DOCUMENT FILED ON 01/24/2025

M MICHAELA MURPHY , JUSTICE

MEDIA REQUEST FILED BY WMTW-TV VIDEO AND AUDIO APPROVED BY JUSTICE MURPHY. COPY EMAILED TO SDHANDY@HEARST.COM.

01/24/2025 ORDER - COURT ORDER ENTERED ON 01/24/2025

M MICHAELA MURPHY , JUSTICE

ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. 1. BY 1/31/2025, PLTS WILL FILE THEIR MOTION IN OPPOSITION TO THE DEFS MOTION TO ALTER OR AMEND, WHICH THE DEFS FILED ON 1/17/25. THE DEFS MAY FILE AREPLY BY 2/7/25 2. BY 2/7/25,

PLTS WILL FILE THEIR POST-TRIAL BRIEF, ADDRESSING THE REMEDIES THEY SEEK UNDER COUNTS I, III AND V. DEFS RESPONSE WILL BE FILED BY 2/21/25. PLTS REPLY WILL BE FILED BY 2/28/25. COPIES EMAILED TO PARTIES AND USPS THIS DATE.

02/03/2025 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE
RESPONSIVE PLEADING - RESPONSE FILED ON 01/31/2025
Plaintiff's Attorney: ZACHARY L HEIDEN
PLTS OPPOSITION TO DEFS. MOTION TO ALTER OR AMEND COMBINED ORDER ON PARTIALLY DISPOSITIVE MOTIONS

02/04/2025 NOTE - OTHER CASE NOTE ENTERED ON 02/03/2025
TAPE TRANSCRIPT FORM FILED REQUESTED FROM JUSTICE MURPHY

02/07/2025 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
OTHER FILING - TRIAL BRIEF FILED ON 02/07/2025
Plaintiff's Attorney: ZACHARY L HEIDEN
REC/FIL PLAINTIFF'S POST TRIAL BRIEF ON DECLARATORY AND INJUNCITIVE RELEASE AND HABEAS REMEDIES S/ZACH HEIDEN ESQ CAROL GARVAN, ANAHITA SOTOOHI, MATT WARNER, ALEX HARRIMAN AND KEVIN MARTIN AND JORDAN BROCK ALONG WITH TRANSCIPTS OF ALL THREE DAYS.

02/10/2025 ORDER - COURT ORDER ENTERED ON 02/10/2025
M MICHAELA MURPHY , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO PARTIES/COUNSEL ORDER ON SEALING TRANSCRIPTS AND AUDIO FILE OF THE INCHAMBERS CONDUCTED ON JANUARY 24, 2025 AFTER THE CONCLUSION OF IN-COURT TRIAL.

02/10/2025 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK,MICHAEL CAREY,ROGER KATZ,MATTHEW MORGAN-SUBSTITUTED,RONALD SCHEIDER-SUBSTITUED,AARON FREY, AAG,ERIC SAMPSON,ERIC SAMPSON,PETER JOHNSON,KEVIN JOYCE,SCOTT NICHOLS,SCOTT KANE,KENNETH MASON,PATRICK POLKY,TODD BRACKET,CHRISTOPHER WAINWRIGHT,TROY MORTON,ROBERT YOUNG,JOEL MERRY,DALE LANCASTER,JASON TRUNDY,BARRY CURTIS,WILLIAM KING,OFFICE OF THE ATTORNEY GENERAL,MAINE COMMISSION ON PUBLIC DEFENSE SERVICES,JIM BILLINGS,ROBERT CUMMINS-SUBSTITUTED,RANDALL BATES,KIMBERLY MONAGHAN,DAVID SOUCY,MICHAEL CANTARA
OTHER FILING - REPLY MEMORANDUM FILED ON 02/07/2025
DEFT'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFT'S MOTION TO ALTER OR AMEND COMBINES ORDER ON PARTIALLY DISPOSITIVE MOTIONS S/SEAN MAGENIS ESQ

02/12/2025 OTHER FILING - TRANSCRIPT FILED ON 02/12/2025
VOLUME 1 THRU 3 OF THE BENCH TRIAL HELD 1/22, 1/23, 1/24

02/18/2025 OTHER FILING - OTHER DOCUMENT FILED ON 01/24/2025

02/18/2025 OTHER FILING - TRANSCRIPT FILED ON 01/24/2025
M MICHAELA MURPHY , JUSTICE
TRANSCRIPT ORDER FORM FILED BY JUSTIE MURPHY

02/20/2025 OTHER FILING - TRANSCRIPT FILED ON 02/07/2025

Plaintiff's Attorney: ZACHARY L HEIDEN

TRANSCRIPTS FILED OF ALL THREE DAYS. CONFERENCE IN CHAMBERS ON 3RD DAY PAGE 117 TO THE END OF THE TRANSCIPT SEALED BY JUSTICE MURPHY SEE ORDER 2/10/25

02/21/2025 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES

OTHER FILING - OTHER DOCUMENT FILED ON 02/21/2025

Defendant's Attorney: SEAN D MAGENIS

DEFS POST HEARING BRIEF FILED BY COUNSEL FOR DEF.

02/21/2025 Party(s): OFFICE OF THE ATTORNEY GENERAL

OTHER FILING - OTHER DOCUMENT FILED ON 02/21/2025

Defendant's Attorney: PAUL SUITTER

DEF AND PARTY IN INTEREST STATE OF MAINE'S POST-HEARING BRIEF WITH EXHIBIT A PLTS RESPONSES TO DEF STATE OF MAINE'S FIRST SET OF INTERROGATORIES

02/24/2025 ORDER - COURT ORDER ENTERED ON 02/21/2025

M MICHAELA MURPHY , JUSTICE

ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO PARTIES/COUNSEL 2/24/25. CONCLUSION: FOR THE REASONS OUTLINE ABOVE, THE ENTRY WILL BE: MCPDS DEFS MOTION FOR PARTIAL SUMMARY JUDGMENT ON RELIEF DEMANED IN COUNTS I AND II IS DENDIED. MCPDS DEFS MOTION TO ALTER OR AMEND COMBINES ORDER ON PARTIALLY DISPOSITIVE MOTIONS (1/3/25) IS GRANTED IN PART AND DENIED IN PART. (CONT)

02/24/2025 ORDER - COURT ORDER ENTERED ON 01/21/2025

M MICHAELA MURPHY , JUSTICE

ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO PARTIES/COUNSEL 1/21/25 COMBINED ORDER RESOLVING PENDING MOTIONS OF THE MCPDS DEFS(CONT ORDER) AS TO THE JUDGMENT OF THE 1/3/25 ORDER"ON COUNT I THE ENTRY WILL BE: THAT PORTION OF THE ENTRY APPEARING ON PAGE 41 OF THE ORDER, CURRENTLY STATING ONCOUNT I, THE PLTS MOTION FOR PARTIAL SUUMARY JUDGMNET IS GRANTED ON THE ISSUE OF LIABILITY ONLY," SHALL BE AMENDED(CONT)

02/24/2025 ORDER - COURT ORDER ENTERED ON 02/21/2025

M MICHAELA MURPHY , JUSTICE

ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO PARTIES/COUNSEL 2/24/25 ELECTRONICALLY AND USPS COMBINED ORDER RESOLVING PENDING MOTIONS OF THE MCPDS DEFS(CONT)TO STATE "ON COUNT I THE PLTS MOTION FOR PARTIAL SUMMARY JUDGMENT ASSERTING ACTUAL DENIAL OF COUNSEL PURSUANT TO THE SIXTH AMENDEDMENT OF THE UNITED STATES CONSITITUION, IS GRANTED ON THE ISSUE OF LIABLITLY ONLY."

02/24/2025 Party(s): OFFICE OF THE ATTORNEY GENERAL

MOTION - MOTION PARTIAL SUMMARY JUDG DENIED ON 02/21/2025

M MICHAELA MURPHY , JUSTICE

COPIES TO PARTIES/COUNSEL 2/24/25. DEFS MOTION FOR PARTIAL SUMMARY JUDGMENT ON RELIEF DEMANDED IN COUNTS I AND II IS DENIED.

02/24/2025 Party(s): MAINE COMMISSION ON PUBLIC DEFENSE SERVICES

MOTION - OTHER MOTION GRANTED ON 02/21/2025

M MICHAELA MURPHY , JUSTICE

MOTION TO ALTER OR AMEND COMBINED ORDER ON PARTIALLY DISPOSITIVE MOTIONS AND PROPOSED ORDER PORTION OF THE ENTRY APPEARING ON PAGE 41 OF THE ORDER REGARDING LIABLILTY ONLY SHALL BE AMENDED TO STATE, "ON COUNT I, THE PLTS MOTION ASSERTING ACUTAL DENIAL OF COUNSEL PURSUANT TO US CONSTITUTION IS GRANTED ON THE ISSUE OF LIABILITY ONLY"

03/03/2025 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH

OTHER FILING - CLOSING ARGUMENT/BRIEF FILED ON 02/28/2025

Plaintiff's Attorney: ZACHARY L HEIDEN

PLTS POST TRIAL RELPY BRIEF ON DECLARATORY AND INJUNCTIVE RELIEF & HABEAS REMEDIES FILED

03/07/2025 ORDER - COURT ORDER ENTERED ON 03/07/2025

M MICHAELA MURPHY , JUSTICE

ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO PARTIES/COUNSEL COPIES TO PARTIES THIS DATE MAILED AND SCANNED 3/7/25

03/10/2025 HEARING - OTHER MOTION SCHEDULED FOR 04/07/2025 at 10:00 a.m. in Room No. 4 AUGSC

03/18/2025 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES,OFFICE OF THE ATTORNEY GENERAL,MAINE COMMISSION ON PUBLIC DEFENSE SERVICES

MOTION - OTHER MOTION FILED ON 03/17/2025

Defendant's Attorney: SEAN D MAGENIS

MOTION FOR MRCIV.P.54(B)(1) CERTIFICATION OF PHASE 1 ADJUDICATION FILED ELECTRONICALLY ORIGINAL FILED SAME DAY

03/18/2025 Party(s): STATE OF MAINE AS TO COUNT III

RESPONSIVE PLEADING - RESPONSE FILED ON 03/17/2025

Defendant's Attorney: PAUL SUITTER

RESPONSE TO THE COURT'S INQUIRY REGARDING COUNT V FILED

03/24/2025 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH

OTHER FILING - TRANSCRIPT ORDER FORM FILED ON 03/21/2025

3/24/25: COPY EMAILED TO OTO THIS DATE
AUDIO EMAILED TO CUSTOMER 3/24/25 BY CTA CATHERINE SMITH

03/25/2025 OTHER FILING - TRANSCRIPT FILED ON 03/24/2025

CD FOR COURT FILE. 3/24/25: SENT TO CUSTOMER AND OTO

03/27/2025 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK,MICHAEL CAREY,ROGER KATZ,MATTHEW MORGAN-SUBSTITUTED,RONALD SCHEIDER-SUBSTITUED,AARON FREY, AAG,ERIC SAMPSON,ERIC SAMPSON,PETER JOHNSON,KEVIN JOYCE,SCOTT NICHOLS,SCOTT KANE,KENNETH MASON,PATRICK POLKY,TODD BRACKET,CHRISTOPHER WAINWRIGHT,TROY MORTON,ROBERT YOUNG,JOEL MERRY,DALE LANCASTER,JASON TRUNDY,BARRY CURTIS,WILLIAM KING,OFFICE OF THE ATTORNEY GENERAL,MAINE COMMISSION ON PUBLIC DEFENSE SERVICES,JIM BILLINGS,ROBERT

CUMMINS-SUBSTITUTED,RANDALL BATES,KIMBERLY MONAGHAN,DAVID SOUCY,MICHAEL CANTARA

APPEAL - NOTICE OF APPEAL FILED ON 03/27/2025

REC/FIL DEFENDANT'S NOTICE OF APPEAL S/SEAN MAGENIS AAG

03/27/2025 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK,MICHAEL CAREY,ROGER KATZ,MATTHEW MORGAN-SUBSTITUTED,RONALD SCHEIDER-SUBSTITUED,AARON FREY, AAG,ERIC SAMPSON,ERIC SAMPSON,PETER JOHNSON,KEVIN JOYCE,SCOTT NICHOLS,SCOTT KANE,KENNETH MASON,PATRICK POLKY,TODD BRACKET,CHRISTOPHER WAINWRIGHT,TROY MORTON,ROBERT YOUNG,JOEL MERRY,DALE LANCASTER,JASON TRUNDY,BARRY CURTIS,WILLIAM KING,OFFICE OF THE ATTORNEY GENERAL,MAINE COMMISSION ON PUBLIC DEFENSE SERVICES,JIM BILLINGS,ROBERT CUMMINS-SUBSTITUTED,RANDALL BATES,KIMBERLY MONAGHAN,DAVID SOUCY,MICHAEL CANTARA

OTHER FILING - TRANSCRIPT ORDER FORM FILED ON 03/27/2025

BY SEAN MAGENIS AAG FOR THE DEFENDANTS

03/27/2025 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK,MICHAEL CAREY,ROGER KATZ,MATTHEW MORGAN-SUBSTITUTED,RONALD SCHEIDER-SUBSTITUED,AARON FREY, AAG,ERIC SAMPSON,ERIC SAMPSON,PETER JOHNSON,KEVIN JOYCE,SCOTT NICHOLS,SCOTT KANE,KENNETH MASON,PATRICK POLKY,TODD BRACKET,CHRISTOPHER WAINWRIGHT,TROY MORTON,ROBERT YOUNG,JOEL MERRY,DALE LANCASTER,JASON TRUNDY,BARRY CURTIS,WILLIAM KING,OFFICE OF THE ATTORNEY GENERAL,MAINE COMMISSION ON PUBLIC DEFENSE SERVICES,JIM BILLINGS,ROBERT CUMMINS-SUBSTITUTED,RANDALL BATES,KIMBERLY MONAGHAN,DAVID SOUCY,MICHAEL CANTARA

OTHER FILING - TRANSCRIPT ORDER FORM SENT TO REPORTER/ER ON 03/27/2025

03/27/2025 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK,MICHAEL CAREY,ROGER KATZ,MATTHEW MORGAN-SUBSTITUTED,RONALD SCHEIDER-SUBSTITUED,AARON FREY, AAG,ERIC SAMPSON,ERIC SAMPSON,PETER JOHNSON,KEVIN JOYCE,SCOTT NICHOLS,SCOTT KANE,KENNETH MASON,PATRICK POLKY,TODD BRACKET,CHRISTOPHER WAINWRIGHT,TROY MORTON,ROBERT YOUNG,JOEL MERRY,DALE LANCASTER,JASON TRUNDY,BARRY CURTIS,WILLIAM KING,OFFICE OF THE ATTORNEY GENERAL,MAINE COMMISSION ON PUBLIC DEFENSE SERVICES,JIM BILLINGS,ROBERT CUMMINS-SUBSTITUTED,RANDALL BATES,KIMBERLY MONAGHAN,DAVID SOUCY,MICHAEL CANTARA

APPEAL - NOTICE OF APPEAL SENT TO REPORTER/ER ON 03/27/2025

03/27/2025 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES,JUSTIN ANDRUS-SUBSTITUED JIM BILLINGS,JOSHUA TARDY,DONALD ALEXANDER,MEEGAN BURBANK,MICHAEL CAREY,ROGER KATZ,MATTHEW MORGAN-SUBSTITUTED,RONALD SCHEIDER-SUBSTITUED,AARON FREY, AAG,ERIC SAMPSON,ERIC SAMPSON,PETER JOHNSON,KEVIN JOYCE,SCOTT NICHOLS,SCOTT KANE,KENNETH MASON,PATRICK POLKY,TODD BRACKET,CHRISTOPHER WAINWRIGHT,TROY MORTON,ROBERT YOUNG,JOEL MERRY,DALE LANCASTER,JASON TRUNDY,BARRY CURTIS,WILLIAM KING,OFFICE OF THE ATTORNEY GENERAL,MAINE COMMISSION ON PUBLIC DEFENSE SERVICES,JIM BILLINGS,ROBERT

CUMMINS-SUBSTITUTED,RANDALL BATES,KIMBERLY MONAGHAN,DAVID SOUCY,MICHAEL CANTARA
APPEAL - NOTICE OF APPEAL SENT TO LAW COURT ON 03/27/2025

03/27/2025 Party(s): STATE OF MAINE AS TO COUNT III
APPEAL - NOTICE OF APPEAL FILED ON 03/27/2025
Defendant's Attorney: PAUL SUITTER
REC'D AND FILED - NOTICE OF APPEAL BY PARTY IN INTEREST STATE OF MAINE S/PAUL SUITTER AAG

03/27/2025 Party(s): STATE OF MAINE AS TO COUNT III
OTHER FILING - TRANSCRIPT ORDER FORM FILED ON 03/27/2025
FILED BY PAUL E SUITTER AAG NOTE: THERE MAYBE 2 SEPERATE NOTICES OF APPEAL FILED THAT ORDER THE SAME SET OF TRIAL TRANSCRIPTS FOR THE LAW COURT. THERE IS NO NEED FOR TWO OF THE SAME SET. PLEASE SPLIT THE COST BETWEEN THE TWO SETS OF APPELLANTS IF POSSIBLE PER ATTORNEY SUITTER

03/27/2025 Party(s): STATE OF MAINE AS TO COUNT III
OTHER FILING - TRANSCRIPT ORDER FORM SENT TO REPORTER/ER ON 03/27/2025
FORM COMPLETED AND FORWARDED TO TRANSCRIPT OFFICE 4/3/25 BY CTA CATHERINE SMITH

03/27/2025 Party(s): STATE OF MAINE AS TO COUNT III
APPEAL - NOTICE OF APPEAL SENT TO REPORTER/ER ON 03/27/2025

03/27/2025 Party(s): STATE OF MAINE AS TO COUNT III
APPEAL - NOTICE OF APPEAL SENT TO LAW COURT ON 03/27/2025

04/04/2025 Party(s): OFFICE OF THE ATTORNEY GENERAL
MOTION - OTHER MOTION FILED ON 04/02/2025
PARTY IN INTEREST STATE OF MAINE'S MOTION FOR CLARIFICATION OF PROCEDURAL SCHEDULE OR IN THE ALTERNATIVE TO STAY ALL MATTERS RELATED TO COUNT III PENDING APPEAL

04/04/2025 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES
RESPONSIVE PLEADING - RESPONSE FILED ON 04/03/2025
Defendant's Attorney: SEAN D MAGENIS
DEFS RESPONSE TO INJUNCTIVE ORDER AFTER PHASE ONE TRIAL COUNT I

04/04/2025 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH
RESPONSIVE PLEADING - RESPONSE FILED ON 04/04/2025
Plaintiff's Attorney: ZACHARY L HEIDEN
PLTS OPPOSITION TO STATE'S MOTION FOR CLARIFICATION & PLTS OPPOSITION TO MCPDS DEFS MOTION FOR MRCIVP 54B(1) CERTIFICATION OF PHASE I ADJUDICATION FILED

04/11/2025 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES
RESPONSIVE PLEADING - RESPONSE FILED ON 04/11/2025
Defendant's Attorney: SEAN D MAGENIS
DEFS REPLY TO PLTS OPPOSITION TO DEFS MOTION FOR MRCIVP 54(B)(1) CERTIFICATION OF PHASE 1 ADJUDICATION FILED

04/11/2025 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH

MOTION - MOTION TO CONTINUE FILED ON 04/10/2025

Plaintiff's Attorney: ZACHARY L HEIDEN

PLTS MOTION TO CONTINUE ACTION ON COUNT III FILED BY PLT.

04/14/2025 OTHER FILING - OTHER DOCUMENT FILED ON 04/11/2025

NOTICE OF DOCKETING IN THE LAW CLERK FILED BY THE LAW COURT; RECORD NEEDS TO BE FILED BY 5/1/2025 WITH THE LAW COURT.

04/15/2025 Party(s): STATE OF MAINE AS TO COUNT III

RESPONSIVE PLEADING - RESPONSE FILED ON 04/15/2025

PARTY IN INTEREST STATE OF MAINE'S OPPOSITION TO PLTS. MOTION TO CONTINUE ACTION ON COUNT III WITH ATTACHED EXHIBIT A

05/12/2025 ORDER - COURT ORDER ENTERED ON 05/07/2025

M MICHAELA MURPHY , JUSTICE

ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO PARTIES/COUNSEL COMBINED ORDER ON ALL PENDING MOTIONS; COPIES TO PARTIES 5/12/25 ELECTRONICALLY AND USPS. CONCLUSION ENTRY WILL BE: THE MCDPS DEFS MOTION FOR CERT. OF THE PHASE ONE LITIGATION IS DENIED. THE COURT MAY CONTINUE TRIAL COURT PROCEEDINGS PENDING THE APPEAL CONSISTENT WITH RULE 62(D) OF THE MRCIVP.

05/12/2025 ORDER - COURT ORDER ENTERED ON 05/07/2025

M MICHAELA MURPHY , JUSTICE

ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO PARTIES/COUNSEL 5/12/25 ELECTRONICALLY AND USPS. THE STATE OF M AINE AS PARTY IN INTEREST'S MOTION FOR CLARIFCATION OF PROCEDURAL SCHEDULE OR IN THE ALTERNATIVE TO STAY ALL MATTERS RELATED TO COUNT III APPEAL IS DENIED. PLTS MOTION TO CONTINUE ACTION ON COUNT III IS GRANTED. STATES MSJ ON COUNT V IS DENIED IN PART WITH RESPECT FOR DECLARATORY RELIEF BUT BRANED IN PART WITH REPSECT TO INJUCTIVE RELIEF..

05/12/2025 ORDER - COURT ORDER ENTERED ON 05/07/2025

M MICHAELA MURPHY , JUSTICE

ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO PARTIES/COUNSEL ORDER CONT. INJUCTIVE RELIEF AGAINST STATE OF MAINE

05/15/2025 ORDER - COURT ORDER ENTERED ON 05/15/2025

M MICHAELA MURPHY , JUSTICE

ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO PARTIES/COUNSEL ORDER SCHEDULING INDIVIDUAL HABEAS CORPUS HEARINGS. AS OF THE LAST REAL TIME SPREADSHEET ON 5/15/25 THERE ARE APPROXIMATELY 50 OR MORE UNREPRESENTED INDIGENT CIRMINAL DEFS WHO ARE INCARCERAGED IN MAINE JAILS ON CHARGES FORWHICH THEY ARE PRESUMED INOCENT. THE FOLLOWING SCHEDULING ORDER FOR HABEASHEARINGS; JUNE 24 IN BANGOR AND JULY 1ST IN AUBURN

05/15/2025 ORDER - COURT ORDER ENTERED ON 05/15/2025

M MICHAELA MURPHY , JUSTICE

ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT.

COPIES TO PARTIES/COUNSEL BY JUNE 9TH COUNSEL FOR THE PLT SHALL AFTER CONSULTATION WITH OPPOSING COUNSEL FILE WITHTHE COURT A LIST OF INCARCERATED INDIVIDUALS THEY CLAIM ARE ELIGIBLE FOR HABEAS CORPUS HEARINGS AND RELIEF BEING HELD IN THE CUSTODY OF PENOBSCOT OR ANDROSCOGGIN SHERIFF. ONCE THE LIOST IS RECEIVED BY THE COURT IT SWILL ISSUE INDIVIDUAL WRITS OF HABEAS CORPUS ALONG WITH TRANSPORT WRITS....

05/20/2025 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH

MOTION - OTHER MOTION FILED ON 05/19/2025

Plaintiff's Attorney: ZACHARY L HEIDEN

AND CAROL GARVAN PLTS MOTION TO ALTER OR AMEND MAY 7, 2025 COMBINED ORDER.

06/09/2025 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH

OTHER FILING - OTHER DOCUMENT FILED ON 06/09/2025

Plaintiff's Attorney: CAROL J GARVAN

PLTS LIST OF INDIVIDUALS ELIGIBLE FOR RELIEF AT JUNE 24 AND JULY 1 HABEAS HEARINGS FILED BY ATTY. GARVIN

06/12/2025 Party(s): MAINE COMMISSION OF INDIGENT LEGAL SERVICES

OTHER FILING - OTHER DOCUMENT FILED ON 06/11/2025

Defendant's Attorney: SEAN D MAGENIS

LETTER FILED REQUESTING A BRIEF CONFERENCE RELATING TO FURTHER PROCEEDINGS IN COUNT III PURSUANT TO THE COURT'S ORDER SCHEDULING INDIVIDUAL HABEAS HEARINGS FILED ELECTRONICALLY; ORIGINAL FILED ON 6/16/25

06/12/2025 HEARING - OTHER HEARING SCHEDULED FOR 06/13/2025 at 12:00 p.m. in Room No. 1

NOTICE TO PARTIES/COUNSEL ELECTRONICALLY ON 6/12/25 1-888-450-5996 PASSCODE 9152301#

06/12/2025 HEARING - OTHER HEARING NOTICE SENT ELECTRONICALLY ON 06/12/2025

06/13/2025 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH

OTHER FILING - OTHER DOCUMENT FILED ON 06/13/2025

PLT LIST OF INDIVIDUALS ELIGIBLE FOR RELIEF AT JUNE 24 AND JUL 1 HABEAS HEARINGGS AS OF JUNE 12, 2025 FILED BY CAROL GARVAN

06/13/2025 HEARING - HABEAS CORPUS SCHEDULED FOR 06/24/2025 at 09:00 a.m. in Room No. 4

NOTICE TO PARTIES/COUNSEL ELECTRONICALLY

06/13/2025 HEARING - HABEAS CORPUS NOTICE SENT ON 06/13/2025

AMENDED NOTICE MAILED TO ALL PARTIES, DISREGARD NOTICE SENT ON FRIDAY REGARDING "REGISTERED ORDER ON 6/14/25."

06/14/2025 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE,LANH DANH HUYNH

OTHER FILING - OTHER DOCUMENT FILED ON 06/12/2025

Plaintiff's Attorney: CAROL J GARVAN

MATT WARNER, ALEX HARRIMAN, ZACH HEIDEN, ANIITA SOTOOHI AND KEVIN MARTIN & JORDAN BOCK

OPPOSITION TO STATE OF MAINE EMERGENCY MOTION TO STAY THE TRIAL COURT'S ACTION

TO ADDRESS THE STAT'S SIXTH AMENDMENT CRISIS COPY OF LAW COURT FILING

06/14/2025 HEARING - OTHER HEARING HELD ON 06/13/2025
M MICHAELA MURPHY , JUSTICE

06/14/2025 ORDER - COURT ORDER ENTERED ON 06/13/2025
M MICHAELA MURPHY , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO PARTIES/COUNSEL ELECTRONICALLY 6/13/25.PARTIES AGREED THAT ALL INCARCERATED DEFS LISTED ON THE 6/9/25 LIST WITH ANDRO AND PENOB ELIGIBLE FORA HABEAS HEARING HAVE NOW BEEN APPT. COUNSEL. THE PARTIES AGREE AND COURT NOW ORDERS THERE IS NO LONGER A NEED FOR HABEAS HEARINGS...THE COURT WILL CONDUCT A HEARING ON 6/24/25 AT 9:00 A.M. IN PERSON TO DISCUSS FUTURE HABEAS PROCEEDINGS DEPENDING ON THE NEED; PROTOCOL

06/16/2025 Party(s): ANDREW ROBBINS,BRANDY GROVER,RAY MACK,MALCOLM PEIRCE
OTHER FILING - OTHER DOCUMENT FILED ON 06/16/2025
Plaintiff's Attorney: ZACHARY L HEIDEN
ZACH HEIDEN, ANAHITA SOTOOHI, MATT WARNER, KEVIN MARTIN, JORDAN BOCK AND SAMANTHA JANDL PLTS REVISED LIST OF INDIVIDUALS ELIGIBLE FOR RELIEF AT JUNE24 AND JULY 1 HABEAS HEARINGS

06/21/2025 OTHER FILING - OTHER DOCUMENT FILED ON 06/20/2025
ORDER STAYING TRIAL COURT ACTION ON COUNT 34 HABEAS CORPUS HEARINGS; COPY VIA EMAIL SENT TO JUSTICE MURPHY AND THE ENTIRE COUNSEL OF RECORD. STATE'S MOTION IS GRANTED AND FURTHER ACTION ON COUNT 3 IS STAYED PENDING GHIS COURT'S CONSIDERATION OF THIS APPEAL. RECORD TO BE FILED WITH LAW COURT ON OR BEFORE JUNE 27, 2025; APPELLANTS BRIEF DUE ON 7/25/25; APPELLEES MUST FILE THEIR BRIEF ON OR BEFOR 8/22/25; APPELLANTS REPLY BRIEF ON OR BEFORE 9/5/25ORAL ARGUMENT WILL BE THE WEEK OF OCT.7-9.

06/24/2025 HEARING - HABEAS CORPUS NOT HELD ON 06/24/2025

06/24/2025 Party(s): STATE OF MAINE AS TO COUNT III
OTHER FILING - OTHER DOCUMENT FILED ON 06/16/2025
Defendant's Attorney: PAUL SUITTER
COPY OF LETTER TO THE LAW COURT INDICATING THAT THE CONFERENCE HELD ON 6/13/25 ALL DEFS ON THE JUNE 9TH LIST HAVE BEEN PROVIDED A CRIMINAL DEFENSE LAWYER WITH COPIES OF ORDER AND NOTICE FOR THE HEARING ON 6/24/25; COPY OF EMERGENCY MOTION APPELLANT FILED WITH THE LAW COURT ATTACHED AS WELL.

06/24/2025 ORDER - COURT ORDER ENTERED ON 06/20/2025
VALERIE STANFILL , SUPREME COURT CHIEF JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPY OF ORDER STAYING TIRAL COURT ACTION ON COUNT 3 HABEAS CORPUS HEARINGS FILED ELECTRONICALLY ON 6/20/25 AT 6:37 P.M. RECORD TO BE FILED WITH THE LAW COURT ON OR BEFORE 6/27/25; APPELLANTS BRIEF DUE 7/25/25; APPELLANTS BRIEF TO BE FILED ON OR BEFORE 8/22/25; REPLY BRIEF 9/5/25 ORAL ARGUMENT TO BE SET WEEK OF 10/7/25

06/25/2025 TRANSFER - TEMPORARY TRANSFER TRANSFERRED ON 06/25/2025
TO THE LAW COURT HAND DELIEVERED.

Receipts

03/02/2022	Misc Fee Payment	$100.00	paid.
03/02/2022	Misc Fee Payment	$600.00	paid.
03/02/2022	Misc Fee Payment	$600.00	paid.
03/02/2022	Misc Fee Payment	$600.00	paid.
03/02/2022	Misc Fee Payment	$100.00	paid.
03/02/2022	Misc Fee Payment	$25.00	paid.
03/02/2022	Misc Fee Payment	$150.00	paid.
03/02/2022	Misc Fee Payment	$100.00	paid.
09/29/2023	Misc Fee Payment	$25.00	paid.
10/01/2024	Misc Fee Payment	$300.00	paid.
11/22/2024	Misc Fee Payment	$225.00	paid.
01/17/2025	Misc Fee Payment	$700.00	paid.
03/21/2025	Misc Fee Payment	$50.00	paid.

A TRUE COPY
ATTEST: _____
Clerk

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-22-054

ANDREW ROBBINS, et al.,

Plaintiffs,

v.

JAMES BILLINGS, in his official capacity as Executive Director of the Maine Commission on Public Defense Services; JOSHUA TARDY, in his official capacity as Chair of the Maine Commission on Public Defense Services; DONALD ALEXANDER, RANDALL BATES, MICHAEL CAREY, ROGER KATZ, KIMBERLY MONAGHAN, and DAVID SOUCY, in their official capacities as Commissioners of the Maine Commission on Public Defense Services; and the STATE OF MAINE,

Defendants.

COMBINED ORDER ON ALL PENDING MOTIONS

Background

Pending before the Court are four motions, three of which were filed by the parties after the Court issued its last order on March 7, 2025. The MCPDS Defendants and the State of Maine appealed that Order on March 27, 2025.

In this combined order, the Court will rule on: The MCPDS Defendants' Motion for M.R. Civ. P. 54(b)(1) Certification of the Phase One Litigation; the State of Maine as Party-in-Interest's Motion for Clarification of Procedural Schedule or in the Alternative to Stay all Matters Related to Count III Pending Appeal; the Plaintiffs' Motion to Continue Action on Count III; and the State of Maine's Motion for Summary Judgment on Count V.

In November of 2024, the parties requested that Counts I, II, III, and V be resolved via motions for summary judgment.[1] The Plaintiffs filed a Motion for Partial Summary Judgment as to liability only on Counts I, II, III, and V. The MCPDS Defendants filed a Motion for Summary Judgment on Counts I and II. And the State of Maine filed a Motion for Summary Judgment on Count V. On January 3, 2025, the Court issued a combined order (the "January 3rd Order") addressing these motions, a Jury Demand by the MCPDS Defendants as to Count I, and the State of Maine's Motion to Continue on Count V.

On Count I, the Court ruled that a jury trial was not available to the MCPDS Defendants, and granted Plaintiffs' motion for partial summary judgment on the issue of liability only. On Count II, the Court granted full summary judgment in favor of the MCPDS Defendants. On the habeas corpus action brought in Count III, the Court granted the Plaintiffs' motion for partial summary judgment on the issue of liability only, as the Plaintiffs had prevailed in Count I under the Sixth Amendment, but left the legal issue of the right to counsel under Article I, Section 6 of the Maine Constitution unresolved so that the parties could make arguments in a later proceeding. On Count V, the Court deferred ruling on the State of Maine's motion for summary judgment until the State could conduct a limited period of discovery, thus granting in part the State's motion to continue.

On January 22–24, 2025, the Court conducted a bench trial (the "January 2025 trial") on the remaining issues of remedies after granting partial summary judgment in favor of Plaintiffs on Counts I and III. With respect to Count I, the Court heard testimony from witnesses pertinent to the claim for permanent injunctive relief sought by Plaintiffs. As to Count III, the Court received a legal stipulation of the Plaintiffs and the State of Maine as Party-in-Interest that the right to

[1] The Court had previously dismissed Count IV on August 13, 2024.

counsel rooted in the Maine Constitution was at least co-extensive with the right to counsel guaranteed under the Sixth Amendment. With respect to the habeas relief sought by Plaintiffs in Count III, the State of Maine as Party-in-Interest repeatedly objected to the Court's consideration of any facts on the issue.

After this bench trial on remedies, the Court heard argument and permitted further briefing. On March 7, 2025, the Court issued an Order After Phase One Trial on Counts I, III, and V (the "March 7th Order"). The Order established standards for how habeas relief would be made available under Count III at individual habeas hearings that the Court planned to conduct in April and May of 2025, and also resolved the legal issue left unaddressed in the Plaintiffs' Motion for Partial Summary Judgment on Count III, the role of Article I, Section 6. Mar. 7th Order 24.

With respect to Count V, the Court again deferred ruling on the State's Motion for Summary Judgment. The State had earlier requested a continuance to enable it to obtain discovery, which the Court agreed to so long as it was completed on an expedited basis. In the March 7th Order, the Court made an inquiry of the State with respect to Count V and asked that the State respond within 10 days. The State timely responded, but the response was not presented to the Court for review until just a few days before the April 7, 2025 conference of counsel (the "April 7th conference") that was also ordered in the March 7th Order.

The April 7th conference was held to establish the course of future proceedings in light of the plan that the Court ordered the MCPDS Defendants to file with the Court by April 3, 2025 on how they proposed to comply with the permanent injunction issued in Count I. Their plan was timely filed. In addition, the Court held the conference to schedule and discuss how to conduct the individual habeas hearings that would be required in light of the relief ordered by the Court in Count III in the March 7th Order.

The first motion filed by the MCPDS Defendants was a Motion for Certification of the Phase One Litigation pursuant to M.R. Civ. P. 54(b)(1), dated March 17, 2025. On the last page of that motion, the MCPDS Defendants provided notice to Plaintiffs that they had no more than 21 days to file an opposition. Ten days later, before the 21 days had come and gone, the MCPDS Defendants filed a Notice of Appeal of the Court's March 7th Order on Count I.

On March 27, 2025, the same day the MCPDS Defendants filed their Notice of Appeal, the State of Maine as Party-in-Interest also filed a Notice of Appeal of the Court's March 7th Order. After filing that appeal, on April 2, 2025, the State of Maine as Party-in-Interest filed the second pending motion, a Motion for Clarification of Procedural Schedule; or in the Alternative to Stay all Matters Related to Count III Pending Appeal.

Counsel for the parties appeared and were heard at the April 7th conference. All pending motions were discussed, and the Plaintiffs informed the Court that they would be filing a Motion to Continue Action on Count III pending appeal, which they did on April 10, 2025. That is the third motion awaiting resolution by the Court.

The following is the Court's analysis and conclusions on the above-described pending motions.

Count I: Motion for Rule 54(b)(1) Certification of "Phase 1" Adjudication

As noted, this motion by the MCPDS Defendants was brought 10 days before they filed their March 27, 2025 appeal. The Defendants fault the Plaintiffs for not responding to their motion before the appeal was filed, but it is not clear to the Court that Plaintiffs knew when the MCPDS appeal would be filed. The only information the Court has as to the required timing of Plaintiffs' response was the so-called "21-day language" the Defendants provided on the last page of their March 17, 2025 motion.

In any event, after reviewing the pertinent exceptions in Appellate Rule 3 that might permit this Court to take action on the Motion for Certification, the Court agrees that it lacks authority to act on this motion given the pending appeal on Count I, as a Motion for Certification does not fall within the enumerated exceptions.

At the April 7th conference, counsel for the MCPDS Defendants nevertheless acknowledged that Rule 62(d) of the Maine Rules of Civil Procedure permits this Court in its discretion to "suspend, modify, restore, or grant an injunction" notwithstanding their appeal. The Court will continue trial court action on Count I pending appeal, consistent with Rule 62.

As a remedy for violations of the Sixth Amendment, the Court issued an injunction that required the MCPDS Defendants to provide continuous representation for the Plaintiffs, and to create a plan to do so. They were also ordered to prioritize Plaintiffs who remained in custody awaiting representation. In Exhibit A to that plan, they reported that as of March 7, 2025, there were 85 individuals who remained in custody without representation. After compliance efforts began, only six of those 85 individuals who were in custody on March 7, 2025 remained incarcerated without representation by April 3, 2025, but the Court understands that there were likely around 30 additional unrepresented individuals in custody as of that date, as unrepresented individuals were "added" to the spreadsheet after March 7, 2025. As of the date of this Order, those numbers have gone up again.

As noted in Exhibit B of Defendants' plan, MCPDS developed with the Judicial Branch a "real time shared document" to replace the "without counsel spreadsheet" previously relied upon by MCPDS, the courts, and Class Counsel. To date, this Court has received a number of such "real time" documents. On April 16, 2025, the Court received the first one, which showed 36 defendants

were in custody without counsel. On April 18, there were 35. On April 23, there were 44. On April 25, there were 49. The Court has not received an updated list since April 25th.

This new document contains two references to this case: "Robbins Date: 14 days after initial appearance" and "Robbins Date: 60 days after initial appearance." Because this case is mentioned in this document, the Court sent what it received to counsel of record, as it is not clear to the Court whether Class Counsel or any other counsel of record received these documents or will receive such documents in the future. If Class Counsel are not going to be routinely included as recipients of this information, the Court trusts the parties can agree on a way to make that happen without court order. If that is not possible, a motion or motions seeking or objecting to the provision of this information to all counsel of record may be filed with the Court.

In addition, because Rule 62(d) permits trial court action pending appeal, any party may file any pleading with the Court commensurate with the Rule.

Count III: Jurisdictional Challenge & Cross-Motions

Before addressing the pending cross-motions on Count III, the Court will address a related but previously unasserted theory related to Count III. For the first time in this litigation on Count III, at the April 7th conference, counsel for the State of Maine as Party-in-Interest raised with the Court the argument that, under 14 M.R.S. § 5512(1), criminal defendants who have been charged with a "felony" are not eligible for habeas relief. The State of Maine's argument is that a "jurisdictional command" embedded in Maine's habeas statutes prohibits the Court from providing relief to any Plaintiff charged with a "felony." Because the argument raises the issue of the Court's jurisdiction, it will be addressed here.

The statute in question reads as follows:

> The following persons shall not of right have such writ: Persons committed to jail for certain offenses. Persons committed to or confined in prison or jail on suspicion

> of treason, felony or accessories before the fact to a felony, when the same is plainly and specifically expressed in the warrant of commitment.

14 M.R.S. § 5512(1).

Section 5512 dates back to the beginning of Maine's statehood, in 1821. P.L. 1821, ch. 64 § 1. Its language has remained nearly identical for 204 years, and it has rarely been analyzed, let alone cited to. But the language of § 5512 does not do away with the court's discretionary authority in the habeas context.[2]

In *Welch v. Sheriff of Franklin County,* habeas petitioners had been charged with cheating by false pretenses, a felony in 1901. 95 Me. 451, 50 A. 88, 88 (1901). The Law Court ultimately dismissed their petition for a writ of habeas corpus, but not because the petitioners had been charged with felonies. The Law Court acknowledged that while "they are in confinement, charged with the commission of a felony, and are not entitled to the writ of habeas corpus *as a matter of right*," it was still within "the discretion of the court" whether or not to grant their petition. *Id.* at 88–89 (emphasis added). Section 5512 does not categorically bar individuals charged with a "felony" from obtaining habeas relief. The issues remain whether a petitioner's restraint is illegal, and according to the statute, whether issuance of the writ is "necessary for the furtherance of justice." 4 M.R.S. § 7.

Chapter 609 of Title 4, the habeas corpus chapter, supports this conclusion. Section 5518 lays out the proper procedure for a court to follow "[w]hen such writ is issued on an application in [sic] behalf of any person described in section 5512." 14 M.R.S. § 5518. The only people "described" in § 5512 are those committed to jail on charges of "felony" or treason; and those committed through a civil process. *Id.* This indicates that the Legislature recognizes there are

[2] *See* 4 M.R.S. § 7 (explaining that the Supreme Judicial Court "may issue all writs and processes . . . necessary for the furtherance of justice") *and* 4 M.R.S. § 105(2)(B) (stating that the Superior Court and the Supreme Judicial Court are vested with "concurrent jurisdiction" over the extraordinary writs).

circumstances in which a petitioner charged with a "felony" would indeed be entitled to habeas relief, as the Legislature laid out a procedure for specifically that purpose.

In its Opposition to the Plaintiffs' Motion to Continue Action on Count III, the State argues that "14 M.R.S. § 5512 bars members of the Plaintiff subclass from obtaining habeas relief if they are charged with Class A, B, or C offenses." PII State of Maine's Opp. to Pls.' Mot. to Continue Action on Count III 10. But this assertion does not explain how today's classification of offenses compares, if at all, to offenses considered "felonies" in 1821, when § 5512 was first adopted. Moreover, "felony" is not a term used in Maine's Criminal Code[3] or Rules of Criminal Procedure. In 1976, the State of Maine adopted Title 17-A (the Maine Criminal Code), replacing Title 17 (the former home of Maine's criminal laws). In doing so, the Legislature undertook a comprehensive reclassification and codification of most criminal offenses, including the explicit "abolition of the felony-misdemeanor distinction." M.R.U. Crim. P. 1 committee advisory note 1976.

The State's argument also fails to address or account for the second category of offense listed in § 5512(1): "Persons committed to or confined in prison or jail on suspicion of *treason*, felony or accessories before the fact to a felony . . . ." 14 M.R.S. § 5512(1) (emphasis added). The Legislature paired "felony" together with "treason." Treason is no longer a crime under Maine state law. Under Maine's former Title 17, treason was indeed a crime, 17 M.R.S.A. §§ 3801–03 (1975), repealed by P.L. 1975, ch. 499 (effective March 1, 1976), but those sections were repealed by the Legislature when Title 17-A was adopted in 1976 and were not included in the Maine Criminal Code.

[3] The one exception being the crime of felony murder, found in 17-A M.R.S. § 202.

The Court will therefore exercise its discretion to consider habeas corpus relief for any unrepresented Plaintiff, regardless of whether or not they are being restrained on "felony" charges, so long as they meet other criteria established in prior orders.

The Pending Cross-Motions on Count III

The State as Party-in-Interest's Motion for Clarification of Procedural Schedule or in the Alternative to Stay All Matters Related to Count III Pending Appeal, dated April 2, 2025, along with Plaintiffs' April 10, 2025 Motion to Continue Action on Count III raise essentially the same issues. The Court will address them together.

Plaintiffs ask the Court to proceed with the habeas hearings ordered as a remedy in the Court's March 7th Order. They make a number of arguments in support of their position that the Court may continue trial court proceedings on Count III. First, they argue that the appeal is interlocutory and is one taken from an order granting partial summary judgment, and that Appellate Rule 3(c)(4) allows the Court to proceed while the appeal is pending. Pls.' Mot. to Continue Action on Count III 8–9. Second, they argue that under longstanding common law in Maine, habeas corpus relief is not stayed pending appeal. *Id.* at 2–8. Plaintiffs also ask the Court to clarify the meaning of the term "party-in-interest" as applied to the State in Count III given the State's ongoing assertion of sovereign immunity in Count V, which it claims bars this Court from including the State as a party in that count and/or taking any action of any kind against the State in this litigation. *Id.* at 9–11.

In opposition to the Plaintiffs' motion, the State argues that Maine Rule of Appellate Procedure 3(b) "unambiguously" precludes the Court from taking any further action on Count III while the State's appeal is before the Law Court. PII State of Maine's Opp. to Pls.' Mot. to Continue Action on Count III 4–6; M.R. App. P. 3(b) ("The trial court shall take no further action

pending disposition of the appeal by the Law Court."). It asserts that any conflicting rules and any common law to the contrary are secondary to Appellate Rule 3. *Id.* at 6–8. The State also objects to the Plaintiffs' characterization of the Court's March 7th Order as a summary judgment order or as an injunction. *Id.* at 5–6, 8–9. Neither characterization is accurate, the State argues, and thus the Court may not proceed on Count III without leave of the Law Court.

The Court has considered the arguments of the parties and has reviewed the pertinent rules and case law. The Court concludes that it may proceed with individual habeas hearings under Count III without first seeking leave of the Law Court for several reasons.

Habeas Relief While Appeal is Pending

a. The State's appeal is an interlocutory appeal of a summary judgment order, permitting the Court to proceed while that appeal is pending.

With respect to their first argument, Plaintiffs point to Appellate Rule 3(c)(4), which permits a trial court to act pending appeal if the appeal taken is of "an order granting or denying a motion for summary judgment."[4] They argue that the March 7th Order constitutes such an order. The State of Maine as Party-in-Interest disagrees, arguing that the March 7th Order is not properly understood as a summary judgment order because it came *after* the January 2025 trial and was distinct from the Court's January 3rd Order—the only order that could have fallen under Rule 3(c)(4).

As stated above, in the Court's January 3rd Order, the Court granted Plaintiffs' motion for partial summary judgment as to Count III on the issue of liability only, which meant that further

[4] In the alternative, Plaintiffs argue that Appellate Rule 3(c)(2) would also permit the Court to proceed without Law Court approval as the pending appeal is of injunctive relief granted by the trial court, pursuant to Maine Rule of Civil Procedure 62(a) and (d). The Plaintiffs argue that habeas relief "falls within any reasonable understanding of an injunction." Pls.' Mot. to Continue Action on Count III 9. The Court does not find this argument persuasive. The Court does not believe that habeas relief is properly understood as a form of injunctive relief. Maine caselaw and Maine statutes make clear that habeas corpus is a unique remedy, aimed at rectifying a specific type of harm and carried out with unique procedures, *see* 14 M.R.S. §§ 5501–47.

proceedings would be necessary. And at the January 2025 trial, the Court and the parties addressed issues related to remedies under Counts I and III. On Count I, the parties addressed factual issues pertinent to the injunctive relief sought by the Plaintiffs on Count I. On Count III, the Court permitted the Plaintiffs, the State of Maine as Party-in-Interest, and the Respondent-Sheriffs to present evidence, if they wished, on the issue of habeas remedies. The Sheriffs declined to do so. And finally, the State as Party-in-Interest and Plaintiffs addressed the role of the Maine Constitution in Count III, which was the legal issue remaining on liability in Count III.

The March 7th Order followed the January 2025 trial. Further briefing by the parties was requested and permitted. The Court made factual findings primarily on the issue of injunctive relief, but also related to Count III, including the numbers of unrepresented criminal defendants and how long some had been in custody. The Court relied upon some of these findings in establishing the standards that it would apply at the habeas hearings that were not part of the January 2025 trial proceedings, and which have yet to be conducted. Those standards described habeas relief that could be available to two separate groups of Plaintiffs, depending on whether they were held in custody, and for how long, or whether they were living in the community under Orders of Commitment subject to Conditions of Release, and for how long.

The January 3rd Order, the January 2025 trial, and the March 7th Order were all part and parcel of the decision of the parties to litigate and resolve Count III (and the other Counts) by way of Rule 56 of the Maine Rules of Civil Procedure, which anticipates and provides for such sequential proceedings. *See* M.R. Civ. P. 56(c) ("A summary judgment, interlocutory in character, may be rendered on the issue of liability alone.") *and* M.R. Civ. P. 56(d) (entitled "Case Not Fully Adjudicated on Motion," discussing the proper procedure when "judgment is not rendered upon the whole case" upon motions for summary judgment, and explaining that, where issues remain,

the court must then have a trial and make an order which, among other things, "direct[s] such further proceedings in the action as are just.").

While Rule 3(c)(4) does not distinguish between cases where full summary judgment is granted or denied, or when partial summary judgment on liability (or on a particular theory of liability) is granted or denied, it clearly contemplates that trial court action can continue toward resolution of the remaining issues in a particular count or cause of action while the appeal of an order for summary judgment remains pending in the Law Court. M.R. App. P. 3(c)(4) ("The trial court is permitted to *act on a case* pending resolution of any appeal of . . . an order granting or denying a motion for summary judgment . . . ." (emphasis added)). The Rule could be also be seen as designed to protect the appellate rights of the party aggrieved by an order issued under Rule 56 by permitting the appeal to be filed consistent within the deadline, but still permitting the court to complete any additional, subsequent proceedings necessitated by an order issued pursuant to the Rule. Any other interpretation of Civil Procedure Rule 56, read together with Appellate Rule 3(c)(4), could result in piecemeal litigation, significant uncertainty for parties and litigants, added expense, delays, and potentially multiple appeals to the Law Court on the same claim, cause of action, or "case."

b. The State's status as "Party-in-Interest" and its role in habeas hearings as permitted by 14 M.R.S. § 5512.

The Plaintiffs have asked the Court to clarify the State's role as "Party-in-Interest" to Count III. Pls.' Mot. to Continue Action on Count III 9. In its opposition, the State of Maine as Party-in-Interest asked the Court not to address Plaintiffs' question, stating that it would "not be appropriate" for the Court to do so, as that in itself would constitute impermissible further trial court action on Count III. PII State of Maine's Opp. to Pls.' Mot. to Continue Action on Count III 9–10. The Court disagrees. In the Court's view, the State's status as Party-in-Interest is pertinent

to its claim that no habeas hearings should be held while its appeal of the March 7th Order is pending.

The Plaintiffs note a disconnect between the State's role in Count III and its role in Count V. As to the latter, the State of Maine insists that it is beyond the reach of this Court, or any Maine court, to treat the State of Maine as a party in Count V due to its assertion of sovereign immunity. In Count III, acting as a Party-in-Interest, the State nevertheless insists it is entitled to enjoy all the traditional benefits which accrue to a "party."

The State's argument as to Count III fails to address how the Maine Legislature defines its role in habeas proceedings. The Legislature could have permitted the State to be a "party," but it did not do so. Instead, it defined the State's role to be that of an "interested person." 14 M.R.S. § 5522. The Legislature also defined the rights that the State has in habeas proceedings, namely the right to receive notice of the hearing, the right to be represented at the hearing, and the right to "object" at the hearing, if the State sees fit. *Id.*

In its August 13, 2024 Order on Pending Motions to Dismiss, this Court designated the State of Maine as a "Party-in-Interest" to Count III. Order on Pending Mots. Dismiss 17. In doing so, the Court "follow[ed] the lead" of Justice Douglas in the habeas proceeding *Peterson v. Johnson*. In *Peterson*, Justice Douglas relied on the procedure laid out in 14 M.R.S. § 5522. *Peterson v. Johnson*, SJC-23-02, at 5–6 (Nov. 6, 2023) (Douglas, J.).

The State itself cited to Justice Douglas's *Peterson* decision in its opposition to Plaintiffs' Motion to Continue Action on Count III, acknowledging the statutory role of the State in a habeas proceeding. PII State of Maine's Opp. to Pls.' Mot. to Continue Action on Count III 10 n.5. 14 M.R.S. § 5522 states: "If imprisoned on any criminal accusation, he shall not be discharged until sufficient notice has been given to the Attorney General or other attorney for the State that he

may appear and object, if he thinks fit." The statute contains no express authorization for the Party-in-Interest to appeal the grant of a writ of habeas corpus, and it is also silent as to whether the filing of an appeal by the Party-in-Interest would result in the stay of an order of discharge of a habeas petitioner should the Court issue such an order.

Importantly, the hearings at which the State has the statutory right to be heard and to object have not occurred—or even been scheduled to occur—due to the State of Maine as Party-in-Interest's appeal, and the need for the Court to address these pending motions. Nevertheless, the State of Maine as Party-in-Interest submits that individual Plaintiffs, who are presumed innocent but who remain in custody without representation for an indefinite period of time, must continue to wait, again for an indefinite period of time, for the parties to litigate this Court's legal findings on Count III before they even get an individualized hearing on their habeas claims.

The Party-in-Interest's legislatively prescribed rights in a habeas proceeding may be exercised at the individual habeas hearings, but the Court concludes that those rights should not be construed to prevent such habeas proceedings from occurring at all.

c. Maine common law regarding habeas appeals does not support the Party-in-Interest's claim that the Court cannot conduct individual habeas hearings pending its appeal.

In the alternative, the Plaintiffs argue that habeas relief is not stayed pending appeal under Maine's common law, and that the common law, not the Rules of Civil or Appellate Procedure, governs habeas appeals.

Plaintiffs cite to Rule 81 of the Maine Rules of Civil Procedure and its reporter's notes. Rule 81 lays out the applicability of the Maine Rules of Civil Procedure and includes several particular proceedings to which the Rules of Civil Procedure have "limited applicability." M.R. Civ. P. 81(b). Habeas corpus is first on the list. Because the "extraordinary" writ of habeas corpus

"differ[s] so greatly" from what the justice system considers to be an "ordinary" civil action, it is "excluded from general coverage" by the Rules of Civil Procedure. M.R. Civ. P. 81 reporter's notes. Habeas proceedings "symbolize traditional rights of citizens." *Id.* In the habeas context, that symbol is "preserved" in "the practice prescribed by" Title 14, Chapter 609. *Id.*; M.R. Civ. P. 81(b)(1). But neither that chapter, the Rules of Civil Procedure, nor the Appellate Rules contain a process for appeal, either when the writ is granted or when the writ is denied.[5] There is no procedure for a respondent-sheriff or a party-in-interest to appeal a court's granting of a writ of habeas corpus, nor to pause a petitioner's release by doing so. Under such circumstances, Rule 81 declares "these proceedings shall follow the course of the common law." M.R. Civ. P. 81(b)(1).

Longstanding common law in Maine holds that the discharge of an incarcerated individual on a successful habeas petition cannot be stayed by an appeal. Plaintiffs cite to the 1881 Law Court case *Knowlton v. Baker*, which, in its entirety, reads

> Exceptions do not lie to the discharge of a prisoner on *habeas corpus.* The object of the writ is to secure the right of personal liberty; and this can only be accomplished by prompt action and a speedy trial. To allow exceptions to the order of the court in term time, or to the order of a judge in vacation, discharging a prisoner, would necessarily result in considerable delay, and thus defeat one of the principal purposes of the writ, namely, a speedy release. True, errors may result from such hasty action, and parties interested in the imprisonment of the person released, may thereby suffer. But the history of the writ shows that greater evils are liable to result from the want of speedy action. We have been cited to no authority justifying the allowance of exceptions in such cases, and we are not aware of the existence of any. On the contrary, it has been decided in Massachusetts that exceptions do not lie in such cases. And their *habeas corpus* act, in force at the time of the decision, so far as this question is concerned, was in no respect different from what ours is now. In fact, ours, as is well known, is substantially a transcript of theirs. *Wyeth v. Richardson,* 10 Gray, 240.

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[5] Instead, Chapter 609 contains multiple sections which explicitly give Maine courts the authority to release a petitioner on bail or to lower a petitioner's bail, even where the court has denied the petitioner's writ of habeas corpus. *See, e.g.*, 14 M.R.S. § 5513 ("If the writ is denied and an appeal taken to the law court, the person restrained may be admitted to bail within the discretion of the justice rendering judgment thereon, pending such appeal."); 14 M.R.S. § 5516 ("If it appears that he is imprisoned on mesne process for want of bail and the court or justice thinks that excessive bail is demanded, reasonable bail shall be fixed, and on giving it to the plaintiff, he shall be discharged."); 14 M.R.S. § 5531 ("The party may be bailed to appear from day to day until judgment is rendered or remanded or committed to the sheriff or placed in custody, as the case requires.").

72 Me. 202, 202–03 (1881). Where a writ has been granted, the purpose of habeas corpus—to swiftly secure the liberty of a person wrongfully detained—would be defeated if the delays resulting from an appeal could pause the discharge of a wrongfully detained person.

The Law Court reaffirmed this principle in *Stewart v. Smith*, holding as follows:

> The purpose of this celebrated writ of habeas corpus, which has been denominated "the great writ of liberty," is not only to secure the right of personal liberty to one who has been illegally deprived thereof, but also to insure [sic] a speedy hearing and determination of the questions involved and as to the right of the petitioner to be released from imprisonment. To allow exceptions to the order for a discharge of the prisoner, by any judge who is given by statute the power to order the issuance of the writ and to act thereon, would be to seriously impair the efficiency of a process which has been relied upon by English speaking people for many centuries as the bulwark of their liberties, and would be inconsistent with the history and theory of the writ. It is better that occasional errors by a judge having jurisdiction should go uncorrected than that the speedy release of a person illegally deprived of his liberty should be prevented, or delayed by the length of time that must necessarily elapse in many cases before exceptions to an order for the discharge of the petitioner could be presented, argued, and determined by the proper tribunal.

101 Me. 397, 64 A. 663, 664 (1906).

The supreme courts of other states have cited to *Knowlton* (and other state's similar holdings) for the rule that "to allow a review of an order of another court made in a habeas corpus case is inconsistent with the object of the writ," that is, that a writ cannot be appealed at all. *Ex parte Sullivan*, 189 P.2d 338, 346 (Nev. 1948); *see also Wisener v. Burrell*, 118 P. 999, 999 (Okla. 1911) (citing to *Knowlton* and holding that "an appeal from a decision in habeas corpus, discharging a person held, as in the case at bar, does not lie."); *and In re Barker*, 56 Vt. 1, *5–6 (1884) (citing to *Knowlton* and *Wyeth v. Richardson,* 76 Mass. 240 (10 Gray 240)—the Massachusetts case cited by *Knowlton*—for the same conclusion). The Plaintiffs do not go so far, arguing only that, under Maine's common law, the State's appeal of Count III cannot result in the suspension of proceedings that might provide habeas relief to individual Plaintiffs.

The State of Maine as Party-in-Interest's arguments fail to account for these decisions. Instead, they assert that the cases cited by Plaintiffs do not advance their argument because they were supplanted by the adoption of Appellate Rule 3 in 2001.[6] This argument overlooks Rule 81(b)(1) of the Rules of Civil Procedure, which requires that court proceedings follow the common law where the procedure is "not specifically covered by statute *or other court rules*." (emphasis added). Appellate Rule 3 does not mention habeas proceedings, and it has never been applied to a writ of habeas corpus, either by the Law Court or the Superior Court. This Court cannot so easily ignore Law Court precedent, Rule 81 of the Rules of Civil Procedure and its reporter's notes, nor the history and meaning of the "great writ of liberty." *See Stewart*, 101 Me. 397, 64 A. 663, 664 (1906).

Having carefully considered the arguments of the parties, along with pertinent Rules, statutes, and common law, the Court concludes it has the authority, and indeed the obligation, to proceed with the individual habeas hearings that it ordered on March 7, 2025. The Court has ruled that the Plaintiffs are being wrongfully deprived of their liberty because they are being held, or are out on bail with restrictive conditions, without the constitutionally guaranteed assistance of counsel.

As the Court stated more than once in its March 7th Order, the preferred remedy for any such violation is the provision of counsel. If counsel is not made available within 7 days after the individual habeas hearing at which the Court determines the eligibility of the Plaintiff for habeas

[6] The State of Maine as Party-in-Interest also argues that Rule 81 does not apply because this is a *pre*-conviction habeas action, and Rule 81 is limited to *post*-conviction habeas actions. The Court disagrees. Rule 81(b)(1)(A) reads: "Proceedings for post-conviction relief in criminal actions or under the writ of habeas corpus." The "or" separates the two types of proceedings listed. Furthermore, the adoption of the post-conviction review chapter, 15 M.R.S. §§ 2121–32, explicitly replaced the remedies for so-called "post-conviction habeas corpus." If Rule 81 were referring only to post-conviction habeas corpus, including the second phrase at all would be redundant. The State's argument also fails to grapple with the reporter's note to Rule 81, which discusses the reason for the habeas exception and does not distinguish between pre- and post-conviction habeas proceedings.

relief, the Court could then provide individual relief consistent with the legal standards established in the March 7th Order. Those standards were established after careful consideration of the decisions made by courts in Oregon and Massachusetts that were forced to confront the same systemic and unconstitutional conditions within their indigent legal systems that exist in Maine today.

And yet individual Plaintiffs have not actually had their day in court. While they may have prevailed on some, but certainly not all, of their claims, not one of them has been brought into any courtroom to plead their habeas case, as the great writ has always required. *See Habeas Corpus*, BLACK'S LAW DICTIONARY (12th ed. 2024) (translating "habeas corpus" as Latin for "that you have the body" and defining the writ as being "employed to *bring a person before a court*, most frequently to ensure that the person's imprisonment or detention is not illegal." (emphasis added)). Many likely do not even know whether or not they are entitled to any relief by this Court, if for no other reason but that they remain unrepresented by counsel in their criminal cases who could, among other things, advise them of their rights to habeas relief.

In sum, to completely halt individual habeas hearings for all eligible class members in this Phase I litigation pending appeal would be contrary to the common law principles outlined in *Knowlton* and *Stewart*, and would result in the abrogation of a right that was described by the Law Court in *Stewart* as a "bulwark of [] liberties." And it is a right that both the Maine and United States Constitutions state "shall not be suspended." Me. Const. art. I, § 10; U.S. Const. art. I, § 9, cl. 2.

A common thread in all the cases reviewed by this Court is this: individuals whose liberties are restrained are entitled to *speedy* resolution of their claim that their restraint is illegal. These habeas hearings can only be conducted individually, as the rights at stake are personal to each

individual class member. *Betschart v. Garrett*, 700 F. Supp. 3d 965, 988 (D. Or. 2023), *amended*, 2023 WL 7621969, *1 (D. Or. Nov. 14, 2023).

The number of individuals that may be entitled to such relief has fluctuated over time, and that is likely to continue to be the case. Depending on the success of ongoing compliance efforts by the MCPDS Defendants, there may be a very few individuals entitled to relief, or there may be many more. That is simply unknowable until the habeas proceedings for these Class are scheduled and actually held.

In a separate Order to be issued over the next few days, the Court will notify counsel for the parties, including counsel for the State of Maine as Party-in-Interest, as to when and where the habeas hearings will occur, consistent with the process set out in the March 7th Order. It is likely that there will be two sessions scheduled in June and July in Penobscot and Androscoggin Counties. The Order will also address the obligation of counsel of record to agree to the list of individuals presumptively entitled to these individual hearings, consistent with the standards determined in the March 7 Order. The Court hopes the new "live" document being utilized by the Judicial Branch and MCPDS will be useful for this purpose, but it will also be necessary for the parties to indicate where the individuals are physically located. The Court will accommodate the concerns of the Respondent-Sheriffs as to how and when each individual will need to be transported and will do everything possible to conduct the hearings in the individual counties or regions where each individual is held.

Count V: Motion for Summary Judgment

One of the issues of first impression in this litigation centers around the State of Maine's assertion of sovereign immunity in Count V. Because the issue has been pending or deferred for some time, a brief procedural history follows.

It was first asserted on June 14, 2024, when the State moved to dismiss Count V, arguing that it is immune from suit under the doctrine of sovereign immunity and that the Declaratory Judgments Act does not provide Plaintiffs with a cause of action in Count V. Def. State of Maine Mot. Dismiss 4–10. The Court denied the State's motion in part, holding that the State is not immune from the declaratory relief Plaintiffs seek. Order on Pending Mots. Dismiss 9–17. The State therefore remained a Defendant in the case for the purposes of the declaratory judgment sought in Count V. *Id.* The Court deferred ruling on a question of first impression, namely whether the Court had the authority to issue injunctive relief against the State on Count V given the assertion of immunity, but allowed that the issue "may be explored and argued after trial, should Plaintiffs prevail in establishing liability." *Id.* at 15.

The State appealed the Court's August 13, 2024 Order to the Law Court. After that appeal was docketed, a single Law Court Justice remanded the case back to this Court, stating: "[t]he trial court may take any action on, and may proceed with, its matter in the usual course as though no appeal had been taken." *Robbins v. Comm'n on Pub. Def. Servs.*, No. Ken-24-450 (Me. Oct. 24, 2024) (Horton, J.). The State requested clarification, and the single Justice explained that the prior order "does not direct the Superior Curt to take any particular action and does not prohibit the Superior Court from taking any particular action." *Robbins*, No. Ken-24-450 (Me. Nov. 4, 2024) (Horton, J.).

The State then filed a Motion for Summary Judgment on Count V along with a Motion to Continue Trial on Count V. In the motion to continue, the State argued that it had been fundamentally unfair of the Court to deprive the State of an opportunity to conduct discovery on Count V. Def. State of Maine Mot. Continue 11–12. In its summary judgment motion, the State made a number of arguments, including ones previously presented to the Court in its motion to

dismiss: (1) that the State of Maine is immune from suit under the doctrine of sovereign immunity and has not waived its immunity; (2) that the Declaratory Judgments Act does not form the basis of a cause of action against the State of Maine; and (3) that the Declaratory Judgments Act does not provide for the relief Plaintiffs seek from the State of Maine. Def. State of Maine Mot. Summ. J. 3–13.

The Court addressed both motions in its January 3rd Order. As to the motion to continue, the Court granted the motion in part, permitting limited discovery on an expedited schedule by way of depositions only. Jan. 3rd Order 41. The Court did not otherwise delay resolution of any count except Count V, as Count V was "the only Count in which the State of Maine is now a party." *Id.* at 38.

After the January 2025 bench trial and post-trial briefing by the parties as to remedies, the Court issued its March 7th Order. The Court declined to reverse its August 13, 2024 conclusion that the State was not immune from Plaintiffs' request for declaratory judgment against the State, citing to *Welch v. State*, 2004 ME 84, 852 A.2d 214, and Judge Duddy's decision in *NECEC Transmission LLC v. Bureau of Parks & Land*, No. BCD-CIV-2021-058, 2021 WL 6125325 (Me. B.C.D. Dec. 16, 2021). March 7th Order 43. As to the issue of injunctive relief under the Declaratory Judgments Act, the Court requested that counsel for the State consider the Law Court's decision in *Avangrid Networks, Inc. v. Sec'y of State*, 2020 ME 109, 237 A.3d 882, and advise the Court whether the State would agree to assist its agency actors, the MCPDS Defendants, to comply with the injunction ordered against them in Count I. March 7th Order 44. If so, it would become unnecessary for the Court to consider or resolve "the complex issues of first impression as to the injunctive relief requested by Plaintiffs." *Id.* at 44.

On March 17, 2025, the State responded to the Court's request. Counsel for the State stated that it had never committed the State to stepping up and supporting MCPDS in providing a remedy. Def. State of Maine's Response to the Court's Inquiry 2. The State stated it was unable to answer the Court's inquiry at all because: (1) *Avangrid*'s "commentary has no bearing on this case," as it involved a discrete state official; and (2) counsel for the State does not know which state officers the Court might issue injunctive relief against. *Id.* at 2–3. The State also questioned whether the Court was "asking for the State of Maine to commit to enact legislation, to appropriate additional funds to MCPDS or to the Judicial Branch, or to promulgate rules." *Id.* at 4.

The Court has repeatedly acknowledged in this case that, under Maine's separation of power, no court in Maine has the authority to order the Legislature to act or to appropriate funding of any kind. Counsel for the State is surely aware of this. The issue is whether in a civil case a court has the authority to declare and enforce the clear holdings of *Gideon v. Wainwright* and its progeny—that it is the *State's* obligation to provide indigent criminal defendants with representation. Or as counsel for the MCPDS Defendants put it very early in this litigation: it is the State of Maine that is the "real party in interest in this matter." Mot. Dismiss Tr. 16, 17 (May 26, 2022). The State nevertheless asserts that no court in Maine has the authority to order the State, as a party, to do anything in any civil case whenever the defense of sovereign immunity is asserted. According to the State of Maine's attorney, this is so even when, as here, the Court would not be ordering the Legislature to appropriate funds, or ordering the Governor to do anything, and even when fundamental rights to liberty and due process have been violated.[7]

[7] *See Welch v. State*, 2004 ME 84, ¶ 8, 853 A.2d 214 ("To allow the State to assert sovereign immunity as a bar to quiet title actions brought in its own courts by private citizens *would fly in the face of the constitutional protections and property rights of the people*. As the Supreme Court said, 'sovereign immunity . . . does not confer upon the State a concomitant right to disregard the Constitution.'" (quoting *Alden v. Maine*, 527 U.S. 706, 754–55 (1999) (emphasis added)); *and NECEC Transmission LLC v. Bureau of Parks & Land*, No. BCD-CIV-2021-058, 2021 WL 6125325, *8 n.15 (Me. B.C.D. Dec. 16, 2021) (declining to formally address the sovereign immunity defense raised by defendants on a motion for preliminary injunction, but stating that the court was "inclined to agree" with the line of cases across

On April 22, 2025, L.D. 1101 was enacted as an emergency measure by the Maine Legislature. P.L. 2025, ch. 40 (emergency, effective April 23, 2025). In Section 3, it enacted 4 M.R.S.A. § 1807, which now authorizes Maine judges to appoint private attorneys for indigent defendants irrespective of their enrollment on MCPDS "rosters," so long as certain requirements are met. It requires the court to find that no public defender, assigned counsel, contract counsel, or employed counsel is available; that the private attorney is "qualified" in the view of the court and has three years of legal experience "relevant to the pending matter"; and that the attorney has not otherwise been disqualified by MCPDS. 4 M.R.S. § 1807(1)(A)–(C).

Section 4 requires MCPDS, an Executive Branch agency, to submit a report to the Judiciary Committee by January 1, 2026, updating the Legislature on the status of this case, *Robbins v. Billings, et al.,* CV-22-54. It requires MCPDS to advise the Legislature of the number of defendants granted habeas relief by the court; the type of habeas relief granted; along with efforts made by MCPDS to provide representation before any habeas relief was granted. *Id.* Section 6 provides "ongoing funding" to create additional public defenders and other positions within MCPDS.

Section 5 is directed at the Judicial Branch. It requires the Branch to submit its own report to the Legislature by the same date required of MCPDS, providing statistics on the number of cases in which courts have appointed private counsel as now permitted.

In Sections 4 and 5, the Legislature states in reference to the reports required of both MCPDS and Judicial Branch that the "Joint Standing Committee on Judiciary may report out legislation related to the report to the Second Regular Session of the 132nd Legislature."

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other states that hold that sovereign immunity is not an available defense when the issue is constitutional—"the availability of judicial review here appears to be integral to the constitutional framework.").

In light of this new law, and the Legislature's active and ongoing oversight of Maine's indigent defense system, the Court concludes that it is not necessary for it to address the issue of first impression as to its authority, or any Maine court's authority, to order injunctive relief against the State. Clearly, the Legislature is sufficiently concerned about the ongoing crisis of non-representation that it has ordered MCPDS to report by the end of the year on its efforts to address the crisis and provided additional resources to increase the capacity of the agency to provide counsel to unrepresented indigent criminal defendants. And the Legislature empowered individual jurists to appoint counsel under certain circumstances when no attorney approved by MCPDS is available to represent an indigent criminal defendant. In other words, it could be said that the State of Maine's three branches of government are working within their own spheres of authority to address the same problem: the crisis of unrepresented indigent criminal defendants.

In sum, given the directives made by the Legislature to the Executive and Judicial Branches, and the Legislature's ongoing oversight and monitoring, there is no need for this Court to further address the issues of first impression generated in Count V. These actions constitute the work of "The State" to remedy Plaintiffs' harms. The Court believes that the constitutional violations that have been established can be adequately redressed by the injunctive relief ordered against MCPDS Defendants, in tandem with individual habeas hearings that will now proceed as provided in this Combined Order.

CONCLUSION

The entry will be:

The MCPDS Defendants' Motion for M.R. Civ. P. 54(b)(1) Certification of the Phase One Litigation is DENIED. The Court may continue trial court proceedings pending appeal consistent with Rule 62(d) of the Maine Rules of Civil Procedure.

The State of Maine as Party-in-Interest's Motion for Clarification of Procedural Schedule or in the Alternative to Stay all Matters Related to Count III Pending Appeal is DENIED.

The Plaintiffs' Motion to Continue Action on Count III is GRANTED.

The State of Maine's Motion for Summary Judgment on Count V is DENIED in part with respect to Plaintiffs' request for Declaratory Relief but GRANTED in part with respect to their request for Injunctive relief against the State of Maine.

The Clerk shall note this Order on the docket by reference pursuant to Rule 79(a) of the Maine Rules of Civil Procedure.

Dated: May 7, 2025

Justice, Maine Superior Court

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-22-054

ANDREW ROBBINS, et al.,

Plaintiffs,

v.

JAMES BILLINGS, in his official capacity as Executive Director of the Maine Commission on Indigent Legal Services; JOSHUA TARDY, in his official capacity as Chair of the Maine Commission on Indigent Legal Services; DONALD ALEXANDER, RANDALL BATES, MICHAEL CAREY, ROGER KATZ, KIMBERLY MONAGHAN, and DAVID SOUCY, in their official capacities as Commissioners of the Maine Commission on Indigent Legal Services; and the STATE OF MAINE,

Defendants.

ORDER AFTER PHASE ONE TRIAL (COUNTS I, III, AND V)

On January 22–24, 2025, the Court held a bench trial on the issues remaining for resolution in Counts I, III and V in this Phase I litigation. The trial was conducted pursuant to the Court's January 3, 2025 Combined Order on Partially Dispositive Motions. In that Order, the Court granted partial summary judgment on the issue of liability in favor of the Plaintiff Subclass members on Count I; granted full summary judgment in favor of the MCPDS Defendants on Count II; granted partial summary judgment on the issue of liability under the Sixth Amendment in favor of Plaintiff Subclass members on Count III; and deferred ruling on the State of Maine's Motion for Summary Judgment on Count V.[1]

[1] On February 21, 2025, the Court ruled on two pending motions brought by MCPDS Defendants. The Court granted in part and denied in part a Motion to Alter or Amend Combined Order on Partially Dispositive Motions and denied a Motion for Partial Summary Judgment on Relief Demanded in Counts I and II.

The Court has reviewed the extensive post-trial filings by the parties on these Counts, the last of which was received by the Court on February 28, 2025. The Court begins by making findings of fact upon which it will in part rely when considering the remedy issues for the Section 1983 claim in Count I, as well as for the claim for habeas corpus relief in Count III.[2]

FACTUAL FINDINGS

The scope of the problem at the close of the evidence

As of January 9, 2025, there were approximately 739 pending criminal cases in Maine where no counsel had ever been provided by the MCPDS Defendants. O'Brien Testimony, Jan. 23, 2025, at 64–72.[3] This was the credible conclusion of the Plaintiffs' expert, Dr. Liam O'Brien, a highly qualified Professor of Statistics at Colby College. Of those cases, about one half of them remained without assigned counsel for more than 66 days. *Id.* at 67. Professor O'Brien conducted this analysis using data provided to Plaintiffs by the MCPDS Defendants for three points in time: September of 2024, November of 2024, and January of 2025. *Id.* at 44. He concluded that the median time that cases are going without counsel has increased from September 2024 to January 2025. *Id.* at 76–77.[4]

In this same time frame, Professor O'Brien identified an additional distinct group of 252 cases in which counsel had been assigned but later withdrew, and no new attorney had been

[2] The Court overrules the State of Maine's standing objection to the Court considering any facts developed in the three-day bench trial in its decision on the habeas claim in Count III. The Court is unpersuaded that factual findings play no meaningful role in the Court's consideration of the scope of the remedy available in habeas claims, in addition to determinations of liability in such claims. *See, e.g.*, *Peterson v. Johnson,* SJC-23-02, at 4–11 (Jan. 12, 2024) (Douglas, J.) (Findings of Fact).

[3] Please note: both the Court and the parties produced transcripts of the audio recording of the January 22–24, 2025 trial. The two transcriptions were paginated differently, and thus citations to the record using one transcript do not line up with the other transcript. When citing to the record in this Order, the Court is referring to the Court's official transcription, not the transcription ordered privately by the parties.

[4] Professor O'Brien calculated the median number of days these 739 cases have gone without counsel in two different ways. When calculated from the date the motion for appointment of counsel was granted, the median number was 66 days. *Id.* at 57. However, if calculated from the date the case was filed, the median number for cases for which counsel was not assigned rose to 111 days for that same group of 739 cases. *Id.* at 71.

assigned. *Id.* at 63. This brings the number of cases without counsel to 991 as of January 9, 2025. *Id.* at 73. And just as with the other group of 739 cases, the trend for this distinct group of 252 cases is that "the median is increasing throughout time. So at each time point, it's getting larger." *Id.* at 77.

Professor O'Brien also noted that, in a number of these cases, the defendant has been without counsel for more than a year. As of January 9, 2025: (1) of the cases in which a defendant's motion for counsel was granted or appointment was ordered by a court, but no counsel has been appointed, and in cases where a defendant has requested counsel but a court has not yet ruled on that motion, there are a total of 51 cases in which a defendant has been without counsel for more than a year, *id.* at 64–67; (2) of the cases in which a defendant previously had counsel but that counsel withdrew and no new attorney has been assigned, there are a total of 79 cases in which a defendant has been without counsel for more than a year. *Id.* at 74–75.

MCPDS Defendants' response to the crisis

Against this background, the MCPDS Defendants attribute the crisis to forces outside their control. They argue that the number of private attorneys participating in their programs is insufficient to carry 70 percent of adult criminal cases. Pls.' Ex. 7, Annual Report of Commission (Jan. 14, 2025), at 3. That percentage was selected by MCPDS as part of its goal to create a "hybrid" indigent defense system. Under this model, public defender offices are expected to staff the remaining 30 percent of the criminal cases requiring assignment of counsel for adult indigent defendants. *Id.*

In its Report, MCPDS adamantly defends its caseload standards (often referred to as the "Chapter 4" standards or regulations)—the points-based limits MCPDS puts on how many cases a rostered attorney can take in a single year. It asserts that "[t]he idea that PDS standards are too

high and are driving people away is simply not supported." *Id.* They note that the trend of declining participation has been ongoing for "a period of years," with the exception of an uptick in 2024. *Id.* Earlier in the crisis, in a March 8, 2024 memo from Executive Director Billings to the Commissioners, he made essentially the same claim. MCPDS Defs.' Ex. 13, Memorandum Regarding Unassigned Cases and System Capacity (Mar. 8, 2024). Executive Director Billings stated that, as of that date, there were over 20,000 unallocated "points" in the system, *id.* at 1, and that "for all attorneys not already over their caseload limit, the average carried caseload was 85 points less than their caseload limit." *Id.* He drew the following conclusion from the data:

> It has been suggested that the implementation of Chapter 4 was the precursor to the rise in the number of cases needing counsel. However, looking at the number of cases without counsel over time reveals that the number of unstaffed cases has been steadily increasing since November of 2023. That rate held steady in January of 2024 after the implementation of the Chapter 4 caseload standards. The current accelerated rate of increase did not begin until mid to late February of 2024. The temporal delay and availability of system capacity indicate that the rise in cases without counsel cannot be ascribed to the implementation of Chapter 4.

Id. at 2. He explained that since the Chapter 4 regulations were implemented, "26 attorneys have been granted caseload limit waivers. 19 attorneys have been granted waivers that would allow them to exceed the standard caseload limit of 270 points." *Id.* at 1. He ended the memo by stating that MCPDS staff concluded that "counsel appear to be self-regulating their caseloads and intentionally maintaining lower caseloads than the maximums permitted by Chapter 4." *Id.* at 3. In other words, he believes the caseload standards are working to the benefit of the system as it motivates private attorneys to stay on the rosters if they can control their caseloads.

He indicated at trial, however, that since the Court's finding of liability on Count I, that he had been "freely granting" waivers. Billings Testimony, Jan. 23, 2025, at 220–21.[5]

[5] In its most recent Annual Report, MCPDS Executive Director Billings wrote that MCPDS undertook emergency rulemaking in July 2024. Pls.' Ex. 7, Annual Report of Commission (Jan. 14, 2025), at 3. These rules made it possible for attorneys to seek waivers for "specialized panels." *Id.* Executive Director Billings noted that only one

The MCPDS Report concludes that the caseload standards should be maintained, and that "the best way forward to address this crisis is to: (a) continue the buildout of the public defender offices to geographically cover the remainder of the state, (b) increase to at least a 50% public defender-private counsel ratio, and (c) continue with recruitment efforts at the law school level—both in Maine and elsewhere." Pls.' Ex. 7, Annual Report of Commission (Jan. 14, 2025), at 3–4.

There is unrebutted testimony in the record, however, that the approach taken to date by MCPDS for how to use the expertise and experience *within* the public defender offices (the District Defenders) has fallen short in addressing the crisis in four of the five regions where offices now exist, with one notable exception in Region IV, where the Capital Region Public Defender opened in late 2023. In response to questions from the Court, it was established that some of the District Defenders in the other four regions are not actually assigning cases to themselves but are instead supervising Assistant Defenders in cases selected for them by the District Defenders.

District Defenders were presumably hired because they are experienced and highly competent attorneys qualified to handle any case type. And it is well understood that one major benefit of a public defender system is that public defenders are not typically given the option to pick and choose their cases. But that is what appears to be happening now. The Court understands that four of the five public defender offices open now are relatively new. And in ordinary circumstances, the decision to roll out the offices while permitting District Defenders to personally handle very few or, in some cases, no, adult criminal matters might be completely defensible. But current circumstances are far from ordinary.

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attorney applied for a waiver, and he cites this fact as further evidence that the standards should not be changed or adjusted during this crisis. *Id.* The waivers are intended to permit attorneys to exceed the number of points MCPDS permits attorneys to accrue before they must notify courts and MCPDS that they are no longer eligible to be assigned to represent defendants for certain case types. Billings Testimony, Jan. 23, 2025, at 219–20.

Executive Director Billings testified that he is hearing from his District Defenders that

> a lot of the cases on the unrepresented list are there because nobody wants them, and the evidence is in disarray, the discovery is incomplete, there's an ongoing battle for discovery, and that it takes a long time to get caught up because you feel like you are behind in those case. And so there's a limit to how quickly they can take cases off the list and still provide high-quality services.

Billings Testimony, Jan. 23, 2025, at 240.

Cases that are in disarray are exactly what might be expected when cases linger without representation by a skilled practitioner who could resolve or ameliorate what the District Defenders describe. And it would seem obvious that these cases are *exactly* the sorts of cases that the District Defenders should personally be taking on—particularly for defendants in custody.

Here are the numbers of cases that have been selected by four out of the five District Defenders (DDs) for assignment to their Assistant Defenders (ADs), and to themselves:

1) The Aroostook County DD personally handles no adult criminal cases of his own. Instead, he handles "a few juvenile cases" and acts as "Lawyer of the Day" (LOD) in Fort Kent and sometimes in Madawaska. He supervises two ADs who each have 70–75 cases. Billings Testimony, Jan. 24, 2025, at 8–11;

2) In the Highlands Region of Penobscot and Piscataquis Counties, the DD personally handles no adult criminal cases of her own. Instead, she supervises one AD who has 11 cases, and one AD who has 20 cases. *id.* at 7–8;

3) In the Downeast Region of Hancock and Washington Counties, the DD has 14 cases of his own, two of which are on deferred dispositions. As of the close of the evidence, he had no ADs to supervise. *id.* at 8;

4) In the Tri-County Region of Androscoggin, Franklin, and Oxford Counties, the DD personally handles 13 adult criminal cases. He supervises one AD who, as of January 24, 2025, had 2 cases (but who he hoped would be able to take 12 to 15 more cases in the near future); one AD who has 12 cases; one AD who has 24 cases; and one AD who has 40 cases. He also supervises one AD who, as of the close of the evidence, did not have any cases assigned to him. Tarpinian Testimony, Jan. 24, 2025, at 74–77.

MCPDS is understandably concerned with the Assistant Defenders being "overwhelmed" if they have to take too many cases while they are still being trained. However, no MCPDS representative has articulated a credible reason why the District Defenders themselves cannot take "off the spreadsheet" the most difficult cases, meaning either that the case or defendant may be particularly challenging—especially when those defendants are in custody. To put it in simple, mathematical terms, if each District Defender personally handled approximately ten unrepresented defendants who are now in custody, the "in custody" column on the spreadsheet would be cut in half.

The testimony at trial also establishes that no one from MCPDS' central office is maintaining an internal list of the unrepresented, incarcerated defendants or where they are located—much less attempting to actually visit them in the jails. Instead, they wait to receive the data from the Judicial Branch, and then forward that data three times per week to "all eligible counsel." Maciag Testimony, Jan. 23, 2025, at 183–85. Deputy Director Maciag and Executive Director Billings explained that MCPDS does not have the staff to make calls or otherwise reach out to private counsel to take adult criminal cases and often rely upon court clerks to make such calls. Billings Testimony, Jan. 23, 2025, at 198–99. He did note, however, that MCPDS recently conducted a pilot program to recruit private attorneys to represent parents in child protective cases. *Id.* at 254. A private attorney was hired to work with the Lewiston District Court clerks to make calls to find counsel willing to be assigned. *Id.* He stated that her success rate was approximately sixty percent. *Id.* He did not indicate if MCPDS was considering using this model to try and similarly convince private attorneys to take criminal cases off the unrepresented list.

In his oral closing argument, Counsel for MCPDS suggested to the Court that their proposal for a remedy to the ongoing Sixth Amendment violations found in Count I was

essentially the budget they had proposed be included in the Governor's budget for the next biennium, MCPDS Defendants' Closing Argument, Jan. 24, 2025, at 116, which means that MCPDS is addressing the current crisis by focusing on obtaining additional resources.

Executive Director Billings testified about the budget MCPDS submitted for consideration by the Governor. Billings Testimony, Jan. 23, 2025, at 249–59. Because an insufficient number of private attorneys are willing to take cases, the proposed budget would permit MCPDS to roll out three more public defender offices: one in the Midcoast, and two in the most populated counties in Maine, Cumberland and York. Billings Testimony, Jan. 23, 2025, at 251; Pls.' Ex. 7, Annual Report of Commission (Jan. 14, 2025), at 9, 15. Their goal is for public defender offices statewide to take on 50 percent of adult criminal cases, as opposed to the 30 percent of adult criminal cases they are supposed to be handling now. Billings Testimony, Jan. 23, 2025, at 255; Pls.' Ex. 7, Annual Report of Commission (Jan. 14, 2025), at 15. Their budget included financial incentives for private attorneys to take more cases, along with the creation of three new positions tasked specifically with soliciting private attorneys to take cases "off" the unrepresented list. Billings Testimony, Jan. 23, 2025, at 251–52. The proposal was modeled after the State of Oregon, which has faced similar problems to Maine in providing counsel for indigent defendants. *Id.* at 244–45.

Unfortunately, to date, MCPDS has been unable to persuade other State actors in the Legislative or Executive Branches to go along with this proposal. According to Executive Director Billings, "[t]he next word we saw was in the release of the Governor's budget, where we had no new positions and we do not have the $12 million that we need to pay the rostered attorneys." *Id.* at 257.

The parties are aware that the Court has no authority to order the Legislature to appropriate the funds requested by MCPDS. And the Court would emphasize that it has no intention of ordering any particular District Defender to take a particular case. Nor does it have authority at this stage of the litigation to order MCPDS to consider suspending caseload standards or to implement a pilot program such as the one that was so successful in finding attorneys for parents in child protective cases. The Court's purpose in asking about capacity was not part of an agenda to micromanage MCPDS. The Court's questions were designed to determine if there was as a factual matter some reserve capacity in the system. It appears to the Court that there is.

The factual findings about these issues are manifest from the trial record, and some of them they will play a part in the legal analysis conducted by the Court on the Counts remaining in this litigation.

COUNT I

The Phase I Subclass of unrepresented Plaintiffs (hereinafter, "the Plaintiffs") prevailed on the issue of liability under Count I, the Section 1983 claim. The Court found that the Sixth Amendment requires MCPDS Defendants to provide Plaintiffs with continuous representation from the time the right attaches at a defendant's first appearance or arraignment, throughout pretrial events and proceedings, and throughout the plea-bargaining and trial processes.

Plaintiffs now seek a declaratory judgment consistent with those conclusions, and a permanent injunction requiring the MCPDS Defendants to provide continuous representation.

In order to obtain permanent injunctive relief, Plaintiffs must succeed on the merits; and they must establish that 1) they would suffer irreparable harm if the injunction is not issued; 2) the harm to the Plaintiffs outweighs any potential harm to the Defendants; and 3) there are public

interests beyond the private interests of the Plaintiffs that would be served by issuance of the injunction. *Ingraham v. Univ. of Me. at Orono,* 441 A.2d 691, 693 (Me. 1982); *Fitzpatrick v. Town of Falmouth,* 2005 ME 97, ¶ 18, 879 A.2d 21. "Failure to demonstrate that any one of three criteria are met requires that injunctive relief be denied." *All. for Retired Ams. v. Sec'y of State,* 2020 ME 123, ¶ 11, 240 A.3d 45. The most critical factor independent of success on the merits is the demonstration of irreparable harm. *Nken v. Holder*, 556 U.S. 418, 434 (2009).

Before addressing whether Plaintiffs have established these three criteria, the Court must address a legal issue, raised for the first time by the MCPDS Defendants almost two years after this litigation commenced—that the MCPDS Defendants are entitled to "quasi-judicial immunity" and that therefore Plaintiffs are not entitled to any injunctive relief, as a matter of law.

In support of their argument, the MCPDS Defendants rely upon cases primarily from jurisdictions that take markedly different approaches than Maine as to how separate branches of government manage the authority and responsibility allocated to them to run indigent defense systems. Remarkably, after many months of asserting that the Judicial Branch has no authority over how MCPDS operates, in part because only MCPDS can determine what attorneys are qualified or eligible to be appointed, MCPDS now asserts they are protected from being subjected to injunctive relief by judicial or quasi-judicial immunity because all they do is "facilitate" the work of the courts. In order to make that argument, the MCPDS Defendants must now characterize their role differently. They now describe their obligation to provide counsel to indigent defendants as working under the courts, and as essentially ministerial. The Court rejects this argument for a number of reasons.

As noted, the MCPDS Defendants have repeatedly claimed that jurists in Maine have no authority to determine whether an attorney is qualified or eligible to be appointed. They cite to

the "Clifford Commission," which in 1999 "recommend[ed] that Maine implement an indigent legal services system that is independent from the judiciary, and that provides the training and oversight necessary to ensure quality representation to Maine's citizens." MCPDS Defs.' Ex. 9, Clifford Commission Report, at 10. The Report was admitted into evidence as a Defense Exhibit, and it is also posted on the MCPDS website. *See* Maciag Testimony, Jan. 23, 2025, at 132–36; *see also* Report of the Indigent Legal Services Commission, at 10 (Feb. 2009), https://www.maine.gov/pds/sites/maine.gov.mcils/files/documents/Clifford-Commission-Report.pdf.

The Clifford Commission specifically recommended that the Maine Legislature create a new state agency, outside of the Judicial Branch and with its own budget, and that it be given the exclusive authority to set its own standards for "the selection, training, and performance review of appointed counsel." MCPDS Defs.' Ex. 9, Clifford Commission Report, at 11.

In 1999, in response to this Report, the Maine Legislature did just that. It specifically removed from the Judicial Branch the authority to make determinations as to which attorneys were qualified or eligible to represent indigent defendants. Maine jurists still retained the authority and obligation to determine indigency, M.R.U. Crim. P. 44A, and to appoint counsel, M.R.U. Crim. P. 44, but only from rosters populated by attorneys MCPDS deemed qualified. 4 M.R.S. § 1804(2)–(3) (It is explicitly the "duty" of MCPDS to "determin[e] . . . whether an attorney meets the minimum eligibility requirements to receive assignments or to receive assignments in specialized case types," to "ensure an adequate pool of qualified attorneys," and to "ensure the delivery of high-quality, effective and efficient indigent legal services."). When read in tandem with Rule 44 of the Maine Rules of Criminal Procedure, this is abundantly clear. "Assigned counsel *must be designated by [MCPDS] as eligible to receive assignments for the type of case to which counsel is assigned.*" M.R. Crim. P. 44(a)(1) (emphasis added). And

notably, under certain circumstances, the Commission has authority, pursuant to procedures they established, to "accept the initial assignment made by the court or substitute other counsel for counsel assigned by the court." *Id.*

The Law Court recently had occasion to review an administrative appeal brought by an attorney who claimed he was aggrieved by action taken by MCPDS. In *Gordon v. Maine Commission on Public Defense Services*, the Law Court explained the process in Maine for attorneys who challenge MCPDS decisions as to their ability to remain on rosters. 2024 ME 59, ¶ 3–7, 320 A.3d 449. Attorney Gordon requested an intra-agency appeal before a hearing officer, who denied his appeal. *Id.* ¶ 8. MCPDS then ratified the decision of the hearing officer. *Id.* Attorney Gordon's only recourse was to seek review in the Superior Court, which was of course required to show great deference to MCPDS's decision about his eligibility. *Id.* ¶ 11. That deference resulted in Attorney Gordon having to appeal to the Law Court, which also described its authority to overturn MCPDS's decision as "deferential and limited." *Id.* The Law Court stated: "[W]e do not substitute our judgment for that of the agency on questions of fact." *Id.* The question of fact the Law Court was referring to was Attorney Gordon's eligibility to stay on the rosters maintained by MCPDS. This decision refutes the MCPDS Defendants' new position that all they do is "facilitate" the court assignment process.

The Court has nevertheless reviewed the cases cited by the MCPDS Defendants and finds them inapplicable. There is simply no comparison between the defendants sued in those cases to the MCPDS Defendants. The defendants in the cases cited were actually working directly with and under the supervision of jurists who determined whether an attorney was eligible to be

assigned to represent an indigent defendant. The MCPDS Defendants' reliance upon the Penobscot Superior Court's *Carey* case is also completely misplaced.[6]

Irreparable harm

Plaintiffs called a number of witnesses to testify about the harm they claim is irreparable for persons who are charged with crimes punishable by jail or incarceration, but who must wait an indeterminate amount of time before counsel is finally appointed. MCPDS Defendants claim that the factual record at the most created "speculative harms" because Plaintiffs failed to call any witness or produce evidence that any Plaintiff's "right to a fair trial has been irredeemably lost." Instead, MCPDS Defendants suggest that hundreds of individual Plaintiffs, who are

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[6] The MCPDS Defendants cite to three federal cases in support of their immunity argument. None of them are analogous to Maine's system of administering public defense services.

The first is *Roth v. King*, concerning the "Family Court Panels Committee," which was established to work *in consultation with* the presiding and deputy presiding judges of the District of Columbia Family Court to recommend panels of designated and approved attorneys to represent indigent parties in juvenile delinquency matters. 449 F.3d 1272, 1277 (D.C. Cir. 2006). The defendants in the suit, a group of judges and public defense employees, were judicially immune from injunctive relief—the judges because they were acting in a "judicial capacity" when selecting attorneys for inclusion on the panels and the public defense employees because, by statute, they were tasked with coordinating with and assisting judges during the panel process. *Id.* at 1286–87.

Second is *Durrance v. McFarling*, in which a practicing attorney sued two judges for removing him from a "felony defendant appointment list." No. 4:08-cv-289, 2009 WL 1577995 (E.D. Tex. June 4, 2009). Under Texas law, a panel of judges in each county created and maintained a list of attorneys eligible for felony appointments. *Id.* at *1. The defendant-judges had judicial immunity from suit because the steps they took to assist in removing the plaintiff-attorney from the felony appointments list related to the "general function[s] normally performed" by a judge in that jurisdiction. *Id.* at *4.

Third, in *Ashford v. Bowie*, a practicing attorney's application to be placed on a list of attorneys eligible to receive court appointments in murder cases was denied by a panel of judges and attorneys. No. 8:15CV8, 2016 WL 4186952 (D. Neb. Aug. 8, 2016) (*vacated and remanded on unrelated grounds by Ashford v. Douglas Cnty.*, 880 F.3d 990 (8th Cir. 2018)). The attorney sued the panel members, alleging their decision was racially motivated. *Id.* at *1. The Nebraska legislature expressly tasks judges with the appointment responsibility in cases with indigent defendants. NEB. REV. STAT. §§ 29-3902 to -3906. The judges in this particular county had created a panel of four judges, two private practice attorneys experienced in criminal defense, and the County Public Defender to consider applications to the appointment list. *Ashford*, 2016 WL 4186952, at *2. The defendant-judges had judicial immunity from suit, and the defendant-public defender had quasi-judicial immunity from suit, because they were engaged in a *judicial act*, rather than an administrative or executive act, under Nebraska law. *Id.* at *3.

The MCPDS Defendants' reliance on a Maine Superior Court case and its progeny at the Law Court is similarly misplaced. In the *Carey* case, three of the named defendants were entitled to quasi-judicial immunity from suit because they were all Judicial Branch employees (court clerks) engaged in the "seemingly" judicial act of appointing counsel. *Carey v. Me. Bd. of Overseers of the Bar*, No. CV-17-17, 2017 WL 6513581, at *17 (Me. Super. Ct. Oct. 25, 2017). On appeal, the Law Court concluded defendant MCILS (today, MCPDS) and Judicial Branch employees were immune from suit under the Maine Tort Claims Act. *Carey v. Bd. of Overseers of Bar*, 2018 ME 119, ¶ 25, 192 A.3d 589. The defendants in the *Carey* case were being sued *for damages*. *Id.* ¶¶ 21, 30 n.5.

represented for one day only by "Lawyers of the Day," should try and convince trial judges at seven-day review hearings that their individual cases should be dismissed for lack of a fair trial—even though those Plaintiffs have not come remotely close to having a trial at all because the MCPDS Defendants have failed to provide them with representation. Essentially, they argue that the Court should say the current situation is "good enough"—that the hundreds of Plaintiffs should wait patiently in jails or in the community while on bail until a lawyer is finally provided who might then file motions to dismiss their cases at some undetermined point in time. In some respects, they are reiterating arguments already rejected as to whether this case should have been brought as a class action, as well as their arguments regarding whether any Plaintiff has actually gone without counsel at a "critical stage." The Court stands by its previous rulings on both those issues.

MCPDS Defendants also argue that Plaintiffs overstate federal case law when they assert that deprivation of any constitutional right constitutes irreparable harm. The Court agrees with the Defendants that, for purposes of obtaining injunctive relief, Plaintiffs must establish actual harm.[7] However, after reviewing the factual record in the form of testimony and exhibits, the Court concludes that Plaintiffs have established actual harm, and that it is irreparable.

Plaintiffs called a number of highly experienced defense attorneys, who testified at length about what is lost if counsel is not promptly assigned to provide continuous representation throughout the criminal process. Attorney Amber Tucker, Attorney Walt McKee, Professor Eve Primus, and Professor Rachel Casey all testified credibly about the harms experienced by

[7] The Massachusetts Supreme Judicial Court has found that actual denial of the right to counsel entitles a criminal defendant to relief even without a specific showing of harm due to the absence of counsel. Because unrepresented defendants "could not be expected by themselves to assess and to demonstrate the seriousness of any harm to them," "it is enough that they have shown a violation of that right that *may likely* result in irremediable harm if not corrected." *Lavallee v. Justs. in the Hampden Superior Ct.*, 812 N.E.2d 895, 905 (Mass. 2004) (emphasis added); *Carrasquillo v. Hampden Cnty. Dist. Cts.*, 142 N.E.3d 28, 44 (Mass. 2020) (emphasis added).

unrepresented defendants when they are not able to conduct initial investigations;[8] when they are not able to participate in timely bail hearings;[9] when they are not able to meaningfully engage in plea bargaining;[10] about the harm to the attorney-client relationship;[11] along with a myriad of significant personal costs,[12] including lost housing, employment, and familial relationships.

A number of the MCPDS Defendants' own experts corroborated important aspects of Plaintiffs' witness testimony, including Commissioner David Soucy, Commission Chair Joshua Tardy, District Defender Frayla Tarpinian, Deputy Director Eleanor Maciag, and Executive Director Jim Billings.

Commissioner Soucy testified that "[e]vidence is lost when there are delays[,] [m]emories fade, tapes are destroyed, opportunities are lost because of the timelines imposed by the court." Soucy Testimony, Jan. 22, 2025, at 214. He also testified about the importance of appointing counsel promptly so that discovery issues can be addressed. *Id.* at 212–13. He corroborated Professor Casey's testimony when he stated that the prompt appointment of counsel is a reasonable expectation of the client in establishing the attorney-client relationship, as a client "needs some reassurance that their case is being addressed." *Id.* at 214–15.

Commission Chair Tardy confirmed it is important for people to have counsel at bail hearings because of the substantive rights at stake in those hearings. Tardy Testimony, Jan. 22, 2025, at 204.

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[8] Tucker Testimony, Jan. 23, 2025, at 13–16, 19; McKee Testimony, Jan. 22. 2025, at 29, 30–32, 35–36; Primus Testimony, Jan. 22, 2025, at 106–08.
[9] McKee Testimony, Jan. 22, 2025, at 44, 46–47, 62, 64; Primus Testimony, Jan. 22, 2025, at 110–11.
[10] Tucker Testimony, Jan. 23, 2025, at 16 –17, 18; McKee Testimony, Jan. 22, 2025, at 37, 39–40; Primus Testimony, Jan. 22, 2025, at 108–112, 114–15.
[11] Primus Testimony, Jan. 22, 2025, at 104–05, 106.
[12] Casey Testimony, Jan. 22, 2025, at 77, 79, 80–87; Tucker Testimony, Jan. 23, 2025, at 18–19, 20; McKee Testimony, Jan. 22, 2025, at 49.

District Defender Tarpinian (Region IV) reiterated the barriers facing an unrepresented defendant who tries to conduct their own investigation or receive or interpret the discovery in their case. Tarpinian Testimony, Jan. 24, 2025, at 88–90. And she testified about the importance of having an attorney to address any discovery issues early in a case, *id.* at 49–52, particularly when considering the difficulties often encountered with the automatic discovery system. *Id.* at 45–47. She also testified about the challenges facing an unrepresented defendant in drug cases specifically—defendants may be unfamiliar with drug lab testing delays and the implications of those delays on their case. *Id.* at 46–47; 89–90.

Deputy Director Maciag testified that delays in appointment result in delays in necessary witness interviews being conducted. Maciag Testimony, Jan. 23, 2025, at 38.

And Executive Director Billings did not disagree with Plaintiffs' position that unrepresented criminal defendants are unable to meaningfully participate in plea negotiations without the assistance of counsel. Billings Testimony, Jan. 23, 2025, at 98. He further testified that there are unrepresented defendants who feel "trapped in a coercive system" and plead guilty just to get out of jail. *Id.* at 98.

While it is true that Attorneys McKee and Tucker and District Defender Tarpinian testified that the kind and extent of harm could vary case to case, these concessions did not undercut the Plaintiffs' central premise that gaps in representation throughout the criminal process cause harms that cannot be repaired or remedied.

The Court finds that Plaintiffs have produced credible and compelling evidence of irreparable harm caused by the MCPDS Defendants' failure to provide continuous representation at all critical stages of the criminal process. While the MCPDS Defendants are correct that the presumption of prejudice, *see Penson v. Ohio*, 488 U.S. 75, 88–89 (1988); *Van v. Jones*, 475 F.3d

292, 311–12 (6th Cir. 2007), does not relieve Plaintiffs of their obligation to establish real harm to be eligible for injunctive relief, the Court concludes that Plaintiffs have amply established real, irreparable harm through the testimony of their experts, and as corroborated by a number of Defense witnesses.

Balancing of harms and the public interest

Plaintiffs must also establish that the harm to them outweighs potential harm to the MCPDS Defendants, and that the issuance of an injunction is in the public interest. The parties correctly recognize that when the respondent is a state government or the federal government, the balancing of equities and the public interest merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

Plaintiffs claim that no harm will befall the State if the Court issues injunctive relief for the Plaintiffs, as the MCPDS Defendants would simply be required to follow their statutory and constitutional obligations. Plaintiffs also claim that if counsel is provided to in-custody defendants within seven days of their initial appearance, the criminal justice system in Maine will "guarantee efficiency, make criminal proceedings less burdensome on all involved, and will prevent cases from being needlessly delayed." Pls.' Post-Trial Br. 15. Defendants assert that injunctive relief will harm their interests and the interest of the public by impeding their efforts to increase capacity to provide defense counsel for indigent defendants. And the Defendants question the "last-minute focus on Maine's emerging public defenders' offices as somehow the problem" as an "unfortunate and unproductive detour."

The Court understands that its ability to issue injunctive relief is limited to the leeway granted to the Judicial Branch in *Burr v. Department of Corrections*, 2020 ME 130, ¶¶ 18–28, 240 A.3d 371. The Defendants properly focus on the controlling language. The Law Court in *Burr* made clear that when a plaintiff has prevailed on the merits of a Section 1983 claim against

a state agency, meaning that a court has ruled a constitutional violation has occurred, the court may grant injunctive relief requiring agency actors to comply with the Constitution without violating separation of powers principles. *Id.* ¶¶ 23, 27. Put a different way, agency actors are not "harmed" if they make decisions about compliance which might result in them doing things differently than they did before a constitutional violation was found, so long as it is the agency who decides which changes to make which would enable it to fulfill its constitutional obligations. For MCPDS that means providing counsel consistent with the requirements of the Sixth Amendment. *See* 4 M.R.S. § 1801 (establishing MCPDS, "whose purpose is to provide high-quality, effective and efficient representation . . . consistent with federal and state constitutional and statutory obligations.") *and id.* § 1804(3)(D) (including among MCPDS's duties to "ensure an adequate pool of qualified attorneys.").

The Court has concluded that the balance of harms weighs significantly in favor of Plaintiffs, and they have therefore established the third criteria for obtaining injunctive relief.

Finally, the public interests in providing the relief requested are significant. They would include the public interest in a fair, functional, and stable criminal justice system; the public interest in the protection of the liberty interests for all the citizens of Maine who are charged with crimes punishable by incarceration; and the public interest in ensuring that the presumption of innocence is meaningfully protected against the power of the State through the effective assistance of counsel.

INJUNCTION ON COUNT I

Before issuing the injunction, the Court will set out its analysis on how to provide a meaningful remedy for Plaintiffs while adhering to the standard set out in *Burr*. 2020 ME 130,

¶ 27, 240 A.3d 371 ("To . . . enjoin specific conduct that the court found unconstitutional [is] a power that rests with the judiciary.").

The Court will order the MCPDS Defendants to provide continuous representation as required by the Sixth Amendment. The Court understands that the Defendants are constrained by the resources that the Executive and Legislative Branches have provided. There is nothing in the trial record, however, that gives the Court any confidence that those branches will soon be providing the resources that the Defendants state they need. The Court also understands that advocates for improvements in Maine's indigent defense system have always had their work cut out for them. After decades of neglect by State actors, they have had to fight every step of the way to create a system that is independent from the judiciary, free from political interference, and adequately resourced.

What follows is the Ninth Circuit's description of where things stand in Oregon for indigent defendants who are presumed to be innocent but remain incarcerated for indeterminate amounts of time without the benefit of counsel:

> The state arrests a citizen and incarcerates him pending trial. Days, weeks, and months pass without any legal representation. He seeks relief from the authorities—surely a lawyer should help him? In response, he gets a shoulder shrug, a promise that they are "working on it," and nothing more. He remains in jail, without legal counsel or any relief in sight. You might think this passage comes from a 1970s State Department Report on some autocratic regime in the Soviet Bloc. Unfortunately, we do not need to go back in time or across an ocean to witness this Kafkaesque scene. This is the State of Oregon in 2024. . . . Yet, due to an "ongoing public defense crisis" of its own creation, Oregon does not provide indigent criminal defendants their fundamental right to counsel despite *Gideon*'s clear command.

Betschart v. Oregon, 103 F.4th 607, 612 (9th Cir. 2024).

Lest anyone believe that the Ninth Circuit was being overdramatic about what Oregon is facing, or how their problems compare to present circumstances in Maine, some perspective is in

order. Oregon has approximately three times the population of Maine. In *Betschart,* the federal District Court and later the Ninth Circuit were contending at separate points in time with approximately 100 unrepresented indigent defendants who remained in jail pending trial. 103 F.4th at 613. In Maine, while the numbers of unrepresented indigent defendants fluctuate week to week, the number of incarcerated unrepresented defendants fluctuates between 50 to 100. *See* Pls.' Washer Dep. Ex. 5. Given this, it is fair to say that the situation in Maine is two or three times worse than the situation in Oregon for incarcerated unrepresented defendants. There can be no serious dispute that unrepresented defendants who are incarcerated confront the most significant harms and impediments to obtaining their Sixth Amendment rights. *See supra* pp. 5–8 (loss of physical liberty, housing, and employment, to name a few). Therefore, the Court believes the focus of the injunction must be to require the MCPDS Defendants to provide representation for the incarcerated Plaintiffs.

The injunction requiring MCPDS Defendants to provide representation for plaintiffs and to prioritize incarcerated plaintiffs does not violate the doctrine of separation of powers

The parties have spent a lot of their efforts over the last two years arguing about who or what is responsible for the current crisis. Clearly, the MCPDS Defendants have, along with the courts, struggled to respond to their day-to-day obligations while at the same time trying to figure out how to best address the growing problem. But if all the parties or system participants do—including the courts—is assign blame to others, nothing will change. And the result will be the normalization of egregious, ongoing violation of fundamental rights. It will then become acceptable in the State of Maine to arrest indigent defendants, hold them in custody for indeterminate periods of time, and deny them access to their State and federal constitutional rights simply because they are poor.

The Court is keenly aware that the MCPDS Defendants did not think it appropriate for the Court to elicit at trial information about the efforts made by its central office to address the problem, along with the capacity of its District Defenders to provide representation. The Defendants misapprehend why the inquiry was important. Again, it was not part of a plan by the Court to take over the agency or to micromanage it. The Court is also aware that the MCPDS Defendants have argued strenuously since the earliest days of this litigation that they have absolutely no ability to comply with any Court order as they are understaffed and under-resourced. And they insist that requiring them to do anything at all would violate the separation of powers doctrine.

The Court is not ordering the MCPDS to violate any of its own regulations or standards. However, it was important for the Court to know how MCPDS has approached the crisis it confronts before the Court decides if it should impose the extraordinary remedies that Plaintiffs—and indeed, sometimes the Defendants—are asking the Court to impose.[13]

The remedy that must be tried first is representation for incarcerated Plaintiffs. That is the primary goal of the injunction the Court has concluded it must issue on Count I. Prioritizing incarcerated Plaintiffs is integral to the relief required in this case, in recognition of the undeniable fact that the incarcerated Plaintiffs experience the most direct and significant harms in terms of loss of liberty, harms caused by the Defendants' failure to provide counsel for them.[14]

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[13] *See, e.g.*, Tarpinian Testimony, Jan. 24, 2025, at 86–87 (Question by Attorney Kevin Martin for Plaintiffs: "If sheriffs were ordered to release persons who had been held for seven days without counsel, would that interfere with the operations of your public defender's office?" Answer by District Defender Tarpinian: "It would not." Question by Attorney Kevin Martin for Plaintiffs: "And if charges were dismissed against persons who – who had gone without counsel for 45 days, would that interfere with the operations of your public defender's office?" Answer by District Defender Tarpinian: "No. It would help.").

[14] The Court would emphasize that the MCPDS Defendants are not being ordered to comply with any *Lavallee*-type protocol as a remedy in Count I. *See* infra pp. 35–39. The statutory framework that resulted in the "*Lavallee* protocol," discussed further under Count III and used by Massachusetts to solve their indigent defense crisis, is obviously different from a Section 1983 claim. The *Lavallee* and *Carrasquillo* cases are important, however, in part because Massachusetts was able to implement guardrails to ensure that the courts would not encroach on the

There is some existing capacity in the system which would enable MCPDS to presently comply with their obligation to provide continuous representation under the Sixth Amendment for at least some of the incarcerated, unrepresented indigent defendants

The Court's factual findings from trial establish that there is some capacity within the system which would give MCPDS Defendants the ability to comply with their obligations to provide continuous representation for Plaintiffs, particularly for unrepresented indigent defendants who are incarcerated for an indeterminate amount of time. Steps they could consider include retaining counsel, as they did in child protective cases, to make calls to find counsel willing to take cases "off the spreadsheet." They could also escalate their efforts, as Executive Director Billings indicated in his testimony, to offer waivers to private counsel.[15] According to him, there are clearly excess unused "points" in the system.

The Defendants could also immediately require District Defenders to take cases off the in-custody, unrepresented spreadsheet, even if that means that they take the cases "nobody wants." Clearly some of the District Defenders are handling just a few of their own cases, if any. As the Court noted in its Findings, if the District Defenders each took 10 cases off the in-custody unrepresented spreadsheet, the spreadsheet would essentially be cut in half.

All of the above could occur almost immediately. But as *Burr* held, the Court has no authority to micromanage or set policies for the agency. And so the Court feels compelled to emphasize *it is not ordering MCPDS to take any of those steps.* It is completely up to them to

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independence of the agency charged in the Commonwealth to run its indigent defense system, while at the same time ensuring that a meaningful remedy was provided for unrepresented indigent defendants.

In both *Lavallee* and *Carrasquillo*, the Massachusetts Supreme Judicial Court began by recognizing the limits of its authority under its own separation of powers doctrine, and it approved the imposition of extraordinary remedies only as a last resort. The process required under *Lavallee* was for the trial court to establish as a factual matter that the agency had been given the opportunity to provide counsel consistent with its obligations and standards, and then to establish that capacity within the system to provide representation had been exhausted before any other remedies would be imposed. *Lavallee*, 812 N.E.2d at 911–12; *Carrasquillo*, 142 N.E.3d at 50 –52.

[15] Other efforts would obviously require changes in rulemaking but could be considered, including temporarily suspending or modifying caseload standards or requiring LODs to remain on a case until trial counsel is available, thus providing continuous representation.

decide how they intend to come into compliance with the Sixth Amendment, but the options described do exist. *Burr*, 2020 ME 130, ¶ 27, 240 A.3d 371.

The Court agrees with the Plaintiffs that Defendants should be given a reasonable amount of time to decide how to comply, and they will be given a deadline to provide their plan to opposing counsel and to the Court.

The time frame for providing representation for incarcerated Plaintiffs will also be the timeframe under which the MCPDS Defendants are required to prepare a plan for how to come into compliance with their other ongoing obligations to provide counsel for unrepresented indigent defendants in Maine.

The Court cannot and does not expect miracles. The Defendants can only do what is possible. But it is clear that the Defendants have not been prioritizing finding or providing counsel for the incarcerated Plaintiffs "on the spreadsheet" who are waiting for MCPDS to do just that. Each and every one of these individuals has been found indigent by a court. Each one of them appears to be a Subclass member. The Defendants must prioritize finding counsel for them, and the Court believes the Defendants can do so using existing resources. How they choose to do that is up to the MCPDS Defendants, and the Court is confident that MCPDS can find a way to provide counsel for some, if not all of the incarcerated Plaintiffs.

After MCPDS has an opportunity to provide counsel for the unrepresented Plaintiffs, it will likely be necessary for the Court to provide Plaintiffs with other forms of relief not available to them in Count I. The Court will address those proposed remedies further in Count III; but again, to be clear, they are not a part of the remedies being provided in Count I.

On Count I, the Court issues the following Order:

(1) The Court declares that the MCPDS Defendants are required to provide continuous representation for all Subclass Members as previously defined by the Court, and further

declares that they have failed to do so in violation of the Sixth Amendment to the United States Constitution.

(2) The MCPDS Defendants are ordered to create and file with the Court a written plan on how they intend to remedy the ongoing violations of the Sixth Amendment for all Subclass members, whether they are in-custody or in the community subject to bail conditions, and to do so by April 3, 2025.

(3) The MCPDS Defendants are further ordered to prioritize and to make good faith efforts to actually provide counsel for the unrepresented, incarcerated defendants who, as of this same date, are listed on the so-called "without counsel" spreadsheet, and to do so by April 3, 2025. They must also by that date advise the Court as to how successful they have been in these efforts.

COUNT III

In its January 3, 2025 Order, the Court granted Plaintiffs' Motion for Summary Judgment on the issue of liability only for Count III based on their successful arguments regarding violations of the Sixth Amendment on Count I. The Court reserved ruling "on any arguments the parties might make as to primacy or co-extensiveness between the Sixth Amendment and Article I, Section 6 of the Maine Constitution." Jan. 3rd Order, at 40.

At the January 6, 2025 Pretrial Conference and again before trial commenced on January 22, 2025, counsel for Plaintiffs and for Party-in-Interest State of Maine stipulated that Article I, Section 6 of the Maine Constitution conveyed at least the same, if not more, constitutional protections to Maine citizens as they enjoy under the Sixth Amendment.

Consequently, the Court will now find that Plaintiffs are entitled to habeas relief under both the Sixth Amendment and Article I, Section 6 of the Maine Constitution for failing to provide continuous representation to indigent defendants at all stages of the criminal process.

Habeas remedies and the parties' Count III arguments

Article I, Section 10 of the Maine Constitution states that "the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." Me. Const. art. I, § 10. The Law Court has found that the writ of habeas corpus is broadly available to secure the right of personal liberty to anyone who has been illegally deprived of his freedom. *Stewart v. Smith,* 101 Me. 397, 64 A. 663, 664 (1906). It has been held to apply not only to persons accused of a crime, but also to persons who have been held against their will as mentally ill if their detention violates their constitutional rights. *A.S. v. LincolnHealth,* 2021 ME 6, ¶ 11, 246 A.3d 157.

In Maine, "[e]very person unlawfully deprived of his personal liberty by the act of another . . . shall of right have a writ of habeas corpus according to the provisions herein contained." 14 M.R.S. § 5501. The Plaintiffs argue that in Maine, habeas remedies are available to persons subject to physical custody in jail or prison, but also to persons whose liberty is restrained by the imposition of bail conditions and personal recognizance, if the deprivations they endure are unlawful.

The United States Supreme Court has held that the "Great Writ" is not just available to individuals held in "actual, physical custody in prison or jail." *Jones v. Cunningham*, 371 U.S. 236, 238 (1963). Instead, the Court looked to the use of habeas in common law England, concluding that "there are other restraints on a man's liberty, restraints not shared by the public generally, which have been thought sufficient . . . to support the issuance of habeas corpus." *Id.* at 240. These other restraints, the Court concluded, included parole, which "significantly restrain[s] [an individual's] liberty to do those things which in this country free men are entitled to do" and thus was "enough to invoke the help of the Great Writ." *Id.* at 243. The habeas

remedy "is not now and never has been a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose—the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty." *Id.* at 242–43.

The language in Maine's habeas statute does not dampen or limit the scope of the "Great Writ" under common law. Maine's habeas law embraces the spirit of the remedy by explicitly affording relief beyond only release from physical detainment—repeatedly using the language "imprisonment or restraint" when referring to the unlawful deprivation of an individual's personal liberty by the action of another. *See, e.g.*, 14 M.R.S. §§ 5510, 5511, 5515, 5518, 5521–23. Basic statutory interpretation tells the Court that "restraint" refers to something distinct from "imprisonment." When considered in concert with the history of the "Great Writ," the Court concludes that the "unlawfully depriv[ation] of . . . personal liberty," *id.* § 5501, can include more than physical custody in a Maine jail or prison.

Plaintiffs clarify that what they are seeking is a conditional writ, which they describe as the "most common and least intrusive form of relief: a conditional order of release from the unlawful restraints on their liberty." Pls.' Post-Trial Br. 26 (citing *Wilkinson v. Dotson,* 544 U.S. 74, 89 (2005)). With a conditional writ, "the state is given a window of time to cure the infirmity within which it might cure the error." *Satterlee v. Wolfenbarger,* 453 F.3d 362, 369 (6th Cir. 2006). If the state fails to comply with the stated conditions, the conditional writ of habeas corpus "requires" release. *Id.*

While not exactly conceding liability in Count III, Counsel for Party-in-Interest State of Maine (hereinafter "State")[16] agreed that the issues regarding what remedy, if any, should be

[16] Maine's 16 county sheriffs were named as necessary Respondents as they are the custodians of approximate 100 Plaintiffs who are incarcerated in Maine county jails. They were remotely present for all trial proceedings and were given the opportunity to call witnesses, examine witnesses, and make argument. None of them called or examined witnesses, but the Court has reviewed their written submissions and will grant their requests to provide names of

provided in Count III was at this stage more of a legal than factual matter. And it does not challenge the concept that release is required if an individual's detention is illegal. At the same time, the State makes the argument that the Court must conduct an individualized, fact-specific inquiry into what remedy is appropriate for an individual, now that the Court has found that their rights to counsel under the Sixth Amendment and Article I, Section 6 have been violated by the MCPDS Defendants.

The State relies in large part on *United States v. Morrison*, 449 U.S. 361 (1981), for its oft-cited language that as a general rule in cases involving violations of the Sixth Amendment, "remedies should be tailored to the injury suffered from the constitutional violation and should not unnecessarily infringe on competing interests." *Id.* at 364.

In *Morrison,* which was not a habeas case, the Supreme Court reversed a Third Circuit decision dismissing with prejudice an indictment where DEA agents had intentionally contacted the defendant, who they knew was under indictment and had retained counsel. *Id.* at 362–63. The agents made disparaging statements to her about her attorney and essentially told her that if she did not cooperate with them, she would face a harsh sentence. *Id.* at 362. She declined to cooperate with them, but they tried again. *Id.* She informed her attorney, who was able to convince the Circuit Court that the federal agents' conduct merited dismissal of the indictment with prejudice. *Id.* at 363. The Supreme Court reversed, saying there was no evidence their conduct had prejudiced the quality of her representation or had adversely affected her legal position. *Id.* at 366–67.

Class Members who are in jail, which jail they are currently held, and what is expected of any sheriff as far as transporting that individual to any proceedings, and obviously providing as much advance notice as possible to the sheriffs and their attorneys before any in-court proceedings occur.

It is somewhat mystifying why the State believes *Morrison* controls how the Court should respond to the constitutional violations found under Count III given the facts of Ms. Morrison's case. Ms. Morrison actually had an attorney, an effective one to boot. The *Morrison* Court explicitly distinguishes its decision from the facts of *Gideon v. Wainwright*, because, of course, Mr. Gideon had no attorney. *Id.* at 364 ("In *Gideon v. Wainwright*, the defendant was totally denied the assistance of counsel.") (internal citations omitted).

To the extent the State suggests that *Morrison* requires Sixth Amendment remedies be provided in proportion to the harm caused, the Court agrees with that general principle. But to the extent the State suggests *Morrison* stands for the proposition that a dismissal can never be an appropriate remedy for a Sixth Amendment violation, the Court disagrees. There is simply no language in *Morrison* to support the State's position. The Circuit Court dismissed her indictment *with prejudice* even though she had an attorney, and, understandably, the Supreme Court found the Circuit Court had gone too far. In this case, Plaintiffs do not seek that kind of relief. The dismissals they seek are dismissals *without prejudice*, meaning that if their cases are dismissed, they could and should expect that they will be charged again by the State. By contrast, Ms. Morrison walked free until the Supreme Court held otherwise.

The Court is aware that some trial courts in Maine have been using a form that cites *Morrison* at the so-called seven-day review hearings that were established by the Trial Chiefs of the Superior and District Courts in November of 2023. Pls.' Ex. 1, Order on Delay in Appointment of Counsel at an Appearance Pursuant to the Standing Order on Initial Assignment of Counsel (dated Mar. 22, 2024). The so-called Standing Order required that any indigent person who was being held in jail for more than seven days without counsel be brought before a judge to "review" their status. It appears that many jurists routinely find violations of the Sixth

Amendment at these hearings, and those that use the form order check a box that cites to *Morrison.* The form states in pre-printed language that the defendant is not subject to release as the defendant's right to counsel "does not outweigh the competing interests including society's interest in the administration of criminal justice." *Id.* It is not clear if the meaning of that phrase is ever explained to the defendant who is simply returned to custody and their cases remain on the court's docket.

To be clear, this is not a Judicial Branch form, despite its appearance to the contrary. More concerning is that it blithely cites to language in *Morrison* about the "State's competing interest including society's interest in the administration of criminal justice" as a reason to deny any remedy at all to a criminal defendant who has been held in jail without counsel, which was hardly Ms. Morrison's situation. The Court concludes that *Morrison* does not control its decision in Count III.

Dismissal without prejudice as a pre-conviction remedy

Counsel for the State argues that dismissal without prejudice is not an appropriate habeas remedy in the pre-conviction context. The Court has concluded otherwise.

Plaintiffs are being denied the right to counsel at critical stages—during bail hearings, the investigatory phase, and plea bargaining. The Plaintiffs who are not in-custody but are instead in the community on conditions of release are nevertheless being deprived of their personal liberty by these conditions. The restraints on liberty are numerous, and any practitioner of criminal law could list them from memory: conditions of release restrict a defendant's freedom of movement; freedom of association; where they may live and with whom; where they may be employed; what they may own or possess; whether they may access the Internet, etc. *See* 15 M.R.S. § 1026(3)(A)(1)–(19); see attached JB Conditions of Release form and Bail Bond form. Violation

of any condition imposed is itself a crime. *id.* § 1092. The State can also move to revoke a defendant's bail and obtain a warrant for the defendant's arrest. *Id.* § 1095–96. Upon the State's motion, the court can then order the defendant be held without bail pending trial. *Id.* § 1097.

It is the ongoing violations of the Plaintiffs' right to counsel under the Sixth Amendment and Article I, Section 6 that make these restraints unlawful. They may live in the community, but significant liberties have been taken away from them. And while being deprived of their liberty by the State, it is the State that has failed to provide them with an attorney.

The State's argument fails to appreciate that Plaintiffs cannot be free of these restrictions unless and until the charges against them have been resolved; only then does a court declare that they are "released" from bail and bail conditions. Their argument fails to grasp that the Plaintiffs do not have access to the court to resolve their case because the Maine courts cannot constitutionally require them to stand trial—or even attend a dispositional conference—until an attorney is provided by the State. The Court has concluded that the circumstances of these Plaintiffs constitute "unlawful depriv[ation] of . . . personal liberty" entitling them to a writ of habeas corpus. *See* 14 M.R.S. § 5501.

In addition, habeas in Maine is not just a post-conviction remedy. Indeed, Maine law explicitly recognizes that an individual's liberty can be unlawfully restrained before conviction. *See, e.g.*, 14 M.R.S. § 5511 ("any party alleged to be imprisoned or restrained of his liberty *but not convicted and sentenced*" (emphasis added)). The fact that they have not been convicted does not foreclose redress. The Plaintiffs' right to counsel under the Maine and United States Constitutions is being denied, and while waiting for the State to provide counsel they must live with significant loss of liberties. And "every right, when withheld, must have a remedy, and every injury its proper redress." *Marbury v. Madison*, 1 Cranch, 5 U.S. 137, 147 (1803).

The role of public safety in habeas claims

The State also objects to releasing any Plaintiff who may present public safety concerns and has repeatedly taken to reminding this Court of what happened when a trial court judge lowered bail for one defendant following a review hearing. After being released, the defendant assaulted his former partner and killed another person.

No Judge or Justice in either the District or Superior Court needs to be reminded about the consequences of decisions that they make every single day in Maine courtrooms. Public safety is always top of mind for many decisions Maine jurists make in criminal cases. It is important, however, to remember that given the conditions under which most jurists work when making bail decisions, they are often expected in a matter of minutes to apply the bail code to an unpredictable number of individuals, and to do so in reliance upon information supplied by others in the criminal justice system who may also be working under difficult conditions. Jurists in Maine are not permitted to conduct their own investigations of the facts of a case or the personal characteristics of a criminal defendant. If the information conveyed is inadequate, or if a judge makes a decision based on information from others, or, as often happens, an agreement is reached by prosecutors and defense counsel that bail should be lowered or a defendant released, judges have come to understand that they will likely be the person blamed or berated for whatever dangerous act a criminal defendant might decide to commit after their release.

It is sometimes the case, however, that the Maine and United States Constitutions actually *require* that someone be released from custody or restraint. For example, when a jury finds that the State has not proven a defendant's guilt beyond a reasonable doubt, they are instructed that they *must* follow the Constitution and return a verdict of not guilty. Unless the defendant is held on other charges, that means they are released into the community, even if they are dangerous.

The jury is not permitted to consider public safety; they must follow the law and the Constitution. When the Law Court reverses a criminal conviction due to prosecutorial misconduct, or because a defendant's Fourth, Fifth, or Sixth Amendment rights have been violated by State actors, the person released may have actually committed a violent act, or they may go on to commit a violent act upon their release. Recently, in *State v. Akers*, 2021 ME 43, 259 A.3d 127, the Law Court reviewed a jury's conviction of a defendant for intentional or knowing murder after the defendant killed his neighbor with a machete. The Law Court vacated the defendant's conviction for violations of his Fourth, Fifth, and Fourteenth Amendment rights stemming from two illegal, warrantless searches and involuntary inculpatory statements by the defendant. Public records confirm that upon remand to the Superior Court, the State was compelled to dismiss the charges against the defendant because it lacked the evidence required to sustain a conviction. In the Law Court's *Akers* decision, it never weighed the violence that the defendant committed and was convicted of against the potential risk to public safety in determining that the defendant's rights had been violated. Instead, the Law Court was compelled by the law and the Constitution to find that his conviction "must be vacated." *Id.* ¶ 50.

Just like a Maine jury, jurists on the Law Court, the Superior Court, and the District Court must all follow the law and the Constitution. Every Maine jury and every Maine jurist takes an oath to do so. So when these difficult decisions are made, it would be extreme unlikely that it occurred because a jury or a jurist did something they simply felt like doing. It would be because a jury or a jurist took an oath to uphold constitutional standards and to follow the law. And in a habeas claim, release from custody or from restraint is *required* if the restraint is illegal.

The Plaintiffs in this case have not been convicted of the crimes for which they are charged. Each of them is still presumed to be innocent under the Maine and United States

Constitutions. And yet many of them remain in custody, without counsel. Their only access to due process is to be brought before a judge every seven days, represented by counsel who are permitted by the MCPDS rules to represent them for all of one day. They are brought before judges, most of whom are essentially doing bail hearings—not habeas hearings. The Maine Bail Code does not permit a judge to dismiss a case, and it was never designed or intended to provide remedies for the constitutional violations at issue here. As Justice Douglas stated in *Peterson v. Johnson*, the Review Hearings were never intended to be the solution to this crisis. SJC-23-02, at 29–30 (Jan. 12, 2024) (Douglas, J.) ("[T]he regular status hearings held pursuant to the Standing Order are intended as a limited, short-term response to an on-going crisis, and do not justify indefinite delay by the State in assigning counsel to in-custody defendants entitled to a court-appointed attorney.").

The Court fully intends to factor in the legitimate concerns about public safety expressed by the State in their argument regarding habeas relief, just as the Ninth Circuit did in *Betschart*. And while *Morrison* stands for the proposition that judicial relief provided for violations of the Sixth Amendment must be proportional to how grievous the violation was and what harm has been caused, it is not a habeas case, and it never mentions the phrase "public safety" anywhere. More importantly, *Morrison* should not be read as a reason for Maine courts to do nothing when significant systemic failures have resulted in the complete lack of counsel for a significant number of indigent defendants.

Reducing backlogs or MCPDS caseloads by dismissing cases

It has also been suggested at various times that dismissing cases through this lawsuit could work as a curative case management tool to reduce trial court backlogs or somehow help MCPDS address its ongoing challenges. The suggestion has come from both sides and at various

stages of this litigation. The Court categorically rejects these as improper considerations, and they will not play any part in this Order.

It may become necessary for the Court to dismiss cases, but if that happens the Court understands it is unlikely that other systemic problems will be solved. Prosecutors will likely continue to file more cases than the court system can handle, and no court can stop them from filing anything they choose to. MCPDS will in all likelihood continue to struggle with being under-resourced, which in the current budget before the Legislature means that they will be unable to roll out more public defender offices and that they could run out of funds in the next year or so to pay the private attorneys who are currently willing to take cases. Those are problems no court in Maine has any authority to remedy.

HABEAS RELIEF ON COUNT III

After considering the arguments of counsel and reviewing pertinent case law, the Court has concluded that Plaintiffs are entitled to habeas relief. The nature of the remedies available to a Plaintiff under a Section 1983 claim and a habeas claim are quite different. However, the Court will attempt to structure the relief provided for each Count to be as consistent as possible. Therefore, the timelines established in Count I are intended to give the MCPDS Defendants (who are not named Defendants in Count III) the time and opportunity to comply with the initial requirement of the Court's injunction that they provide counsel for the incarcerated Plaintiffs. The starting date for carrying out the habeas relief will be delayed briefly to see how many Plaintiffs remain in custody after the MCPDS Defendants decide how to comply with the Court's injunction and provide counsel for them. To be clear, however, the Court does not intend to wait indefinitely to provide relief under Count III while MCPDS decides what to do in Count I.

Three cases from other jurisdictions provide the framework for how habeas relief will be provided. These cases, *Betschart*, *Lavallee*, and *Carrasquillo*, are really the only cases this Court, or any court, has to go on. And that is because only a few states—Oregon, Massachusetts, and now Maine—have found themselves in this position facing similar crises.

The Court will rely upon the aforementioned cases: *Betschart,* which was a class action habeas case, 103 F.4th 607 (9th Cir. 2024); and two cases from Massachusetts which predate *Betschart* but were not habeas cases, *Lavallee*, 812 N.E.2d 895 (Mass. 2004), *and Carrasquillo*, 142 N.E.3d 28 (Mass. 2020). What they have in common is that all three provided meaningful remedies for Plaintiffs identically situated to the Plaintiffs in Maine. In the Court's view, they all offer sound approaches for providing relief that is proportionate to the gravity of the violation and harms caused, while at the same time ensuring consideration of other important public concerns, including public safety.

In *Betschart,* the Ninth Circuit on May 31, 2024 affirmed the granting of habeas relief issued by the United States District Court in Oregon. 103 F.4th at 613. The case was filed as a class action brought by federal public defenders on behalf of state indigent defendants who were eligible for appointment of counsel but who remained unrepresented for indeterminate periods of time in local jails. *Id.* at 611, 613.

The District Court granted a temporary restraining order, and applied essentially the same standards that this Court did for Count I. *Id.* at 614. The District Court declared that the State of Oregon was violating the Sixth Amendment, and it ordered that the sheriffs who had custody of the class members release them unless the State of Oregon provided representation within seven days of the defendant's initial appearance, or within seven days of the withdrawal of previously appointed counsel. *Id.* Each released class member was brought before a state court judge to set

reasonable bail conditions to address the State's concerns regarding public safety. *Id.* at 613; *Betschart v. Garrett*, 700 F.Supp.3d 965, 988 (D. Or. 2023). The District Court denied relief to persons who were charged with certain offenses if the Oregon Constitution prohibited pretrial release. *Betschart*, 103 F.4th at 614. And it made clear that relief would not be available for defendants who repeatedly "fired" their attorneys in order to be released. *Betschart v. Garrett*, No. 3:23-CV-01097-CL, 2023 WL 7621969, at *1 (D. Or. Nov. 14, 2023).

The Maine Superior Court is clearly not the Ninth Circuit. But closer to home and Maine's jurisprudential traditions, the Commonwealth of Massachusetts in 2004 and again in 2020 confronted the same problem that exists in Oregon, and now in Maine. The approach taken by the Massachusetts Supreme Judicial Court in both begins with an explicit recognition that courts in the Commonwealth are constrained by the doctrine of separation of powers but could nonetheless provide a meaningful remedy for unrepresented defendants.

First, in *Lavallee*, a group of indigent criminal defendants being held pretrial without attorneys sought relief in the form of a writ by the Massachusetts Supreme Judicial Court pursuant to Mass. G.L. ch. 211 § 3. *Lavallee v. Justs. in the Hampden Superior Ct.*, 812 N.E.2d 895, 899–900 (Mass. 2004). Petitioners alleged that Massachusetts's "chronic underfunding" of its assigned counsel system led to an insufficient number of attorneys willing to accept indigent defense cases. *Id.* at 900. The Massachusetts Supreme Judicial Court ruled that the petitioners were being denied the right to counsel under its state constitution. *Id.* at 901. To address the petitioners' complete denial of the right to counsel, the court fashioned a remedy recognizing that

> [t]he harm involved here, the absence of counsel, cannot be remedied in the normal course of trial and appeal because an essential component of the "normal course," the assistance of counsel, is precisely what is missing here. The course of the proceedings in these cases is per se not normal.

Id. at 907. The court established what is now known as the "*Lavallee* protocol"—every week, the clerk of the county courts would be required to prepare a list of the unrepresented criminal defendants to forward to the district attorney, the attorney general, the chief counsel for the public defenders, and the judges tasked with administrative and scheduling decisions. *Id.* at 911–12. Using this list, the administrative judge would schedule a status hearing as to each defendant who had either been held in custody for more than seven days or whose case has been pending for more than forty-five days. *Id.* at 912. At the hearing, the judge would determine whether the public defense committee has made a "good faith effort" to secure representation for each defendant. *Id.* If, despite a good faith effort, there was no counsel available to represent a defendant, the judge was required to, if the defendant had been held in custody for seven days or more, order the defendant be released from custody, subject to conditions; or, if the defendant's case had been pending for forty-five days or more, order the defendant's charges be dismissed without prejudice until counsel could be made available to the defendant. *Id.* at 912–13. This solution, the court reasoned, acknowledged that "[t]he duty to provide . . . counsel falls squarely on government, and the burden of a systemic lapse is not to be borne by defendants." *Id.* at 911.

In 2020, the indigent defense attorney shortage recurred. In *Carrasquillo v. Hampden County District Courts*, 142 N.E.3d 28 (Mass. 2020), a shortage of defense attorneys available on arraignment days led a judge to order a public defense office to provide counsel "who shall accept appointment in all cases as ordered by the Court." *Id.* at 41. The overseeing public defense committee filed an emergency petition for a writ, seeking to vacate the judge's order. *Id.* at 42. The Massachusetts Supreme Judicial Court ruled that the judge's order was invalid because it infringed on the committee's statutory authority to control caseload limits, but it reaffirmed the

Lavallee protocol as an appropriate method for remedying constitutional violations for deprivation of counsel. *Id.* at 35, 44, 47, 49–51.

Notably, the condition of indigent defense in Massachusetts has improved since the *Carrasquillo* decision. After the Supreme Judicial Court's opinion in March of 2020, a single justice of the high court required the parties to regularly provide the court with information so that they could periodically assess whether the *Lavallee* protocol was still required in the county courts. *Carrasquillo v. Hampden Cnty. Dist. Courts*, 2021 WL 5441084, at *1 (Mass. Oct. 21, 2021) (Wendlandt, J.). After months of "deteriorating" circumstances in which the number of indigent criminal defendants without counsel increased, with a dispute as to whether the public defense committee actually lacked the capacity to represent indigent defendants, the single justice assigned a retired associate justice to the case. *Id.* The retired justice was ordered to prepare a report for the court discussing the causes of the indigent defense counsel shortage and possible solutions based on the parties' joint recommendations. *Id.*

The retired justice submitted his report to the court in March of 2022, and in June of 2022, the single justice lifted the *Lavallee* protocol. *Carrasquillo v. Hampden Cnty.*, 2022 WL 2902767, at *1 (Mass. June 30, 2022). The "crisis ha[d] abated"; there were just two unrepresented indigent defendants in Hampden County, each having been on the list for less than four days. *Id.* The justice attributed the change in circumstances "largely, if not entirely, to the extraordinary efforts of the parties to address the problems and find solutions." *Id.* The public defense committee had successfully opened a second office of twelve attorneys in the county, had increased rates for private attorneys, and waived the cap on the number of hours a private attorney could bill for the year. *Id.* The justice noted that these changes, while perhaps brought to bear by the "awareness of the urgency" required by the *Lavallee* protocol, would continue to be

effective even without the protocol in place. *Id.* The county courts would continue to circulate weekly lists of unrepresented defendants, and the public defense committee would continue to provide the court with periodic six month updates, including (1) the number of unrepresented defendants and specifically the number in custody; (2) the length of time each has gone without counsel and the charges pending against them; (3) the current caseloads of public defenders and private contracted attorney; and (4) the committee's efforts to increase the availability of counsel for unrepresented defendants, including the status of any ongoing efforts to petition the Legislature for continued additional funding. *Id.* The county courts and the district attorney would be invited to file a response to each update. *Id.*

In *Lavallee* and *Carrasquillo,* the Massachusetts Supreme Judicial Court ordered the same relief as *Betschart* and more. It ordered both release from custody after seven days and dismissal without prejudice after forty-five days without counsel.

Importantly, however, the Massachusetts Supreme Judicial Court also added one critical requirement to the findings made at individual hearings where eligibility for relief would be confirmed and provided. In part in recognition of the separation of powers and the authority delegated to the agency in the Commonwealth to staff and administer indigent defense, it required the Court to hear from those state actors about their ability and capacity to provide counsel, and to establish as a factual matter that, despite "good faith efforts," the agency was unable to do so. *See Lavallee*, 812 N.E.2d at 912. Only if capacity was truly exhausted in an individual case would the court step in.

The Court would emphasize what it stated as to Count I. The most appropriate remedy it can provide to Plaintiffs is representation. Release or dismissal without prejudice pursuant to this Order may be necessary, but only as a last resort. However, if representation has become

available at the time the Court issues relief for individual Plaintiffs, the constitutional violation has been remedied.

While neither the Maine Constitution nor Maine's habeas statute, 14 M.R.S. §§ 5501–46, provides for the very limited factual inquiry the Court will require, Plaintiffs do not object to the Court requiring this "check" to ensure that the appropriate remedy is being provided. Plaintiffs here seek a "conditional remedy" and the Court believes it has the authority to add another condition to that remedy by requiring that a representative from MCPDS—who the Court understands is not a party to Count III—advise the Court it has had an opportunity to find counsel, and whether it has made a good faith effort to do so before the Court acts. That factual determination is required by the separation of powers, and the Court trusts that MCPDS will cooperate in providing this information when requested by the Court.

The Court therefore concludes that Plaintiffs are entitled to habeas corpus relief for violations of their Sixth Amendment and Article I, Section 6 rights to continuous representation. Relief will be provided as follows:

1) On April 7, 2025 at 10:00 a.m., counsel for the parties in this matter, including counsel for the Maine county sheriffs, shall attend a hearing at the Capital Judicial Center to set the course of future habeas proceedings. By that date, the Court should have received information from MCPDS regarding their efforts to provide counsel for incarcerated Plaintiffs. The first round of hearings will prioritize any Plaintiffs who remain incarcerated, and relief will be provided to them consistent with this Order. Any attorney for the sheriffs may appear remotely.

2) Counsel for the parties shall have by that date agreed to and prepared a list of all Plaintiffs who are incarcerated awaiting appointment of counsel in any Maine jail or correctional facility. The list shall include the name and physical location of any Plaintiff, and shall be shared with all Maine sheriffs, all District Attorneys, the Office of the Attorney General, and the Executive Director of MCPDS. The list shall be based upon the Counsel Needed spreadsheets provided to MCPDS by the Judicial Branch. The list shall also include the docket numbers for any pending charges for the Plaintiffs.

3) The Court will conduct several court sessions at several locations in northern, central, and southern Maine during the month of April 2025. The court locations and dates of each session will be provided no later than April 7, 2025. The locations will be determined with the goal of assisting the sheriffs in arranging transport for any Plaintiffs in their custody.

4) Only Plaintiffs held in physical custody shall receive notices to appear at the first round of hearings conducted in April of 2025. Other hearings for Plaintiffs who are out on bail will be the subject of habeas relief hearings beginning in May of 2025 on a schedule to be discussed and set by the Court at the conference on April 7, 2025. Ongoing hearings are expected to be necessary for Plaintiffs in and out of custody.

5) MCPDS will provide counsel for these Plaintiffs at every hearing conducted.

6) The Court will rely upon the physical court files which it will have in its possession at each hearing in determining whether the individual is a Class member, and as to any pertinent dates for when the individual first appeared before the court, when bail was set and in what amount, and how long they have been held. The Court will be assisted by a clerk who will have access to MEJIS during any court proceeding.

7) The sheriffs do not need to personally appear at these hearings, but they shall designate a representative to appear who can verify how long the person has been held, and on what charges.

8) At the hearings for incarcerated Plaintiffs, the Court will determine if MCPDS has made a good faith effort to secure representation. This determination for the hearings conducted in April of 2025 shall be made in person by an MCPDS employee designated by the agency. After the first round of hearings, the Court is willing to accept written affidavits submitted by the MCPDS Defendants so long as the information is individually tailored to each individual Plaintiff.

9) At the hearings for incarcerated Plaintiffs, the Court will hear from counsel for the individual, from the prosecuting attorney, and from the MCPDS representatives. The Court will also hear from Class Counsel and from any attorney from the Office of the Attorney General who has been involved in this litigation if they wish to be heard.

10) After hearing from the parties, the Court will make the following determinations:
    a. Whether the individual Plaintiff is a Subclass member as defined by the Court;
    b. Whether MCPDS has made good faith efforts to secure representation for the individual; and

c. Whether there is still no attorney available to represent the individual.

If the Court determines that, despite the good faith efforts of MCPDS and any efforts by others to find representation for the individual, there is still no counsel willing and available to represent the individual, the Court shall order as follows:

> For any Subclass member who has been detained and remains without counsel for more than 14 days after their initial appearance or arraignment, or more than 14 days after leave for withdrawal of counsel has been granted, this Court will order release of the individual from detention unless within 7 additional days after the habeas hearing, counsel is provided. However, the Court will impose conditions of release related to ensuring the presence of the individual at the next court appearance, and to ensure the safety of the community. These conditions can include any condition authorized under the Maine Bail Code sufficient to protect public safety and ensure the integrity of the judicial process; and the Court may do so without the consent of the individual. This Court must advise the individual of the consequences of violation of any condition of release, and the consequence of committing new criminal conduct while they are out on bail.
>
> This relief shall not be available for any individual who is being held without bail after his or her right to bail has been extinguished because they are charged with a formerly capital offense. *See* 15 M.R.S. § 1027(3).
>
> With respect to Subclass members who have remained without counsel for more than 60 days after their initial appearance or arraignment or more than 60 days after counsel has been granted leave to withdraw, the Court shall order that the charges against the Subclass member be dismissed *without prejudice* until such time as counsel is available to provide representation of the individual, unless within 7 additional days after the habeas hearing, counsel is provided. This order applies both to Plaintiffs who are incarcerated and those living in the community subject to bail conditions.
>
> No relief set out above for incarcerated Plaintiffs or Plaintiffs residing in the community on bail shall be available if the individual persists in "firing" appointed counsel for less than good cause, and/or in order to obtain relief.
>
> For current members of the Subclass, the 60-day deadline shall begin running on the date this Order is signed and docketed by the Court.

COUNT V

The Defendant State of Maine has again raised the sovereign immunity defense as to both the request for declaratory judgment and for injunctive relief under Count V.

As to the declaratory judgment, the Court stands by its August 13, 2024 Order on Pending Motions to Dismiss, in which it relied on *Welch v. State*, 2004 ME 884, 852 A.2d 214, to conclude the State was not immune from Plaintiffs' request for declaratory judgment against the State. Aug. 13, 2024 Order, at 12–15. Judge Duddy's Footnote 15 in *NECEC* reinforces the Court's decision to do so. When the *NECEC* case was before the Business and Consumer Court, Judge Duddy did not formally address the sovereign immunity defense raised by the defendants, having denied plaintiff-energy company's motion for preliminary injunction for failure to meet their burden. *NECEC Transmission LLC v. Bureau of Parks & Land*, No. BCD-CIV-2021-00058, 2021 WL 6125325, at *8 n.15 (Me. B.C.D. Dec. 16, 2021). Nonetheless, the court stated it was "inclined to agree" with the line of cases across several other states which hold that, in an action seeking a declaratory judgment regarding constitutionality, sovereign immunity is not an available defense. *Id.* "[T]he availability of judicial review here appears to be integral to the constitutional framework," Judge Duddy wrote. *Id.* Granting the state immunity from constitutional claims "would undermine and destroy the principle of judicial review." *Id.* (quoting *Jones v. Bd. of Trs. of Ky. Retirement Sys.*, 910 S.W.2d 710, 713 (Ky. 1995)).

As to the issue of injunctive relief under the Declaratory Judgments Act, the Court did not reach any conclusion its August 13, 2024 Order. At that time, the Court stated that the issue "may be explored and argued after trial, should Plaintiffs prevail in establishing liability." Aug. 13, 2024 Order, at 15. Plaintiffs have now prevailed in establishing liability, and the Court believes that *Avangrid Networks, Inc. v. Sec'y of State*, 2020 ME 109, 237 A.3d 882 offers a sound alternative for the parties and the Court. The case involved the dispute over the citizen ballot initiative against the Central Maine Power transmission line from Quebec to Lewiston, Maine. In that case, the Law Court "saw no need to" order injunctive relief enjoining the Secretary of State

from including the initiative on the ballot because the Secretary of State had represented to the Law Court that, if the Court were to conclude that the ballot initiative was unconstitutional, he would not include the initiative on the ballot. *Id.* ¶ 39. The Law Court was "confident that he '[would] comply with the law once it is declared' and prevent the invalid initiative from being placed on the ballot," and thus declined to order the injunctive relief requested by plaintiffs. *Id.* (quoting *Great N. Paper, Inc. v. Penobscot Nation*, 2001 ME 68, ¶ 64 n.21, 770 A.2d 574).[17]

Counsel for the State has represented to this Court on multiple occasions that the State would step into the shoes of MCPDS for any violations found by this Court. Now that the Court has found liability against the MCPDS Defendants, and after review of the *Avangrid* decision, the Court thinks it appropriate for the State to advise the Court as to whether the State will indeed step up and support the agency in providing a remedy for the violations found.

Counsel for the State has ten days to respond to the Court's inquiry. If the State stands by its Counsel's previous statements to the Court, it will become "unnecessary" for this Court to consider or resolve the complex issues of first impression as to the injunctive relief requested by Plaintiffs. *See Avangrid*, 2020 ME 109, ¶ 39, 237 A.3d 882; *see also Gideon v. Wainwright*, 372

[17] The Law Court's discussion of this issue reads in full:

> As we have noted, in the trial court and indeed during much of his oral argument on this appeal, the Secretary of State has opposed the issuance of injunctive relief that would enjoin him from including the initiative on the ballot. Ultimately, however, counsel for the Secretary stated that if we were to conclude that the initiative is unconstitutional and cannot be submitted to the electors for popular vote—which is precisely our clear holding today—on his own accord, he will not include the initiative on the ballot. Based on the Secretary of State's clarification of his position, we are confident that he "will comply with the law once it is declared" and prevent the invalid initiative from being placed on the ballot. *Great N. Paper, Inc. v. Penobscot Nation*, 2001 ME 68, ¶ 64 n.21, 770 A.2d 574. Thus, we see no need for the issuance of injunctive relief. *See Littlefield v. Town of Lyman*, 447 A.2d 1231, 1235 (Me. 1982) (holding that injunctive relief against a municipal planning board was "unnecessary" when we remanded for the trial court to enter a declaratory judgment that a specific version of an ordinance applied and there was "no evidence suggesting an unwillingness on the part of the Board to accept a judicial determination of that question").

Avangrid, 2020 ME 109, ¶ 39, 237 A.3d 882.

U.S. 335, 343 (1963) ("[O]ne charged with crime, who is unable to obtain counsel, must be furnished counsel *by the state*." (emphasis added)).

The Court will wait for Counsel's response before issuing any further order on Count V.

The entry will be:

On Count I, the Court orders a permanent injunction requiring MCPDS Defendants to provide continuous representation for Plaintiffs. The Court further orders them to provide a plan to the Court explaining how they will comply with the injunction. The deadlines for providing representation and for filing the plan with the Court are set forth on pp. 23–24 and are incorporated herein.

On Count III, the Court will provide Habeas Corpus relief for Plaintiffs as set forth in detail on pp. 34–40. The deadlines and procedures established on pp. 40–42 are incorporated herein.

Counsel of record for Counts I, III, and V, along with Counsel for Maine county sheriffs in Count III, shall attend a hearing on April 7, 2025 at 10:00 a.m. at the Capital Judicial Center. Any attorney for the sheriffs may appear remotely.

On Count V, the Court defers ruling on pending motion for summary judgment brought by the State of Maine until the Court receives the State's response to the inquiry made by the Court on pp. 44 of this Order.

The Clerk shall note this Order on the docket by reference pursuant to Rule 79(a) of the Maine Rules of Civil Procedure.

Dated: March 7, 2025

Justice, Maine Superior Court

MAINE JUDICIAL BRANCH

☐ **COMMITMENT ORDER with CONDITIONS OF RELEASE** ☐ **CONDITIONS OF RELEASE**

☐ UNIFIED CRIMINAL ☐ DISTRICT ☐ SUPERIOR COURT located at _____

Docket No. _____

STATE OF MAINE v. _____, Defendant

OFFENSE(S): _____

OFFENSE DATE (*mm/dd/yyyy*): _____ **LOCATION OF OFFENSE:** _____

AGENCY: _____

SEQUENCE NUMBER: _____ **ATN/CTN:** _____

Defendant shall be held at the ☐ _____ County Jail ☐ Department of Corrections ☐ without bail ☐ as indicated on attached Bail Bond form ☐ until bail is posted as follows:

☐ **PERSONAL RECOGNIZANCE.**

☐ **UNSECURED.** Defendant is not required to post any security to be released, but if defendant fails to appear as the Bail Bond requires defendant shall owe the State of Maine $_____

☐ **SECURED.** Defendant shall be released from custody only after the following security is posted.

☐ Cash in the amount of $_____ or ☐ No Third Party Bail Allowed

☐ Real estate (or _____) with a net value (total value less encumbrances) of $_____.

☐ Bail Lien. ☐ Within 1 working day after today. ☐ Before defendant may be released, a lien on the real estate described must be recorded in the Registry of Deeds in the country where the real estate is located, and proof of such recording must be filed with the court listed above. (Note: The Registry of Deeds and the clerk's office are different offices and may be in different counties.)

☐ **SUPERVISED RELEASE: Check One Box Only** ☐ AND ☐ OR in the alternative, defendant is released to the custody of a supervised bail contract pursuant to terms and conditions provided in the contract. The contract must be signed by the Defendant, the Court, and the supervising agency.

☐ **CONCURRENT.** This bail is concurrent to the bail previously set/posted in (*list court and docket number*): _____

Additional conditions to which the defendant agrees to obey, if checked. The defendant will not:

☐ use ☐ possess **OR** ☐ excessively use or possess ☐ alcohol; and

☐ use ☐ possess **OR** ☐ excessively use or possess ☐ marijuana or marijuana products; and

☐ use or possess ☐ any illegal drugs or their derivatives; and

☐ use or possess ☐ any dangerous weapons or ☐ firearms.

☐ In order to determine if s/he has violated any prohibitions of this bond regarding alcohol, illegal drugs or their derivatives, marijuana or marijuana products, she/he will submit to searches of her/his person, vehicle, and residence and, if applicable, to chemical tests upon articulable suspicion.

☐ As a condition of her/his participation in a specialty court docket, or as a condition of her/his deferred disposition, she/he will submit to random searches of her/his person, vehicle, and residence and, if applicable, to chemical tests for possession or use of alcohol, illegal drugs or their derivatives, or marijuana or marijuana products.

☐ In order to determine if s/he has violated any prohibitions of this bond regarding firearms or dangerous weapons, s/he will submit to searches of her/his person, vehicle, and residence ☐ at any time without articulable suspicion or probable cause. ☐ upon articulable suspicion.

ADA Notice: The Maine Judicial Branch complies with the Americans with Disabilities Act (ADA). If you need a reasonable accommodation contact the Court Access Coordinator, accessibility@courts.maine.gov, or a court clerk.
Language Services: For language assistance and interpreters, contact a court clerk or interpreters@courts.maine.gov.

☐ have no direct or indirect contact with (*name and DOB (mm/dd/yyyy)*) _____

_____

except as is necessary ☐ for counseling; ☐ to pay child support; ☐ for child contact; ☐ for court appearances; ☐ by telephone (☐ from _____ ☐ am ☐ pm to _____ ☐ am ☐ pm); ☐ by text; ☐ by email; ☐ _____

☐ and not enter any ☐ residence ☐ place of employment ☐ place of education of any such person(s); ☐ except for a single time, while accompanied by a police officer, for the purpose of retrieving defendant's personal effects.

☐ maintain or actively seek employment; ☐ maintain or commence an education program.

☐ participate in regular substance abuse counseling and provide proof of such counseling upon request.

☐ undergo ☐ medical ☐ mental health ☐ evaluation ☐ counseling/treatment & provide proof of such counseling/treatment upon request.

☐ complete certified Domestic Violence Intervention Program ☐ undergo other counseling/treatment _____ and provide proof of such counseling/treatment upon request.

☐ abide by the following restrictions on personal associations, place of abode, or travel: _____

_____

☐ report ☐ daily ☐ weekly ☐ _____, ☐ in person ☐ by phone, to ☐ probation officer ☐ _____

☐ comply with the following curfew: _____

_____

☐ participate in ☐ outpatient ☐ voluntary inpatient treatment; at or with _____

_____

☐ take medications as prescribed. ☐ participate in an electronic monitoring program.

☐ not operate any motor vehicle under any circumstances ☐ unless lawfully licensed to do so.

☐ _____

_____

_____

If the defendant makes bail, the defendant is required to appear at the Unified Criminal Court on: (*mm/dd/yyyy*) _____ at _____ ☐ am ☐ pm and on any other date and time and at the court the justice, judge, or clerk tells me to appear.

(This Conditions of Release form must be attached to defendant's Bail Bond.)

Date (*mm/dd/yyyy*)	▶ ☐ Justice ☐ Judge ☐ Clerk ☐ Bail Commissioner	Printed Name of Bail Commissioner

ADA Notice: The Maine Judicial Branch complies with the Americans with Disabilities Act (ADA). If you need a reasonable accommodation contact the Court Access Coordinator, accessibility@courts.maine.gov, or a court clerk.
Language Services: For language assistance and interpreters, contact a court clerk or interpreters@courts.maine.gov.

The Conditions of Release remain in effect. The defendant is required to appear on:
(*mm/dd/yyyy*) _____ at _____ ☐ am ☐ pm at ☐ District ☐ Superior Court.

Date (*mm/dd/yyyy*): _____ ▶ _____
☐ Justice ☐ Judge

The Conditions of Release remain in effect. The defendant is required to appear on:
(*mm/dd/yyyy*) _____ at _____ ☐ am ☐ pm at ☐ District ☐ Superior Court.

Date (*mm/dd/yyyy*): _____ ▶ _____
☐ Justice ☐ Judge

The Conditions of Release remain in effect. The defendant is required to appear on:
(*mm/dd/yyyy*) _____ at _____ ☐ am ☐ pm at ☐ District ☐ Superior Court.

Date (*mm/dd/yyyy*): _____ ▶ _____
☐ Justice ☐ Judge

The Conditions of Release remain in effect. The defendant is required to appear on:
(*mm/dd/yyyy*) _____ at _____ ☐ am ☐ pm at ☐ District ☐ Superior Court.

Date (*mm/dd/yyyy*): _____ ▶ _____
☐ Justice ☐ Judge

The Conditions of Release remain in effect. The defendant is required to appear on:
(*mm/dd/yyyy*) _____ at _____ ☐ am ☐ pm at ☐ District ☐ Superior Court.

Date (*mm/dd/yyyy*): _____ ▶ _____
☐ Justice ☐ Judge

The Conditions of Release remain in effect. The defendant is required to appear on:
(*mm/dd/yyyy*) _____ at _____ ☐ am ☐ pm at ☐ District ☐ Superior Court.

Date (*mm/dd/yyyy*): _____ ▶ _____
☐ Justice ☐ Judge

SSC 578

MAINE JUDICIAL BRANCH
BAIL BOND ☐ AMENDED

☐ UNIFIED CRIMINAL ☐ DISTRICT ☐ SUPERIOR COURT located at _____ Docket No. _____
STATE OF MAINE v. _____, Defendant
Defendant's mailing address: _____
Defendant's residence address (if different): _____
Defendant's email address: _____
Date of Birth (*mm/dd/yyyy*): _____ **SS Number Disclosure Required on separate form**
Hair Color _____ Eye Color _____ Height _____ Weight _____ Gender _____ Race _____
Home phone # _____ Work phone # _____ Cell phone # _____
For Title 29-A violations, driver's license number required _____ State _____
Date of Offense(s) (*mm/dd/yyyy*) _____ Location of Offense(s) _____
Offense(s), Class of offense, Seq #, Title & Section, ATN/CTN of each offense:

_____

_____

Law enforcement officer and agency: _____

The following apply if checked:

☐ **PERSONAL RECOGNIZANCE.** ☐ **UNSECURED.** If I fail to appear as this Bail Bond requires I will owe the State of Maine $_____

☐ **SECURED.** To be released from custody the following property is being posted. The property is:

☐ Cash in the amount of $_____ (see reverse for designation of third-party ownership) **OR**

☐ Real estate (or _____) with a net value of $_____.

☐ Bail Lien. ☐ Within 1 working day after today. ☐ Before I may be released, a lien on the real estate described must be recorded in the Registry of Deeds in the county where the real estate is located, and proof of such recording must be filed with the court listed above. (Note: The Registry of Deeds and the clerk's office are different offices and may be in different counties.)

☐ **CONCURRENT.** This bail is concurrent to the bail previously set/posted in (*list court and docket number*): _____

I agree to obey the following conditions of my release so long as this bail bond remains in effect. I understand that it is a crime for me to violate any of these conditions, and that if I violate these conditions I will be subject to arrest, jail and/or a fine.

1. I will appear at the Unified Criminal Docket located at _____, in _____ (City/Town), _____ (County) Maine, Tel # (207) _____, on (*mm/dd/yyyy*) _____ at _____ ☐ a.m. ☐ p.m. and on any other date and time and at the court the justice, judge, or clerk tells me to appear.
2. I will commit no criminal act and will not violate any protection from abuse orders.
3. I will immediately give written notice of any change in my address or telephone number to the court named above.
4. I waive extradition to the State of Maine from any other State of the United States, from the District of Columbia, from any territory of the United States, and from any other jurisdiction whatsoever, for prosecution on the charge(s) listed above.

Additional conditions which I agree to obey, if checked. I will not: ☐ use ☐ possess **OR** ☐ excessively use or possess ☐ alcohol; and ☐ use ☐ possess **OR** ☐ excessively use or possess ☐ marijuana or marijuana products; and ☐ use or possess ☐ any illegal drugs or their derivatives; and ☐ use or possess ☐ any dangerous weapons or ☐ firearms.

☐ In order to determine if I have violated any prohibitions of this bond regarding alcohol, illegal drugs or their derivatives, marijuana or marijuana products, I will submit to searches of my person, vehicle and residence and, if applicable, to chemical tests upon articulable suspicion.

☐ As a condition of my participation in a specialty court docket, or as a condition of my deferred disposition, I will submit to random searches of my person, vehicle, residence and, if applicable, to chemical tests for use or possession of alcohol, illegal drugs or their derivatives, or marijuana or marijuana products.

☐ In order to determine if I have violated any prohibitions of this bond regarding firearms or dangerous weapons, I will submit to searches of my person, vehicle, and residence ☐ at any time without articulable suspicion or probable cause. ☐ upon articulable suspicion.

☐ have no direct or indirect contact with (*name and DOB mm/dd/yyyy*) _____ except as is necessary

☐ for counseling; ☐ to pay child support; ☐ for child contact; ☐ for court appearances; ☐ by telephone (☐ from _____ ☐ a.m. ☐ p.m. to _____ ☐ a.m. ☐ p.m.) ☐ by text ☐ by email ☐ _____

☐ and not enter any ☐ residence ☐ place of employment ☐ place of education of any such person(s)

☐ except for a single time, while accompanied by a police officer, for the purpose of retrieving defendant's personal effects.

☐ not operate any motor vehicle under any circumstances ☐ unless lawfully licensed to do so. ☐ Participate in electronic monitoring.

☐ **Defendant cannot be released unless a supervised bail contract is executed and approved by the Court. Def. must abide by contract conditions.**

☐ _____

☐ As a condition of my release, I shall comply with any condition(s) set forth on the Conditions of Release form.

☐ **THE CASH BAIL HAS BEEN POSTED BY A THIRD PARTY**

WARNING: Your cash or surety bail may be ordered forfeited if you fail to appear or if you violate any of the conditions of release in this case. Cash or surety bail has been ordered to ensure your appearance at all court proceedings as required, ensure you refrain from new criminal conduct, ensure the integrity of the judicial process, and ensure the safety of others in the community. Forfeiture of this bail may occur if you fail to appear as ordered, violate any of the conditions of release on this bond or others, or fail to abide by court orders.

I have read and I understand all my obligations under this bond. Defendant: ▶ _____

I have explained the defendant's (and if applicable, the surety's/third party's) obligations under this bond on this date and will give a copy of this form to the defendant and surety/third party immediately after signing it.

Dated (*mm/dd/yyyy*): _____ at _____ ☐ am ☐ pm ▶ _____

at _____, Maine ☐ Justice ☐ Judge ☐ Clerk ☐ Bail Commissioner

_____
Printed Name of Bail Commissioner

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-22-054

ANDREW ROBBINS, et al.,

Plaintiffs,

v.

JAMES BILLINGS, in his official capacity as Executive Director of the Maine Commission on Public Defense Services; JOSHUA TARDY, in his official capacity as Chair of the Maine Commission on Public Defense Services; DONALD ALEXANDER, RANDALL BATES, MICHAEL CAREY, ROGER KATZ, KIMBERLY MONAGHAN, and DAVID SOUCY, in their official capacities as Commissioners of the Maine Commission on Public Defense Services; and the STATE OF MAINE,

Defendants.

COMBINED ORDER ON PARTIALLY DISPOSITIVE MOTIONS

Pending before the Court are a number of motions filed by the parties, some of which require resolution before the Phase I trial now scheduled to begin in January of 2025. The Court separated claims originally made by Plaintiffs into two phases in the Court's Combined Order dated February 27, 2024. Plaintiffs are a Subclass of the original Class certified by the Court on July 13, 2022. The Court amended the definition of the Subclass on September 26, 2024 following briefing.

The Subclass of Plaintiffs in this Phase I trial of the class action brought by the ACLU of Maine in 2022 is now defined as follows:

> All individuals who currently are, or in the future will be, eligible for appointment of counsel by the Superior or District Court as required by the Sixth Amendment

> to the United States Constitution or Article 1, Section 6 of the Maine Constitution, but who remain unrepresented after arraignment or first appearance on any criminal charge punishable by incarceration or imprisonment.

Order Mot. Amend Class Def., at 10. For purposes of this Combined Order, the Court will use "Plaintiffs" to refer to the individuals who comprise the amended Subclass. The Defendants remaining in this litigation are the Executive Director and Commissioners of the Maine Commission on Public Defense Services (hereinafter MCPDS) and the State of Maine, who is a Party-in-Interest on Count III and a party in Count V.

The Court in this Combined Order addresses the following motions: Plaintiffs' Motion to Strike Jury Demand as to Count I; Plaintiffs' Motion for Partial Summary Judgment on liability issues in Counts I, II, III, and V[1]; MCPDS Defendants' Motion for Summary Judgment on Counts I and II; the State of Maine's Motion for Summary Judgment on Count V; and the State of Maine's Motion to Continue Trial.[2]

I. Plaintiffs' Motion to Strike Jury Demand

Before the Court considers the parties' motions for summary judgment, it will address the pending question of whether a jury trial is available to MCPDS Defendants on Count I. The Defendants filed a jury trial demand as to "all claims" on October 1, 2024 but clarified at an October 11, 2024 hearing they are demanding a jury only on Counts I and II. Because the parties agree that the MCPDS Defendants have a statutory right to a jury trial on Count II under the Maine Civil Rights Act, the Plaintiffs' Motion filed on October 15, 2024 focused solely on Count I. The MCPDS Defendants filed their opposition on November 5, 2024 and the Plaintiffs filed their reply on November 12, 2024.

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[1] The Court dismissed Count IV brought against the agency MCPDS on August 13, 2024.

[2] The Court defers ruling on two motions: Plaintiffs' Motion in Limine to Exclude Evidence of Prior Convictions, Prior Arrests, Bad Acts, or Pending Criminal Charges; and Motion to Limit the Testimony of Dr. Rachel Casey. These will be discussed at the next conference of counsel now set for January 6, 2025.

a. Injunctive Relief

The Plaintiffs argue that because Count I is an equitable claim the MCPDS Defendants are not entitled to a jury trial. The Court agrees.

Under the Maine Constitution, a party has a right to a jury trial in all civil actions "except in cases where it has heretofore been otherwise practiced . . . ." Me. Const. art. I, § 20. The Law Court in 1989 held that the right to jury trial exists unless it is "affirmatively shown" that a jury trial was unavailable in such a case when Maine's Constitution was adopted in 1820. *N. Sch. Congregate Hous. v. Merrithew*, 558 A.2d 1189, 1190 (Me. 1989) (citing *In re Shane T.*, 544 A.2d 1295, 1297 (Me. 1988) (finding no right to a jury trial because suits adjusting the relationship between parent and child were heard in equity without a jury prior to 1820) *and see also City of Portland v. DePaolo*, 531 A.2d 669, 670 (Me. 1987) (finding a right to a jury trial in a civil suit seeking monetary penalties for violations of the City's anti-pornography ordinance, even though that type of action was unknown in 1820)). The Law Court has also consistently held that the Maine Constitution provides a right to a jury trial for legal claims but not equitable claims. *See, e.g.*, *Town of Falmouth v. Long*, 578 A.2d 1168, 1171–72 (Me. 1990); *DesMarais v. Desjardins*, 664 A.2d 840, 844 (Me. 1995); *DiCentes v. Michaud*, 1998 ME 227, ¶ 7, 719 A.2d 509 ("Because matters in equity were never triable of right to a jury, the right to a jury trial does not exist for claims sounding in equity.").

The Defendants argue that a jury trial is presumed here because the Plaintiffs cannot prove that a jury trial was unavailable for this cause of action (or a suit of the same general nature) prior to 1820. Defs.' Opp'n to Pls.' Mt. to Strike 3–4. However, this argument ignores the core of the Article I, Section 20 analysis which has been consistently used by the Law Court whenever this issue arises— jury trials are provided for legal claims but not equitable claims.

See, e.g., *DaimlerChrysler Corp. v. Exec. Dir., Me. Revenue Servs.*, 2007 ME 62, ¶ 20, 922 A.2d 465

> The Maine Constitution provides that: 'In all civil suits, and in all controversies concerning property, the parties shall have a right to a trial by jury, except in cases where it has heretofore been otherwise practiced . . . .' Actions sounding in equity, 'cases where it has heretofore been otherwise practiced,' do not have a right to a jury trial.

(internal citations omitted); *DesMarais*, 664 A.2d at 844

> Our 'practice in analyzing the right to a jury trial is to find there is such a right unless it is affirmatively shown that a jury trial was unavailable in such a case in 1820.' The Maine Constitution thus provides a jury trial for legal claims, but not equitable ones.

(internal citations omitted); *DiCentes*, 1998 ME 227, ¶ 7, 719 A.2d 509

> The right to jury trial in civil matters is found in article 1, section 20 of the Maine Constitution, which provides in pertinent part that '[i]n all civil suits, . . . the parties shall have a right to a trial by jury, except in cases where it has heretofore been otherwise practiced.' Pursuant to M.R. Civ. P. 38, this right 'shall be preserved to the parties inviolate.' We have construed article 1, section 20 to provide 'a broad constitutional guarantee of a right to a jury in all civil cases except where by the common law and Massachusetts statutory law that existed prior to the adoption of the Maine Constitution in 1820 such cases were decided without a jury.' Because matters in equity were never triable of right to a jury, the right to a jury trial does not exist for claims sounding in equity.

(ellipses in original) (internal citations omitted)). Thus, the question this Court must first answer is whether a claim for injunctive relief is a legal or an equitable claim. If Count I is equitable, there is no need to delve further into pre-statehood common law or Massachusetts law because equitable claims are not tried before a jury.

To distinguish legal claims from equitable ones, the Law Court considers the "basic nature of the issue presented, including the relief sought." *DesMarais*, 664 A.2d at 844. In a 1993 case, the Law Court specifically held that "[e]ntitlement to a jury trial depends on the type of relief requested by the claim, whether it be in the form of a complaint, a counterclaim[,] or a

cross-claim." *Morris v. Resol. Tr. Corp.*, 622 A.2d 708, 716 (Me. 1993) (superseded by statute on unrelated grounds in *Wilmington Tr. Co. v. Sullivan-Thorne*, 2013 ME 94, ¶ 11, 81 A.3d 371).

The relief requested here—injunctive relief—is equitable. *See, e.g.*, *Bangor Historic Track, Inc. v. Dep't of Ag.*, 2003 ME 140, ¶ 11, 837 A.2d 129 ("[I]njunctive relief is an equitable remedy."). Federal courts conclude the same. *See, e.g.*, *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311 (1982) ("It goes without saying that an injunction is an equitable remedy."). The fact that Plaintiffs seek an equitable remedy is alone sufficient to render Count I equitable and to eliminate the parties' jury trial right. *See Morris*, 622 A.2d at 716; *DaimlerChrysler Corp.*, 2007 ME 62, ¶¶ 20, 23–24, 922 A.2d 465; *DesMarais*, 664 A.2d at 844–45. In fact, the Law Court concluded another case was equitable in nature when a plaintiff sought both injunctive relief and, "as a secondary measure," a civil penalty. *Town of Falmouth*, 578 A.2d at 1172. Even the inclusion of a claim for a civil penalty alongside the requested injunctive relief did not transform that case into one entitling the parties to a jury trial. In Count I, the Plaintiffs do not seek damages, civil penalties, or any kind of legal relief; they seek an injunction requiring the Defendants to comply with the Sixth Amendment.

The Defendants also contend they are entitled to a jury trial because a Section 1983 claim is a "legal claim sounding in tort." Defs.' Opp'n to Pls.' Mt. to Strike 5. The Defendants rely on a Supreme Court case, *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687 (1999), in which the Supreme Court concluded a Section 1983 claim was an action at law entitling parties to a jury trial when plaintiffs sought legal relief in the form of monetary damages. *Id.* at 709–10. It is difficult to see why Defendants find this case persuasive. The Supreme Court noted: "[a party] is *not* entitled to a jury trial on his entitlement to a remedy that sounds not in law but in equity." *Id.* at 713 (emphasis added). Again, in Count I, Plaintiffs are

not seeking monetary damages. Indeed, *City of Monterey* actually supports the Plaintiffs' argument that a jury trial is not available to the Defendants as a matter of right in Count I.

b. Declaratory Judgment

Plaintiffs also seek a declaratory judgment under Count I. The Court understands them to ask the Court to declare that they have a right to continuous representation under the Sixth Amendment, from the time of their initial appearance through the pretrial and plea-bargaining processes and trial. The fact that they seek such a declaration does not change the Court's conclusion that MCPDS Defendants are not entitled to a jury trial on Count I.

Requests for declaratory judgments "are neither legal nor equitable." *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 284 (1988). The inclusion of a prayer for declaratory judgment "does not independently generate a right to a jury trial." *See Zani v. Zani*, 2023 ME 42, ¶ 15, 299 A.3d 9. In Maine, when a plaintiff seeks a declaratory judgment, the procedure followed by the court is governed by the "nature of the case." *Socec v. Me. Turnpike Auth.*, 129 A.2d 212, 213 (Me. 1957). That is, the right to a jury trial is "preserved" so long as the right is provided in the Maine Constitution ("under the circumstances and in the manner provided in Rules 38 and 39"). M.R. Civ. P. 57 (referencing Rule 38, providing the civil jury trial of right, and Rule 39, providing the procedure when a party demands a civil jury trial).

As described above, the right to a jury trial is provided for legal claims but not equitable claims. *See supra* pp. 3–5. Thus, if an action including a request for declaratory judgment "is legal in nature, the right to trial by jury is preserved." M.R. Civ. P. 57 reporter's notes; *see Me. Broad. Co. v. E. Tr. & Banking Co.*, 142 Me. 220, 226 (1946) ("The right of jury trial in what is essentially an action at law may not be denied a litigant merely because his adversary has asked that the controversy be determined under the declaratory procedure." (quoting *Aetna Cas. & Sur.*

Co. v. Quarles, 92 F.2d 321, 325 (4th Cir. 1937))); *see also Perkins v. Applebee*, No. CV-80-667, 1982 Me. Super. LEXIS 63, at *3 (Jan. 20, 1982) ("[A] request for a declaratory judgment does not transform a legal action into an equitable one."). Claims in equity, including equitable claims seeking declaratory judgment, do not carry the right to a jury trial. *See supra* pp. 3–5.

The Court will therefore grant the Plaintiffs' Motion to Strike Jury Demand on Count I. The Court would note that even if a jury trial were available to Defendants, the course of future proceedings would remain the same. For reasons more fully explained below, the Court will grant Plaintiffs' Motion for Partial Summary Judgment on the issue of liability on Count I and will grant the MCPDS Defendants' Motion for Summary Judgment as to Count II. And because there are no material factual issues that require resolution by a factfinder, the remaining legal issues in the case will not be resolved by a jury. The issue of remedy in Count I will be addressed after full briefing and argument on the well-established criteria which must be established before a Court may issue injunctive relief. *See Bangor Historic Track*, 2003 ME 140, 837 A.2d 129; *Ingraham v. Univ. of Me. at Orono*, 441 A.2d 691 (Me. 1982).

II. Motions for Summary Judgment

As stated above, the Plaintiffs have filed a Motion for Partial Summary Judgment as to liability on Counts I, II, III, and V. The MCPDS Defendants have filed a Motion for Summary Judgment on Counts I and II; and the Defendant State of Maine has filed a Motion for Summary Judgment as to Count V.

Under Maine law, "[c]ross motions for summary judgment neither alter the basic Rule 56 standard, nor warrant the grant of summary judgment *per se*." *Dorsey v. N. Light Health*, 2022 ME 62, ¶ 10, 288 A.3d 386 (quoting *F.R. Carroll, Inc. v. TD Bank, N.A.*, 2010 ME 115, ¶ 8, 8

A.3d 646) (emphasis in original). The summary judgment standard must be applied separately to each motion. *F.R. Carroll, Inc.*, 2010 ME 115, ¶ 8, 8 A.3d 646.

The summary judgment record consists only of the parties' properly supported statements of material fact and the portions of the record referenced therein. *See Dorsey*, 2022 ME 62, ¶ 10, 288 A.3d 386. Summary judgment is appropriate "if the summary judgment record, taken in the light most favorable to the nonmoving party, demonstrates that there is no genuine issue of material fact in dispute and the moving party would be entitled to a judgment as a matter of law at trial." *Chartier v. Farm Fam. Life Ins. Co.*, 2015 ME 29, ¶ 6, 113 A.3d 234; M.R. Civ. P. 56(c). A fact is "material" if it "can affect the outcome of the case," and there is a "genuine issue" when there is "sufficient evidence for a fact-finder to choose between competing versions of the fact." *Toto v. Knowles*, 2021 ME 51, ¶ 8, 261 A.3d 233 (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8, 13 A.3d 773).

Here, the Motion for Summary Judgment filed by the Plaintiffs is only partially dispositive because it addresses the question of liability. The Motion for Summary Judgment filed by Defendants addresses both liability and remedies. Under Rule 56, the Court may render a summary judgment on the issue of liability alone. M.R. Civ. P. 56(c).

A. COUNT I

The Plaintiffs have filed a Motion for Partial Summary Judgment as to liability on Count I. They allege the Defendants have violated the Subclass members' Sixth Amendment rights under the United States Constitution. The MCPDS Defendants have also filed a Motion for Summary Judgment as to Count I, as to both liability and relief. They argue the Plaintiffs have not been denied counsel at critical stages under federal law.

The legal questions presented in Count I are whether the Sixth Amendment requires continuous representation for the Plaintiffs as they argue, and whether the MCPDS Defendants are correct that the dispositional conference is the earliest and next criminal stage in Maine after a criminal defendant's Sixth Amendment rights attach at the first appearance. The question of whether a particular stage of a criminal proceeding is a critical stage under the Sixth Amendment is a question of law. *See Van v. Jones*, 475 F.3d 292, 314 (6th Cir. 2007) ("[T]he overarching legal question of whether a particular proceeding is a 'critical stage' of the trial should focus not only on the specific case before us, but the general question of whether such a stage is 'critical.'"). After addressing these two issues about the breadth of what the Sixth Amendment requires, the Court must then determine if there are any material issues of fact that require resolution by a factfinder as to whether the MCPDS Defendants are providing representation to the Plaintiffs consistent with these legal standards.

After considering the legal positions of all the parties and reviewing the Summary Judgment record, the Court concludes that Subclass members have been deprived of continuous representation after the right to counsel attaches as required in Maine by the Sixth Amendment; and because counsel is not being provided at critical stages as also required by the Sixth Amendment, the Court grants the Plaintiffs' Motion for Partial Summary Judgment on the liability issues in Count I, and denies the Defendants' Motions for Summary Judgment on Count I. The Court will not address as part of this Combined Order the arguments made by the parties to date regarding remedies, as they will have a full opportunity to be heard on those issues in later proceedings to be held in January of 2025.

The Plaintiffs brought Count I under 42 U.S.C. § 1983, the federal statute originally enacted as part of the Civil Rights Act of 1871. In 1961, the law was expanded by the United

States Supreme Court to become applicable to certain state actors in *Monroe v. Pape*. 365 U.S. 167 (1961). It now permits individuals to sue certain government entities and employees for violations of their civil rights. Section 1983 does not create new substantive rights; it is an avenue for relief from the violation of a federally protected right (i.e., the Sixth Amendment right to counsel). *Baker v. McCollan*, 443 U.S. 137, 144 n. 3 (1979). It reads in part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983. State courts have jurisdiction to hear claims brought under Section 1983. *Martinez v. California*, 444 U.S. 277, 283 n.7 (1980).

To prevail on a Section 1983 claim, a plaintiff must prove that: (1) they were deprived of a right secured by the United States Constitution or federal law; and (2) the person (or people) who deprived them of that right acted under color of state law. *Gomez v. Toledo*, 446 U.S. 635, 640 (1980). The parties do not dispute that the Defendants in this case were acting under color of state law.

The Maine Legislature enacted a law, still in effect, which explicitly and unambiguously requires the MCPDS Defendants to "provide high-quality, effective and efficient representation and promote due process for persons who receive indigent legal services in parity with the resources of the State *and consistent with federal and state constitutional and statutory obligations*." 4 M.R.S. § 1801 (emphasis added).

The Sixth Amendment to the United States Constitution reads in part: "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." U.S. Const. amend. VI. This obligation is applied to the states through the Fourteenth

Amendment. *Gideon v. Wainwright*, 372 U.S. 335, 341–43 (1963). The right to the assistance of counsel "attaches" when formal judicial proceedings have begun against the accused—"whether by way of formal charge, preliminary hearing, indictment, information, or arraignment." *Rothgery v. Gillespie Cnty., Tex.*, 554 U.S. 191, 198 (2008). After the right attaches, a criminal defendant is entitled to have counsel present at all "critical stages" of the process. *Id.* at 211–12. The complete absence of counsel at a critical stage of a criminal proceeding is a per se Sixth Amendment violation, and no analysis for prejudice or harmless error need be conducted. *Penson v. Ohio*, 488 U.S. 75, 88–89 (1988); *Van v. Jones*, 475 F.3d 292, 311–12 (6th Cir. 2007) ("It is settled that a complete absence of counsel at a critical stage of a criminal proceeding is a per se Sixth Amendment violation warranting reversal of a conviction, a sentence, or both, as applicable, without analysis for prejudice or harmless error.")

The Supreme Court has identified some specific events in a criminal proceeding as "critical stages." The list includes, but is not limited to, custodial interrogations, *see Massiah v. United States*, 377 U.S. 201 (1964) *and Brewer v. Williams*, 430 U.S. 387 (1977), corporeal identifications or "lineups," *see Moore v. Illinois*, 434 U.S. 220 (1977) *and United States v. Wade*, 388 U.S. 218 (1967), preindictment preliminary hearings at which the "sole purposes . . . are to determine whether there is sufficient evidence against the accused to warrant presenting his case to the grand jury, and, if so, to fix bail if the offense is bailable," *Coleman v. Alabama*, 399 U.S. 1 (1970), arraignments, *Hamilton v. Alabama*, 368 U.S. 52 (1961), trial, *Gideon*, 372 U.S. 335 (1963), sentencing, *Mempa v. Rhay*, 389 U.S. 128 (1967), appeals, *see Douglas v. California*, 372 U.S. 353 (1963) *and Halbert v. Michigan*, 545 U.S. 605 (2005), and during probation and parole revocation proceedings, *Gagnon v. Scarpelli*, 411 U.S. 778 (1973).

The list obviously includes events that occur in a courtroom. However, it is important to recognize it also includes events that occur outside the presence of the court which have nevertheless been found to be "critical" under the Sixth Amendment. *See, e.g.*, *Massiah*, 377 U.S. 201 (1964) (eliciting incriminating statements without the presence of counsel after a criminal proceeding has begun violates the Sixth Amendment); *Brewer*, 430 U.S. 387 (1977) (same); *Moore*, 434 U.S. 220 (1977) (a criminal defendant's Sixth Amendment right to counsel was violated by a corporeal identification conducted after the initiation of adversary judicial criminal proceedings and in the absence of counsel); *Wade*, 388 U.S. at 237 (the post-indictment lineup is a critical stage of prosecution at which a defendant is "as much" entitled to the assistance of counsel as at the trial itself).

The criminal process in Maine is comprised of consequential events which often occur before a criminal proceeding takes place in a courtroom. The legal requirements for these events in Maine, as in other States, are set out in Maine's Rules of Unified Criminal Procedure. In our system of federalism, it is the states, not the United States Supreme Court, who are empowered to establish their own criminal procedures. *See Smith v. Robbins*, 528 U.S. 259, 274 (2000) ("[T]he Constitution 'has never been thought [to] establish this Court as a rule-making organ for the promulgation of state rules of criminal procedure.'" (quoting *Spencer v. Texas*, 385 U.S. 554, 564 (1967))). Therefore, courts, including federal courts, look to promulgated state rules to understand a state's criminal justice process. And importantly, in Maine, these rules have the force of law. *Peterson v. Johnson*, SJC-23-02, at 14 (Jan. 12, 2024) (Douglas, J.).

The Court will therefore look to the Maine rules in considering the parties' legal arguments on Count I. It will also consider state and federal caselaw in deciding whether or not the representation required in Maine by the Sixth Amendment is "continuous representation."

And it will also apply the federal definitions of "critical stage" to events and proceedings established in the rules in deciding what the Sixth Amendment demands.[3]

Continuous representation under Maine law and the Sixth Amendment

Rule 44 of Maine's Rules of Unified Criminal Procedure states that a defendant has the right to have counsel "represent the defendant at *every stage of the proceeding.*" M.R.U. Crim. P. 44 (emphasis added). The Plaintiffs argue that this rule requires the State under the Maine Constitution to provide continuous representation. While the Court concludes in this Combined Order that indigent defendants in Maine are entitled to "continuous representation," it does not agree with Plaintiffs that Rule 44 embodies only the standard required by Article I, Section 6 of the Maine Constitution.

The Court concludes that Maine complies with the demands of the Sixth Amendment under the United States Constitution *through* Rule 44. *See State v. Smith*, 677 A.2d 1058, 1060 (Me. 1996) (holding that Rule 44 "implements the constitutional right to counsel in a criminal proceeding"). In *Smith,* the parties did not—and more importantly, the Law Court does not—ever mention the Maine Constitution. In that case, the defendant appealed a Superior Court's denial of his request to be declared indigent, asserting violations of his Fourth, Fifth, and Sixth Amendment rights. Defendant Smith simply made no claim under the Maine Constitution, and

[3] The parties also dispute what it means for the State to provide counsel within a reasonable time of the right to counsel attaching. *See Rothgery*, 554 U.S. at 212 ("[C]ounsel must be appointed within a reasonable time after attachment to allow for adequate representation at any critical stage before trial, as well as at trial itself."). Plaintiffs construe this obligation as an alternative theory of liability. The Defendants make a number of arguments on the issue. With respect to summary judgment issues, they argue that the length of time without counsel is not material; and they insist that no Plaintiff has been deprived of this right because—eventually—counsel is provided. The Court has concluded that the Plaintiffs' Sixth Amendment rights require continuous representation, and at critical stages identified in this Combined Order. Given these findings, it is not necessary for the Court at this stage of the proceedings to decide what amount of delay is constitutionally "reasonable" in appointing counsel for the Plaintiffs as part of the liability analysis. The Court has concluded that the issue of "unreasonable" delay should be addressed in later proceedings as part of the remedies analysis when the parties have an opportunity to argue the issue of injunctive relief in Count I, and perhaps as part of the Habeus proceedings in Count III.

the Law Court, in reviewing his Sixth Amendment claim, stated that Rule 44 "implements" the constitutional right to counsel in Maine criminal proceedings.

The Court finds that Justice Douglas of the Maine Supreme Judicial Court's recent decision in *Peterson v. Johnson*, SJC-23-02 (Jan. 12, 2024) (Douglas, J.), lends some support to this Court's interpretation of the relationship between Rule 44 and the United States Constitution. He wrote:

> Guaranteed by the Sixth Amendment to the United States Constitution and *provided for in Maine law* (emphasis added), the right to assistance by counsel to defend against a criminal charge is "among the fundamental principles of liberty and justice," *State v. Babb*, 2014 ME 129, ¶ 10, 104 A.3d 878; "safeguards the other rights deemed essential for the fair prosecution of a criminal proceeding," *Maine v. Moulton*, 474 U.S. 159, 169 (1985); and "embodies a realistic recognition of the obvious truth that the average defendant does not have the professional legal skill to protect himself when brought before a tribunal with power to take his life or liberty," *Johnson v. Zerbst*, 304 U.S. 458, 462–63 (1938).
>
> If a defendant cannot afford to hire an attorney, the State has an affirmative obligation to assign counsel. *Gideon v. Wainwright*, 372 U.S. 335, 342–43 (1963); *State v. Watson*, 2006 ME 80, ¶ 14, 900 A.2d 702; *see State v. Smith*, 677 A.2d 1058, 1060 (Me. 1996); M.R.U. Crim. P. 44(a)(1). And inherent in the right to counsel is a requirement that an accused is constitutionally entitled to an attorney who provides competent effective assistance. *See Kimmelman v. Morrison*, 477 U.S. 365, 377 (1986); *Strickland v. Washington*, 466 U.S. 668, 685 (1984); *Laferriere v. State*, 1997 ME 169, ¶ 5, 697 A.2d 1301. . . .
>
> The Maine Rules of Unified Criminal Procedure require appointment of counsel for indigent defendants at initial appearance. Rule 44(a)(1) provides that when an individual charged with a criminal offense involving a risk of jail cannot afford an attorney, "the court shall advise the defendant of the defendant's right to counsel and *assign counsel to represent the defendant at every stage of the proceeding* unless the defendant elects to proceed without counsel." (Emphasis added by Douglas, J.). Rule 5(e) provides that "[w]hen a person is entitled to court-appointed counsel, the court *shall assign counsel* to represent the defendant *not later than the time of the initial appearance*, unless the person elects to proceed without counsel." (Emphasis added by Douglas, J.). The rules are unambiguous. They require the court to assign counsel to represent an indigent defendant "not later than" the initial appearance to "represent the defendant at every stage of the proceeding."
>
> The rules of criminal procedure are "intended to provide for the just determination" of criminal proceedings and are to be "construed to secure simplicity and procedure,

> fairness in administration, and the elimination of unjustifiable expense and delay." M.R.U. Crim. P. 2. The rules are promulgated by the Maine Supreme Judicial Court; and once effective, "all laws in conflict therewith shall be of no further force or effect." 4 M.R.S. § 9 (2023). Court rules, thus, "have the force of law." *State v. Wells*, 443 A.2d 60, 63–64 (Me. 1982); *Cunningham v. Long*, 125 Me. 494, 496, 135 A. 198, 199 (1926) (holding that "rules have the force of law, and are binding upon the court, as well as upon parties to an action, and cannot be dispensed with to suit the circumstances of any particular case"); *accord State v. Heng*, 539 P.3d 13, 16 (Wash. 2023) ("Our court rules also guarantee the right to counsel."); *State v. Charlton*, 538 P.3d 1289, 1291–92 (Wash. 2023) (same).

Peterson, SJC-23-02, at 12–14 (Jan. 12, 2024) (Douglas, J.).

Given Justice Douglas's decision in *Peterson*, the Law Court's decision in *Smith*, 677 A.2d 1058 (Me. 1996), and the unambiguous language of Rule 44, the Court concludes that in Maine the Sixth Amendment entitles indigent defendants to continuous representation once the right to counsel attaches at their initial appearance or arraignment.

The MCPDS Defendants argue as a matter of law that unrepresented indigent defendants in Maine—even those who are being held in jails awaiting assignment of counsel—are simply not entitled under the Sixth Amendment to representation except at certain discrete court proceedings which they insist are the only "critical stages" that constitutionally matter. Defendants' list includes: the probable cause determination (but not the bail hearing) that occurs at the initial appearance or arraignment; the dispositional conference itself; and trial proceedings. Nothing that occurs in preparation for those events is, in the view of the MCPDS Defendants, constitutionally significant enough to require that they provide counsel to the Plaintiffs, even for those who are incarcerated.

The Court rejects the MCPDS Defendants' very limited view of what they owe indigent defendants in Maine under the Sixth Amendment—particularly those defendants who are held in jails across the State for days, weeks, and sometimes months without *any* Sixth Amendment

protections. The Sixth Amendment demands continuous representation in Maine from the time the right attaches, and at all stages of the criminal process.

Critical stages in the Maine criminal process

Even if Rule 44 requires continuous representation only pursuant to Article I, Section 6 of the Maine Constitution, the Court concludes that the MCPDS Defendants' obligations under the Sixth Amendment to provide counsel are not limited to the proceedings they argue are "critical." Their list of "critical stages" may be an accurate description of the status quo, but it is not correct as a matter of law.

MCPDS Defendants argue that Plaintiffs' failure to point to one instance in which a Subclass member has ever been unrepresented at a dispositional conference is fatal to the entirety of their Sixth Amendment claim. The Court disagrees. Their focus on the dispositional conference ignores what federal courts have come to recognize is at stake throughout the criminal process from the time the Sixth Amendment right attaches to the time an indigent defendant must decide if they are going to proceed to trial or instead knowingly and intelligently waive their right to trial. It also seems to be rooted in large part on a misstatement of what Justice Douglas stated in *Peterson* about dispositional conferences in Maine.

"Critical stage" does not have one agreed-upon meaning. *See Van*, 475 F.3d at 312–15 ("[T]he pithy definitions we have do not simply capture the sometimes permissive or inclusive conclusions by the Supreme Court . . . that this or that period, moment, or event in the course of a criminal proceeding is a critical stage."). The Supreme Court has never comprehensively laid out the breadth of the right to counsel at critical stages. *Rothgery*, 554 U.S. at 212 n.15 ("We do not here purport to set out the scope of an individual's postattachment right to the presence of

counsel."). However, the Supreme Court has articulated the purpose or essence of the "critical stage" in the following cases:

- When the accused's available defenses may be "irretrievably lost," *Hamilton*, 368 U.S. at 54, or where the accused's rights may be "preserved or lost." *White v. Maryland*, 373 U.S. 59, 60 (1963).
- "[T]he accused is guaranteed that he need not stand alone against the State at any stage of the prosecution, formal or informal, in court or out, where counsel's absence might derogate from the accused's right to a fair trial." *Wade*, 388 U.S. at 226.
- "[A]ppointment of counsel for an indigent is required at every stage of a criminal proceeding where substantial rights of a criminal accused may be affected." *Mempa*, 389 U.S. at 134.
- "[T]he test utilized by the Court has called for examination of the event in order to determine whether the accused required aid in coping with legal problems or assistance in meeting his adversary." *United States v. Ash*, 413 U.S. 300, 313 (1973).
- When there may be "significant consequences for the accused." *Bell v. Cone*, 535 U.S. 685, 696 (2002).
- "[W]hat makes a stage critical is what shows the need for counsel's presence." *Rothgery*, 554 U.S. at 212.
- When the accused "cannot be presumed to make critical decisions without counsel's advice." *Lafler v. Cooper*, 566 U.S. 156, 165 (2012).

The right to counsel is a "continuous right." *Betschart v. Oregon*, 103 F.4th 607, 620 (9th Cir. 2024). It "is not a haphazard jack-in-the-box that occasionally appears when cranked." *Id.* at 621. The Defendants' argument that the critical stages are only those stages at which a defendant's rights *at trial* may be prejudiced by denial of counsel ignores more recent Supreme Court precedent explicitly rejecting this view. *See, e.g.*, *Lafler*, 566 U.S. at 164–65

> [P]etitioner and the Solicitor General claim that the sole purpose of the Sixth Amendment is to protect the right to a fair trial. Errors before trial, they argue, are not cognizable under the Sixth Amendment unless they affect the fairness of the trial itself. The Sixth Amendment, however, is not so narrow in its reach. . . . Its protections are not designed simply to protect the trial, even though 'counsel's absence in these stages may derogate from the accused's right to a fair trial.'

Id. (citations omitted). The Sixth Amendment guarantees an "ongoing right that persists throughout trial court proceedings." *Betschart*, 103 F.4th at 621.

a. From the time when the Sixth Amendment rights attach to the time of the dispositional conference is a critical stage requiring representation in order to protect an indigent defendant's federal constitutional rights and to ensure access to judicial intervention when necessary.

The United States Supreme Court has declared that "the period from arraignment to trial [is] 'perhaps the most critical period of the proceedings,' during which the accused 'requires the guiding hand of counsel,' if the guarantee is not to prove an empty right." *Wade*, 388 U.S. at 225 (internal citations omitted); *see also Powell v. Alabama*, 287 U.S. 45, 57 (1932) (concluding that defendants did not have the assistance of counsel "during perhaps the most critical period of the proceedings . . . , that is to say, from the time of their arraignment until the beginning of their trial, when consultation, thorough-going investigation and preparation were vitally important"). Indeed, depriving a person of counsel during the period before trial "may be more damaging than denial of counsel during the trial itself." *Maine v. Moulton*, 474 U.S. 159, 170 (1985).

The "constitutional command" of the Sixth Amendment requires more than someone "who happens to be a lawyer [to be] present at trial alongside the accused." *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Defendant's counsel must not just show up on the day of a court proceeding, "but prepare for it too." *Betschart*, 103 F.4th at 620. Only with preparation can counsel provide the "meaningful advocacy" the Sixth Amendment demands. *Id.* This is not a new or novel idea. The Supreme Court has long held that "the right to counsel is the right to the *effective assistance of counsel*." *McMann v. Richardson*, 397 U.S. 759, 771 n. 14 (1970); *see also United States v. Cronic*, 466 U.S. 648, 654–55 (1984) ("The Constitution's guarantee of assistance of counsel cannot be satisfied by mere formal appointment.").

The Defendants insist that the pretrial investigation phase is not a critical stage but is instead "something that counsel must undertake in order to be adequately prepared to render constitutionally effective assistance at a critical stage." Defs.' Opp'n to Pls.' Mot. Summ. J. 17. The preparation they refer to is precisely the point. The pretrial period is a critical stage *because* it is when the defendant's counsel is preparing to try the case. *See Peterson*, SJC-23-02, at 18 (Jan. 12, 2024) (Douglas, J.) ("[p]retrial events and proceedings . . . have the potential to substantially impact a defendant's defenses to the charges or otherwise adversely affect the outcome at trial."). It is difficult to square the position of MCPDS Defendants that pretrial events and proceedings are not critical stages when the Supreme Court has actually described it as "the most critical period of the proceedings" and so "vitally important" that to be without counsel during that time is "more damaging than denial of counsel during the trial itself." *Wade*, 388 U.S. at 225; *Powell*, 287 U.S. at 57; *Moulton*, 474 U.S. at 170.

This position is also difficult to square with the exacting requirements embodied in Maine rules regarding the State's obligation to provide discovery of all kinds to a defendant before and in preparation for the dispositional conference. *See* M.R.U. Crim. P. 16. The rules categorize the types of discovery, some of which must be provided "automatic[ly]," meaning no request has to be made, while other types of discovery have to be requested. The discovery rules use terminology that an unrepresented person could not be reasonably expected to understand.

The rules lay out a process for how defense counsel may seek redress from the court on their client's behalf if the State is falling short in meeting its discovery obligations. The Court rejects the suggestion that defendants can do this themselves before the dispositional conference, or that they should simply wait patiently for as long as it takes MCPDS to provide counsel before access to the Court is possible. In addition, the arguments advanced by Defendants fail to note

the realities facing unrepresented criminal defendants, particularly those incarcerated in Maine jails. It is well accepted among Maine criminal practitioners—including those who work at the Office of the Attorney General—that discovery in criminal cases is not provided the way it used to be. It is provided electronically, through "the cloud," and often arrives piecemeal as it becomes available to prosecutors from law enforcement agencies, or as the State's investigation of a defendant continues, even after they have been charged and brought before the court.

Substantial federal constitutional rights are also implicated in the early stages of the criminal process. And those rights can be at serious risk if indigent defendants must confront the State alone, without the assistance of counsel. For example, MCPDS Defendants fail to consider the complex Sixth Amendment jurisprudence that requires the State to provide exculpatory evidence to criminal defendants as part of the discovery process. Presumably the Defendants are not suggesting that unrepresented defendants are expected to understand the rights they have to disclosure of exculpatory evidence, much less how to enforce those rights it if their access to Maine courts is hobbled by their lack of representation. *See Brady v. Maryland*, 373 U.S. 83, 87 (1963) ("[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.") *and Giglio v. United States*, 405 U.S. 150, 154 (1972) (holding that "[w]hen the 'reliability of a given witness may well be determinative of guilt or innocence,' nondisclosure of evidence affecting credibility" violates due process).

MCPDS Defendants also fail to note that the Sixth and Fourteenth Amendments have long demanded that no person who is incompetent to stand trial can be compelled to withstand the rigors of any part of the criminal process. *Bishop v. United States,* 350 U.S. 961 (1956); *Pate v. Robinson,* 383 U.S. 375, 378 (1966); *Dusky v. United States,* 362 U.S. 402 (1960). If an

unrepresented indigent defendant's diminished capacities are not recognized by a Lawyer of the Day at the first appearance, waiting weeks or months until a lawyer is finally assigned in order to address the issue at a dispositional conference raises significant Sixth Amendment and due process concerns. Yet the MCPDS Defendants fail to even address the issue of unrepresented defendants awaiting this important advocacy during the pretrial process. Indigent defendants whose mental capacities are so diminished, developmentally or psychiatrically, simply cannot advocate for themselves while waiting indefinitely for MCPDS to provide counsel. *See* 15 M.R.S. § 101-D (setting deadlines for the evaluation of a criminal defendant's competency to stand trial); *see, e.g.*, *Drope v. Missouri*, 420 U.S. 162, 171–72 (1975) ("[T]he prohibition [on trying a mentally incompetent defendant] is fundamental to an adversary system of justice."); *United States v. Flores-Martinez*, 677 F.3d 699, 705–06 (5th Cir. 2012) ("[T]he criminal defendant has a procedural due process right that guarantees 'procedures adequate to guard an accused's right not to stand trial or suffer conviction while incompetent.'" (quoting *Holmes v. King*, 709 F.2d 965, 967 (5th Cir.1983) (citations omitted))); *United States v. DiMartino*, 949 F.3d 67, 71–72 (2d Cir. 2020) ("The court must remain alert to issues of competence *throughout* a criminal proceeding." (emphasis added)).

Maine rules also require that *at least 7 days before* the date of the dispositional conference (a critical stage, *see Peterson*, SJC-23-02, at 21 (Jan. 12, 2024) (Douglas, J.)), motions to dismiss, discovery-related motions, motions to suppress, and other motions related to the admissibility of evidence must be served upon the opposing party. M.R.U. Crim. P. 12(b)(3)(A). Such motions include potentially dispositive motions brought under the Fourth, Fifth, Sixth, and Fourteenth Amendments. Even if such a motion is successful only in part, preventing the admission of illegal or unconstitutional evidence at trial would seem to be a basic

requirement to ensure a fair trial under the Sixth Amendment. Obviously, the rule contemplates that discovery would have been obtained and reviewed, and that appropriate investigation would have occurred before the need for any such motions could be recognized or drafted. It would be next to impossible for an unrepresented defendant to protect their constitutional rights by filing potentially dispositive motions with the court.

Other rules address important events that are intended to occur before the dispositional conference. Within 14 days of charging a defendant, the prosecution can strengthen its position against a defendant by joining other defendants in the same case. M.R.U. Crim. P. 8(b). Severing a client from joinder must be done by motion, and meeting the legal standard or even understanding it would be difficult for an unrepresented defendant. *See* M.R.U. Crim. P. 8(d); *State v. Pierce*, 2001 ME 14, 770 A.2d 630. In addition, defense counsel can file motions to preserve and transcribe testimony taken before the Grand Jury under certain circumstances. M.R.U. Crim. P. 6(g). If that does not occur before the Grand Jury rises, the defendant may lose forever the potential to use such testimony advantageously at trial or otherwise. Other opportunities to preserve evidence at crime scenes, or in a forensic lab, can also be lost or compromised unless counsel is involved early and continuously. Again, this preservation can only be done by successful motion practice before the court. If evidence is destroyed while a defendant is unrepresented and without an attorney to monitor the discovery process, that defendant then bears the burden of demonstrating bad faith on the part of the police or proving that comparable evidence cannot now be obtained. *See State v. Cote*, 2015 ME 78, ¶ 15, 118 A.3d 805; *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988). An unrepresented defendant is at the mercy of police and prosecutors who may not prioritize or even understand the defendant's need to preserve such evidence.

By the time of the dispositional conference, defense counsel must be "prepared to engage in meaningful discussion regarding *all* aspects of the case with a view toward reaching an appropriate resolution." M.R.U. Crim. P. 18(b) (emphasis added). Maine law does not just suggest the involvement of defense counsel during the pretrial period—it demands thoughtful and substantive representation. *See Peterson*, SJC-23-02, at 20–21 (Jan. 12, 2024) (Douglas, J.).

All of the above-described events, along with the expectations and deadlines established by the rules, require representation for indigent defendants. Counsel must process discovery, conduct investigation as warranted, and file motions when necessary to protect a defendant's federal constitutional rights during the period between attachment of that right and the dispositional conference. It would be close to impossible for an unrepresented defendant to understand these processes, much less to productively access a court for redress of important federal constitutional rights under the Fourth, Fifth, Sixth, and Fourteenth Amendments.

As the Supreme Court has said repeatedly: "Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive, for it affects his ability to assert any other rights he might have." *Cronic,* 466 U.S. at 654.

b. The process of plea bargaining with the prosecution has long been recognized as a critical stage under the Sixth Amendment.

Plaintiffs argue that plea bargaining is a critical stage. The Court agrees. In Maine's current criminal justice system and throughout the United States, it is beyond dispute that almost all criminal cases are resolved short of trial. As the MCPDS Defendants surely understand, the decision made by a defendant whether to plead guilty is an individual right that cannot be compelled or coerced. And given the enormous pressures faced by trial courts in Maine to resolve cases, it is difficult to overstate the critical role played by counsel in ensuring that any guilty plea is made knowingly and intelligently.

The United States Supreme Court "[has] long recognized that the negotiation of a plea bargain is a critical phase of litigation for purposes of the Sixth Amendment right to effective assistance of counsel." *Padilla v. Kentucky*, 559 U.S. 356, 373 (2010); *see also Missouri v. Frye*, 566 U.S. 134, 144 (2012) ("[T]he negotiation of a plea bargain, rather than the unfolding of a trial, is almost always the critical point for a defendant.") *and Lafler*, 566 U.S. 156 (2012) ("Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process."). This is "an obvious truth," *Gideon*, 372 U.S. at 343, because plea bargaining "is not some adjunct to the criminal justice system; it *is* the criminal justice system." *Frye*, 566 U.S. at 144 (emphasis in original).

The Defendants argue that plea bargaining is not a critical stage because "substantive plea negotiations" take place at the dispositional conference, which has already been established as a critical stage. Defs.' Opp'n to Pls.' Mot. Summ. J. 19. To the Plaintiffs' contention that plea bargaining begins well before the dispositional conference, the MCPDS Defendants state that Plaintiffs' position "would eliminate the well-established 'critical stage' analysis. *Id.*

If what the MCPDS Defendants are referring to as the "well-established critical stage analysis" includes their position that somehow *Peterson* eliminates the possibility that a critical stage could ever occur in Maine between first appearance and the actual dispositional conference, they misstate *Peterson*. As Plaintiffs argue, "*Peterson* said no such thing." Pls.' Opp'n to Defs.' Mot. Summ. J. 4. *Peterson* does not stand for the conclusion that the only other pretrial critical stage is the dispositional conference. Instead, *Peterson* says "[*a*]*t a minimum*, . . . the Sixth Amendment requires assignment of counsel *sufficiently in advance* of a dispositional conference to be able to provide effective representation in connection with the conference as

well as related matters." *Peterson*, SJC-23-02, at 21 (Jan. 12, 2024) (Douglas, J.) (emphasis added). Their arguments to the contrary ignore both *Peterson* and substantive federal case law.

In Maine, while plea bargaining may sometimes "culminate" at a dispositional conference, the work that must occur to reach a valid and enforceable plea agreement must begin when the State initiates criminal proceedings against a defendant. *Peterson*, SJC-23-02, at 20 (Jan. 12, 2024) (Douglas, J.). This work includes defendant's counsel conducting a pretrial investigation and protecting the defendant's Sixth Amendment rights during the pretrial process as discussed above. It also involves defendant's counsel communicating with their client regularly. And, importantly, it requires defendant's counsel to advocate on their client's behalf to a prosecutor. Plea bargaining cannot be understood as one discrete event. One round of negotiations often leads to others which might or might not "culminate" in resolution by guilty plea at any point before, during, or after the dispositional conference. But regardless of *when* the plea negotiation occurs, the Supreme Court has repeatedly held that criminal defendants require the assistance of counsel to help them negotiate with prosecutors. *See Padilla*, 559 U.S. 356 (2010); *Frye*, 566 U.S. 134 (2012); *Lafler*, 566 U.S. 156 (2012). The MCPDS Defendants' argument fails to acknowledge these federal precedents.

Criminal defendants must be afforded the assistance of counsel throughout the plea-bargaining processes. It is simply not credible for the MCPDS Defendants to suggest otherwise.

c. A bail hearing is a critical stage for Sixth Amendment purposes because of the rights at stake.

Finally, the Court considers Plaintiffs' argument that a bail hearing is a critical stage, and Defendants' argument that it is not. The Court concludes that a bail hearing is a critical stage requiring representation.

A defendant is entitled to the assistance of counsel "where [his] substantial rights . . . may be affected." *Mempa*, 389 U.S. at 134. A defendant's most basic right—his freedom from incarceration—hangs in the balance at a bail hearing. Even if a defendant is not in custody, arguments about conditions of release constitute a "significant infringement of liberty." *Lerman*, No. ANDCD-CR-2024-451 Unified Criminal Docket, at 12 (Androscoggin Cnty., June 1, 2024). One of the reasons the Supreme Court in *Coleman* concluded Alabama's preliminary hearing was a critical stage was because, at that proceeding, the Court decided bail.[4] *Coleman*, 399 U.S. at 8–9 ("[C]ounsel can also be influential at the preliminary hearing in making effective arguments for the accused on such matters as the necessity for an early psychiatric examination or bail."). Other courts have also concluded that a standalone bail hearing is a critical stage. *See Higazy v. Templeton*, 505 F.3d 161, 172 (2d Cir. 2007) (holding that a bail hearing is a critical stage of the criminal process); *Hurrell-Harring v. State*, 930 N.E.2d 217, 223 (N.Y. 2010) (citing *Higazy* with approval); *Caliste v. Cantrell*, 329 F. Supp. 3d 296, 314 (E.D. La. 2018) (holding that a bail hearing is a "critical stage" because "[t]here is no question that the issue of pretrial detention is an issue of significant consequence for the accused"); *Gonzales v. Comm'r of Corr.*, 68 A.3d 624, 631–37 (Conn. 2013). Given this, the Court concludes that a bail hearing is a critical stage.

The MCPDS Defendants' argument that the bail hearing is not a critical stage is difficult to understand, if for no other reason than that MCPDS, through the Lawyer of the Day (LOD) program, actually does provide counsel at bail proceedings. Supp.'g S.M.F. ¶ 157. And the Law Court has held that representation by an LOD fulfills a defendant's right to counsel. *State v. Galarneau*, 2011 ME 60, ¶¶ 7–9, 20 A.3d 99. The Court trusts that MCPDS Defendants are not

[4] The contours of Alabama's preliminary hearing are analogous to Maine's initial proceedings. *See* M.R.U. Crim. P. 5 (the court determines probable cause and sets bail, if applicable).

arguing that the LODs could simply make a probable cause argument at initial proceedings and then leave the defendant to their own devices to argue bail. But in this case, Defendants suggest that would be constitutionally permissible.

Finally, the Court is not persuaded by MCPDS Defendants' argument that the bail hearing is not a critical stage because it does not affect a defendant's opportunity for a fair trial. The proper inquiry, under *Coleman*, is "whether potential substantial prejudice to defendant's rights inheres in the confrontation and the ability of counsel to help avoid that prejudice." 399 U.S. at 9. The possibility of pretrial detention, and counsel's ability to advocate to protect the liberty of a defendant who is presumed innocent, makes a bail hearing a critical stage.

There are no genuine issues of material fact requiring resolution in Count I as to the MCPDS Defendants' obligations to provide continuous representation for Plaintiffs, and at critical stages as found above.

After reviewing the Summary Judgment record and filings, the Court concludes that, when viewing the record in the light most favorable to the MCPDS Defendants, there is no genuine issue of material fact as to whether Defendants are providing continuous representation and representation at critical stages as required by the Sixth Amendment. Therefore, Plaintiffs are entitled to Partial Summary Judgment as a matter of law. *See* M.R. Civ. P. 56(c). "A material fact is one that can affect the outcome of the case, and there is a 'genuine issue' when there is sufficient evidence for a fact-finder to choose between competing versions of the fact." *Stewart-Dore v. Webber Hosp. Ass'n.*, 2011 ME 26, ¶ 8, 13 A.3d 773; *see also Adeyanju v. Foot & Ankle Assocs. of Me., P.A.*, 2024 ME 64, ¶ 17, 322 A.3d 1201; *Cookson v. Brewer Sch. Dep't*, 2009 ME 57, ¶ 11, 974 A.2d 276.

It would be an understatement to describe the Summary Judgment record filed by the parties as "voluminous." Substantial parts of it, however, do not pertain to Count I. They instead

pertain to Count II's allegations regarding the emotional and psychological effects on Plaintiffs who remain unrepresented, particularly those in custody. Other sections which do pertain to Count I allege what is at stake for indigent defendants at various pretrial stages, but the Court addressed those issues as a matter of law in its discussion of critical stages. And significant portions of the record propose how to calculate how many eligible defendants have gone without representation after first appearance, and for how long.[5]

With respect to the parts of the record that pertain directly to the two legal issues presented in Count I, Plaintiffs have produced admissible evidence about criminal cases in which eligible criminal defendants have not been appointed counsel by the scheduled date of their dispositional conference. Supp.'g S.M.F. ¶ 124. In some cases, the dispositional conference was postponed, sometimes repeatedly, while the defendant remained unrepresented. *Id.* ¶ 126. In other cases, a criminal defendant's dispositional conference was held without the defendant having been assigned counsel. *Id.* ¶ 125. Thus, Plaintiffs have generated admissible evidence that criminal defendants are not being provided continuous representation or representation at critical stages of a criminal proceeding.

The MCPDS Defendants have responded to the Plaintiffs' Statements of Material Facts, but they have not properly controverted them. Defendants responded with "qualified" in response to Plaintiffs' Paragraphs 124, 125, and 126 and they "object" to the language about what "docket records *indicate*." Opp. S.M.F. ¶¶ 124–26, 128. They claim that the Court cannot rely upon the docket records and instead must have the underlying case files for each docket record included in the summary judgment record—despite the fact that in a different part of the

[5] The Court has decided that the length of time Plaintiffs have been unrepresented is material only as to the remedy that might be sought but not as to the legal issue of continuous representation and representation at critical stages of the Maine criminal process. *See supra* note 3, at 13.

MCPDS Defendants' argument they acknowledge that the Court *can* take judicial notice of the docket records and the underlying files. Opp. S.M.F. ¶ 124 n.9. The Court agrees with the Defendants that it can take judicial notice of the docket records and underlying filings, and it will do so.

Next, they argue that the Court cannot, as they say Plaintiffs request, draw inferences from competing, but undisputed facts, and they cite two cases which they claim support their position. However, the summary judgment records at issue in those cases are distinguishable from the record before this Court. The parties in those cases generated competing, uncontested facts that might be "capable of supporting conflicting yet plausible inferences." *Id.* ¶¶ 124–26, 128. Such inferences, which "are capable of leading a rational fact-finder to different outcomes . . . depending on which of them the fact-finder draws . . . is not [a choice] for the court on summary judgment." *Lewis v. Concord Gen. Mut. Ins. Co.*, 2014 ME 34, ¶ 10, 87 A.3d 732 (quoting *Lougee Conservancy v. CitiMortgage, Inc.*, 2012 ME 103, ¶ 11, 48 A.3d 774). In *Lougee*, the Law Court found that "competing inferences" existed, precluding summary judgment on an agency theory, when undisputed facts supported contrary views as to the extent of the party's control over the agent. 2012 ME 103, ¶¶ 13–15, 48 A.3d 774. So while the Defendants correctly cite the legal holdings of both *Lougee* and *Lewis,* they stand for a proposition not at work here, as the MCPDS Defendants have not actually presented to the Court any competing, undisputed facts that might lead a court to improperly choose between inferences. The MCPDS Defendants have not generated any facts that controvert the Statement of Material Facts generated by Plaintiffs referenced above.

The Court will also deem three statements, two by MCPDS Deputy Executive Director Eleanor Maciag and one by MCPDS Commission Chair Joshua Tardy, as not properly

controverted, and therefore admitted for purposes of summary judgment. First, in Paragraph 5 of Plaintiffs' Statement of Material Facts, Deputy Director of MCPDS Maciag, who has been designated an expert for the MCPDS Defendants, stated that MCPDS has not provided a sufficient number of attorneys to populate the rosters, thus making it impossible for Defendants to fulfill their mandate to provide sufficient attorneys. Supp.'g S.M.F. ¶ 5 (citing Maciag Dep. (Oct. 30, 2024), 9:17–21 ("Currently we are not providing -- there are not enough attorneys available to meet the demand for indigent legal services. So in terms of -- for those individuals, we are unable to meet that -- our statutory mandate.")). Defendants' response was to "qualify" and argue that her entire statement is a legal conclusion. Opp. S.M.F. ¶ 5. It is not necessary for the Court to address the assertion in the qualification that finding sufficient numbers of qualified is not a part of MCPDS's mandate. For purposes of summary judgment, the Court accepts her statement that "there are not enough attorneys available to meet the demand for legal services" as her view of the state of the rosters and finds her statement has not been effectively controverted.

Second, in Paragraph 10, Deputy Executive Director Maciag states under oath, again in her capacity as one of the MCPDS Defendants' experts, that because MCPDS does not have a sufficient pool of attorneys, there is a growing list of people who need, but who do not receive, counsel. Supp.'g S.M.F. ¶ 10 (citing Maciag Dep. (Oct. 30, 2024), 35:14–16 ("Because we don't have a sufficient pool of attorneys, neither employed or rostered, we have this growing list of people needing counsel.")). Defendants again responded to this by stating "qualified" and arguing that because this statement referenced the "inherently unreliable" Counsel Needed list, the statement is "misleading and unsupported by the cited authority." Opp. S.M.F. ¶ 10. In the deposition referenced, Deputy Executive Director Maciag was relying upon data generated by Maine courts and shared with her agency. She was testifying as a designated expert for the

MCPDS Defendants. Her understanding of that data has not been controverted. The MCPDS Defendants do not offer any opposing fact of any kind to counter her statements that the number of rostered attorneys is insufficient, and that the number of unrepresented indigent defendants is growing. The Court will accept these statements from Deputy Director Maciag statements as uncontroverted facts.

Third, in Plaintiffs' Paragraph 13, MCPDS Commission Chair Tardy's states under oath, that as of the beginning of 2024, there were around 300 defendants without counsel, and that the number has now "gone far beyond that." Supp.'g S.M.F. ¶ 13 (citing Tardy Dep. 21:9–13 ("I don't know what the number is right now so I just don't know. I just know that it's -- at the beginning of the year, the number was 300. It has gone far beyond that, and there is an ebb and flow, but it's an ebb and flow of unacceptability.")). Defendants again stated "qualified" and use the same argument regarding the unreliability of the Counsel Needed list without offering any opposing fact of any kind. Opp. S.M.F. ¶ 13. Chairman Tardy is a named Defendant. His statement that the number of unrepresented defendants has "gone far beyond" 300 is an uncontroverted admission of a party opponent, and the Court will accept it as such.

The MCPDS Defendants' "qualified" responses do not generate any material fact requiring factfinding at trial. Even when taken in the light most favorable to the Defendants, *see Chartier*, 2015 ME 29, ¶ 6, 113 A.3d 234, the undisputed facts established in the Plaintiffs' Statement of Material Facts establish that no representation is being provided by the MCPDS Defendants from the time of first appearance to the dispositional conference for a number of Plaintiffs. Many criminal defendants still do not have counsel at the time of their scheduled dispositional conference (Supp.'g S.M.F. ¶ 124); some proceeded through their dispositional conference without counsel (*Id.* ¶ 125); and others' cases were postponed indefinitely until

counsel could be appointed (*Id.* ¶ 126). This is certainly not continuous representation, and it is not representation at the critical stages identified by the Court as legally required such that representation must be provided between the first appearance and the dispositional conference.

Plaintiffs are therefore entitled to Partial Summary Judgment on the issue of liability under Count I.

B. COUNT II

The Court has reviewed the parties' motions for summary judgments, their opposition motions, and their replies, along with all supporting documents, including affidavits and statements of material facts. Based on the summary judgment record presented, the Court denies the Plaintiffs' Motion for Summary Judgment as to Count II and grants the Defendants' Motion for Summary Judgment as to Count II.[6]

The Plaintiffs have failed to present evidence to the Court for each essential element of Count II, namely, the element of intent, and the Defendants are thus entitled to summary judgment. *See Johnson v. Carleton*, 2001 ME 12, 765 A.2d 571 ("If the evidence presented by a plaintiff who has the burden of proof on an essential element at trial is insufficient, and the defendant would thus be entitled to judgment as a matter of law on that state of the evidence at a trial, the defendant is entitled to a summary judgment.").

In Count II, brought under the Maine Civil Rights Act, 5 M.R.S. § 4682, the Plaintiffs allege the Defendants have violated the Subclass members' right to counsel under Article I, Section 6 of the Maine Constitution. When an "aggrieved party" brings a suit under the Maine Civil Rights Act alleging their constitutional rights have been violated, they must prove that

[6] Rule 56(c) of the Maine Rules of Civil Procedure gives the Court the authority to render summary judgment *against* the moving party. The Court was inclined to do so, as no issue of material fact exists and the Plaintiffs have failed to prove each necessary element of Count II. However, the parties have filed cross-motions for summary judgment and so the Court declines to.

someone "[*i*]*ntentionally* interfere[d]or attempt[ed] to *intentionally* interfere with the exercise or enjoyment . . . of those secured rights." 5 M.R.S. § 4682(1-A)(B) (emphasis added). This interference can be proven in several ways, including, as Plaintiffs argue, "[e]ngaging in any conduct that would cause a reasonable person to suffer emotional distress or to fear death or bodily injury to that person or to a close relation." *Id.* § 4682(1-A)(B)(5).

The statute does not define "intentionally." However, in a 2020 case, the Law Court discussed the similarities in language found in 17 M.R.S. § 2931[7] and language found in the Maine Civil Rights Act, 5 M.R.S. § 4681 (2020),[8] noting: "'Intentionally,' as used in this section, means that it was the person's 'conscious object to cause' the result of his or her conduct." *Anctil v. Cassese*, 2020 ME 59, ¶ 12, 232 A.3d 245. The Court acknowledges that Section 4681 pertains to actions brought by the Attorney General, as opposed to Section 4682, which pertains to actions brought by private, aggrieved persons, but the language in each section as to intentionality is identical. Taking Section 4682's plain language and the Law Court's *Anctil*

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[7] Comparing this language:

> A person may not, by force or threat of force, intentionally injure, intimidate or interfere with, or intentionally attempt to injure, intimidate or interfere with or intentionally oppress or threaten any other person in the free exercise or enjoyment of any right or privilege, secured to that person by the Constitution of Maine or laws of the State or by the United States Constitution or laws of the United States.

17 M.R.S. § 2931.

[8] To this language:

> Whenever any person, whether or not acting under color of law, intentionally interferes or attempts to intentionally interfere by physical force or violence against a person, damage or destruction of property or trespass on property or by the threat of physical force or violence against a person, damage or destruction of property or trespass on property with the exercise or enjoyment by any other person of rights secured by the United States Constitution or the laws of the United States or of rights secured by the Constitution of Maine or laws of the State or violates section 4684-B, the Attorney General may bring a civil action for injunctive or other appropriate equitable relief in order to protect the peaceable exercise or enjoyment of the rights secured.

5 M.R.S. § 4681 (2020).

decision together, the Court reads Section 4682 as requiring the Plaintiffs in this case to establish intentionality as defined in the Maine Criminal Code.[9]

Therefore, to succeed under the Maine Civil Rights Act, the Plaintiffs would need to prove that the Defendants' "conscious object" when engaging in conduct that would cause a reasonable person to suffer emotional distress was to interfere with the Subclass members' right to counsel. *See* 5 M.R.S. § 4682(1-A)(B); *Anctil*, 2020 ME 59, ¶ 12, 232 A.3d 245. It is not enough for the Plaintiffs to demonstrate that the Subclass members have suffered emotional harm. While the Plaintiffs have provided expert testimony regarding the emotional distress likely suffered by those who are incarcerated, and those waiting to be appointed counsel, *see* Casey Aff. ¶ 10–48, there is nothing in the Plaintiffs' Statement of Material Facts that suggests, let alone proves, that the Defendants *intentionally* interfered with the Subclass members' right to counsel. The Plaintiffs have failed to make a prima facie case for Count II. The Court denies the Plaintiffs' Motion for Summary Judgment as to Count II and grants the Defendants' Motion for Summary Judgment as to Count II.

It should be noted that the Court's decision on Count II does not address the meaning or breadth of Article I, Section 6 of the Maine Constitution. It is limited to a decision of what is

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[9] The Court considers the statutory language unambiguous. However, if the statute is in fact ambiguous, this Court's interpretation comports with the Maine Legislature's stated intent when the Maine Civil Rights Act was first introduced as a bill in 1989. Senator Gauvreau introduced an amendment to the bill, explicitly intended to "restrict the amounts or numbers of actions which could be brought" under the statute once enacted. 2 Legis. Rec. 1238 (1st Reg. Sess. 1989). The amendment added an "intentionalities standard," meaning that, in Senator Gauvreau's words, "unless a party could prove by the preponderous [sic] of the evidence that a municipal official or any other person working under state law, unless the plaintiff could establish that the conducting [sic] question was intentional, then no such private action could occur." *Id.* Furthermore, when the Maine Legislature amended the Act in 2023 to extend protection to actions that "cause emotional distress or fear of violence," the bill summary declared:

> Examples of behavior prohibited under the bill include repeatedly trespassing on another person's property to hang or burn a figure in effigy or to fumigate the other person's residential property with pesticides when such conduct is motivated by reason of race, color, religion, sex, ancestry, national origin, physical or mental disability, sexual orientation or gender identity.

L.D. 868, Summary (131st Leg. 2023). With this history in mind, in the event that the Act *is* ambiguous, the Court nonetheless concludes that the Plaintiffs have failed to demonstrate the kind of intentional conduct the Legislature intended the Act to require.

required for private citizens to bring claims under the Maine Civil Rights Act. The parties will be free to argue about claims and defenses under the Maine Constitution as they argue the merits of other Counts that are left unresolved in whole or in part by this Combined Order.

C. COUNT III

Plaintiffs in Count III have requested Habeus relief from the Court based upon their claims in Counts I and II that their rights under the United States and Maine Constitution have been violated by the MCPDS Defendants and the State of Maine. Although the claims in Count III have been brought against individual County Sheriffs, the Court permitted the State of Maine to remain a Defendant as a Party in Interest, something the State had actually agreed to in the Habeus case heard and decided by Justice Douglas. *See Peterson*, SJC-23-02 (Jan. 12, 2024) (Douglas, J.).

As the Court has found that the liability of the MCPDS Defendants under the Sixth Amendment has been established as a matter of law, the Court will apply the legal findings made on Count I in the bench trial on Count III now scheduled for January of 2025.[10] To that extent, the Plaintiffs' Motion for Summary Judgment is granted in part.

The Court will discuss the course of future proceedings on Count III at the conference now scheduled for January 6, 2025.

D. COUNT V

In its August 13, 2024 Order on Pending Motions to Dismiss, the Court denied the Motion filed by the State of Maine asserting that it was immune from suit under the doctrine of

[10] As noted, 16 Maine County Sheriffs have been named Defendants on Count III as they are the custodians of a number of Class Members. Counsel for these Defendants have participated in multiple court conferences in this case since Count III was added, but they have not filed any partial or fully dispositive motions on behalf of their clients. The Court has made it clear that the Sheriffs can fully participate in the Habeus trial if they choose to do so, and at the pretrial conference set for January 6, 2025, the Court expects an update on what role, if any, the Sheriffs or their counsel will play in the proceedings on Count III.

sovereign immunity. After full briefing and argument, the Court held that the State of Maine could remain a Defendant in this case for purposes of the declaratory judgment sought in Count V. The Court also deferred its decision as to whether the Court has authority to issue any injunctive relief against the State of Maine as a Defendant on Count V unless Plaintiffs "prevail in establishing liability." Order on Pending Mot. Dismiss, at 15. That Order rejecting the State's argument regarding sovereign immunity was appealed to the Law Court and no decision on the merits has been issued. However, after the appeal was docketed, a Single Law Court Justice remanded this case back to the Superior Court on October 24, 2024, stating: "[t]he trial court may take any action on, and may proceed with, its matter in the usual course as though no appeal had been taken." *Robbins v. Comm'n on Pub. Def. Servs.*, No. Ken-24-450 (Me. Oct. 24, 2024) (Horton, J.). Upon motion of the State, the Single Justice provided clarification on November 4, 2024 that the prior order "does not direct the Superior Court to take any particular action and does not prohibit the Superior Court from taking any particular action." *Robbins*, No. Ken-24-450 (Me. Nov. 4, 2024) (Horton, J.).

This Court now has pending before it the State of Maine's Motion to Continue Trial on Count V, along with its Motion for Summary Judgment on Count V. In the latter motion, the State makes a number of arguments, including ones made previously regarding sovereign immunity and as to whether a declaratory judgment is simply a remedy and not a cause of action. In the Motion to Continue, the State asserts the Court has been fundamentally unfair in depriving the State of an opportunity to conduct discovery. The Court addresses this argument first.

Motion to Continue

The State of Maine argues that it is fundamentally unfair for the Court to make any substantive rulings in Count V unless it has had an opportunity to conduct discovery.[11] It suggests that if the Court fails to give the State of Maine this opportunity, the validity of any judgment issued by the Court could be undermined.

The Court would first note that Rule 56(a) by plain language has for a very long time permitted a motion for summary judgment to be filed by a Claimant so long as more than 20 days have passed since the action was filed. M.R. Civ. P. 56(a). For a Defending Party, Rule 56(b) states that it can be brought "at any time, but within such time as not to delay the trial . . . ." M.R. Civ. P. 56(b).

It is also worth noting that what the Court believes Plaintiffs seek in Count V at this stage of the proceedings is a declaration by the Court that the State of Maine is constitutionally responsible for providing counsel for indigent defendants where a risk of jail exists, and that the State of Maine has failed to comply with this obligation.

In addition, when pressed by the Court as to what discovery the State of Maine felt it needed to conduct, it is the Court's recollection that counsel for the State indicated that it had not finally decided what it intended to do about discovery.

The Court also recognizes that given the failure of the Clerk's Office to duly docket the appeal filed by the State of Maine, it was not until shortly before the discovery deadline expired that the Law Court, acting through a Single Justice, indicated that the trial court had authority to

[11] The State has sent mixed messages to the Court regarding its role in this litigation, especially in regard to discovery. It has suggested that sovereign immunity shields the State not just from a judgment, but also from being compelled to participate in the litigation in any respect as that would inflict injury on the State's sovereignty.

continue trial proceedings "as though no appeal had been taken." *Robbins*, No. Ken-24-450 (Me. Oct. 24, 2024).

The Court is persuaded that, given this history, it would be fundamentally fair to grant the State's Motion to Continue Trial in part to permit *limited* discovery on an expedited schedule by way of depositions only. To be clear, however, the Court does not believe it would be fundamentally fair to delay resolution of any Count except Count V, which is the only Count in which the State of Maine is now a party. This is particularly the case as the Court trusts that counsel for the State has had full access to all discovery generated by all parties in this case. Counsel for the State is an Assistant Attorney General (AAG) in the same office as the AAG who has been involved in representing the MCPDS Defendants in this case since its inception.

Finally, the Court wishes to be clear that at no time did it prevent or impose any procedural obstacle on the State of Maine's ability to file an answer in this case. The Court will not otherwise address this assertion.

Motion for Summary Judgment

The Court will therefore defer ruling on the Cross Motions for Summary Judgment pending in Count V and will permit the State of Maine to conduct limited discovery on an expedited schedule. The Court would, however, request that the State of Maine once again reflect upon two things. First, the Plaintiffs in this Phase I proceeding are only seeking a declaration as to what the State of Maine legally and constitutionally is obligated to provide indigent defendants who have been charged with crimes punishable by incarceration but who remain unrepresented. Second, it is the Court's understanding from previous comments from counsel for the State of Maine that the objection to being included as a named defendant is different from the State of Maine's intention as to how it *might* proceed in this litigation should

the Court provide a remedy on behalf of the Plaintiffs against the MCPDS Defendants. In any event, the Court invites and awaits clarification on the State of Maine's position.

CONCLUSION

With respect to Count I, the Court grants partial Summary Judgment for the Plaintiffs on the issue of liability only. And while the Court has done so after striking the Defendants' jury demand on this Count, its analysis would be the same if a jury trial was available to the MCPDS Defendants as they have argued, as there are no disputed issues of material fact as to whether the Defendants have violated the Sixth Amendment rights of the Plaintiffs. The Court denies the MCPDS Defendants' Motion for Summary Judgment on Count I.

The Court declares and concludes that the Sixth Amendment requires the MCPDS Defendants to provide Plaintiffs continuous representation from the time the right attaches at a defendant's first appearance before the Court, throughout pretrial events and proceedings, and throughout the plea-bargaining process and trial process. The Court also declares and concludes that the MCPDS Defendants have deprived the Plaintiffs of their Sixth Amendment right to representation at critical stages between the time the right attaches and the time of the dispositional conference. In light of these findings, prejudice will be presumed.

At the conference with counsel set for January 6, 2025, the Court will establish a procedure for the parties to address the issue of remedy. Plaintiffs have consistently stated that they are seeking only injunctive relief. However, the parties have not been given an opportunity to address the criteria under Maine law for whether Plaintiffs are entitled to injunctive relief. *See, e.g.*, *Burr v. Dep't of Corr.*, 2020 ME 130, 240 A.3d 371; *Bangor Historic Track*, 2003 ME 140, 837 A.2d 129; *Ingraham v. Univ. of Maine at Orono*, 441 A.2d 691 (Me. 1982). Oral argument will be conducted on one of the days now set aside for the bench trial on the Habeus claim in

Count III, January 22–24, 2025. Counsel should attempt to agree on a briefing schedule with those dates in mind. If either party is seeking a testimonial hearing on the issue of remedy, that will be discussed at the January 6, 2025 conference, but parties should expect that the Court is likely to require any such testimony to be taken on January 22–24, 2025.

With respect to Count II, the Court grants Summary Judgment for the Defendants. While neither party addressed the critical element of intentionality in their arguments on summary judgment, the Court has concluded that Plaintiffs have failed to produce or point to any evidence in the summary judgment record that establishes the kind of intentional violation of constitutional rights which must be proven in order to establish liability under the Maine Civil Rights claim alleged in Count II.

As to Count III, the legal findings made in this Combined Order regarding the Sixth Amendment may be used in any determination made by the Court in future proceedings, including those set now set for January 22–24, 2025 on this Count. The Court reserves ruling on any argument the parties might make as to primacy or co-extensiveness between the Sixth Amendment and Article I, Section 6 of the Maine Constitution until later in these proceedings after further hearing and argument.

With respect to Count V, the claim brought against the State of Maine, counsel for the State must now decide whether, in light of its pending appeal of the previous findings of this Court, it intends to pursue *limited* discovery in the form of depositions pursuant to Rule 56(h) as it has suggested in some of the filings on the pending motions. If the State wishes to do so, it must file a discovery plan with opposing counsel and the Court by January 6, 2025. The Court urges the State to begin to schedule any such depositions as soon as possible, and at the January

6, 2025 conference, the Court will discuss with counsel for the parties the deadlines for this discovery and how the parties will finally argue the issues presented in Count V.

Finally, the Court is reminded that, as the Assistant Attorney General who has represented the MCPDS Defendants throughout this litigation stated early on, it is the State of Maine that is "the real party in interest in this matter." Mot. Dismiss. Tr. 16, 17 (May 26, 2022).

The entry will be:

On Count I, the Plaintiffs' Motion for Partial Summary Judgment is GRANTED on the issue of liability only. The Court will conduct further proceedings to consider the arguments of the parties on the issue of remedy. The MCPDS Defendants' Motion for Summary Judgment on Count I is DENIED.

On Count II, the MCPDS Defendants' Motion for Summary Judgment is GRANTED and the Plaintiffs' Motion on the issue of liability is DENIED.

On Count III, the Habeus proceeding will proceed before the Court on January 22–24, 2025. The legal findings made in this Order may be applied to any Order issued on Count III after hearing and argument.

On Count V, the Motion for Summary Judgment filed by the State of Maine on the issue of sovereign immunity is DEFERRED and the Motion to Continue Trial on Count V only is granted in part to give the State of Maine a brief period to conduct discovery for reasons stated above.

The Clerk shall note this Order on the docket by reference pursuant to Rule 79(a) of the Maine Rules of Civil Procedure.

Dated: January 3, 2025

Justice, Maine Superior Court

Entered on the Docket: 1/3/2025

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. KENSC-CV-22-54

ANDREW ROBBINS, et al.,

Plaintiffs,

v.

MAINE COMMISSION ON PUBLIC DEFENDER SERVICES, et al.,

Defendants.

ORDER ON MOTION TO AMEND CLASS DEFINITION

Before the Court is a Motion brought by Plaintiffs on August 15, 2024 to amend the class definition. Oral argument was held on September 13, 2024. The Court has considered the written filings of the parties and their oral arguments and grants the motion in part for the reasons stated.

On July 13, 2022, the Court certified a class of Plaintiffs consisting of "all individuals who are or will be eligible for the appointment of competent counsel by the Superior or District Court pursuant to 15 M.R.S. Section 810 because they have been indicted for a crime punishable by imprisonment, and they lack sufficient means to retain counsel." On February 27, 2024, the Court created a case-management Subclass "consisting of Class Members who remain unrepresented after initial appearance or arraignment, unless the right to counsel has been waived by an individual Class Member."[1] The Proposed Order filed by Plaintiffs now request that the

[1] In its decision to reject the second settlement proposed by the parties, the Court was concerned that the crisis of non-representation was not addressed in the proposal. By creating the case-management Subclass and permitting amendment of both the claims and defenses in its February 27, 2024 Combined Order, there is now a forum to do so. In that same Order, the Court rejected the highly problematic suggestion of the parties that perhaps unrepresented criminal defendants should bring a separate Class Action. It also rejected claims by Defendants in this case that the original claims of inadequate representation brought under the Sixth Amendment and Article I, Section 6 were insufficiently related to the emerging constitutional claims of non-representation to be a part of this case. Further, this Court, and the Law Court in dismissing the State's appeal of the February 27, 2024 Combined Order, found that claims of non-representation were indeed made in the original Complaint. *See SJC's Order Dismissing Appeal*, Ken-24-132, May 1, 2024, at 2 n.1.

Class be defined as follows: "All individuals who are or will be eligible for the appointment of competent counsel by the Superior Court or District Court pursuant to 15 M.R.S. Section 810 because they have been charged with a crime punishable by imprisonment, and they lack sufficient means to retain counsel."

Plaintiffs request this amendment in part due to the emergence of "a crisis of complete denial of counsel" and they assert it is necessary "to harmonize" it with the definition of the Subclass created in February of this year. They also assert that it is necessary to ensure that the Class as a whole includes all adult criminal defendants eligible for court-appointed counsel under Maine law, regardless of whether they are charged with felony or misdemeanor criminal conduct. Defendants oppose the Motion for a number of reasons, but they do not argue that persons charged with misdemeanors should not be included in the Class as a whole. Their arguments are essentially threefold: they argue first that the representative Plaintiffs in the Class and Subclass are not typical of the claims or defenses of the class as their claims are now moot. This first argument also states that more than "some delay" in appointment of counsel must occur before the claim can be made out, and that specifically with respect to the Sixth Amendment that Plaintiffs must identify a "critical stage" for which they appeared without counsel. Second, they claim that the proposed definition of the Subclass "fails to identify a class who have viable claims for denial of their right to counsel under the Sixth Amendment to the United States Constitution" because Plaintiffs have not identified any representative Plaintiffs who have gone without representation at a critical stage of their prosecution. Finally, they argue that the Plaintiffs have failed to address or establish whether acts or failures to act of the Defendants are susceptible or appropriate for "final injunctive relief or corresponding declaratory

relief with respect to the class as a whole" based on their belief that the Defendants are unable to provide the injunctive relief sought.

Before addressing the arguments of the parties, the Court would note the following. The parties have for the last six months or more been focusing their attention on preparing for the Phase 1 trial of this litigation which is now set to begin in December of this year. This means that the claims and defenses asserted when this lawsuit was filed over two years ago await adjudication of the claims and defenses raised regarding the hundreds of individuals who have been charged with criminal offenses but who remain unrepresented for days, weeks, or months due to the shortage of lawyers willing and qualified to represent them. As the parties know, the current "crisis" as it is now commonly described, simply did not exist the day the initial Complaint was filed. An Amended Complaint is now before the Court which asserts claims of non-representation while still asserting the original claims. New Defendants have entered as a result, and new defenses will be asserted in the first phase of the trial.

It is not possible to know when or how the Phase 1 litigation will conclude and when resolution of the original claims can commence. Because of this and other uncertainties, the Court is reluctant to amend the original definition in the manner requested by Plaintiffs and to do so now. It may or may not become necessary to consider amendment to that definition at the time the other, original claims and defenses are ready for adjudication or are otherwise resolved. Because the trajectory of this case has been directly affected on more than one occasion by outside events, it would not be surprising if new circumstances emerge which might require reconsideration of the Class definition for the remaining claims.

In addition, resolution of certain legal issues generated by the claims in Phase 1, no matter which side prevails, seems likely to affect the remaining claims. If a remedy is

provided—or none at all—that could also directly affect the status of the remaining claims. Therefore, as the Court suggested to the parties at the conclusion of oral argument, this Order will focus now on whether amendment to the definition of the Subclass is appropriate, with the goal of ensuring that the parties are prepared for the Phase 1 trial now scheduled for December of this year.

STANDARD OF REVIEW

Rule 23(c)(1) of the Maine Rules of Civil Procedure permits this Court to alter or amend an order defining the class "before the decision on the merits." Some courts have interpreted this provision to not only provide discretion but an obligation to do so. *See, e.g.*, *Powers v. Hamilton Cnty. Pub. Def. Comm'n*, 501 F.3d 592, 619 (6th Cir. 2007) ("[D]istrict courts have broad discretion to modify class definitions, . . . the court took seriously its obligation to make appropriate adjustments to the class definition as the litigation progressed."); *Rivera v. Harvest Bakery Inc.*, 312 F.R.D. 254, 267 (E.D.N.Y. 2016) ("[T]he court has a duty to ensure that the class is properly constituted and has broad discretion to modify the class definition as appropriate to provide the necessary precision."); *McNamara v. Felderhof*, 410 F.3d 277, 280 n.8 (5th Cir. 2005) ("But under Rule 23(c)(1), courts are required to reassess their class rulings as the case develops." (internal citations and quotations omitted)); *see also Carlino v. CHG Med. Staffing, Inc.*, 634 F.Supp.3d 895, 900–01 (E.D. Cal. 2022) ("[T]he district court retains flexibility and is free to modify a class definition in light of developments during the course of litigation." (internal citations and quotations omitted)).

The Court agrees with the Defendants that any adjustment to the definition of the Class or Subclass should be analyzed pursuant to the requirements of Rule 23. The Court also recognizes that when it created the case-management Subclass and defined it, the parties did not have or

subsequently request from this Court input into how the Subclass would be specifically defined going forward. As noted in the February 27, 2024 Combined Order, courts have created these kinds of subclasses "to expedite resolution of the case by segregating [a distinct legal] issue [that is] common to some members of the existing [class]." *Casale v. Kelly*, 257 F.R.D. 396, 408 (S.D.N.Y. 2009) (quoting *Am. Timber & Trading Co. v. First Nat. Bank of Oregon*, 690 F.2d 781, 787 (9th Cir. 1982)) (quotation marks omitted) (alterations in original).

The Court would first note that Rule 23(c)(4)(B) states that "[w]hen appropriate . . . a class may be divided into subclasses and *each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.*" (emphasis added). This language has never been construed by the Law Court. Because this language states that any subclass is treated like a class, it could also be read to require that a subclass must independently meet the Rule 23 criteria. The Court will therefore analyze whether the current case-management Subclass meets that standard[2] before considering any amendment to it.

Rule 23(a) permits establishment of a class action if (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses

[2] While the Court finds the language in Rule 23(c)(4)(B) to be broad and unambiguous, it has been said that "no court or commentator has developed a fully reasoned view of the correct interpretation" of that Rule. Scott Dodson, *Subclassing*, 27 Cardozo L. Rev. 2351, 2371 (2006). The article *Subclassing* analyzes the federal counterpart to Maine's rule on subclasses. Both rules provide that a subclass is to be treated as a class. M. R. Civ. P. 23(c)(4)(B); Fed. R. Civ. P. 23(c)(5) (previously Fed. R. Civ. P. 23(c)(4)(B)). The article discusses two approaches to interpreting the rule: the "contingency theory" and the "replacement theory." The author argues that the latter theory is better supported by the text of Rule 23. It notes that the Rule does not say "when" a subclass can be created, but in the cases cited, subclasses were usually created at the same time the entire class was certified. The contingency theory seems to presuppose the existence of a certifiable class before it is divided into a subclass or classes, which means that the original class would continue to exist after a subclass is created. The replacement theory, however, envisions a situation where it may be necessary to create a subclass or subclasses which meet the Rule 23 requirements in order for the class action as a whole to become certified. The Rule also plainly states that if Rule 23(a) and (b) is met for the subclass, that subclass is then "treated as a class." The author suggests that Rule 23(c)(4)(B) conveys broad authority for courts to manage complex litigation by dividing a class or creating subclasses. Scott Dodson, *Subclassing*, 27 Cardozo L. Rev. 2351 (2006).

of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

In addition, Rule 23(b) sets out three additional considerations, one of which must be met to make a class action "maintainable":

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests, or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole, or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum;

(D) the difficulties likely to be encountered in the management of a class action.

Application of Rule 23(a) to the Subclass

While Defendants do not challenge the four requirements of Rule 23(a) as to the current Subclass, they do contest whether the proposed amendment is appropriate in three respects. One

argument focuses on Rule 23(a)(3) as to the "typicality" of the representative parties. However, the Court will address each requirement of Rule 23(a) separately.

First, with respect to numerosity, the number of potential subclass members under the proposed amendment is well over 600. That number is taken from the best evidence available to the parties and to the Court—the Judicial Branch's spreadsheet that is compiled more than once per week. That number includes criminal defendants charged with misdemeanors and felonies. It is also likely an underestimate of the number of individuals who have been unrepresented for an indefinite period, as the spreadsheet reports only individuals who are currently without counsel but not those who have been on the spreadsheet whose names have been removed as appointment of counsel became possible. The Plaintiffs are correct that this number changes frequently, and that Subclass members move in and out of the subclass as they are charged with an offense and they wait for varying periods of time for an attorney to be found willing and eligible for appointment. However, it would seem beyond dispute that the numerosity requirement is easily met.

With respect to the second issue of commonality, the Court finds that there are questions of law common to all members of the Subclass both as currently defined and also under the proposed amendment to the definition. Those common issues include, but are not limited to, resolution of the following common legal issues: whether the delays experienced by the Subclass are systemic and/or whether they are "unreasonable" and therefore unconstitutional; how to determine what criminal proceeding in Maine state courts constitute a "critical stage" under federal law; and what role a "critical stage" plays, if at all, in the analysis of the claims brought under Article 1, Section 6 of the Maine Constitution given the language of Rule 44 of the Maine Rules of Criminal Procedure. These are some of the highly contested issues common to the

Subclass as currently defined and also under the proposed amendment. As noted above, they are also issues which, when resolved, will likely have an impact on the original claims brought by the Plaintiffs.

With respect to the third and the fourth requirements of Rule 23(a), both address concerns related to the representative parties. Defendants emphasize the third criteria, but the substance of their arguments seem to address both "typicality" and "adequacy." Defendants assert that it is not sufficient for the Plaintiffs to allege that the three representative Plaintiffs added to this case after pleadings were amended "remain unrepresented" for various periods of time without connecting the delays in representation to any particular "critical stage" of a criminal proceeding. The Defendants also seemed to suggest that the claims of the representative Plaintiffs have become moot once counsel is located and assigned. The Court agrees with Plaintiffs that "mootness" of the claim of a representative Plaintiff in a case asserting inherently transitory claims does not create a bar to certification for lack of "typicality" or, for that matter, for "adequacy" under subparagraph 4. In this case, one representative remained without counsel for 14 weeks, one for seven weeks and one for six weeks before counsel was found. The claim being made is that these delays are unconstitutional under both federal and state law, and there is established case law that courts are not to presume inadequacy or typicality when a representative claim has become moot. *See Cohen v. Brown U.*, 16 F.4th 935, 947 (1st Cir. 2021). Unless the Defendants can establish somehow that the three representatives have interests that "meaningfully conflict with those of the class," they cannot be disqualified. *See id.*

With respect to the issue of whether the representatives' lack of representation can be tied to a "critical stage," the Court recognizes that this is a highly contested issue of law "common to the class" that has not been resolved with respect to what is required for an attorney to be

prepared to competently represent an indigent defendant at a critical stage, in addition to whether representation is required in Maine to be continuously provided, as a matter of law, once eligibility for counsel has been determined. The Court does not find these unresolved, common legal issues to act as a bar to meeting the requirements under either subparagraph 3 or 4 of Rule 23(a) for either the current or proposed Subclass. They are also merits-based arguments which should not be resolved at this stage. Once a full factual record exists, the Court intends to give the parties fair and ample opportunity to make those kinds of arguments.

With respect to Rule 23(b) requirements, the Court when certifying the class relied upon subsection 2 which as the parties know is often relied upon by plaintiffs in civil rights litigation. Defendants have consistently argued that they lack the ability to provide any relief sought and that this means the Court cannot find "appropriate final injunctive relief with respect to the class as a whole." The Court was not persuaded by this assertion at the time of initial class certification, and still is not. In the Phase 1 litigation, the Court does have authority after trial to declare what the law is (or is not) regarding the rights and obligations of the parties when indigent persons who are eligible for appointment of counsel remain unrepresented for indefinite periods of time. With respect to the request for injunctive relief, while it is no doubt true that the current Defendants cannot dismiss cases against unrepresented criminal defendants or order their release, the Law Court has recognized that in a civil rights action, agency actors can be ordered to comply with constitutional standards and to perform acts consistent with their obligations so long as the Court considers and adheres to the doctrine of separation of powers.

Burr v. Dept. of Corrections, 2020 ME 130, ¶ 23–28, 240 A.3d 371.

Amendment to Definition of Subclass

Having concluded that the current case-management Subclass meets the criteria of Rule 23(a) and (b) and will now be treated as a class as permitted by Rule 23(c)(4)(B), the Court will address whether the definition of the Subclass should be amended. As noted above, Defendants do not seem to object to the inclusion of unrepresented individuals who are charged with misdemeanors be included in the Subclass. The Court will therefore include those indigent criminal defendants in the definition. The Court will also clarify for the parties which claims pertain to the Subclass so that the parties can be prepared for the upcoming Phase 1 trial.

The Plaintiffs have at all times in this litigation stated that they are only seeking declarative and prospective injunctive relief. They have also stated consistently that they are pursuing relief under the Sixth Amendment and Article 1, Section 6 to the Maine Constitution for both Class and Subclass members. The Court believes it appropriate to amend the Subclass definition to more specifically address who is included and what they are claiming so that the parties can be prepared to address these claims and defenses at the Phase 1 trial. The Subclass will be defined as follows:

> All individuals who currently are, or in the future will be, eligible for appointment of counsel by the Superior or District Court as required by the Sixth Amendment to the United States Constitution or Article 1, Section 6 of the Maine Constitution, but who remain unrepresented after arraignment or first appearance on any criminal charge punishable by incarceration or imprisonment.

The entry will be: Plaintiffs' Motion to Amend the Class Definition is granted in part. The Case-Management Subclass meets the criteria set forth in Rules 23(a) and (b) and 23(b)(2) and will now be treated as a class pursuant to Rule 23(c)(4)(B). The definition for the Subclass is amended as set forth above pursuant to Rule 23(c)(1).

The Clerk shall note this Order on docket by reference pursuant to Rule 79(a) of the Maine Rules of Civil Procedure.

9/26/24
DATE

SUPERIOR COURT JUSTICE

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
DOCKET NO. KENSC-CV-22-54

ANDREW ROBBINS; BRANDY GROVER; RAY MACK; MALCOLM PEIRCE; LANH DANH HUYNH; CLIFFORD NEVILLE III; RALPH BUCK; AND DAISHAWN WILLIAMS, on behalf of themselves and all other similarly situated,

Plaintiffs-Petitioners,

v.

STATE OF MAINE; MAINE COMMISSION ON INDIGENT LEGAL SERVICES; JAMES BILLINGS, in his official capacity as Executive Director of the Maine Commission on Indigent Legal Services; JOSHUA TARDY, in his official capacity as Chair of the Maine Commission on Indigent Legal Services; DONALD ALEXANDER, RANDALL BATES, MEEGAN BURBANK, MICHAEL CANTARA, MICHAEL CAREY, ROGER KATZ, KIMBERLY MONAGHAN, and DAVID SOUCY, in their official capacities as Commissioners of the Maine Commission on Indigent Legal Services; AARON M. FREY, in his official capacity as Attorney General of Maine;

Defendants, and

STATE OF MAINE; ERIC SAMSON, in his official capacity as Sheriff of Androscoggin County; PETER JOHNSON, in his official capacity as Sheriff of Aroostook County; KEVIN JOYCE, in his official capacity as Sheriff of Cumberland County; SCOTT R. NICHOLS, in his official capacity as Sheriff of Franklin County; SCOTT KANE, in his official capacity as Sheriff of Hancock County; KENNETH L. MASON, in his official capacity as Sheriff of Kennebec County; PATRICK W. POLKY, in his official

capacity as Sheriff of Knox County; TODD B. BRACKETT, in his official capacity as Sheriff of Lincoln County; CHRISTOPHER WAINWRIGHT, in his official capacity as Sheriff of Oxford County; TROY MORTON, in his official capacity as Sheriff of Penobscot County; ROBERT YOUNG, in his official capacity of Sheriff of Piscataquis County; JOEL MERRY, in his official capacity as Sheriff of Sagadahoc County; DALE P. LANCASTER, in his official capacity as Sheriff of Somerset County; JASON TRUNDY, in his official capacity as Sheriff of Waldo County; BARRY A. CURTIS, in his official capacity as Sheriff of Washington County; and WILLIAM L. KING, JR., in his official capacity as Sheriff of York County,

Respondents.

FIRST AMENDED CLASS ACTION COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND CLASS ACTION PETITION FOR HABEAS RELIEF

Plaintiffs Andrew Robbins, Brandy Grover, Ray Mack, Malcolm Peirce, Lanh Danh Huynh, Clifford Neville III, Ralph Buck, and Daishawn Williams hereby allege as follows:

INTRODUCTION

1. The right to assistance of counsel in criminal proceedings is a bedrock of our criminal justice system. Guaranteed by both the Sixth Amendment of the United States Constitution and Article 1, Section 6 of the Maine Constitution, the right ensures that the state will provide counsel to indigent defendants facing the possibility of imprisonment. *See Gideon v. Wainwright*, 372 U.S. 335, 344-345 (1963); *State v. Cook*, 1998 ME 40, ¶ 6, 706 A.2d 603. In the half-century since *Gideon*, the United States Supreme Court has expanded that obligation in significant ways, requiring the states to provide counsel to indigent defendants facing incarceration, including for misdemeanors, and extending protections to juveniles in delinquency

proceedings. But the animating principle has remained the same: it is the state's responsibility to ensure that "any person haled into court, who is too poor to hire a lawyer," is provided with an adequate legal defense. *Gideon*, 372 U.S. at 344.

2. The right to counsel means more than just the bare appointment of an attorney for trial: the state must provide *effective* counsel—and must do so under circumstances that allow for competent and meaningful representation. *See United States v. Cronic*, 466 U.S. 648, 659-660 (1984). This right attaches as soon as the prosecution commences—that is, the defendant's "first appearance before a judicial officer at which defendant is told of the formal accusation against him and restrictions are imposed on his liberty." *Rothgery v. Gillespie County*, 554 U.S. 191, 194 (2008). Once the right attaches, the state must provide counsel "within a reasonable time after attachment to allow for adequate representation at any critical stage before trial, as well as at trial itself." *Id*. at 212 (cleaned up). In this state, Maine Rule of Unified Criminal Procedure 44 "implements the constitutional right to counsel in a criminal proceeding," guaranteeing appointment of counsel at the initial appearance and continuous representation once the right attaches. *State v. Smith*, 677 A.2d 1058, 1060 (Me. 1996); M.R.U. Crim. P. 5(e), 44(a)(1) (requiring the court to "assign counsel to represent the defendant at every stage of the proceeding").

3. This lawsuit challenges the failure of the State of Maine and its officials to adequately develop, maintain, supervise, administer, and fund an indigent-defense system that provides effective representation to indigent defendants once the right to counsel attaches and throughout the entire criminal legal process. Maine is unique in the country as the only state in which appointed private attorneys provide almost *all* indigent defense. There is no serious question that this system is broken. As Chief Justice Stanfill recently recognized, "[w]e are in a constitutional crisis." State of the Judiciary Address of Chief Justice Valerie Stanfill to 2d Reg.

Sess. 131st Legis., at 7 (Feb. 21, 2024). The State "depend[s] on the private bar" to provide attorneys to indigent defendants, yet "there are fewer and fewer lawyers available and willing to take cases." *Id.* According to the most recent annual report from the Maine Commission on Indigent Legal Services ("MCILS" or "Commission"), since 2017, the number of private attorneys eligible to represent indigent defendants has fallen from 402 to 295—of whom just 134 are actively seeking assignments. Over the same period, the number of cases brought by prosecutors has risen from 25,824 to 30,656 per year. As a result, "[w]e have people sitting in jail every day—frequently a dozen or more in Aroostook County alone—without an attorney because there is no one to take their cases." State of the Judiciary Address, *supra*, at 7.

4. The State has delegated to MCILS the responsibility for administering the State's indigent-defense system. By law, MCILS is responsible for "[d]evelop[ing] and maintain[ing] a system that employs public defenders, uses appointed private attorneys and contracts with individual attorneys or groups of attorneys," and "shall consider other programs necessary to provide quality and efficient indigent legal services." 4 M.R.S. § 1804(3)(A). But that under-staffed, under-resourced agency—and the system of predominantly private attorneys that it oversees—is not capable of meeting the demand for legal services that the State itself creates. The result is two significant violations of the State's constitutional obligations.

5. First, the State is now routinely failing to appoint counsel for indigent defendants for extensive periods after their right to an attorney attaches. As just discussed, hundreds of attorneys have stopped accepting cases from the MCILS roster, resulting in a worsening crisis as courts work through the enormous backlog of cases created by the pandemic and as the number of prosecutions continues to rise. Based on data distributed by the state courts, as of May 8, 2024, there were 633 indigent criminal defendants, charged in 840 separate cases, who had not been

provided with an attorney, of whom 144 were incarcerated. There were 551 defendants who had been waiting for appointment of counsel for at least 10 days, 466 defendants who had been waiting for appointment of counsel for at least 20 days, and an unbelievable 373 defendants who had been denied the assistance of counsel for at least 30 days.

6. Second, the State is failing to ensure that counsel, once appointed, have the training and supervision necessary to provide effective representation. Specifically, the State and its officials have failed to promulgate and enforce standards; to monitor and evaluate the performance of rostered attorneys; or to adequately train and compensate rostered attorneys as necessary to maintain a system of effective representation for indigent clients. The resulting system routinely and systematically denies indigent criminal defendants their constitutional right to effective representation.

7. The State's lawyer-of-the-day program encapsulates these twin failures. The State designates a "lawyer of the day" to provide representation at the 48-hour hearing for in-custody defendants and at the initial appearance for out-of-custody defendants. As implemented, this program is under-resourced to the point of constitutional deficiency. On any given day, as few as two lawyers may be on hand to meet with over eighty defendants. This regime does not come close to providing an adequate number of lawyers to even meet with—let alone provide constitutionally competent representation to—defendants in need of counsel concerning the implications of potential pleas or advocacy on bail and conditions of release. And, once the lawyer of the day has finished for the day, people accused of crimes are forced to wait many more days, weeks, or months before their actual attorney is assigned.

8. The State employs this same constitutionally deficient program to designate temporary lawyers at the newly created seven-day review hearings for unrepresented in-custody

defendants. Under the November 3, 2023, standing order issued by the Trial Court Chiefs, in-custody defendants who have not yet been provided counsel must "be brought before the court on the next convenient date on which in-custody arraignments are held, but in no event later than seven (7) days after the date of the initial appearance," and a lawyer of the day may be designated to appear on behalf of the defendant at the seven-day review hearing on a limited basis. Standing Order 1-2. But these seven-day hearings are merely a "limited, short-term response to an ongoing crisis" and "do not address the fundamental need—'to get a lawyer working, whether to attempt to avoid [a] trial or to be ready with a defense when the trial date arrives.'" *Peterson v. Johnson*, No. SJC-23-2, at 29, 31-32 (Jan. 12, 2024) (Douglas, J.) (quoting *Rothgery*, 554 U.S. at 210). By definition, lawyers of the day "do not have an ongoing relationship with a defendant, they typically represent multiple defendants" in a given appearance, and "[b]oth the time they are able to devote to an individual client and the scope of their representation is more limited than assigned counsel's." *Id*. at 25.

9. Plaintiffs are members of a certified class of indigent defendants who are entitled to State-appointed counsel in criminal proceedings. They sue to vindicate the class members' right to adequate legal representation that is enshrined in the Maine and United States constitutions. More specifically, Plaintiffs seek a judgment under 42 U.S.C. § 1983, the Maine Civil Rights Act, and the Maine Declaratory Judgments Act that the deficiencies in the State of Maine's system create an unconstitutional risk that indigent criminal defendants will be denied the benefit of effective assistance of counsel at all stages of their cases in violation of the Sixth Amendment of the United States Constitution and Article I, Section 6 of the Maine Constitution. Plaintiffs respectfully request appropriate declaratory and injunctive relief.

10. The Court has also certified a subclass of class members who remain unrepresented after their initial appearance or arraignment (unless the class member has waived their right to counsel). The members of this subclass sue to vindicate indigent defendants' right to be appointed counsel within a reasonable time after the right to counsel attaches and during every stage of the proceedings. More specifically, the subclass seeks a judgment under 42 U.S.C. § 1983, the Maine Civil Rights Act, and the Maine Declaratory Judgments Act that the State's failure to provide counsel violates the Sixth Amendment of the United States Constitution and Article I, Section 6 of the Maine Constitution, and respectfully requests appropriate declaratory and injunctive relief. The subclass further seeks a writ of habeas corpus releasing them from detention and restrictive conditions of release and other equitable remedies, on the grounds that they are being unlawfully detained without counsel in violation of their state and federal constitutional rights.

THE PARTIES

11. Plaintiff Andrew Robbins is a Maine resident who was arrested in the summer of 2021 on weapons charges. He was initially released on bail, but was taken back into custody following a subsequent October 30, 2021, arrest for violating his conditions of release and violating a protective order, as well as misdemeanor drug possession. At his initial appearance, Mr. Robbins was represented by a lawyer of the day, but was subsequently assigned to another lawyer. At the time the initial complaint was filed in March of 2022, Mr. Robbins had met his attorney only once—for an approximately 30-second conversation at his door during the summer of 2021 (while he was out on release). When the complaint was first filed, Mr. Robbins had never had a follow-up visit from his lawyer, nor had his lawyer ever arranged a video call, communicated with him about a plea offer, or reviewed his discovery materials with him. When Mr. Robbins received a copy of his discovery material, he observed that it contained materials relating to another

defendant, but as far as Mr. Robbins knows the attorney he was initially assigned never took any action based on this mistake. And while Mr. Robbins has two young daughters, who his wife is attempting to care for alone (while working full time), his attorney had, at the time the initial complaint was filed, refused to ask for a bail hearing following his October 30, 2021, arrest. Mr. Robbins has now completed his sentence.

12. Plaintiff Brandy Grover is a Maine resident currently residing in Rockland, Maine on community release. Ms. Grover was previously arrested on July 9, 2021, for aggravated trafficking. Ms. Grover developed a substance-abuse disorder after being prescribed opioids following an injury in her job as a certified nursing assistant. She is currently in recovery, but she briefly relapsed following the deaths of three people close to her. After her arrest, Ms. Grover was assigned a lawyer through the lawyer-of-the-day system, who did not advocate for her release, creating the impression for Ms. Grover that the lawyer believed she was better off in jail. Ms. Grover believes that her lawyer was annoyed and angry at her for not taking a plea deal. At the time of filing of the initial complaint, Ms. Grover had otherwise been unable to get in touch with her lawyer, who did not take her calls or the calls of family members, leaving Ms. Grover to resort to writing letters, which remained unanswered (either by phone or letter) when the complaint was filed. Ms. Grover eventually pled to Class B trafficking and was subsequently sentenced to community release.

13. Plaintiff Ray Mack is a Maine resident currently incarcerated in Kennebec County Jail awaiting trial following his May 27, 2021, arrest on charges of possession of a firearm and threat with a dangerous weapon. Mr. Mack pled not guilty at his initial appearance, but he did not feel that he had sufficient information about the proceedings to understand what was happening. Mr. Mack describes his initial appearance as "entirely one-sided." His lawyer at the initial

appearance spoke with the court, but not with Mr. Mack, and Mr. Mack was not able to participate in the proceedings. Prior to the filing of the initial complaint, Mr. Mack had only minimal contact with his attorney, who had not taken the time to review his discovery with him or discuss the proceedings in any detail. Mr. Mack is currently serving his sentence at Maine State Prison.

14. Plaintiff Malcolm Peirce is a Maine resident who was charged with several drug-related charges, as well as a charge of escape. Mr. Peirce was represented by a lawyer-of-the-day attorney during his initial appearance. His first assigned attorney had to withdraw from the representation due to a conflict of interest, and Mr. Peirce has had minimal contact—a handful of conversations each lasting only a few minutes—with his second state-appointed attorney. Their last phone call left Mr. Peirce with the impression that this attorney did not want Mr. Peirce to contact him. At the time of filing the initial complaint, Mr. Peirce had not heard from his attorney since this call, and Mr. Peirce's attorney had likewise not responded to a request to provide copies of discovery (which Mr. Peirce believes the attorney had not reviewed). Mr. Peirce has since entered a guilty plea and is serving a sentence at Federal Medical Center, Devens.

15. Plaintiff Lanh Danh Huynh is a Maine resident who was incarcerated at Maine Correctional Center in Windham, Maine. Mr. Huynh was arrested on June 1, 2021, for possession of a firearm and bail violations. Mr. Huynh pled not guilty, but he did not feel that he had sufficient information about the charges against him to decide how to plead. At the time of filing the initial complaint, Mr. Huynh had had only minimal contact with his state-appointed attorney, despite being charged almost eight months earlier. He had yet to see or review any of the discovery materials in his case and had encountered significant difficulty contacting his attorney, who did not return his calls. When Mr. Huynh tried calling his lawyer's office, he was told his lawyer was in court or busy, but his lawyer never called back. He had likewise tried having his brother and

friends call this lawyer's office to set up a meeting or call, but to no avail. His attorney had otherwise had no engagement with his case; he had not filed any motions on his behalf, including any motions for Mr. Huynh to be released on bail, and he had not informed Mr. Huynh of any details about the proceedings.

16. Plaintiff Clifford Neville III is facing charges filed in Penobscot County and is currently incarcerated at Two Bridges Regional Jail in Wiscasset, Maine. He was arrested on about April 20, 2024 and had his first court appearance on about April 22, 2024. Although Mr. Neville is eligible for a court-appointed attorney and has not waived his right to counsel, he has not yet been provided with an attorney and remains unrepresented. As of May 31, 2024, he has remained unrepresented for over a month.

17. Plaintiff Ralph Buck is facing charges filed in Oxford County and is currently incarcerated at York County Jail in Alfred, Maine. He was arrested in mid-April 2024, and had his first court appearance on about April 16, 2024. Although Mr. Buck is eligible for a court-appointed attorney and has not waived his right to counsel, he has not yet been provided with an attorney and remains unrepresented. As of May 31, 2024, he has remained unrepresented for a month and a half.

18. Plaintiff Daishawn Williams is facing charges filed in Penobscot County and is currently incarcerated at Two Bridges Regional Jail in Wiscasset, Maine. After his arrest in 2021, he was initially able to hire a private attorney, but as of spring 2024 he could no longer afford to retain private counsel. On about March 21, 2024, his private counsel filed a motion to withdraw, which was granted by the court. Although Mr. Williams is eligible for a court-appointed attorney and has not waived his right to counsel, he has not yet been provided with an attorney and remains unrepresented. As of May 31, 2024, he has remained unrepresented for over two months.

19. Defendant-Respondent State of Maine is the proper defendant and respondent with respect to the Plaintiff Class's Maine Declaratory Judgments Act claim. *See* Order on Plaintiffs' Motion for Leave to Amend and Supplement the Complaint (May 23, 2024) at 8-9 (observing that "the State itself is constitutionally vested with an affirmative obligation to furnish counsel to indigent criminal defendants"); Order Denying Preliminary Settlement Approval at 18 (Sept. 13, 2023) (quoting defense counsel's statements in this litigation that the "ultimate party in interest, again, is the State of Maine.") The State of Maine, like all other states, is obligated to "furnish counsel" to those accused of crimes who are unable to afford counsel on their own. *See Gideon v. Wainwright*, 372 U.S. 335, 343-345 (1963); *see also Peterson v. Johnson*, No. SJC-23-2, Final Decision and Order, at 12 (January 12, 2024) ("If a defendant cannot afford to hire an attorney, the State has an affirmative obligation to assign counsel.") States may attempt to fulfill this obligation in a variety of ways, including through the creation of independent agencies, such as the Maine Commission on Indigent Legal Services, to administer aspects of its indigent-defense system. But the State of Maine may not discharge its fundamental constitutional obligation by purporting to assign it to a specific person, agency, or political subdivision: the constitutional obligation to safeguard the right to counsel rests with the State itself. State of Maine is likewise the proper respondent and party in interest with respect to the Plaintiff Subclass's habeas claims, because members of the Subclass are held in the State's custody upon the State's order. *See* Order on Plaintiffs' Motion for Leave to Amend and Supplement the Complaint (May 23, 2024) at 14 (recognizing that the State of Maine has previously insisted on being a proper respondent in habeas actions concerning non-representation); *Peterson v. Johnson*, SJC-23-2, State Respondent's Memorandum of Law (Oct. 27, 2023) (State of Maine's request to intervene as respondent to ensure that "complete relief" in the matter could be achieved); *Peterson*, SJC-23-2, Final Decision

and Order (Jan. 12, 2024) (permitting habeas action to proceed against Respondent State of Maine, Party in Interest, following motion to intervene as Defendant by State of Maine); *see also Betschart v. Garrett*, 3:23-cv-01097-CL, 2023 WL 7220562 (D. Or. Nov. 14, 2023) (permitting habeas action to proceed against respondent State of Oregon, following motion to intervene by State of Oregon).

20. Defendant MCILS is the proper defendant with respect to the Plaintiff Class's Maine Declaratory Judgments Act claims because MCILS is statutorily directed to "provide efficient, high-quality representation to indigent criminal defendants, juvenile defendants and children and parents in child protective cases, consistent with federal and state constitutional and statutory obligations"; "ensure the delivery of indigent legal services by qualified and competent counsel in a manner that is fair and consistent throughout the State"; and "ensure adequate funding of a statewide system of indigent legal services, which must be provided and managed in a fiscally responsible manner, free from undue political interference and conflicts of interest." 4 M.R.S. § 1801. MCILS is responsible for "[d]evelop[ing] and maintain[ing] a system that employs public defenders, uses appointed private attorneys and contracts with individual attorneys or groups of attorneys," and "consider[ing] other programs necessary to provide quality and efficient indigent legal services." 4 M.R.S. § 1804(3)(A). MCILS is further responsible for "develop[ing] criminal defense . . . training and evaluation programs for attorneys throughout the State to ensure an adequate pool of qualified attorneys." 4 M.R.S. § 1804(3)(D).

21. Defendant James Billings is the Executive Director of MCILS. He is required by statute to "[e]nsure that the provision of indigent legal services complies with all constitutional, statutory, and ethical standards," 4 M.R.S. § 1805(1), and to "[a]dminister and coordinate delivery of indigent legal services and supervise compliance with commission standards," *id.* § 1805(3).

22. Defendant Joshua Tardy is an MCILS Commissioner and Chair of the Commission.

23. Defendants Donald Alexander, Randall Bates, Meegan Burbank, Michael Cantara, Michael Carey, Roger Katz, Kimberly Monaghan, and David Soucy are MCILS Commissioners.

24. Defendant Aaron M. Frey is the Attorney General of Maine, the "chief law officer of the State." *Superintendent of Ins. v. Attorney Gen.*, 558 A.2d 1197, 1199 (Me. 1989) (quotation omitted). Defendant Frey is a proper defendant with regards to the Plaintiff Class's claims under the federal and state civil rights acts because of his responsibility for "providing part of the relief sought" as well as his role in insuring "compliance with any judgment" ultimately obtained. *See* Order on Plaintiffs' Motion for Leave to Amend and Supplement the Complaint (May 23, 2024) at 11-12 (recognizing that the Attorney General "by virtue of his office" has the authority and the responsibility to protect the rights of the people of Maine, including the rights of people prosecuted by the State). Defendant Frey's duties include serving as the "legal representative of the people of the State in pursuing the public interest." *Id.* at 1202. This duty carries with it the responsibility of ensuring that the enforcement of Maine's laws are carried out in a manner consistent with the Constitution. The Maine Attorney General is authorized to direct and control prosecutions of homicides and major crimes as well as crimes involving public officials. 5 M.R.S. § 200-A. The Maine Attorney General "shall consult with and advise the district attorneys in matters relating to their duties." 5 M.R.S. § 199.

25. Respondents Eric Samson, Peter Johnson, Kevin Joyce, Scott Nichols, Scott Kane, Kenneth Mason, Patrick Polky, Todd Brackett, Christopher Wainwright, Troy Morton, Robert Young, Joel Merry, Dale Lancaster, Jason Trundy, Barry Curtis, and William King are the Sheriffs for each county in Maine. By law, in Maine, a county "sheriff has the custody and charge of the county jail and of all prisoners in that jail and shall keep it in person, or by a deputy as jailer,

master or keeper." 30-A M.R.S. § 1501; *see also* 30-A M.R.S. § 454 (requiring each county, whose law enforcement responsibilities rest on sheriffs, to provide for detention facilities).

JURISDICTION AND VENUE

26. This Court has jurisdiction over this action pursuant to 4 M.R.S. § 105, 5 M.R.S. § 8058, 14 M.R.S. §§ 5951-5963, and 14 M.R.S. § 6051(13).

27. This Court has personal jurisdiction over the defendants-respondents pursuant to 14 M.R.S. § 704-A(2) and 14 M.R.S. §§5511, 5513.

28. Venue is proper in Kennebec County pursuant to 14 M.R.S. § 501 and 14 M.R.S. §§ 5511, 5513.

BACKGROUND

I. The Right to Counsel under the Maine and U.S. Constitutions.

29. The Sixth Amendment guarantees that "in all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." U.S. Const. amend. VI.

30. In the landmark decision *Gideon v. Wainwright*, 372 U.S. 355, 345-346 (1963), the Supreme Court held that the Sixth Amendment requires states to provide counsel to indigent criminal defendants. *Gideon*'s guarantee applies in any case that could result in imprisonment. *See Argersinger v. Hamlin*, 407 U.S. 25, 40 (1972) (accused must receive counsel when case could result "in the actual deprivation of a person's liberty").

31. Under the U.S. Constitution, the right to assistance of counsel attaches as soon as the State initiates "adversarial judicial proceedings" against a defendant—that is, at the defendant's first appearance when he is "told of the formal accusation against him and restrictions are imposed on his liberty." *Rothgery,* 554 U.S. at 194, 198, 211. After the right attaches, the State must provide

"appointed counsel during any critical stage of the . . . proceedings," and "counsel must be appointed within a reasonable time after attachment to allow for adequate representation at any critical stage before trial, as well as at trial itself." *Id*. at 212 (cleaned up).

32. Article I, Section 6 of the Maine Constitution provides that "[i]n all criminal prosecutions, the accused shall have a right to be heard by the accused and counsel to the accused, or either, at the election of the accused."

33. Under Maine law, Maine Rule of Unified Criminal Procedure 44 "implements the constitutional right to counsel in a criminal proceeding," guaranteeing appointment of counsel at the initial appearance and continuous representation once the right attaches. *State v. Smith*, 677 A.2d 1058, 1060 (Me. 1996); M.R.U. Crim. P. 5(e), 44(a)(1) (requiring the court to "assign counsel to represent the defendant *at every stage of the proceeding*") (emphasis added).

34. Maine and federal courts have emphasized the importance of assigning counsel at the initial appearance and throughout the early stages of representation, including plea negotiations, pretrial investigation, and advocacy regarding bail and conditions of release. "From the time of [defendant's] arraignment until the beginning of their trial, when consultation, thorough-going investigation and preparation were vitally important," is "perhaps the most critical of the proceedings." *Powell v. Alabama*, 287 U.S. 45, 57 (1932). The Supreme Court has emphasized "the vital need for a lawyer's advice and aid during the pretrial phase." *Estelle v. Smith*, 451 U.S. 454, 469 (1981) (quotations omitted). And "[t]he importance of assigning counsel at initial appearance was emphasized by the late Justice Harry Glassman in his 1967 treatise on the rules of criminal procedure." *State v. Peterson*, No. SJC-23-2, at 13 n.12 (quoting Glassman, Maine Practice: Rules of Criminal Procedure Annotated § 44.2 at 394-395 (1967)).

35. The right to counsel is not fulfilled by the mere appointment of counsel; satisfaction of this constitutional obligation requires the *assistance* of counsel, and specifically the *effective* assistance of counsel. *United States v. Cronic*, 466 U.S. 648, 654 (1984) ("[I]t has long been recognized that the right to counsel is the right to the effective assistance of counsel." (quoting *McMann v. Richardson*, 397 U.S. 759, 771 n. 14 (1970))); *McGowan v. State*, 2006 ME 16, ¶ 9, 894 A.2d 493. If mere appointment of counsel were sufficient, the right would be "a sham and nothing more than a formal compliance with the Constitution's requirement that an accused be given the assistance of counsel." *Cronic*, 466 U.S. at 654 (quotation marks omitted).

36. Because "the adversarial process protected by the Sixth Amendment requires that the accused have 'counsel acting in the role of an advocate,'" the right to effective assistance is the "right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing." *Cronic*, 466 U.S. at 656 (quoting *Anders v. California*, 386 U.S. 738, 743 (1967)). Once "the process loses its character as a confrontation between adversaries, the constitutional guarantee is violated." *Id.* at 656-657. In short, effective counsel is counsel that can, and does, put the prosecutor's case to the test.

37. When assessing effectiveness of counsel, "prevailing norms of practice as reflected in American Bar Association standards and the like . . . are guides to determining what is reasonable." *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010) (cleaned up).

38. As relevant here, the American Bar Association has outlined ten principles to evaluate whether a state is providing assistance of counsel at all critical stages of a proceeding

("ABA Principles"). The ABA issued a revised set of principles effective August 2023.[1] These revised standards are:

a. Principle 1: Public defense providers and their lawyers should be independent of political influence and subject to judicial authority and review only to the same extent as retained counsel and prosecutors.

b. Principle 2: There should be adequate state funding and oversight of public defense providers, and when caseloads allow, the public defense delivery system consists primarily of dedicated public defense offices, augmented by additional public defense providers to handle overflow and conflict-of-interest cases.

c. Principle 3: Public defense providers' workloads should be monitored and controlled to ensure effective and competent representation.

d. Principle 4: The state should collect reliable data on public defense, regularly reviews that data, and implements necessary improvements.

e. Principle 5: Public defense should be provided at no cost to any person who is financially unable to obtain representation without substantial burden or undue hardship.

f. Principle 6: Counsel should be appointed immediately after arrest, detention, or upon request.

g. Principle 7: Assignment of lawyers should ensure that the experience, training, and supervision of the lawyer matches the complexity of the case.

h. Principle 8: The same attorney should continuously represent the client until completion of the case.

[1] *See* American Bar Association, Ten Principles of a Public Defense Delivery System (August 2023), *available at* https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls-sclaid-ten-princ-pd-web.pdf (last visited May 28, 2024).

i. Principle 9: Public defense providers should adopt a client-centered approach to representation based around understanding a client's needs and working with them to achieve their goals, including with assistance of investigators, social workers, mitigation specialists, experts, and other specialized professionals.

j. Principle 10: Public defense providers should be included as equal participants in the legal system, and there should be parity between defense counsel and the prosecution with respect to resources.

II. Indigent Defense in Maine and MCILS.

39. State law provides:

> Before arraignment, competent defense counsel must be assigned by the court unless waived by the accused after being fully advised of the accused's rights by the court if the court determines that the accused is indigent and the accused is charged with murder or a Class A, B or C crime, except when the accused has not had an initial appearance on the complaint.
>
> Competent defense counsel must be assigned by the court unless waived by the accused after being fully advised of the accused's rights by the court if the court determines that the accused is indigent and that:
>
> A. There is a risk upon conviction that the accused may be sentenced to a term of imprisonment;
>
> B. The accused has a physical, mental or emotional disability preventing the accused from fairly participating in the criminal proceeding without counsel; or
>
> C. The accused is a noncitizen for whom the criminal proceeding poses a risk of adverse immigration consequences.

15 M.R.S. § 810. The statute is supplemented by Rule 44 of the Maine Rules of Unified Criminal Procedure, which "implements the constitutional right to counsel in a criminal proceeding." *State v. Smith*, 677 A.2d 1058, 1060 (Me. 1996). Rule 44 specifies that a defendant has a right to be

represented by counsel "at every stage of the proceeding," unless the defendant waives that right or "the court concludes that in the event of conviction a sentence of imprisonment will not be imposed." M.R.U. Crim. P. 44(a)(1). Rule 5(e) of the Maine Rules of Unified Criminal Procedure further provides that "[w]hen a person is entitled to court-appointed counsel, the court shall assign counsel to represent the defendant not later than the time of the initial appearance, unless the person elects to proceed without counsel." M.R.U. Crim. P. 5(e). The rules of criminal procedure "are unambiguous" in "requir[ing] the court to assign counsel to represent an indigent defendant 'not later than' the initial appearance to 'represent the defendant at every stage of the proceedings.'" *Peterson v. Johnson*, No. SJC-23-2, at 13 (citations omitted). These court rules "have the force of law" and "all laws in conflict therewith shall be of no further force or effect." *Id.* at 14 (citations omitted).

40. The State's current system of indigent defense took shape in 2009, with the passage of legislation creating MCILS.

41. MCILS was created to address concerns about the increasing cost and lack of independent oversight of the indigent-defense system, which was then funded and administered by the judiciary. A February 2009 report ("Clifford Commission Report")[2] attributed increased costs to a surge in felony charges (due to changes to rules and applicable laws) and an increase in the number of criminal defendants qualifying as indigent. The Clifford Commission Report recommended "that Maine implement an indigent legal services system that is independent from the judiciary, and that provides the training and oversight necessary to ensure quality representation to Maine's citizens."

[2] Indigent Legal Services Commission, Clifford Commission Report 10, *available at* https://www.maine.gov/mcils/sites/maine.gov.mcils/files/documents/Clifford-Commission-Report.pdf (Feb. 2009).

42. According to its enabling legislation, MCILS is "an independent commission whose purpose is to provide efficient, high-quality representation to indigent criminal defendants, juvenile defendants and children and parents in child protective cases, consistent with federal and state constitutional and statutory obligations." 4 M.R.S. § 1801. The Commission is tasked with "ensur[ing] the delivery of indigent legal services by qualified and competent counsel in a manner that is fair and consistent throughout the State" and "ensur[ing] adequate funding of a statewide system of indigent legal services, which must be provided and managed in a fiscally responsible manner, free from undue political interference and conflicts of interest." *Id.*

43. As described in detail below, *see infra*, ¶¶ 73-101, Defendants have failed to fulfill these fundamental duties, leaving Maine with a system that both actually and constructively denies defendants assistance of counsel in their criminal proceedings.

44. While courts are more accustomed to evaluating compliance with the Sixth Amendment in the context of the effectiveness of an individual attorney's performance, the Constitution's guarantee of the assistance of counsel is implicated when criminal defendants are—either actually or constructively—denied the assistance of counsel altogether. *Roe v. Flores-Ortega*, 528 U.S. 470, 483 (2000). The two claims—ineffective assistance of counsel, on the one hand, and denial of counsel, on the other—are distinct. *Penson v. Ohio*, 488 U.S. 75, 88 (1988). A denial of counsel claim is not a claim of substandard representation but rather it is a claim of non-representation, caused either by the actual failure to provide an attorney or by providing an attorney who is not able to provide real assistance. *Cronic*, 466 U.S. at 658-660.

45. While Defendants' actual and constructive violations of the right to counsel are widespread, three particular failures stand out with respect to this litigation: (1) Defendants' failure to provide counsel to hundreds of indigent defendants at all, leaving those defendants waiting for

weeks or months without representation; (2) Defendants' failure to fulfill their statutory obligations; and (3) Defendants' flawed implementation of the lawyer-of-the-day system.

A. Non-Representation.

46. There is no overstating the damage wrought to an indigent criminal defendant's constitutional right to counsel when he is not appointed counsel *at all* in a timely manner. As the Supreme Court recounted in *Gideon*:

> Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.

Gideon, 372 U.S. at 345 (internal quotation marks and citation omitted).

47. A skilled attorney assists her client not only in the courtroom, but throughout all stages of the case. A lawyer, more than a layperson, has experience with the types of evidence that must be gathered to prepare a defense, and how to gather them. Witnesses must be interviewed before memories grow stale. Requests for preservation of evidence must be made, and discovery must be requested and reviewed. Plea bargains must be negotiated. Bail and conditions of release must be advocated for. There is a tremendous risk that, when counsel is not provided on a timely basis, the damage to the defendant's ability to contest the charges against him can never be repaired.

48. "As defendants wait for weeks, or months, for an initial appearance, their chances of defeating the charges dwindle. Delay in investigation impedes preparation of a defense and is a

sure-fire prescription for miscarriages of justice and convicting innocents at trial. The days immediately after an arrest can be the most critical to the development of a defense. Delaying an accused's access to counsel . . . hinders counsel's ability to find and talk to witnesses, gather physical evidence, and document the defendant's mental, physical, and emotional state near the time of the alleged crime, so even when an attorney finally does appear, the damage to the case may be irreparable." Pamela R. Metzger and Janet C. Hoeffel, *Criminal (Dis)appearance*, 88 Geo. Wash. L. Rev. 392, 409 (2020) (cleaned up).

49. Case outcomes are not the only aspect to suffer from a delay. There are downstream effects of going without counsel after an arrest or initial appearance. Prompt pretrial release for eligible individuals "preserves a defendant's ability to work, maintain family connections, and avoid the significant physical and mental hazards associated with pretrial detention." *Id*. at 400 (citations omitted). Additionally, even a brief period of pre-trial detention "creates a risk of unimaginable violence, trauma, injury, and illness," and heightens the risk of suicide and adverse health outcomes. *Id*. at 407. Defendants may "lose jobs and face eviction," and without employment they may "fall behind on rent payments, car payments, and bills for utilities, food, and medication." *Id.* at 408. Moreover, "families suffer the absence of an economic provider or child caretaker." *Id*.

50. Since the filing of the original Complaint, the Defendants' failure to provide competent counsel to all indigent persons facing criminal charges has reached crisis levels. Hundreds of attorneys have stopped accepting cases from the MCILS roster. According to MCILS's January 16, 2024 Annual Report, since 2017, the number of rostered attorneys has fallen from 402 to 295; as of January 9, 2024, just 134 of those rostered attorneys were actively seeking assignments. Over that same period, the annual number of cases brought by prosecutors has risen

from 25,824 to 30,656. The shortage of qualified and rostered defense attorneys is particularly acute in rural areas, forcing judges and MCILS to appoint attorneys from other counties despite the significant travel this requires.

51. Many counties have no MCILS-rostered attorneys available at all to take certain categories of criminal cases. As of March 4, 2024, there was one lawyer available to take assignments for serious violent felonies and domestic violence in the Alfred Unified Criminal Docket, and zero lawyers available for sex offenses or drug offenses. There were zero lawyers available to take assignments for serious violent felonies, other felonies, sex offenses, domestic violence, or drug offenses in the Aroostook Unified Criminal Docket. There were zero lawyers available to take assignments for serious violent felonies, other felonies, sex offenses, domestic violence, or drug offenses in the Auburn Unified Criminal Docket. There were zero lawyers available to take assignments for serious violent felonies, other felonies, sex offenses, domestic violence, or drug offenses in the Augusta Unified Criminal Docket. There were zero lawyers available to take assignments for serious violent felonies, other felonies, sex offenses, domestic violence, or drug offenses in the Bangor Unified Criminal Docket. There were zero lawyers available to take assignments for serious violent felonies, other felonies, sex offenses, domestic violence, or drug offenses in the Belfast Unified Criminal Docket. There were zero lawyers available to take assignments for serious violent felonies, other felonies, sex offenses, domestic violence, or drug offenses in the Farmington Unified Criminal Docket. There were zero lawyers available to take assignments for serious violent felonies, other felonies, sex offenses, domestic violence, or drug offenses in the Portland Unified Criminal Docket. And there was one lawyer available to take assignments for drug offenses, and zero lawyers available to take assignments for

serious violent felonies, other felonies, sex offenses, or domestic violence in the Rockland Unified Criminal Docket.

52. Because Defendants have failed to develop and resource a public defense system that is capable of responding to the ever-growing demand for prosecutions, people entitled to court-appointed counsel often wait weeks or months for counsel to be assigned.

53. Defendant MCILS denies that it has a duty to provide efficient high-quality representation to indigent criminal defendants consistent with federal and state constitutional and statutory obligations. *See* Complaint ¶¶ 38-39; Answer ¶¶ 38-39.

54. Defendant MCILS denies that its failure to fulfill its duty to provide efficient high-quality representation to indigent criminal defendants consistent with federal and state constitutional and statutory obligations has resulted in the denial of actual representation to class members. *See* Complaint ¶ 80; Answer ¶ 80.

55. Based on data distributed by the state courts, as of May 8, 2024, there were 633 individual defendants entitled to counsel who had not yet been provided with an attorney (on 840 separate charges), and 144 of those people were incarcerated. There were 551 defendants who had been waiting for appointment of counsel for at least 10 days, 466 defendants who had been waiting for appointment of counsel for at least 20 days, and an unbelievable 373 defendants who had been denied the assistance of counsel for at least 30 days.

56. As the Aroostook County District Court recently recognized in one such case of non-representation, "Mr. Fisher has suffered a violation of his right to counsel." *Maine v. Fisher*, AROCD-CR-23-40015, 23-40737, 24-40021 (2/16/2024) (Langner, J.) (finding constitutional violation based on failure to timely appoint counsel, but then refusing to dismiss case, order

release, or provide any remedy other than ordering MCILS to "ramp[] up its efforts to locate an attorney for Mr. Fisher").

57. When an indigent criminal defendant is awaiting the assignment of their constitutionally required attorney, the State purposely delays scheduling their next court date.

58. The consequences of the delays in appointment of counsel are disastrous. Unrepresented criminal defendants are denied the opportunity to properly investigate their claims, effectively engage in plea negotiations, or advocate effectively for release on their own recognizance or a reasonable reduction in their bail amount.

59. Unrepresented individuals are unable to meaningfully participate in plea negotiations. In the weeks or months following initial appearance, unrepresented individuals have no realistic chance of negotiating a favorable plea deal, even if that would be the most favorable outcome. Delays in appointment of counsel lead to the inability to preserve evidence, the denial of discovery, and waiver or failure to assert the speedy trial right, and all of these failures leave the indigent defendant at severe disadvantage for plea bargaining. Prosecutors know that they can decline to negotiate without fighting motions to suppress, expending time and resources to go to trial, or risking exposure of damaging information about law enforcement. In some cases, desperate indigent defendants attempt to negotiate their own guilty plea in exchange for release. Without timely appointment of counsel, the guilty pleas extracted from unrepresented individuals are not the product of a functioning adversarial system, but instead result from an imbalance of power between the prosecutor and the indigent defendant.

60. Unrepresented individuals are unable to conduct pretrial investigation and prepare their defense while going weeks or months without counsel. Unrepresented defendants are unable to adequately secure witnesses, review discovery, or request preservation of evidence. The delays

can result in the permanent loss of evidence such as eyewitness accounts, security videos, forensic evaluations, and crime scene documentation.

61. Unrepresented individuals are unable to adequately advocate for changes in bail status. Although unrepresented in-custody defendants are entitled to seven-day review hearings and may be designated a lawyer of the day, that appearance is by definition temporary and limited, and "do[es] not address the fundamental need—'to get a lawyer working, whether to attempt to avoid [a] trial or to be ready with a defense when the trial date arrives.'" *Peterson v. Johnson*, No. SJC-23-2, at 29, 31-32 (quoting *Rothgery*, 554 U.S. at 210). Counsel's assistance is necessary for investigating and gathering evidence in support of release, identifying space in appropriate programs, crafting a conditional release plan, and effectively advocating for release. Detention orders risk jailing individuals who would not face another day of incarceration if counsel were able to adequately argue for their release.

62. For unrepresented individuals who are in custody and denied the chance to obtain prompt pretrial release with the assistance of counsel, the impacts are even more far-reaching. Detained individuals may be unable to access necessary services such as medical care, mental health treatment, and substance use treatment while detained without counsel. Detained individuals may lose their jobs and lose contact with their families because they are locked up longer than necessary, due to their inability to adequately advocate for modification of their bail.

63. The only way out for some unrepresented defendants trapped in this coercive system is to plead guilty. Individuals who are innocent and who wish to defend their innocence are forced to wait in jail, while individuals who are willing to plead guilty may be released.

64. Defendant State of Maine has failed to manage the risk of serious deprivation of constitutional rights created by these inadequacies.

65. Defendant State of Maine has refused to ensure that the individuals it prosecutes who cannot afford an attorney are provided with an attorney.

66. Defendant State of Maine is constitutionally vested with an affirmative obligation to furnish counsel to indigent criminal defendants.

67. Defendant State of Maine will not meet this obligation unless a court of competent jurisdiction declares that it is obligated to do so and enjoins it to do so.

68. Defendant Frey has failed to exercise any oversight responsibilities to ensure that criminal prosecutions are carried out in a manner consistent with the Constitution.

69. Defendant Frey has failed to take any actions for the protection of the right to counsel for indigent defendants.

70. Defendant Frey will continue to fail to exercise any oversight or to take any action for the protection of the right to counsel for indigent defendant unless a court of competent jurisdiction declares that he is obligated to do so and enjoins him to do so.

71. Defendant MCILS has failed to establish and operate a system for providing "efficient, high-quality representation to indigent criminal defendants," has failed to "ensure the delivery of indigent legal services by qualified and competent counsel in a manner that is fair and consistent throughout the State and to ensure adequate funding of a statewide system of indigent legal services," and has failed to "[d]evelop criminal defense . . . training and evaluation programs for attorneys throughout the State to ensure an adequate pool of qualified attorneys." 4 M.R.S. § 1801; 4 M.R.S. § 1804(3)(D).

72. Defendant MCILS will continue to fail to establish and operate a system for providing efficient, high-quality representation to indigent criminal defendants, will continue to fail to ensure the delivery of indigent legal services by qualified and competent counsel in a manner

that is fair and consistent throughout the State and to ensure adequate funding of a statewide system of indigent legal services," and will continue to fail to develop criminal defense training and evaluation programs for attorneys throughout the State to ensure an adequate pool of qualified attorneys until a court of competent jurisdiction declares that it is obligated to do so and enjoins it to do so.

B. Failure to Fulfill Statutory Obligations

73. State statutes impose obligations that guide the State's stewardship of its indigent-defense system. Both MCILS and its Executive Director have failed to comply with these statutory commands in multiple different categories. These failures make it impossible for MCILS to fulfill its overarching constitutional and statutory role—namely, "to provide efficient, high-quality representation to indigent criminal defendants, juvenile defendants, and children and parents in child protective cases." 4 M.R.S. § 1801; *see also Gideon*, 372 U.S. at 344-45; *Cook*, 1998 ME 40, ¶ 6, 706 A.2d 603.

74. The Sixth Amendment Center, a nonprofit organization dedicated to ensuring compliance with the Sixth Amendment in localities around the country, has catalogued MCILS's systemic failures in this area. In particular, it detailed MCILS's failings in a 2019 report commissioned by the Maine Legislative Council, a 10-member body consisting of the President of the Senate, the Speaker of the House, and the Republican and Democratic Floor Leaders and Assistant Floor Leaders of each body. *See* Sixth Amendment Center, *The Right to Counsel in Maine: Evaluation of Services Provided by the Maine Commission on Indigent Legal Services* (2019), excerpts of which are attached hereto as Exhibit 1.[3] Among other deficiencies, the report

[3] *See* Sixth Amendment Center, The Right to Counsel in Maine: Evaluation of Services Provided by the Maine Commission on Indigent Legal Services, *available at* https://sixthamendment.org/6AC/6AC_me_report_2019.pdf (last visited February 24, 2022).

found that MCILS failed to impose adequate attorney qualification standards; ensure training of new attorneys and continuing education for experienced attorneys; adequately supervise attorneys; ensure meaningful representation at critical stages of criminal proceedings; compensate attorneys to cover overhead and an adequate fee; or guard against conflicts of interest. Ex. 1, at iv-ix.

75. These failures are also documented in extensive detail in government reports and MCILS's own assessment of its operations.

76. On January 10, 2020, the Maine Legislature's Government Oversight Committee directed its Office of Program Evaluation & Government Accountability ("OPEGA") to review MCILS's operations.[4] As described in the resulting report (attached as Exhibit 2), the Legislature requested that OPEGA focus on (as relevant here) the "adequacy of the oversight structure of MCILS in ensuring that operations align with and accomplish the organization's purpose." Ex. 2, at 1. The Report concluded that, among other failings, "overall . . . MCILS lacks adequate standard operating procedures and formal written policies to govern its primary functions." *Id.* 33.

77. MCILS's Executive Director subsequently wrote a series of three memoranda in December 2021 and January 2022[5] discussing MCILS's compliance with various obligations, each of which likewise reveals the Commission's failure to fulfill its duties. These memoranda discuss MCILS's compliance with (1) its statutory obligations ("MCILS Statutory Memorandum," attached as Exhibit 3); (2) recommendations from the Sixth Amendment Center and OPEGA reports ("MCILS OPEGA Memorandum," attached as Exhibit 4); and (3) the ABA's Ten Principles ("MCILS Ten Principles Memorandum," attached as Exhibit 5).

[4] Office of Program Evaluation & Government Accountability of the Maine State Legislature, Report on the Maine Commission on Indigent Legal Services, *available at* https://legislature.maine.gov/doc/4769 (Jan. 2020).

[5] The MCILS Ten Principles Memorandum is dated January 2021, but it was produced in January 2022.

78. An individual MCILS Commissioner provided his own commentary on the Executive Director's Ten Principles Memorandum ("Commissioner Redline," attached as Exhibit 6), concluding that the memorandum—which itself recognized MCILS's failings—nevertheless did not go far enough in recognizing how substantially MCILS underperforms its obligations.

1. Development of Standards

79. First, section 1804(2) requires MCILS to develop standards "governing the delivery of indigent legal services," including:

> A. Standards governing eligibility for indigent legal services. The eligibility standards must take into account the possibility of a defendant's or civil party's ability to make periodic installment payments toward counsel fees and the cost of private legal services in the relevant geographic area;
>
> B. Standards prescribing minimum experience, training and other qualifications for contract counsel, assigned counsel and public defenders;
>
> C. Standards for assigned counsel, contract counsel and public defender case loads;
>
> D. Standards for the evaluation of assigned counsel, contract counsel and public defenders. The commission shall review the standards developed pursuant to this paragraph at least every 5 years or earlier upon the recommendation of the executive director;
>
> E. Standards for independent, quality and efficient representation of clients whose cases present conflicts of interest;
>
> F. Standards for the reimbursement of expenses incurred by assigned counsel, contract counsel and public defenders, including attendance at training events provided by the commission; and
>
> G. Other standards considered necessary and appropriate to ensure the delivery of adequate indigent legal services.

4 M.R.S. § 1804(2).

80. Likewise, section 1804(3)(M) provides that the Commission "shall . . . [e]stablish procedures for handling complaints about the performance of counsel providing indigent legal services." *Id.* § 1804(3)(M).

81. MCILS has not developed these standards and procedures. As OPEGA explained, "even when standards are required to be established specifically in statute, MCILS relies on informal methods or does not address the standard at all." Ex. 2, at 33.

82. In particular, the OPEGA Report details that MCILS has not promulgated *any* standards or procedures regarding evaluation of counsel (subsection 2(D)); conflicts of interest (subsection 2(E)); or complaints about the performance of counsel (subsection 3(M)). *Id.*

83. Absent any standards in this area, MCILS has no mechanism for monitoring or rectifying the experience Plaintiffs have had in their cases—namely, attorneys who do not return their calls, set up meetings, review their discovery with them, or generally take an active role in moving their cases forward. *See supra*, ¶¶ 11-18.

84. And because Maine is unique as the only state where appointed private attorneys provide nearly *all* indigent defense, there may be no one else able to step in when an appointed attorney is unavailable. *See* Ex. 1, at 26.

85. MCILS has had ample time to comply with these obligations. The statutory mandates to implement requirements surrounding caseloads and conflicts of interest were enacted in 2009, and so have been in place for over a decade. P.L. 2009, ch. 419, § 2. The statutory mandates surrounding evaluation of counsel and a complaint procedure were enacted in 2017, likewise providing MCILS sufficient time to comply. P.L. 2017, ch. 284, Pt. UUUU, §§ 1, 2 (AMD).

86. Moreover, this failure makes it impossible for MCILS to fulfill its constitutional and statutory obligations. With no standards for evaluating counsel, reviewing complaints about counsel, or resolving conflicts of interest, the Commission cannot evaluate whether indigent defendants are provided "qualified and competent counsel," let alone rectify any cases where they are not. 4 M.R.S. § 1801.

2. Attorney Qualification, Training, and Compensation

87. MCILS's failure to promulgate these standards is particularly problematic given its deficient standards for attorney qualifications and training. As described by the Sixth Amendment Center, "[j]ust as you would not go to a dermatologist for heart surgery, a real estate or divorce lawyer cannot be expected to handle a complex criminal case competently." Ex. 1, at 27. And yet, that is precisely what the State's system allows.

88. MCILS is required by statute to "[d]evelop criminal defense, child protective and involuntary commitment representation training and evaluation programs for attorneys throughout the State to ensure an adequate pool of qualified attorneys." 4 M.R.S. § 1804(3)(D). It is also required to "[e]stablish minimum qualifications to ensure that attorneys are qualified and capable of providing quality representation in the case types to which they are assigned, recognizing that quality representation in each of these types of cases requires counsel with experience and specialized training in that field." *Id.* § 1804(3)(E).

89. The standards and systems MCILS has established with respect to attorney qualifications and training are woefully inadequate.

90. To receive an assignment from the Commission, in most cases an attorney need only attend a "Commission-approved training course for the area of the law for which the attorney is seeking to receive assignments." 94-649 C.M.R. ch. 2, § 4 (2) (2010).

91. This requirement can be satisfied by attending a single training course in criminal law. Ex. 1, at 30.

92. While there are greater qualifications for certain categories of serious offenses such as homicide and sex offenses, even in those cases an attorney can request a waiver. 94-649 C.M.R. ch. 3, §§ 3, 4 (1) (2010).

93. Thus, regardless of background, training, or prior case experience, MCILS allows attorneys to take on criminal representations after attending a single-day "Minimum Standards" course. This system does not satisfy MCILS's statutory obligation to "ensure that attorneys are qualified and capable of providing quality representation in the case types to which they are assigned," 4 M.R.S. § 1804(3)(E), particularly when coupled with MCILS's non-existent standards for evaluating counsel or resolving complaints about counsel, *see supra*, ¶ 82.

94. As an MCILS Commissioner has explained, the Commission's "basic eligibility requirements remain too low." *See* Correspondence from Ron Schneider (Jan. 10, 2022), attached as Exhibit 7. The Commission does "not want to admit that there are lawyers receiving assignments who should not be receiving them or are not really ready to receive them, even though full-time defense lawyers and judges could name them." *Id.* As a result, "MCILS still does not ensure that every assigned lawyer has the necessary ability, training and experience necessary to handle the case assigned to them as MCILS still permits lawyers just out of law school with a one-day Commission-sponsored or Commission-approved training course to represent a person, who, by definition, faces jail, involuntary confinement in a hospital, or the loss of custody of a child." Ex. 6, at 5.

95. And while MCILS technically requires specialized training for certain representations, a recent report found that "more than 1 of every 8 case assignments that required specialized representation was given to an attorney who was supposed to be ineligible to serve."[6]

96. MCILS's mechanisms for training and supervision are also statutorily and constitutionally deficient. MCILS does not require appointed attorneys to obtain any training in any specific practice area, beyond the minimal requirements that the attorney must meet to first be placed on the roster. And while MCILS created a "Resource Counsel Program" to provide appointed attorneys with a resource for mentoring and supervision, the 25 attorneys who staff this program are capped at providing 10 hours of mentoring each month—a total of 250 hours to mentor and supervise the hundreds of attorneys responsible for thousands of criminal representations in the state. Ex. 1, at 31. MCILS also has no authority to require any attorney to cooperate with this program, nor does it have any sort of planning for helping resource counsel attorneys identify performance problems or training needs.

3. Monitoring the Indigent Defense System

97. MCILS is separately required to establish certain processes for monitoring the indigent defense system. These include a statutory obligation to "[e]stablish a method for accurately tracking, monitoring and enforcing caseloads of assigned counsel, contract counsel and public defenders." 4 M.R.S. § 1804(3)(G).

98. But MCILS does not actually know when a case is assigned, as a court does not directly inform MCILS that a lawyer has been assigned to a case.

[6] Samantha Hogan and Agnel Philip, *Lawyers Who Were Ineligible to Handle Serious Criminal Charges Were Given Thousands of These Cases Anyway*, Maine Monitor (Feb. 23, 2021), *available at* https://www.themainemonitor.org/lawyers-who-were-ineligible-to-handle-serious-criminal-charges-were-given-thousands-of-these-cases-anyway.

99. As MCILS itself acknowledges, the Commission "does not yet have processes and procedures that track caseloads in real time." Ex. 3, at 104. MCILS does not have a target date for implementing such a system. *Id.*

100. While a lawyer can open a new matter in MCILS's database, many wait to do so until the case has been resolved and they start the process to apply for their voucher.

101. Absent this information, there is no way for MCILS to fulfill its obligation to track and monitor caseloads of assigned counsel. Learning of the representation after the fact is of little use because MCILS does not have an accurate understanding of an attorney's caseload at a given point in time, nor can MCILS take any responsive actions based on attorney caseload.

4. MCILS's Executive Director

102. The statutory scheme likewise imposes a series of obligations on the Executive Director of MCILS. The Executive Director must, among other obligations, "[e]nsure that the provision of indigent legal services complies with all constitutional, statutory and ethical standards," 4 M.R.S. § 1805(1), "[a]ssist the commission in developing standards for the delivery of adequate indigent legal services," *id.* § 1805(2), and "[a]dminister and coordinate delivery of indigent legal services and supervise compliance with commission standards," *id.* § 1805(3).

103. As detailed above, *see supra*, ¶¶ 73-101, MCILS has failed in each of these categories: the provision of indigent legal services does not comply with all constitutional, statutory, and ethical standards, 4 M.R.S. § 1805(1); MCILS has failed to develop standards for the delivery of adequate indigent legal services, *Id.* § 1805(2); and MCILS does not coordinate and supervise the delivery of indigent legal services, *id.* § 1805(3).

104. Moreover, given that the Commission has no way of tracking active MCILS cases, *see supra*, ¶¶ 98-99, it is impossible for the Executive Director to fulfill his statutory obligation to "[a]dminister and coordinate delivery of indigent legal services," 4 M.R.S. § 1805(3).

105. The Executive Director has thus failed in fulfilling these statutory obligations.

* * *

106. Defendants' lax approach to their statutory and constitutional obligations has resulted in a system that fails to provide attorneys to indigent defendants at their initial appearance and at every stage of the proceedings, resulting in denial of counsel under the federal and state constitutions.

107. And, Defendants' lax approach to their statutory and constitutional obligations creates an unconstitutional risk that indigent defendants who are eventually provided with an attorney will be assigned an attorney who is ill-prepared and incapable of providing effective representation under the federal and state constitutions.

108. As discussed above, the constitutional right to counsel is not fulfilled by the mere appointment of counsel. *See supra*, ¶¶ 35-36; *Cronic*, 466 U.S. at 654. But to the extent Maine does appoint counsel, the mere appointment of counsel is sometimes the best that Maine's current system provides. Without any standards for evaluating conflicts of interest, or attorneys' performance, MCILS has no baseline for establishing what effective representation requires—let alone mechanisms for measuring how appointed counsel are performing. And even where MCILS has ostensibly put standards in place—for example, with respect to attorney qualifications and training—these standards are far too low to ensure effective representation. *See supra*, ¶¶ 89-94.

109. The systemic structural limitations in Maine's system, including but not limited to MCILS's failure to even satisfy its own statutory requirements, have resulted in a system that

denies the Plaintiff Class actual representation, as guaranteed by *Gideon* and its progeny. "Actual representation assumes a certain basic representational relationship," *Hurrell-Harring v. New York*, 15 N.Y.3d 8, 22 (2010), which is impossible to develop and maintain when attorneys do not meet or communicate with their clients. *See Public Defender, Eleventh Jud. Cir. Of Fla. v. State*, 115 So. 3d 261, 278 (Fla. 2013) (finding denial of counsel where attorneys were "mere conduits for plea offers," did not communicate with clients, were unable to investigate the allegations, and were unprepared for trial).

C. The Lawyer-of-the-Day System

110. Rule 5 of the Maine Rules of Unified Criminal Procedure allows for the assignment of a "lawyer for the day . . . for the limited purpose of representing the [defendant] at the initial appearance or arraignment." M.R.U. Crim. P. 5(e). These lawyers appear at 48-hour hearings for in-custody defendants, at the initial appearance, and at the newly instituted seven-day bail review hearings for defendants not yet appointed counsel.

111. There is no per se problem with a lawyer-of-the-day system. But the State's lawyer-of-the-day system, as implemented, violates two fundamental tenets of effective representation: effective assistance of counsel at the outset of a criminal case and continuous representation through the completion of a case.

112. First, it is critical that a defendant receive effective representation "at the earlier stages of a criminal case." *Kuren v. Luzerne County*, 637 Pa. 33, 80 (2016). Indeed, the "right to counsel is as important in the initial stages of a criminal case as it is at trial." *Id.*; *see also* ABA Principle 3.

113. The State's lawyer-of-the-day system fails to ensure effective representation at the start of a defendant's case, because it is woefully under-resourced. In Androscoggin County, for

example, two lawyers of the day typically represent 200 defendants, with one lawyer estimating that they had about 5 minutes with each defendant. Ex. 1, at 52-53. Likewise, in Cumberland County there are an average of two lawyers of the day to handle 80 defendants. *Id.* at 52. These attorneys must set up a makeshift office in the courthouse, or else meet with defendants while in lock-up, requiring them to attempt to describe constitutional rights to an entire group of in-custody defendants, effectively leading to a group waiver of constitutional rights. *Id.*; *see also Wilbur v. City of Mount Vernon*, 989 F. Supp. 2d 1122, 1124 (W.D. Wash. 2013) (finding that a "meet and plead" system, where clients met their attorneys for the first time in court and immediately accepted a plea bargain without discussing their cases in a confidential setting, resulted in the lack of a representational relationship that violated the Sixth Amendment).

114. This problem is not one of limited representation, *State v. Galarneau,* 2011 ME 60, ¶ 8, 20 A.3d 99*,* but rather of no real representation at all. Because attorneys are often forced to communicate with defendants as a group, the "basic representational relationship" necessary for "[a]ctual representation" is lacking. *Hurrell-Harring*, 15 N.Y.3d at 22.

115. The resource challenges are particularly acute for in-custody hearings, in which the lawyer of the day is also responsible for making arguments for release on bail. As detailed by MCILS's rules for criminal practice,[7] the attorney should conduct an initial interview and investigation, including health (mental and physical) and employment background, criminal history, and the general circumstances of the alleged offense. Recent amendments to the bail statute allow for further argument based upon caretaking responsibilities and other factors. *See* 15 M.R.S. § 1026 (4)(C)(4), (12)-(14); P.L. 2021, ch. 397, § 5 (AMD). Yet the current lawyer-of-the-day

[7] Maine Commission on Indigent Legal Services, Chapter 102: Standards of Practice for Attorneys Who Represent Adults in Criminal Proceedings (Feb. 27, 2012), *available at* https://www.maine.gov/mcils/sites/maine.gov.mcils/files/inline-files/Adult%20Criminal%20Standards%20Final%20Adopted%20to%20SOS%20effdate.pdf.

system provides insufficient time and resources for the assigned attorney to meaningfully confer on these topics with each person on the docket.

116. Compounding this problem, the defendant is typically assigned a different lawyer to handle the case going forward, resulting in a lack of continuous representation and requiring a new attorney who is unfamiliar with the case to step in. *See* ABA *Standards for Criminal Justice*, Standards 5-6.2 cmt**.** (3d ed. 1992) (explaining that "the risk of substandard representation" increases given the new attorney's low familiarity with the case).

117. Mr. Robbins and Mr. Peirce both had to switch attorneys after initially being assigned a lawyer through the lawyer-of-the-day system.

118. Even for defendants who do not switch attorneys after their initial assignment, the lawyer-of-the-day system does not provide adequate time for defendants to have any meaningful communication with their assigned lawyers at their initial appearance or 48-hour hearing.

119. Mr. Mack, for example, pled not guilty at his initial appearance, but did not feel that he had sufficient information about the proceedings to understand what was happening, and he did not speak or otherwise participate at all in court. Nor did Mr. Mack feel that his attorney adequately advocated for him with respect to bail, pushing Mr. Mack to independently request that the state revisit bail in his case.

120. The same was true with respect to Mr. Huynh, who pled not guilty at his initial appearance, but did not feel that he had adequate information about the proceedings or the charges against him to decide how to proceed.

CLASS ACTION ALLEGATIONS

121. Plaintiffs bring this class action lawsuit pursuant to Rule 23 of the Maine Rules of Civil Procedure on behalf of all indigent persons who are now or who will be before a state court

in Maine under formal charge of having committed any offense, the penalty for which includes the possibility of confinement, incarceration, imprisonment, or detention in a correctional facility (regardless of whether actually imposed) and who qualify for representation through Maine's indigent-defense system.

122. The Court granted the Plaintiffs' Motion for Class Certification on July 15, 2022, explaining "that Plaintiffs have met the requirements of both Rule 23(a) and Rule 23(b)(2)." The Court thus certified a class consisting of: "All individuals who are or will be eligible for the appointment of competent defense counsel by the Superior or District Court pursuant to 15 M.R.S. § 810 because they have been indicted for a crime punishable by imprisonment, and they lack sufficient means to retain counsel."

123. The Court certified a Subclass on February 27, 2024, "consisting of Class Members who remain unrepresented after initial appearance or arraignment, unless the right to counsel has been waived by an individual Class Member." The Court further found that "creation of this subclass does not create a conflict between claims common to the entire class and would promote expeditious resolution of the case."

124. As reflected in the Court's orders, there are important questions of law and fact raised in this case that are common to the Class and to the Subclass, including:

i. Whether the State has violated the state and federal constitutions by failing to provide members of the Subclass with counsel a reasonable time after the right to counsel attaches and throughout all stages of the proceedings;

ii. Whether the State has failed to comply with its statutory obligations to implement an effective indigent-defense system, including specific obligations to develop standards governing the delivery of indigent legal services; establish

training programs and attorney qualifications; and monitor the indigent-defense system;

iii. Whether the State's failure to adequately fund the delivery of indigent-defense services, and, in particular, to ensure that attorneys are appropriately compensated, results in the provision of constitutionally deficient representation;

iv. Whether the State's implementation of the lawyer-of-the-day system fails to ensure the provision of effective representation at the start of a defendant's case, and at the newly created seven-day review hearings conducted for members of the Subclass; and

v. Whether the State's failure to implement, administer, and oversee an adequate public defense system results in a violation of the state and federal constitutions.

125. The claims of the Plaintiffs as Class representatives are typical of the claims of the Class as a whole. Like all the Class members, the Class representatives are being denied their right to counsel in violation of the Sixth Amendment to the U.S. Constitution and Article I, Section 6 of the Maine Constitution as a result of Defendants' ongoing failure to adequately establish, supervise, administer, and fund indigent-defense services.

126. Also like all Class members, the Class representatives are being harmed by MCILS's ongoing failure to enact regulations setting standards for an adequate public defense system.

127. As discussed above, MCILS's failure to adopt standards or develop procedures governing the delivery of indigent-defense services creates a series of systemic failings. *See supra*, ¶¶ 73-101.

128. Without any procedure for evaluating counsel, MCILS has no way of knowing when particular attorneys fail to provide effective representation. MCILS has not even taken the basic step of setting up a formal system for reporting complaints about particular attorneys, which would allow it to investigate particular attorneys as necessary. These attorneys thus remain in the pool of rostered attorneys, continually picking up new defendants who likewise receive ineffective representation, even when it was clear to all that the attorney had a track record of failing to perform even basic functions of representation.

129. Likewise, without any procedure for evaluating conflicts of interest, MCILS leaves it to individual attorneys to identify conflicts and then recuse themselves from a case. MCILS has no way of knowing whether this is happening, and therefore has no way of preventing attorneys from representing defendants even when they are conflicted.

130. Even when MCILS has promulgated standards—with respect to attorney qualifications and training, for example—MCILS fails to ensure compliance with these standards, and, regardless, the standards are too low to guarantee effective representation.

131. The common questions of law and fact articulated above predominate over any individualized questions that may arise out of the Plaintiffs' or Class members' criminal cases. Accordingly, a class action is superior to other available methods for the fair and efficient adjudication of the allegations raised in this matter.

132. Defendants have failed to adequately establish, supervise, administer, and fund an indigent-defense system, thereby violating the rights of poor defendants across the State. In this way, Defendants have acted and refused to act on grounds generally applicable to the entire Class, making it appropriate for the Court to issue final injunctive and declaratory relief for all Class members.

133. The Class representatives will fairly and adequately protect the interests of the Class. The interests of the Class representatives are not in conflict with the interests of any other indigent defendant, and the Class representatives have every incentive to pursue this litigation vigorously on behalf of themselves and the Class as a whole.

134. The Class representatives are being represented by experienced, well-resourced counsel in this matter, including the American Civil Liberties Union of Maine, Preti Flaherty, Beliveau & Pachios, LLP, and Goodwin Procter LLP. The ACLU of Maine—an affiliate of the nationwide American Civil Liberties Union—has more than five decades of experience defending the civil liberties of the people of Maine, including through state and federal civil-rights actions. Counsel at Preti, Flaherty, Beliveau & Pachios, LLP, possess expertise in complex litigation, administrative law, and matters relating to Maine state government. And counsel at Goodwin Procter LLP have extensive experience litigating complex actions in trial and appellate courts, including a significant track record of litigating civil-rights suits in conjunction with ACLU affiliates.

COUNT I:
VIOLATION OF THE SIXTH AMENDMENT OF THE U.S. CONSTITUTION
(42 U.S.C. § 1983)
Plaintiff Class v. Defendants Billings, Tardy, Alexander, Bates, Burbank, Cantara, Carey, Katz, Monaghan, Soucy, and Frey.

135. Plaintiffs reallege the preceding paragraphs as though fully set forth herein.

136. 42 U.S.C. § 1983 provides that "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

137. The Sixth Amendment to the United States Constitution, as applicable to the States through the Fourteenth Amendment, provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense."

138. As courts have explained, where, as here, plaintiffs sue for prospective relief in conjunction with the state's provision of indigent-defense services, the plaintiffs' burden is to demonstrate "the *likelihood* of substantial and immediate irreparable injury, and the inadequacy of remedies at law." *Luckey v. Harris*, 860 F.2d 1012, 1017 (11th Cir. 1988) (quotations marks omitted; emphasis added). Plaintiffs have not yet been sentenced (or, in some cases, convicted). They seek prospective relief to avoid future harm from the state's ongoing provision of insufficient indigent-defense services in their case. As a result, there is no need for plaintiffs to show prejudice in any individual case. *See id.* (differentiating a suit for prospective relief from a *Strickland* action where "a party seeks to overturn his or her conviction"). Plaintiffs can instead state a claim for relief based on, for example, "systemic" actions that "hamper the ability of their counsel to defend them" and "effectively deny them their eighth and fourteenth amendment right to bail." *Id.*

139. Applying these principles, the State's indigent-defense system violates the Sixth Amendment in three ways.

140. First, Defendants have failed to provide attorneys to the Subclass of individuals within a reasonable time after the right to counsel attaches to allow for adequate representation at every critical stage, and have failed to provide attorneys to the Subclass at all critical stages of the proceedings.

141. Second, Defendants have failed to develop and implement an effective system for the appointment of counsel for indigent defendants. In particular, MCILS has failed to (i) set and enforce standards for counsel conflicts of interest and attorney performance; (ii) monitor and

evaluate rostered attorneys; (iii) ensure adequate funding and support for rostered attorneys; and (iv) provide training to rostered attorneys. Even when MCILS has set standards (with respect to attorney qualifications, for example), these standards are both insufficiently rigorous and not sufficiently enforced.

142. Third, Defendants' implementation of the lawyer-of-the-day program to provide representation at criminal defendants' 48-hour hearings, initial appearances, and seven-day review hearings creates an unconstitutional risk of ineffective representation. No attorney reasonably can be expected to adequately represent all their clients when they are responsible for up to 100 defendants upon walking into court in the morning. Under these conditions attorneys are forced to describe constitutional rights to large groups of defendants, making it impossible to advise every defendant as to the proper course of action in his or her individual case. And designation of lawyers of the day to appear at the newly created seven-day hearings are merely a "limited, short-term response" and "do not address the fundamental need—'to get a lawyer working, whether to attempt to avoid [a] trial or to be ready with a defense when the trial date arrives.'" *Peterson v. Johnson*, No. SJC-23-2, at 29, 31-32 (quoting *Rothgery*, 554 U.S. at 210).

143. The problems with the lawyer-of-the-day program persist throughout a defendant's case. A defendant who is not given effective counsel at the critical initial stages of his or her proceeding may make choices—as to whether to plead guilty, for example—that are impossible to undo later in the case. Denial of bail at the initial hearing also has serious consequences for the remainder of the case, with pre-trial detention significantly increasing the probability of conviction, primarily due to an increase in guilty pleas.[8]

[8] Megan Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes*, 34 J. Law Econ. & Org. 511, 514 (2018).

144. Defendants have acted and threatened to act under the color of state law in depriving Plaintiffs of rights guaranteed by the Constitution and laws of the United States.

145. As a result, Plaintiffs are entitled to preliminary and permanent injunctive relief, a declaratory judgment, costs and attorney's fees, and such other relief as the Court deems just.

146. Because Defendants have acted and threatened to act under the color of state law to deprive Plaintiffs of rights guaranteed by the Constitution and laws of the United States, Plaintiffs may sue and seek relief pursuant to 42 U.S.C. § 1983.

COUNT II:
VIOLATION OF ARTICLE 1, SECTION 6 OF THE MAINE CONSTITUTION
(Maine Civil Rights Act, 5 M.R.S. § 4682)
Plaintiff Class v. Defendants Billings, Tardy, Alexander, Bates, Burbank, Cantara, Carey, Katz, Monaghan, Soucy, and Frey.

147. Plaintiffs reallege the preceding paragraphs as though fully set forth herein.

148. Article I, Section 6 of the Maine Constitution provides that "[i]n all criminal prosecutions, the accused shall have a right to be heard by the accused and counsel to the accused, or either, at the election of the accused."

149. As courts have explained, where, as here, plaintiffs sue for prospective relief in conjunction with the state's provision of indigent-defense services, the plaintiffs' burden is to demonstrate "the *likelihood* of substantial and immediate irreparable injury, and the inadequacy of remedies at law." *Luckey v. Harris*, 860 F.2d 1012, 1017 (11th Cir. 1988) (quotations marks omitted; emphasis added). Plaintiffs have not yet been sentenced (or, in some cases, convicted). They seek prospective relief to avoid future harm from the state's ongoing provision of insufficient indigent-defense services in their case. As a result, there is no need for plaintiffs to show prejudice in any individual case. *See id.* (differentiating a suit for prospective relief from a *Strickland* action where "a party seeks to overturn his or her conviction"). Plaintiffs can instead state a claim for

relief based on, for example, "systemic" actions that "hamper the ability of their counsel to defend them" and "effectively deny them their eighth and fourteenth amendment right to bail." *Id.*

150. Applying these principles, the State's indigent-defense system violates Article I, Section 6 in three ways.

151. First, Defendants have failed to provide continuous representation of counsel to the Subclass of individuals at the initial appearance and at every stage of the proceedings.

152. Second, Defendants have failed to develop and implement an effective system for the appointment of counsel for indigent defendants. In particular, MCILS has failed to (i) set and enforce standards for counsel conflicts of interest and attorney performance; (ii) monitor and evaluate rostered attorneys; (iii) ensure adequate funding and support for rostered attorneys; and (iv) provide training to rostered attorneys. Even where MCILS has set standards (with respect to attorney qualifications, for example), these standards are both insufficiently rigorous and not sufficiently enforced.

153. Third, Defendants' implementation of the lawyer-of-the-day program to provide representation at criminal defendants' 48-hour hearings, initial appearances, and seven-day review hearings creates an unconstitutional risk of ineffective representation. No attorney reasonably can be expected to adequately represent all their clients when they are responsible for up to 100 defendants upon walking into court in the morning. Under these conditions attorneys are forced to describe constitutional rights to large groups of defendants, making it impossible to advise every defendant as to the proper course of action in his or her individual case. And designation of lawyers of the day to appear at the newly created seven-day hearings are merely a "limited, short-term response to an ongoing crisis" and "do not address the fundamental need—'to get a lawyer

working, whether to attempt to avoid [a] trial or to be ready with a defense when the trial date arrives.'" *Peterson v. Johnson*, No. SJC-23-2, at 29, 31-32 (quoting *Rothgery*, 554 U.S. at 210).

154. The problems with the lawyer-of-the-day program persist throughout a defendant's case. A defendant who is not given effective counsel at the critical initial stages of his or her proceeding may make choices—as to whether to plead guilty, for example—that are impossible to undo later in the case. Denial of bail at the initial hearing also has serious consequences for the remainder of the case, with pre-trial detention significantly increasing the probability of conviction, primarily due to an increase in guilty pleas.[9]

155. Defendants have acted and threatened to act under the color of state law in depriving Plaintiffs of rights guaranteed by the Maine Constitution and laws of Maine.

156. As a result, Plaintiffs are entitled to preliminary and permanent injunctive relief, a declaratory judgment, costs and attorney's fees, and such other relief as the Court deems just.

157. Because Defendants have acted and threatened to act under the color of state law to deprive Plaintiffs of rights guaranteed by the Maine Constitution and laws of Maine, Plaintiffs may sue and seek relief pursuant to the Maine Civil Rights Act, 5 M.R.S. § 4682.

COUNT III:
PETITION FOR A WRIT OF HABEAS CORPUS
(14 M.R.S. §§ 5501-5546 and Maine Const. art. I, § 10)
Plaintiff Subclass v. Respondents Sheriffs and State of Maine

158. Plaintiffs reallege the preceding paragraphs as though fully set forth herein.

159. Habeas corpus is the appropriate remedy when a petitioner challenges "the fact or duration of his confinement" or seeks a "quantum change" to a less restrictive form of custody, *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 873 (1st Cir. 2010). In this case, members of the

[9] Megan Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes*, 34 J. Law Econ. & Org. 511, 514 (2018).

Subclass challenge the fact of their confinement and restrictive conditions of release, which, they allege, has become unconstitutional because they have not been provided with the assistance of counsel.

160. Under the Suspension Clause of the Maine Constitution, "the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." Me. Const. art. I, § 10.

161. Under Maine's habeas statute, "[e]very person unlawfully deprived of his personal liberty by the act of another . . . shall of right have a writ of habeas corpus." 14 M.R.S. § 5501; *see also* 14 M.R.S. § 5511 (authorizing "any person" to seek writ of habeas corpus on behalf of "any party alleged to be imprisoned or restrained of his liberty but not convicted and sentenced"); 14 M.R.S. § 5513.

162. Due process prohibits the State from physically detaining defendants before trial unless specific procedural safeguards are met, including providing counsel at any adversarial hearing. *United States v. Salerno*, 481 U.S. 739, 755 (1987).

163. An action in habeas corpus is available "to protect and vindicate [a person's] right of personal liberty be freeing [the person] from illegal restraint." *Roussel v. State*, 274 A.2d 909, 913 (Me. 1971).

164. Because Defendants State of Maine and County Sheriffs have detained the Plaintiff Subclass unlawfully without counsel in violation of their constitutional rights, the Plaintiff Subclass are entitled to freedom from that illegal restraint under the habeas corpus provisions of the Maine Constitution and 14 M.R.S. § 5501 *et seq*.

COUNT IV:
MAINE DECLARATORY JUDGMENTS ACT CLAIM
(14 M.R.S. §§ 5951-5963)
Plaintiff Class v. Defendant MCILS

165. Plaintiffs reallege the preceding paragraphs as though fully set forth herein.

166. The Maine Declaratory Judgments Act is the appropriate vehicle for obtaining a declaration of rights when a genuine controversy exists that depends on the interpretation of those rights.

167. Plaintiffs have a right, arising under Maine law, to continuous representation at the initial appearance and at every stage of the proceedings.

168. Defendant MCILS has failed to "provide efficient high-quality representation . . . consistent with federal and state constitutional and statutory obligations" to Class members, has failed to "[d]evelop and maintain a system that employs public defenders, uses appointed private attorneys and contracts with individual attorneys or groups of attorneys," and has failed to "consider other programs necessary to provide quality and efficient indigent legal services." 4 M.R.S. § 1804(3)(A).

169. Defendant MCILS has failed to maintain a pool of qualified attorneys from which the judiciary can assign counsel to class members.

170. As a result of these failures, Class members have suffered, and will continue to suffer, unconstitutional restrictions on their liberty and irreparable injury to, *inter alia*, their health, safety, employment, housing, familial relations, and well-being.

171. MCILS disagrees that it has a duty to provide efficient high-quality representation to Class members consistent with federal and state constitutional and statutory obligations, and further disagrees that its failure to fulfill its duty to provide efficient high-quality representation has resulted in the denial of actual representation to the Class.

172. Resolution of this disagreement is fit for judicial review because it concerns an official interpretation of a statute that itself implements a constitutional obligation to class members.

173. Hardship to Class members will result if the court withholds review because they will be forced to wait weeks or months without representation to which they are entitled.

COUNT V:
MAINE DECLARATORY JUDGMENTS ACT CLAIM
(14 M.R.S. §§ 5951-5963)
Plaintiff Class v. Defendant State of Maine

174. Plaintiffs reallege the preceding paragraphs as though fully set forth herein.

175. The Maine Declaratory Judgments Act is the appropriate vehicle for obtaining a declaration of rights when a genuine controversy exists that depends on the interpretation of those rights.

176. Plaintiffs have a right, arising under Maine law, to continuous representation at the initial appearance and at every stage of the proceedings.

177. Defendant State of Maine is constitutionally vested with an affirmative obligation to furnish counsel to Class members.

178. The State of Maine has failed to furnish counsel to Class members when commencing prosecutions against those individuals.

179. As a result of these failures, Class members have suffered, and will continue to suffer, unconstitutional restrictions on their liberty and irreparable injury to, inter alia, their health, safety, employment, housing, familial relations, and well-being.

180. The State of Maine disagrees that the state itself is obligated to make counsel available to Class members when the State of Maine commences prosecutions against those individuals.

181. Resolution of this disagreement is fit for judicial review because it concerns an official interpretation of a constitutional obligation to Class members.

182. Hardship to class members will result if the court withholds review because they will be forced to wait weeks or months without representation to which they are entitled.

183. Judicial review of the State of Maine's failure to meet its obligation under the constitution is integral to the constitutional framework.

* * * * *

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

I. Under Count I and Count II, a declaratory judgment that Defendants Billings, Tardy, Alexander, Bates, Burbank, Cantara, Carey, Katz, Monaghan, Soucy, and Frey have denied the Subclass the right to assistance of counsel by failing to provide them with continuous representation of counsel within 48 hours of their initial appearance and at all stages of representation, in violation of the Sixth Amendment to the United States Constitution and Article I, Section 6 of the Maine Constitution;

II. Under Count I and Count II, injunctive relief requiring Defendants Billings, Tardy, Alexander, Bates, Burbank, Cantara, Carey, Katz, Monaghan, Soucy, and Frey to provide continuous representation of counsel to all members of the Subclass within 48 hours of the initial appearance and at all stages of representation, and ordering equitable relief for all Subclass

members not provided counsel within 48 hours of initial appearance, including but not limited to release without conditions from custody, provision of sufficient money for the Subclass members to hire private attorneys, or dismissal of charges without prejudice.

III. Under Count I and Count II, a declaratory judgment that Defendants Billings, Tardy, Alexander, Bates, Burbank, Cantara, Carey, Katz, Monaghan, Soucy, and Frey have denied the guarantee of assistance of counsel to the Class through their failure to ensure adequate gatekeeping, supervision, and training of state-appointed counsel, in violation of the Sixth Amendment to the United States Constitution and Article I, Section 6 of the Maine Constitution;

IV. Under Counts I and II, injunctive relief requiring Defendants Billings, Tardy, Alexander, Bates, Burbank, Cantara, Carey, Katz, Monaghan, Soucy, and Frey to guarantee the assistance of counsel to the Class by establishing adequate gatekeeping, supervision, and training of state-appointed counsel, consistent with the Sixth Amendment to the United States Constitution and Article I, Section 6 of the Maine Constitution;

V. Under Count III, a writ of habeas corpus directed at Respondents Sheriffs and the State of Maine declaring that Subclass members have been unlawfully detained in violation of their Sixth Amendment and Article I, Section 6 rights on the grounds they have been detained without counsel, and ordering equitable relief including but not limited to release without conditions from custody, provision of sufficient money for the Subclass members to hire private attorneys, or dismissal of charges without prejudice.

VI. Under Count IV, a declaratory judgment that Defendant MCILS has unlawfully failed to ensure the availability of efficient. high-quality representation to Subclass members.

VII. Under Count IV, a declaratory judgment that Defendant MCILS's implementation of the lawyer-of-the-day program violates the Sixth Amendment to the United States Constitution and Article I, Section 6 of the Maine Constitution;

VIII. Under Count IV, injunctive relief requiring Defendant MCILS to ensure adequate representation of Class members at their 48-hour hearings and their subsequent seven-day bail review hearings, consistent with the Sixth Amendment to the United States Constitution and Article I, Section 6 of the Maine Constitution;

IX. Under Count IV, injunctive relief requiring Defendant MCILS to ensure the availability of efficient, high-quality representation to Class members.

X. Under Count V, a declaratory judgment that Defendant State of Maine has unlawfully failed to furnish counsel to Class members when commencing prosecutions against those individuals.

XI. Under Count V, injunctive relief requiring Defendant State of Maine to furnish counsel to Class members when commencing prosecutions against those individuals.

VII. An award to Plaintiffs of costs and attorney's fees; and

VIII. Any such other and further relief that this Court deems just and proper.

May 31, 2024

Respectfully submitted.

ANDREW ROBBINS, BRANDY GROVER, RAY MACK, MALCOLM PEIRCE, LANH DANH HUYNH; CLIFFORD NEVILLE III; RALPH BUCK; AND DAISHAWN WILLIAMS.

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STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.

ANDREW ROBBINS; BRANDY GROVER; RAY MACK; MALCOLM PEIRCE; and LANH DANH HUYNH, on behalf of themselves and all other similarly situated,

Plaintiffs,

v.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES; JUSTIN ANDRUS, in his official capacity as Executive Director of the Maine Commission on Indigent Legal Services; JOSHUA TARDY, in his official capacity as Chair of the Maine Commission on Indigent Legal Services; and DONALD ALEXANDER, MEEGAN BURBANK, MICHAEL CAREY, ROBERT CUMMINS, ROGER KATZ, MATTHEW MORGAN, and RONALD SCHNEIDER, in their official capacities as Commissioners of the Maine Commission on Indigent Legal Services,

Defendants.

CLASS ACTION COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiffs Andrew Robbins, Brandy Grover, Ray Mack, Malcolm Peirce, and Lanh Danh Huynh hereby allege as follows:

INTRODUCTION

1. The right to assistance of counsel in criminal proceedings is a bedrock of our criminal justice system. Guaranteed by both the Sixth Amendment of the United States Constitution and Article 1, Section 6 of the Maine Constitution, the right ensures that the state

will provide counsel to indigent defendants facing the possibility of imprisonment. *See Gideon v. Wainwright*, 372 U.S. 335, 344–345 (1963); *State v. Cook*, 1998 ME 40, ¶ 6, 706 A.2d 603. In the half-century since *Gideon*, the United States Supreme Court has expanded that obligation in significant ways, requiring the states to provide counsel to indigent defendants facing incarceration, including for misdemeanors, and extending protections to juveniles in delinquency proceedings. But the animating principle has remained the same: it is the state's responsibility to ensure that "any person haled into court, who is too poor to hire a lawyer," is provided with an adequate legal defense. *Gideon*, 372 U.S. at 344.

2. The right to counsel means more than just the appointment of an attorney for trial. The government must provide *effective* counsel to indigent defendants under circumstances that allow for competent and meaningful representation. *See United States v. Cronic*, 466 U.S. 648, 659–60 (1984). Moreover, the right to assistance of counsel attaches well before trial begins, because "certain pretrial events may so prejudice the outcome of the defendant's prosecution that, as a practical matter, the defendant must be represented at those events in order to enjoy genuinely effective assistance at trial." *Rothgery v. Gillespie Cty.*, 554 U.S. 191, 217 (2008) (Alito, J., concurring).

3. This lawsuit challenges the failure of the Maine Commission on Indigent Legal Services ("MCILS" or "the Commission") to adequately supervise, administer, and fund an indigent defense system, in violation of state statute and the state and federal constitutions. While there are many skilled and committed defense attorneys in Maine, MCILS has failed in its constitutional and statutory obligation to supervise, administer, and fund a system that provides effective representation to indigent defendants throughout the entire criminal legal process.

4. Indigent defense is the responsibility of MCILS. By law, MCILS is responsible for "[d]evelop[ing] and maintain[ing] a system that uses appointed private attorneys ... to provide quality and efficient indigent legal services." 4 M.R.S. § 1804(3)(A). Maine is unique in the country as the only state where appointed private attorneys provide *all* indigent defense.

5. To carry out its mandate, MCILS must, among other duties, "develop standards governing the delivery of indigent legal services," 4 M.R.S. § 1804(2); "[e]stablish minimum qualifications to ensure that attorneys are qualified and capable of providing quality representation in the case types to which they are assigned, recognizing that quality representation in each of these types of cases requires counsel with experience and specialized training in that field," *id.* § 1804(3)(E); "[e]stablish rates of compensation for assigned counsel," *id.* § 1804(3)(F); and "[e]stablish a method for accurately tracking and monitoring case loads of assigned counsel and contract counsel," *id.* § 1803(G).

6. The statutory scheme likewise sets forth specific responsibilities for the Executive Director of the Commission. *See* 4 M.R.S. § 1805. In particular, the Executive Director must "[e]nsure that the provision of indigent legal services complies with all constitutional, statutory and ethical standards," *id.* § 1805(1); provide "regular" training, *id.* § 1805(5); and "[a]dminister and coordinate delivery of indigent legal services and supervise compliance with commission standards" *id.* § 1805(3).

7. MCILS and its Executive Director have failed to fulfill their statutory duties—resulting in a system that routinely and systematically denies indigent criminal defendants their constitutional right to representation. Specifically, MCILS and its Executive Director have not fulfilled their statutory obligations to promulgate and enforce standards; to monitor and evaluate the performance of rostered attorneys; or to adequately train and compensate rostered attorneys

as necessary to maintain a system of effective representation for indigent clients. These failings not only subvert the Legislature's command in sections 1804 and 1805, they also create an unconstitutional risk that indigent criminal defendants will be denied their right to counsel.

8. Furthermore, MCILS employs a "lawyer of the day" program to provide representation at the 48-hour hearing for in-custody defendants and at the initial appearance for out-of-custody defendants. At these hearings, defendants are required to enter an initial plea. In-custody defendants are also given the opportunity to advocate for release from custody, including the granting of bail and the nature and extent of any conditions of release. There is nothing *per se* unconstitutional about a lawyer-of-the-day program, but as implemented by MCILS the program is under-resourced to the point of constitutional deficiency. On any given day, as few as two lawyers may be on hand to meet with over eighty defendants. This regime violates the Sixth Amendment because it does not come close to providing an adequate number of lawyers to even meet with—let alone provide competent representation to—defendants in need of counsel concerning the implications of potential pleas or advocacy on bail and conditions of release.

9. The system for providing indigent legal defense in Maine is broken. Dozens of attorneys have stopped accepting cases from the MCILS roster, and the crisis is set to worsen with the anticipated spike in trials as courts begin the process of working through the enormous backlog of cases the pandemic has created. The shortage of qualified and rostered defense attorneys is particularly acute in rural areas, forcing judges and MCILS to appoint attorneys from other counties despite the significant travel this requires.

10. Plaintiffs are five indigent defendants currently being represented in criminal proceedings by appointed counsel. They sue on their own behalf, and on behalf of all similarly situated individuals, to vindicate indigent defendants' right to adequate legal representation that

is enshrined in the Maine and United States constitutions. More specifically, plaintiffs seek a judgment under 42 U.S.C. § 1983 that the deficiencies in the MCILS system create an unconstitutional risk that indigent criminal defendants will be denied the benefit of effective assistance of counsel at critical stages of their cases in violation of the Sixth Amendment of the United States Constitution and Article I, § 6 of the Maine Constitution. Plaintiffs also seek a judgment that the Commission's specific failure to promulgate statutorily required standards violates the Maine Administrative Procedure Act, 5 M.R.S. § 11001, and Article I, § 6 of the Maine Constitution. Plaintiffs respectfully request appropriate declaratory and injunctive relief.

THE PARTIES

11. Plaintiff Andrew Robbins is a Maine resident who is currently incarcerated at Cumberland County Jail awaiting trial following an arrest in the summer of 2021 on weapons charges. He was initially released on bail, but he has been in custody since a subsequent October 30, 2021, arrest for violating his conditions of release and violating a protective order, as well as misdemeanor drug possession. At his initial appearance, Mr. Robbins was represented by a "lawyer of the day," but was subsequently assigned to another lawyer. Since that point, Mr. Robbins has met his attorney only once, in the summer of 2021 while he was released, for an approximately 30-second conversation at his door. Mr. Robbins has never had a follow-up visit from his lawyer, nor has his lawyer ever arranged a video call, communicated with him about a plea offer, or reviewed his discovery materials with him. When Mr. Robbins received a copy of his discovery material, he observed that it contained materials relating to another defendant, but as far as Mr. Robbins knows his attorney never took any action based on this mistake. And while Mr. Robbins has two young daughters, who his wife is attempting to care for alone (while

working full time), his attorney has refused to ask for a bail hearing following his October 30, 2021, arrest.

12. Plaintiff Brandy Grover is a Maine resident currently incarcerated in Somerset County Jail awaiting sentencing following a July 9, 2021, arrest for aggravated trafficking. Ms. Grover developed a substance-abuse disorder after being prescribed opioids following an injury in her job as a certified nursing assistant. She is currently in recovery, but she briefly relapsed following the deaths of three people close to her. After her arrest, Ms. Grover was assigned a lawyer through the "lawyer of the day" system, who did not advocate for her release, creating the impression for Ms. Grover that the lawyer believed she was better off in jail. Ms. Grover believes that her lawyer was annoyed and angry at her for not taking a plea deal. Ms. Grover has otherwise been unable to get in touch with her lawyer, who does not take her calls or the calls of family members, leaving Ms. Grover to resort to writing letters; however, she has also not yet received any responses, either by phone or by letter, to her letters. Ms. Grover eventually pled to Class B trafficking and awaits sentencing, but she is concerned that her attorney will not adequately advocate on her behalf at her sentencing. Her attorney has never advanced any mitigating circumstances, such as Ms. Grover's family status or her disability.

13. Plaintiff Ray Mack is a Maine resident currently incarcerated in Kennebec County Jail awaiting trial following his May 27, 2021, arrest on charges of possession of a firearm and threat with a dangerous weapon. Mr. Mack pled not guilty at his initial appearance, but he did not feel that he had sufficient information about the proceedings to understand what was happening. Mr. Mack describes his initial appearance as "entirely one-sided." His lawyer spoke with the court, but not with Mr. Mack, and Mr. Mack was not able to participate in the proceedings. Since that point, Mr. Mack has had only minimal contact with his attorney.

Although Mr. Mack is currently set to go to trial in March, his attorney has never taken the time to go through his discovery with him or discuss the trial in any detail.

14. Plaintiff Malcolm Peirce is a Maine resident who is currently incarcerated at the Piscataquis County Jail awaiting trial following his December 12, 2019, arrest on several drug-related charges, as well as a charge of escape. Mr. Peirce was represented by a "lawyer of the day" attorney during his initial appearance. His first assigned attorney had to withdraw from the representation due to a conflict of interest, and Mr. Peirce has had minimal contact—a handful of conversations each lasting only a few minutes—with his current state-appointed attorney. Their last phone call left Mr. Peirce with the impression that his attorney did not want Mr. Peirce to contact him, and Mr. Peirce has not heard from his attorney since. Mr. Peirce's attorney has likewise not responded to a request to provide copies of discovery, and Mr. Peirce believes his attorney has not reviewed his discovery.

15. Plaintiff Lanh Danh Huynh is a Maine resident who is currently incarcerated at Cumberland County Jail awaiting trial following a June 1, 2021, arrest for possession of a firearm and bail violations. Mr. Huynh pled not guilty, but he did not feel that he had sufficient information about the charges against him to decide how to plead. Despite having been charged over eight months ago, he has had minimal contact with his state-appointed attorney. He has yet to see or review any of the discovery materials in his case and has had significant difficulty contacting his attorney, who does not return his calls. When Mr. Huynh tried calling his lawyer's office, he was told his lawyer was in court or busy, but his lawyer never called back. He has likewise tried having his brother and friends call this lawyer's office to set up a meeting or call, but to no avail. His attorney has otherwise had no engagement with his case; he has not filed any motions on his behalf, including any motions for Mr. Huynh to be released on bail, and Mr.

Huynh does not know when his next court date is. His family has been attempting to put together enough money for him to hire a lawyer in an effort to find someone who would take a more active role in his case.

16. Defendant MCILS is statutorily directed to "provide efficient, high-quality representation to indigent criminal defendants, juvenile defendants and children and parents in child protective cases, consistent with federal and state constitutional and statutory obligations"; "ensure the delivery of indigent legal services by qualified and competent counsel in a manner that is fair and consistent throughout the State"; and "ensure adequate funding of a statewide system of indigent legal services, which must be provided and managed in a fiscally responsible manner, free from undue political interference and conflicts of interest." 4 M.R.S. § 1801.

17. Defendant Justin Andrus is the Executive Director of MCILS. He is required by statute to "[e]nsure that the provision of indigent legal services complies with all constitutional, statutory, and ethical standards," 4 M.R.S. § 1805(1), and to "[a]dminister and coordinate delivery of indigent legal services and supervise compliance with commission standards," *id.* § 1805(3).

18. Defendant Joshua Tardy is a MCILS Commissioner and Chair of the Commission.

19. Defendant Donald Alexander is a MCILS Commissioner.

20. Defendant Meegan Burbank is a MCILS Commissioner.

21. Defendant Michael Carey is a MCILS Commissioner.

22. Defendant Robert Cummins is a MCILS Commissioner.

23. Defendant Roger Katz is a MCILS Commissioner.

24. Defendant Matthew Morgan is a MCILS Commissioner

25. Defendant Ronald Schneider is a MCILS Commissioner.

JURISDICTION AND VENUE

26. This Court has jurisdiction over this action pursuant to 4 M.R.S. § 105, 5 M.R.S. § 8058, 14 M.R.S. §§ 5951–5963, and 14 M.R.S. § 6051(13).

27. This Court has personal jurisdiction over the defendants pursuant to 14 M.R.S. § 704-A(2).

28. Venue is proper in Kennebec County pursuant to 14 M.R.S. § 501.

BACKGROUND

I. The Right to Counsel.

29. The Sixth Amendment guarantees that "in all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." U.S. Const. amend. VI.

30. In the landmark decision *Gideon v. Wainwright*, 372 U.S. 355, 345–46 (1963), the Supreme Court held that the Sixth Amendment requires states to provide counsel to indigent criminal defendants. *Gideon*'s guarantee applies in any case that could result in imprisonment. *See Argersinger v. Hamlin*, 407 U.S. 25, 40 (1972) (accused must receive counsel when case could result "in the actual deprivation of a person's liberty").[1]

31. The right to counsel is not fulfilled by the mere appointment of counsel; satisfaction of this constitutional obligation requires the *assistance* of counsel, and specifically the *effective* assistance of counsel. *United States v. Cronic*, 466 U.S. 648, 654 (1984) ("[I]t has long been recognized that the right to counsel is the right to the effective assistance of counsel." (quoting *McMann v. Richardson*, 397 U.S. 759, 771, n.14 (1970))); *McGowan v. State*, 2006 ME

[1] The Maine Constitution affords a right to counsel that is coextensive with the federal Sixth Amendment. *State v. Watson*, 2006 ME 80, ¶ 14, 900 A.2d 702. As with the federal Constitution, "the constitutional right imposes an affirmative obligation on the State to provide court-appointed counsel if the defendant faces incarceration." *Id.*

16 ¶ 9, 894 A.2d 493. If mere appointment of counsel were sufficient, the right would be "a sham and nothing more than a formal compliance with the Constitution's requirement that an accused be given the assistance of counsel." *Cronic*, 466 U.S. at 654 (quotation marks omitted).

32. Because "the adversarial process protected by the Sixth Amendment requires that the accused have 'counsel acting in the role of an advocate,'" the right to effective assistance is the "right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing." *Cronic*, 466 U.S. at 656 (quoting *Anders v. California*, 386 U.S. 738, 743 (1967)). Once "the process loses its character as a confrontation between adversaries, the constitutional guarantee is violated." *Id.* at 656–657. In short, effective counsel is counsel that can, and does, put the prosecutor's case to the test.

33. When assessing effectiveness of counsel, "prevailing norms of practice as reflected in American Bar Association standards and the like . . . are guides to determining what is reasonable." *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010) (cleaned up).

34. As relevant here, the American Bar Association has outlined ten principles to evaluate whether a state is providing assistance of counsel at all critical stages of a proceeding ("ABA Principles").[2] These standards are:

a. The public defense function, including the selection, funding, and payment of defense counsel, is independent.

b. Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.

[2] *See* American Bar Association, Ten Principles of a Public Defense Delivery System, *available at* https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.pdf (last visited Feb. 24, 2022).

c. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment as soon as feasible after clients' arrest, detention, or request for counsel.

d. Defense counsel is provided sufficient time and a confidential space within which to meet with the client.

e. Defense counsel's workload is controlled to permit the rendering of quality representation.

f. Defense counsel's ability, training, and experience match the complexity of the case.

g. The same attorney continuously represents the client until completion of the case.

h. There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.

i. Defense counsel is provided with and required to attend continuing legal education.

j. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

II. Indigent Defense in Maine and the MCILS.

35. State law provides:

> Before arraignment, competent defense counsel shall be assigned by the Superior or District Court, unless waived by the accused after being fully advised of his rights by the court, in all criminal cases charging a felony, when it appears to the court that the accused has not sufficient means to employ counsel. The Superior or District Court may in any criminal case appoint counsel when it appears to the court that the accused has not sufficient means to employ counsel. The District Court shall order reasonable

> compensation to be paid to counsel by the District Court for such services in the District Court. The Superior Court shall order reasonable compensation to be paid to counsel out of the state appropriation for such services in the Superior Court.

15 M.R.S. § 810. The statute is supplemented by Rule 44 of the Maine Rules of Unified Criminal Procedure, which "implements the constitutional right to counsel in a criminal proceeding." *State v. Smith*, 677 A.2d 1058, 1060 (Me. 1996). The rule specifies that a defendant has a right to be represented by counsel at every stage of the proceeding "unless the court concludes that in the event of conviction a sentence of imprisonment will not be imposed." M.R.U. Crim. P. 44(a)(1).

36. The State's current system of indigent defense took shape in 2009, with the passage of legislation creating MCILS.

37. MCILS was created to address concerns about the increasing cost and lack of independent oversight of the indigent defense system, which was then funded and administered by the judiciary. A February 2009 report ("the Clifford Commission Report")[3] attributed increased costs to a surge in felony charges (due to changes to rules and applicable laws) and an increase in the number of criminal defendants qualifying as indigent. The Clifford Commission Report recommended "that Maine implement an indigent legal services system that is independent from the judiciary, and that provides the training and oversight necessary to ensure quality representation to Maine's citizens."

38. According to its enabling legislation, MCILS is "an independent commission whose purpose is to provide efficient, high-quality representation to indigent criminal defendants, juvenile defendants and children and parents in child protective cases, consistent with federal and state constitutional and statutory obligations." 4 M.R.S. § 1801. The commission is tasked with "ensur[ing] the delivery of indigent legal services by qualified and

[3] Indigent Legal Services Commission, Clifford Commission Report 10, *available at* https://www.maine.gov/mcils/sites/maine.gov.mcils/files/documents/Clifford-Commission-Report.pdf (Feb. 2009).

competent counsel in a manner that is fair and consistent throughout the State" and "ensur[ing] adequate funding of a statewide system of indigent legal services, which must be provided and managed in a fiscally responsible manner, free from undue political interference and conflicts of interest." *Id.*

39. As described in detail below, *see infra*, ¶¶ 46–71, MCILS has failed to fulfill these duties, leaving Maine with a system that creates an unconstitutional risk that defendants will be denied effective assistance of counsel in their criminal proceedings.

40. The Sixth Amendment Center, a nonprofit organization dedicated to ensuring compliance with the Sixth Amendment in localities around the country, has catalogued MCILS's systemic failures in this area. In particular, it detailed MCILS's failings in a 2019 report commissioned by the Maine Legislative Council, a 10-member body consisting of the President of the Senate, the Speaker of the House, and the Republican and Democratic Floor Leaders and Assistant Floor Leaders of each body. *See* Sixth Amendment Center, *The Right to Counsel in Maine: Evaluation of Services Provided by the Maine Commission on Indigent Legal Services* (2019) ("*Sixth Amendment Center Report*"), excerpts of which are attached hereto as Exhibit 1.[4] Among other deficiencies, the report found that MCILS failed to impose adequate attorney qualification standards; ensure training of new attorneys and continuing education for experienced attorneys; adequately supervise attorneys; ensure meaningful representation at critical stages of criminal proceedings; compensate attorneys to cover overhead and an adequate fee; or guard against conflicts of interest. Ex. 1, at iv–ix.

41. These failures are also documented in extensive detail in government reports and MCILS's own assessment of its operations.

[4] *See* Sixth Amendment Center, The Right to Counsel in Maine: Evaluation of Services Provided by the Maine Commission on Indigent Legal Services, *available at* https://sixthamendment.org/6AC/6AC_me_report_2019.pdf (last visited February 24, 2022).

42. On January 10, 2020, the Maine Legislature's Government Oversight Committee directed its Office of Program Evaluation & Government Accountability ("OPEGA") to review MCILS's operations.[5] As described in the resulting report (attached as Exhibit 2), the Legislature requested that OPEGA focus on (as relevant here) the "adequacy of the oversight structure of MCILS in ensuring that operations align with and accomplish the organization's purpose." Ex. 2 at 1. The Report concluded that, among other failings, "overall . . . MCILS lacks adequate standard operating procedures and formal written policies to govern its primary functions." *Id.* 33.

43. MCILS's Executive Director subsequently wrote a series of three memoranda in December 2021 and January 2022[6] discussing MCILS's compliance with various obligations, each of which likewise reveals the Commission's failure to fulfill its duties. These memoranda discuss MCILS's compliance with (1) its statutory obligations ("MCILS Statutory Memorandum," attached as Exhibit 3); (2) recommendations from the Sixth Amendment Center and OPEGA reports ("MCILS OPEGA Memorandum," attached as Exhibit 4); and (3) the ABA's Ten Principles ("MCILS Ten Principles Memorandum," attached as Exhibit 5).

44. An individual MCILS Commissioner provided his own commentary on the Executive Director's Ten Principles Memorandum ("Commissioner Redline," attached as Exhibit 6), concluding that the memorandum—which itself recognized MCILS's failings—nevertheless did not go far enough in recognizing how substantially MCILS underperforms its obligations.

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[5] Office of Program Evaluation & Government Accountability of the Maine State Legislature, Report on the Maine Commission on Indigent Legal Services, *available at* https://legislature.maine.gov/doc/4769 (Jan. 2020).

[6] The MCILS Ten Principles Memorandum is dated January 2021, but it was produced in January 2022.

45. While these documents reveal extensive failings in multiple areas of MCILS's operations, two particular failures stand out with respect to this litigation: MCILS's failure to fulfill its statutory obligations, and its implementation of the "lawyer of the day" system.

(1) Failure to Fulfill Statutory Obligations

46. State statutes impose obligations that guide the State's stewardship of its indigent defense system. Both MCILS and its Executive Director have failed to comply with these statutory commands in multiple different categories.

(a) Development of Standards

47. First, section 1804(2) requires MCILS to "develop standards governing the delivery of indigent legal services, including:

> A. Standards governing eligibility for indigent legal services. The eligibility standards must take into account the possibility of a defendant's or civil party's ability to make periodic installment payments toward counsel fees;
>
> B. Standards prescribing minimum experience, training and other qualifications for contract counsel and assigned counsel;
>
> C. Standards for assigned counsel and contract counsel case loads;
>
> D. Standards for the evaluation of assigned counsel and contract counsel. The commission shall review the standards developed pursuant to this paragraph every 5 years or upon the earlier recommendation of the executive director;
>
> E. Standards for independent, quality and efficient representation of clients whose cases present conflicts of interest;
>
> F. Standards for the reimbursement of expenses incurred by assigned counsel and contract counsel; and
>
> G. Other standards considered necessary and appropriate to ensure the delivery of adequate indigent legal services.

4 M.R.S. § 1804(2).

48. Likewise, section 1804(3)(M) provides that the Commission "shall ... [e]stablish procedures for handling complaints about the performance of counsel providing indigent legal services." *Id.* § 1804(3)(M).

49. MCILS has not developed these standards and procedures. As OPEGA explained, "even when standards are required to be established specifically in statute, MCILS relies on informal methods or does not address the standard at all." Ex. 2 at 33.

50. In particular, the OPEGA Report details that MCILS has not promulgated *any* standards or procedures regarding counsel caseloads (subsection 2(C)); evaluation of counsel (subsection 2(D)); conflicts of interest (subsection 2(E)); or complaints about the performance of counsel (subsection 3(M)). *Id.*

51. Absent any standards in this area, MCILS has no mechanism for monitoring or rectifying the experience Plaintiffs have had in their cases—namely, attorneys who do not return their calls, set up meetings, review their discovery with them, or generally take an active role in moving their cases forward. *See supra*, ¶¶ 11–15.

52. And because Maine is unique as the only state where appointed private attorneys provide *all* indigent defense, there may be no one else able to step when an appointed attorney is unavailable. *See* Ex. 1 at 26.

53. MCILS has had ample time to comply with these obligations. The statutory mandates to implement requirements surrounding case load and conflicts of interest were enacted in 2009, and so have been in place for over a decade. P.L. 2009, ch. 419, § 2. The statutory mandates surrounding evaluation of counsel and a complaint procedure were enacted in 2017, likewise providing MCILS sufficient time to comply. P.L. 2017, ch. 284, Pt. UUUU, §§ 1, 2 (AMD).

54. MCILS itself has affirmed the accuracy of OPEGA's findings on statutory noncompliance. A December 28, 2021, MCILS memorandum on statutory compliance acknowledges that the "Commission has not yet promulgated case load standards," noting only that "Commission staff anticipates that case load standards will be part of the updated performance standards under development," while "[c]ase load tracking and management" will be "part of the system design for the next case management system." Ex. 3, at 102. Similar comments are made about evaluation standards and conflicts of interest. *Id.* at 102–103.

55. Moreover, this failure makes it impossible for MCILS to fulfill its overarching statutory role—namely, "to provide efficient, high-quality representation to indigent criminal defendants, juvenile defendants, and children and parents in child protective cases." 4 M.R.S. § 1801. Without a standard for the number of cases an attorney should be handling, MCILS has no way of "ensur[ing] the delivery of indigent legal services ... in a manner that is fair and consistent throughout the State." *Id.* Likewise, with no standards for evaluating counsel, reviewing complaints about counsel, or resolving conflicts of interest, the Commission cannot evaluate whether indigent defendants are provided "qualified and competent counsel," let alone rectify any cases where they are not. *Id.*

(b) Attorney Qualification, Training, and Compensation

56. MCILS's failure to promulgate these standards is particularly problematic given its deficient standards for attorney qualifications and training. As described by the Sixth Amendment Center, "[j]ust as you would not go to a dermatologist for heart surgery, a real estate or divorce lawyer cannot be expected to handle a complex criminal case competently." Ex. 1 at 27. And yet, that is precisely what the State's system allows.

57. MCILS is required by statute to "[d]evelop criminal defense, child protective and involuntary commitment representation training and evaluation programs for attorneys throughout the State to ensure an adequate pool of qualified attorneys." 4 M.R.S. § 1804(3)(D). It is also required to "[e]stablish minimum qualifications to ensure that attorneys are qualified and capable of providing quality representation in the case types to which they are assigned, recognizing that quality representation in each of these types of cases requires counsel with experience and specialized training in that field." *Id.* § 1804(3)(E).

58. The standards and systems MCILS has established with respect to attorney qualifications and training are woefully inadequate.

59. To receive an assignment from the Commission, in most cases an attorney need only attend a "Commission-approved training course for the area of the law for which the attorney is seeking to receive assignments." 94-649 C.M.R. ch. 2, § 4 (2) (2010).

60. This requirement can be satisfied by attending a single training course in criminal law. Ex. 1 at 30.

61. While there are greater qualifications for certain categories of serious offenses such as homicide and sex offenses, even in those cases an attorney can request a waiver. 94-649 C.M.R. ch. 3, §§ 3, 4 (1) (2010).

62. Thus, regardless of background, training, or prior case experience, MCILS allows attorneys to take on criminal representations after attending a single-day "Minimum Standards" course. This system does not satisfy MCILS's statutory obligation to "ensure that attorneys are qualified and capable of providing quality representation in the case types to which they are assigned," 4 M.R.S. § 1804(3)(E), particularly when coupled with MCILS's non-existent standards for evaluating counsel or resolving complaints about counsel, *see supra*, ¶ 50.

63. As an MCILS Commissioner has explained, the Commission's "basic eligibility requirements remain too low." *See* Correspondence from Ron Schneider (Jan. 10, 2022), attached as Exhibit 7. The Commission does "not want to admit that there are lawyers receiving assignments who should not be receiving them or are not really ready to receive them, even though full-time defense lawyers and judges could name them." *Id.* As a result, "MCILS still does not ensure that every assigned lawyer has the necessary ability, training and experience necessary to handle the case assigned to them as MCILS still permits lawyers just out of law school with a one-day Commission-sponsored or Commission-Approved training course to represent a person, who, by definition, faces jail, involuntary confinement in a hospital, or the loss of custody of a child." Ex. 6, at 5.

64. And while MCILS technically requires specialized training for certain representations, a recent report found that "more than 1 of every 8 case assignments that required specialized representation was given to an attorney who was supposed to be ineligible to serve."[7]

65. MCILS's mechanisms for training and supervision are also statutorily and constitutionally deficient. MCILS does not require appointed attorneys to obtain any training in any specific practice area, beyond the minimal requirements that the attorney must meet to first be placed on the roster. And while MCILS created a "Resource Counsel Program" to provide appointed attorneys with a resource for mentoring and supervision, the 25 attorneys who staff this program are capped at providing 10 hours of mentoring each month—a total of 250 hours to mentor and supervise the hundreds of attorneys responsible for thousands of criminal representations in the state. Ex. 1 at 31. MCILS also has no authority to require any attorney to

[7] Samantha Hogan and Agnel Philip, *Lawyers Who Were Ineligible to Handle Serious Criminal Charges Were Given Thousands of These Cases Anyway*, Maine Monitor (Feb. 23, 2021), *available at* https://www.themainemonitor.org/lawyers-who-were-ineligible-to-handle-serious-criminal-charges-were-given-thousands-of-these-cases-anyway.

cooperate with this program, nor does it have any sort of planning for helping resource counsel attorneys identify performance problems or training needs.

66. Compounding these failings, MCILS has failed to ensure that attorneys are compensated in a manner commensurate with "quality and efficient indigent legal services." 4 M.R.S. § 1804(3)(A), (F). As MCILS itself acknowledges, its current rate of $80 per hour is inadequate, particularly because it does not incorporate overhead and administrative costs, such as the costs of support staff. *See, e.g.*, *Jewell v. Maynard*, 181 W. Va. 571, 578–579 (1989) (recognizing that states must account for overhead costs and expenses when evaluating adequate compensation for appointed attorneys). MCILS has conceded that the current rate "does not allow defense counsel to practice with the same resources as attorneys for [the] state," and that "the gulf between the practice conditions of assigned counsel and their state-employed peers is stark." Ex. 5 at 6. Such "[i]nadequate compensation 'leads to a decrease in the overall number of attorneys willing to accept court appointments' and can 'encourage some attorneys to accept more clients than they can effectively represent in order to make ends meet.'" Ex. 1 at 77. In MCILS's own words, "there is no parity between assigned counsel and the state, nor [is] the defense function an equal partner" in the criminal justice system. Ex. 5 at 6.

(c) Monitoring The Indigent Defense System

67. MCILS is separately required to establish certain processes for monitoring the indigent defense system. These include a statutory obligation to "[e]stablish a method for accurately tracking and monitoring caseloads of assigned counsel and contract counsel." 4 M.R.S. § 1804(3)(G).

68. But MCILS does not actually know when a case is assigned, as a court does not directly inform MCILS that a lawyer has been assigned to a case.

69. As MCILS itself acknowledges, the Commission "does not yet have processes and procedures that track caseloads in real time." Ex. 3, at 104. MCILS does not have a target date for implementing such a system. *Id.*

70. While a lawyer can open a new matter in MCILS's database, many wait to do so until the case has been resolved and they start the process to apply for their voucher.

71. Absent this information, there is no way for MCILS to fulfill its obligation to track and monitor caseloads of assigned counsel. Learning of the representation after the fact is of little use because MCILS does not have an accurate understanding of an attorney's caseload at a given point in time, nor can MCILS take any responsive actions based on attorney caseload.

(d) MCILS's Executive Director

72. The statutory scheme likewise imposes a series of obligations on the Executive Director of MCILS. The Executive Director must, among other obligations, "[e]nsure that the provision of indigent legal services complies with all constitutional, statutory and ethical standards," 4 M.R.S. § 1805(1), "[a]ssist the commission in developing standards for the delivery of adequate indigent legal services," *id.* § 1805(2), and "[a]dminister and coordinate delivery of indigent legal services and supervise compliance with commission standards," *id.* § 1805(3).

73. As detailed above, *see supra*, ¶¶ 46–71, MCILS has failed in each of these categories: the provision of indigent legal services does not comply with all constitutional, statutory, and ethical standards, 4 M.R.S. § 1805(1); MCILS has failed to develop standards for the delivery of adequate indigent legal services, *Id.* § 1805(2); and MCILS does not coordinate and supervise the delivery of indigent legal services, *id.* § 1805(3).

74. Moreover, given that the Commission has no way of tracking active MCILS cases, *see supra*, ¶¶ 68–69, it is impossible for the Executive Director to fulfill his statutory

obligation to "[a]dminister and coordinate delivery of indigent legal services," 4 M.R.S. § 1805(3).

75. The Executive Director has thus failed in fulfilling these statutory obligations.

* * *

76. In addition to violating the statute, MCILS's lax approach to its statutory obligations creates an unconstitutional risk that indigent defendants will be assigned an attorney who is ill-prepared and incapable of providing effective representation under the federal and state constitutions.

77. As discussed above, the constitutional right to counsel is not fulfilled by the mere appointment of counsel. *See supra*, ¶¶ 31–32; *Cronic*, 466 U.S. at 654. But the mere appointment of counsel is all that MCILS's system provides. Without any standards for evaluating caseloads, conflicts of interest, or attorneys' performance, MCILS has no baseline for establishing what effective representation requires—let alone mechanisms for measuring how appointed counsel are performing. And even where MCILS has ostensibly put standards in place—for example, with respect to attorney qualifications and training—these standards are far too low to ensure effective representation. *See supra*, ¶¶ 58–63.

78. As a result, MCILS's failure is not just a statutory violation, but a constitutional violation as well.

79. While courts are more accustomed to evaluating compliance with the Sixth Amendment in the context of the effectiveness of an individual attorney's performance, the Constitution's guarantee of the assistance of counsel is implicated when criminal defendants are—either actually or constructively—denied the assistance of counsel altogether. *Roe v. Flores-Ortega*, 528 U.S. 470, 483 (2000). The two claims—ineffective assistance of counsel, on

the one hand, and denial of counsel, on the other—are distinct. *Penson v. Ohio*, 488 U.S. 75, 88 (1988). A denial of counsel claim is not a claim of substandard representation but rather it is a claim of nonrepresentation, caused either by the actual failure to provide an attorney or by providing an attorney who is not able to provide real assistance. *Cronic*, 466 U.S. at 658–660.

80. The systemic structural limitations in Maine's system, including but not limited to MCILS's failure to even satisfy its own statutory requirements, have resulted in a system that denies Plaintiffs, and those similarly situated, with actual representation, as guaranteed by *Gideon* and its progeny. "Actual representation assumes a certain basic representational relationship," *Hurrell-Harring v. New York*, 15 N.Y.3d 8, 22 (2010), which is impossible to develop and maintain when attorneys do not meet or communicate with their clients. *See Public Defender, Eleventh Jud. Cir. of Fla. v. State*, 115 So. 3d 261, 278 (Fla. 2013) (finding denial of counsel where attorneys were "mere conduits for plea offers," did not communicate with clients, were unable to investigate the allegations, and were unprepared for trial).

(2) The Lawyer of the Day System

81. Rule 5 of the Maine Rules of Unified Criminal Procedure allows for the assignment of a "lawyer for the day . . . for the limited purpose of representing the [defendant] at the initial appearance or arraignment." M.R.U. Crim. P. 5(e). These lawyers appear at 48-hour hearings for in-custody defendants and at the initial appearance.

82. There is no per se problem with a lawyer-of-the-day system. But the State's lawyer-of-the-day system, as implemented, violates two fundamental tenets of effective representation: effective assistance of counsel at the outset of a criminal case and continuous representation through the completion of a case.

83. First, it is critical that a defendant receive effective representation "at the earlier stages of a criminal case." *Kuren v. Luzerne Cty.*, 637 Pa. 33, 80 (2016). Indeed, the "right to counsel is as important in the initial stages of a criminal case as it is at trial." *Id.*; *see also* ABA Principle 3.

84. The State's lawyer-of-the-day system fails to ensure effective representation at the start of a defendant's case, because it is woefully under-resourced. In Androscoggin County, for example, two lawyers of the day typically represent 200 defendants, with one lawyer estimating that they had about 5 minutes with each defendant. Ex. 1, at 52–53. Likewise, in Cumberland County there are an average of two lawyers of the day to handle 80 defendants. *Id.* at 52. These attorneys must set up a makeshift office in the courthouse, or else meet with defendants while in lock-up, requiring them to attempt to describe constitutional rights to an entire group of in-custody defendants, effectively leading to a group waiver of constitutional rights. *Id.*; *see also Wilbur v. City of Mount Vernon*, 989 F. Supp. 2d 1122, 1124 (W.D. Wash. 2013) (finding that a "meet and plead" system, where clients met their attorneys for the first time in court and immediately accepted a plea bargain without discussing their cases in a confidential setting, resulted in the lack of a representational relationship that violated the Sixth Amendment).

85. This problem is not one of "limited representation," *State v. Galarneau,* 2011 ME 60, ¶ 8, 20 A.3d 99, but rather of no real representation at all. Because attorneys are often forced to communicate with defendants as a group, the "basic representational relationship" necessary for "[a]ctual representation" is lacking. *Hurrell-Harring*, 15 N.Y.3d at 22.

86. The resource challenges are particularly acute for in-custody hearings, in which the lawyer of the day is also responsible for making arguments for release on bail. As detailed by

MCILS's rules for criminal practice,[8] the attorney should conduct an initial interview and investigation, including health (mental and physical) and employment background, criminal history, and the general circumstances of the alleged offense. Recent amendments to the bail statute allow for further argument based upon caretaking responsibilities and other factors. *See* 15 M.R.S. § 1026 (4)(C)(4), (12)-(14); P.L. 2021, ch. 397, § 5 (AMD). Yet the current lawyer-of-the-day system provides insufficient time and resources for the assigned attorney to meaningfully confer on these topics with each person on the docket.

87. Compounding this problem, the defendant is typically assigned a different lawyer to handle the case going forward, resulting in a lack of continuous representation and requiring a new attorney who is unfamiliar with the case to step in. *See* ABA *Standards for Criminal Justice*, Standards 5-6.2 cmt (3d ed. 1992) (explaining that "the risk of substandard representation" increases given the new attorney's low familiarity with the case).

88. Mr. Robbins and Mr. Peirce both had to switch attorneys after initially being assigned a lawyer through the lawyer-of-the-day system.

89. Even for defendants who did not switch attorneys after their initial assignment, the lawyer-of-the-day system does not provide adequate time for defendants to have any meaningful communication with their assigned lawyers at their initial appearance or 48-hour hearing.

90. Mr. Mack, for example, pled not guilty at his initial appearance, but did not feel that he had sufficient information about the proceedings to understand what was happening, and he did not speak or otherwise participate at all in court. Nor did Mr. Mack feel that his attorney

[8] Maine Commission on Indigent Legal Services, Chapter 102: Standards of Practice for Attorneys Who Represent Adults in Criminal Proceedings (Feb. 27, 2012), *available at* https://www.maine.gov/mcils/sites/maine.gov.mcils/files/inline-files/Adult%20Criminal%20Standards%20Final%20Adopted%20to%20SOS%20effdate.pdf.

adequately advocated for him with respect to bail, pushing Mr. Mack to independently request that the state revisit bail in his case.

91. The same was true with respect to Mr. Huynh, who pled not guilty at his initial appearance, but did not feel that he had adequate information about the proceedings or the charges against him to decide how to proceed.

CLASS ACTION ALLEGATIONS

92. Plaintiffs bring this class action lawsuit pursuant to Rule 23 of the Maine Rules of Civil Procedure on behalf of all indigent persons who are now or who will be before a state court in Maine under formal charge of having committed any offense, the penalty for which includes the possibility of confinement, incarceration, imprisonment, or detention in a correction facility (regardless of whether actually imposed) and who qualify for representation through Maine's indigent-defense system.

93. There are important questions of law and fact raised in this case that are common to the Class, including:

i. Whether Defendants have failed to comply with their statutory obligations to implement an effective indigent-defense system, including their specific obligations to develop standards governing the delivery of indigent legal services; establish training programs and attorney qualifications; and monitor the indigent-defense system;

ii. Whether Defendants' failure to adequately fund the delivery of indigent-defense services, and, in particular, to ensure that attorneys are appropriately compensated, results in the provision of constitutionally deficient representation;

iii. Whether Defendants' implementation of the lawyer-of-the-day system fails to ensure the provision of effective representation at the start of a defendant's case; and

iv. Whether Defendants failure to implement, administer, and oversee an adequate public-defense system results in a violation of the state and federal constitutions.

94. The claims of the Plaintiffs as Class representatives are typical of the claims of the Class as a whole. Like all of the Class members, the Class representatives are being denied their right to counsel in violation of the Sixth Amendment to the U.S. Constitution and Article I, § 6 of the Maine Constitution as a result of MCILS's ongoing failure to adequately supervise, administer, and fund indigent-defense services.

95. Also like all Class members, the Class representatives are being harmed by MCILS's ongoing failure to enact regulations setting standards for an adequate public defense system.

96. As discussed above, MCILS's failure to adopt standards or develop procedures governing the delivery of indigent-defense services creates a series of systemic failings. *See supra*, ¶¶ 46–71.

97. Without a limit on the number of cases each attorney should handle, attorneys can take on far more defendants than they are able to competently represent. Attorneys who do are then unable to communicate with defendants, promptly return their calls, review their discovery, and generally ensure that they can devote the level of attention needed for efficient representation—all problems experienced by Plaintiffs here. *See supra*, ¶¶ 11–15.

98. Similarly, without any procedure for evaluating counsel, MCILS has no way of knowing when particular attorneys fail to provide effective representation. MCILS has not even taken the basic step of setting up a formal system for reporting complaints about particular attorneys, which would allow it to investigate particular attorneys as necessary. These attorneys thus remain in the pool of rostered attorneys, continually picking up new defendants who likewise receive ineffective representation, even when it was clear to all that the attorney had a track record of failing to perform even basic functions of representation.

99. Likewise, without any procedure for evaluating conflicts of interest, MCILS leaves it to individual attorneys to identify conflicts and then recuse themselves from a case. MCILS has no way of knowing whether this is happening, and therefore has no way of preventing attorneys from representing defendants even when they are conflicted.

100. Even where MCILS has promulgated standards—with respect to attorney qualifications and training, for example—MCILS fails to ensure compliance with these standards, and, regardless, the standards are too low to guarantee effective representation.

101. The common questions of law and fact articulated above predominate over any individualized questions that may arise out of the Plaintiffs' or Class members' criminal cases. Accordingly, a class action is superior to other available methods for the fair and efficient adjudication of the allegations raised in this matter.

102. MCILS has failed to adequately supervise, administer, and fund an indigent defense system, thereby violating the rights of poor defendants across the State. In this way, Defendants have acted and refused to act on grounds generally applicable to the entire Class, making it appropriate for the Court to issue final injunctive and declaratory relief for all Class members.

103. The Class representatives will fairly and adequately protect the interests of the Class. The interests of the Class representatives are not in conflict with the interests of any other indigent defendant, and the Class representatives have every incentive to pursue this litigation vigorously on behalf of themselves and the Class as a whole.

104. The Class representatives are being represented by experienced, well-resourced counsel in this matter, including the American Civil Liberties Union of Maine, Preti Flaherty, Beliveau & Pachios, LLP, and Goodwin Procter LLP. The ACLU of Maine—an affiliate of the nationwide American Civil Liberties Union—has more than five decades of experience defending the civil liberties of the people of Maine, including through state and federal civil-rights actions. Counsel at Preti, Flaherty, Beliveau & Pachios, LLP, possess expertise in complex litigation, administrative law, and matters relating to Maine state government. And counsel at Goodwin Procter LLP have extensive experience litigating complex actions in trial and appellate courts, including a significant track record of litigating civil-rights suits in conjunction with ACLU affiliates.

COUNT I:
VIOLATION OF THE SIXTH AMENDMENT (42 U.S.C. § 1983)
Plaintiffs v. All Defendants

105. Plaintiffs reallege the preceding paragraphs as though fully set forth herein.

106. 42 U.S.C. § 1983 provides that "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

107. The Sixth Amendment to the United States Constitution, as applicable to the States through the Fourteenth Amendment, provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense."

108. As courts have explained, where, as here, plaintiffs sue for prospective relief in conjunction with the state's provision of indigent-defense services, the plaintiffs' burden is to demonstrate "the *likelihood* of substantial and immediate irreparable injury, and the inadequacy of remedies at law." *Luckey v. Harris*, 860 F.2d 1012, 1017 (11th Cir. 1988) (quotations marks omitted; emphasis added). Plaintiffs have not yet been sentenced (or, in some cases, convicted), and are not seeking (through this suit) release from prison. Rather, they seek prospective relief to avoid future harm from the state's ongoing provision of insufficient indigent-defense services in their case. As a result, there is no need for plaintiffs to show prejudice in any individual case. *See id.* (differentiating a suit for prospective relief from a *Strickland* action where "a party seeks to overturn his or her conviction"). Plaintiffs can instead state a claim for relief based on, for example, "systemic" actions that "hamper the ability of their counsel to defend them" and "effectively deny them their eighth and fourteenth amendment right to bail." *Id.*

109. Applying these principles, the State's indigent defense system violates the Sixth Amendment in two ways.

110. First, MCILS has failed to develop and implement an effective system for the appointment of counsel for indigent defendants. In particular, MCILS has failed to (i) set and enforce standards for counsel caseloads, conflicts of interest, and attorney performance; (ii) monitor and evaluate rostered attorneys; (iii) ensure adequate funding and support for rostered attorneys; and (iv) provide training to rostered attorneys. Even where MCILS has set standards (with respect to attorney qualifications, for example), these standards are both insufficiently

rigorous and not sufficiently enforced. These violations unconstitutionally infringe or imminently threaten to infringe Plaintiffs' rights under the Sixth Amendment to the U.S. Constitution.

111. Second, MCILS's implementation of its lawyer-of-the-day program to provide representation at criminal defendants' 48-hour hearings and initial appearances creates an unconstitutional risk of ineffective representation. No attorney reasonably can be expected to adequately represent all their clients when they are responsible for up to 100 defendants upon walking into court in the morning. Under these conditions attorneys are forced to describe constitutional rights to large groups of defendants, making it impossible to advise every defendant as to the proper course of action in his or her individual case.

112. The problems with the lawyer-of-the-day program persist throughout a defendant's case. A defendant who is not given effective counsel at the critical initial stage of his or her proceeding may make choices—as to whether to plead guilty, for example—that are impossible to undo later in the case. Denial of bail at the initial hearing also has serious consequences for the remainder of the case, with pre-trial detention significantly increasing the probability of conviction, primarily due to an increase in guilty pleas.[9]

113. Defendants have acted and threatened to act under the color of state law in depriving Plaintiffs of rights guaranteed by the Constitution and laws of the United States.

114. As a result, Plaintiffs are entitled to preliminary and permanent injunctive relief, a declaratory judgment, costs and attorney's fees, and such other relief as the Court deems just.

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[9] Megan Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes*, 34 J. Law Econ. & Org. 511, 514 (2018).

115. Because Defendants have acted and threatened to act under the color of state law to deprive Plaintiffs of rights guaranteed by the Constitution and laws of the United States, Plaintiffs may sue and seek relief pursuant to 42 U.S.C. § 1983.

COUNT II:
FAILURE TO PROMULGATE RULES (5 M.R.S. § 8058)
Plaintiffs v. MCILS and the Director

116. Plaintiffs reallege the preceding paragraphs as though fully set forth herein.

117. Under the Maine Administrative Procedure Act, "[a]ny person aggrieved by the failure or refusal of an agency to act shall be entitled to judicial review thereof in the Superior Court. The relief available in the Superior Court shall include an order requiring the agency to make a decision within a time certain." 5 M.R.S. § 11001.

118. Likewise, "[j]udicial review . . . of an agency's refusal or failure to adopt a rule where the adoption of a rule is required by law, may be had by any person who is aggrieved in an action for declaratory judgment in the Superior Court conducted pursuant to Title 14, section 5951, et seq." 5 M.R.S. § 8058(1); *see also id.* ("[I]n the event that the court finds that an agency has failed to adopt a rule as required by law, the court may issue such orders as are necessary and appropriate to remedy such failure.").

119. Here, MCILS has failed to adopt rules required by two separate sources of law.

120. First, MCILS is statutorily mandated to promulgate standards governing the delivery of legal services—including standards for minimum qualifications of counsel, maximum caseloads, evaluation of counsel, and conflicts of interest. 4 M.R.S. § 1801(1); *see supra*, ¶¶ 47–52. Yet in the decade since its creation, the agency has not promulgated the required standards. *See supra*, ¶¶ 53–54.

121. The Commission's and Executive Director's failures to comply with these statutory directives violate the Maine Administrative Procedure Act.

122. Second, MCILS is constitutionally required under the federal and state constitutions to provide effective representation to indigent defendants. To fulfill this constitutional requirement, MCILS must adopt rules to ensure that the provision of representation complies with constitutional standards. MCILS has failed to do so here. *See supra*, ¶¶ 46–71.

123. The Commission's and Executive Director's failures to comply with these constitutional directives likewise violates the Maine Administrative Procedure Act.

124. These violations can be remedied through the Declaratory Judgments Act, 5 M.R.S. §§ 5951–5963.

125. There is an actual controversy between the parties over the agency's failure to promulgate these statutorily required standards.

126. Pursuant to section 8508, Plaintiffs seek a declaration that the MCILS has failed to adopt a rule where the adoption of a rule is required by law, and the entry of an appropriate order to remedy that failure.

* * * * *

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

I. A declaratory judgment that Defendants' have denied the guarantee of the assistance of counsel to Plaintiffs and those similarly situated through their failure to ensure adequate gatekeeping, supervision, and training of state-appointed counsel violates the Sixth Amendment to the United States Constitution;

II. Injunctive relief requiring Defendants to guarantee the assistance of counsel to Plaintiffs and those similarly situated by establishing adequate gatekeeping, supervision, and training of state-appointed counsel, consistent with the Sixth Amendment to the United States Constitution;

III. A declaratory judgment holding that MCILS has failed to adhere to statutorily required rules for gatekeeping, supervision, and training of state-appointed counsel;

IV. An order requiring MCILS to adopt such statutorily required rules;

V. A declaratory judgment holding that the MCILS's implementation of the lawyer of the day program violates the Sixth Amendment to the United States Constitution;

VI. Injunctive relief requiring MCILS to ensure adequate representation of indigent defendants at their 48-hour hearings, consistent with the Sixth Amendment to the United States Constitution;

VII. An award to Plaintiffs of costs and attorney's fees; and

VIII. Any such other and further relief that this Court deems just and proper.

March 1, 2022

Respectfully submitted.

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STATE OF MAINE
KENNEBEC, ss

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

ANDREW ROBBINS, et al.,

Plaintiffs,

v.

STATE OF MAINE, et al.,

Defendants

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON COUNTS I AND II OF PLAINTIFFS' AMENDED COMPLAINT

The Executive Director of the Maine Commission on Public Defense Services, in his official capacity, and each of the Commissioners of the Maine Commission on Public Defense Services in their official capacities (collectively "Defendants"), by and through undersigned counsel, pursuant to M. R. Civ. P. 7 and 56, hereby move this Court to enter summary judgment in their favor on Counts I and II of Plaintiffs' Complaint as follows

FACTS

The subclass of Plaintiffs pursuing claims to be adjudicated in "Phase 1" of the pending litigation are, "All individuals who currently are, or in the future will be, eligible for appointment of counsel by the Superior or District Court as required by the Sixth Amendment to the United States Constitution or Article 1, Section 6 of the Maine Constitution, but who remain unrepresented after arraignment or first appearance on any criminal charge punishable by incarceration or imprisonment." (Plaintiffs' Subclass"). SMF at ¶1[(Order on Motion to Amend Class, 10 (Sep. 26, 2024)]. Contending that the claims of Class representatives are "typical of

the claims of the Class as a whole, SMF at ¶2, Plaintiffs allege that Plaintiffs' Subclass have been denied the assistance of counsel following entry of an order finding them entitled to the appointment of counsel. SMF at ¶3. Plaintiffs allege that actual denial of counsel is established once "weeks" or "months" pass between an order finding members of Plaintiffs' Subclass entitled to the appointment of counsel and the appearance of defense counsel in their underlying criminal prosecutions. SMF at ¶4.

The Maine Commission on Public Defense Services ("MCPDS") is a statutorily established independent commission governed by nine (9) appointed commissioners, 4 M.R.S.A. § 1803-1804, and headed by an Executive Director. 14 M.R.S.A. § 1805. The Executive Director of MCPDS and each of the Commissioners of MCPDS in their official capacities are the Defendants in this matter. MCPDS is charged with maintaining rosters of attorneys from which courts in the Unified Criminal Docket may appoint defense counsel qualified to represent a criminal defendant in a criminal prosecution. 4 M.R.S.A. § 1801, et seq.

STANDARD OF REVIEW

Summary judgment is appropriate where there is no genuine issue of material fact, entitling the moving party to judgment as a matter of law. *Est. of Frost*, 2016 ME 132, ¶ 15, 146 A.3d 118 (summary judgment appropriate when parties' statements of material fact "demonstrate[] that there is no genuine issue of material fact that is in dispute and the prevailing party is entitled to judgment as a matter of law."). A fact is "material" where that fact has, "the potential to affect the outcome of the suit." *MMG Ins. Co. v. Estate of Greenlaw*, 2024 ME 28 at ¶13 (quoting *Am. Prot. Ins. Co. v. Acadia Ins. Co.*, 2003 ME 6, ¶ 10); *see also Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8)). An issue of fact is "genuine" when

"sufficient evidence requires a factfinder to choose between competing versions of the truth at trial." *MP Assocs. v. Liberty*, 2001 ME 22, ¶ 12, 771 A.2d 1040, 1044 (citing *Burdzel v. Sobus,* 2000 ME 84, ¶ 6).

A court reviewing a motion for summary judgment must, "consider[] the properly presented evidence and any reasonable inferences that may be drawn therefrom in the light most favorable to the [nonmoving] party, in order to determine whether there is a genuine issue of material fact and whether any party is entitled to a judgment as a matter of law." *Pushard v. Bank of Am., N.A.*, 2017 ME 230, ¶ 13; *see also Jenness v. Nickerson*, 637 A.2d 1152, 1154 (Me. 1994) ("[T]he opposing party will be given the benefit of any inferences which might reasonably be drawn from the evidence." (quoting 2 Field, McKusick & Wroth, *Maine Civil Practice* § 56.4 at 39 (2d ed. 1970))). "[T]o survive a defendant's motion for summary judgment, a plaintiff must produce evidence that, if produced at trial would be sufficient to resist a motion for a judgment as a matter of law. *Corey v. Norman, Hanson & DeTroy*, 1999 ME 196, ¶ 7, 742 A.2d 933, 937–38; *see also* M. R. Civ. P. 56(e) ("[A]n adverse party may not rest upon the mere allegations or denials of that party's pleading, but must respond by affidavits or as otherwise provided in this rule, setting forth specific facts showing that there is a genuine issue for trial.").

ARGUMENT AND MEMORANDUM OF LAW

The question before the Court in Count I of Plaintiffs' Complaint is whether Defendants' acts or failures to act have caused the denial of Plaintiffs' right to counsel under the Sixth Amendment to the United States Constitution. The question controlling liability is whether Plaintiffs' Subclass have been denied counsel at a "critical stage" in their underlying criminal prosecutions after initial appearance. The question controlling liability in Count I of Plaintiffs' Complaint is not whether Maine's system of indigent defense is able to immediately appoint

counsel. The question controlling liability on Count I of Plaintiffs' Complaint is, likewise, not whether improving access to competent defense counsel is an important public policy goal, required to effectuate the rights and obligations of all participants in the criminal justice system: prosecutors, the judiciary, and criminal defendants.

There is, at the close of discovery, no genuine issue of material fact regarding Plaintiffs' claim that Plaintiffs' Subclass have been denied counsel at a "critical stage". Plaintiffs must establish harm to support their claim for prospective relief. With respect to Count I of Plaintiffs' Amended Complaint, the necessary harm is actual denial of counsel at a "critical stage." There is no evidence supporting harm to any member of Plaintiffs' Subclass's right to a fair trial, let alone any of the Class representatives. There is no genuine issue of material fact preventing judgment as a matter of law in Defendants' favor on Plaintiffs' claims that Defendants have caused a violation of Plaintiffs' right to counsel pursuant to the Sixth Amendment of the United States Constitution. This Court should enter judgment as a matter of law in Defendants' favor on Count I of Plaintiffs' Amended Complaint.[1]

I. The Sixth Amendment requires that counsel be appointed within a reasonable time after attachment to allow for adequate representation at any critical stage

Plaintiffs allege that, "Defendants have failed to provide attorneys to the Subclass of individuals within a reasonable time after the right to counsel attaches to allow for adequate representation at every critical stage, and have failed to provide attorneys to the Subclass at all critical stages of the proceedings." SMF at ¶3. Plaintiffs' claim under the Sixth Amendment requires proof that Plaintiffs Subclass have been denied counsel at a "critical stage" of their prosecutions. There is no genuine issue of fact supporting a conclusion that a delay in

[1] As addressed in Section II(C), below, judgment in Defendants' favor on Count I also controls the disposition of Count II, asserted pursuant to Article I, §6 of the Maine Constitution.

identifying a specific attorney to represent members of Plaintiffs Subclass occurred at a "critical stage" of their underlying prosecutions. There is, likewise, no genuine issue of material fact supporting a conclusion that delays in identifying specific attorneys to represent Subclass members was unreasonably timed: timed as to prevent subsequently appearing attorneys from effectively representing Subclass members at critical stages of their underlying criminal prosecutions.

Three concepts control an analysis of an indigent criminal defendant's claim of actual denial of counsel under the Sixth Amendment: attachment, reasonableness, and "critical stage." "[C]ounsel must be appointed within a reasonable time after attachment to allow for adequate representation at any critical stage before trial, as well as at trial itself." *Rothgery v. Gillespie Cnty., Tex.*, 554 U.S. 191, 212 (2008).

A. The right to counsel attaches at the inception of a criminal prosecution

The right to counsel under the Sixth Amendment "attaches" when adversarial proceedings in a prosecution begin. *See Rothgery*, 554 U.S. 191, 211–12 ("Attachment occurs when the government has used the judicial machinery to signal a commitment to prosecute as spelled out in *Brewer* [*v. Williams*, 430 U.S. 387 (1977)] and [*Michigan v.*] *Jackson* [475 U.S. 625 (1986)]."). "Whatever else it may mean, the right to counsel granted by the Sixth and Fourteenth Amendments means at least that a person is entitled to the help of a lawyer at or after the time that judicial proceedings have been initiated against him...." *State v. Smith*, 615 A.2d 1162, 1164 (Me. 1992) (quoting *Brewer,* 430 U.S. at 398). As defined here, Plaintiffs' Subclass consists of class members whose right to counsel has "attached." SMF at ¶1 (Subclass defined as Class members "who remain unrepresented *after arraignment or first appearance*.") (emphasis added).

B. A stage is "critical" if it risks irremediable loss of rights fundamental to a fair trial.

1. Proof of denial of counsel at a "critical stage" addresses the test established for establishing presumptive harm otherwise requiring proof of individualized prejudice.

The concept of a "critical stage" is relevant to one of the two standards for evaluating an alleged Sixth Amendment violation: *United States v. Cronic*, 466 U.S. 648 (1984) and *Strickland v. Washington*, 466 U.S. 668 (1984). In the context of a claim asserting actual denial of counsel, under the standard announced in *Cronic*, denial of counsel at a "critical stage" creates a presumption of prejudice: obviating the need for the party asserting deprivation to establish prejudice. *Cronic*, 466 U.S. at 659. As the First Circuit Court of Appeals observed:

> While both Cronic and Strickland concern Sixth Amendment violations, they are distinct legal claims and the difference between the two "is not of degree but of kind." Strickland requires a case-by-case analysis of whether counsel's deficiencies affected the outcome of a trial, while Cronic permits a presumption of prejudice if an actual or constructive denial of counsel occurs during a critical stage of the trial. These claims, while based on similar factual underpinnings, are separate and distinct.

Fusi v. O'Brien, 621 F.3d 1, 6 (1st Cir. 2010) (quoting *Bell v. Cone*, 535 U.S. 685, 697 (2002)) (internal citation omitted). "A criminal defendant who is entitled to counsel but goes unrepresented at a critical stage of prosecution suffers an actual denial of counsel and is entitled to a presumption of prejudice. *Tucker v. State*, 394 P.3d 54, 63 (Idaho 2017) (citing *Cronic*, 466 U.S. at 658–60) (emphasis added); *see also Betschart v. Garrett*, 700 F. Supp. 3d at 982 (D.Or. 2023) ("The prejudice to the defendant is not that the defendant is assured success at a hearing they would otherwise not enjoy; rather, it is the fact that they were denied the ability to access the court with counsel in a critical proceeding.").

2. To be a "critical stage," a procedural event must necessarily entail the risk of irremediable loss of a right affecting the fairness of trial.

A "critical stage" in a criminal prosecution is a stage at which "counsel's absence at such stages might derogate from [defendant's] right to a fair trial." *United States v. Wade*, 388 U.S. 218 at 227–28 (1967) (counsel's absence at forensic analyses did not violate the Sixth Amendment right to counsel at "critical stages" because, "they are not critical stages since there is minimal risk that [defendant's] counsel's absence at such stages might derogate from his right to a fair trial."). The guiding principal behind the "critical stage" analysis is the effect of the absence of counsel on "the reliability of the trial process." *Cronic*, 466 U.S. at 658 ("Absent some effect of challenged conduct on the reliability of the trial process, the Sixth Amendment guarantee is generally not implicated."). What constitutes a "critical stage" in the context of the Sixth Amendment right to counsel depends on whether denial of counsel at that stage prejudices a criminal defendant's rights at trial. *See, e.g., Coleman v. Alabama*, 399 U.S. 1, 9, 90 S. Ct. 1999, 2003, 26 L. Ed. 2d 387 (1970) ("The determination whether the hearing is a 'critical stage' requiring the provision of counsel depends, as noted, upon an analysis 'whether potential substantial prejudice to defendant's rights inheres in the particular confrontation and the ability of counsel to help avoid that prejudice.'" (quoting *Wade*, 388 U.S. at 227)); *McNeil v. Wisconsin*, 501 U.S. 171, 177–78 (1991) ("The purpose of the Sixth Amendment counsel guarantee—and hence the purpose of invoking it—is to 'protec[t] the unaided layman at critical confrontations' with his 'expert adversary,' the government, after 'the adverse positions of government and defendant have solidified' with respect to a particular alleged crime." (quoting *United States v. Gouveia*, 467 U.S. 180, 189, (1984)); *see also Rothgery*, 554 U.S. at 218 ("Texas counties need only appoint counsel as far in advance of trial, and as far in advance of any pretrial 'critical stage,' as necessary to guarantee effective assistance at trial.") (Alito, J. concurring). The United

States Supreme Court noted that established caselaw, "defined critical stages as proceedings between an individual and agents of the State (whether 'formal or informal, in court or out') that amount to 'trial-like confrontations,' at which counsel would help the accused 'in coping with legal problems or . . . meeting his adversary.'" *Rothgery*, 554 U.S. at 212 n.16 (quoting *Wade*, 388 U.S. at 226 and *United States v. Ash*, 413 U.S. 300, 312–313 (1973)) (internal citations omitted). "[T]he [Supreme] Court has clarified that not every 'critical' pretrial event comes with Sixth Amendment protection: the possibility that [such an event] may have important consequences at trial, standing alone, is insufficient to trigger the Sixth Amendment right to counsel." *United States v. Boskic*, 545 F.3d 69, 82 (1st Cir. 2008) (quoting *Moran v. Burbine*, 475 U.S. 412, 432 (1986)) (internal quotations omitted). Instead, "what makes a stage critical is what shows the need for counsel's presence." *Rothgery*, 554 U.S. at 212.

The Law Court has, likewise, characterized a "critical stage" as one, "where the results might well settle the accused's fate and reduce the trial to a mere formality." *Smith*, 615 A.2d at 1164 (quoting *Maine v. Moulton,* 474 U.S. 159, 170 (1985)). "[T]he purpose of the constitutional requirement of effective counsel is to ensure a fair trial." *Aldus v. State*, 2000 ME 47, ¶ 15, 748 A.2d 463 (internal quotation omitted). Consistent with that formulation of the Sixth Amendment right to counsel, the Law Court has recognized that the basis for characterizing a stage as "critical" is the irremediable loss of rights at trial. In *Nadeau v. State*, 232 A.2d 82, 86 (Me. 1967)[2], the Law Court concluded that a recently announced 'critical stage' became "critical" "only upon and because of the occurrence of a subsequent event at trial stage."

[2] The Law Court's holding in *Nadeau*, relied on a conclusion of law that the holding in a then-recently-decided Supreme Court case, *White v. State of Maryland*, 373 U.S. 59 (1963), was not retroactive. *Nadeau*, 232 A.2d at 86. The following year, the Law Court reversed its denial of petitioner's habeas corpus petition based on a subsequent United States Supreme Court case declaring that the holding in *White* had retroactive effect. *Nadeau v. State*, 247 A.2d 113, 113 (Me. 1968).

Id. ("[T]he adverse effect upon the respondent came only when an admission obtained when he did not have the benefit of the advice of counsel was used against him at his trial. If this had not occurred, the lack of assistance of counsel at the preliminary examination would have had no effect whatever, 'no right of the slightest value (having) been lost.'" (quoting *Commonwealth v. O'Leary*, 347 Mass. 387, 198 N.E.2d 403 (1964)). The Court in *Nadeau* also noted the parameters of a critical stage, consistent with *Hamilton v. State of Alabama*, 368 U.S. 52 (1961). *Id.* at 85 (noting stage at issue in *Hamilton* was hearing "at which under Alabama law certain defenses, pleas and motions must be tendered or the opportunity therefor is lost.").

More recently, in a claim alleging "denial of access to [appellant's] court appointed counsel," the Law Court addressed whether the alleged denial occurred, "during a critical stage of a criminal prosecution against [appellant]," citing to federal caselaw summarizing and applying definitions of a "critical stage." *Anctil v. Cassese*, 2020 ME 59, ¶ 17, 232 A.3d 245 (citing *Van v. Jones*, 475 F.3d 292, 312-315 (6th Cir. 2007)).[3] The Court in *Van* concluded that, "[w]hether [a Michigan defendant's consolidation hearing] was a critical stage depends on whether there was a reasonable probability that [appellant]'s case could suffer significant consequences from his total denial of counsel at the stage," *Van*, 475 F.3d at 313, observing, "many of the stages found to be critical are those in which an opportunity may be *irretrievably lost*, or material may come out that may be *incurably damaging*." *Id.* at 314-15 (emphasis added).

Most recently, a single justice of the Law Court, addressing a claim for habeas corpus alleging that petitioners' continued pre-trial confinement was "unlawful" based on delays in the

[3] The Law Court's citation to *Van* was in the context of explaining the court's conclusion that, "[Appellant] did not allege that [Appellee]'s action resulted in a denial of access to his court-appointed counsel during a critical stage of a criminal prosecution against him." *Anctil*, 2020 ME 59 at ¶ 17 (emphasis added).

appointment of defense counsel, concluded that the dispositional conference required in criminal prosecutions pursuant to M. R. U. Crim. P.18 was the earliest "critical stage" in a criminal prosecution in Maine. *Peterson v. Johnson*, Docket No. SJC-23-2, p.21 (Jan. 12, 2024) (available at: https://www.courts.maine.gov /news/peterson/SJC-23-2_2024.01.12_final_order .pdf) (last accessed Nov. 22, 2024).[4] "At a minimum, therefore, the Sixth Amendment requires assignment of counsel sufficiently in advance of a dispositional conference to be able to provide effective representation in connection with the conference as well as related matters." *Id.* Recognizing that the "assistance" of counsel includes plea bargaining, *id.* at p.19-20 (citing *Missouri v. Frye,* 566 U.S. 134, 144 (2012)), the court in *Peterson* relied on the dispositional conference as the inflection point for determination of a criminal defendant's substantive rights. *Id.* at 20. The *Peterson* court noted that "[c]ounsel for the State and defense counsel [] are required to appear and '[] be prepared to engage in meaningful discussion regarding all aspects of the case with a view toward reaching an appropriate resolution," *id.* (quoting M. R. U. Crim. P. 18(a)-(b)) and that, "[o]ther significant pretrial events are timed to the date of the dispositional conference as well," such as, motions to dismiss, motions for joinder or severance, discovery motions, motions to suppress, and certain discovery from the State. *Id.* at 20-21. That view is in accord with other cases addressing Sixth Amendment claims in the context of that jurisdiction's criminal procedure. *See, e.g., Betschart*, 700 F.Supp.3d at 982 (noting that, under Oregon law, criminal defendants had time-limited right to request hearing court identified as a "critical stage"); *see also David v. Missouri*, Case No. 20AC-CC00093, p.12 (Feb. 18, 2021) (noting that

[4] Reflecting the distinct standards pursuant to *Strickland*, applicable in the instant litigation, and *Cronic*, requiring proof of actual prejudice to a criminal defendant based on the circumstances specific to their underlying criminal matter, the court in *Peterson* noted, "This is not to suggest that entitlement to court-appointed counsel under current Sixth Amendment jurisprudence is necessarily timed to the scheduling of a dispositional conference. The right could inhere earlier, depending upon the circumstances of each case." *Peterson*, at p.21 n.16.

local rules of criminal procedure required asserting specific procedural rights "within the first ten days after entry of the initial plea").[5]

C. The "reasonableness" of the time within which counsel is appointed is based on the ability of counsel to provide effective representation at trial.

"A reasonable time," in the context of Plaintiffs' claimed constitutional deficiency, is defined by reference to the "adequacy of representation at [a] critical stage." *Rothgery*, 554 U.S. at 212. Addressing the standard of proof for a party seeking a preliminary injunction based on a systemic claim for denial of counsel, the court in *Betschart* noted that, in addition to establishing that petitioners "lack[ed] counsel at a critical stage," petitioners could seek to establish an "unreasonable delay in appointment that fails to provide for adequate representation at the critical stage." 700 F.Supp.3d at 981. Cases applying the "reasonable time" standard have evaluated the standard with reference to specific procedural events mandated by the applicable rules of criminal procedure. *See, e.g., id.* at 982 (noting that, under Oregon law, criminal defendants had time-limited right to request hearing court determined as "critical stage"); *Lavallee v. Justs. In Hampden Superior Ct.*, 442 Mass. 228, 236, 812 N.E.2d 895, 904 (2004) (observing that Massachusetts criminal procedure established time limits for assertion of defenses and pretrial conference report within mandatory time limits); *see also David* at p.12 (noting that local rules of criminal procedure required asserting certain procedural rights "within the first ten days after entry of the initial plea"). Reasonableness is, accordingly, measured in relation to the "critical stage" at issue.

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[5] *David v. Missouri* is attached hereto for ease of reference as Exhibit A.

II. There is no genuine issue of material fact preventing judgment as a matter of law in Defendants' favor on Plaintiffs' claim that they have been denied counsel at a "critical stage" of their criminal prosecutions.

A. Plaintiffs must establish denial of counsel at a "critical stage" to justify prospective relief.

Count I of Plaintiffs' Amended Complaint seeks injunctive and declaratory relief. SMF at ¶6. To justify prospective injunctive relief, "the Court must find that four criteria are met: (1) that plaintiff will suffer irreparable injury if the injunction is not granted, (2) that such injury outweighs any harm which granting the injunctive relief would inflict on the defendant, (3) that plaintiff has exhibited a likelihood of success on the merits (at most, a probability; at least, a substantial possibility), (4) that the public interest will not be adversely affected by granting the injunction." *Ingraham v. Univ. of Maine at Orono*, 441 A.2d 691, 693 (Me. 1982) (citing *Women's Community Health Ctr. v. Cohen*, 477 F.Supp. 542, 544 (D.Me. 1979); *UV Indus. Inc. v. Posner*, 466 F.Supp. 1251, 1255 (D.Me. 1979)). Where the procedural posture, as here, involves a request for a permanent injunction at the merits state (i.e. trial), "the criterion from *Ingraham* regarding the merits is more accurately expressed as 'the plaintiff succeeds on the merits.'" *Fitzpatrick v. Town of Falmouth*, 2005 ME 97, ¶ 18; *see also Windham Land Tr. v. Jeffords*, 2009 ME 29, ¶ 41 (identifying fourth factor in test for permanent injunctive relief as "the plaintiff succeeds on the merits." (citing *Walsh v. Johnston*, 608 A.2d 776, 778 (Me. 1992) and *Fitzpatrick,* 2005 ME 97 at ¶ 18); *Moses v. Fawkes*, 66 V.I. 454, 461–62 (2017) ("Importantly, unlike a preliminary injunction where a strong showing on the remaining three factors can overcome a low likelihood of success on the merits, a permanent injunction can never be entered without actual success on the merits.") (collecting cases)

What does Plaintiff need to prove in order to succeed on the merits of their claim of actual denial of counsel? SMF at ¶3. While similar claims exist in reported caselaw over the last

two decades, those cases apply materially different standards of review than the standard of proof at trial: standards evaluating allegations, not evidence, applied before the inception, let alone completion, of discovery. *Luckey v. Harris*, 860 F.2d 1012 (11th Cir. 1988) (evaluating the sufficiency of allegations at the motion to dismiss stage); *Kuren v. Luzerne County*, 146 A.3d 715 (Pa. 2016) (reviewing dismissal of complaint for failure to state a claim upon which relief could be granted); *Hurrell-Harring v. State*, 15 N.Y.3d 8 (2010) (addressing justiciability, standing of plaintiffs, and ripeness of systemic claims at motion to dismiss stage); *Duncan v. State*, 284 Mich. App. 246, 328 (2009) ("[T]he case is presently justiciable, because a case or controversy exists. *Whether plaintiffs can ultimately prove their allegations and establish their case is a matter for another day.*) (emphasis added). Unique among reported caselaw for establishing class action plaintiffs' standard of proof at trial, the Idaho Supreme Court in *Tucker* concluded: (i) to meet their burden of proof, class action plaintiffs alleging actual denial of counsel must establish that there is a substantial likelihood that they will be denied counsel at a critical stage and (ii) proof of that "substantial likelihood" requires proving allegations of harm by a named plaintiff. *Tucker*, 484 P.3d at 865 ("Evidence of the 'likelihood of substantial and immediate irreparable injury' means that Appellants must establish a likelihood of future systemic harm to members of the certified class.") To succeed on the merits of their claims, to prove their allegations at trial, Plaintiffs must prove that at least one of the Class representatives have suffered the harm alleged: actual denial of the assistance of counsel at a critical stage. *Id.* (plaintiffs must prove that the alleged harm was actually suffered "by at least one named plaintiffs [sic] that formed the basis of standing.").

In a class action, the continued viability of a class depends on meeting the "typicality" prong of M. R. Civ. P. 23(a), requiring that "[o]ne or more members of a class may sue or be

sued as representative parties on behalf of all *only if* . . . he claims or defenses of the representative parties are typical of the claims or defenses of the class . . ." M. R. Civ. P. 23(a)(3). "[P]laintiffs must show they are members of the class." *Morrow v. Washington*, 277 F.R.D. 172, 188 (E.D. Tex. 2011) (quoting *Forbush v. J.C. Penney Co.,* 994 F.2d 1101, 1105 (5th Cir.1993)) ("Accordingly, certifying a class of which the proposed class representatives are not members, such as Plaintiffs' proposed class, is inappropriate."). "When members of a common class seeking injunctive and declaratory relief are certified, this includes a finding that the named class members have established claims that are common to—and representative of—the class as a whole." *Tucker v. State*, 484 P.3d 851, 864 (Idaho 2021) (citing *In re Carbon Dioxide Indus. Antitrust Litig.*, 155 F.R.D. 209, 212 (M.D. Fla. 1993)). Requiring proof that one named Plaintiff was unrepresented at a critical stage, accordingly, acknowledges the representative nature of a class action while relying on the "typicality" required for that named Plaintiffs to proceed in a representative capacity.

B. Plaintiffs lack evidence necessary to establish a substantial likelihood that Plaintiffs' Subclass will be denied the effective assistance of counsel.

There is no genuine issue of material fact supporting a claim that Plaintiffs have been denied counsel at any proceeding in their underlying criminal matters, following initial appearance, which necessarily entail a risk of irremediable or irretrievable loss of rights, affecting the fairness of an eventual trial. A lawyer of the day satisfies the Sixth Amendment obligation to provide the assistance of counsel at initial appearance. *State v. Galarneau*, 2011 ME 60, ¶ 8, 20 A.3d 99; *see also* M.R.U. Crim. P. 5(e). Without evidence that a named Plaintiff, *Tucker*, has been denied counsel at a dispositional conference, there is no genuine issue of

material fact regarding whether Plaintiffs' Subclass has been denied their right to counsel under the Sixth Amendment.

Plaintiffs, likewise, cannot establish that Class representatives or the Subclass have been denied counsel adequately prepared to provide effective assistance at a critical stage: the determining factor in establishing whether counsel has been appointed within a "reasonable time." *Rothgery* 554 U.S. at 212. The number of days which have elapsed between an order appointing an indigent criminal defendant counsel and the date upon which appointed counsel appeared in their underlying criminal cases fails to address the controlling standard. *Id.* The number of days that members of Plaintiffs Subclass have waited for the appointment of counsel, without more, is not material to whether Plaintiffs' right to counsel has been violated. *Boles*, 2021 ME 49 at ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore*, 2011 ME 26 at ¶ 8)). Plaintiffs instead require evidence that the delay in appointing counsel has rendered it impossible for counsel to provide effective assistance at a "critical stage". Without that evidence, there is no genuine issue of material fact supporting a conclusion that Plaintiffs' Subclass have not been appointed counsel within a "reasonable time." Defendants are, accordingly, entitled to summary judgment on Count I of Plaintiffs' Amended Complaint. [6]

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[6] Plaintiffs' inability to identify a named Plaintiff denied counsel at a "critical stage" also undermines Plaintiffs' standing to assert a claim of actual denial of counsel. A plaintiff seeking prospective injunctive relief must allege a "particularized injury." *Matter of Int'l Paper Co., Androscoggin Mill Expansion*, 363 A.2d 235, 239 (Me. 1976); *see also Fitzgerald v. Baxter State Park Auth.*, 385 A.2d 189, 197 (Me. 1978); *Madore*, 1998 ME 178 at ¶ 13 ("to have standing to seek injunctive and declaratory relief, a party must show that the challenged action constitutes 'an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.'" (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992))). Pursuant to the *Cronic* standard which Plaintiffs have chosen to pursue, that "particularized" evidence is that a named Plaintiff has been denied counsel at "critical stage." At this procedural stage, Plaintiffs require evidence to support their allegation that a named Plaintiff has been denied counsel at "critical stage." Order on Motion to Amend Class Definition, p.8-9 (noting, "[w]ith respect to the issue of whether the representatives' lack of representation can be tied to a 'critical stage,' that, "[o]nce a full factual record exists, the Court intends to give the parties fair and ample opportunity to make those kinds of arguments.").

C. Defendants are entitled to summary judgment on Count II on the same basis as Count I.

The right to counsel pursuant to article I, §6 of the Maine Constitution is coextensive with the Sixth Amendment to the United States Constitution. *State v. Hill*, 2014 ME 16, 86 A.3d 628, 631 ("The right to counsel afforded by the Maine Constitution is coextensive with that of the Sixth Amendment.") (citing *State v. Watson,* 2006 ME 80, ¶ 14, 900 A.2d 702). The Law Court has, accordingly, applied federal caselaw addressing rights pursuant to the Sixth Amendment to the United States Constitution to its analysis of the right to counsel pursuant to article I § 6 of the Maine Constitution. *State v. Clark*, 483 A.2d 1221, 1224 n.2 (Me. 1984) ("This court has not yet extended the protection of article I § 6 of the Maine Constitution beyond that afforded by the Sixth amendment of the United States Constitution. Thus we look to the decisions of the federal courts, particularly the Court of Appeals for the First Circuit, for guidance in formulating the scope of the right to counsel." (citing *State v. Carter,* 412 A.2d 56, 60, 61 (Me.1980) and *State v. Lafferty,* 309 A.2d 647, 667 (Me.1973) (Wernick, J., concurring)) (internal citations omitted); *State v. Gallant,* 595 A.2d 413, 416 (Me.1991) ("The protection afforded by article 1, § 6 of the state constitution is commensurate with that of the sixth amendment to the federal constitution.") (citing *Carter,* 412 A.2d at 60); *see also Fahnley v. State*, 2018 ME 92, ¶ 17, 188 A.3d 871 (applying unified test based on *Strickland*, 466 U.S. at 698 to claims alleging violation of Sixth Amendment and article I § 6 of the Maine Constitution); *State v. Reeves*, 2022 ME 10, ¶ 46, 268 A.3d 281 (citing and concluding that federal interpretations of "right to self-representation" pursuant to Sixth Amendment were "persuasive" in interpreting Article I, §6 of Maine Constitution); *but see Winchester v. State*, 2023 ME 23, 291

A.3d 707 (2023) (analyzing claim for violation of right to speedy trial asserted *solely* pursuant to article I, §6 of the Maine constitution).[7]

"The right to counsel afforded by article I, section 6 of the Maine Constitution is commensurate with that of the Sixth Amendment of the federal constitution." *Watson*, 2006 ME at ¶14 (citing *Gallant*, 595 A.2d at 416). Accordingly, for the same reasons which entitle Defendants to judgment as a matter of law on Count I of Plaintiffs' Amended Complaint, this Court should enter summary judgment in Defendants' favor on Count II of Plaintiffs' Amended Complaint.

CONCLUSION

To meet their burden of proof on Counts I and II, as limited to claims for "actual denial of counsel" in "Phase I" of this litigation[8], Plaintiffs must establish that a named Plaintiff was denied counsel at a dispositional conference or appointed counsel within such a short period of time prior to a dispositional conference as to make it impossible to provide effective assistance at that dispositional conference. There is no genuine issue of material fact preventing judgment as a matter of law in Defendants' favor under either scenario.

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[7] The Law Court premised its analysis in *Winchester* by observing, "In his appeal of the PCR court's denial of his petitions, Winchester's claim rests solely on the Maine Constitution. *See State v. Caouette*, 446 A.2d 1120, 1121 n.2 (Me. 1982) ("The Sixth Amendment claim was not pursued on appeal and we have no occasion to discuss it."). Hence, unless we specifically indicate otherwise, we discuss federal precedent only to the extent that we find it persuasive." *Winchester*, 2023 ME 23 at ¶ 12 (internal footnote omitted).

[8] Combined Order, p.16 (Feb. 27, 2024) ("In Phase 1, the Court will adjudicate the federal and state claims and defenses regarding non-representation as they relate to the subclass above.").

WHEREFORE, Defendants pray this Court grant their Motion, enter judgment in Defendants' favor on Counts I and II of Plaintiffs' Amended Complaint, and grant all such other and further relief as this Court deems just.

Dated: November 22, 2024

Respectfully submitted,

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NOTICE

You are herby notified, pursuant to M. R. Civ. P. 7(b)(1)(A), that matter in opposition to the motion pursuant to M. R. Civ. P. 7(c), must be filed not later than 21 days after the filing of the motion unless another time is provided by these Rules or set by the court. Failure to file timely opposition will be deemed a waiver of all objections to the motion, which may be granted without further notice or hearing.

You are further notified, pursuant to M. R. Civ. P. 7(b)(1)(B), (i) that opposition to the motion must comply with the requirements of Rule 56(h) including specific responses to each numbered statement in the moving party's statement of material facts, with citations to points in the record or in affidavits filed to support the opposition; and (ii) that not complying with Rule 56(h) in opposing the motion may result in entry of judgment without hearing.

STATE OF MAINE
KENNEBEC, ss.

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

ANDREW ROBBINS, et al.,

Plaintiffs/Petitioners,

v.

STATE OF MAINE, et al.,

Defendants/Respondents.

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiffs Andrew Robbins et al. ("Plaintiffs") hereby move for summary judgment on Counts I, II, III, and V of the Amended Complaint. *See* M.R. Civ. P. 56. For the following reasons, and as set forth in greater detail in Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion for Partial Summary Judgment ("Plaintiffs' Memorandum"), the Court should grant Plaintiffs' Motion:

1. Summary judgment is appropriate when "review of the parties' statements of material facts and the referenced record evidence indicates no genuine issue of material fact that is in dispute, and, accordingly, the moving party is entitled to judgment as a matter of law." *Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 14, 951 A.2d 821 (internal citations omitted).
2. The undisputed facts contained in Plaintiffs' Statement of Undisputed Material Facts ("PSMF") are sufficient to support granting summary judgment in Plaintiffs' favor.
3. Therefore, applying the law, as discussed in Plaintiffs' Memorandum, to the undisputed evidence in the record, Plaintiffs are entitled to summary judgment as a matter of law.

For these reasons, the Court should grant Plaintiffs' Motion for Summary Judgment.

November 22, 2024

Respectfully submitted.

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IMPORTANT NOTICES

Pursuant to Rule 7(b)(1), notice is hereby given that any matter in opposition must be filed no later than 21 days after the filing of the enclosed motion unless another time is provided by the Maine Rules of Civil Procedure or set by the Court. Your failure to file a timely

opposition will be deemed a waiver of all objections to the motion, which may be granted without further notice or hearing.

Notice is further given that any opposition to the above motion must comply with the requirements of Maine Rule of Civil Procedure 56(h), including specific responses to each numbered statement in the statement of material facts being submitted in support of the above motions and with citations to points in the record or in affidavits filed to support the opposition. The failure to comply with Rule 56(h) in opposing the above motion may result in entry of judgment without hearing.

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. KEN 25-137

ANDREW ROBBINS, et al.

Plaintiffs - Appellees

v.

STATE OF MAINE, et al.

Defendants - Appellants.

ON APPEAL FROM THE KENNEBEC COUNTY SUPERIOR COURT

JOINT APPENDIX
VOLUME II

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STATE OF MAINE
KENNEBEC, ss.

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

ANDREW ROBBINS, et al.,

Plaintiffs/Petitioners,

v.

STATE OF MAINE, et al.,

Defendants/Respondents.

PLAINTIFFS' MOTION TO AMEND THE CLASS DEFINITION

Under M.R. Civ. P. 23, which permits the Court broad authority and flexibility to modify the class definition in light of subsequent developments, Plaintiffs move to amend the definition of the Class to ensure that it includes all adult criminal defendants who are legally entitled to the assistance of Court-appointed counsel. In 2022, Plaintiffs proposed that the Plaintiff Class be defined, in part, with regard to whether a person has been indicted, and the Court accepted this proposal. Since 2022, the focus of this case has shifted, new facts have come to light, and a crisis of complete denial of counsel has emerged. Reflecting these developments, in February 2024, the Court certified a Subclass of "Class Members who remain unrepresented after initial appearance or arraignment, unless the right to counsel has been waived by an individual Class Member." Combined Order, 16. Plaintiffs now respectfully request that the Class definition be amended so that it accurately reflects these developments, harmonizes with the Court-defined Subclass, and ensures that the Class appropriately includes all adult criminal defendants eligible for Court-appointed counsel under Maine law— regardless of whether they have been indicted.

BACKGROUND

On March 1, 2022, Plaintiffs moved for certification of this matter as a class action, with a proposed definition as follows: "All individuals who currently are or in the future will be eligible for the appointment of competent defense counsel by the Superior or District Court pursuant to 15 M.R.S. §810 because they have been indicted for a crime punishable by imprisonment in the State Prison and they lack sufficient means to employ counsel." Motion for Class Certification, 13. The Court observed, at oral argument on Defendants' Motion for Class Certification, that this definition would not include people charged with misdemeanors who are, nonetheless, entitled to the assistance of court-appointed counsel. Hearing on Motion for Class Certification, 6:19-24. In response, counsel for Plaintiffs noted that this definition was chosen because "other states have certified classes along those lines." Hearing on Motion for Class Certification, 7:10-11. On July 13, 2022, the Court certified the Class consistent with the definition proposed by Plaintiffs. Order on Motion for Class Certification, 5.

Since July 2022, the focus of the case has shifted from the adequacy of representation to the complete denial of representation. The Court noted, in its February 27, 2024 Combined Order, that "there are approximately 393 indigent defendants in Maine who are entitled to representation under the United States and Maine Constitutions who remain unrepresented." Combined Order, 1. Since then, that number has nearly doubled to well over 600 people without counsel, hundreds of whom have been without counsel for 30 days or more. In response to this unmitigated constitutional crisis, the Court certified a Subclass of "Class Members who remain unrepresented after initial appearance or arraignment, unless the right to counsel has been waived by an individual Class Member." Combined Order, 16.

Three times per week, the Administrative Office of the Courts issues a spreadsheet of individuals who are entitled to the assistance of court-appointed counsel but who have not been provided with counsel. The spreadsheet includes the names of the individuals, the docket numbers of their cases, and the charges against them, among other information. It does not otherwise distinguish between people who have been charged with a felony or a misdemeanor.

On July 10, 2024, Plaintiffs conducted a 30(b)(6) deposition of the Maine Commission on Public Defense Services. At that deposition, MCPDS Executive Director Jim Billings testified on behalf of the agency that MCPDS treats all individuals on the spreadsheet the same, whether or not they are a class member: These individuals are all charged with an offense that carries a risk of imprisonment, and they are therefore all eligible for appointment of counsel. Exhibit A (July 10, 2024 Deposition Transcript) at 181:9-12, 185:11-15; 15 M.R.S. §810; M.R. Crim. P. 44(a); *State v. Cook*, 1998 ME 40, 706 A.2d 603 (Me. 1998). But Billings also testified that, under MCPDS's reading of the Court's Order on Class Certification, the judicial branch spreadsheet includes "subclass members, class members, and nonclass members." Ex. A at 99:8-9. In particular, Billings explained that MCPDS understands the current Class and Subclass definition to *exclude* individuals charged with Class D or E misdemeanors, even when those individuals are legally entitled to appointment of counsel because they are charged with offenses that carry a risk of jail. Ex. A at 102:3-20, 174:2-6. Plaintiffs now seek to amend the Class definition to remedy this inconsistency and resolve any ambiguity, ensuring that individuals legally entitled to counsel on Class D or E misdemeanor charges are not left out of the Class.

DISCUSSION

The goal of this litigation is to remedy the injury suffered by adult defendants in Maine who are legally eligible for the assistance of counsel but who are not receiving it. As the Court

noted in its Combined Order, there is an "ever-increasing" number of unrepresented indigent defendants. Combined Order, 14. Until the causes of this crisis are addressed, "critical defense work cannot get done." Combined Order, 10. And as the Court has observed, it is far better for this statewide class action to comprehensively address the constitutional right-to-counsel violations experienced by adult indigent defendants in Maine, rather than proceeding with piecemeal litigation that resolves some claims now but requires separate class litigation for other claims or subgroups. Combined Order, 14.

To ensure that individuals legally entitled to counsel on Class D or E charges are not left out of the Class, Plaintiffs propose that the Class definition be modified to remove the reference to "indictment" and define the Class straightforwardly as follows: "All individuals who are or will be eligible for the appointment of competent defense counsel by the Superior or District Court pursuant to 15 M.R.S. §810 because they have been charged with a crime punishable by imprisonment, and they lack sufficient means to retain counsel." The Court's Combined Order has already anticipated this in defining the Subclass to include people who are unrepresented after either "initial appearance" or "arraignment." Combined Order, 16. And, MCPDS has acknowledged that it treats all people entitled to the assistance of court-appointed counsel the same, whether they have been charged with a felony or a misdemeanor. Ex. A at 181:9-12, 185:11-15. This amended Class definition will therefore harmonize with both the Defendants' and the Court's understanding of how to define the group of affected individuals.

Under M.R. Civ. P. 23(c)(1), an order defining a class "may be altered or amended before the decision on the merits." As the Court has noted, it has broad authority under Rule 23 to "manage this litigation." Combined Order, 16. The Court exercised this authority in creating the

Subclass, in order to "promote expeditious resolution of the case." *Id.* The Law Court declined to review this decision. *See* Order Dismissing Appeal (May 1, 2024), 2, n.1.

Federal courts, interpreting the analogous federal rule, have routinely recognized that Rule 23 affords courts broad authority to modify class definitions "in light of subsequent developments." *See Carlino v. CHG Med. Staffing, Inc.* 634 F.Supp. 3d, 895, 900-01 (E.D. Cal. 2022); *see also Roy v. Cnty. of Los Angeles*, 2018 WL 3435417, at *2 (C.D. Cal. July 11, 2018) (noting that "the district court retains flexibility and is free to modify a class definition in light of developments during the course of litigation"). Courts have not only the discretion, but also the obligation, to revisit the class definition as the case develops. *See Powers v. Hamilton Cnty. Pub. Def. Comm'n*, 501 F.3d 592, 619 (6th Cir. 2007) (observing that district courts must "be vigilant to ensure that a certified class is properly constituted" and "make appropriate adjustments to the class definition as the litigation progress[es]"); *McNamara v. Felderhof*, 410 F.3d 277, 281, n.8 (5th Cir. 2005) (noting that courts are "required" to assess their class rulings as a case progresses). The court's discretion to modify a class definition to "provide the necessary precision" is "well established." *See Rivera v. Harvest Bakery Inc.*, 312 F.R.D. 254, 267 (E.D.N.Y. 2016) (citing 5 James W. Moore et al., Moore's Federal Practice, §23.21).

As this litigation has progressed, subsequent developments have revealed that Class and Subclass definitions must be modified. Plaintiffs recently learned in discovery that MCPDS does not consider individuals who have been charged with Class D or E misdemeanors to be members of the Class or Subclass—even when they are legally entitled to court-appointed counsel—because those offenses are not prosecuted by indictment.[1] Ex. A at 102:3-20, 174:2-6. But MCPDS does

[1] Counsel for Defendants likewise noted in the opposition to Plaintiffs' Motion for Protective Order that Defendants understand the class definition to exclude those charged with Class D or E crimes. *See* Defendants' Opposition to Plaintiffs' Motion for Protective Order (Aug. 9, 2024), 2

treat all unrepresented individuals who are entitled to court-appointed counsel the same, regardless of whether they have been charged with a felony or misdemeanor. Ex. A at 181:9-12, , 185:11-15. Thus, if Plaintiffs are successful in this case, it could lead to a remedy that treats people charged with felonies differently than people charged with misdemeanors. That is, to put it bluntly, not the goal of this litigation. And it could lead to exactly the kind of piecemeal litigation this Court warned against, affording relief to indigent defendants charged with felonies but requiring a second class action on behalf of indigent defendants charged with misdemeanors.

Removing the reference to "indictment" from the class definition will remedy this potential problem. Moreover, amending the Class definition will not cause any delay or hardship to Defendants, as MCPDS has testified that it treats everyone entitled to the assistance of court-appointed counsel the same, regardless of the underlying offense.

CONCLUSION

For these reasons, the Plaintiffs respectfully request that the Court amend the Class definition in this case. The Class should be defined as follows:

> All individuals who are or will be eligible for the appointment of competent defense counsel by the Superior Court or District Court pursuant to 15 M.R.S. §810 because they have been charged with a crime punishable by imprisonment, and they lack sufficient means to retain counsel.

August 15, 2024

Respectfully submitted.

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n.2 ("An indictment, required by the time of a dispositional conference, if not before, necessarily means that the defendant is charged with a Class A, B, or C crime.").

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Counsel for Plaintiffs

STATE OF MAINE
KENNEBEC, ss

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

ANDREW ROBBINS, et al.,

Plaintiffs,

v.

STATE OF MAINE, et al.,

Defendants

DEFENDANTS' STATEMENT OF MATERIAL FACTS IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON COUNTS I AND II OF PLAINTIFFS' AMENDED COMPLAINT

The Executive Director of the Maine Commission on Public Defense Services, in his official capacity, and each of the Commissioners of the Maine Commission on Public Defense Services in their official capacities (collectively "Defendants"), by and through undersigned counsel, pursuant to M. R. Civ. P. 56((h), hereby provide their Statement of Material Facts in Support of Defendants' Motion for Summary Judgment on Counts I and II of Plaintiffs' Amended Complaint as follows:

FACTS

1. The subclass of Plaintiffs pursuing claims to be adjudicated in "Phase 1" of the pending litigation are, "All individuals who currently are, or in the future will be, eligible for appointment of counsel by the Superior or District Court as required by the Sixth Amendment to the United States Constitution or Article 1, Section 6 of the Maine Constitution, but who remain unrepresented after arraignment or first appearance on any criminal charge punishable by incarceration or imprisonment." Order on Motion to Amend Class, 10 (Sep. 26, 2024).

2. Plaintiffs contend that the claims of Class representatives are "typical of the claims of the Class as a whole. Plaintiffs' Amended Complaint at ¶125 ("The claims of the Plaintiffs as Class representatives are typical of the claims of the Class as a whole. Like all the Class members, the Class representatives are being denied their right to counsel in violation of the Sixth Amendment to the U.S. Constitution and Article I, Section 6 of the Maine Constitution as a result of Defendants' ongoing failure to adequately establish, supervise, administer, and fund indigent-defense services.").

3. Plaintiffs allege that "Defendants have failed to provide attorneys to the Subclass of individuals within a reasonable time after the right to counsel attaches to allow for adequate representation at every critical stage, and have failed to provide attorneys to the Subclass at all critical stages of the proceedings." Plaintiffs' Amended Complaint at ¶140.

4. Plaintiffs allege that actual denial of counsel is established once "weeks" or "months" pass between an order finding members of Plaintiffs' Subclass entitled to the appointment of counsel and the appearance of defense counsel in their underlying criminal prosecutions. Plaintiffs' Amended Complaint at ¶¶45, 52, 60.

5. The Maine Commission on Public Defense Services ("MCPDS") is a statutorily established independent commission governed by nine (9) appointed commissioners, 4 M.R.S.A. § 1803-1804, and headed by an Executive Director. 14 M.R.S.A. § 1805.

6. Count I of Plaintiffs' Amended Complaint seeks injunctive and declaratory relief. Plaintiffs' Amended Complaint, ¶145; *Id.* at p.52-53.

Dated: November 22, 2024

Respectfully submitted,

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

ANDREW ROBBINS, et al.,

Plaintiffs/Petitioners,

v.

STATE OF MAINE, et al.,

Defendants/Respondents.

PLAINTIFFS' RESPONSE TO MCPDS DEFENDANTS' STATEMENT OF MATERIAL FACTS IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT ON RELIEF DEMANDED IN COUNTS I AND II OF THE AMENDED COMPLAINT

1. Plaintiffs in this case include eight Named Plaintiffs, each of whom allege deficient, inadequate, or nonexistent legal representation subsequent to facing criminal charges in Maine courts. Pls.' Am. Compl. ¶¶ 1-8, 11-18, attached hereto as "Exhibit A."

   RESPONSE: Admitted.

2. Plaintiffs in this case include a certified class (the "Class") of all indigent defendants in Maine at risk of being denied effective assistance of counsel in violation of the Sixth Amendment of the United States Constitution and Article 1, Section 6 of the Maine Constitution. Ex. A ¶ 9.

   RESPONSE: Qualified. Defendants' statement is incomplete and misleading. Plaintiffs are members of a certified class of indigent defendants who are entitled to State-appointed counsel in criminal proceedings. They sue to vindicate the class members' right to adequate legal representation that is enshrined in the Maine and United States

constitutions. More specifically, Plaintiffs seek a judgment under 42 U.S.C. § 1983, the Maine Civil Rights Act, and the Maine Declaratory Judgments Act that the deficiencies in the State of Maine's system create an unconstitutional risk that indigent criminal defendants will be denied the benefit of effective assistance of counsel at all stages of their cases in violation of the Sixth Amendment of the United States Constitution and Article I, Section 6 of the Maine Constitution. (Pls.' First Am. Compl. ¶ 9.)

3. Plaintiffs in this case include a certified subclass (the "Subclass") of individuals consisting of any class members who are not represented by counsel after their initial appearance or arraignment, despite having not waived any right to counsel. Ex. A ¶ 10.

   RESPONSE: Qualified. Defendants' statement is incomplete and misleading. Plaintiffs in this case include a certified subclass of individuals defined as "[a]ll individuals who currently, *or in the future will be*, eligible for appointment of counsel by the Superior or District Court as required by the Sixth Amendment to the United States Constitution or Article 1, Section 6 of the Maine Constitution, but who remain unrepresented after arraignment or first appearance on any criminal charge punishable by incarceration or imprisonment." Order on Motion to Amend Class Definition, 10 (Sept. 26, 2024) (emphasis added).

4. For the purpose of Counts I and II, Defendants are the Executive Director of the Maine Commission on Public Defense Services ("MCPDS") and nine commissioners of MCPDS. Ex. A ¶¶ 135-157.

   RESPONSE: Admitted.

5. In Counts I and II of the Amended Complaint, Plaintiffs allege that Defendants have violated the Sixth Amendment to the U.S. Constitution and Article 1, Section 6 of the Maine Constitution. Ex. A ¶¶ 139-142, 150-153.

RESPONSE: Admitted.

6. In "Phase 1" of this litigation, the Court will address Plaintiffs' allegation that Defendants have failed to provide continuous representation of counsel to the Subclass of individuals at the initial appearance and at every stage of the proceedings. Combined Order at 16 (Feb. 27, 2024), attached hereto as "Exhibit B."

   RESPONSE: Qualified. Defendants' statement is incomplete and misleading. In Phase 1 on this litigation, "the Court will adjudicate the federal and state claims and defenses regarding non-representation as they relate to the subclass above." Combined Order, 16 (February 27, 2024).

7. Under Counts I and II of the Amended Complaint, Plaintiffs seek both declaratory and injunctive relief. Ex. A ¶¶ I-IV.

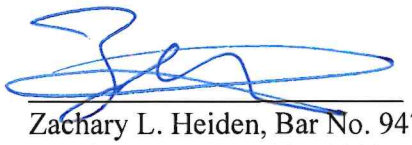
   RESPONSE: Admitted.

8. The injunctive relief Plaintiffs seek includes "ordering equitable relief for all Subclass members not provided with counsel within 48 hours of initial appearance, including but not limited to release without conditions from custody, or dismissal of charges without prejudice. Ex. A at 53.

   RESPONSE: Qualified. Defendants' statement is incomplete and misleading. Plaintiffs seek declaratory and injunctive relief to require the Executive Director and Commissioners of MCPDS to cease "persisting in certain unlawful conduct[,] and order[ing] them to implement compliance procedures." *See* Combined Order, 11. Plaintiffs also seek classwide habeas relief on behalf of Subclass members who have not been provided with counsel, including, but not limited to, release without conditions from custody and dismissal of charges without prejudice. (Pls.' First Am. Compl. 52-54, ¶¶ I-V, X-XIII.)

December 13, 2024

Respectfully submitted,



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

ANDREW ROBBINS, et al.,

Plaintiffs/Petitioners,

v.

STATE OF MAINE, et al.,

Defendants/Respondents.

PLAINTIFF'S STATEMENT OF ADDITIONAL MATERIAL FACTS IN OPPOSITION TO MCPDS DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON COUNTS I AND II AS TO LIABILITY

1. Class Representative Daishawn Williams remained without counsel for 14 weeks after the court granted prior counsel's withdrawal motion, from March 21 until July 3, 2024. Supp. Affidavit of Eleanor Shea (Shea. Supp. Aff.) ¶ 2 & Exh. A.
2. Class Representative Williams attended seven-day review hearings on April 26, May 3, and May 24, 2024. At each of these appearances, the court concluded that Williams's constitutional right to counsel had been violated. Shea. Supp. Aff. ¶ 3 & Exh. B.
3. Class Representative Clifford Neville remained without counsel for 7 weeks after his initial appearance, from April 29 until June 21, 2024. Shea. Supp. Aff. ¶ 4 & Exh. C.
4. Class Representative Neville attended seven-day review hearings on May 6, May 13, May 20, and June 3, 2024. At each of these appearances, the court concluded that Class Representative Neville's constitutional right to counsel had been violated. Shea. Supp. Aff. ¶ 5 & Exh. D.
5. After going unrepresented for seven weeks after his initial appearance, Class

Representative Neville was appointed counsel on June 21 and then pled guilty to felony charges on the date of his scheduled dispositional conference 17 days later, on July 8, 2024. Shea. Supp. Aff. ¶ 6 & Exh. C.

6. Class Representative Buck remained without counsel for 6 weeks after his initial appearance, from April 16 until May 31, 2024. Shea. Supp. Aff. ¶ 7 & Exh. E.

December 13, 2024

Respectfully submitted,

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

ANDREW ROBBINS, et al.,

Plaintiffs,

v.

STATE OF MAINE, et al.,

Defendants

DEFENDANTS' RESPONSE TO PLAINTIFFS' STATEMENT OF ADDITIONAL MATERIAL FACTS IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON COUNTS I AND II AS TO LIABILITY

1. Class Representative Daishawn Williams remained without counsel for 14 weeks after the court granted prior counsel's withdrawal motion, from March 21 until July 3, 2024. Supp. Affidavit of Eleanor Shea (Shea. Supp. Aff.) ,¶ 2 & Exh. A.

   RESPONSE
   Qualified. Appointed counsel appeared on behalf of Mr. Williams 10 weeks after the court granted Mr. Williams' Motion for Appointment of Counsel on April 12, 2024, following the withdrawal of Mr. Williams' fourth retained attorney since 2021. *State v. Williams*, Docket Record (Oct. 17, 2024).[1]

2. Class Representative Williams attended seven-day review hearings on April 26, May 3, and May 24, 2024. At each of these appearances, the court concluded that Williams's constitutional right to counsel had been violated. Shea. Supp. Aff., ¶ 3 & Exh. B.

   RESPONSE
   Qualified. The court's orders, based on an unidentified "totality of the circumstances" include a finding that "Defendant has suffered a violation of their right to counsel," notwithstanding that each of those orders followed Mr. Williams' appearance at a January 8, 2024 dispositional conference represented by retained counsel and identify no "critical stage" at which Mr. Williams was denied counsel. *State v. Williams*, Docket Record (Oct. 17, 2024).[1]

[1] Attached to Plaintiffs' Statement of Additional Material Facts as Exhibit A to Supplemental Affidavit of Eleanor Shea.

3. Class Representative Clifford Neville remained without counsel for 7 weeks after his initial appearance, from April 29 until June 21, 2024. Shea. Supp. Aff. ,¶ 4 & Exh. C

   RESPONSE
   Qualified. Counsel was appointed for Mr. Neville on June 21, 2024: 7 weeks after the court granted Mr. Neville's Motion for Appointment of Counsel on April 29, 2024 and 17 days prior to Mr. Neville's dispositional conference on July 8, 2024. *State v. Williams*, Docket Record (Oct. 17, 2024).[1]

4. Class Representative Neville attended seven-day review hearings on May 6, May 13, May 20, and June 3, 2024. At each of these appearances, the court concluded that Class Representative Neville's constitutional right to counsel had been violated. Shea. Supp. Aff., ¶5 & Exh. D.

   RESPONSE
   Qualified. The court's orders, based on an unidentified "totality of the circumstances" include a finding that "Defendant has suffered a violation of their right to counsel," notwithstanding that each of those orders predate Mr. Neville's July 8, 2024 dispositional conference and identify no "critical stage" at which Mr. Neville was denied counsel. *State v Neville*, Docket Record (Oct. 17, 2024).[2]

5. After going unrepresented for seven weeks after his initial appearance, Class Representative Neville was appointed counsel on June 21 and then pled guilty to felony charges on the date of his scheduled dispositional conference 17 days later, on July 8, 2024. Shea. Supp. Aff. ¶ 6 & Exh. C.

   RESPONSE
   Qualified. Concurrently with the dismissal of Count 1 (Robbery - Class A) of the State's criminal complaint against Mr. Neville, Mr. Neville pled guilty to Count 2 (Robbery-Class B) and Count 3 (Violating Conditions of Release - Class E) of the State's criminal complaint against Mr. Neville. *State v Neville*, Docket Record (Oct. 17, 2024).[2]

6. Class Representative Buck remained without counsel for 6 weeks after his initial appearance, from April 16 until May 31, 2024. Shea. Supp. Aff. ¶ 7 & Exh. E.

   RESPONSE
   Qualified. Appointed counsel appeared on behalf of Mr. Buck on May 31, 2024: 6 weeks after the court granted Mr. Buck's Motion for Appointment of Counsel on April 16, 2024

[2] Attached to Plaintiffs' Statement of Additional Material Facts as Exhibit C to Supplemental Affidavit of Eleanor Shea.

and 28 days prior to Mr. Buck's scheduled dispositional conference on June 28, 2024. *State v. Buck*, Docket Record (Oct. 17, 2024).[3]

Dated: December 20, 2024

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[3] Attached to Plaintiffs' Statement of Additional Material Facts as Exhibit E to Supplemental Affidavit of Eleanor Shea.

STATE OF MAINE
KENNEBEC, ss.

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

ANDREW ROBBINS, et al.,

Plaintiffs/Petitioners,

v.

STATE OF MAINE, et al.,

Defendants/Respondents.

PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT

MCPDS and Maine Are Failing to Meet Their Legal Obligation to Provide Counsel.

1. Maine tasked the Maine Commission on Public Defense Services (formerly known as the Maine Commission on Indigent Legal Services) with responsibility for administering its indigent defense delivery system. Affidavit of Eve Brensike Primus ("Primus Aff.") ¶ 10.

2. MCPDS's statutory charge is to provide counsel in indigent cases "where folks have a constitutional or a statutory right to counsel." Deposition of MCPDS Deputy Director Eleanor Maciag (Oct. 30) ("Maciag (Oct. 30) Dep.") 8:7-17.

3. MCPDS's charge under the statute is to provide efficient, high-quality representation for indigent defendants. Deposition of MCPDS Executive Director Billings (July 10) ("Billings (July 10) Dep.") 116:22-117:3.

4. Most prosecutorial districts in Maine do not have a sufficient number of private attorneys who are willing to accept court-appointed cases, and so must rely on attorneys from other parts of the state who are willing to take on additional cases. Primus Aff. ¶ 30.

5. Defense expert and MCPDS Executive Director James Billings ("Billings") admits that MCPDS is "failing" to appoint counsel from the inception of the case. Billings (July 10) Dep. 76:11-77:2; Maciag (Oct. 30) Dep. 9:17-21 (admitting MCPDS is not fulfilling its statutory mandate to provide sufficient attorneys to meet the demand for indigent legal services).

6. Commissioner and MCPDS Chair Joshua Tardy ("Tardy") admits that Maine is in a crisis concerning the State's ability to provide effective representation under the Sixth Amendment. Deposition of MCPDS Chair Joshua Tardy ("Tardy Dep.") 56:10-16.

7. Tardy admits that criminal defendants who can't afford an attorney should have the government provide an attorney to them at no cost to them, and if defendants are allowed to go unrepresented that "would cut away at the fabric of our community and society." Tardy Dep. 57:8-16.

Hundreds of Indigent Defendants Are Waiting for Counsel

8. Throughout Maine, there are not enough criminal defense attorneys engaged to handle the volume of criminal cases requiring the appointment of criminal defense counsel. Primus Aff. ¶ 38.

9. As a result, indigent criminal defendants who are constitutionally entitled to the effective assistance of trial counsel are routinely being told at their first formal hearing that there are no available lawyers to represent them. Primus Aff. ¶ 39.

10. Because MCPDS does not have a sufficient pool of attorneys, neither employed nor rostered, there is a growing list of people who need, but who do not receive, counsel. Maciag (Oct. 30) Dep. 35:14-16.

11. Indigent criminal defendants who are being detained in jail pre-trial are regularly being held for weeks (and even months) without having attorneys appointed to represent them. Primus Aff. ¶ 40.

12. Indigent defendants who are not detained pre-trial are often waiting even longer to have criminal defense attorneys appointed in their cases due to the attorney shortage. Primus Aff. ¶ 41.

13. As of the beginning of 2024, there were around 300 defendants without counsel, and the number has now "gone far beyond that." Tardy Dep. 21:9-13.

14. Tardy admits that even "one or two defendants sitting in jail without an attorney or access to an attorney if they could otherwise not afford one is unacceptable." Tardy Dep. 21:15-17.

15. Statistical expert Professor Liam O'Brien performed an analysis of the case information database created through an automated data exchange process between MCPDS and the Judicial Branch, in which the Judicial Branch regularly extracts a subset of data from their case management system, MEJIS, and transfers that data to MCPDS. Affidavit of Liam O'Brien, Ph.D. ("O'Brien Aff.") ¶¶ 5-6.

16. According to O'Brien's analysis of the database produced by MCPDS, as of November 18, 2024, there were 593 adult criminal cases in which the indigent defendants'

motion for counsel was granted but defendants were never appointed counsel. O'Brien Aff. ¶ 7, Exhibit 1.

17. According to O'Brien's analysis of the database produced by MCPDS as of November 18, 2024, there were 822 adult criminal cases in which indigent defendants (or others on their behalf) filed requests for appointment of counsel, but were never appointed counsel. O'Brien Aff. ¶ 8, Exhibit 2.

18. O'Brien's Exhibit 2 analysis is more accurate than his Exhibit 1 analysis because it includes hundreds of cases where individuals had requested appointment of counsel, but the court had not acted on those requests (sometimes for weeks or months). O'Brien Aff. ¶ 8.

19. In addition to the 822 cases of defendants who requested but were never appointed counsel, the November 18 database shows an additional 310 adult criminal cases in which indigent defendants' counsel withdrew but defendants were not appointed new counsel. O'Brien Aff., ¶ 9, Exhibit 3.

20. According to O'Brien's analysis of the November 18 database, for the 593 cases of indigent defendants whose motion for counsel was granted but who were never appointed counsel, 553 had been without counsel for 7 days or more since counsel was ordered; 480 had been without counsel for 14 days or more; and 409 had been without counsel for 30 days or more. For these 593 cases, the median duration of time without counsel since the date counsel was granted or ordered was 56 days. O'Brien Aff. ¶ 10, Exhibit 4.

21. According to O'Brien's analysis of the November 18 database, for the 822 cases of indigent defendants who requested but were never appointed counsel, 768 had been without

counsel for 7 days or more since counsel was requested; 682 had been without counsel for 14 or more days; and 584 had been without counsel for 30 or more days. For these 822 cases, the median duration of time without counsel since the date counsel was requested was 59 days. O'Brien Aff. ¶ 11, Exhibit 5.

22. O'Brien's Exhibit 5 analysis is a more accurate analysis of the duration of time defendants have been without counsel than his Exhibit 4 analysis. Because Analysis 4 counts from the date the court granted a motion for appointment of counsel rather than the date the defendant filed a request for counsel, it undercounts the duration of time without counsel in the cases in which the court has not acted on the request for counsel, sometimes for weeks or months. O'Brien Aff. ¶ 11.

23. According to O'Brien's analysis of the November 18 database, for the 822 cases in which indigent defendants who requested but were never appointed counsel, 796 had been without counsel for 7 days or more since the case was filed; 779 had been without counsel for 14 days or more; and 686 had been without counsel for 30 days or more. For these 822 cases, the median duration of time without counsel since the case was filed was 95 days. O'Brien Aff. ¶ 12, Exhibit 6.

24. According to O'Brien's analysis of the November 18 database, for the 272 cases in which indigent defendants' counsel had their motion for withdrawal granted and were not appointed new counsel, 269 defendants had been without counsel for 7 days or more since their motion for withdrawal was granted; 260 had been without counsel for 14 or more days; and 244 had been without counsel for 30 or more days. For these 272 cases, the median duration of time

without counsel since the date a motion for withdrawal was granted was 232.5 days. O'Brien Aff. ¶ 13, Exhibit 7.

25. Over the past year, the number of adult criminal cases listed on the "Counsel Needed" spreadsheets distributed by the Administrative Office of the courts has increased dramatically. Affidavit of Eleanor Shea ("Shea Aff."), ¶ 11.

26. The November 13, 2023 Counsel Needed spreadsheet created and distributed by the Administrative Office of the Courts ("Counsel Needed spreadsheet") contains 157 rows of adult criminal cases in need of counsel. Of those rows, 52 are recorded as in custody. Shea Aff. ¶¶ 2-3, Exhibit A.

27. The December 1, 2023 Counsel Needed spreadsheet contains 211 rows. Of those rows, 55 are recorded as in custody. Shea Aff. ¶ 4, Exhibit B.

28. The January 31, 2024 Counsel Needed spreadsheet contains 381 rows. Of those rows, 118 are recorded as in custody. Shea Aff. ¶ 5, Exhibit C.

29. The March 15, 2024 Counsel Needed spreadsheet contains 685 rows. Of those rows, 180 are recorded as in custody. Shea Aff. ¶ 6, Exhibit D.

30. The May 31, 2024 Counsel Needed spreadsheet contains 899 rows. Of those rows, 214 are recorded as in custody. Shea Aff. ¶ 7, Exhibit E.

31. The August 12, 2024 Counsel Needed spreadsheet contains 785 rows. Of those rows, 209 are recorded as in custody. Shea Aff. ¶ 8, Exhibit F.

32. The October 2, 2024 Counsel Needed spreadsheet contains 938 rows. Of those rows, 244 are recorded as in custody. Shea Aff. ¶ 9, Exhibit G.

33. The November 13, 2024 Counsel Needed spreadsheet contains 1,003 rows. Of those rows, 212 are recorded as in custody. Shea Aff. ¶ 10, Exhibit H.

34. Many courts in Maine explicitly recognize that there is a constitutional crisis with respect to indigent defense in the state and have made statements on the record that defendants are being systematically denied their Sixth Amendment rights to counsel under the federal and state constitutions. Primus Aff. ¶ 81.

35. Maine trial courts are finding Sixth Amendment violations for people who have not been provided counsel, either in written opinions or in form orders where they are checking off a "Sixth Amendment violation" box. Billings (Nov. 6) Dep. 18:7-19:6; Shea Aff. ¶ 14, Exhibit J (examples of court orders finding Sixth Amendment violations).

36. District Defender Frayla Tarpinian, one of Defendants' experts, admits that Maine courts are ruling that the Sixth Amendment has been violated yet the courts are providing no remedy, and "[t]hat can't be the right answer." Deposition of Frayla Tarpinian ("Tarpinian Dep.") 101:1-7, 102:11-13.

The Importance of Counsel Within a Reasonable Time After Initial Appearance

37. "[A]t every point of the process" in a criminal case starting with the initial appearance, "it's an adversarial system" and "there are advantages that you can gain or lose." Tarpinian Dep. 53:25-54:2; 57:1-11.

38. The beginning of any criminal case is therefore critical. McKee Dep. 26:3-6, 27:18-25 (further explaining that there are "critically important tasks" that attorneys need to perform "[i]mmediately upon the initiation of a criminal case"); Primus Dep. 85:18-86:8; Affidavit of Walter McKee ("McKee Aff.") ¶¶ 11-16; Primus Aff. ¶ 43.

39. Before a criminal case has been initiated, there often has been an investigation by the police, a review of investigatory material by the prosecutor, and, in some cases, an independent investigation by the prosecutor (including review of physical evidence and an interview of potential witnesses). McKee Aff. ¶ 13.

40. When the right to counsel attaches, defendants and their attorneys begin the case at a disadvantage because the prosecutor has already been working to develop their case. McKee Aff. ¶¶ 13-14.

41. Criminal defense attorneys need to be diligent and organized in order to catch up. McKee Aff. ¶ 14.

42. It is "important" for criminal defendants to be appointed counsel "as soon as possible." Maciag (Aug. 29) Dep. 21:18-22:1; Deposition of MCPDS Commissioner David Soucy ("Soucy Dep.") 41:23-42:5 (Defendant Commissioner Soucy recognizing that it is "absolutely" important that lawyers get started in a "short time frame," and specifically the same day they are appointed); McKee Dep. 26:3-6.

43. MCPDS expects that rostered attorneys will meet with their clients "within a few days or a week." Billings (July 10) Dep. 158:11-17.

44. As soon as defense counsel is assigned to a case, they need to meet with their client "ASAP" and take steps to understand the context of the case. Tarpinian Dep. 28:13-19, 30:1-3; *id.* at 11:17-24 (setting expectations for public defenders in Capital Region Public Defender's Office to meet with clients within 48 hours if they are in custody, and otherwise within a week).

45. Under MCPDS's rules for criminal practice, lawyers serving at an initial appearance or arraignment are directed to conduct an initial interview and investigation, assess the health (including mental health) of the accused, ascertain the employment and housing background of the accused, research the criminal history of the accused, and learn the general circumstances of the alleged offence. Primus Aff. ¶58.

46. Immediately upon the initiation of a criminal case, defense counsel needs to complete a set of critically important tasks, including: review of the charging instrument; review of the discovery; an initial interview of the client; preservation of evidence; advocacy for the least restrictive pretrial conditions possible; and analysis of any plea offer. McKee Aff. ¶15.

The Importance of Counsel for Pretrial Investigation

47. MCPDS agrees that, "[i]n almost every case," assigned counsel needs to conduct an investigation, including interviewing key witnesses, hiring an investigator, and generally investigating the defendant's possible lines of defense. Billings (July 10) Dep. 160:16-161:1.

48. Defendants' expert Tarpinian explained that "the floor on what's effective assistance of counsel" includes having a lawyer to assist with pretrial investigation. Tarpinian Dep. 24:1-8 (recognizing that "of course" an attorney will need to engage in pretrial

investigation); Deposition of Darcy Fisher ("Fisher Dep.") 49:9-17; Deposition of Amber Tucker ("Tucker Dep.") 35:24-36:6.

49. Attorneys can use the investigation phase to collect exculpatory evidence, as well as information that is important for mitigation—for example, to negotiate for a more favorable plea deal. Tarpinian Dep. 54:10-17; McKee Dep. 36:12-15.

50. A large number of indigent criminal defendants in Maine are being denied access to counsel during the critical pre-trial investigative period. Primus Aff. ¶42.

51. Most of what happens to prepare a criminal defense happens outside of the courtroom during that critical, pre-trial investigative period. Primus Aff. ¶ 43.

52. Investigating cases includes requesting and reviewing discovery materials from the prosecutor, as well as any other case-related documents from other public agencies; reviewing the physical scene or hiring an investigator to do so; canvassing for witnesses, preparing for and conducting witness interviews (including working with a translator if necessary), or hiring an investigator to do so; subpoenaing witnesses; hiring and supervising investigators; reviewing and analyzing all discovery, case-related documents, and the results of witness interviews; ensuring evidence is preserved; and properly documenting notes of discovery and investigation. Tucker Aff. ¶ 21.

53. Defendants' expert Tarpinian explained that "all roads … lead to discovery," and that an effective lawyer should obtain and "thoroughly" review discovery. Tarpinian Dep. 61:8-9, 70:11-18; *id.* 12:18-13:8 (discussing the approach of the Rural Public Defenders' Office to discovery).

54. MCPDS Commissioner David Soucy ("Soucy") explained that discovery is critical, and that attorneys cannot "even prepare [a] defense sometimes" without obtaining discovery. Soucy Dep. 41:9-17; Fisher Dep. 49:14-15.

55. Review of discovery is necessary to understand the strengths and weaknesses of a particular case; as a result, a lawyer cannot "meaningful[ly]" evaluate how best to approach a case without discovery. Fisher Dep. 51:17-24.

56. While an unrepresented defendant can review discovery, it is often "meaningless" without legal training and experience in using discovery to mount a defense McKee Dep. 35:10-25.

57. A delay in receiving discovery has "reverberating effects throughout the case." Soucy Dep. 41:6-17.

58. Early appointment of an attorney is critical because the attorney needs to take steps to preserve evidence that might otherwise be lost. Primus Dep. 125:9-15; Soucy Dep. 42:7-9 (explaining that "[e]vidence is lost when there are delays").

59. Among other steps, attorneys need to preserve technological evidence, which can otherwise be erased. Primus Dep. 125:9-15; McKee Dep. 22:24-23:11, 41:19-42:4 (explaining the need for an attorney to send a preservation letter to law enforcement early in the case to ensure that they secure any electronically stored discovery); *id.* at 42:7-43:24 (further describing problems with loss of technological evidence); Tucker Dep. 39:4-13 (describing the problems with loss of technological evidence when attorneys are appointed later in a case); Soucy Dep. 42:7-9.

60. Attorneys also need to interview witnesses before their memories fade or they are otherwise unavailable, and view the alleged crime scene before there are changes to the area. Primus Dep. 125:16-23; Soucy Dep. 42:7-9.

61. "By and large," loss of witness evidence is a problem that cannot be resolved if an attorney is appointed later in the case. Fisher Dep. 55:23-56:3.

62. It is important for attorneys to interview witnesses to develop a "meaningful" understanding of the strengths and weaknesses of a particular case. Fisher Dep. 51:21-24; Primus Dep. 125:16-17; McKee Dep. 22:17-24.

63. Interviewing witnesses is "conducted much more effectively by an attorney than a criminal defendant." Fisher Dep. 52:12-18.

64. Unrepresented individuals are not equipped to hire experts. Primus Aff. ¶ 49.

65. MCPDS recognizes that, before a dispositional conference, the defendant's lawyer should consider retaining and retain experts. Fisher Dep. 49:9-50:6.

66. Expert work is complicated, so the prompt identification of the need for and retention of an expert by an attorney is paramount to the client. Tucker Dep. 56:23-57:5; Tucker Aff. ¶¶ 40-46; Tarpinian Dep. 24:1-13 (to be considered effective, counsel should be analyzing whether an expert may be helpful in the client's case as part of a pretrial investigation.).

67. MCPDS recognizes that, before a dispositional conference, the defendant's lawyer should commence an investigation into the allegations, which is "conducted much more effectively by an attorney than a criminal defendant." Fisher Dep. 49:9-52:18.

68. Billings admits that counsel needs to investigate the defendant's possible lines of defense against prosecution, which includes interviewing key witnesses or hiring an investigator to do so. Billings (July 10) Dep. 160:16-161:1.

69. Unrepresented individuals are not equipped to conduct pretrial investigations or hire investigators. Primus Aff. ¶ 49.

70. Investigation is necessary for effective representation, to determine whether there is a sufficient factual basis for the client's charges and to identify the client's potential defenses, alibis or sentencing mitigation factors. Tucker Aff. ¶ 2.

71. Investigation must begin promptly after the client's initial appearance. Tucker Aff. ¶ 23.

72. If investigations do not begin promptly after initial appearance, witnesses' memories may fade; crime scenes may be altered or destroyed; and physical or virtual evidence (including toxicology reports, security camera footage, or medical records) may be lost, recorded over, or deteriorate. Tucker Aff. ¶ 23; Billings (July 10) Dep. 13:16-15:9; Fisher Dep. 55:7-57:2; McKee Dep. 36:12-19; Soucy Dep. 42:7-10; Tarpinian Dep. 35:8-14, 60:12-16; Tucker Dep. 39:4-13, 42:1-15.

73. If defendants are not appointed counsel until later in their case, evidence may go stale and witnesses' memories may fade, and that cannot be remedied later in the case. Tardy Dep. 13:23-14:2.

74. In addition, starting an investigation promptly helps forge stronger attorney-client relationships and provides clients with "some reassurance that their case is being addressed." Soucy Dep. 42:10-12, 17-18; Primus Aff. ¶ 49.

75. Late-appointed counsel will not have been able to interview the client and witnesses while their memories are fresh before important details are forgotten. Primus Aff. ¶46.

76. Late-appointed counsel will not have been able to take photographs of the crime scene as it looked at the time of the alleged crime. Primus Aff. ¶47.

77. Late-appointed counsel will not have been able to ensure the preservation of technological and evanescent evidence – all of which could lead to irreparable harm in a criminal defendant's case. Primus Aff. ¶48.

78. Criminal defendants cannot effectively investigate their own case from a jail cell. Tucker Aff. ¶26.

79. Even when a person is not in jail, the terms of release may bar them from speaking to key witnesses or alleged victims. Tucker Aff. ¶26.

80. It is important for an attorney to conduct legal research in order to evaluate the strengths and weaknesses in a case. Fisher Dep. 57:4-12; *id.* at 54:5-7 (generally explaining that attorneys need to do legal research); Tucker Dep. 36:17-21.

81. An attorney is able to conduct research much more effectively than most criminal defendants. Fisher Dep. 54:19-24.

82. Because criminal law is constantly evolving—based on actions by the legislature and decisions from the Maine Law Court and the U.S. Supreme Court—defense attorneys frequently need to conduct legal research in order to provide appropriate advice and advocacy. McKee Aff. ¶18.

The Importance of Counsel for Plea Bargaining

83. Negotiating plea agreements includes discussions with the prosecutor and, at times, the judge to dismiss a case or resolve the case by plea bargain. Tucker Aff. ¶29.

84. A defendant under indictment who is not represented is "unable to meaningfully participate in plea negotiations." Billings (July 10) Dep. 12:10-16.

85. If a defendant engages in plea negotiations without counsel, they could make statements damaging to their case. Tardy Dep. 12:22-13:7.

86. If a defendant is not represented early in the case, they may lose the opportunity to cooperate with prosecutors. Tardy Dep. 13:8-11.

87. A client cannot properly negotiate a plea agreement without a lawyer. Tucker Aff. ¶ 36.

88. Unrepresented individuals are unable to negotiate with the prosecution without waiving their constitutional rights. Tucker Aff. ¶ 50.

89. For cases involving multiple defendants, defense counsel needs to understand how their client fits into the entire case in order to evaluate the case and advise their client. McKee Aff. ¶ 16.

90. Defense counsel must promptly communicate every plea offer made to the client (regardless of when in the case it occurs) and provide appropriate advice. Tucker Aff. ¶ 30.

91. Without investigation, an attorney cannot effectively advise their client regarding any plea deal, because any such advice requires knowing the risks of proceeding to trial and, in turn, knowledge of possible defenses. Tucker Aff. ¶ 25.

92. An attorney cannot recommend that the client accept a plea without having conducted appropriate investigation. Tucker Aff. ¶ 25.

93. Evaluating plea agreements requires knowledge of the relevant law and of the risks and benefits of the agreement. Tucker Aff. ¶ 37.

94. Evaluating plea agreements requires knowledge of what deals prosecutors have agreed to enter in similar cases. Tucker Aff. ¶ 37.

95. Prompt appointment of a competent attorney who conducts an investigation that allows the attorney to properly counsel the client regarding any plea offered is necessary to ensure that defendants do not inadvertently waive their rights or defenses. Tucker Aff. ¶ 39.

96. Prompt plea negotiations mitigate the risk of clients accepting substandard plea offers solely to get out of jail sooner, and the risk that a client may end up serving a jail sentence longer than the sentence they might eventually plead to. Tucker Aff. ¶ 32.

97. Prompt plea negotiations also lower risks for clients with co-defendants: if such a client delays in plea negotiations, the prosecution may well negotiate with the co-defendant and persuade them to testify against the client. Tucker Aff. ¶ 33.

98. In some cases, defense counsel may recommend that a defendant cooperate with the prosecution, and in other circumstances they may recommend against cooperation. Unless counsel first understands the entire case, and how their client fits in, such advice would be malpractice. McKee Aff. ¶ 17.

99. Delays in appointment of counsel mean that unrepresented defendants may lose the opportunity to take advantage of a more favorable plea deal. Billings (July) Dep. 12:10-16; Fisher Dep. 55:7-57:2; McKee Dep. 48:3-9; Primus Dep. 126:18-23; Tucker Dep. 55:5-25.

100. Any delay in evaluating and conveying a plea offer to a client could result in the offer being withdrawn. Tucker Aff. ¶34.

101. Delays in appointment of counsel mean that unrepresented defendants may feel pressured to plead guilty without adequately understanding the consequences of their plea. Billings (July 10) Dep. 17:20-18:3; Fisher Dep. 30:23-32:14, 57:4-58:1; Maciag (Aug. 29) Dep. 44:25-45:5; Primus Dep. 85:15-17, 126:22-127:4; Tarpinian Dep. 39:6-13; 55:12-21; Tucker Dep. 47:14-24, 65:23-66:3; Primus Aff. ¶ 45; Tucker Aff. ¶ 32.

102. Some defendants "feel trapped in a coercive system and they plead guilty in order to get out." Billings (July 10) Dep. 17:20-22.

103. A lack of available counsel increases the pressure on defendants to plead guilty without adequately understanding the consequences of such a plea or the alternatives, because there is not an attorney to review discovery with them, explain the charges, investigate their cases, research the applicable law, and counsel the defendant about options. Primus Aff. ¶45.

The Importance of Counsel at Bail Hearings

104. MCPDS admits that attorneys add value during bail hearings by reserving the client's right to silence to prevent the client from incriminating themselves, and articulating arguments that are favorable to the client so they get a fair deal. Fisher Dep. 58:9-14, 63:11-13.

105. Defendants' expert admits that an attorney being unable to secure release of their client at a bail hearing "puts [that] client at a significant disadvantage in life." Tarpinian Dep. 54:3-7.

106. A defendant's bail may in some cases be reargued when an attorney is appointed, but the impact of the bail conditions in the intervening time without an attorney can be "cataclysmic." McKee Dep. 49:21-52:2.

107. Multiple jurisdictions have identified bail hearings as a critical stage of a defendant's case because defendants could make incriminating statements if they do not have counsel to advise them. Primus Dep. 78:14:21.

108. It is critical that an attorney consider a defendant's bail arguments on day one. McKee Dep. 36:1-19.

109. A defendant's opportunity for bail may have passed if assignment of an attorney is delayed, which can have a negative impact on the case compared to having the opportunity to make bail and can affect the fairness and ultimate results of the case. McKee Dep. 24:11-21, Primus Dep. 79:14-22, Primus Aff. ¶ 44.

110. Defendants can end up with restrictive bail conditions if not properly advocated for. McKee Dep. 49:7-16, 51:21-52:2.

111. It is important to have counsel during bail hearings because substantive rights are impacted at a bail hearing; "if proper arguments aren't brought to the attention of the court, a defendant could be harmed and have his or her liberty impacted." Tardy Dep. 11:21-12:12.

112. An extended delay between the first formal appearance and the appointment of trial counsel compromises defendants' ability to make arguments about bail and conditions of release. Primus Aff. ¶44.

113. Billings agreed that counsel needs to investigate a defendant's possible lines of defense against prosecution "[i]n almost every case." Billings (July 10) Dep. 160:16-161:1.

114. Unrepresented individuals are not equipped to prepare defenses. Primus Aff. ¶ 49.

115. A defendant without an attorney, even if that defendant is sophisticated, is at a significant disadvantage when it comes to mounting a defense. McKee Dep. 57:12-17.

116. To advise a client on potential defenses that are available to them, a lawyer must conduct an investigation and legal research. Tucker Dep. 36:1-21.

117. Unrepresented individuals are unable to make legally-counseled arguments to the court, whether orally or in writing. Primus Aff. ¶51.

118. Empirical evidence demonstrates that case outcomes for defendants detained pre-trial are much worse—in terms of both increased likelihood of conviction and harsher sentences—than for those released pending trial. Primus Dep. 84:4-88:21; Tarpinian Dep. 52:7-11.

The Importance of Counsel in Preparing For, and Presenting at, the Dispositional Conference

119. Criminal defendants rely on having attorneys conduct preparation prior to a dispositional conference. Maciag (Aug. 29) Dep. 57:14-58:19 (example of appearance at dispositional conference without lawyer); Primus Dep. 80:14-81:10.

120. Criminal defendants need attorneys to talk to prosecutors about plea deals in advance of a dispositional conference. Maciag (Aug. 29) Dep. 43:10-44:10, 44:12-16, 44:25-45:5, 94:2-95:19 (need to understand immigration consequences and consult with immigration attorney to provide effective assistance of counsel for a plea); Fisher Dep. 49:9-50:6, 57:4-58:1; Tarpinian Dep. 13:14-22, 39:6-21, 44:13-16, 55:12-21, 63:22-25, 70:11-71:23; McKee Aff. ¶¶ 15-16; Tucker Aff. ¶¶ 28-39.

121. To prepare for the dispositional conference, defense counsel needs to thoroughly analyze the discovery, identify missing discovery and decide what to do about it, and identify and prepare pretrial motions. Tarpinian Dep. 61:9-14, 65:17-25, 66:1-14, 70:11-72:18.

122. "Pretrial motions are really important" and can be dispositive. Tarpinian Dep. 66:6-8.

123. Some courts have held dispositional conferences even when Subclass members remain unrepresented. Fisher Dep. 29:18-30:22.

124. Just during the September - October 2024 time period, court docket records indicate that over sixty criminal defendants still had not been appointed counsel as of the scheduled date of their dispositional conference. Shea Aff. ¶ 12, Exhibit I.

125. Docket records indicate that in some cases, when defendants remained unrepresented on the scheduled date of the dispositional conference, the court held the

dispositional conference, and in some cases the defendant entered a guilty plea. Shea Aff. ¶ 12, Exhibit I, at ACLU008289-8291; ACLU008309- 8310; ACLU008318- 8322; ACLU008611-8614; ACLU008633-8634; ACLU008487-8489; ACLU008643-8646; and ACLU008669-8672.

126. Docket records indicate that in other cases, when defendants remained unrepresented on the scheduled date of the dispositional conference, the court postponed the conference to a later date, sometimes repeatedly over several months. Shea Aff. ¶ 12, Exhibit I, at ACLU 008192- 8194; ACLU008208-8210; ACLU008226-8237; ACLU008241-8282; ACLU008306-8308; ACLU008369-8372; ACLU008386-8387; ACLU008390-8397; ACLU008400-8403; ACLU008411-8414; ACLU008427-8445; ACLU008453-8486; ACLU008490-8493; ACLU008566-8567; ACLU008570-8580; ACLU008616-8632; ACLU008635-8639; ACLU008658-8664; and ACLU008673-8682.

127. Some courts delay hearings and other case deadlines (*e.g.*, dispositional conferences) when defendants are without counsel. Deposition of Christopher Guillory ("Guillory Dep.") 46:21-47:16; Primus Dep. 103:20-105:18.

128. Named Plaintiff Clifford Neville was appointed counsel less than three weeks before his dispositional conference, and then entered a guilty plea on felony charges on the day of his dispositional conference. Shea Aff. ¶ 12, Exhibit I, at ACLU-008500 -008507.

The Denial of Counsel Would Cause a Reasonable Person Emotional Distress

129. A person formally accused of a crime may have many other serious issues in addition to their pending criminal case, involving their housing, employment, family

relationships, and medical needs. These issues are even more complicated if a person is locked up in jail. McKee Aff. ¶ 19.

130. Delays in appointment of counsel cause increased stress, which can result in negative physical, mental, and emotional effects. Deposition of Rachel Casey, Ph.D. ("Casey Dep.") 44:13-19, 46:18-22, 50:11-23, 60:8-13, 60:25-61:6, 61:21-62:10, 77:15-87:2, 79:17-20, 81:4-13, 82:25-83:4, 85:1-86:1, 87:2-9; Casey Aff. ¶¶ 10–14, 21–27, 32, 44–48.

131. Maine's denial of counsel to people who are accused of crimes but are unable to afford counsel causes devastating harms to their health, safety, and well-being. Casey Aff. ¶ 46.

132. These harms are inflicted even if a person is only denied counsel for a short period, and even if a person is not locked up in jail while waiting for their lawyer to be appointed. Casey Aff. ¶ 47.

133. For people who are kept locked up, for weeks or even months, the harmful effects can be life-altering. Casey Aff. ¶ 48.

134. Stress has negative effects on both the immune system and cardiovascular system, leading to an increase in infections, diabetes, hypertension, other cardiovascular disease and depression. Casey Aff. ¶ 13.

135. Persistent stressful circumstances are damaging to health, and persistent stress may lead to premature death, due to the continuous adrenergic state that stress causes in the body. Casey Aff. ¶ 14.

136. It is very likely that many of the people being denied the assistance of counsel are also suffering from torment and apprehension over not being able to obtain assistance with their pending criminal cases. Casey Aff. ¶ 45.

137. When people are charged with crimes and denied counsel, they will first face the often-unfamiliar experience of going to court. This can be disorienting and anxiety-producing. Casey Aff. ¶¶ 15-16.

138. This anxiety, in turn, will have a negative effect on relationships with loved ones. Casey Aff. ¶ 17.

139. People's job performance will likely suffer. Casey Aff. ¶ 18.

140. Because defendants' lives are on hold until their criminal cases case be resolved, they are unable to make long-term commitments, such as signing a lease, getting a new job, or pursuing educational opportunities. Casey Aff. ¶ 19.

141. For people who are denied counsel and kept in jail, the situation is even worse. Casey Aff. ¶ 20.

142. Stress is severely exacerbated by the carceral environment. Casey Aff. ¶ 24.

143. Jail exacerbates all other preexisting mental health conditions and increases the risk of suicide. Casey Aff. ¶¶ 25-26.

144. Delays in appointment of counsel can have negative effects on a defendant's relationship with their family, as well as negative impacts on the defendant's family. Casey Dep. 71:16-74:11, 83:14-25, 84:10-25; Casey Aff. ¶¶ 17, 31, 34–38, 42–43; McKee Aff. ¶ 19.

145. Jail confinement brings with it family stress arising from the uncertainty and unpredictability associated with pending court cases. Casey Aff. ¶ 31.

146. This uncertainty and unpredictability is particularly acute for people without counsel, because they have no one to turn to in order to understand their case or what will happen next in the legal process. Casey Aff. ¶ 32.

147. For people who are locked up in jail who have dependent children, the effect on both parent and child can be life-altering. Casey Aff. ¶ 35

148. Parents may lose custody of their children—temporarily or permanently—and children may be forced into the foster care system. Casey Aff. ¶ 36.

149. Delays in appointment of counsel can have negative effects on a defendant's employment situation. Casey Dep. 74:12-75:18, 83:5-8; Casey Aff. ¶¶ 18-19, 39-41; McKee Aff. ¶ 19.

150. People who are eligible for court-appointed counsel are already, by definition, either under-employed or unemployed. Casey Aff. ¶ 40.

151. Very few employers will hold a person's job open for them while they are confined to jail for an indefinite period of time. Casey Aff. ¶ 41.

152. Delays in appointment of counsel can have negative effects on a defendant's housing status. Casey Dep. 83:9-13; Casey Aff. ¶¶ 19, 43; McKee Aff. ¶ 19.

The Lawyer-of-the-Day Program Does Not Prevent Sixth Amendment Violations

153. Billings admits that when a person does not have a lawyer for months at a time, but has a Lawyer of the Day (LOD) at a seven-day review hearing, their Sixth Amendment rights still are being violated. Billings (Nov. 6) Dep. 15:15-24.

154. Tardy admits that the presence of an LOD at a seven-day review hearing does not provide the necessary representation to satisfy the Sixth Amendment. Tardy Dep. 27:15-28:3.

155. Soucy admits that an LOD cannot serve as adequate counsel for people who are in court for a dispositional conference or bail hearing because the LOD does not have an adequate opportunity to prepare, to get to know the client, to understand the circumstances affecting the client. These are necessary because bail arguments, if done well, require more than a cursory acquaintance with circumstances of defendants. Soucy Dep. 7:19-9:4.

156. Maine's Lawyer-of-the-Day system, by design, provides only limited representation for discrete hearings. McKee Aff. ¶ 22.

157. By design, an LOD has limited time and opportunity to meet with their clients, and represents them in court on a single discrete occasion—their arraignment, initial appearance, or bail review. Tucker Aff. ¶ 54; Billings (July 10) Dep. 143:17-144:12; Billings (Nov. 6) Dep. 9:23-10:10; Fisher Dep. 21:15-22:5, 22:23-23:10, 24:2-24; Guillory Dep. 31:1-4, 32:1-13, 33:2-23, 34:4-16; Maciag (Aug. 29) Dep. 83:5-87:5; McKee Dep. 38:23-39:-6, 44:8-11; Soucy Dep. 7:19-25, 8:1-15, 9:1-4; Tarpinian Dep. 45:3-7.

158. LODs are meeting their clients for the first time only moments before they present arguments on behalf of those defendants. McKee Aff. ¶ 25.

159. The LOD system does not permit or support LODs to engage in ongoing investigation, discovery review, evidence preservation, bail advocacy, and plea negotiations. McKee Aff. ¶ 23.

160. LODs do not have sufficient time to adequately represent a defendant a trial or sentencing. Maciag (Aug. 29) Dep. 82:1-17.

161. LODs "are not able to play the necessary role of counsel during the pre-trial investigative period of conducting a thorough investigation and doing adequate legal research to provide informed counsel to their clients." Primus Aff. ¶ 57; McKee Aff. ¶ 23 (stating that LODs do not "engage in any of the early ongoing tasks critical to adequate representation"); Tucker Aff. ¶ 55 (stating that LODs "are not expected to undertake tasks outside the scope of their highly limited engagement").

162. Defendants' expert and MCPDS Executive Director Eleanor Maciag admits that LODs hiring experts is "[n]ot [something she has] encountered in [her] tenure." Maciag (Aug. 29) Dep. 86:25-87:1; Guillory Dep. 89:25-90:2 (LODs do not hire experts in status hearings).

163. Tarpinian admits that the "Lawyer of the Day program is one of the places where there's an issue with discovery," and LODs are sometimes not provided complaints or discovery, which she characterized as "unimaginable." Tarpinian Dep. 46:4-18.

164. LODs "have not reviewed discovery or spoken with their clients before the day of the hearing," and that day are given the charging document and "the discovery sometimes, not always." Often, LODs merely "review[] the actual charge itself, [and go] through a quick skim, if

any, of the discovery." McKee Dep. 38:20-39:6, 44:5-46:7; McKee Aff. ¶¶ 24-25; Primus Aff. ¶¶ 60-61.

165. LODs cannot or do not "file substantive motions or even omnibus motions to preserve evidence or obtain more detailed discovery on their client's behalf. As a result, evidence is not preserved by this program and may be erased or destroyed while indigent defendants are waiting for appointment of counsel." Primus Aff. ¶¶ 68-69; Guillory Dep. 89:12-16 (such motions or requests are not made by LODs).

166. Conducting plea negotiations, evaluating pleas, identifying the need for an expert, hiring investigators, conducting legal research, or performing any investigation are all outside the scope of the limited representation of the LOD. Tucker Aff. ¶¶ 53, 57; Primus Dep. 78:10-13 (identifying that LODs do not have the time or ability to conduct the necessary legal research or factual investigation); Primus Aff. ¶ 62 (LODs "do not have any ability to conduct a thorough investigation of the charges and do not have sufficient time to conduct adequate legal research into the nature of the charges").

167. MCPDS's Training and Supervising Director, Christopher Guillory admits there is no communication between LODs and their clients before the day of representation, and his understanding is "[t]hat there is not a continuing relationship" between the Lawyer of the Day and the person they were representing beyond that date of representation. Guillory Dep. 10:2-9; 23:12-17; McKee Aff. ¶ 27; Tucker Aff. ¶¶ 54, 58 (stating that "LODs are not expected to meet with clients after their initial limited representation").

168. Individuals accused of crimes will be denied effective representation if they are unrepresented or if they are only represented by an LOD because these lawyers are not given the

time or guidance necessary to conduct client communications, expert work, investigations, or plea negotiations. Tucker Aff. ¶ 53

169. Attorneys serving as LODs are not expected to undertake tasks outside the scope of their highly limited representation. Tucker Aff. ¶ 55.

170. Because an LOD's representation is limited, they are not in a position to provide adequate or constitutionally sufficient continuous representation to a client throughout their criminal case. Tucker Aff. ¶ 56.

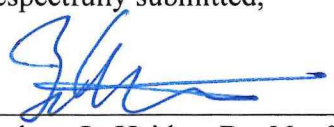
171. Conducting plea negotiations, evaluating pleas, identifying the need for an expert, hiring investigators, conducting legal research, or performing any investigation are all outside the scope of the limited representation of the LOD. Tucker Aff. ¶ 57.

172. LODs are not expected to meet with clients after their limited representation. Tucker Aff. ¶ 58.

173. After the hearing is concluded, LODs typically are not performing any additional tasks for that defendant, are not remaining in communication with that defendant, and are not passing on information to any future lawyer working with that defendant. McKee Aff. ¶ 27.

November 22, 2024

Respectfully submitted,



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STATE OF MAINE
KENNEBEC, ss

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

ANDREW ROBBINS, et al.,

Plaintiffs,

v.

STATE OF MAINE, et al.,

Defendants

DEFENDANTS' OPPOSING STATEMENT OF MATERIAL FACTS

The Executive Director of the Maine Commission on Public Defense Services, in his official capacity, and each of the Commissioners of the Maine Commission on Public Defense Services in their official capacities (collectively "Defendants"), pursuant to M. R. Civ. P. 56(h)(2), hereby provide Defendants' Opposing Statement of Material Facts as follows:

GENERAL OBJECTION[1]

Plaintiffs' Statement of Material Facts includes one hundred and seventy-three (173) purported facts which Plaintiffs contend are material to the questions controlling liability in Counts I, II, and III in this lawsuit. As the party seeking summary judgment, Plaintiffs are obligated to comply with M. R. Civ. P. 56(h)(1), mandating "a separate, *short, and concise* statement of material facts." (emphasis added). "If a party submits an unnecessarily long, repetitive, or otherwise convoluted statement of material facts that fails to achieve the Rule's

[1] "If a party contends that the court should not consider a factual assertion, denial, or qualification, the party may set forth an objection in either its opposing statement or in its reply statement and shall include a brief statement of the reason(s) for the objection and any supporting authority or record citations." M. R. Civ. P. 56(i)(1).

requirement of a 'separate, short, and concise' statement, the court has the discretion to disregard the statement and deny the motion for summary judgment solely on that basis." *First Tracks Invs., LLC v. Murray, Plumb & Murray*, 2015 ME 104, ¶ 2, 121 A.3d 1279 (quoting *Stanley v. Hancock Cnty. Comm'rs*, 2004 ME 157, ¶¶ 28-29, 864 A.2d 169). Maine courts have routinely characterized statements of material facts as excessive and not in compliance with the requirements of Rule 56(h) when they include: (i) 98 paragraphs, *Wells v. Anthem Health Plans of Maine, Inc.*, 2006 WL 1670294, at *4 (Me. Super. May 9, 2006); (ii) 115 paragraphs, *Lyons v. Hotch*, 2002 WL 32068349, at *1 n.1 (Me. Super. Dec. 13, 2002); (iii) 127 paragraphs, *First Tracks Invs., LLC*, 2015 ME 104 at ¶ 2; or (iv) 145 paragraphs. *Oceanic Inn, Inc. v. Sloan's Cove, LLC*, 2016 ME 34, ¶4 n.2, 133 A.3d 1021; *see also Stanley*, 2004 ME 157 at ¶ 27 (191 paragraph statement of material fact fails to comply with M. R. Civ. P. 56(h)). Plaintiffs' 173 statements, based on the number of statements of "material fact" alone, clearly ignore the requirements of Rule 56(h) and should result in denial of Plaintiffs' Motion for Summary Judgment.[2]

Plaintiffs' failure to comply with the requirements of Rule 56(h), results in a record that is inherently confusing, duplicative,[3] and largely occupied by alleged "material facts" which are

[2] *Stanley v. Hancock Cnty. Comm'rs*, 2004 ME 157, ¶ 48, 864 A.2d 169, 183 (Alexander, J., dissenting) (discussing options faced in "dilemma" of "determining how to respond to [a] seriously disorganized, extensive, and repetitive statement in violation of Rule 56(h)(1)" consisting of 191 statements). In their response, below, Defendants address each of Plaintiffs' 173 statements with a response and any objections pursuant to M. R. Civ. P. 56(h)(2). The resulting length of Defendants' Opposing Statement of Material Facts, while unfortunate, is dictated by the excessive length of Plaintiffs' Statement of Material Facts. Because each fact and the response thereto, including objections, should be capable of review based on the response and objections alone, Defendants have attempted to balance an interest in not duplicating identical responses with providing full citations (i.e. not short form citations for legal authority cited in response to prior statements of fact). Defendants; Opposing Statement also includes portions of the cited authority within the response, where appropriate, in the interest of easing the Court's task of referencing multiple external authorities in the course of reviewing each of Plaintiffs' 173 statements.

[3] Examples of identical assertions include those in paragraphs 47 and 113, as well as paragraphs 69 and 78.

neither "material" or "facts", as addressed below. The vast majority of Plaintiffs' purported material facts are, in fact, opinions. *See, e.g.,* Plaintiffs' Statement of Material Facts, ¶¶38 ("The beginning of any criminal case is therefore critical."); 59 ("Among other steps, attorneys need to preserve technological evidence, which can otherwise be erased."); 107("Multiple jurisdictions have identified bail hearings as a critical stage of a defendant's case."); 142 ("Stress is severely exacerbated by the carceral environment."). Opinions are not facts. *See, e.g., Forbis v. City of Portland*, 270 F. Supp. 2d 57, 61 (D. Me. 2003) (distinguishing between plaintiff's "assertion that the police chief ratified or covered up an inadequate internal affairs investigation," and "record evidence for that assertion"). Moreover, numerous purported "material facts" state that a particular witness "admits" an assertion of fact or opinion. *See, e.g.,* Plaintiffs' Statement of Material Facts, ¶¶5 ("James Billings ("Billings") admits . . . "); 7 ("Tardy admits . . ."); 36 ("District Defender Frayla Tarpinian, one of Defendants' experts, admits . . ."); 53 ("Defendants' expert Tarpinian explained that "all roads ... lead to discovery" . . ."); 68 ("Billings admits . . . "); 105 ("Defendants' expert admits . . . "). This tactic, addressing the contents of the record of testimony instead of the import of the testimony itself has been "emphatically condemned" by courts in reviewing statements of material fact. *See, e.g., Reeves v. Safeway Stores, Inc.*, 121 Cal. App. 4th 95, 106 (2004) (what a witness might have said in deposition not a "material fact," and "emphatically condemn[ing]" moving party's statement of "the supposed 'fact' in an attributive form.").[4] Plaintiffs compound this unnecessary complexity by creating and citing affidavits of five (5) of Plaintiffs' designated expert witnesses: all of whom have already been

[4] Instead, an expert opinion can, when properly founded and addressed and addressing the significance of a material fact (i.e. the applicable standard of care) create a genuine issue of material fact barring summary judgment. *See, e.g., In re Fresenius GranuFlo/NaturaLyte Dialysate Prods. Liab. Litig.*, 691 F. Supp. 3d 280, 299 (D. Mass. 2023) ("to defeat a motion for summary judgment, plaintiffs' "expert opinion[s] must be more than a conclusory assertion about ultimate legal issues." (quoting *Hayes v. Douglas Dynamics, Inc.*, 8 F.3d 88, 92 (1st Cir. 1993))).

deposed on the same subject matter as addressed in the affidavits largely tracking their expert witness designations and uniformly devoid of any asserted factual basis or other citation for their conclusory statements of opinion.[5] This Court should, accordingly, strike Plaintiffs' unreasonably duplicative and immaterial "Statement of Undisputed Material Facts," M. R. Civ. P. 12 ("the court may order stricken from any pleading . . . any redundant [or] immaterial . . . matter."), and deny Plaintiffs' Motion for Summary Judgment based on Plaintiffs' abject failure to comply with Rule 56. *See* M. R. Civ. P. 1 (directing that rules of civil procedure, "shall be construed to secure the just, speedy and inexpensive determination of every action.").

OPPOSING STATEMENT OF MATERIAL FACTS

1. Maine tasked the Maine Commission on Public Defense Services (formerly known as the Maine Commission on Indigent Legal Services) with responsibility for administering its indigent defense delivery system. Affidavit of Eve Brensike Primus ("Primus Aff.") ¶ 10.

RESPONSE

Qualified. The statutory responsibility of the Maine Commission on Public Defense Services ("MCPDS") is established in 4 M.R.S.A. § 1801.

OBJECTION

The cited basis for this statement, an affidavit of Plaintiffs' retained expert, lacks any foundation supporting the statement. M.R. Civ. P. 56(e) (affidavits "shall be made on personal knowledge, *shall set forth such facts as would be admissible in*

[5] Those experts are: Eve Brensike Primus, Rachel Casey, Lliam O'Brien, Walter McKee, and Amber Tucker.

evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.") (emphasis added); *see also Carignan v. Dumas*, 2017 ME 15 n.1, 154 A.3d 629 (foundation required for admissibility of facts asserted in support of summary judgment); M. R. Evid. 702-703. Moreover, to the extent this statement seeks to characterize the legal authority or responsibilities of the Maine Commission on Public Defense Services, 4 M.R.S.A. § 1801, et seq., it is not a "fact" and should, therefore, be stricken. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material.").

2. MCPDS's statutory charge is to provide counsel in indigent cases "where folks have a constitutional or a statutory right to counsel." Deposition of MCPDS Deputy Director Eleanor Maciag (Oct. 30) ("Maciag (Oct. 30) Dep.") 8:7-17.

RESPONSE

Denied. MCPDS's statutory charge is found in 4 M.R.S.A. § 1801, et seq.

OBJECTION

To the extent this statement seeks to characterize the legal authority and/or responsibilities of the Maine Commission on Public Defense Services, 4 M.R.S.A. § 1801, et seq., it is not a "fact" and should, therefore, be stricken. *See,*

e.g., Boles v. White, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material.").

3. MCPDS's charge under the statute is to provide efficient, high-quality representation for indigent defendants. Deposition of MCPDS Executive Director Billings (July 10) ("Billings (July 10) Dep.") 116:22-117:3.

RESPONSE

Qualified. MCPDS's statutory authority speaks for itself. 4 M.R.S.A. § 1801, et seq.

OBJECTION

To the extent this statement seeks to characterize the legal authority and/or responsibilities of the Maine Commission on Public Defense Services, 4 M.R.S.A. § 1801, et seq., it is not a "fact" and should, therefore, be stricken. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material.").

4. Most prosecutorial districts in Maine do not have a sufficient number of private attorneys who are willing to accept court-appointed cases, and so must rely on attorneys from other parts of the state who are willing to take on additional cases. Primus Aff. ¶ 30.

RESPONSE

Qualified. There are not presently enough rostered attorneys available to represent indigent criminal defendants to avoid delays in appointment of counsel. Billings Depo #1 (105:23-106:8); *see also id.* at Exhibit 4 (Defendants' Responses to Plaintiffs' First Set of Interrogatories) (attached hereto as **Exhibit A**).

OBJECTION

The cited basis for this statement, an affidavit of Plaintiffs' retained expert, lacks any foundation supporting the statement. M.R. Civ. P. 56(e) (affidavits "shall be made on personal knowledge, *shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein*.") (emphasis added); *see also Carignan v. Dumas*, 2017 ME 15 n.1, 154 A.3d 629 (foundation required for admissibility of facts asserted in support of summary judgment); *see also* M. R. Evid. 702-703.

5. Defense expert and MCPDS Executive Director James Billings ("Billings") admits that MCPDS is "failing" to appoint counsel from the inception of the case. Billings (July 10) Dep. 76:11-77:2; Maciag (Oct. 30) Dep. 9:17-21 (admitting MCPDS is not fulfilling its

statutory mandate to provide sufficient attorneys to meet the demand for indigent legal services).

RESPONSE

Qualified. The cited authority fails to support the fact asserted. Billings Depo. at 76:11-77:2 ("**Q** And that brings us to [ABA Ten Principles of a Public Defense Delivery System] Principle 6: Counsel should be appointed immediately after arrest, detention, or upon request. What is MCILS's view on how the State of Maine is doing with this Principle? MR. MAGENIS: Objection to form, extent it calls for a legal conclusion. You can answer. **A** Well, it's failing. It -- it -- leaving aside whether I agree with the Principle or not, we are not meeting the Principle because of the delay in appointing people."); Maciag Depo. #2 ("Q. Looking at this statute, would you agree that MCPDS is obligated to "provide high quality effective and efficient representation and promote due process for persons who receives indigent legal services in parity with the resources of the State and consistent with federal and state constitutional and statutory obligations"? A. Yes. Q. Is MCPDS currently meeting that obligation? MR. MAGENIS: Objection, calls for a legal opinion. It was asked and answered at the 30(b)(6). You can answer. A. We are striving to provide high quality effective, efficient representation with our rostered attorneys and our employed defenders. BY MS. SOTOOHI: Q. Why striving but not accomplished? MR. MAGENIS: Objection to form. A. Currently we are not providing -- there are not enough attorneys

available to meet the demand for indigent legal services. So in terms of -- for those individuals, we are unable to meet that -- our statutory mandate.").

OBJECTION

The cited basis for this statement, deposition testimony subject to objections based on the question seeking a conclusion of law, consist and/or are cited in support of conclusions of law. To the extent this statement seeks to characterize the legal authority and/or responsibilities of the Maine Commission on Public Defense Services, 4 M.R.S.A. § 1801, et seq., it is not a "fact" and should, therefore, be stricken. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material.").

6. Commissioner and MCPDS Chair Joshua Tardy ("Tardy") admits that Maine is in a crisis concerning the State's ability to provide effective representation under the Sixth Amendment. Deposition of MCPDS Chair Joshua Tardy ("Tardy Dep.") 56:10-16.

RESPONSE

Denied. The cited authority fails to support the fact asserted. Tardy Depo. at 56:10-16 ("Q. Switching gears again, I would like to ask a general question. MCPDS's overarching role by statute, and this is in Section 1801, is to provide

efficient, high-quality representation to indigent criminal defendants. Do you believe that's happening currently? MR. MAGENIS: Objection to the extent it calls for a legal opinion. A. Yes. BY MS. BOCK: Q. Do you believe that the current representation crisis is interfering with MCPDS's role to fulfill this statutory obligation? MR. MAGENIS: Objection to form. A. I believe that we have a statutory obligation, and we're doing our best to fulfill it. BY MS. BOCK: Q. Do you agree that the representation problems we've been discussing are a crisis for the state's ability to provide effective representation under the Sixth Amendment? MR. MAGENIS: Objection to the extent it calls for a legal opinion. A. I agree that we're in a crisis. BY MS. BOCK: Q. In your view, roughly how long has there been a crisis? A. I think there's -- to be consistent with one of my prior answers, I think that any time that there is an unrepresented defendant incarcerated, it's problematic. I think that the problems in Maine have become more acute as we came out of the pandemic, and the backlog of cases didn't match the population of attorneys qualified to provide the representation.").

OBJECTION

The cited basis for this statement, deposition testimony subject to objections based on the question seeking a conclusion of law, consist and/or are cited in support of conclusions of law. To the extent this statement seeks to characterize the legal authority and/or responsibilities of the Maine Commission on Public Defense Services, 4 M.R.S.A. § 1801, et seq., it is not a "fact" and should, therefore, be stricken. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material

fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material.").

7. Tardy admits that criminal defendants who can't afford an attorney should have the government provide an attorney to them at no cost to them, and if defendants are allowed to go unrepresented that "would cut away at the fabric of our community and society." Tardy Dep. 57:8-16.

RESPONSE

Qualified. Plaintiffs' characterization of Commissioner Tardy's testimony as an admission is misleading. Tardy Depo. 57:2-16 (cited testimony in response to question asking, "Why do you believe in the Sixth Amendment beyond needing to comply with your constitutional obligations -- excuse me, *beyond the state needing to comply with its constitutional obligations*?") (emphasis added).

OBJECTION

To the extent this statement seeks to characterize the legal authority and/or responsibilities of the Maine Commission on Public Defense Services, 4 M.R.S.A. § 1801, et seq., it is not a "fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting

Stewart-Dore v. Webber Hosp. Ass'n, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material.").

8. Throughout Maine, there are not enough criminal defense attorneys engaged to handle the volume of criminal cases requiring the appointment of criminal defense counsel. Primus Aff. ¶ 38.

RESPONSE

Qualified. There are not presently enough rostered attorneys available to represent indigent criminal defendants to avoid delays in appointment of counsel. Billings Depo #1 (105:23-106:8); *see also id.* at Exhibit 4 (Defendants' Responses to Plaintiffs' First Set of Interrogatories).

OBJECTION

The cited basis for this statement, an affidavit of Plaintiffs' retained expert, lacks any foundation supporting the statement. M. R. Civ. P. 56(e) (affidavits "shall be made on personal knowledge, *shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein*.") (emphasis added); *see also Carignan v. Dumas*, 2017 ME 15 n.1, 154 A.3d 629 (foundation required for admissibility of facts asserted in support of summary judgment); *see also* M. R. Evid. 702-703.

9. As a result, indigent criminal defendants who are constitutionally entitled to the effective assistance of trial counsel are routinely being told at their first formal hearing that there are no available lawyers to represent them. Primus Aff. ¶ 39.

RESPONSE

Qualified. There are not presently enough rostered attorneys available to represent indigent criminal defendants to avoid delays in appointment of counsel. Billings Depo #1 (105:23-106:8); *see also id.* at Exhibit 4 (Defendants' Responses to Plaintiffs' First Set of Interrogatories).

OBJECTION

The cited basis for this statement, an affidavit of Plaintiffs' retained expert, lacks any foundation supporting the statement. M.R. Civ. P. 56(e) (affidavits "shall be made on personal knowledge, *shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein*.") (emphasis added); *see also Carignan v. Dumas*, 2017 ME 15 n.1, 154 A.3d 629 (foundation required for admissibility of facts asserted in support of summary judgment); *see also* M. R. Evid. 702-703.

10. Because MCPDS does not have a sufficient pool of attorneys, neither employed nor rostered, there is a growing list of people who need, but who do not receive, counsel. Maciag (Oct. 30) Dep. 35:14-16.

RESPONSE

Qualified. The testimony cited in support of this statement references a "Counsel Needed" list, compiled manually by individual court clerks and not directly from MEJIS data, which the 30(b)(6) designee for the Administrative Office of Courts testified was inherently unreliable and not the official record of indigent defendants entitled to counsel who are awaiting appointment of counsel. 30(b)(6) Deposition of Administrative Office of the Courts (Sept. 4, 2024) ("AOC Depo"), 47:18-49:16 (testifying that AOC relies on MEJIS, not manually created "Counsel Needed" lists for accurate information on unrepresented individuals). The characterization that indigent criminal defendants "do not receive [] counsel" is misleading and unsupported by the cited authority in context of the question asked and the full response of the witness to the cited question and prior questions. Maciag Depo. (Oct. 30, 2024) at 34:9-35:23.

11. Indigent criminal defendants who are being detained in jail pre-trial are regularly being held for weeks (and even months) without having attorneys appointed to represent them. Primus Aff. ¶ 40.

RESPONSE

Qualified. There are not presently enough rostered attorneys available to represent indigent criminal defendants to avoid delays in appointment of counsel. Billings Depo #1 (105:23-106:8); *see also id.* at Exhibit 4 (Defendants' Responses to Plaintiffs' First Set of Interrogatories).

OBJECTION

The cited basis for this statement, an affidavit of Plaintiffs' retained expert, lacks any foundation supporting the statement. M.R. Civ. P. 56(e) (affidavits "shall be made on personal knowledge, *shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein*.") (emphasis added); *see also Carignan v. Dumas*, 2017 ME 15 n.1, 154 A.3d 629 (foundation required for admissibility of facts asserted in support of summary judgment); *see also* M. R. Evid. 702-703. The affidavit of Plaintiffs' retained expert neither cites nor purports to rely upon any fact underlying her conclusion. M. R. Evid. 702.

12. Indigent defendants who are not detained pre-trial are often waiting even longer to have criminal defense attorneys appointed in their cases due to the attorney shortage. Primus Aff. ¶ 41.

RESPONSE

Qualified. There are not presently enough rostered attorneys available to represent indigent criminal defendants to avoid delays in appointment of counsel. Billings Depo #1 (105:23-106:8); *see also id.* at Exhibit 4 (Defendants' Responses to Plaintiffs' First Set of Interrogatories).

OBJECTION

The cited basis for this statement, an affidavit of Plaintiffs' retained expert, lacks any foundation supporting the statement. M.R. Civ. P. 56(e) (affidavits "shall be made on personal knowledge, *shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein*.") (emphasis added); *see also Carignan v. Dumas*, 2017 ME 15 n.1, 154 A.3d 629 (foundation required for admissibility of facts asserted in support of summary judgment); *see also* M. R. Evid. 702-703. The affidavit of Plaintiffs' retained expert neither cites nor purports to rely upon any fact underlying her conclusion. M. R. Evid. 702.

13. As of the beginning of 2024, there were around 300 defendants without counsel, and the number has now "gone far beyond that." Tardy Dep. 21:9-13.

RESPONSE

Qualified. Tardy Depo. at 21:6-13 (responding to question asking, "Q. What is your current awareness of the geographic variation in the problem that the [November 3, 2023] standing order [issued by the Maine Judicial Branch] is designed to fix?" by testifying that, "there is an ebb and flow [in the reported number of unrepresented indigent criminal defendants], but it's an ebb and flow of unacceptability."). Commissioner Tardy's characterization of the number of unrepresented indigent criminal defendants was based on review of "Counsel Needed" lists provided by the Maine Judicial Branch. Tardy Depo. at 55:2-12; *id.* at 25:20-25; 30(b)(6) Deposition of Administrative Office of the Courts (Sept. 4,

2024) ("AOC Depo"), 47:18-49:16 (testifying that AOC relies on MEJIS, not manually created "Counsel Needed" lists for accurate information on unrepresented individuals). The testimony cited in support of this statement references a "Counsel Needed" list, compiled manually by individual court clerks and not directly from MEJIS data, which the 30(b)(6) designee for the Administrative Office of Courts testified was inherently unreliable and not the official record of indigent defendants entitled to counsel who are awaiting appointment of counsel. *Id*.

14. Tardy admits that even "one or two defendants sitting in jail without an attorney or access to an attorney if they could otherwise not afford one is unacceptable." Tardy Dep. 21:15-17.

RESPONSE

Qualified. The term "unacceptable" is not defined in the cited evidence. Tardy Depo. at 21:6-17.

OBJECTION

The fact that a Commissioner of MCPDS believes that it is "unacceptable" for indigent criminal defendants to be unrepresented for any period of time and without regard for the legal analysis required pursuant to Counts I and II of Plaintiffs' Amended Complaint asserting violations of the United States and Maine Constitutions is not "material" to whether or not there is a violation of

Plaintiffs' rights pursuant to the United States and Maine Constitutions. and this paragraph should, therefore, be stricken as "immaterial". *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material.").

15. Statistical expert Professor Liam O'Brien performed an analysis of the case information database created through an automated data exchange process between MCPDS and the Judicial Branch, in which the Judicial Branch regularly extracts a subset of data from their case management system, MEJIS, and transfers that data to MCPDS. Affidavit of Liam O'Brien, Ph.D. ("O'Brien Aff.") ¶¶ 5-6.

RESPONSE

Denied. Prof. O'Brien did not perform any independent analysis to create the document titled "Analysis 2", instead relying on parameters provided to Prof. O'Brien by Plaintiffs' counsel to select portions of data from spreadsheets produced by the Administrative Office of the Courts as defined by Plaintiffs' counsel. O'Brien Depo. at 33:14-22; *id.* at 34:9-35:14 (attached hereto as **Exhibit B**).

OBJECTION

Whether or not Plaintiffs' retained expert performed or did not perform an analysis is immaterial to whether or not there is a violation of Plaintiffs' rights pursuant to the United States and Maine Constitutions. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This proffered fact should, accordingly, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i)(1).

16. According to O'Brien's analysis of the database produced by MCPDS, as of November 18, 2024, there were 593 adult criminal cases in which the indigent defendants' motion for counsel was granted but defendants were never appointed counsel. O'Brien Aff. ¶ 7, Exhibit 1.

RESPONSE

Qualified. "The database produced by MCPDS as of November 18, 2024," is misleading as it refers to data produced by the Administrative Office of the Courts ("AOC") to MCPDS. Deposition of Arthur Washer (Aug. 27, 2024) ("Washer Depo."), 55:2-57:20 (describing data received from AOC) (attached hereto as **Exhibit C**). That data, derived from the Maine Judicial Information System ("MEJIS"), is a subset of that data, subject to an unquantifiable degree of error and, to be reliable, must be compared to the filings and other docket records in

each underlying case to determine its accuracy. 30(b)(6) Deposition of Administrative Office of the Courts (Sept. 4, 2024) ("AOC Depo"), 47:18-49:16 (testifying that AOC relies on MEJIS, not manually created "Counsel Needed" lists for accurate information on unrepresented individuals) (attached hereto as **Exhibit D**). Prof. O'Brien did not perform any independent analysis to create the document titled "Analysis 1", instead relying on parameters provided to Prof. O'Brien by Plaintiffs' counsel to select portions of data from spreadsheets produced by the Administrative Office of the Courts as defined by Plaintiffs' counsel. O'Brien Depo. at 39:13-20 ("Q. All right. So going back to Exhibit 10 which you testified to earlier, what was the question which you were answering in analysis 1? A. Analysis 1 is looking for people that had been granted -- so they filed a motion for the appointment of counsel that was granted or there was an order for counsel entered but they did not have an attorney listed in the case file.").

OBJECTION

In the affidavit to which this statement cites, Plaintiffs have failed to establish the necessary foundation for the reliability of any methodology underlying this statement. M. R. Civ. P. 702; *In re Sarah C.*, 2004 ME 152, ¶ 10, 864 A.2d 162 ("The proponent of expert testimony must satisfy two requirements: first, the testimony must be relevant pursuant to M.R. Evid. 401, and second, the testimony must assist the jury in understanding the evidence or determining the existence of a fact in issue.") (citing *State v. Fleming,* 1997 ME 158, ¶ 14, 698 A.2d at 507;

Williams, 388 A.2d at 504); *see also State v. Ericson*, 2011 ME 28, ¶ 14, 13 A.3d 777 (analysis based on unreliable methodology is, itself, unreliable and therefore irrelevant) (citing *Tolliver v. Dep't of Transp.,* 2008 ME 83, ¶ 29, 948 A.2d 1223)). Additionally, the analysis underlying this statement was not produced by Plaintiffs in discovery prior to its submission in support of Plaintiffs' Motion for Summary judgment, despite being responsive to discovery requests served upon Plaintiffs and Plaintiffs' continuing duty to supplement Plaintiffs' discovery responses. There is no evidence included in the affidavit underlying this statement identifying the methodology resulting in the conclusion. Notwithstanding use of updated data as provided by the Administrative Office of the Courts on or about November 18, 2024, the analysis at Exhibit 1 of the O'Brien Affidavit appears to use a different set of parameters not disclosed by Plaintiffs in discovery or explained by Prof. O'Brien during his November 1, 2024 deposition. *Cf.* O'Brien Depo., Exhibit 10 ("Analysis 1") (attached hereto as **Exhibit E**) and O'Brien Affidavit at ¶7, Exhibit 1 ("Analysis 1"); *see also* O'Brien Depo. at 29:12:17 (testifying that lines 4 and 5 of Analysis 1 are the "descriptions of what should be represented in this list of case IDs."). Plaintiffs' failure to disclose the additional work performed by Prof. O'Brien by modifying his initial parameters for "Analysis 1" until revealing it in support of their Motion for Summary Judgment merits striking this paragraph. *See* O'Brien Depo. at 62:7-11 ("Q. Professor O'Brien, other than the seven analyses that you've testified to today and are referenced in your disclosure, do you at present have any intention to do any further work in this matter? A. No.").

17. According to O'Brien's analysis of the database produced by MCPDS as of November 18, 2024, there were 822 adult criminal cases in which indigent defendants (or others on their behalf) filed requests for appointment of counsel, but were never appointed counsel. O'Brien Aff. ¶ 8, Exhibit 2.

RESPONSE

Qualified. Prof. O'Brien did not perform any independent analysis to create the document titled "Analysis 2", instead relying on parameters provided to Prof. O'Brien by Plaintiffs' counsel to select portions of data from spreadsheets produced by the Administrative Office of the Courts as defined by Plaintiffs' counsel. O'Brien Depo. at 33:14-22 ("Q. . . . [W]hat established the variables or points that you were looking at in each of these successive analyses; how did that come about? A. So you can think of Exhibit 10, analysis 1, as a subset of the cases that are in analysis 2 or Exhibit 11. Q. Okay. A. The difference between the two is that analysis 2 also includes cases where somebody filed a motion for appointment of counsel but then there was no subsequent indication that that motion was granted."); *id.* at 34:9-35:14.

OBJECTION

In the affidavit to which this statement cites, Plaintiffs have failed to establish the necessary foundation for the reliability of any methodology underlying this statement. M. R. Civ. P. 702; *In re Sarah C.*, 2004 ME 152, ¶ 10, 864 A.2d 162

("The proponent of expert testimony must satisfy two requirements: first, the testimony must be relevant pursuant to M.R. Evid. 401, and second, the testimony must assist the jury in understanding the evidence or determining the existence of a fact in issue.") (citing *State v. Fleming,* 1997 ME 158, ¶ 14, 698 A.2d at 507; *Williams,* 388 A.2d at 504); *see also State v. Ericson*, 2011 ME 28, ¶ 14, 13 A.3d 777 (analysis based on unreliable methodology is, itself, unreliable and therefore irrelevant) (citing *Tolliver v. Dep't of Transp.,* 2008 ME 83, ¶ 29, 948 A.2d 1223)). Additionally, the analysis underlying this statement was not produced by Plaintiffs in discovery prior to its submission in support of Plaintiffs' Motion for Summary judgment, despite being responsive to discovery requests served upon Plaintiffs and Plaintiffs' continuing duty to supplement Plaintiffs' discovery responses. There is no evidence included in the affidavit underlying this statement identifying the methodology resulting in the conclusion. Notwithstanding use of updated data as provided by the Administrative Office of the Courts on or about November 18, 2024, the analysis at Exhibit 1 of the O'Brien Affidavit appears to use a different set of parameters not disclosed by Plaintiffs in discovery or addressed by Prof. O'Brien during his November 1, 2024 deposition. *Cf.* O'Brien Depo., Exhibit 10 ("Analysis 1") and O'Brien Affidavit at ¶7, Exhibit 1 ("Analysis 1"); *see also* O'Brien Depo. at 29:12:17 (testifying that lines 4 and 5 of Analysis 1 are the "descriptions of what should be represented in this list of case IDs."). Plaintiffs' failure to disclose the additional work performed by Prof. O'Brien by modifying his initial parameters for "Analysis 1" until revealing it in support of their Motion for Summary Judgment

merits striking this paragraph. *See* O'Brien Depo. at 62:7-11 ("Q. Professor O'Brien, other than the seven analyses that you've testified to today and are referenced in your disclosure, do you at present have any intention to do any further work in this matter? A. No.").

18. O'Brien's Exhibit 2 analysis is more accurate than his Exhibit l analysis because it includes hundreds of cases where individuals had requested appointment of counsel, but the court had not acted on those requests (sometimes for weeks or months). O'Brien Aff. ¶ 8.

RESPONSE

Qualified. Prof. O'Brien did not perform any independent analysis to create the document titled "Analysis 2", instead relying on parameters provided to Prof. O'Brien by Plaintiffs' counsel to select portions of data from spreadsheets produced by the Administrative Office of the Courts as defined by Plaintiffs' counsel. O'Brien Depo. at 33:14-22. What constitutes "accurate" is not defined by the source upon which Plaintiffs rely. O'Brien Affidavit, ¶8.

19. In addition to the 822 cases of defendants who requested but were never appointed counsel, the November 18 database shows an additional 310 adult criminal cases in which indigent defendants' counsel withdrew but defendants were not appointed new counsel. O'Brien Aff., ¶ 9, Exhibit 3.

RESPONSE

Qualified. Prof. O'Brien did not perform any independent analysis to create the document titled "Analysis 2", instead relying on parameters provided to Prof. O'Brien by Plaintiffs' counsel to select portions of data from spreadsheets produced by the Administrative Office of the Courts as defined by Plaintiffs' counsel. O'Brien Depo. at 33:14-22. By premising an assertion regarding "822 cases of defendants" on the number of "adult criminal cases," without consideration of indigent criminal defendants with multiple separate pending cases this statement misleadingly inflates the number reported. O'Brien Aff., ¶9, Exhibit 3.

OBJECTION

The Subclass whose claims are set to be tried in January 2025 consists of indigent criminal defendants entitled to the appointment of counsel, "*who remain unrepresented* after arraignment or first appearance." Order on Motion to Amend Class, 10 (Sep. 26, 2024) (emphasis added). This statement is, accordingly, immaterial to the claims presently at issue. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This proffered fact should, accordingly, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i)(1).

20. According to O'Brien's analysis of the November 18 database, for the 593 cases of indigent defendants whose motion for counsel was granted but who were never appointed counsel, 553 had been without counsel for 7 days or more since counsel was ordered; 480 had been without counsel for 14 days or more; and 409 had been without counsel for 30 days or more. For these 593 cases, the median duration of time without counsel since the date counsel was granted or ordered was 56 days. O'Brien Aff. ¶ 10, Exhibit 4.

RESPONSE

Qualified. Prof. O'Brien did not perform any independent analysis to create the document titled "Analysis 2", instead relying on parameters provided to Prof. O'Brien by Plaintiffs' counsel to select portions of data from spreadsheets produced by the Administrative Office of the Courts as defined by Plaintiffs' counsel. O'Brien Depo. at 33:14-22. This assertion, based on the number of "cases of indigent defendants" without consideration of indigent criminal defendants with multiple separate pending cases this statement misleadingly inflates the number reported. O'Brien Aff., ¶10, Exhibit 4.

OBJECTION

The time during which members of Plaintiffs' Subclass are without counsel, without reference to an underlying procedural event qualifying as a "critical stage," is immaterial to the claims presently at issue. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . .

. .” (quoting *Stewart-Dore v. Webber Hosp. Ass’n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (“As to materiality, the substantive law will identify which facts are material.”). This proffered fact should, accordingly, be stricken from Plaintiffs’ Statement of Material Fact. M. R. Civ. P. 56(i)(1).

21. According to O’Brien’s analysis of the November 18 database, for the 822 cases of indigent defendants who requested but were never appointed counsel, 768 had been without counsel for 7 days or more since counsel was requested; 682 had been without counsel for 14 or more days; and 584 had been without counsel for 30 or more days. For these 822 cases, the median duration of time without counsel since the date counsel was requested was 59 days. O’Brien Aff. ¶ 11, Exhibit 5.

RESPONSE

Qualified. Prof. O’Brien did not perform any independent analysis to create the document titled “Analysis 2”, instead relying on parameters provided to Prof. O’Brien by Plaintiffs’ counsel to select portions of data from spreadsheets produced by the Administrative Office of the Courts as defined by Plaintiffs’ counsel. O’Brien Depo. at 33:14-22. This assertion, based on the number of “cases of indigent defendants” without consideration of indigent criminal defendants with multiple separate pending cases this statement misleadingly inflates the number reported. O’Brien Aff. ¶ 11; *id.* at Exhibit 5.

OBJECTION

The time during which members of Plaintiffs' Subclass are without counsel, without reference to an underlying procedural event qualifying as a "critical stage," is immaterial to the claims presently at issue. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This proffered fact should, accordingly, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i)(1).

22. O'Brien's Exhibit 5 analysis is a more accurate analysis of the duration of time defendants have been without counsel than his Exhibit 4 analysis. Because Analysis 4 counts from the date the court granted a motion for appointment of counsel rather than the date the defendant filed a request for counsel, it undercounts the duration of time without counsel in the cases in which the court has not acted on the request for counsel, sometimes for weeks or months. O'Brien Aff. ¶ 11.

RESPONSE

Qualified. What constitutes "accurate" is not defined by the source upon which Plaintiffs rely. O'Brien Aff. ¶ 11.

OBJECTION

The time during which members of Plaintiffs' Subclass are without counsel, without reference to an underlying procedural event qualifying as a "critical stage," is immaterial to the claims presently at issue. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). The time during which "the court has not acted on [a] request for counsel," is immaterial to the liability of the Defendants against whom Plaintiffs have asserted their claims. *Id.* This proffered fact should, accordingly, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i)(1).

23. According to O'Brien's analysis of the November 18 database, for the 822 cases in which indigent defendants who requested but were never appointed counsel, 796 had been without counsel for 7 days or more since the case was filed; 779 had been without counsel for 14 days or more; and 686 had been without counsel for 30 days or more. For these 822 cases, the median duration of time without counsel since the case was filed was 95 days. O'Brien Aff. ¶ 12, Exhibit 6.

RESPONSE

Qualified. Prof. O'Brien did not perform any independent analysis to create the document titled "Analysis 2", instead relying on parameters provided to Prof. O'Brien by Plaintiffs' counsel to select portions of data from spreadsheets

produced by the Administrative Office of the Courts as defined by Plaintiffs' counsel. O'Brien Depo. at 33:14-22. This assertion, based on the number of "cases of indigent defendants" without consideration of indigent criminal defendants with multiple separate pending cases this statement misleadingly inflates the number reported. O'Brien Aff. ¶ 12; *id.* at Exhibit 6.

OBJECTION

The time during which members of Plaintiffs' Subclass are without counsel, without reference to an underlying procedural event qualifying as a "critical stage," is immaterial to the claims presently at issue. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This proffered fact should, accordingly, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i)(1).

24. According to O'Brien's analysis of the November 18 database, for the 272 cases in which indigent defendants' counsel had their motion for withdrawal granted and were not appointed new counsel, 269 defendants had been without counsel for 7 days or more since their motion for withdrawal was granted; 260 had been without counsel for 14 or more days; and 244 had been without counsel for 30 or more days. For these 272 cases,

the median duration of time without counsel since the date a motion for withdrawal was granted was 232.5 days. O'Brien Aff. ¶ 13, Exhibit 7.

RESPONSE

Qualified. Prof. O'Brien did not perform any independent analysis to create the document titled "Analysis 2", instead relying on parameters provided to Prof. O'Brien by Plaintiffs' counsel to select portions of data from spreadsheets produced by the Administrative Office of the Courts as defined by Plaintiffs' counsel. O'Brien Depo. at 33:14-22. By premising an assertion regarding "272 cases in which indigent defendants' counsel had their motion for withdrawal granted" on the number of "cases," without consideration of indigent criminal defendants with multiple separate pending cases this statement misleadingly inflates the number reported. O'Brien Aff. ¶ 13, Exhibit 7.

OBJECTION

The Subclass whose claims are set to be tried in January 2025 consists of indigent criminal defendants entitled to the appointment of counsel, "*who remain unrepresented* after arraignment or first appearance." Order on Motion to Amend Class, 10 (Sep. 26, 2024) (emphasis added). This statement is, accordingly, immaterial to the claims presently at issue. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive

law will identify which facts are material."). This proffered fact should, accordingly, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i)(1).

25. Over the past year, the number of adult criminal cases listed on the "Counsel Needed" spreadsheets distributed by the Administrative Office of the courts has increased dramatically. Affidavit of Eleanor Shea ("Shea Aff. "), ¶ 11.

RESPONSE

Qualified. The "Counsel Needed" spreadsheet is intended to assist in soliciting the appointment of attorneys for indigent criminal defendants appointed counsel but for whom specific counsel has not been identified or appointed. AOC Depo. at 44:5-12. The Administrative Office of the Courts does not know whether the "Counsel Needed" spreadsheets are a reliable record of indigent defendants in the State of Maine who do currently do not have appointed counsel. *Id.* at 43:18-23. In order to reliably determine whether or not counsel has been appointed to represent an indigent criminal defendant, the Administrative Office of the Courts would review individual case information in the Maine Judicial Information System ("MEJIS"). *Id.* at 46:20-47:1; *id.* at 47:25-48:5 ("Q. If you were trying to determine whether an attorney had appeared in a specific case, what source would you look at? MR. CEDRONE: Objection, form. A. Had entered an appearance or been appointed, I would look in MEJIS."); *id.* at 50:22-51:5.

OBJECTION

The source cited establishes no foundation for the contention that any increase in the "number of adult criminal cases" was "dramatic[]" as required by M. R. Civ. P. 56(e) ("Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein."). This proffered fact should, accordingly, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i)(1).

26. The November 13, 2023 Counsel Needed spreadsheet created and distributed by the Administrative Office of the Courts ("Counsel Needed spreadsheet") contains 157 rows of adult criminal cases in need of counsel. Of those rows, 52 are recorded as in custody. Shea Aff. ¶ ¶ 2-3, Exhibit A.

RESPONSE

Qualified. A fluctuating number of indigent criminal defendants, including defendants incarcerated pre-trial, are awaiting the appointment of defense counsel following a court order finding them eligible for the appointment of defense counsel. Billings Depo #1 (105:23-106:8); *see also id.* at Exhibit 4 (Defendants' Responses to Plaintiffs' First Set of Interrogatories). In order to reliably determine whether or not counsel has been appointed to represent an indigent criminal defendant, the Administrative Office of the Courts would review individual case information in the Maine Judicial Information System ("MEJIS").

Id. at 47:25-48:5 (to reliably determine whether or not counsel has been appointed to represent an indigent criminal defendant, the Administrative Office of the Courts would review individual case information in MEJIS); *id.* at 46:20-47:1; *id.* at 50:22-51:5.

OBJECTION

The number of adult criminal cases included in a 2023 spreadsheet intended to assist clerks of the Unified Criminal Docket in locating qualified defense counsel to represent indigent criminal defendants, AOC Depo. #1 at 44:5-12, is not material to the elements controlling the claims of Plaintiffs' Subclass that their rights to actual assistance of counsel under the Sixth Amendment of the United States Constitution and article I, §6 of the Maine Constitution have been violated. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This proffered fact should, accordingly, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i)(1).

27. The December 1, 2023 Counsel Needed spreadsheet contains 211 rows. Of those rows, 55 are recorded as in custody. Shea Aff. ¶ 4, Exhibit B.

RESPONSE

Qualified. A fluctuating number of indigent criminal defendants, including defendants incarcerated pre-trial, are awaiting the appointment of defense counsel following a court order finding them eligible for the appointment of defense counsel. Billings Depo #1 (105:23-106:8); *see also id.* at Exhibit 4 (Defendants' Responses to Plaintiffs' First Set of Interrogatories). In order to reliably determine whether or not counsel has been appointed to represent an indigent criminal defendant, the Administrative Office of the Courts would review individual case information in the Maine Judicial Information System ("MEJIS"). *Id.* at 47:25-48:5 (to reliably determine whether or not counsel has been appointed to represent an indigent criminal defendant, the Administrative Office of the Courts would review individual case information in MEJIS); *id.* at 46:20-47:1; *id.* at 50:22-51:5.

OBJECTION

The number of adult criminal cases included in a 2023 spreadsheet intended to assist clerks of the Unified Criminal Docket in locating qualified defense counsel to represent indigent criminal defendants, AOC Depo. #1 at 44:5-12, is not material to the elements controlling the claims of Plaintiffs' Subclass that their rights to actual assistance of counsel under the Sixth Amendment of the United States Constitution and article I, §6 of the Maine Constitution have been violated. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248

(1986) ("As to materiality, the substantive law will identify which facts are material."). This proffered fact should, accordingly, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i)(1).

28. The January 31, 2024 Counsel Needed spreadsheet contains 381 rows. Of those rows, 118 are recorded as in custody. Shea Aff. ¶ 5, Exhibit C.

RESPONSE

Qualified. A fluctuating number of indigent criminal defendants, including defendants incarcerated pre-trial, are awaiting the appointment of defense counsel following a court order finding them eligible for the appointment of defense counsel. Billings Depo #1 (105:23-106:8); *see also id.* at Exhibit 4 (Defendants' Responses to Plaintiffs' First Set of Interrogatories). In order to reliably determine whether or not counsel has been appointed to represent an indigent criminal defendant, the Administrative Office of the Courts would review individual case information in the Maine Judicial Information System ("MEJIS"). *Id.* at 47:25-48:5 (to reliably determine whether or not counsel has been appointed to represent an indigent criminal defendant, the Administrative Office of the Courts would review individual case information in MEJIS); *id.* at 46:20-47:1; *id.* at 50:22-51:5.

OBJECTION

The number of adult criminal cases included in a 2024 spreadsheet intended to assist clerks of the Unified Criminal Docket in locating qualified defense counsel to represent indigent criminal defendants, AOC Depo. #1 at 44:5-12, is not material to the elements controlling the claims of Plaintiffs' Subclass that their rights to actual assistance of counsel under the Sixth Amendment of the United States Constitution and article I, §6 of the Maine Constitution have been violated. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This proffered fact should, accordingly, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i)(1).

29. The March 15, 2024 Counsel Needed spreadsheet contains 685 rows. Of those rows, 180 are recorded as in custody. Shea Aff. ¶ 6, Exhibit D.

RESPONSE

Qualified. A fluctuating number of indigent criminal defendants, including defendants incarcerated pre-trial, are awaiting the appointment of defense counsel following a court order finding them eligible for the appointment of defense counsel. Billings Depo #1 (105:23-106:8); *see also id.* at Exhibit 4 (Defendants' Responses to Plaintiffs' First Set of Interrogatories). In order to reliably determine whether or not counsel has been appointed to represent an indigent

criminal defendant, the Administrative Office of the Courts would review individual case information in the Maine Judicial Information System ("MEJIS"). *Id.* at 47:25-48:5 (to reliably determine whether or not counsel has been appointed to represent an indigent criminal defendant, the Administrative Office of the Courts would review individual case information in MEJIS); *id.* at 46:20-47:1; *id.* at 50:22-51:5.

OBJECTION

The number of adult criminal cases included in a 2024 spreadsheet intended to assist clerks of the Unified Criminal Docket in locating qualified defense counsel to represent indigent criminal defendants, AOC Depo. #1 at 44:5-12, is not material to the elements controlling the claims of Plaintiffs' Subclass that their rights to actual assistance of counsel under the Sixth Amendment of the United States Constitution and article I, §6 of the Maine Constitution have been violated. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This proffered fact should, accordingly, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i)(1).

30. The May 31, 2024 Counsel Needed spreadsheet contains 899 rows. Of those rows, 214 are recorded as in custody. Shea Aff. ¶ 7, Exhibit E.

RESPONSE

Qualified. A fluctuating number of indigent criminal defendants, including defendants incarcerated pre-trial, are awaiting the appointment of defense counsel following a court order finding them eligible for the appointment of defense counsel. Billings Depo #1 (105:23-106:8); *see also id.* at Exhibit 4 (Defendants' Responses to Plaintiffs' First Set of Interrogatories). In order to reliably determine whether or not counsel has been appointed to represent an indigent criminal defendant, the Administrative Office of the Courts would review individual case information in the Maine Judicial Information System ("MEJIS"). *Id.* at 47:25-48:5 (to reliably determine whether or not counsel has been appointed to represent an indigent criminal defendant, the Administrative Office of the Courts would review individual case information in MEJIS); *id.* at 46:20-47:1; *id.* at 50:22-51:5.

OBJECTION

The number of adult criminal cases included in a 2024 spreadsheet intended to assist clerks of the Unified Criminal Docket in locating qualified defense counsel to represent indigent criminal defendants, AOC Depo. #1 at 44:5-12, is not material to the elements controlling the claims of Plaintiffs' Subclass that their rights to actual assistance of counsel under the Sixth Amendment of the United States Constitution and article I, §6 of the Maine Constitution have been violated. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect

the outcome of the case . . . .” (quoting *Stewart-Dore v. Webber Hosp. Ass’n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (“As to materiality, the substantive law will identify which facts are material.”). This proffered fact should, accordingly, be stricken from Plaintiffs’ Statement of Material Fact. M. R. Civ. P. 56(i)(1).

31. The August 12, 2024 Counsel Needed spreadsheet contains 785 rows. Of those rows, 209 are recorded as in custody. Shea Aff. ¶ 8, Exhibit F.

RESPONSE

Qualified. A fluctuating number of indigent criminal defendants, including defendants incarcerated pre-trial, are awaiting the appointment of defense counsel following a court order finding them eligible for the appointment of defense counsel. Billings Depo #1 (105:23-106:8); *see also id.* at Exhibit 4 (Defendants’ Responses to Plaintiffs’ First Set of Interrogatories). In order to reliably determine whether or not counsel has been appointed to represent an indigent criminal defendant, the Administrative Office of the Courts would review individual case information in the Maine Judicial Information System (“MEJIS”). *Id.* at 47:25-48:5 (to reliably determine whether or not counsel has been appointed to represent an indigent criminal defendant, the Administrative Office of the Courts would review individual case information in MEJIS); *id.* at 46:20-47:1; *id.* at 50:22-51:5.

OBJECTION

The number of adult criminal cases included in a 2024 spreadsheet intended to assist clerks of the Unified Criminal Docket in locating qualified defense counsel to represent indigent criminal defendants, AOC Depo. #1 at 44:5-12, is not material to the elements controlling the claims of Plaintiffs' Subclass that their rights to actual assistance of counsel under the Sixth Amendment of the United States Constitution and article I, §6 of the Maine Constitution have been violated. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This proffered fact should, accordingly, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i)(1).

32. The October 2, 2024 Counsel Needed spreadsheet contains 938 rows. Of those rows, 244 are recorded as in custody. Shea Aff. ¶ 9, Exhibit G.

RESPONSE

Qualified. A fluctuating number of indigent criminal defendants, including defendants incarcerated pre-trial, are awaiting the appointment of defense counsel following a court order finding them eligible for the appointment of defense

counsel. Billings Depo #1 (105:23-106:8); *see also id.* at Exhibit 4 (Defendants' Responses to Plaintiffs' First Set of Interrogatories). In order to reliably determine whether or not counsel has been appointed to represent an indigent criminal defendant, the Administrative Office of the Courts would review individual case information in the Maine Judicial Information System ("MEJIS"). *Id.* at 47:25-48:5 (to reliably determine whether or not counsel has been appointed to represent an indigent criminal defendant, the Administrative Office of the Courts would review individual case information in MEJIS); *id.* at 46:20-47:1; *id.* at 50:22-51:5.

OBJECTION

The number of adult criminal cases included in a 2024 spreadsheet intended to assist clerks of the Unified Criminal Docket in locating qualified defense counsel to represent indigent criminal defendants, AOC Depo. #1 at 44:5-12, is not material to the elements controlling the claims of Plaintiffs' Subclass that their rights to actual assistance of counsel under the Sixth Amendment of the United States Constitution and article I, §6 of the Maine Constitution have been violated. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This proffered fact should, accordingly, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i)(1).

33. The November 13, 2024 Counsel Needed spreadsheet contains 1,003 rows. Of those rows, 212 are recorded as in custody. Shea Aff. ¶ 10, Exhibit H.

RESPONSE

Qualified. A fluctuating number of indigent criminal defendants, including defendants incarcerated pre-trial, are awaiting the appointment of defense counsel following a court order finding them eligible for the appointment of defense counsel. Billings Depo #1 (105:23-106:8); *see also id.* at Exhibit 4 (Defendants' Responses to Plaintiffs' First Set of Interrogatories). In order to reliably determine whether or not counsel has been appointed to represent an indigent criminal defendant, the Administrative Office of the Courts would review individual case information in the Maine Judicial Information System ("MEJIS"). *Id.* at 47:25-48:5 (to reliably determine whether or not counsel has been appointed to represent an indigent criminal defendant, the Administrative Office of the Courts would review individual case information in MEJIS); *id.* at 46:20-47:1; *id.* at 50:22-51:5.

OBJECTION

The number of adult criminal cases included in a 2024 spreadsheet intended to assist clerks of the Unified Criminal Docket in locating qualified defense counsel to represent indigent criminal defendants, AOC Depo. #1 at 44:5-12, is not material to the elements controlling the claims of Plaintiffs' Subclass that their

rights to actual assistance of counsel under the Sixth Amendment of the United States Constitution and article I, §6 of the Maine Constitution have been violated. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This proffered fact should, accordingly, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i)(1).

34. Many courts in Maine explicitly recognize that there is a constitutional crisis with respect to indigent defense in the state and have made statements on the record that defendants are being systematically denied their Sixth Amendment rights to counsel under the federal and state constitutions. Primus Aff. ¶ 81.

RESPONSE

Qualified. A fluctuating number of indigent criminal defendants, including defendants incarcerated pre-trial, are awaiting the appointment of defense counsel following a court order finding them eligible for the appointment of defense counsel. Billings Depo #1 (105:23-106:8); *see also id.* at Exhibit 4 (Defendants' Responses to Plaintiffs' First Set of Interrogatories).

OBJECTION

The cited basis for this statement, an affidavit of Plaintiffs' retained expert, lacks any foundation supporting the statement. M.R. Civ. P. 56(e) (affidavits "shall be made on personal knowledge, *shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein*.") (emphasis added); *see also Carignan v. Dumas*, 2017 ME 15 n.1, 154 A.3d 629 (foundation required for admissibility of facts asserted in support of summary judgment); *see also* M. R. Evid. 702-703. Moreover, to the extent this statement seeks to characterize rulings of Maine courts, neither the uncited rulings themselves nor Plaintiffs' characterization of their holdings constitute a material fact. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This proffered fact should, accordingly, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i)(1).

35. Maine trial courts are finding Sixth Amendment violations for people who have not been provided counsel, either in written opinions or in form orders where they are checking off a "Sixth Amendment violation" box. Billings (Nov. 6) Dep. 18:7-19:6; Shea Aff. ¶ 14, Exhibit J (examples of court orders finding Sixth Amendment violations).

RESPONSE

Qualified. The court's opinion in *State v. Lerman* speaks for itself and, following a finding of a Sixth Amendment violation, remedied that violation through dismissal of the pending charges. *State v. Lerman*, Docket No. ANDCD-CR-2024-451, Dismissal of Criminal Complaint (Jun. 13, 2024). Trial courts have, consistent with Maine Judicial Branch form CR-B-1-4-24, issued orders in individual criminal prosecutions which each find that an individual defendant has "suffered a violation of their right to counsel," basing those findings on "the totality of the circumstances," but not including findings relevant to the controlling legal standard. Deposition of James Billings (Nov. 6, 2024), 18:24-19:3 ("I'm aware the court has some kind of form or form order where some of the judges are checking Sixth Amendment violation off, but it's not clear what that's based on . . . ."). The controlling standard for establishing a violation of the right to counsel pursuant to the Sixth Amendment of the United States Constitution and Article I, §6 of the Maine Constitution is whether an indigent criminal defendant has been denied counsel at a "critical stage," obviating the need to establish prejudice to find a violation of the Sixth Amendment right to counsel, *United States v. Cronic*, 466 U.S. 648 (1984), or that an indigent criminal defendant has suffered prejudice to their rights to a fair trial. and *Strickland v. Washington*, 466 U.S. 668 (1984); *see also Fusi v. O'Brien*, 621 F.3d 1, 6 (1st Cir. 2010) (quoting *Bell v. Cone*, 535 U.S. 685, 697 (2002)).

OBJECTION

The authority cited as supporting this statement characterizes documents for which originals are both available and provide the best evidence of their contents. *See* M. R. Evid. 1004.

36. District Defender Frayla Tarpinian, one of Defendants' experts, admits that Maine courts are ruling that the Sixth Amendment has been violated yet the courts are providing no remedy, and "[t]hat can't be the right answer." Deposition of Frayla Tarpinian ("Tarpinian Dep.") 101:1-7, 102:11-13.

RESPONSE

Qualified. The cited source fails to support the statement that "Maine courts are ruling that the Sixth Amendment has been violated," Deposition of Frayla Tarpinian ("Tarpinian Depo."), 100:6-101:11 (testifying to lack of familiarity with appointment of counsel in Kennebec County, served by a public defender's office), or that any statement regarding acts or failures to act by Maine courts by Ms. Tarpinian qualifies as an admission.

37. "[A]t every point of the process" in a criminal case starting with the initial appearance, "it's an adversarial system" and "there are advantages that you can gain or lose." Tarpinian Dep. 53:25-54:2; 57:1-11.

RESPONSE

Qualified. The authority cited as supporting this statement is materially altered by Plaintiffs' effort to excerpt 15 lines from a six (6) page answer, the portions of which Plaintiffs exclude providing responsive context regarding specific stages of criminal prosecutions, Tarpinian Depo. at 53:3 – 58:13, and context for the question to which the witness was responding. *Id.* at 56:25 – 57:3 ("Q. So I guess there is like a baseline, is it fair to say that -- I'm looking at the language in this disclosure, that each procedural stage presents some level of risk to the criminal defendant?").

OBJECTION

Plaintiffs' selective quotations of and citations to excerpts deposition testimony are misleading, requiring reference to the context, including the questions to which the deponent was responding. M. R. Evid. 1006.

38. The beginning of any criminal case is therefore critical. McKee Dep. 26:3-6, 27: 18-25 (further explaining that there are "critically important tasks" that attorneys need to perform "[i]mmediately upon the initiation of a criminal case"); Primus Dep. 85: 18-86:8; Affidavit of Walter McKee ("McKee Aff.") ¶¶11-16; Primus Aff. ¶ 43.

RESPONSE

Denied. The use of the term "critical" in this statement is misleading because it does not address what constitutes a "critical stage" in the context the controlling legal standard requiring proof of denial of counsel at a "critical stage." *Cf.*

Deposition of Walter McKee (Nov. 1, 2024) ("McKee Depo."), 20:4-22 ("Q. In your response just now, you reference the proper representation of defendant. Against what standard are you measuring the propriety of the representation of a defendant? A. An ordinarily careful, reasonably prudent defense attorney."); *id.* at 28:1-8 ("Q. And against what standard are you evaluating these tasks as being critically important? A. I can't imagine anybody who ever defended a criminal case that has not done these particular tasks. It is a base-level standard. We can call it a reasonably prudent attorney, ordinarily careful attorney. I would say an attorney doing any semblance of the job.") and *State v. Smith*, 615 A.2d 1162, 1164 (Me. 1992) (characterizing a "critical stage" relevant to right to the assistance of counsel as one, "where the results might well settle the accused's fate and reduce the trial to a mere formality." (quoting *Maine v. Moulton,* 474 U.S. 159, 170 (1985))).

OBJECTION

To the extent this statement seeks to characterize the legal standard controlling the determination of Counts I or II of Plaintiffs' Amended Complaint, it is not a "fact," *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material.") and is an impermissible characterization of the controlling law by an expert, *see Nieves-Villanueva v. Soto-Rivera,* 133 F.3d 92, 99 (1st Cir. 1997), and

should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

39. Before a criminal case has been initiated, there often has been an investigation by the police, a review of investigatory material by the prosecutor, and, in some cases, an independent investigation by the prosecutor (including review of physical evidence and an interview of potential witnesses). McKee Aff. ¶ 13.

RESPONSE

Qualified. This fact applies to all criminal defendants, whether or not indigent and whether or not immediately appointed counsel at initial appearance. McKee Depo. at 56:23-57:4 ("You previously testified to your opinion that the defendant or defense counsel in any criminal case begins at a disadvantage; is that right? A. They do. A whole lot of work has happened in every case well before the initial appearance date. They are way ahead of you before you even get started.").

40. When the right to counsel attaches, defendants and their attorneys begin the case at a disadvantage because the prosecutor has already been working to develop their case. McKee Aff. ¶¶ 13-14.

RESPONSE

Qualified. This fact applies to all criminal defendants, whether or not indigent and whether or not immediately appointed counsel at initial appearance. McKee

Depo. at 56:23-57:4 ("You previously testified to your opinion that the defendant or defense counsel in any criminal case begins at a disadvantage; is that right? A. They do. A whole lot of work has happened in every case well before the initial appearance date. They are way ahead of you before you even get started."). That fact does not prevent effective representation by counsel entering their appearance after initial appearance. McKee Depo. at 21:19-22:2 ("Q. In your criminal practice, is there a time period after which you will not accept a retention to defend a criminal defendant? A. There is not. There is not a black and white rule by any means. There are certain challenges when somebody comes in very late in the process, just the ability to work them into the schedule, if you will. My trial is tomorrow. Okay, I'm probably not going to be able to take that trial on."); Deposition of Amber Tucker ("Tucker Depo."), 46:8-22 ("Q. In your professional experience as a criminal defense lawyer, have you ever rejected a retention solely based upon the amount of time that had passed since the initial appearance? A. None comes to mind, but if I had somebody who wanted to hire me who had unrealistic or unreasonable expectations and I thought that there was not going to be anything that I could do for the client, then I would probably not take on that case. Q. I think my question is a bit different which is that based solely on the time that had elapsed since initial appearance, in your experience as a criminal defense attorney, have you ever, based on that one factor, rejected a retention? A. No.").

41. Criminal defense attorneys need to be diligent and organized in order to catch up. McKee Aff. ¶ 14.

RESPONSE

Qualified. The professional obligation of diligence and organization applies to all counsel representing criminal defendants, whether or not their clients are indigent and whether or not counsel is appointed immediately. McKee Depo. at 31:7-16; 43:11-24; 45:14-46:11; 53:2-13

OBJECTION

An opinion that "[c]riminal defense attorneys need to be diligent and organized in order to catch up," is not a "fact" nor is it material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material.") and is an impermissible characterization of the controlling law by an expert, *see Nieves-Villanueva v. Soto-Rivera,* 133 F.3d 92, 99 (1st Cir. 1997), and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

42. It is "important" for criminal defendants to be appointed counsel "as soon as possible." Maciag (Aug. 29) Dep. 21: 18-22:1; Deposition of MCPDS Commissioner David Soucy

("Soucy Dep.") 41:23-42:5 (Defendant Commissioner Soucy recognizing that it is "absolutely" important that lawyers get started in a "short time frame," and specifically the same day they are appointed); McKee Dep. 26:3-6.

RESPONSE

Qualified. The cited authority does not support this assertion as it lacks foundation for the standard being applied and foundation for the context of the term "important'. Deposition of Eleanor Maciag (Aug. 29, 2024) ("Maciag Depo. #1")[6], 21:18-22:1 ("Q. Turning to principle six which is also on page five [of Exhibit 1], the first sentence of that says, "counsel should be appointed immediately after arrest, detention or upon request." *Would you agree that this principle is important to MCILS's mission*? MR. MAGENIS: Objection, form, foundation. Calls for an opinion. A. I believe that it's important for folks to get counsel as soon as possible.") (emphasis added); *id.* at Exhibit 1 (American Bar Association, *Ten Principles of a Public Defense Delivery System* (Aug. 2023), p.5); Deposition of David Soucy (Sept. 6, 2024) ("Soucy Depo."), 41:23-42:5 ("Q. And all of these tasks that we've just been talking about that students [participating in the Rural Practice Clinic] would do as part of their case, how soon after an initial appearance would they get started on that? A. Typically that

[6] Plaintiffs have inaccurately designated the cited authority "Maciag 30b6 Deposition Transcript (August 29)". That deposition was, in fact, the first of Plaintiffs' two (2) individual depositions of Deputy Director Maciag, as Plaintiffs' counsel acknowledged on the record. Maciag Depo.#1, 86:2-11 ("MR. MAGENIS: I'm going to object to this line of questioning. Last week at the deposition of Chris Guillory, who was designated as a 30(b)(6) witness, on these precise topics, these precise questions were asked. This is not a good use of time. MS. SOTOOHI: I do feel it's a little bit like my time to waste too. *There is no confusion over whether or not this is the 30(b)(6)* or who Ms. Maciag is speaking on behalf of. She's speaking from her personal knowledge.") (emphasis added).

afternoon. Q. And was it important that they get started in that short time frame? A. Oh, absolutely."); McKee Depo. at 25:19-26:6 ("Q. So when you list the challenges earlier that apply to all criminal defendants who seek to retain counsel after the initial appearance, do all -- all of those challenges don't necessarily apply to every single case; is that correct? A. Sure. Some cases may not have electronically stored information. Some cases may have only a couple witnesses that are important, but that's gauged on a case by case basis to a large degree. But for every case, I can say that the beginning of the case is critical for the person defending because I don't know one way or the other at that point anything about the case.").

OBJECTION

An opinion that appointing counsel early in a criminal prosecution is "important" not a fact nor is it material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."), and is an impermissible characterization of the controlling law by an expert, *see Nieves-Villanueva v. Soto-Rivera,* 133 F.3d 92, 99 (1st Cir. 1997). This statement is immaterial and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

43. MCPDS expects that rostered attorneys will meet with their clients "within a few days or a week." Billings (July 10) Dep. 158: 11-17.

RESPONSE

Denied. The cited authority does not support this statement. Billings Depo. at 158:4-17 ("I -- I used the words as promptly as possible, which I think I took from the rules. What does that mean to you? **A** It would depend on the circumstances of the case, if the person is confined or not, if they're in state, out of state. I -- **Q** Okay. **A** I don't think that's something we would micro manage, but we would be concerned if an attorney has been appointed, knows they have a case, and they haven't at least gotten a letter out or made some phone calls or attempted to meet with a client within a few days or a week. You know, start getting longer than that, I think that starts to be a concern.").

OBJECTION

MCPDS's expectation regarding the diligence of appointed counsel is not material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint asserting actual denial of counsel. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is immaterial and should,

therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

44. As soon as defense counsel is assigned to a case, they need to meet with their client "ASAP" and take steps to understand the context of the case. Tarpinian Dep. 28:13-19, 30:1-3; *id* at 11: 17-24 (setting expectations for public defenders in Capital Region Public Defender's Office to meet with clients within 48 hours if they are in custody, and otherwise within a week).

RESPONSE

Qualified. The cited authority refers to the standard the witness testified she applies to defense counsel employed by the Capital Region Public Defender's Office. Tarpinian Depo. 25:13 – 28:19; *id.* at 29:19-30:12 ("Q. Do you have an opinion on how quickly after an initial appearance a defense lawyer should start things like meeting with the client and factual investigation to provide effective assistance? A. I wouldn't -- I don't gear a practice to the first appearance because I don't have control over that. We really gear our practice to when we get assigned. So as soon as you're assigned, it's drilled in, you probably understand now, meet with your client, get in touch with your client ASAP. Get as many backup phone numbers and addresses as you can to keep in contact. But in terms of how quickly -- the first appearance isn't the date that I use. I know that it's a date that's important for your case, but it's not a date that I use. I use the date of appointment. So the day the paperwork comes to our office, that's our trigger.

That's the start button for our cases. So that's the date that I gear everything off of for procedure, for how we think about cases."); *id.* at 10:13-11:24 (responding to question asking, "For the junior level, for the less experienced lawyers in your office, what sort of trainings do you do to help them become the types of lawyers they need to be to represent your clients?"); *id.* at 64:18-22 ("Q. What I'm trying to get at, I think sometimes you and I are talking about two different things. You're talking about what it takes for you and your office to do your job once you're assigned a client -- A. Absolutely.").

OBJECTION

The fact that a task expected to be completed by defense counsel employed by the Capital Region Public Defender's Office following assignment is not material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material.") and is an impermissible characterization of the controlling law by an expert, *see Nieves-Villanueva v. Soto-Rivera,* 133 F.3d 92, 99 (1st Cir. 1997). This statement is immaterial and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

45. Under MCPDS's rules for criminal practice, lawyers serving at an initial appearance or arraignment are directed to conduct an initial interview and investigation, assess the health (including mental health) of the accused, ascertain the employment and housing background of the accused, research the criminal history of the accused, and learn the general circumstances of the alleged offence. Primus Aff. ¶ 58.

RESPONSE

Denied. The referenced rules speak for themselves. *See, e.g.,* 94-649 C.M.R. ch. 102, § 5(4)(B) ("Defense counsel should conduct a client interview as soon as practicable and if the client is in custody then in no event within more than seven (7) days after receiving notice of an assignment.").

OBJECTION

In consideration of the fact that the source cited, an affidavit of Plaintiffs' retained expert characterizing MCPDS regulations, is not the best evidence, this statement is not a fact. Rules promulgated by MCPDS regarding adult criminal practice expectations are not material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint asserting actual denial of counsel. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This

statement is immaterial and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

46. Immediately upon the initiation of a criminal case, defense counsel needs to complete a set of critically important tasks, including: review of the charging instrument; review of the discovery; an initial interview of the client; preservation of evidence; advocacy for the least restrictive pretrial conditions possible; and analysis of any plea offer. McKee Aff. ¶ 15.

RESPONSE

Qualified. The cited source identifies tasks Plaintiffs' retained expert has opined are important based on the standard of care he opines applies to lawyers representing criminal defendants. McKee Depo. at 27:14-28:8 ("Q. Looking down at opinion number -- sorry, paragraph three on Exhibit 3 which appears on page three of Exhibit 3, that paragraph includes a list of tasks. I think you've testified to some of them. As stated in paragraph three, you characterize those tasks as critically important. Do you see the portion that I'm referring to? A. "Immediately upon the initiation of a criminal case"? Q. Yes, and it's the second line down there. A. Right. Yeah, I agree. Those are all critically important tasks. That is base level. Q. And against what standard are you evaluating these tasks as being critically important? A. I can't imagine anybody who ever defended a criminal case that has not done these particular tasks. It is a base-level standard. *We can call it a reasonably prudent attorney, ordinarily careful attorney*. I would

say an attorney doing any semblance of the job.") (emphasis added); *see also* Tarpinian Depo. at 61:18-20 ("[C]an you be as effective being brought in after initial appearance? I think you can, I think it depends on the case.").

OBJECTION

An opinion regarding tasks that reasonably prudent counsel must undertake is neither a fact nor is it material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."), and is an impermissible characterization of the controlling law by an expert, *see Nieves-Villanueva v. Soto-Rivera,* 133 F.3d 92, 99 (1st Cir. 1997). This statement is immaterial and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

47. MCPDS agrees that, "[i]n almost every case," assigned counsel needs to conduct an investigation, including interviewing key witnesses, hiring an investigator, and generally investigating the defendant's possible lines of defense. Billings (July 10) Dep. 160: 16-161:1.

RESPONSE

Denied. The cited testimony addresses deposition Exhibit #10, 94-649 CMR ch. 102, Standards of Practice for Attorneys Who Represent Adults in Criminal Proceedings. Billings Depo. #1 at 160:16-21 ("**Q** Checking down my list, do you agree that assigned counsel needs to investigate the defendant's possible lines of defense against prosecution as part of the representation? MR. MAGENIS: Objection to form and foundation. **A** In almost every case, yes."). The scope of investigation is dictated by the circumstances of an individual case. Tarpinian Depo. at 62:10-18 ("But what we see at the initial appearance and what this case looks like at trial can be very different so you have to redo a lot of that work. So is it crucial that you have that witness investigated? I would say it's more crucial to determine if that person is helpful for your client or unhelpful for your client, and that is not something that's static. That changes throughout the life of a case.").

OBJECTION

The cited source results from Plaintiffs' counsel seeking to elicit opinion testimony regarding the contents of MCPDS's regulations from a fact witness. The statement is neither a fact nor is it material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."), and is an impermissible characterization of the controlling law by an expert, *see Nieves-*

Villanueva v. Soto-Rivera, 133 F.3d 92, 99 (1st Cir. 1997). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

48. Defendants' expert Tarpinian explained that "the floor on what's effective assistance of counsel" includes having a lawyer to assist with pretrial investigation. Tarpinian Dep. 24: 1-8 (recognizing that "of course" an attorney will need to engage in pretrial investigation); Deposition of Darcy Fisher ("Fisher Dep.") 49:9-17; Deposition of Amber Tucker ("Tucker Dep.") 35:24-36:6.

RESPONSE

Qualified. The cited authority addresses the witness's opinion regarding the standard of care applicable to defense counsel in contrast to the standard of "effective assistance" relevant to the constitutional right to the assistance of counsel. *Id.* at 64:16-22 (". . . I'm getting stuck in the jargon. A. Okay, yeah. Q. What I'm trying to get at, I think sometimes you and I are talking about two different things. You're talking about what it takes for you and your office to do your job once you're assigned a client -- A. Absolutely."). Pretrial investigation includes all time periods prior to trial. *Id.* at 24:9-25 ("[O]ne of the things I talk about with my attorneys is those phrases overlap in the criminal justice system. These are systems -- this is an ecosystem, they're all related. So pretrial investigation in our -- unfortunately for us doesn't end until the jury has rendered a verdict because we get discovery sometimes during trial, sometimes the day of

trial. And I'm talking serious, important discovery. I'm not talking they interviewed a witness, and they learned something new. I'm talking they discovered photos on a camera that weren't helpful to the prosecution's case so they weren't turned over so we get them the day of trial. There is no discovery deadline in Maine. The absence of a discovery deadline in Maine means the discovery is open until we start trial."). Ms. Fisher, testifying as the designee for MCPDS on training, testified regarding MCPDS training of defense counsel. Deposition of Darcy Fisher ("Fisher Depo.") 49:9-50:6 ("Q. What steps need to happen before a lawyer appears at a dispositional conference, in general? A. Steps by whom? Q. Steps by the lawyer appointed to represent the criminal defendant. A. They should have met with the client, reviewed all discovery, requested any missing discovery, commenced an investigation into the allegations, thought about strategies with the client's goals in mind. I think the rule is they have to serve the suppression motion on the prosecutor seven days prior to the dispositional conference. So if that's appropriate, then it would be that. Also retaining any experts, things that they should be thinking about or doing at that point. If there are any potential immigration issues, then they should be exploring that as well, consulting an immigration expert if appropriate, negotiating with the prosecutor. Q. And the steps you just described are steps that you think, in general depending on the case, should take place before a dispositional conference; is that correct? A. Yes."). The remaining citation does not support the fact asserted. Deposition of Amber Tucker (Oct. 28, 2024) ("Tucker Depo."), 35:24-36:6 ("Q. So moving to opinion five on Exhibit 4 --

sorry, paragraph five on opinion four -- I'll try that again. Paragraph five on Exhibit 4, there's a reference in paragraph five to investigation being necessary to, quote, determine whether there is a significant factual basis for the client's charges. Did I read that correctly? A. Yes.");

OBJECTION

An opinion regarding tasks that reasonably prudent counsel must undertake is neither a fact nor is it material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."), and is an impermissible characterization of the controlling law by an expert, *see Nieves-Villanueva v. Soto-Rivera,* 133 F.3d 92, 99 (1st Cir. 1997). This statement is immaterial and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

49. Attorneys can use the investigation phase to collect exculpatory evidence, as well as information that is important for mitigation-for example, to negotiate for a more favorable plea deal. Tarpinian Dep. 54:10-17; McKee Dep. 36:12-15.

RESPONSE

Qualified. This asserted fact mischaracterizes the cited sources by using the phrase "investigation phase": which Ms. Tarpinian testified encompasses all periods up to and including trial. Tarpinian Depo. at 24:9-25 ("[O]ne of the things I talk about with my attorneys is those phrases overlap in the criminal justice system. These are systems -- this is an ecosystem, they're all related. So pretrial investigation in our -- unfortunately for us doesn't end until the jury has rendered a verdict because we get discovery sometimes during trial, sometimes the day of trial. And I'm talking serious, important discovery. I'm not talking they interviewed a witness, and they learned something new. I'm talking they discovered photos on a camera that weren't helpful to the prosecution's case so they weren't turned over so we get them the day of trial. There is no discovery deadline in Maine. The absence of a discovery deadline in Maine means the discovery is open until we start trial."). The cited authority from Plaintiffs' retained expert's deposition, when read in context and not limited to a two-line portion of the expert's testimony, does not support the asserted fact. McKee Depo. at 36:1-15 ("Q. Would you agree that the impact of a delay in a criminal defendant obtaining counsel, whether it be privately retained or appointed, that impact varies depending on the individual, the circumstances in which they find themselves and the particular charges that are levied against them? A. It can. The length of delay as well, right? One day versus 10 days versus a year. There are impacts from day one, but they are greater as time goes on. Q. When you say "they are greater," what do you base that on? A. What I spoke about before in terms of the impact of not having an attorney representing them at some point

down the road, the ability to secure witnesses, to secure evidence, to do an investigation if need be.").

OBJECTION

Opinion testimony regarding efforts that reasonably prudent defense counsel may undertake is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."), and is an impermissible characterization of the controlling law by an expert, *see Nieves-Villanueva v. Soto-Rivera,* 133 F.3d 92, 99 (1st Cir. 1997). This statement is immaterial and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

50. A large number of indigent criminal defendants in Maine are being denied access to counsel during the critical pre-trial investigative period. Primus Aff. ¶ **42.**

RESPONSE

Denied. The cited authority lacks the required foundation for characterizing the number of relevant defendants as "large," Affidavit of Eve Brensike Primus (Nov. 18, 2024) ("Primus Aff."'), ¶42 ("A large *proportion* of indigent criminal defendants in Maine are being denied access to counsel during this critical pre-

trial investigative period."). M. R. Evid. 703. A fluctuating number of indigent criminal defendants, including defendants incarcerated pre-trial, are awaiting the appointment of defense counsel following a court order finding them eligible for the appointment of defense counsel. Billings Depo #1 (105:23-106:8); *see also id.* at Exhibit 4 (Defendants' Responses to Plaintiffs' First Set of Interrogatories).

OBJECTION

The cited authority lacks the required foundation. M. R. Evid. 703. Opinion testimony characterizing the number of relevant defendants as "large" and characterizing an undefined "pre-trial investigative phase" as "critical" is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."), and is an impermissible characterization of the controlling law by an expert, *see Nieves-Villanueva v. Soto-Rivera,* 133 F.3d 92, 99 (1st Cir. 1997). This statement is immaterial and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

51. Most of what happens to prepare a criminal defense happens outside of the courtroom during that critical, pre-trial investigative period. Primus Aff. ¶ 43.

RESPONSE

Qualified. Preparation for trial in a criminal matter occurs prior to trial. Tarpinian Depo. at 14:21-17:13.

OBJECTION

The cited authority lacks the required foundation. M. R. Evid. 703. Opinion testimony characterizing preparation for trial as occurring before trial is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). Asserting that period is "critical" is an impermissible characterization of the controlling law by an expert, *see Nieves-Villanueva v. Soto-Rivera,* 133 F.3d 92, 99 (1st Cir. 1997). Designating the entire time between initiation of a criminal prosecution and trial as "critical" is a conclusion of law, not a fact. This statement is immaterial and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

52. Investigating cases includes requesting and reviewing discovery materials from the prosecutor, as well as any other case-related documents from other public agencies; reviewing the physical scene or hiring an investigator to do so; canvassing for witnesses, preparing for and conducting witness interviews (including working with a translator if

necessary), or hiring an investigator to do so; subpoenaing witnesses; hiring and supervising investigators; reviewing and analyzing all discovery, case-related documents, and the results of witness interviews; ensuring evidence is preserved; and properly documenting notes of discovery and investigation. Tucker Aff. ¶ 21.

RESPONSE

Qualified. Investigation in the context of representing a criminal defendant may include these tasks. Tucker Depo. at 45:17-46:22 ("Q. . . . What I'm trying to get at is in evaluating your professional ability to provide effective assistance to a retained criminal defendant, is that case specific? A. Yeah. I mean I think it depends, right? So I'm thinking that the two cases that you were talking about, the one that did go to trial, yes. I was fortunate, I took on the case, and the original assigned attorney had done a great job with investigating the case, gathering the information, and I was able to pick up and, you know, hit the ground running when I got involved in the case, do additional investigation and prepare the case for trial. In the other case, there wasn't any investigation that was done by the attorney prior to me. So I, again, you know, picked it up and did what I could with it, right? Q. In your professional experience as a criminal defense lawyer, have you ever rejected a retention solely based upon the amount of time that had passed since the initial appearance? A. None comes to mind, but if I had somebody who wanted to hire me who had unrealistic or unreasonable expectations and I thought that there was not going to be anything that I could do for the client, then I would probably not take on that case. Q. I think my question

is a bit different which is that based solely on the time that had elapsed since initial appearance, in your experience as a criminal defense attorney, have you ever, based on that one factor, rejected a retention? A. No.").

OBJECTION

The cited authority lacks the required foundation. M. R. Evid. 703. Opinion testimony characterizing what is required to investigate cases is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). Asserting that period is "critical" is an impermissible characterization of the controlling law by an expert, *see Nieves-Villanueva v. Soto-Rivera,* 133 F.3d 92, 99 (1st Cir. 1997). This statement is immaterial and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

53. Defendants' expert Tarpinian explained that "all roads ... lead to discovery," and that an effective lawyer should obtain and "thoroughly" review discovery. Tarpinian Dep. 61:8-9, 70:11-18; *id* 12:18-13:8 (discussing the approach of the Rural Public Defenders' Office to discovery).

RESPONSE

Qualified. Ms. Tarpinian testified that "all roads with me lead to discovery," in evaluating a criminal defense lawyer's tasks at the inception of a criminal prosecution. Tarpinian Depo. at 61:8-9; *see also id.* at 59:13-25 ("[D] o you have an opinion then on what the first critical stage of a criminal prosecution is under this Sixth Amendment analysis? A. Can you define that for me? I mean if you define it, I'll try to analyze it. But I don't have -- I didn't come with all of the definitions, I haven't read all of the caselaw. I haven't read your complaint. Maybe I should have -- Q. No, that's fair enough. So setting aside the definition under Sixth Amendment juris prudence or whatever, just using the common understanding of the term "critical stage" -- A. Okay."). To be effective at a dispositional conference, a lawyer should "be able to thoroughly analyze the discovery." *Id.* at 70:12-18 ("Q. . . . [W]hat types of things do you think a lawyer needs to do to be prepared and effective at a dispositional conference in advance of the conference? A. They have to read all the discovery, watch all the videos, review -- so be thoroughly -- be able to thoroughly analyze the discovery."). The final citation does not support this statement. *Id.* at 12:18-13:8.

OBJECTION

Opinion testimony characterizing discovery as important in the defense of a criminal defendant is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty*

Lobby, Inc., 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is immaterial and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

54. MCPDS Commissioner David Soucy ("Soucy") explained that discovery is critical, and that attorneys cannot "even prepare [a] defense sometimes" without obtaining discovery. Soucy Dep. 41:9-17; Fisher Dep. 49: 14-15.

RESPONSE

Qualified. Commissioner Soucy's testimony, in response to a question asking why failure of prosecutors to provide mandatory discovery to students in the Maine Rural Practice Clinic was "a problem," and, "Would that delay in getting discovery have a knockoff effect on other parts of the student's investigation or work on the case?" was, "Sure. For instance, *if you need to see a video in order to determine if there's a motion to suppress that should be filed and you don't have the video*, it's difficult to file the motion and speak with authority. Sometimes there's excul -- oftentimes there's exculpatory information in videos. You can't even prepare your defense sometimes without seeing that information. And so, yeah, it has reverberating effects throughout the case." Soucy Depo. at 40:1-41:17 (emphasis added). Ms. Fisher, testifying as the designee for MCPDS on training, testified regarding MCPDS training of defense counsel. Deposition of Darcy Fisher ("Fisher Depo.") 49:9-50:6 ("Q. What steps need to happen before a

lawyer appears at a dispositional conference, in general? A. Steps by whom? Q. Steps by the lawyer appointed to represent the criminal defendant. A. They should have met with the client, reviewed all discovery, requested any missing discovery, commenced an investigation into the allegations, thought about strategies with the client's goals in mind.").

OBJECTION

Opinion testimony characterizing discovery as important in the defense of a criminal defendant is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is immaterial and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

55. Review of discovery is necessary to understand the strengths and weaknesses of a particular case; as a result, a lawyer cannot "meaningful[ly]" evaluate how best to approach a case without discovery. Fisher Dep. 51:17-24.

RESPONSE

Denied. The cited authority does not support the statement, which, materially mischaracterizes that authority. Fisher Depo. at 51:17-24 ("Q. Is it important for a lawyer to review discovery before a dispositional conference? A. Yes. Q. Why is that? A. Because *the lawyer can't have a meaningful discussion about a resolution of the case* without knowing the strengths of the state's case or the weaknesses of the state's case.") (emphasis added).

OBJECTION

Opinion testimony characterizing discovery as important in the defense of a criminal defendant is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is immaterial and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

56. While an unrepresented defendant can review discovery, it is often "meaningless" without legal training and experience in using discovery to mount a defense McKee Dep. 35:10-25.

RESPONSE

Qualified. If an unrepresented defendant reviews discovery and does not understand it or how to use it in developing a defense to a criminal prosecution, that discovery is meaningless. McKee Depo. at 34:20-35:25.

OBJECTION

Opinion testimony in the form of a hypothetical characterizing discovery as important in the defense of a criminal defendant is not a fact and is also immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is neither a fact nor a "material fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

57. A delay in receiving discovery has "reverberating effects throughout the case." Soucy Dep. 41:6-17.

RESPONSE

Qualified. Commissioner Soucy's testimony, in response to a question asking why failure of prosecutors to provide mandatory discovery to students in the Maine Rural Practice Clinic was "a problem," and, "Would that delay in getting

discovery have a knockoff effect on other parts of the student's investigation or work on the case?" was, "Sure. For instance, *if you need to see a video in order to determine if there's a motion to suppress that should be filed and you don't have the video*, it's difficult to file the motion and speak with authority. Sometimes there's excul -- oftentimes there's exculpatory information in videos. You can't even prepare your defense sometimes without seeing that information. And so, yeah, it has reverberating effects throughout the case." Soucy Depo. at 40:1-41:17 (emphasis added).

OBJECTION

Opinion testimony in the form of a hypothetical characterizing the potential effect of a delay in receiving discovery from prosecutors is not a fact and is also immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is neither a fact nor a "material fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

58. Early appointment of an attorney is critical because the attorney needs to take steps to preserve evidence that might otherwise be lost. Primus Dep. 125:9-15; Soucy Dep. 42:7-9 (explaining that "[e]vidence is lost when there are delays").

RESPONSE

Qualified. The cited authority characterizes the reasoning of court opinions addressing claims for denial of effective assistance of counsel. Primus Depo. at 125:9-15 ("Part of the reason why everyone agrees that kind of early appointment is so important is because that lawyer needs to get in there early in order to preserve evidence that might otherwise disappear, or particularly in a technological world, such as the one we live in, where a lot of things or cameras that are regularly erased."). The excerpted portion of Commissioner Soucy's testimony omits crucial context. Soucy Depo. at 41:23-42:12 (explaining that students in Maine's Rural Practice Clinic were instructed to address defense tasks shortly after an initial appearance to guard against potential negative consequences including loss of evidence, destruction of evidence, and the loss of opportunities, "because of the timelines imposed by the court."). Defense counsel can provide effective assistance notwithstanding a delay in appointment. Tarpinian Depo. at 30:13-14:17 ("Q. Can it make your job harder if you're not assigned someone until long after their initial appearance? A. It can, but it doesn't really stop us from doing our job. *** Criminal cases, we are really dealing with people's lives, and their lives don't stop because they got arrested for OUI a year ago or a month ago or a week ago or today. Their lives develop. So, you know,

violations of conditions of release, bail conditions, are hugely harmful and impactful on people's lives. You know, they hamper liberty, which is a problem, but they're used by our criminal system to really trap people and so our cases are never done. Like they never stop. So like case investigation done early often has to be redone later because -- I call it factual drift."); Tucker Depo. at 45:17-46:22 ("Q. . . . What I'm trying to get at is in evaluating your professional ability to provide effective assistance to a retained criminal defendant, is that case specific? A. Yeah. I mean I think it depends, right? * * * Q. In your professional experience as a criminal defense lawyer, have you ever rejected a retention solely based upon the amount of time that had passed since the initial appearance? A. None comes to mind, but if I had somebody who wanted to hire me who had unrealistic or unreasonable expectations and I thought that there was not going to be anything that I could do for the client, then I would probably not take on that case. Q. I think my question is a bit different which is that based solely on the time that had elapsed since initial appearance, in your experience as a criminal defense attorney, have you ever, based on that one factor, rejected a retention? A. No."); McKee Depo. at 21:19-22:2 ("Q. In your criminal practice, is there a time period after which you will not accept a retention to defend a criminal defendant? A. There is not. There is not a black and white rule by any means. There are certain challenges when somebody comes in very late in the process, just the ability to work them into the schedule, if you will. My trial is tomorrow. Okay, I'm probably not going to be able to take that trial on.").

OBJECTION

Opinion testimony expressed as a conclusory assertion of the steps defense counsel "needs to take" is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is immaterial and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

59. Among other steps, attorneys need to preserve technological evidence, which can otherwise be erased. Primus Dep. 125:9-15; McKee Dep. 22:24-23:11, 41:19-42:4 (explaining the need for an attorney to send a preservation letter to law enforcement early in the case to ensure that they secure any electronically stored discovery); *id.* at 42:7-43:24 (further describing problems with loss of technological evidence); Tucker Dep. 39:4-13 (describing the problems with loss of technological evidence when attorneys are appointed later in a case); Soucy Dep. 42:7-9.

RESPONSE

Qualified. Electronic evidence is potentially more easily destroyed than physical evidence. McKee Depo. 22:24-23:11, *id.* at 41:19-42:4; *id.* at 42:7-43:24. Destruction of electronic evidence does not necessarily prevent effective

representation of criminal defendants. Tucker Depo. 38:14-39:17 ("Q. In your experience, are there instances in which you have been privately retained to represent a criminal defendant after they have had their initial appearance? A. Yes. Q. And in your experience, have you been retained to represent a criminal defendant weeks or even months after they have had their initial appearance? A. Yes. Q. In those situations, are you able to provide effective assistance? A. I do the best job that I can. Q. You don't believe that you're ineffective when you are retained to represent a criminal defendant and accept that retention weeks or months after their initial appearance; is that accurate? A. I think it depends, right? So I think there are other pieces of information. And so one case that comes to mind that I'm thinking of is a case where I was retained months after the initial appearance, and I went to request discovery and was told that one of the police officer's WatchGuard recordings had been destroyed. And so had I been retained earlier in the case, then I would have sent a preservation letter or made a request for that information. But by the time I got involved in the case, it was already gone. Q. And did you continue to represent that client after learning that information? A. I did, and I filed a motion to dismiss which is still pending."). Commissioner Soucy's testimony, in response to a question asking why failure of prosecutors to provide mandatory discovery to students in the Maine Rural Practice Clinic was "a problem," and, "Would that delay in getting discovery have a knockoff effect on other parts of the student's investigation or work on the case?" was, "Sure. For instance, *if you need to see a video in order to determine if there's a motion to suppress that should be filed and you don't have the video*, it's

difficult to file the motion and speak with authority. Sometimes there's excul -- oftentimes there's exculpatory information in videos. You can't even prepare your defense sometimes without seeing that information. And so, yeah, it has reverberating effects throughout the case." Soucy Depo. at 40:1-41:17 (emphasis added).

OBJECTION

An assertion of opinion that attorneys "need" to take specific steps in all criminal prosecutions is not a fact and is also immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is neither a fact nor a "material fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

60. Attorneys also need to interview witnesses before their memories fade or they are otherwise unavailable, and view the alleged crime scene before there are changes to the area. Primus Dep. 125:16-23; Soucy Dep. 42:7-9.

RESPONSE

Qualified. The cited authority does not support the statement. Primus Dep. 125:16-23; Soucy Dep. 42:7-9.

OBJECTION

An assertion of opinion that attorneys "need" to take specific steps in all criminal prosecutions is not a fact and is also immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is neither a fact nor a "material fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

61. "By and large," loss of witness evidence is a problem that cannot be resolved if an attorney is appointed later in the case. Fisher Dep. 55:23-56:3.

RESPONSE

Qualified. The statement materially mischaracterizes the cited testimony. Fisher Depo. at 55:23-56:15 ("Q. In cases where you have witness's memories fade, is that something that can be fixed if an attorney is appointed later in the case? MR. MAGENIS: Objection to form. A. By and large, no. I mean technically it's possible. BY MS. BOCK: Q. But do you agree that generally, that probably

can't be fixed? MR. MAGENIS: Same objection. A. I think it really depends on the situation. BY MS. BOCK: Q. Are there cases where it is not possible to fix fading memories when an attorney is appointed later in the case? MR. MAGENIS: Objection to form. A. Yes."). Loss of evidence can potentially be remedied. Tucker Depo. 38:14-39:17 ("Q. In your experience, are there instances in which you have been privately retained to represent a criminal defendant after they have had their initial appearance? A. Yes. Q. And in your experience, have you been retained to represent a criminal defendant weeks or even months after they have had their initial appearance? A. Yes. Q. In those situations, are you able to provide effective assistance? A. I do the best job that I can. Q. You don't believe that you're ineffective when you are retained to represent a criminal defendant and accept that retention weeks or months after their initial appearance; is that accurate? A. I think it depends, right? So I think there are other pieces of information. And so one case that comes to mind that I'm thinking of is a case where I was retained months after the initial appearance, and I went to request discovery and was told that one of the police officer's WatchGuard recordings had been destroyed. And so had I been retained earlier in the case, then I would have sent a preservation letter or made a request for that information. But by the time I got involved in the case, it was already gone. Q. And did you continue to represent that client after learning that information? A. I did, and I filed a motion to dismiss which is still pending.").

OBJECTION

The authority cited in support of this statement is testimony in response to a series of incomplete hypothetical questions, asked of a fact witness, and objected to at deposition. *See State v. Bunker*, 351 A.2d 841, 844 (Me. 1976) ("In framing a hypothetical question the practice is for the question to contain the assumption of the existence of such facts and conditions *as the jury may be authorized to find upon the evidence as it then is, or as there may be good reason to suppose it may thereafter appear to be*." (quoting *Reid v. Eastern Steamship Co.*, 112 Me. 34, 90 A. 609 (1914))) (emphasis added).

62. It is important for attorneys to interview witnesses to develop a "meaningful" understanding of the strengths and weaknesses of a particular case. Fisher Dep. 51:21-24; Primus Dep. 125:16-17; McKee Dep. 22:17-24.

RESPONSE

Denied. The cited authority does not support the statement, Primus Depo. at 125:16-17; McKee Depo. at 22:17-24. Plaintiffs quotation of one word from that cited authority materially mischaracterizes the deposition testimony. Fisher Depo. at 51:17-24 ("Q. Is it important for a lawyer to review discovery before a dispositional conference? A. Yes. Q. Why is that? A. Because *the lawyer can't have a meaningful discussion about a resolution of the case* without knowing the strengths of the state's case or the weaknesses of the state's case.") (emphasis added).

OBJECTION

An assertion of opinion about what qualifies as an undefined "meaningful understanding," is not a fact and is also immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is neither a fact nor a "material fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

63. Interviewing witnesses is "conducted much more effectively by an attorney than a criminal defendant." Fisher Dep. 52:12-18.

RESPONSE

Qualified. Ms. Fisher's personal opinion is that all steps in pretrial preparation for the defense of a criminal prosecution are "conducted more effectively by an attorney than a criminal defendant." Fisher Depo. at 52:5-18.

OBJECTION

A lay witness's personal opinion based on her personal experience regarding the relative effectiveness of an attorney and an unrepresented litigant in pretrial preparation, is not a fact and is also immaterial to the standard determinative of

Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is neither a fact nor a "material fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

64. Unrepresented individuals are not equipped to hire experts. Primus Aff. ¶ 49.

RESPONSE

Qualified. Whether hiring an expert witness is necessary for the defense of a criminal prosecution depends on the circumstances of each criminal case. Billings Depo. #1 at 170:9-15 ("**Q** And then aside from trainings, what does MCILS do to ensure that experts are hired by -- by assigned counsel when it's appropriate? **A** Well, that when it's appropriate I think is the key to that question. Because that's a professional judgment call by the lawyer that they are entrusted to make.").

OBJECTION

An assertion of opinion by Plaintiffs' retained expert that unrepresented defendants are not "equipped to hire experts" is not a fact, lacks foundation for any relevance to effective representation, and is also immaterial to the standard

determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is neither a fact nor a "material fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

65. MCPDS recognizes that, before a dispositional conference, the defendant's lawyer should consider retaining and retain experts. Fisher Dep. 49:9-50:6.

RESPONSE

Qualified. Among the responsibilities of criminal defense counsel is consideration of whether expert witnesses are appropriate. Billings Depo. #1 at 170:9-15 ("**Q** And then aside from trainings, what does MCILS do to ensure that experts are hired by -- by assigned counsel when it's appropriate? **A** Well, that when it's appropriate I think is the key to that question. Because that's a professional judgment call by the lawyer that they are entrusted to make."); Tucker Depo. at 56:23-57:5 ("Q. I am referring to paragraph 12 of Exhibit 4. I think we've addressed this already, but just to be clear, is it fair to say that in your experience, not every single criminal prosecution requires retention of an expert in order to adequately defend it? A. Correct. I think you have to go through the analysis of whether this case needs an expert or would warrant an expert.").

OBJECTION

A lay witness's personal opinion based on her personal experience is not a fact and is also immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is neither a fact nor a "material fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

66. Expert work is complicated, so the prompt identification of the need for and retention of an expert by an attorney is paramount to the client. Tucker Dep. 56:23-57:5; Tucker Aff. ¶¶ 40-46; Tarpinian Dep. 24:1-13 (to be considered effective, counsel should be analyzing whether an expert may be helpful in the client's case as part of a pretrial investigation.).

RESPONSE

Qualified. Among the responsibilities of criminal defense counsel is consideration of whether expert witnesses are appropriate. Billings Depo. #1 at 170:9-15 ("**Q** And then aside from trainings, what does MCILS do to ensure that experts are hired by -- by assigned counsel when it's appropriate? **A** Well, that

when it's appropriate I think is the key to that question. Because that's a professional judgment call by the lawyer that they are entrusted to make."); Tucker Depo. at 56:23-57:5 ("Q. I am referring to paragraph 12 of Exhibit 4. I think we've addressed this already, but just to be clear, is it fair to say that in your experience, not every single criminal prosecution requires retention of an expert in order to adequately defend it? A. Correct. I think you have to go through the analysis of whether this case needs an expert or would warrant an expert.").

OBJECTION

An assertion of opinion that consideration of expert witnesses is "paramount to the client" is not a fact and is also immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is neither a fact nor a "material fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

67. MCPDS recognizes that, before a dispositional conference, the defendant's lawyer should commence an investigation into the allegations, which is "conducted much more effectively by an attorney than a criminal defendant." Fisher Dep. 49:9-52:18.

RESPONSE

Qualified. Ms. Fisher's personal opinion is that all steps in pretrial preparation for the defense of a criminal prosecution are "conducted more effectively by an attorney than a criminal defendant." Fisher Depo. at 52:5-18.

OBJECTION

A lay witness's personal opinion based on her personal experience regarding the relative effectiveness of an attorney and an unrepresented litigant in pretrial preparation, is not a fact and is also immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is neither a fact nor a "material fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

68. Billings admits that counsel needs to investigate the defendant's possible lines of defense against prosecution, which includes interviewing key witnesses or hiring an investigator to do so. Billings (July 10) Dep. 160:16-161:1.

RESPONSE

Qualified. The cited testimony addresses deposition Exhibit #10, 94-649 CMR ch. 102, Standards of Practice for Attorneys Who Represent Adults in Criminal Proceedings. Billings Depo. #1 at 160:16-21 ("**Q** Checking down my list, do you agree that assigned counsel needs to investigate the defendant's possible lines of defense against prosecution as part of the representation? MR. MAGENIS: Objection to form and foundation. **A** In almost every case, yes.").

OBJECTION

Neither Defendants' acknowledgement of the terms of a codified regulation nor the regulation itself is a fact material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is immaterial and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

69. Unrepresented individuals are not equipped to conduct pretrial investigations or hire investigators. Primus Aff. ¶ 49**.**

RESPONSE

Qualified. Unrepresented individuals are not as well equipped as attorneys to conduct pretrial investigations. Tarpinian Depo. at 24:9-25.

OBJECTION

An assertion of opinion by Plaintiffs' retained expert that unrepresented defendants are not "equipped to conduct pretrial investigations" is not a fact, lacks foundation for any relevance to effective representation, *see* M. R. Evid. 702-703, and is also immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is neither a fact nor a "material fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

70. Investigation is necessary for effective representation, to determine whether there is a sufficient factual basis for the client's charges and to identify the client's potential defenses, alibis or sentencing mitigation factors. Tucker Aff. ¶ 2.

RESPONSE

Qualified. Pretrial investigation may be helpful in developing a defense to criminal charges. Tarpinian Depo. at 24:9-25.

OBJECTION

An assertion of opinion by Plaintiffs' retained expert regarding a task "necessary for effective representation," is not a fact, lacks foundation for any relevance to effective representation, *see* M. R. Evid. 702-703, and is also immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is neither a fact nor a "material fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

71. Investigation must begin promptly after the client's initial appearance. Tucker Aff. ¶ 23.

RESPONSE

Denied. McKee Depo. at 21:19-22:2 ("Q. In your criminal practice, is there a time period after which you will not accept a retention to defend a criminal defendant? A. There is not. There is not a black and white rule by any means. There are certain challenges when somebody comes in very late in the process, just the ability to work them into the schedule, if you will. My trial is tomorrow. Okay, I'm probably not going to be able to take that trial on."); Deposition of Amber Tucker ("Tucker Depo."), 46:8-22 ("Q. In your professional experience as a criminal defense lawyer, have you ever rejected a retention solely based upon

the amount of time that had passed since the initial appearance? A. None comes to mind, but if I had somebody who wanted to hire me who had unrealistic or unreasonable expectations and I thought that there was not going to be anything that I could do for the client, then I would probably not take on that case. Q. I think my question is a bit different which is that based solely on the time that had elapsed since initial appearance, in your experience as a criminal defense attorney, have you ever, based on that one factor, rejected a retention? A. No."); Tarpinian Depo. at 26:16-23 ("Q. Would you say the floor on what's effective lawyering is beginning the fact investigation properly after receiving the case? A. No. You would start by talking to your client, and then the fact investigation would start after that. You have to start talking to your client first. But then maybe it's not -- it depends on what your client wants you to do. It depends on the case also.").

OBJECTION

An assertion of opinion that "[i]nvestigation must begin" at a certain point is not a fact, lacks foundation for any relevance to effective representation, and is also immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is neither a fact nor a "material fact"

and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

72. If investigations do not begin promptly after initial appearance, witnesses' memories may fade; crime scenes may be altered or destroyed; and physical or virtual evidence (including toxicology reports, security camera footage, or medical records) may be lost, recorded over, or deteriorate. Tucker Aff. ¶ 23; Billings (July 10) Dep. 13:16-15:9; Fisher Dep. 55:7-57:2; McKee Dep. 36:12-19; Soucy Dep. 42:7-10; Tarpinian Dep. 35:8-14, 60:12-16; Tucker Dep. 39:4-13, 42:1-15.

RESPONSE

Qualified. The actual occurrence of any of these potential challenges to defending a criminal defendant vary based on the circumstances of the case and the possibility or actuality of these challenges does not prevent defense counsel from providing effective representation. McKee Depo. at 21:19-22:2 ("Q. In your criminal practice, is there a time period after which you will not accept a retention to defend a criminal defendant? A. There is not. There is not a black and white rule by any means. There are certain challenges when somebody comes in very late in the process, just the ability to work them into the schedule, if you will. My trial is tomorrow. Okay, I'm probably not going to be able to take that trial on."); Deposition of Amber Tucker ("Tucker Depo."), 46:8-22 ("Q. In your professional experience as a criminal defense lawyer, have you ever rejected a retention solely based upon the amount of time that had passed since the initial appearance? A.

None comes to mind, but if I had somebody who wanted to hire me who had unrealistic or unreasonable expectations and I thought that there was not going to be anything that I could do for the client, then I would probably not take on that case. Q. I think my question is a bit different which is that based solely on the time that had elapsed since initial appearance, in your experience as a criminal defense attorney, have you ever, based on that one factor, rejected a retention? A. No."); Tarpinian Depo. at 34:24-36:5 ("Q. Okay. So one of the other experts in this case has an opinion that it's necessary to begin a fact investigation promptly after the initial appearance because -- this is not a direct quote but it's close: Because otherwise memories may fade, crime scenes may be altered or destroyed, and physical or virtual evidence may be lost, recorded over or destroyed. Do you agree with that opinion? A. Say that again. Q. It's necessary to begin the fact investigation promptly after initial appearance because otherwise memories may fade, crime scenes may be altered or destroyed, and physical or virtual evidence may be lost, recorded over or destroy? A. So I'm fighting with the initial appearance. Promptly after representation begins, yes. As soon as you start a case then, yeah, it's important. All of those things are true, though, but they don't always hurt your client. Like overriding a video that shows your client -- may be implicating them in some offense is helpful. Overriding a video where it's exculpatory is not helpful. I am not trying to like fight with you too much but, again, I gear myself after the case starts. So like when the initial appearance happens, that's when a case begins for a defendant, they're appraised of the charges. If you start representation, then your effective representation has to start

as soon as you get that client. So if you get appointed at an initial appearance, that should start then. If you get appointed the week before jury selection, then your effective -- as an attorney, you're judged on when you are on the case.").

OBJECTION

An assertion of opinion regarding potential outcomes on potential evidence if investigations are not commenced immediately is not a fact, lacks foundation for any relevance to effective representation, and is also immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is neither a fact nor a "material fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

73. If defendants are not appointed counsel until later in their case, evidence may go stale and witnesses' memories may fade, and that cannot be remedied later in the case. Tardy Dep. 13:23-14:2.

RESPONSE

Denied. The portion of the statement premising the statement with, "If defendants are not appointed counsel until later in the case," is unsupported by the cited

authority. Tardy Depo. at 13:23-14:2 ("Q. Do you agree there are situations where evidence might go stale or a witness's memory might fade, and that won't be able to be remedied later in a criminal case? A. Yes.").

OBJECTION

An assertion of opinion regarding potential outcomes on potential evidence of a delay in the appointment of counsel is not a fact, lacks foundation for any relevance to effective representation, and is also immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is neither a fact nor a "material fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

74. In addition, starting an investigation promptly helps forge stronger attorney-client relationships and provides clients with "some reassurance that their case is being addressed." Soucy Dep. 42:10-12, 17-18; Primus Aff. ¶ 49.

RESPONSE

Qualified. For students participating in the Maine Rural Defense Clinic, undertaking tasks such as meeting clients helps with the client relationship

including providing clients "some reassurance that their case is being addressed." Soucy Depo. at 38:11 – 39:8; *id.* at 41:23-42:12. Plaintiffs' second citation does not support the statement. Primus Aff. at ¶49.

OBJECTION

This statement is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

75. Late-appointed counsel will not have been able to interview the client and witnesses while their memories are fresh before important details are forgotten. Primus Aff. ¶ 46.

RESPONSE

Denied. Tarpinian Depo. at 30:13-17 ("Q. Can it make your job harder if you're not assigned someone until long after their initial appearance? A. It can, but it doesn't really stop us from doing our job."); *id.* at 25:13-26:15 ("The other problem with that late discovery is if we get a late recant statement from a domestic violence witness, we get photos that are not helpful of that alleged assault, our case investigation is wasted if we have to go and redo it again at trial

which is frequent."); *id.* at 31:4-19 ("The problem with criminal cases is that -- again, I probably have a lot of bias and misperceptions about civil cases, but it's like this thing happens, and then you deal with it. Criminal cases, we are really dealing with people's lives, and their lives don't stop because they got arrested for OUI a year ago or a month ago or a week ago or today. Their lives develop. . . . So like case investigation done early often has to be redone later because -- I call it factual drift. I'm not demeaning anybody, but our witnesses often have factual drift in their cases."); McKee Depo. at 21:19-22:2 ("Q. In your criminal practice, is there a time period after which you will not accept a retention to defend a criminal defendant? A. There is not. There is not a black and white rule by any means. There are certain challenges when somebody comes in very late in the process, just the ability to work them into the schedule, if you will. My trial is tomorrow. Okay, I'm probably not going to be able to take that trial on."); Deposition of Amber Tucker ("Tucker Depo."), 46:8-22 ("Q. In your professional experience as a criminal defense lawyer, have you ever rejected a retention solely based upon the amount of time that had passed since the initial appearance? A. None comes to mind, but if I had somebody who wanted to hire me who had unrealistic or unreasonable expectations and I thought that there was not going to be anything that I could do for the client, then I would probably not take on that case. Q. I think my question is a bit different which is that based solely on the time that had elapsed since initial appearance, in your experience as a criminal defense attorney, have you ever, based on that one factor, rejected a retention? A. No.").

OBJECTION

An assertion of opinion by Plaintiffs' retained expert that it is uniformly impossible for counsel appointed at some undefined and indeterminate time to conduct effective client and witness interviews is not a fact, lacks foundation for any relevance to effective representation, and is also immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is neither a fact nor a "material fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

76. Late-appointed counsel will not have been able to take photographs of the crime scene as it looked at the time of the alleged crime. Primus Aff. ¶ 47.

RESPONSE

Qualified. Independent of reasons that attorneys for criminal defendants may not want to create photographic evidence independent of evidence captured by third-parties, *see, e.g., United States v. Tsarnaev*, 945 F. Supp. 2d 230, 232 (D. Mass. 2013) (attorney photographs not subject to "work product" exception); *United States v. Malady*, 209 F. App'x 848, 850 (10th Cir. 2006) (same), "crime scenes"

are not relevant to every type of criminal prosecution, *see* Tarpinian Depo. at 26:16-23, and, if relevant, taking photographs of those crime scenes are not among the tasks which attorneys can or should undertake in order to provide effective representation. *Id.* at 34:24-36:7.

OBJECTION

An assertion of opinion by Plaintiffs' retained expert that it is uniformly impossible for counsel appointed at some undefined and indeterminate time to "take photographs of the crime scene as it looked at the time of the alleged crime" is not a fact, lacks foundation for the opinion, M. R. Evid. 702-703, and is also immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is neither a fact nor a "material fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

77. Late-appointed counsel will not have been able to ensure the preservation of technological and evanescent evidence - all of which could lead to irreparable harm in a criminal defendant's case. Primus Aff. ¶ 48.

RESPONSE

Qualified. Defense counsel addresses the effect of non-preservation of evidence by third-parties, including the prosecution, but does not "ensure" such preservation. McKee Depo. at 41:23-43:2 ("Q. Is it a fair characterization of the criminal rules that the prosecution has an obligation to provide a certain amount of what's been referred to as automatic discovery? A. Yes. Q. At the beginning of a criminal case? A. Yes. Q. What function in criminal practice would a preservation letter perform, given that obligation? A. Well, they may have the obligation to preserve certain information, but in the example I was giving you before about electronically recorded information that any law enforcement office, any body cam, whatever they be, the importance of preserving that is critical because electronic information gets lost on too many times to count. No disrespect to law enforcement, prosecutors, but that simply happens. In Augusta just recently we had an issue with the new police report, brand new, multi-million dollar facility, not recording interviews of defendants. Or if they were recorded, they were recorded over. Or they were simply just lost because of a whole different set of issues. Now that can happen with paper, but it's critical to give that notice to the law enforcement agency that that needs to be preserved. That's important because they get a specific notice, they have the name of the defendant, they have the request that they preserve that, and then for a defendant, if that material is lost later on, they would at least be able to argue, well, I at least asked for it first.").

OBJECTION

An assertion of opinion by Plaintiffs' retained expert that it is uniformly impossible for counsel appointed at some undefined and indeterminate time to "ensure the preservation of technological and evanescent evidence" is not a fact, lacks foundation for the opinion, M. R. Evid. 702-703, and, coupled with the indeterminate assertion that failure to "ensure" that preservation "*could* lead to irreparable harm," (emphasis added) is also immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is neither a fact nor a "material fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

78. Criminal defendants cannot effectively investigate their own case from a jail cell. Tucker Aff. ¶ 26.

RESPONSE

Qualified. Unrepresented individuals are not as well equipped as attorneys to conduct pretrial investigations. Tarpinian Depo. at 24:9-25.

OBJECTION

An assertion of opinion by an expert witness that it is uniformly impossible for any criminal defendant, facing any charge, to investigate the facts underlying a criminal case brought against them to an undefined standard of "effective[ness]" is not a fact, lacks foundation for the opinion, M. R. Evid. 702-703, and is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is neither a fact nor a "material fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

79. Even when a person is not in jail, the terms of release may bar them from speaking to key witnesses or alleged victims. Tucker Aff. ¶ 26.

RESPONSE

Qualified. This is a statement of law, not fact. 15 M.R.S.A. §1026(3)(A)(5).

OBJECTION

An assertion that bail conditions may include restrictions on contact with identified individuals, 15 M.R.S.A. §1026(3)(A)(5) ("Avoid all contact with a victim of the alleged crime, a potential witness regarding the alleged crime or

with any other family or household members of the victim or the defendant or to contact those individuals only at certain times or under certain conditions . . . ."), is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is neither a fact nor a "material fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

80. It is important for an attorney to conduct legal research in order to evaluate the strengths and weaknesses in a case. Fisher Dep. 57:4-12; *id.* at 54:5-7 (generally explaining that attorneys need to do legal research); Tucker Dep. 36:17-21.

RESPONSE

Qualified. The cited authority, responding to a question asking why a hypothetical criminal defendant could "get an unfair deal without an appointed counsel," does not support the statement. Fisher Depo. at 56:20-57:12 ("Q. What might happen if a criminal defendant engages in plea negotiations without an appointed attorney? MR. MAGENIS: Objection, calls for an opinion and speculation. A. A lot of things could happen. The defendant could incriminate themselves for that crime or additional crimes, the defendant could end up getting

an unfair deal. BY MS. BOCK: Q. Why might they get an unfair deal without an appointed counsel? MR. MAGENIS: Objection, calls for speculation and an opinion. A. Because they don't have someone who's trained to evaluate the strengths and weaknesses in the case, conduct legal research, file appropriate motions. And also, they may not know what a case is worth as much as an attorney would. Legal research may be useful to identify the elements of charges and available defenses in particular criminal cases."). Fisher Depo. at 54:5-7 ("Q. *Depending on the case*, would an attorney need to do legal research? A. Yes.") (emphasis added); Tucker Depo. 36:17-21 ("Q. Other than investigation, is there any other task that, in your opinion, is necessary to reach the conclusion as to whether there's sufficient factual basis for a client's charges? A. Well, I think certainly having conversations with the client about the case, whether you want to include that in investigation or not. And, again, I think all of these things, depending on how you define investigation, can all go under investigation. I think all of these things could go under investigation generally, but I think also the lawyer performing any necessary research to be able to determine whether there's a sufficient factual basis and then certainly advise the client on potential defenses that are available to them."). The cited authority does not support the statement that it is uniformly "important to for an attorney to conduct legal research."

OBJECTION

Ms. Fisher's answer to a question inviting speculation, soliciting an opinion based on an incomplete hypothetical is inadmissible and, accordingly, does not support

this statement. Fisher Depo. at 57:4-12. To the extent that this statement consists of an assertion of opinion by a witness that it is uniformly impossible for any criminal defendant, facing any charge, to investigate the facts underlying a criminal case brought against them to an undefined standard of "effective[ness]" is not a fact, lacks foundation for the opinion, M. R. Evid. 702-703, and is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is neither a fact nor a "material fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

81. An attorney is able to conduct research much more effectively than most criminal defendants. Fisher Dep. 54: 19-24.

RESPONSE

Qualified. An attorney is able to research the law more effectively than most criminal defendants. Fisher Depo. 54: 19-24.

OBJECTION

The cited authority consists of an objected-to question soliciting opinion testimony from a fact witness, fails to include the necessary prerequisites for the admissibility of opinion evidence, M. R. Evid. 702-702, and is so general in its reference to undefined "research" and "most criminal defendants" as to have no materiality to the standard controlling liability in Counts I and II of Plaintiffs' Amended Complaint. *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is neither a fact nor a "material fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

82. Because criminal law is constantly evolving-based on actions by the legislature and decisions from the Maine Law Court and the U.S. Supreme Court--defense attorneys frequently need to conduct legal research in order to provide appropriate advice and advocacy. McKee Aff. ¶ 18**.**

RESPONSE

Qualified. McKee Depo. at 32:20-33:5 ("Q. Just as with the other tasks that you testified to earlier, is it fair to say that conducting legal research -- the necessity of conducting legal research is something that varies case by case? A. Sure. Some cases you need to do more legal research than others, sometimes you don't simply

because you have already learned it, right? You know some of the basics in the first place as a lawyer. Just like a mechanic might have a certain base level of knowledge. They don't need to look in the manual to figure out how to change a starter.").

OBJECTION

This assertion is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is neither a fact nor a "material fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

83. Negotiating plea agreements includes discussions with the prosecutor and, at times, the judge to dismiss a case or resolve the case by plea bargain. Tucker Aff, ¶ 29**.**

RESPONSE

Qualified. Tucker Depo. at 56:10-23 ("Q. Moving on, if we could, to the next paragraph which is [paragraph]11 on Exhibit 4. I'm just curious, it is technically possible, appreciating that it may not be, in your opinion, ideal for a criminal defendant to accept a plea offer; isn't that correct? A. It is possible. Q. And is it

possible, literally possible as opposed to appreciating it might not be a good idea in your opinion, for a criminal defendant to negotiate a plea with the prosecution? A. It is possible. Q. Without counsel? A. Yes."); *id.* at Exhibit 4 (Plaintiffs' Rule 26 Expert Disclosure of Amber Tucker), p.5 (attached hereto as **Exhibit F**).

OBJECTION

This assertion is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is neither a fact nor a "material fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

84. A defendant under indictment who is not represented is "unable to meaningfully participate in plea negotiations." Billings (July 10) Dep. 12:10-16.

RESPONSE

Qualified. A pro se defendant can engage in plea negotiations. Tucker Depo. at 56:10-23 ("Q. Moving on, if we could, to the next paragraph which is [paragraph]11 on Exhibit 4. I'm just curious, it is technically possible, appreciating that it may not be, in your opinion, ideal for a criminal defendant to

accept a plea offer; isn't that correct? A. It is possible. Q. And is it possible, literally possible as opposed to appreciating it might not be a good idea in your opinion, for a criminal defendant to negotiate a plea with the prosecution? A. It is possible. Q. Without counsel? A. Yes."); *id.* at Exhibit 4 (Plaintiffs' Rule 26 Expert Disclosure of Amber Tucker), p.5. Some pro se defendants may have had a meaningful opportunity to participate in plea negotiations prior to recent statutory changes. Billings Depo #1 at 13:2-12 (A . . . I would not categorically say that those individuals in either civil violations or some misdemeanor cases didn't have a meaningful opportunity to participate in plea negotiations. **Q** Is there a problem in MCILS's view in general when a pro se criminal defendant is engaged in plea negotiations with a prosecutor? MR. MAGENIS: Objection to form. **A** I think there is. And I'm in favor of the stat -- the recent statute that changed Maine law to prohibit it and it's with narrow exceptions."

OBJECTION

The questions to which the witness was responding in the source relied upon by Plaintiffs for this statement sought a legal opinion characterizing the meaning of Plaintiffs' allegation in paragraph 59 of Plaintiffs' Amended Complaint. Billings (July 10) Dep. 11:20-12:16 ("**Q** Could you turn to paragraph 59, please, of the Complaint. I won't read the entire paragraph, but certainly you're welcome to. The first sentence states: Unrepresented individuals are unable to meaningfully participate in plea negotiations. Does MCILS agree with that statement? MR. MAGENIS: Object again to the extent it calls for a legal opinion. You can

answer."). Without a definition or common understanding of "meaningfully participate," this assertion is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

85. If a defendant engages in plea negotiations without counsel, they could make statements damaging to their case. Tardy Dep. 12:22-13:7.

RESPONSE

Qualified. It is "conceivable" that a defendant could make statements damaging to their case which could then be difficult to remedy. Tardy Depo. at 12:22 – 13:7 ("Q. Returning to plea negotiations, are there cases where it's difficult to undo the harm from someone appearing pro se in plea negotiations if they're appointed counsel later in a case? A. It's conceivable, yes. Q. And what might that situation involve? A. If a pro se defendant during the course of plea negotiations could potentially damage his or her case and the ability for -- and could prejudice the case through comments that shouldn't be made by the defendant.").

OBJECTION

The potential that a criminal defendant "could make statements damaging to their case" is neither a fact nor is it material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

86. If a defendant is not represented early in the case, they may lose the opportunity to cooperate with prosecutors. Tardy Dep. 13:8-11.

RESPONSE

Qualified. The opportunity to accept a plea offer arising out of cooperating with prosecutors can be lost for various reasons, depending on the circumstances of the prosecution, including the fact that an indigent criminal defendant has co-defendants. Tucker Depo. at 55:5-56:9 ("Q. Is it fair to say that there is a particular risk to criminal defendants of a plea agreement being withdrawn when they have codefendants? A. There could be. Q. I only pick that out because it was mentioned in paragraph 10 here in Exhibit 4 as a potential ground for withdrawing a plea agreement. Do you see what I'm referring to? A. Yeah, I didn't hear the last part of what you said. For what a plea agreement? Q. For withdrawing a plea agreement. Is that -- A. So I think the short answer is, you

know, when you represent somebody and there's multiple codefendants, sometimes it's, you know, to see who can cooperate first, right? And so the later in the case that an attorney is appointed to one of those codefendants, they may lose out on that opportunity because the other codefendants who were appointed counsel or retained counsel earlier in time may have been able to have those conversations with the prosecutor. Q. Is it fair to say that there are occasions in your experience in which plea offers have been withdrawn even when a criminal defendant doesn't have codefendants? A. Sure. Q. The existence of a codefendant is just another element in the risk analysis of a plea agreement being withdrawn; is that fair? A. Correct."); *id.* at Exhibit 4 (Plaintiffs' Rule 26 Expert Disclosure of Amber Tucker), p.5.

OBJECTION

The potential that a criminal defendant could lose the opportunity to cooperate with prosecutors is neither a fact nor is it material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

87. A client cannot properly negotiate a plea agreement without a lawyer. Tucker Aff. ¶ 36.

RESPONSE

Qualified. A pro se defendant can engage in plea negotiations. Tucker Depo. at 56:10-23 ("Q. Moving on, if we could, to the next paragraph which is [paragraph]11 on Exhibit 4. I'm just curious, it is technically possible, appreciating that it may not be, in your opinion, ideal for a criminal defendant to accept a plea offer; isn't that correct? A. It is possible. Q. And is it possible, literally possible as opposed to appreciating it might not be a good idea in your opinion, for a criminal defendant to negotiate a plea with the prosecution? A. It is possible. Q. Without counsel? A. Yes."); *id.* at Exhibit 4 (Plaintiffs' Rule 26 Expert Disclosure of Amber Tucker), p.5.

OBJECTION

This statement of opinion, is neither specific enough as to what standard is being applied to determine the "propriety" of an indigent defendant's plea negotiations nor does it include any foundation sufficient to evaluate or support a conclusion that the opinion is reliable. M. R. Civ. P. 702-703. The statement is not a fact or material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are

material."). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

88. Unrepresented individuals are unable to negotiate with the prosecution without waiving their constitutional rights. Tucker Aff. ¶ 50.

RESPONSE

Qualified. The cited basis for this statement does not support the statement. Tucker Aff. at ¶¶ 49-50 ("Effective representation includes ensuring the client is aware of their rights at the earliest opportunity. . . . This ensures that clients do not inadvertently waive their rights.").

OBJECTION

This statement of opinion,[7] is neither specific enough as to which "constitutional rights" are at issue nor does it include any foundation sufficient to evaluate or support a conclusion that the opinion is reliable. M. R. Civ. P. 702-703. The statement is not a fact or material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-*

[7] Moreover, the opinion, in addition to not being included in the cited source for this statement, was not included in Plaintiffs' Expert Disclosure of Amber Tucker or identified at deposition as an opinion that the witness intended to provide, Tucker Depo. at 17:16-18:2 ("Q. So with respect to the opinions to be expressed portion of Exhibit 4 starting on page two and running to page eight, is it accurate there's 18 numbered paragraphs in that section? A. Yes. Q. And is this designation, Exhibit 4, an accurate recitation of the opinions to which you intend to testify at trial? A. Yes. Q. And is Exhibit 4 a complete recitation of the opinions to which you intend to testify at trial? A. Yes."); *id.* at Exhibit 4 (Plaintiffs' Rule 26 Expert Disclosure of Amber Tucker).

Dore v. Webber Hosp. Ass'n, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

To the extent this assertion is based on the premise that the assistance of a Lawyer of the Day is not, for the purpose of plea negotiations, representation, then this statement is a statement of law, not a fact, and contrary to controlling precedent. *State v. Galarneau*, 2011 ME 60, ¶ 10, 20 A.3d 99, 10 (defendant was "represented" for purpose of plea, "reject[ing] [Appellant]'s argument that representation by the lawyer for the day, simply because it is limited in duration, fails to satisfy the right to counsel.").

89. For cases involving multiple defendants, defense counsel needs to understand how their client fits into the entire case in order to evaluate the case and advise their client. McKee Aff. ¶ 16.

RESPONSE

Qualified. McKee Depo. at 29:25-30:24 ("Q. If we move on -- could we please move on to paragraph four on Exhibit 3? Please feel free to take whatever time you need to or would like to review that paragraph but -- A. I have read it. Q. I want to focus on the first portion which indicates or which references cases involving multiple defendants. A. Yes. Q. Are you aware, sitting here today, of whether any or how many of the members of plaintiff's class are facing criminal

charges in which they have codefendants? A. I am not. Q. Is whether or not there are any -- there's anybody in plaintiff's class who meets that description relevant to your opinions? A. I don't know. Q. As you were forming your opinions, did consideration of whether member of plaintiff's class had codefendants factor into your opinions? A. No, only insofar as I assumed somewhere in the class there were people who had codefendants. If they're not, they're not. That's not a fact I delved into. But the opinion is my opinion assuming there is at least one person in the class that has a codefendant.").

OBJECTION

This statement of opinion characterizing the standard of care applicable to defense counsel is not a fact. Moreover, lacking any evidentiarily supported connection to the circumstances of any member of Plaintiffs' Class, is not material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

90. Defense counsel must promptly communicate every plea offer made to the client (regardless of when in the case it occurs) and provide appropriate advice. Tucker Aff. ¶ 30.

RESPONSE

Qualified. Defense counsel is obligated to communicate with clients as required by the Maine Rules of Professional Conduct. McKee Depo. at 31:7-16; 43:11-24; 45:14-46:11; 53:2-13.

OBJECTION

This statement of opinion characterizing the standard of care applicable to defense counsel is not a fact. It is also not material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

91. Without investigation, an attorney cannot effectively advise their client regarding any plea deal, because any such advice requires knowing the risks of proceeding to trial and, in turn, knowledge of possible defenses. Tucker Aff. ¶ 25**.**

RESPONSE

Qualified. This statement of opinion characterizes the standard of care applicable to defense counsel. Tucker Depo. 18:3-23 ("Q. If I could please direct you to paragraph one on page two of Exhibit 4. I guess directing your attention to the third line of paragraph one, do you see the phrase effective representation? A. Yes. Q. What does that phrase mean as used in paragraph one? A. As far as effective representation, I think doing what any other reasonable attorney would do in the same or similar circumstances and the expectation to zealously represent your client. Q. Do you understand that phrase as you're using it in this case to be equivalent to the standard of care applicable to a criminal defense attorney? A. I think it's, yes, similar to that, but I think it also has other legal definitions. Q. In terms of your understanding of the phrase, effective representation, are you using it in a context referencing the standard of care applicable to a criminal defense attorney? A. In -- yes."; *id.* at Exhibit 4 (Plaintiffs' Rule 26 Expert Disclosure of Amber Tucker), p.2; Tarpinian Depo. at 39:6-13 ("Q. And in your view, is it at least helpful for a client to have a lawyer who can help them analyze the information and decide whether a plea deal is one that they should accept? A. Absolutely. And nobody should plea without having the opportunity to consult with counsel. I think that's what the Lawyer of the Day program tries to approximate.").

OBJECTION

This statement of opinion characterizing the standard of care applicable to defense counsel is not a fact. It is not material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

92. An attorney cannot recommend that the client accept a plea without having conducted appropriate investigation. Tucker Aff. ¶ 25**.**

RESPONSE

Qualified. This statement of opinion addresses the standard of care applicable to defense counsel. Tucker Depo. at 47:8-48:19 ("Q. Is that -- I'm just trying to define some terminology here so I understand. Is effectively advise something that is sort of related to or a part of this effective assistance standard to which you testified earlier? A. Yes. Q. Okay. What does effectively advised me? A. So I think in this situation, unless you're doing the investigation, you have no way to be able to counsel the client on whether a plea agreement is favorable to them and they should accept the plea agreement or move forward with other avenues: Motions to suppress, trial. Q. And why is it that investigation is necessary for being able to effectively advise a client on a plea deal? A. Because the attorney

wouldn't have all of the information to be able to do that. Q. When you say do that, you mean advise them on a plea deal? A. Correct. Q. Is it fair to say that there are instances in which an investigation in connection with evaluating a plea deal doesn't turn up any new information? A. Sure. Q. And that whether or not an investigation or the results of an investigation affect the attractiveness of a plea deal is a case-by-case analysis? A. I think so, but I think it's -- I mean I've had cases where exactly what you just said, you do the investigation and maybe there's more, you know, unfavorable information that comes out of the investigation. But in my view, that allows me or gives me more, you know, information to be able to talk to the client about when evaluating the plea offer, right? Q. Suddenly the State offer looks a little better? A. Yeah. So I think all information is good information from the perspective of a defense attorney."); Tarpinian Depo. at 39:6-13 ("Q. And in your view, is it at least helpful for a client to have a lawyer who can help them analyze the information and decide whether a plea deal is one that they should accept? A. Absolutely. And nobody should plea without having the opportunity to consult with counsel. I think that's what the Lawyer of the Day program tries to approximate."); McKee Depo. at 45:8-46:11 ("Q. And when you use the phrase "meaningful representation," you're referring to representation which includes the tasks that you've testified to earlier in terms of investigation, preparation -- A. Sure. Q. -- for trial? A. Yeah. I mean -- well, just general investigation, general preparation, understanding the implications of any individual crime that the person is charged with. Going back to the critical tasks, reviewing the charging instrument. Well, you can tell them that they've

been charged with a Class B burglary, and the maximum penalty is 10 years in prison or a $20,000 fine. Okay, you have reviewed the charging instrument in that scenario. You have reviewed the discovery, you have looked at it, you've gone through the few pages that you can get through so you have done that task. You have done the initial interview of the client, meaning you had a one- or two-minute, maybe a five-minute conversation with them. And so those boxes are checked, but they're not actually being completed in any meaningful way. So simply going and talking to an individual defendant and doing those tasks are not meeting the standard at all. Q. And, again, I'm just going to continue to go back to this. When you say "the standard," are you still referring to that reasonably competent, ordinarily prudent standard? A. Yes, I am.").

OBJECTION

This statement of opinion characterizing the standard of care applicable to defense counsel is not a fact. It is not material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

93. Evaluating plea agreements requires knowledge of the relevant law and of the risks and benefits of the agreement. Tucker Aff. ¶ 37.

RESPONSE

Qualified. A pro se defendant can engage in plea negotiations. Tucker Depo. at 56:10-23 ("Q. Moving on, if we could, to the next paragraph which is [paragraph]11 on Exhibit 4. I'm just curious, it is technically possible, appreciating that it may not be, in your opinion, ideal for a criminal defendant to accept a plea offer; isn't that correct? A. It is possible. Q. And is it possible, literally possible as opposed to appreciating it might not be a good idea in your opinion, for a criminal defendant to negotiate a plea with the prosecution? A. It is possible. Q. Without counsel? A. Yes."); *id.* at Exhibit 4 (Plaintiffs' Rule 26 Expert Disclosure of Amber Tucker), p.5

OBJECTION

This statement of opinion characterizing the standard of care applicable to defense counsel is not a fact. It is not material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

94. Evaluating plea agreements requires knowledge of what deals prosecutors have agreed to enter in similar cases. Tucker Aff. ¶ 37**.**

RESPONSE

Qualified. Tarpinian Depo. at 13:16-5 (". . . I teach my attorneys that we're on a road to trial, you should always be on the road to trial. Your expectation is this case is going to be tried. That's how you litigate every case. And then you develop off ramps, and your client gets to choose what off ramp that they want to take. So you develop the best option for plea available to them. If they want to take it, fantastic. If they don't, we're neutral as to what happens. We just create options for the client. How many options can we create? What options are meeting their goal? What's their goal? Lower -- reduced incarceration? Not have restitution? Get home for Christmastime? I mean everyone's goal is different and so you have to develop your -- these are all based on the relationship with your client.").

OBJECTION

This statement of opinion characterizing the standard of care applicable to defense counsel is not a fact. It is not material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v.*

Liberty Lobby, Inc., 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

95. Prompt appointment of a competent attorney who conducts an investigation that allows the attorney to properly counsel the client regarding any plea offered is necessary to ensure that defendants do not inadvertently waive their rights or defenses. Tucker Aff. ¶ 39.

RESPONSE

Qualified. Tucker Depo. at 56:10-23 ("Q. Moving on, if we could, to the next paragraph which is [paragraph]11 on Exhibit 4. I'm just curious, it is technically possible, appreciating that it may not be, in your opinion, ideal for a criminal defendant to accept a plea offer; isn't that correct? A. It is possible. Q. And is it possible, literally possible as opposed to appreciating it might not be a good idea in your opinion, for a criminal defendant to negotiate a plea with the prosecution? A. It is possible. Q. Without counsel? A. Yes."); *id.* at Exhibit 4 (Plaintiffs' Rule 26 Expert Disclosure of Amber Tucker), p.5; Tarpinian Depo. at 39:6-13 ("Q. And in your view, is it at least helpful for a client to have a lawyer who can help them analyze the information and decide whether a plea deal is one that they should accept? A. Absolutely. And nobody should plea without having the opportunity to consult with counsel. I think that's what the Lawyer of the Day program tries to approximate.").

OBJECTION

This statement of opinion regarding what constitutes "proper[] counsel," and that such counsel is "necessary" is not a fact. This opinion is, furthermore, not material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

96. Prompt plea negotiations mitigate the risk of clients accepting substandard plea offers solely to get out of jail sooner, and the risk that a client may end up serving a jail sentence longer than the sentence they might eventually plead to. Tucker Aff. ¶ 32.

RESPONSE

Denied. The timing of plea offers which are beneficial to client interests vary according to the circumstances of individual prosecutions. Tarpinian Depo. at 56:25-68:23 ("Q. So I guess there is like a baseline, is it fair to say that -- I'm looking at the language in this disclosure, that each procedural stage presents some level of risk to the criminal defendant? A. Every stage of the prosecution should be a direct risk to the defendant because the goal of the prosecution is to

convict them. But at both sides of that process, a defense attorney and a prosecutor thinking tactically have places -- can gain advantages and disadvantages for their case at every point in the process starting at the initial appearance, moving to discovery, moving to motions, pretrial motions and on. You know, whether that's a judge in a dispo conference telling you that your case sucks, whichever side you're on. What you just said makes no sense, it is not going to get you an advantage. That gives the other side nothing tangible but an intangible boost in, yeah, I'm right. I'm going to be successful. That judge's opinion is not real. It has no legal effect, it's just their opinion in a case. But the sides use that -- that will drive negotiations. So if you hear as a prosecutor, your case sucks, that drives down your offer. Your next offer goes down. And if you hear it as a defense attorney, you know that -- you can say that to a jury. No jury is going to buy that defense. You know, that prosecutor is going to entrench on that offer, and you're going to go back to your client and say a judge said that you're -- I know this is what you said happened, but that is not going to be successful in court to help get you an acquittal so the prosecutor is not moving their offer. So like there's shifting sands at every stage, and you have to -- I think an experienced criminal practitioner on either side knows how to use the information and the process to advantage their cases. That's why we think of experienced attorneys as better. Some of them are. They know how to use their experience. Some of them, we have seen attorneys 20 years in who are not particularly better, but they have experience."); *id.* at 68:6-23 ("How do you use this [dispositional conference] procedure to your advantage? How do I use it to

the advantage of my clients? I try to get the judge to side with me and tell the prosecutor they're being unreasonable and give me a lower offer so that I can present that to the client to do whatever they will with it. I don't care if my clients plead or not. It's entirely indifferent to whether I go to -- actually I prefer to go to trial because I love trial. But as a person, I actually don't -- I try to really be mindful, it's not my case. I don't get to choose here. I'm the only one who's having fun at trial because I get to go home no matter how badly it goes, right? If it goes great, I'm going home. If it goes badly, I'm going home. I don't have any stakes in this other than the time it took me to prepare and, again, I don't mind that. So it's really about building -- how do you use every stage, including dispositional conference, to build your client's case?"); *id.* at 86:1-4 ("[D]efense attorneys benefit[ted] greatly from the blitz, and they were able to pull off offers that were very, very favorable for their clients if they wanted to take advantage of that."); Tucker Depo. at 48:7-19 ("Q. And that whether or not an investigation or the results of an investigation affect the attractiveness of a plea deal is a case-by-case analysis? A. I think so, but I think it's -- I mean I've had cases where exactly what you just said, you do the investigation and maybe there's more, you know, unfavorable information that comes out of the investigation. But in my view, that allows me or gives me more, you know, information to be able to talk to the client about when evaluating the plea offer, right? Q. Suddenly the State offer looks a little better? A. Yeah. So I think all information is good information from the perspective of a defense attorney.").

OBJECTION

This statement of opinion is not a fact. This opinion is, furthermore, not material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

97. Prompt plea negotiations also lower risks for clients with co-defendants: if such a client delays in plea negotiations, the prosecution may well negotiate with the co-defendant and persuade them to testify against the client. Tucker Aff. ¶ 33.

RESPONSE

Qualified. Tucker Depo. at 55:5-56:9 ("Q. Is it fair to say that there is a particular risk to criminal defendants of a plea agreement being withdrawn when they have codefendants? A. There could be. Q. I only pick that out because it was mentioned in paragraph 10 here in Exhibit 4 as a potential ground for withdrawing a plea agreement. Do you see what I'm referring to? A. Yeah, I didn't hear the last part of what you said. For what a plea agreement? Q. For withdrawing a plea agreement. Is that -- A. So I think the short answer is, you know, when you represent somebody and there's multiple codefendants,

sometimes it's, you know, to see who can cooperate first, right? And so the later in the case that an attorney is appointed to one of those codefendants, they may lose out on that opportunity because the other codefendants who were appointed counsel or retained counsel earlier in time may have been able to have those conversations with the prosecutor. Q. Is it fair to say that there are occasions in your experience in which plea offers have been withdrawn even when a criminal defendant doesn't have codefendants? A. Sure. Q. The existence of a codefendant is just another element in the risk analysis of a plea agreement being withdrawn; is that fair? A. Correct."); *id.* at Exhibit 4 (Plaintiffs' Rule 26 Expert Disclosure of Amber Tucker), p.5.

OBJECTION

This statement of opinion is not a fact. This opinion is, furthermore, not material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

98. In some cases, defense counsel may recommend that a defendant cooperate with the prosecution, and in other circumstances they may recommend against cooperation.

Unless counsel first understands the entire case, and how their client fits in, such advice would be malpractice. McKee Aff. ¶ 17.

RESPONSE

Qualified. This statement of opinion, by its express terms, addresses the standard of care applicable to defense counsel. McKee Depo. at 45:8-46:11 ("Q. And when you use the phrase "meaningful representation," you're referring to representation which includes the tasks that you've testified to earlier in terms of investigation, preparation -- A. Sure. Q. -- for trial? A. Yeah. I mean -- well, just general investigation, general preparation, understanding the implications of any individual crime that the person is charged with. Going back to the critical tasks, reviewing the charging instrument. Well, you can tell them that they've been charged with a Class B burglary, and the maximum penalty is 10 years in prison or a $20,000 fine. Okay, you have reviewed the charging instrument in that scenario. You have reviewed the discovery, you have looked at it, you've gone through the few pages that you can get through so you have done that task. You have done the initial interview of the client, meaning you had a one- or two-minute, maybe a five-minute conversation with them. And so those boxes are checked, but they're not actually being completed in any meaningful way. So simply going and talking to an individual defendant and doing those tasks are not meeting the standard at all. Q. And, again, I'm just going to continue to go back to this. When you say "the standard," are you still referring to that reasonably competent, ordinarily prudent standard? A. Yes, I am."); Tucker Depo. at 47:8-

48:19 ("Q. Is that -- I'm just trying to define some terminology here so I understand. Is effectively advise something that is sort of related to or a part of this effective assistance standard to which you testified earlier? A. Yes. Q. Okay. What does effectively advised me? A. So I think in this situation, unless you're doing the investigation, you have no way to be able to counsel the client on whether a plea agreement is favorable to them and they should accept the plea agreement or move forward with other avenues: Motions to suppress, trial. Q. And why is it that investigation is necessary for being able to effectively advise a client on a plea deal? A. Because the attorney wouldn't have all of the information to be able to do that. Q. When you say do that, you mean advise them on a plea deal? A. Correct. Q. Is it fair to say that there are instances in which an investigation in connection with evaluating a plea deal doesn't turn up any new information? A. Sure. Q. And that whether or not an investigation or the results of an investigation affect the attractiveness of a plea deal is a case-by-case analysis? A. I think so, but I think it's -- I mean I've had cases where exactly what you just said, you do the investigation and maybe there's more, you know, unfavorable information that comes out of the investigation. But in my view, that allows me or gives me more, you know, information to be able to talk to the client about when evaluating the plea offer, right? Q. Suddenly the State offer looks a little better? A. Yeah. So I think all information is good information from the perspective of a defense attorney."); Tarpinian Depo. at 39:6-13 ("Q. And in your view, is it at least helpful for a client to have a lawyer who can help them analyze the information and decide whether a plea deal is one that they should accept? A.

Absolutely. And nobody should plea without having the opportunity to consult with counsel. I think that's what the Lawyer of the Day program tries to approximate.").

OBJECTION

This statement of opinion regarding the standard of care Plaintiffs' expert opines applies to criminal defense counsel is not a fact. This opinion is, furthermore, not material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

99. Delays in appointment of counsel mean that unrepresented defendants may lose the opportunity to take advantage of a more favorable plea deal. Billings (July) Dep. 12:10-16; Fisher Dep. 55:7-57:2; McKee Dep. 48:3-9; Primus Dep. 126:18-23; Tucker Dep. 55:5-25.

RESPONSE

Qualified. The timing of an offer is among the factors potentially relevant to the favorability of a plea offer. Tucker Depo. at 47:8-48:19 ("Q. Is that -- I'm just trying to define some terminology here so I understand. Is effectively advise something that is sort of related to or a part of this effective assistance standard to which you testified earlier? A. Yes. Q. Okay. What does effectively advised me? A. So I think in this situation, unless you're doing the investigation, you have no way to be able to counsel the client on whether a plea agreement is favorable to them and they should accept the plea agreement or move forward with other avenues: Motions to suppress, trial. Q. And why is it that investigation is necessary for being able to effectively advise a client on a plea deal? A. Because the attorney wouldn't have all of the information to be able to do that. Q. When you say do that, you mean advise them on a plea deal? A. Correct. Q. Is it fair to say that there are instances in which an investigation in connection with evaluating a plea deal doesn't turn up any new information? A. Sure. Q. And that whether or not an investigation or the results of an investigation affect the attractiveness of a plea deal is a case-by-case analysis? A. I think so, but I think it's -- I mean I've had cases where exactly what you just said, you do the investigation and maybe there's more, you know, unfavorable information that comes out of the investigation. But in my view, that allows me or gives me more, you know, information to be able to talk to the client about when evaluating the plea offer, right? Q. Suddenly the State offer looks a little better? A. Yeah. So I think all information is good information from the perspective of a defense attorney."); Tarpinian Depo. at 13:16-5 (". . . I teach my attorneys that we're on a

road to trial, you should always be on the road to trial. Your expectation is this case is going to be tried. That's how you litigate every case. And then you develop off ramps, and your client gets to choose what off ramp that they want to take. So you develop the best option for plea available to them. If they want to take it, fantastic. If they don't, we're neutral as to what happens. We just create options for the client. How many options can we create? What options are meeting their goal? What's their goal? Lower -- reduced incarceration? Not have restitution? Get home for Christmastime? I mean everyone's goal is different and so you have to develop your -- these are all based on the relationship with your client."). Moreover, the cited authority does not support the statement. Billings Depo. #1, 12:10-16 ("**Q** Correct. So someone under indictment who is not represented, does MCILS agree that they are unable to meaningfully participate in plea negotiations? MR. MAGENIS: Objection; calls for a legal opinion. You can answer. **A** I wouldn't dispute that. I don't disagree with that."); Fisher Depo. at 55:7-57:2 ("Q. What might some of the consequences be if a criminal defendant isn't appointed an attorney at the beginning of their criminal case? MR. MAGENIS: Objection, calls for speculation. A. Evidence could not be preserved is one consequence. Witnesses' memories fade if the investigation isn't conducted sooner. It depends on how long the defendant goes without counsel, I think. BY MS. BOCK: Q. And are those problems that can be fixed if an attorney is appointed later in the case? MR. MAGENIS: Objection, calls for an opinion. A. It depends on what the issue is. BY MS. BOCK: Q. In cases where you have witness's memories fade, is that something that can be fixed if an attorney is

appointed later in the case? MR. MAGENIS: Objection to form. A. By and large, no. I mean technically it's possible. BY MS. BOCK: Q. But do you agree that generally, that probably can't be fixed? MR. MAGENIS: Same objection. A. I think it really depends on the situation. BY MS. BOCK: Q. Are there cases where it is not possible to fix fading memories when an attorney is appointed later in the case? MR. MAGENIS: Objection to form. A. Yes. BY MS. BOCK: Q. And are there cases where it is not possible to fix lost or spoiled evidence if an attorney is appointed later in a case? A. Absolutely. Q. What might happen if a criminal defendant engages in plea negotiations without an appointed attorney? MR. MAGENIS: Objection, calls for an opinion and speculation. A. A lot of things could happen. The defendant could incriminate themselves for that crime or additional crimes, the defendant could end up getting an unfair deal.").

OBJECTION

This opinion, and the statements upon which Plaintiffs rely in support, are speculative, lack foundation, and is not a fact: let alone a fact material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

100. Any delay in evaluating and conveying a plea offer to a client could result in the offer being withdrawn. Tucker Aff. ¶ 34.

RESPONSE

Qualified. The timing of an offer and acceptance of that offer are potentially factors, among others, in determining whether to take a plea offer. Q. And that whether or not an investigation or the results of an investigation affect the attractiveness of a plea deal is a case-by-case analysis? A. I think so, but I think it's -- I mean I've had cases where exactly what you just said, you do the investigation and maybe there's more, you know, unfavorable information that comes out of the investigation. But in my view, that allows me or gives me more, you know, information to be able to talk to the client about when evaluating the plea offer, right? Q. Suddenly the State offer looks a little better? A. Yeah. So I think all information is good information from the perspective of a defense attorney."); Tarpinian Depo. at 13:16-5 (". . . I teach my attorneys that we're on a road to trial, you should always be on the road to trial. Your expectation is this case is going to be tried. That's how you litigate every case. And then you develop off ramps, and your client gets to choose what off ramp that they want to take. So you develop the best option for plea available to them. If they want to take it, fantastic. If they don't, we're neutral as to what happens. We just create options for the client. How many options can we create? What options are meeting their goal? What's their goal? Lower -- reduced incarceration? Not have

restitution? Get home for Christmastime? I mean everyone's goal is different and so you have to develop your -- these are all based on the relationship with your client.").

OBJECTION

This statement of opinion regarding the standard of care Plaintiffs' expert opines applies to criminal defense counsel is not a fact. This opinion is, furthermore, not material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

101. Delays in appointment of counsel mean that unrepresented defendants may feel pressured to plead guilty without adequately understanding the consequences of their plea. Billings (July 10) Dep. 17:20-18:3; Fisher Dep. 30:23-32: 14, 57:4-58: 1; Maciag (Aug. 29) Dep. 44:25-45:5; Primus Dep. 85:15-17, 126:22-127:4; Tarpinian Dep. 39:6-13; 55:12-21; Tucker Dep. 47:14-24, 65:23-66:3; Primus Aff. ¶ 45; Tucker Aff. ¶ 32.

RESPONSE

Qualified. The cited references do not support the statement. Billings Depo. #1 at 17:5-18:3 ("Q. . . . I'm also curious in the Commission's position on paragraph -- well, I'll be honest, I'm curious on the Commission's position on every paragraph, but I will save us that. So I'll skip to paragraph 63: The only way out for some unrepresented defendants trapped in this coercive system is to plead guilty, is the allegation in the first sentence of that paragraph. Does MCILS -- what is MCILS's response to that allegation? MR. MAGENIS: Objection to form, and objection on the basis that it calls for a legal opinion. You can answer. **A** I think the answer is a little more nuanced than yes or no. I do believe there are some people who feel trapped in a coercive system and they plead guilty in order to get out, especially if they're held and they're not out on bail. But that personal feeling to me doesn't mean that there is no other way out. I think there is another way out, which is to wait for counsel. But that doesn't change it in the individual defendant's mind when they're making that decision. They may not perceive another way out."); Tarpinian Depo.. at 39:21-40:2 ("I think, of course, there's a [tremendous] pressure on the system to get cases through as quickly as possible, and I wonder about how that impacts people's decisions. Like I don't know how somebody -- I can't walk into a courtroom and understand how somebody who hasn't been in a courtroom feels or thinks. I just don't have that capacity any longer."); Maciag Depo. #1 at 44:25-45:5 ("Q. Do people who are in custody and without counsel ever feel pressured to plead guilty in order to resolve their cases? MR. MAGENIS: Objection, form, foundation. Calls for a legal opinion. A. I don't know for certain. I'm assuming some people do, but I don't know for certain.")

OBJECTION

The potential that some unidentified criminal defendants "may" feel pressure to plead guilty is not a fact nor are there any facts cited by Plaintiffs supporting this speculative opinion. This contention is, furthermore, not material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

102. Some defendants "feel trapped in a coercive system and they plead guilty in order to get out." Billings (July 10) Dep. 17:20-22.

RESPONSE

Denied. The statement materially mischaracterizes the cited source: a question regarding the allegations in Plaintiffs' Amended Complaint and Defendants' Answer to that Amended Complaint. Billings Depo. #1 at 17:5-18:3 ("Q. . . . I'm also curious in the Commission's position on paragraph -- well, I'll be honest, I'm curious on the Commission's position on every paragraph, but I will save us that. So I'll skip to paragraph 63: The only way out for some unrepresented defendants

trapped in this coercive system is to plead guilty, is the allegation in the first sentence of that paragraph. Does MCILS -- what is MCILS's response to that allegation? MR. MAGENIS: Objection to form, and objection on the basis that it calls for a legal opinion. You can answer. **A** I think the answer is a little more nuanced than yes or no. I do believe there are some people who feel trapped in a coercive system and they plead guilty in order to get out, especially if they're held and they're not out on bail. But that personal feeling to me doesn't mean that there is no other way out. I think there is another way out, which is to wait for counsel. But that doesn't change it in the individual defendant's mind when they're making that decision. They may not perceive another way out."); *id.* at Exhibit 3 (Defendants' Answer to Plaintiffs' First Amended Complaint) (attached hereto as **Exhibit G**).

OBJECTION

This statement lacks any foundation. In addition, the potential that some unidentified criminal defendants "may" feel pressure to plead guilty is not a fact nor are there any facts cited by Plaintiffs supporting this speculative opinion. This contention is, furthermore, not material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement

should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

103. A lack of available counsel increases the pressure on defendants to plead guilty without adequately understanding the consequences of such a plea or the alternatives, because there is not an attorney to review discovery with them, explain the charges, investigate their cases, research the applicable law, and counsel the defendant about options. Primus Aff. ¶ 45.

RESPONSE

Qualified. Multiple factors relative to the circumstances of individual criminal defendants and individual prosecutions motivate decisions to plead guilty. Primus Depo. at 94:18-24 ("Q. . . . Is it your understanding that research establishes a causal link between indigent defendants who were detained pre-trial and those who weren't and those outcomes that you just testified to? A. So I believe what the research says that when an individual is detained pre-trial the pressure on them to plead guilty increases exponentially by the day.");

OBJECTION

An opinion by Plaintiffs' retained expert that pressure to plead guilty is increased by a particular factor, without any foundation or quantification, is not a fact nor are there any facts cited by Plaintiffs supporting this speculative opinion. This contention is, furthermore, not material to the standard determinative of Counts I

and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

104. MCPDS admits that attorneys add value during bail hearings by reserving the client's right to silence to prevent the client from incriminating themselves, and articulating arguments that are favorable to the client so they get a fair deal. Fisher Dep. 58:9-14, 63: 11-13.

RESPONSE

Qualified. Attorneys, including a Lawyer of the Day, assist defendants in initial appearances and bail hearings. Fisher Depo. at 58:9-14 ("Q. Recognizing that it varies based on the case, what value does an attorney add during bail hearings? A. They can help reserve the client's right to silence; therefore, hopefully preventing the client from incriminating themselves. They can articulate arguments that are favorable to the client."); Deposition of Christopher Guillory ("Guillory Depo."), 89:2-11 ("Q. Do Lawyers of the Day in these status hearings advise defendants on plea offers? A. Yes. Q. Do those discussions differ from what would happen with a standard Lawyer of the Day appointment? A. I would think so. Q. How would

they differ? A. I think they would have to review the Sixth Amendment issues, and accepting a plea would essentially negate that as an issue to pursue.").

OBJECTION

Plaintiffs' premise that a fact deposition of an MCPDS employee supports a contention that "MCPDS admits" a contention mischaracterizes the form and content of Plaintiffs' cited source. is not a fact nor are there any facts cited by Plaintiffs supporting this speculative opinion. This contention is, furthermore, not a fact not material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

105. Defendants' expert admits that an attorney being unable to secure release of their client at a bail hearing "puts [that] client at a significant disadvantage in life." Tarpinian Dep. 54:3-7.

RESPONSE

Qualified. The statement was in the context of the witness's description of her opinion that parties to a criminal prosecution have opportunities to create

advantages or experience disadvantages at various procedural stages, "depending on how things go," and used the term "life" to distinguish from the context of procedural advantages or disadvantages in a criminal prosecution. Tarpinian Depo. at 53:25-54:10 ("So at every point in the process, it's an adversarial system. And so there are advantages that you can gain or lose depending on how things go. For example, at initial appearance, if a prosecutor is unsuccessful in securing the bail that they want, that may weaken their case. If a defense attorney is unable to secure release of their client, that puts their client at a significant disadvantage in life. For their case, but just being held in custody preconviction is an enormous burden on a person, and that happens for every stage.").

OBJECTION

This statement of opinion is not a fact nor is it material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

106. A defendant's bail may in some cases be reargued when an attorney is appointed, but the impact of the bail conditions in the intervening time without an attorney can be "cataclysmic." McKee Dep. 49:21-52:2.

RESPONSE

Denied. The statement is unsupported by the cited authority. McKee Depo. at 51:1-18 ("If the person has had that condition placed on them at the time of their initial appearance, the delay of days or weeks or months can be, you know, cataclysmic. If they are held in jail because they can't post the, whatever the bail is that's been set, even a modest amount of bail, that has impacts as well, not only for no contact or whatever it may be but just the fact that they're in jail. They may have a job. Well, okay, now an attorney has to be appointed to argue that they should be released because they're going to lose their job in a week because they haven't shown up for work. They may have not had the ability to earn money to have housing, they're going to lose their apartment, not be able to make a mortgage payment on a house. So those issues come up as well. Not being able to continue on with their medical treatment or the ability to continue on with substance abuse counseling if they're already in substance abuse counseling.").

OBJECTION

The procedural opportunities to re-argue bail is an issue of law, not a fact. *See, e.g.,* 15 M.R.S.A. §1026. This statement of Plaintiffs' expert's opinion, based on a hypothetical set of circumstances developed by the expert, is not a fact nor is it

material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

107. Multiple jurisdictions have identified bail hearings as a critical stage of a defendant's case because defendants could make incriminating statements if they do not have counsel to advise them. Primus Dep. 78:14:21.

RESPONSE

Qualified. Maine is not among those jurisdictions. *Peterson v. Johnson, et al.*, Docket No. SJC-23-2, Final Decision and Order (Jan. 12, 2024), p.19 n.15 ("Cases considering this issue typically involve situations in which a defendant lacked any representation at a bail review. Here, petitioners were not left to their own devices but were provided counsel – a lawyer of the day – to represent them. Absent a showing of ineffective assistance of counsel, this is sufficient for Sixth Amendment purposes.").

OBJECTION

This is a conclusion of law, not a fact. It is, therefore, not a fact material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

108. It is critical that an attorney consider a defendant's bail arguments on day one. McKee Dep. 36:1-19.

RESPONSE

Qualified. The source supporting the statement is premised on the standard of care the witness opines applies to criminal defense counsel. McKee Depo. at 19:6-24 ("Q. Okay. If I could direct you please to page two of Exhibit 3 under Roman numeral II and paragraph one. Paragraph one reads, "the beginning of any criminal case is critical." Did I read that correctly? A. You did. Q. And what is meant by the word "critical" in that paragraph? A. It's essential to representing a defendant in a competent manner. That's what critical means. Q. And against what standard are you measuring or establishing the criticalness of this stage? A. Against a basic standard, a basic standard of representing a criminal -- a person charged with a criminal offense after anything other than the beginning, so-called,

is below the standard. Q. When you say "the standard," just to be clear, what standard are you referring to? A. The standard of an ordinarily competent criminal defense lawyer.").

OBJECTION

This statement of opinion is not a fact nor is it material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

109. A defendant's opportunity for bail may have passed if assignment of an attorney is delayed, which can have a negative impact on the case compared to having the opportunity to make bail and can affect the fairness and ultimate results of the case. McKee Dep. 24: 11-21, Primus Dep. 79: 14-22, Primus Aff. ¶ 44.

RESPONSE

Denied. 15 M.R.S.A. §§1026, 1028-A; M. R. U. Crim. P. 46(d); *Peterson v. Johnson, et al.*, Docket No. SJC-23-2, Final Decision and Order (Jan. 12, 2024), *passim* (rejecting Petitioners' contention that bail hearings are "critical stages").

OBJECTION

This assertion of a legal conclusion ("can affect the fairness and ultimate results of the case") and/or opinion of law is not a fact, nor is this conclusory statement of opinion material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

110. Defendants can end up with restrictive bail conditions if not properly advocated for. McKee Dep. 49:7-16, 51:21-52:2.

RESPONSE

Qualified. McKee Depo. 52:21-53:1 ("Q. So is it fair to say that the opinion that's described in paragraph 11 of page four of Exhibit 3 has to do with the competence of counsel once they're appointed? A. Yes, as well as the competence of counsel doing the Lawyer of the Day work."); *id.* at Exhibit 3 (Plaintiffs' Rule 26 Expert Disclosure of Walter McKee), p.4 ("Whether a person accused of a crime is given a lawyer who does not perform the required tasks, or no lawyer at all, is a meaningless distinction. The Constitution says that a person

is entitled to the "assistance of counsel." If a lawyer is not providing assistance, then they may as well not be there."). Courts may impose bail conditions upon criminal defendants pursuant to 15 M.R.S.A. §1026.

OBJECTION

This statement of opinion by Plaintiffs' expert, including the opinion on what constitutes a "proper" bail argument pursuant to professional standards, is not a fact nor is it material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

111. It is important to have counsel during bail hearings because substantive rights are impacted at a bail hearing; "if proper arguments aren't brought to the attention of the court, a defendant could be harmed and have his or her liberty impacted." Tardy Dep. 11:21-12:12.

RESPONSE

Qualified. The source cited expresses the witness's personal belief that it is "important for a criminal defendant to have an attorney during bail hearings," in

the context of a criminal defense system in which is not alleged to, nor does the evidence support a conclusion that it has, failed to provide all indigent criminal defendants with counsel at their initial appearance. Billings Depo. #1 at 76:22-77:2 (A. . . . "[E]ven when we had attorneys on the roster, we were employing a Lawyer of the Day system and still are as a stop gap measure to get people an attorney at initial appearance or arraignment instead of one attorney from the beginning or inception of the case."); Tardy Depo. at 21:18-22:12 (Q. What is your understanding of the role of the Lawyers of the Day who appear at the seven-day status hearings described in the standing order? A. What is my understanding of the role of Lawyers of the Day? There is -- there are practice standards. Lawyers of the Day are to zealously and adequately represent those folks at that point in the process, and it's -- I mean it's just such a broad question. And we've spent so much time as a commission trying to dictate, you know, what is appropriate duties an practice standards for a Lawyer of the Day. We could go down that, but generally speaking, Lawyers of the Day need to advocate for their client as it relates to issues of bail, they need to communicate with the client so that that client or defendant has an understanding of what's next in the process, and to the extent that a Lawyer of the Day doesn't continue on and have that client needs to try to do the best he or she can to help facilitate that particular defendant's procurement of counsel."); *id.* at 32:6-33:2 ("[Y]ou stated that you have a problem with not providing lawyers for the seven-day reviews. You touched on this a bit earlier, but can you explain why? A. Well, if you have a problematic situation, I view it as if somebody needs to see a doctor and they

can't get to the doctor that's going to provide them the care, I don't necessarily want to prevent them from seeing a nurse. That is -- by no way am I making that as a criticism of a Lawyer of the Day and their skills and their competence. But the idea is to not just -- the idea is that these unrepresented defendants need assigned counsel or government employed counsel to stay with them to the extent possible through the remainder of the case. And so that's what they need to -- to just not allow them to have professional assistance that a Lawyer of the Day can provide. And frankly the mental health support that a Lawyer of the Day can provide for that incarcerated defendant is -- despite Mr. Ruffner's request that they be relieved of duty, I was not in agreement and not willing -- I did not want the commission to go there.").

OBJECTION

This is not a fact. Whether or not a defendant could be harmed, in some undefined manner, or have their liberty impacted are not material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

112. An extended delay between the first formal appearance and the appointment of trial counsel compromises defendants' ability to make arguments about bail and conditions of release. Primus Aff. ¶ 44.

RESPONSE

Qualified. 15 M.R.S.A. §1026; *see also* McKee Depo. at 49:17-50:8 ("Q. Can -- in the ordinary course of a criminal prosecution, following initial appearance, is it possible to seek a modification of bail? A. It is. Q. Are there limitations on that ability after the initial appearance? A. There are, depending on a few different factors. But often once bail has been set initially, only when there is some sort of change of circumstances will a judge allow a change of the bail conditions. Q. Do you have any knowledge, one way or the other, as to the current practice of courts in the unified criminal docket in terms of their willingness to consider bail modification motions once counsel has been appointed after a delay for indigent defendants? A. I have seen that, that bail can be reargued once an attorney is appointed, whenever that may be.").

OBJECTION

This statement of opinion by Plaintiffs' expert, including the opinion that defendants' abilities to make bail arguments are "compromise[d]" in comparison with some standard and without identifying the effect of that alleged "compromise[]", or defining the degree of delay which qualifies as "extended," is not a fact nor is it material to the standard determinative of Counts I and II of

Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

113. Billings agreed that counsel needs to investigate a defendant's possible lines of defense against prosecution "[i]n almost every case." Billings (July 10) Dep. 160: 16-161:1.

RESPONSE

Denied. The cited testimony addresses deposition Exhibit #10, 94-649 CMR ch. 102, Standards of Practice for Attorneys Who Represent Adults in Criminal Proceedings. Billings Depo. #1 at 160:16-21 ("**Q** Checking down my list, do you agree that assigned counsel needs to investigate the defendant's possible lines of defense against prosecution as part of the representation? MR. MAGENIS: Objection to form and foundation. **A** In almost every case, yes."). The scope of investigation is dictated by the circumstances of an individual case. Tarpinian Depo. at 62:10-18 ("But what we see at the initial appearance and what this case looks like at trial can be very different so you have to redo a lot of that work. So is it crucial that you have that witness investigated? I would say it's more crucial to determine if that person is helpful for your client or unhelpful for your client, and that is not something that's static. That changes throughout the life of a case.").

OBJECTION

This is not a fact but, instead, a witness agreeing that 94-649 CMR ch. 102 reads as deposing counsel represented. To the extent that testimony is an opinion, it is likewise not a fact and is not material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); *see also, Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

114. Unrepresented individuals are not equipped to prepare defenses. Primus Aff. ¶ 49.

RESPONSE

Denied. *State v. Tomah*, 560 A.2d 575, 575 (Me. 1989) ("An accused also has a constitutional right to proceed without counsel so long as he is made aware of the dangers of self-representation, and the record reflects that he knows what he is doing and makes his choice with his eyes open." (citing *State v. Walls,* 501 A.2d 803, 805 (Me.1985)).

OBJECTION

This is a statement of law, not fact. To the extent it constitutes an opinion, an assertion of opinion by Plaintiffs' retained expert that unrepresented defendants are not "equipped to prepare defenses" is not a fact, lacks foundation for any relevance to effective representation, and is also immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is neither a fact nor a "material fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

115. A defendant without an attorney, even if that defendant is sophisticated, is at a significant disadvantage when it comes to mounting a defense. McKee Dep. 57:12-17.

RESPONSE

Qualified. Neither the statement nor the source upon which it relies identifies "mounting a defense" in the context of critical stages in a criminal prosecution. McKee Depo. at 57:12-17; *see also id.* at 19:6-24 ("Q. Okay. If I could direct you please to page two of Exhibit 3 under Roman numeral II and paragraph one. Paragraph one reads, "the beginning of any criminal case is critical." Did I read that correctly? A. You did. Q. And what is meant by the word "critical" in that paragraph? A. It's essential to representing a defendant in a competent manner.

That's what critical means. Q. And against what standard are you measuring or establishing the criticalness of this stage? A. Against a basic standard, a basic standard of representing a criminal -- a person charged with a criminal offense after anything other than the beginning, so-called, is below the standard. Q. When you say "the standard," just to be clear, what standard are you referring to? A. The standard of an ordinarily competent criminal defense lawyer.").

OBJECTION

This assertion of opinion is not a fact and is also immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is neither a fact nor a "material fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

116. To advise a client on potential defenses that are available to them, a lawyer must conduct an investigation and legal research. Tucker Dep. 36:1-21.

RESPONSE

Qualified. Fisher Depo. at 54:5-7 ("Q. *Depending on the case*, would an attorney need to do legal research? A. Yes.") (emphasis added); Tucker Depo. 36:17-21

("Q. Other than investigation, is there any other task that, in your opinion, is necessary to reach the conclusion as to whether there's sufficient factual basis for a client's charges? A. Well, I think certainly having conversations with the client about the case, whether you want to include that in investigation or not. And, again, I think all of these things, depending on how you define investigation, can all go under investigation. I think all of these things could go under investigation generally, but I think also the lawyer performing any necessary research to be able to determine whether there's a sufficient factual basis and then certainly advise the client on potential defenses that are available to them.").

OBJECTION

This assertion of opinion is not a fact and is also immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is neither a fact nor a "material fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

117. Unrepresented individuals are unable to make legally-counseled arguments to the court, whether orally or in writing. Primus Aff. ¶ 51.

RESPONSE

Qualified. Because individuals without legal counsel are, by definition, unable to make "legally counseled arguments," this statement is meaningless.

OBJECTION

This statement is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is neither a fact nor a "material fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

118. Empirical evidence demonstrates that case outcomes for defendants detained pretrial are much worse-in terms of both increased likelihood of conviction and harsher sentences-than for those released pending trial. Primus Dep. 84:4-88:21; Tarpinian Dep. 52:7-11.

RESPONSE

Denied. The sources cited are inadmissible or do not support the statement. Evidence upon which a properly founded expert opinion relies is not, itself admissible. M.R. Evid. 703; M. R. Evid. 801(c). The portion of Ms. Tarpinian's testimony cited does not support the statement. Tarpinian Depo. at 52:7-11 ("Q.

One of the other experts in this case sites some research which finds that individuals who are held pretrial have worse results in their prosecution. Does that comport with your experience? A. Yeah.").

OBJECTION

Characterization of "evidence" is not, itself, evidence or a fact. The sources relied upon for this statement do not provide the necessary foundation for admissible expert opinion in lieu of the "empirical evidence" referenced. M. R. Evid. 703. Moreover, independent of any opinion, the conclusion that "empirical evidence demonstrates" a conclusion is not, itself, an expert opinion and constitutes inadmissible hearsay. M. R. Evid. 801(c) **(**"'Hearsay' means a statement that [t]he declarant does not make while testifying at the current trial or hearing; and [a] party offers in evidence to prove the truth of the matter asserted in the statement."); *see also Hickok v. G.D. Searle & Co.,* 496 F.2d 444, 446 (10th Cir. 1974) ("[I]t is well established that medical textbooks, treatises and professional articles are not freely admissible in evidence to prove the substantive or testimonial facts stated therein, since they are subject to the hearsay rule."). To the extent this statement opines on the contents of other sources of evidence, this statement is neither a fact nor a "fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

119. Criminal defendants rely on having attorneys conduct preparation prior to a dispositional conference. Maciag (Aug. 29) Dep. 57:14-58:19 (example of appearance at dispositional conference without lawyer); Primus Dep. 80:14-81: 10.

RESPONSE

Qualified. The cited authority does not support the assertion. Maciag Depo #1 at 57:14-58:19 (referencing *State v. Lerman*, Docket No. ANDCD-CR-2024-451, Dismissal of Criminal Complaint (Jun. 13, 2024) ("Lerman Order")); Lerman Order, (attached hereto as **Exhibit H**) (dismissing domestic violence charges against defendant based on defendant being without counsel one week prior to dispositional conference)[8]; *id.* at 9 (quoting *Peterson v. Johnson*, SJC-23-2, at 21 (Jan 12, 2024) (Douglas, J.) ("At a minimum, therefore, the Sixth Amendment requires assignment of counsel sufficiently in advance of a dispositional conference to be able to provide effective representation in connection with the conference as well as related matters."); Primus Depo. at 80:14-81:10 (opining that dispositional conferences are, as a matter of law, "critical stages" pursuant to *Cronic*, 466 U.S. 648, 659).

OBJECTION

[8] This Court may take judicial notice of the Lerman Order as "a fact that is not subject to reasonable dispute because it . . . [c]an be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." M. R. Evid. 201(b)(2); *see also In re Jonas*, 2017 ME 115, ¶ 38 n.10, 164 A.3d 120 ("When a court takes judicial notice of a final judgment, from a Maine court or another court of competent jurisdiction, however, that "notice" is limited to the existence of the judgment, and the action of the court. "[A] court may take notice of another court's order only for the limited purpose of recognizing the 'judicial act' that the order represents or the subject matter of the litigation." (quoting *United States v. Jones*, 29 F.3d 1549, 1553 (11th Cir. 1994))).

This statement asserts an opinion, relying upon an opinion of the governing legal standard, and is not a fact. Notwithstanding the absence of competent evidence in support, this statement is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). Neither a fact nor a "material fact," this statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

120. Criminal defendants need attorneys to talk to prosecutors about plea deals in advance of a dispositional conference. Maciag (Aug. 29) Dep. 43:10-44:10, 44:12-16, 44:25-45:5, 94:2-95:19 (need to understand immigration consequences and consult with immigration attorney to provide effective assistance of counsel for a plea); Fisher Dep. 49:9-50:6, 57:4-58:1; Tarpinian Dep. 13:14-22, 39:6-21, 44:13-16, 55:12-21, 63:22-25, 70:11-71:23; McKee Aff. ¶¶ 15-16; Tucker Aff. ¶¶ 28-39.

RESPONSE

Qualified. The conclusion regarding what criminal defendants "need" is an opinion of law, not fact. Tucker Depo. at 56:10-23 ("Q. Moving on, if we could, to the next paragraph which is [paragraph]11 on Exhibit 4. I'm just curious, it is technically possible, appreciating that it may not be, in your opinion, ideal for a

criminal defendant to accept a plea offer; isn't that correct? A. It is possible. Q. And is it possible, literally possible as opposed to appreciating it might not be a good idea in your opinion, for a criminal defendant to negotiate a plea with the prosecution? A. It is possible. Q. Without counsel? A. Yes."); *id.* at Exhibit 4 (Plaintiffs' Rule 26 Expert Disclosure of Amber Tucker), p.5. The cited authority does not support the conclusion. Maciag Depo. at 43:10-45:6 (responding to questions seeking opinions of law such as, "Are people without lawyers able to prepare defenses?"); Fisher Depo. at 49:9-50:6 (testimony by MCPDS Training and Supervision Counsel regarding steps defense counsel are trained and expected to undertake pursuant to 94-649 C.M.R. ch. 102), *id.* at 57:4-58:1 ("Q. Why might they get an unfair deal without an appointed counsel? MR. MAGENIS: Objection, calls for speculation and an opinion. A. Because they don't have someone who's trained to evaluate the strengths and weaknesses in the case, conduct legal research, file appropriate motions. And also, they may not know what a case is worth as much as an attorney would."); Tarpinian Depo. at 13:14-22 (responding to question, "Q. For the junior level, for the less experienced lawyers in your office, what sort of trainings do you do to help them become the types of lawyers they need to be to represent your clients?"); *id.* at 39:6-21 (Lawyer of the Day program provides counsel relating to plea offers); *id.* at 44:13-16 (addressing collateral consequences specific to habitual offender designation with Secretary of State); *id.* at 55:12-21 (describing witness's practice of seeking mitigation strategies in plea negotiations); *id.* at 63:22-25 (opining that decision on plea offers is important in context of professional responsibilities of defense counsel);

id. at 70:11-71:23 (providing opinion responsive to question, "So what -- looking at the floor again of what an effective lawyer should do, like what types of things do you think a lawyer needs to do to be prepared and effective at a dispositional conference in advance of the conference?").

OBJECTION

This statement is premised upon, or is itself, an opinion of law. Maciag Depo. at 43:10-45:6 (Q. Are people who don't have lawyers able to meaningfully participate in plea negotiations? MR. MAGENIS: Objection to form, foundation, and calls for a legal opinion. A. I don't know. It could depend on the person. Yeah, so I couldn't say for certain. BY MS. SOTOOHI: Q. Are people without lawyers able to conduct pretrial investigations? MR. MAGENIS: Objection, form, foundation. A. Depends on the person. BY MS. SOTOOHI: Q. Are people without lawyers able to prepare defenses? MR. MAGENIS: Objection, form and foundation, and calls for a legal opinion. A. Again, you know, I can't say -- it really depends on the person. There are some people who are quite sophisticated so I couldn't say for certain. BY MS. SOTOOHI: Q. Are people without lawyers able to advocate for changes in their bail status? MR. MAGENIS: Objection, form, foundation. Calls for a legal opinion. A. I believe people can, you know, write to the Court and ask for a hearing so, yeah, they can. BY MS. SOTOOHI: Q. When a person is in custody but without counsel, do you think that has any negative effect on them? MR. MAGENIS: Objection, form and foundation. A. I believe it does. BY MS. SOTOOHI: Q. And what sort of negative things? A.

Definitely a lot more difficult to communicate with anybody outside the facility. Q. Anything else? A. I mean it makes it difficult on a whole host of things to sort of conduct sort of a normal life and normal activities. Q. Do people who are in custody and without counsel ever feel pressured to plead guilty in order to resolve their cases? MR. MAGENIS: Objection, form, foundation. Calls for a legal opinion. A. I don't know for certain. I'm assuming some people do, but I don't know for certain.").

121. To prepare for the dispositional conference, defense counsel needs to thoroughly analyze the discovery, identify missing discovery and decide what to do about it, and identify and prepare pretrial motions. Tarpinian Dep. 61:9-14, 65:17-25, 66: 1-14, 70:11-72:18.

RESPONSE

Qualified. This statement, to the extent supported by the cited authority, states an opinion regarding the standard of care applicable to criminal defense counsel. Tarpinian Depo. 59:13-2 ("Q. So you'll have to forgive me for this question, but -- A. Yeah, yeah. Q. -- do you have an opinion then on what the first critical stage of a criminal prosecution is under this Sixth Amendment analysis? A. Can you define that for me? I mean if you define it, I'll try to analyze it. But I don't have -- I didn't come with all of the definitions, I haven't read all of the caselaw. I haven't read your complaint. Maybe I should have -- Q. No, that's fair enough. So *setting aside the definition under Sixth Amendment juris prudence or whatever,*

just using the common understanding of the term "critical stage" -- A. Okay. Q. -- what, in your view, is the first critical stage in a criminal prosecution?") (emphasis added); *id.* at 61:9-14 ("The critical stage with discovery is actually your disposition conference date because all of our deadlines, in terms of turning over discovery and filing motions is pegged to that date. So that's a more significant date in terms of legally what you have to do."); *id.* at 65:17-66:14 ("[D]ispositional conference dates are really important under the rules, like the hard rules of criminal procedure, because the prosecution has a duty to give discovery ahead of time, I think two weeks ahead of that conference date. The reason that's important is because pretrial motions are required to be provided to the prosecution seven days in advance of a dispositional conference and then held and not filed until 24 hours after a dispositional conference is held which is crazy."); 70:11-72:18 (responding to question seeking opinion on professional standard of care applicable to defense counsel).

OBJECTION

This assertion of opinion is not a fact and is also immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material.").

This statement is neither a fact nor a "material fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

122. "Pretrial motions are really important" and can be dispositive. Tarpinian Dep. 66:6-8.

RESPONSE

Qualified. In the context of dispositional conferences and plea negotiations, pretrial motions, such as motions to suppress, can be important. Tarpinian Depo. at 65:11-70:10.

OBJECTION

This assertion of opinion is not a fact and is also immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). This statement is neither a fact nor a "material fact" and should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

123. Some courts have held dispositional conferences even when Subclass members remain unrepresented. Fisher Dep. 29:18-30:22.

RESPONSE

Denied. The cited authority does not support the statement and, to the extent the statement is based solely on Ms. Fisher's deposition, the statement materially misrepresents her testimony which related to a bail review hearing of a single indigent criminal defendant not a member of Plaintiffs' Subclass. Fisher Depo. at 29:18-30:22 ("Q. Based on your knowledge of what is happening at the seven-day status hearings, how often are criminal defendants being released on bail based on an argument made at the seven-day status hearing? A. I don't have any data on that. Q. Have you heard of any instances where a criminal defendant was released on bail from a seven-day status hearing? A. Can you define released on bail? Like exiting the jail, or their bail was reduced and they were or were not able to post it? Q. Let's start with bail was reduced. A. I have heard of instances of bail being reduced. Q. Can you describe what you've heard about those instances? A. That they are not very common, and that when they do happen, they're not effective. Q. What do you mean by they're not effective? A. Because for an indigent person, if you lower to the bail from $10,000 to $5,000, it still might as well be a million dollars. They're not posting it, and they're not getting out. Q. Have you heard of any situations where a criminal defendant was able to walk out of the jail based on a bail argument made at the seven-day status hearing? A. I've heard of the -- I think it is the Leein Hinkley case. Q. Are there any others beyond that, that you've heard of? A. Not that I can remember specifically.").

OBJECTION

The cited source consists of inadmissible hearsay, M. R. Evid. 801(c), and lacks any evidentiary foundation. M. R. Evid. 701.

124. Just during the September - October 2024 time period, court docket records indicate that over sixty criminal defendants still had not been appointed counsel as of the scheduled date of their dispositional conference. Shea Aff. ¶ 12, Exhibit I.

RESPONSE

Qualified. The summaries of court events cited, in the context of the underlying docket records and filings, (attached hereto as **Exhibits I & J**),[9] reflect the dates upon which certain court events, including dispositional conferences, were scheduled, continued and/or rescheduled.

OBJECTION

Plaintiffs' contention regarding what "docket records indicate" seeks an inference contrary to the standard of review applicable to motions for summary judgment. *Bell ex rel. Bell v. Dawson*, 2013 ME 108, ¶ 15, 82 A.3d 827 (in the context of summary judgment, evidence and reasonable inferences that may be drawn therefrom are viewed "in the light most favorable to the nonmoving party." (citing *Gniadek v. Camp Sunshine at Sebago Lake, Inc.,* 2011 ME 11, ¶ 15, 11

[9] This Court may take judicial notice of the attached docket records and underlying filings as "a fact that is not subject to reasonable dispute because it . . . [c]an be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." M. R. Evid. 201(b)(2); *see also In re Jonas*, 2017 ME 115, ¶ 38 n.10, 164 A.3d 120 (judicial notice is for the limited purpose of recognizing the existence of court action.

A.3d 308)); *see also Lewis v. Concord Gen. Mut. Ins. Co.*, 2014 ME 34, ¶ 10, 87 A.3d 732 ("When facts, though undisputed, are capable of supporting conflicting yet plausible inferences—inferences that are capable of leading a rational fact-finder to different outcomes in a litigated matter depending on which of them the fact-finder draws—then the choice between those inferences is not for the court on summary judgment." (quoting *Lougee Conservancy v. CitiMortgage, Inc.,* 2012 ME 103, ¶ 11, 48 A.3d 774)). The records underlying the "Docket Records" relied upon by Plaintiffs are the best evidence of the proceedings. M. R. Evid. 1006; *see also* M. R. Evid. 1005 (requiring proponent to establish "reasonable diligence" in seeking to obtain documents).

125. Docket records indicate that in some cases, when defendants remained unrepresented on the scheduled date of the dispositional conference, the court held the dispositional conference, and in some cases the defendant entered a guilty plea. Shea Aff. ¶ 12, Exhibit I, at ACLU008289-8291; ACLU008309- 8310; ACLU008318- 8322; ACLU008611-8614; ACLU008633-8634; ACLU008487-8489; ACLU008643-8646; and ACLU008669-8672.

RESPONSE

Qualified. The summaries of court events cited, in the context of the underlying docket records and filings, (attached hereto as **Exhibit I**),[10] reflect the occurrence of certain court events, including dispositional conferences, were continued

[10] *See* footnote 9, supra.

and/or rescheduled. For those defendants who entered guilty pleas, the cited authority does not, nor is it intended to, reflect the presence and assistance of a lawyer of the day: counsel whose limited appearances are not reflected in the same manner as retained or appointed counsel.

OBJECTION

Plaintiffs' contention regarding what "docket records indicate" seeks an inference contrary to the standard of review applicable to motions for summary judgment. *Bell ex rel. Bell v. Dawson*, 2013 ME 108, ¶ 15, 82 A.3d 827 (in the context of summary judgment, evidence and reasonable inferences that may be drawn therefrom are viewed "in the light most favorable to the nonmoving party." (citing *Gniadek v. Camp Sunshine at Sebago Lake, Inc.,* 2011 ME 11, ¶ 15, 11 A.3d 308)); *see also Lewis v. Concord Gen. Mut. Ins. Co.*, 2014 ME 34, ¶ 10, 87 A.3d 732 ("When facts, though undisputed, are capable of supporting conflicting yet plausible inferences—inferences that are capable of leading a rational fact-finder to different outcomes in a litigated matter depending on which of them the fact-finder draws—then the choice between those inferences is not for the court on summary judgment." (quoting *Lougee Conservancy v. CitiMortgage, Inc.,* 2012 ME 103, ¶ 11, 48 A.3d 774)). The records underlying the "Docket Records" relied upon by Plaintiffs are the best evidence of the proceedings. M. R. Evid. 1006; *see also* M. R. Evid. 1005 (requiring proponent to establish "reasonable diligence" in seeking to obtain documents).

126. Docket records indicate that in other cases, when defendants remained unrepresented on the scheduled date of the dispositional conference, the court postponed the conference to a later date, sometimes repeatedly over several months. Shea Aff. ¶ 12, Exhibit I, at ACLU 008192- 8194; ACLU008208-8210; ACLU008226-8237; ACLU008241-8282; ACLU008306-8308; ACLU008369-8372; ACLU008386-8387; ACLU008390-8397; ACLU008400-8403; ACLU00841 l-8414; ACLU008427-8445; ACLU008453-8486; ACLU008490-8493; ACLU008566-8567; ACLU008570-8580; ACLU008616-8632; ACLU008635-8639; ACLU008658-8664; and ACLU008673-8682.

RESPONSE

Qualified. The summaries of court events cited, in the context of the underlying docket records and filings, (attached hereto as **Exhibit J**),[11] reflect the dates upon which certain court events, including dispositional conferences, were scheduled, continued and/or rescheduled.

OBJECTION

Plaintiffs' contention regarding what "docket records indicate" seeks an inference contrary to the standard of review applicable to motions for summary judgment. *Bell ex rel. Bell v. Dawson*, 2013 ME 108, ¶ 15, 82 A.3d 827 (in the context of summary judgment, evidence and reasonable inferences that may be drawn therefrom are viewed "in the light most favorable to the nonmoving party." (citing *Gniadek v. Camp Sunshine at Sebago Lake, Inc.,* 2011 ME 11, ¶ 15, 11

[11] *See* footnote 9, *supra.*

A.3d 308)); *see also Lewis v. Concord Gen. Mut. Ins. Co.*, 2014 ME 34, ¶ 10, 87 A.3d 732 ("When facts, though undisputed, are capable of supporting conflicting yet plausible inferences—inferences that are capable of leading a rational fact-finder to different outcomes in a litigated matter depending on which of them the fact-finder draws—then the choice between those inferences is not for the court on summary judgment." (quoting *Lougee Conservancy v. CitiMortgage, Inc.,* 2012 ME 103, ¶ 11, 48 A.3d 774)). The records underlying the "Docket Records" relied upon by Plaintiffs are the best evidence of the proceedings. M. R. Evid. 1006; *see also* M. R. Evid. 1005 (requiring proponent to establish "reasonable diligence" in seeking to obtain documents).

127. Some courts delay hearings and other case deadlines *(e.g.,* dispositional conferences) when defendants are without counsel. Deposition of Christopher Guillory ("Guillory Dep.") 46:21-47:16; Primus Dep. 103:20-105:18.

RESPONSE

Denied. The cited sources do not support the statement. Deposition of Christopher Guillory (Aug. 22, 2024), 46:21-47:16 ("Q. Are you aware of anyone appearing in court without appointed counsel who is eligible for appointed counsel for a proceeding other than a bail review hearing, initial appearance or arraignment? MR. MAGENIS: Objection to form and foundation. A. Yes. BY MS. BOCK: Q. What case was that? Can you describe the case? A. I don't remember the case exactly. I review a lot of docket records, and I know I have

seen docket records that reflect that someone appeared for a dispositional conference date, and had not yet been assigned counsel. Q. Do you remember when that was, approximately? A. No. I have seen it multiple times. I don't remember when the exact dates were. Q. Which counties was that in? A. I don't remember. Q. Was that within the last six months? A. Yes. Q. Was it within the last three months? A. Yes. Q. Based on your review of the dockets, what happened? MR. MAGENIS: Objection to form and foundation. A. My memory from the dockets I reviewed, the annotation is usually that the case is reset until counsel can be relocated."); Primus Depo. at 103:20-105:18 (opining that length of delay in appointing counsel, generally, means that continuance of dispositional conferences occurred because, "the case would either have to be continued or they would have to have had dispositional conferences without counsel present," and acknowledging that "a dispositional conference also could be continued for good cause."); *id.* at 104:25-105:18 (identifying basis for opinion as Docket Records Bates Stamped as ACLU-008192-008194; ACLU 008195-008322).

OBJECTION

Mr. Guillory, designated and deposed on topics addressing the Lawyer of the Day program, not the subject matter upon which this statement relies, acknowledged his lack of personal knowledge underlying the statements upon which this statement relies. Guillory Depo. at 46:21-47:16; Notice of Rule 30(b)(6) Deposition to Defendant [sic] Maine Commission on Public Defense Services

(Christopher Guillory) (identifying witness as designee for topics #4 and 5 in incorporated 30(b)(6) list) (attached hereto as **Exhibit K**).

128. Named Plaintiff Clifford Neville was appointed counsel less than three weeks before his dispositional conference, and then entered a guilty plea on felony charges on the day of his dispositional conference. Shea Aff. ¶ 12, Exhibit I, at ACLU-008500 -008507.

RESPONSE

Qualified. Pursuant to an agreement reached with the assistance of counsel, including the dismissal of certain charges, Mr. Neville resolved his pending criminal charges on July 8, 2024. *State v. Neville*, CR-2024-1290; CR-2023-2048; CR-2023-727; CR-2022-3525 (Jun. 21, 2024 – Jul. 8, 2024 filings) (attached hereto as **Exhibit L**).

OBJECTION

This statement is not a fact material to the to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). To the extent Plaintiffs implicitly seek an inference of a causal connection between the timing of the appearance of defense counsel for Mr. Neville and Mr. Neville's subsequent guilty plea (in lieu

of obtaining testimony supporting that contention from Mr. Neville, a named Plaintiff), such an inference is barred by the standard controlling summary judgment. *Bell ex rel. Bell v. Dawson*, 2013 ME 108, ¶ 15, 82 A.3d 827 (in the context of summary judgment, evidence and reasonable inferences that may be drawn therefrom are viewed "in the light most favorable to the nonmoving party." (citing *Gniadek v. Camp Sunshine at Sebago Lake, Inc.,* 2011 ME 11, ¶ 15, 11 A.3d 308)); *see also Lewis v. Concord Gen. Mut. Ins. Co.*, 2014 ME 34, ¶ 10, 87 A.3d 732 ("When facts, though undisputed, are capable of supporting conflicting yet plausible inferences—inferences that are capable of leading a rational fact-finder to different outcomes in a litigated matter depending on which of them the fact-finder draws—then the choice between those inferences is not for the court on summary judgment." (quoting *Lougee Conservancy v. CitiMortgage, Inc.,* 2012 ME 103, ¶ 11, 48 A.3d 774)).

129. A person formally accused of a crime may have many other serious issues in addition to their pending criminal case, involving their housing, employment, family relationships, and medical needs. These issues are even more complicated if a person is locked up in jail. McKee Aff. ¶ 19.

RESPONSE

Qualified. It is possible that a criminal defendant has some other issue going on in their life and criminal convictions have consequences for issues related to

housing, employment, family relationships, and medical needs. McKee Depo. at 33:10-34:6.

OBJECTION

This statement is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."); 5 M.R.S.A. § 4682. Neither a fact nor a "material fact," this statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

130. Delays in appointment of counsel cause increased stress, which can result in negative physical, mental, and emotional effects. Deposition of Rachel Casey, Ph.D. ("Casey Dep.") 44:13-19, 46:18-22, 50:11-23, 60:8-13, 60:25-61:6, 61:21-62:10, 77:15-87:2, 79:17-20, 81:4-13, 82:25-83:4, 85:1-86:1, 87:2-9; Casey Aff. ¶¶ 10-14, 21-27, 32, 44-48.

RESPONSE

Denied. Professor Casey cannot reliably opine that delays in appointment of counsel causes or contributes to stress independent of other factors she opines may affect members of Plaintiffs' Class. Casey Depo. at 76:15-23; *id.* at 60:3-13 ("Q. . . . Is it part of the opinion that you intend to testify to at trial whether the

psychological effects identified in paragraph nine of your disclosure actually impact any of the folks who are in plaintiffs' class in this case? A. As I haven't interviewed anyone in the plaintiffs' class, I can't specifically make that claim, but I – it's my opinion that this is true for all incarcerated people in terms of that *there is a negative psychological effect of incarceration for any incarcerated person*, thus, it would be true for members of plaintiffs' class.") (emphasis added); *see also* Defendants' Motion to Limit Testimony of Plaintiffs' Expert Rachel Casey, Ph.D (Nov. 22, 2024).

OBJECTION

The source upon which this statement relies, the opinion testimony of Rachel Casey, fails to meet the threshold of reliability and relevance necessary for the admissibility of proffered expert opinion evidence.[12] M.R. Evid. 401; *Searles v. Fleetwood Homes Of Pennsylvania, Inc.*, 2005 ME 94, ¶ 21, 878 A.2d 509, 515–16 (citing *State v. Williams,* 388 A.2d 500, 504 (Me.1978)). This statement is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."); 5 M.R.S.A. § 4682. Neither a fact nor a "material

[12] Defendants have separately moved, in limine, for the exclusion of opinions asserted by Rachel Casey, Ph.D. Defendants' Motion to Limit Testimony of Plaintiffs' Expert Rachel Casey, Ph.D (Nov. 22, 2024).

fact," this statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

131. Maine's denial of counsel to people who are accused of crimes but are unable to afford counsel causes devastating harms to their health, safety, and well-being. Casey Aff. ¶ 46.

RESPONSE

Denied. Professor Casey testified that she will not offer an opinion that the "devastating harm to their health, safety, and well-being," in fact affect any member of Plaintiffs' Subclass. Casey Depo. at 76:15-23 (Q. . . . [W]hat are you relying on for the opinions that are stated in the three sentences in paragraph 18? A. I am relying on conclusions drawn from the literature about how the legal process – criminal legal process generally impacts people, especially when denied counsel and especially during incarceration. Q. Is it fair to say your conclusion is that the delay in appointment of counsel to indigent criminal defendants causes the harms you described in that first sentence of paragraph 18? A. Yes, I believe it can. Q. Is it your intent to offer an opinion that the harm has in fact occurred to any member of plaintiffs' class in this case? A. No. Q. Is it your intent to offer an opinion quantifying the likelihood that this harm will occur to any plaintiff – any member of plaintiffs' class in this case because they have been denied counsel? A. No."). Professor Casey admits having no basis to conclude that the potential effects she has identified actually affect any member of Plaintiffs' class. *Id.* at 60:3-13 ("Q. . . . Is it part of the opinion that you intend to testify to at trial

whether the psychological effects identified in paragraph nine of your disclosure actually impact any of the folks who are in plaintiffs' class in this case? A. As I haven't interviewed anyone in the plaintiffs' class, I can't specifically make that claim, but I – it's my opinion that this is true for all incarcerated people in terms of that *there is a negative psychological effect of incarceration for any incarcerated person*, thus, it would be true for members of plaintiffs' class.") (emphasis added); *see also* Defendants' Motion to Limit Testimony of Plaintiffs' Expert Rachel Casey, Ph.D (Nov. 22, 2024).

OBJECTION

The source upon which this statement relies, the opinion testimony of Rachel Casey, fails to meet the threshold of reliability and relevance necessary for the admissibility of proffered expert opinion evidence. Defendants' Motion to Limit Testimony of Plaintiffs' Expert Rachel Casey, Ph.D (Nov. 22, 2024); M.R. Evid. 401; *Searles v. Fleetwood Homes Of Pennsylvania, Inc.*, 2005 ME 94, ¶ 21, 878 A.2d 509, 515–16 (citing *State v. Williams,* 388 A.2d 500, 504 (Me.1978)).

132. These harms are inflicted even if a person is only denied counsel for a short period, and even if a person is not locked up in jail while waiting for their lawyer to be appointed. Casey Aff. ¶ 47.

RESPONSE

Denied. Professor Casey testified that she will not offer an opinion that the "devastating harm to their health, safety, and well-being," in fact affect any member of Plaintiffs' Subclass. Casey Depo. at 76:15-23 (Q. . . . [W]hat are you relying on for the opinions that are stated in the three sentences in paragraph 18? A. I am relying on conclusions drawn from the literature about how the legal process – criminal legal process generally impacts people, especially when denied counsel and especially during incarceration. Q. Is it fair to say your conclusion is that the delay in appointment of counsel to indigent criminal defendants causes the harms you described in that first sentence of paragraph 18? A. Yes, I believe it can. Q. Is it your intent to offer an opinion that the harm has in fact occurred to any member of plaintiffs' class in this case? A. No. Q. Is it your intent to offer an opinion quantifying the likelihood that this harm will occur to any plaintiff – any member of plaintiffs' class in this case because they have been denied counsel? A. No."). Professor Casey admits having no basis to conclude that the potential effects she has identified actually affect any member of Plaintiffs' class. *Id.* at 60:3-13 ("Q. . . . Is it part of the opinion that you intend to testify to at trial whether the psychological effects identified in paragraph nine of your disclosure actually impact any of the folks who are in plaintiffs' class in this case? A. As I haven't interviewed anyone in the plaintiffs' class, I can't specifically make that claim, but I – it's my opinion that this is true for all incarcerated people in terms of that *there is a negative psychological effect of incarceration for any incarcerated person*, thus, it would be true for members of plaintiffs' class.") (emphasis added). Professor Casey has no basis to conclude that any effect or

harm applies to individuals who are not incarcerated. *Id.*; *see also* Defendants' Motion to Limit Testimony of Plaintiffs' Expert Rachel Casey, Ph.D (Nov. 22, 2024).

OBJECTION

The source upon which this statement relies, the opinion testimony of Rachel Casey, fails to meet the threshold of reliability and relevance necessary for the admissibility of proffered expert opinion evidence. Defendants' Motion to Limit Testimony of Plaintiffs' Expert Rachel Casey, Ph.D (Nov. 22, 2024); M.R. Evid. 401; *Searles v. Fleetwood Homes Of Pennsylvania, Inc.*, 2005 ME 94, ¶ 21, 878 A.2d 509, 515–16 (citing *State v. Williams,* 388 A.2d 500, 504 (Me.1978)).

133. For people who are kept locked up, for weeks or even months, the harmful effects can be life-altering. Casey Aff. ¶ 48**.**

RESPONSE

Qualified. In her professional experience studying the mental and physical effects of incarceration, prior to her August 23, 2024 retention as an expert in this litigation, Casey Depo. at 52:4-6, whether the incarcerated individuals whom she studied did or did not have an attorney was not relevant to her work relating to the negative effects of incarceration. Casey Depo. at 70:8-16; ; *see also* Defendants' Motion to Limit Testimony of Plaintiffs' Expert Rachel Casey, Ph.D (Nov. 22, 2024).

OBJECTION

The source upon which this statement relies, the opinion testimony of Rachel Casey, fails to meet the threshold of reliability and relevance necessary for the admissibility of proffered expert opinion evidence. Defendants' Motion to Limit Testimony of Plaintiffs' Expert Rachel Casey, Ph.D (Nov. 22, 2024); M.R. Evid. 401; *Searles v. Fleetwood Homes Of Pennsylvania, Inc.*, 2005 ME 94, ¶ 21, 878 A.2d 509, 515–16 (citing *State v. Williams,* 388 A.2d 500, 504 (Me.1978)). To the extent this opinion relates to incarceration independent of whether or not an indigent criminal defendant has been appointed counsel, this statement of opinion is not material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."); 5 M.R.S.A. § 4682. Neither a fact nor a "material fact," this statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

134. Stress has negative effects on both the immune system and cardiovascular system, leading to an increase in infections, diabetes, hypertension, other cardiovascular disease and depression. Casey Aff. ¶ 13.

RESPONSE

Qualified. Plaintiffs' expert fails to apply this general principle to any member of Plaintiffs' class. Plaintiffs' expert fails to apply this general principle to any member of Plaintiffs' class or conclude that it actually affects any member of Plaintiffs' class. Casey Depo. at 51:21-52:12 (Q Have you collected any data in connection with your work in this case? A No. Q Have you conducted any studies in connection with your work in this case? A No. Can I clarify? Do you mean specifically studies about this case or studies that have data relevant to my opinions in this case? Q What I'm trying to get at is you were retained on August 23rd of 2024; is that correct? A Yes. Q So as part of your work in this case, did you conduct any studies or gather any data? A No. Q Independent of your review of the sources that are listed in the footnotes to your disclosure? A Correct, no data was collected.").

OBJECTION

This statement is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."); 5 M.R.S.A. § 4682. Neither a fact nor a "material fact," this statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

135. Persistent stressful circumstances are damaging to health, and persistent stress may lead to premature death, due to the continuous adrenergic state that stress causes in the body. Casey Aff. ¶ 14.

RESPONSE

Qualified. Plaintiffs' expert fails to apply this general principle to any member of Plaintiffs' class or conclude that it actually affects any member of Plaintiffs' class. Casey Depo. at 51:21-52:12 (Q Have you collected any data in connection with your work in this case? A No. Q Have you conducted any studies in connection with your work in this case? A No. Can I clarify? Do you mean specifically studies about this case or studies that have data relevant to my opinions in this case? Q What I'm trying to get at is you were retained on August 23rd of 2024; is that correct? A Yes. Q So as part of your work in this case, did you conduct any studies or gather any data? A No. Q Independent of your review of the sources that are listed in the footnotes to your disclosure? A Correct, no data was collected.").

OBJECTION

This statement is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty*

Lobby, Inc., 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."); 5 M.R.S.A. § 4682. Neither a fact nor a "material fact," this statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

136. It is very likely that many of the people being denied the assistance of counsel are also suffering from torment and apprehension over not being able to obtain assistance with their pending criminal cases. Casey Aff. ¶ 45.

RESPONSE

Denied. Plaintiffs' expert lacks any reliable basis to assert the likelihood of this effect affecting any member of Plaintiffs' class as she has gathered no data regarding Plaintiffs' class. Casey Depo. at 51:21-52:12 (Q Have you collected any data in connection with your work in this case? A No. Q Have you conducted any studies in connection with your work in this case? A No. Can I clarify? Do you mean specifically studies about this case or studies that have data relevant to my opinions in this case? Q What I'm trying to get at is you were retained on August 23rd of 2024; is that correct? A Yes. Q So as part of your work in this case, did you conduct any studies or gather any data? A No. Q Independent of your review of the sources that are listed in the footnotes to your disclosure? A Correct, no data was collected."); *id.* at 48:14 – 21 ("significant negative effect" of unresolved criminal matters); 74:1-11; *id.* at 75:23-76:2; *id.* at (no differentiation based on delay in appointment of counsel regarding effects on

incarcerated individuals). Prior to Plaintiffs' expert's work in this case, commencing in late August, her work was on the effects of imprisonment on people and whether those people had a lawyer was irrelevant to her work. *Id.* at 70:8-16 ("Q So prior to your work in this litigation, has it been -- is it fair to say that you have studied -- and I think you testified to this earlier -- the effects of imprisonment on people? A Yes. Q Prior to your work in this litigation, has whether the people who were imprisoned have a lawyer been relevant to your work? A No.").

OBJECTION

The source upon which this statement relies, the opinion testimony of Rachel Casey, fails to meet the threshold of reliability and relevance necessary for the admissibility of proffered expert opinion evidence. Defendants' Motion to Limit Testimony of Plaintiffs' Expert Rachel Casey, Ph.D (Nov. 22, 2024); M.R. Evid. 401; *Searles v. Fleetwood Homes Of Pennsylvania, Inc.*, 2005 ME 94, ¶ 21, 878 A.2d 509, 515–16 (citing *State v. Williams,* 388 A.2d 500, 504 (Me.1978)).

137. When people are charged with crimes and denied counsel, they will first face the often-unfamiliar experience of going to court. This can be disorienting and anxiety-producing. Casey Aff. ¶¶ 15-16.

RESPONSE

Qualified. Plaintiffs' expert has no reliable basis to differentiate the effects of delays in appointment of counsel from the effects of incarceration in connection being charged with a criminal offense. Casey Depo. at 86:2-87:9 ("Q Is it fair to say that this population of individuals, meaning individuals who are in carceral environments, meaning, as you told us, jail or in prison, there are many potential sources of stress? A Yes. Q And you have as part of your testimony today and as part of your opinions identified many of those; is that correct? A Yes. Q And among the potential sources of stress you identified are potentially losing a job, for example? A Yes. Q Do you intend to testify as part of your opinion at trial in this matter about any difference in – strike that. Is not having counsel in your opinion with respect to the opinions that you intend to testify to at trial another potential source of stress among the already existing sources of stress that you have identified? A Yes. Q In terms of the likelihood of the negative mental and physical effects that you have identified, does it matter whether an increase in stress to someone who is incarcerated comes from lack of counsel or, for example, employment insecurity? A No, but we can't discount the significance of lack of counsel as a source of stress. I believe you asked earlier and I testified to the fact that there are different forms of stress and we respond differently and it's my opinion that lack of counsel represents a particularly acute form of stress. It might be on par with the stress related to lack of employment or lack of custody of children, but it is a significant source of stress."). Plaintiffs' expert has no reliable basis, including empirical data regarding Plaintiffs' class, to reach a conclusion regarding any causal relationship between a particular degree of stress

and a delay in appointment of counsel and stress. Casey Depo. at 88:1-4 ("Q What are you relying on to reach the conclusion that the stress caused by not having counsel results in a particularly acute form of stress? A My professional experience and my review of the literature.").

OBJECTION

This statement is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."); 5 M.R.S.A. § 4682. This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

138. This anxiety, in turn, will have a negative effect on relationships with loved ones. Casey Aff. ¶ 17.

RESPONSE

Qualified. Plaintiffs' expert lacks any reliable basis to assert the likelihood of this effect affecting any member of Plaintiffs' class as she has gathered no data regarding Plaintiffs' class. Casey Depo. at 51:21-52:12 (Q Have you collected any data in connection with your work in this case? A No. Q Have you conducted

any studies in connection with your work in this case? A No. Can I clarify? Do you mean specifically studies about this case or studies that have data relevant to my opinions in this case? Q What I'm trying to get at is you were retained on August 23rd of 2024; is that correct? A Yes. Q So as part of your work in this case, did you conduct any studies or gather any data? A No. Q Independent of your review of the sources that are listed in the footnotes to your disclosure? A Correct, no data was collected.").

OBJECTION

This statement is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."); 5 M.R.S.A. § 4682. This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

139. People's job performance will likely suffer. Casey Aff. ¶ 18.

RESPONSE

Denied. Plaintiffs' expert neither identifies her basis for this conclusion nor was the opinion included in Plaintiffs' Rule 26 Disclosure or the deposition of

Plaintiffs' expert. Casey Aff. at ¶18; Plaintiffs' Rule 26 Expert Disclosure of Rachel Casey, *passim*; Casey Depo., passim.

OBJECTION

This statement is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."); 5 M.R.S.A. § 4682. This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

140. Because defendants' lives are on hold until their criminal cases case be resolved, they are unable to make long-term commitments, such as signing a lease, getting a new job, or pursuing educational opportunities. Casey Aff. ¶ 19.

RESPONSE

Qualified. Casey Depo. at 75:14-18 ("Q . . . My question that was pending earlier was do you know either way whether anyone in plaintiffs' class have lost a job as a result of being confined to jail? A I am not aware of that, no."); *id.* at 53:22-25 (Q . . . Does how long someone has been without counsel matter to the opinions that you are intending to provide in this trial? A No.").

OBJECTION

This statement is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."); 5 M.R.S.A. § 4682. This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

141. For people who are denied counsel and kept in jail, the situation is even worse. Casey Aff. ¶ 20.

RESPONSE

Denied. Plaintiffs' expert admits that she has no reliable basis upon which to base this conclusion. Casey Depo. at 74:1-11; *id.* at 75:23-76:2; 88:1-9 (witness relied on her personal experience, review of "the literature," and cannot quantify the degree of stress applicable to denial of counsel independent of incarceration generally). Professor Casey's ultimate opinion is that: stress is correlated with negative health outcomes, persons in poverty and incarcerated experience stress, and delay in appointment of counsel is an additional source of stress to individuals living in poverty who are also incarcerated. *Id.* at 86:17 – 21.

OBJECTION

The source upon which this statement relies, the opinion testimony of Rachel Casey, fails to meet the threshold of reliability and relevance necessary for the admissibility of proffered expert opinion evidence. Defendants' Motion to Limit Testimony of Plaintiffs' Expert Rachel Casey, Ph.D (Nov. 22, 2024); M.R. Evid. 401; *Searles v. Fleetwood Homes Of Pennsylvania, Inc.*, 2005 ME 94, ¶ 21, 878 A.2d 509, 515–16 (citing *State v. Williams,* 388 A.2d 500, 504 (Me.1978)). As a result, this statement is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."); 5 M.R.S.A. § 4682. This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

142. Stress is severely exacerbated by the carceral environment. Casey Aff. ¶ 24.

RESPONSE

Qualified. Being in jail can be stressful. Casey Depo. at 86:2-87:9 ("Q Is it fair to say that this population of individuals, meaning individuals who are in carceral environments, meaning, as you told us, jail or in prison, there are many potential

sources of stress? A Yes. Q And you have as part of your testimony today and as part of your opinions identified many of those; is that correct? A Yes. Q And among the potential sources of stress you identified are potentially losing a job, for example? A Yes. Q Do you intend to testify as part of your opinion at trial in this matter about any difference in – strike that. Is not having counsel in your opinion with respect to the opinions that you intend to testify to at trial another potential source of stress among the already existing sources of stress that you have identified? A Yes. Q In terms of the likelihood of the negative mental and physical effects that you have identified, does it matter whether an increase in stress to someone who is incarcerated comes from lack of counsel or, for example, employment insecurity? A No, but we can't discount the significance of lack of counsel as a source of stress. I believe you asked earlier and I testified to the fact that there are different forms of stress and we respond differently and it's my opinion that lack of counsel represents a particularly acute form of stress. It might be on par with the stress related to lack of employment or lack of custody of children, but it is a significant source of stress."). Plaintiffs' expert has no reliable basis, including empirical data regarding Plaintiffs' class, to reach a conclusion regarding any causal relationship between a particular degree of stress and a delay in appointment of counsel and stress. Casey Depo. at 88:1-4 ("Q What are you relying on to reach the conclusion that the stress caused by not having counsel results in a particularly acute form of stress? A My professional experience and my review of the literature.").

OBJECTION

This statement is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."); 5 M.R.S.A. § 4682. This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

143. Jail exacerbates all other preexisting mental health conditions and increases the risk of suicide. Casey Aff. ¶¶ 25-26.

RESPONSE

Qualified. Being in jail can be stressful. CITE. There is no basis upon which to differentiate the mental health effects of incarceration from the effect, if any, of a delay in the appointment of counsel to represent an incarcerated individual. *Id.* at 71:3-11 ("Q Is it fair to say that what's described in paragraph 12 [of the witness's Rule 26 Expert Disclosure] is a -- describes possible outcomes for people who are incarcerated? A Yes. Q Do you intend to offer an opinion at trial in this matter as to whether or not those outcomes identified in paragraph 12 are more or less likely for inmates because they don't have counsel? A No."); *Id.* at

Exhibit 4 (Plaintiffs' Rule 26 Expert Disclosure of Rachel Casey), p. 5 (attached hereto as **Exhibit M**).

OBJECTION

This statement is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."); 5 M.R.S.A. § 4682. This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

144. Delays in appointment of counsel can have negative effects on a defendant's relationship with their family, as well as negative impacts on the defendant's family. Casey Dep. 71:16-74:11, 83:14-25, 84:10-25; Casey Aff. ¶¶ 17, 31, 34-38, 42-43; McKeeAff. ¶ 19.

RESPONSE

Denied. Casey Depo. at 75:19-76:2 ("Q. Paragraph 16[of the witness's Rule 26 Expert Disclosure], do you know whether jail confinement has disrupted cohabitating and or marital relationships of any members of plaintiffs' class? A No. Q Do you have an opinion as to whether there's a difference in likelihood of

the condition that you described in paragraph 16 between the population of people who have a lawyer and do not? A No."); *id.* at Exhibit 4, p.6 (Plaintiffs' Rule 26 Expert Disclosure of Rachel Casey).

OBJECTION

The source upon which this statement relies, the opinion testimony of Rachel Casey, fails to meet the threshold of reliability and relevance necessary for the admissibility of proffered expert opinion evidence. Defendants' Motion to Limit Testimony of Plaintiffs' Expert Rachel Casey, Ph.D (Nov. 22, 2024); M.R. Evid. 401; *Searles v. Fleetwood Homes Of Pennsylvania, Inc.*, 2005 ME 94, ¶ 21, 878 A.2d 509, 515–16 (citing *State v. Williams,* 388 A.2d 500, 504 (Me.1978)). As a result, this statement is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."); 5 M.R.S.A. § 4682. This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

145. Jail confinement brings with it family stress arising from the uncertainty and unpredictability associated with pending court cases. Casey Aff. ¶ 31.

RESPONSE

Qualified. Casey Depo. at 61:21-62:10 ("Q Would you also testify that the stress created by the lack of counsel during the pendency of a criminal prosecution also creates a unique type of stress? Do you remember that testimony? A Yes. Q What do you mean by unique type? A I mean that it is a stress that is distinct from the stressors related to incarceration itself. It is stress related to the legal proceedings specifically. Q Do the effects of that unique type of stress in your opinion result in different health consequences? A No, I expect the health consequences would be similar, but having that additional stress could compound the impact of the incarceration related stress in terms of outcomes.").

OBJECTION

This statement is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."); 5 M.R.S.A. § 4682. This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

146. This uncertainty and unpredictability is particularly acute for people without counsel, because they have no one to turn to in order to understand their case or what will happen next in the legal process. Casey Aff. ¶ 32.

RESPONSE

Denied. Casey Depo. at 88:1-9 ("Q What are you relying on to reach the conclusion that the stress caused by not having counsel results in a particularly acute form of stress? A My professional experience and my review of the literature. Q Can you point to any literature that quantifies the degree of stress specific to a person not having counsel? A Not that quantifies it, no."); *see also* Casey Depo. at 56:17-22 (witness has never submitted an article for peer review based on the methodology which she applied to form her opinions in this case: her professional experience and knowledge as opposed to data regarding the population of individuals regarding whom she intends to opine). While testifying that the stress caused by a delay in appointment of counsel is "unique," *id.* at 61:21-62:4, Professor Casey acknowledges that there is no basis to conclude that "unique" stress causes health consequences distinct from incarceration, *id.* at 62:5-10.

OBJECTION

The source upon which this statement relies, the opinion testimony of Rachel Casey, fails to meet the threshold of reliability and relevance necessary for the admissibility of proffered expert opinion evidence. Defendants' Motion to Limit

Testimony of Plaintiffs' Expert Rachel Casey, Ph.D (Nov. 22, 2024); M.R. Evid. 401; *Searles v. Fleetwood Homes Of Pennsylvania, Inc.*, 2005 ME 94, ¶ 21, 878 A.2d 509, 515–16 (citing *State v. Williams,* 388 A.2d 500, 504 (Me.1978)). As a result, this statement is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."); 5 M.R.S.A. § 4682. This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

147. For people who are locked up in jail who have dependent children, the effect on both parent and child can be life-altering. Casey Aff. ¶ 35

RESPONSE

Qualified. Casey Depo. at 73:11-74:7 ("Q . . . [I]s it fair to say the condition you are describing in paragraph 14 is that inmates have little or no contact with -- less or no contact with their children once they are incarcerated? A Yes. Q What is the effect of that condition on inmates in your experience? A In my experience, the impact of limited visitation can contribute to depressed mood, up to and including a contribution to a diagnosis of major depressive disorder. It also contributes to increased stress and concern for their children, especially because this limited

access impacts children negatively, children might demonstrate more behavioral problems which then cause concern for the incarcerated parent. Q And in the opinion that you intend to provide at trial, are you intending to differentiate between that condition that you just described in the population of people who are in prison versus the population of people who are imprisoned and don't have a lawyer? A Not with regard to the specific impact of limited visitation, no.").

OBJECTION

This statement is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."); 5 M.R.S.A. § 4682. This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

148. Parents may lose custody of their children-temporarily or permanently-and children may be forced into the foster care system. Casey Aff. ¶ 36**.**

RESPONSE

Qualified. Casey Depo. at 72:16-73:3 ("Q I'm referring to the second to last line of paragraph 13 which states parents may lose custody of their children. Do you

see what I'm referring to? A I do. Q Do you know whether any members of plaintiffs' class have lost custody of their children? A I'm attempting to recall whether that was described in the complaint, but I don't recall at this moment. Q Outside of the complaint that was filed in this case, do you have any knowledge of whether or not anybody in plaintiffs' class has lost custody of their children? A No.").

OBJECTION

This statement is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."); 5 M.R.S.A. § 4682. This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

149. Delays in appointment of counsel can have negative effects on a defendant's employment situation. Casey Dep. 74:12-75:18, 83:5-8; Casey Aff. ¶¶ 18-19, 39-41; McKee Aff. ¶ 19.

RESPONSE

Qualified. Plaintiffs' expert admits that she has no basis to conclude that this condition affects any member of Plaintiffs' Class. Casey Depo. at 75:14-19 ("Q. My question that was pending earlier was do you know either way whether anyone in plaintiffs' class have lost a job as a result of being confined to jail? A. I am not aware of that, no.").

OBJECTION

The source upon which this statement relies, the opinion testimony of Rachel Casey, fails to meet the threshold of reliability and relevance necessary for the admissibility of proffered expert opinion evidence. Defendants' Motion to Limit Testimony of Plaintiffs' Expert Rachel Casey, Ph.D (Nov. 22, 2024); M.R. Evid. 401; *Searles v. Fleetwood Homes Of Pennsylvania, Inc.*, 2005 ME 94, ¶ 21, 878 A.2d 509, 515–16 (citing *State v. Williams,* 388 A.2d 500, 504 (Me.1978)). As a result, this statement is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."); 5 M.R.S.A. § 4682. This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

150. People who are eligible for court-appointed counsel are already, by definition, either under-employed or unemployed. Casey Aff. ¶ 40.

RESPONSE

Qualified. Casey Depo. at 26:5-10 ("What were you asked to do in this case? A To testify as an expert witness. Q What do you understand the scope of your – strike that. You were asked to give opinions on certain subjects; is that correct? A Yes. Q What do you understand the scope of those opinions to be that you were requested to provide? A I understand that I was asked to provide expert opinion on the general impact of poverty, especially on incarcerated populations, as well as the impact of incarceration, mentally and physically."); *see also* 94-649 C.M.R. ch. 401, §1, et seq. (Guidelines for Determination of Financial Eligibility for Assigned Counsel and Reimbursement for Assigned Counsel Costs).

OBJECTION

This statement is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."); 5 M.R.S.A. § 4682. This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

151. Very few employers will hold a person's job open for them while they are confined to jail for an indefinite period of time. Casey Aff. ¶ 41.

RESPONSE

Denied. Plaintiffs' expert admits that she has no basis to conclude that this condition affects any member of Plaintiffs' Class. Casey Depo. at 75:14-19 ("Q. My question that was pending earlier was do you know either way whether anyone in plaintiffs' class have lost a job as a result of being confined to jail? A. I am not aware of that, no.").

OBJECTION

The source upon which this statement relies, the opinion testimony of Rachel Casey, fails to meet the threshold of reliability and relevance necessary for the admissibility of proffered expert opinion evidence. Defendants' Motion to Limit Testimony of Plaintiffs' Expert Rachel Casey, Ph.D (Nov. 22, 2024); M.R. Evid. 401; *Searles v. Fleetwood Homes Of Pennsylvania, Inc.*, 2005 ME 94, ¶ 21, 878 A.2d 509, 515–16 (citing *State v. Williams,* 388 A.2d 500, 504 (Me.1978)). As a result, this statement is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law

will identify which facts are material."); 5 M.R.S.A. § 4682. This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

152. Delays in appointment of counsel can have negative effects on a defendant's housing status. Casey Dep. 83:9-13; Casey Aff. ¶¶ 19**,** 43; McKee Aff. ¶ 19.

RESPONSE

Qualified. Plaintiffs' expert has no reliable basis upon which to conclude that this condition affects any member of Plaintiffs' Class. Casey Depo. 76:3-7 ("Q Paragraph 17, again, still in your designation, page six, do you know whether or not confinement has produced housing instability affecting any member of plaintiffs' class? A No."); *id.* at Exhibit 4, p.6 (Plaintiffs' Rule 26 Expert Disclosure of Rachel Casey); *id.* at 39:19-40:7 ("A Living in poverty means that education, employment, food, housing, medical care and transportation are difficult to access and this difficulty in turn makes it more likely that people will remain in poverty.")

OBJECTION

The source upon which this statement relies, the opinion testimony of Rachel Casey, fails to meet the threshold of reliability and relevance necessary for the admissibility of proffered expert opinion evidence. Defendants' Motion to Limit Testimony of Plaintiffs' Expert Rachel Casey, Ph.D (Nov. 22, 2024); M.R. Evid.

401; *Searles v. Fleetwood Homes Of Pennsylvania, Inc.*, 2005 ME 94, ¶ 21, 878 A.2d 509, 515–16 (citing *State v. Williams,* 388 A.2d 500, 504 (Me.1978)). As a result, this statement is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."); 5 M.R.S.A. § 4682. This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

153. Billings admits that when a person does not have a lawyer for months at a time, but has a Lawyer of the Day (LOD) at a seven-day review hearing, their Sixth Amendment rights still are being violated. Billings (Nov. 6) Dep. 15: 15-24.

RESPONSE

Denied. The statement materially mischaracterizes the deponent's testimony which does not support the assertion in this paragraph. Billings Depo.#2 at 15:15-16:17 ("Q. Okay. Do you have a personal opinion on whether someone who doesn't have a lawyer for months at a time but does have a Lawyer of the Day at these seven-day review hearings, whether their Sixth Amendment rights are being violated? A. Yes, I have an opinion. Q. What is that opinion? A. *My opinion regardless of the caselaw? Q. Do you have -- sure, yes?* A. I think it's being

violated, yes. If someone is going months at a time without a lawyer, I think that is falling short of the Gideon promise. I don't think that that is completely consistent with supreme court caselaw. I think my view of that is a little more expansive, and I think the law in Maine right now is a little bit in -- based on the Peterson case or whoever saying that it was -- dispositional conference was identified as this magical critical stage in the case, but I don't believe that going weeks or months without a lawyer between initial appearance and some time before your dispositional conference is really discharging the State's obligation to provide an attorney because things can happen in the real world while you're there without a lawyer as a defendant that you're powerless to take advantage of or deal with as part of your defense, whatever the court schedule is. So my own views may not line up consistently or lockstep with what the law is, if that's what you're asking me.") (emphasis added).

OBJECTION

A characterization of what the controlling law is, in addition to not being the proper subject of witness testimony, *see Nieves-Villanueva v. Soto-Rivera,* 133 F.3d 92, 99 (1st Cir. 1997), is neither a "fact" nor a material fact. *See Hoekman v. Education Minnesota*, 335 F.R.D. 219, 237 (D. Minn. 2020) (". . . the admission of expert testimony about the requirements of the law improperly gives the appearance that the court is shifting to witnesses the responsibility to decide the case."). Instruction on applicable principles of law is the exclusive province of the Court. As a result, this statement is immaterial to the standard determinative

of Counts I and II of Plaintiffs' Amended Complaint. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."); 5 M.R.S.A. § 4682. This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

154. Tardy admits that the presence of an LOD at a seven-day review hearing does not provide the necessary representation to satisfy the Sixth Amendment. Tardy Dep. 27:15-28:3.

RESPONSE

Denied. The statement materially mischaracterizes the deponent's testimony which does not support the assertion in this paragraph. Tardy Depo. at 26:20-28:3 ("Q. The minutes explain that Attorneys Rob Ruffner and Neil Prendergast asked this issue be put on the agenda, this issue referring to seven-day review hearings, and that their concern was that the presence of Lawyers of the Day at seven-day review hearings is *being used as a basis for not finding a Sixth Amendment violation*. Describing Attorney Ruffner's views, the summary states, "courts are finding that the presence of a Lawyer of the Day at the seven-day review is grounds for determining that there was no Sixth Amendment violation." Based on your awareness, do you agree that this is happening? MR. MAGENIS: Objection

to form. A. Notwithstanding the form of the question, I agree that -- with the premises of your question that this is happening. BY MS. BOCK: Q. Do you think that is a problem? A. Yes. Q. Why is it a problem? A. Well, first because *I don't believe that a Lawyer of the Day being present at a seven-day review should be the basis for not finding a Sixth Amendment violation*. Q. Why is that? A. Because I believe in the Sixth Amendment. Q. So is it fair to say that you don't think the presence of a Lawyer of the Day at a seven-day review hearing provides the necessary representation to satisfy the Sixth Amendment? A. No, that wasn't the design for providing. I mean it was to try to do -- first do no harm, and to try to provide assistance and to try to provide value added, not to satisfy a Sixth Amendment defense of a prosecutor.") (emphasis added).

OBJECTION

A characterization of what the controlling law is, in addition to not being the proper subject of witness testimony, *see Nieves-Villanueva v. Soto-Rivera,* 133 F.3d 92, 99 (1st Cir. 1997), is neither a "fact" nor a material fact. *See Hoekman v. Education Minnesota*, 335 F.R.D. 219, 237 (D. Minn. 2020) (". . . the admission of expert testimony about the requirements of the law improperly gives the appearance that the court is shifting to witnesses the responsibility to decide the case."). Instruction on applicable principles of law is the exclusive province of the Court. As a result, this statement is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . .

. .” (quoting *Stewart-Dore v. Webber Hosp. Ass’n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (“As to materiality, the substantive law will identify which facts are material.”); 5 M.R.S.A. § 4682. This statement should, therefore, be stricken from Plaintiffs’ Statement of Material Fact. M. R. Civ. P. 56(i).

155. Soucy admits that an LOD cannot serve as adequate counsel for people who are in court for a dispositional conference or bail hearing because the LOD does not have an adequate opportunity to prepare, to get to know the client, to understand the circumstances affecting the client. These are necessary because bail arguments, if done well, require more than a cursory acquaintance with circumstances of defendants. Soucy Dep. 7:19-9:4.

RESPONSE

Denied. The statement materially mischaracterizes the deponent’s testimony which does not support the assertion in this paragraph. Soucy Depo. at 7:9-8:8 (“Q. Do you remember making the comments that are summarized in those sentences? A. I do. Q. What was the context of those statements? A. We were discussing an issue brought forward by Lawyers of the Day, two involved that -- Rob Ruffner and Neil Prendergast who were saying that the Lawyer of the Day was being used as a cover for the unavailability of counsel in court proceedings. Q. Why did you make these comments? A. My concern was that perhaps it was true. Perhaps it was true and so I wanted to make clear that as far as I was

concerned, and for what limited value that may have, a Lawyer of the Day cannot serve as adequate counsel for people who are, for instance, there for a dispositional conference or a bail hearing or anything like that. Q. And why can't the Lawyer of the Day be the lawyer in that context? A. Well, obviously because they don't have an adequate opportunity to prepare, to get to know the client, to understand the circumstances affecting that client. They're there only briefly, almost momentarily, and so they don't have an opportunity to. And, of course, they can't follow up at all."); *Id.* at Exhibit 1 (MCPDS Meeting Minutes (May 14, 2024), p.9) (attached hereto as **Exhibit N**).

OBJECTION

A characterization of what the controlling law is, in addition to not being the proper subject of witness testimony, *see Nieves-Villanueva v. Soto-Rivera,* 133 F.3d 92, 99 (1st Cir. 1997), is neither a "fact" nor a material fact. *See Hoekman v. Education Minnesota*, 335 F.R.D. 219, 237 (D. Minn. 2020) (". . . the admission of expert testimony about the requirements of the law improperly gives the appearance that the court is shifting to witnesses the responsibility to decide the case."). Instruction on applicable principles of law is the exclusive province of the Court. As a result, this statement is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality,

the substantive law will identify which facts are material."); 5 M.R.S.A. § 4682. This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

156. Maine's Lawyer-of-the-Day system, by design, provides only limited representation for discrete hearings. McKee Aff. ¶ 22.

RESPONSE

Qualified. McKee Depo. at 39:15-24 ("Q. Okay. Is it -- again, without having the precise rules directly in front of either of us, is it fair to say that a limited representation generally contemplates a lawyer appearing for a limited purpose and then exiting the case? A. Yes. I think I remember when the rule was changed to specifically allow that in some part. Q. So would you consider a Lawyer of the Day a limited appearance? A. As the program is now, yes, correct."); M. R. U. Crim P. 5(e) ("When a person is entitled to court-appointed counsel, the court shall assign counsel to represent the defendant not later than the time of the initial appearance, unless the person elects to proceed without counsel. Counsel may be assigned, or a lawyer for the day may be designated, for the limited purpose of representing the person at the initial appearance or arraignment.").

OBJECTION

This statement consists of a conclusion of law which, is not the proper subject of witness testimony. *See Nieves-Villanueva v. Soto-Rivera,* 133 F.3d 92, 99 (1st

Cir. 1997). It is, moreover, neither a statement of fact nor a material fact. The witness cited in support of this statement lacks the necessary foundation to opine regarding the operation of the lawyer of the day program. McKee Depo. at 37:14-38:3 ("Q. Have you ever served as a Lawyer of the Day? A. I have not. Q. So on what experience are you basing your opinion regarding the typical tasks that are performed by Lawyers of the Day? A. I have watched it hundreds of times over the course of 30 years, in and out of just about every court in the State of Maine. Q. When you say you have watched it, what is it that you've watched? A. I have been there at initial appearances, I have watched the attorneys for the day who are assigned going through their tasks in speaking to individual defendants as much as they can, and providing whatever minimal service they can provide at that initial appearance.").

157. By design, an LOD has limited time and opportunity to meet with their clients, and represents them in court on a single discrete occasion-their arraignment, initial appearance, or bail review. Tucker Aff. ¶ 54; Billings (July 10) Dep. 143:17-144:12; Billings (Nov. 6) Dep. 9:23-10:10; Fisher Dep. 21:15-22:5, 22:23-23:10, 24:2-24; Guillory Dep. 31:1-4, 32:1-13, 33:2-23, 34:4-16; Maciag (Aug. 29) Dep. 83:5-87:5; McKee Dep. 38:23-39:-6, 44:8-11; Soucy Dep. 7:19-25, 8:1-15, 9:1-4; Tarpinian Dep. 45:3-7.

RESPONSE

Qualified. M. R. U. Crim P. 5(e) ("When a person is entitled to court-appointed counsel, the court shall assign counsel to represent the defendant not later than the time of the initial appearance, unless the person elects to proceed without counsel. Counsel may be assigned, or a lawyer for the day may be designated, for the limited purpose of representing the person at the initial appearance or arraignment.").

158. LODs are meeting their clients for the first time only moments before they present arguments on behalf of those defendants. McKee Aff. ¶ 25.

RESPONSE

Denied. Guillory Depo. at 51:4-52:1 ("Q. Do you think LODs have sufficient time to complete the task listed in No. 4 [on Exhibit 5] before they appear in court? MR. MAGENIS: Objection, calls for an opinion. A. I think our expectation is they will ensure they have sufficient time. And if they do not have sufficient time, they will request more time from the Court before proceeding. BY MS. BOCK: Q. This will vary from case to case, but in your opinion, about how much time would this take for an average case? MR. MAGENIS: Objection, calls for an opinion. A. I don't know that I could estimate it. Someone could have a fact pattern that only takes five minutes to relay. On top of the basic constitutional argument, someone could have facts specific to their case and their life to be raised. In bail and other situations, it could take much longer to convey. Our expectation is that they will take as long as they need to execute their ethical

duties responsibly."); *id.* at Exhibit 5 ("Guidance for Serving as LOD at Counsel Status Reviews" Memorandum (Dec. 7, 2023), p.2 ("The LOD must meet with each client and engage in a meaningful discussion about the client's rights, potential immigration consequences, bail, plea offers, and any questions the client has or issues they are experiencing in the correctional facility."

OBJECTION

The witness cited in support of this statement lacks the necessary foundation to opine regarding the operation of the lawyer of the day program. M. R. Evid. 703; McKee Depo. at 37:14-38:3 ("Q. Have you ever served as a Lawyer of the Day? A. I have not. Q. So on what experience are you basing your opinion regarding the typical tasks that are performed by Lawyers of the Day? A. I have watched it hundreds of times over the course of 30 years, in and out of just about every court in the State of Maine. Q. When you say you have watched it, what is it that you've watched? A. I have been there at initial appearances, I have watched the attorneys for the day who are assigned going through their tasks in speaking to individual defendants as much as they can, and providing whatever minimal service they can provide at that initial appearance.").

159. The LOD system does not permit or support LODs to engage in ongoing investigation, discovery review, evidence preservation, bail advocacy, and plea negotiations. McKee Aff. ¶ 23.

RESPONSE

Denied. Guillory Depo. at 7:9-12 ("Q. Okay. Moving to the Lawyer of the Day program, I'll refer to that as the LOD program. How would you describe an LOD? A. An LOD is a person designated by the Court to appear at either walk-in arraignments or in-custody initial appearances who provides people with advisement rights and makes bail arguments on their behalf."); 83:6-24; *id.* at 88:9-12; 88:20-23; Fisher Depo. at 8:14-9:6; 22:7-11; 24:6-19; 25:22-26:9; 26:19-27:2; 28:22-29:10.

OBJECTION

The witness cited in support of this statement lacks the necessary foundation to opine regarding the operation of the lawyer of the day program. M. R. Evid. 703; McKee Depo. at 37:14-38:3 ("Q. Have you ever served as a Lawyer of the Day? A. I have not. Q. So on what experience are you basing your opinion regarding the typical tasks that are performed by Lawyers of the Day? A. I have watched it hundreds of times over the course of 30 years, in and out of just about every court in the State of Maine. Q. When you say you have watched it, what is it that you've watched? A. I have been there at initial appearances, I have watched the attorneys for the day who are assigned going through their tasks in speaking to individual defendants as much as they can, and providing whatever minimal service they can provide at that initial appearance.").

160. LODs do not have sufficient time to adequately represent a defendant a trial or sentencing. Maciag (Aug. 29) Dep. 82:1-17.

RESPONSE

Denied. The cited authority does not support the statement, which materially mischaracterizes the testimony by suggesting that representing a defendant at trial is within the scope of a lawyer of the day's duties. It is not with the scope of a lawyer of the day's duties to represent a defendant at trial or at sentencing. Maciag Depo.#1 at 82:1-17 (Is it within the scope of the Lawyer of the Day's duties to represent a defendant at trial? A. No. Q. And why not? A. Because that lawyer wouldn't have the time to get up to speed and do the appropriate investigation, fact finding needed to adequately represent somebody at trial. Q. And would a Lawyer of the Day -- would it be within the scope of the Lawyer of the Day's duties to represent someone at sentencing? A. No. Q. And why not? A. The attorney wouldn't have enough time to learn about the case, learn about the client, prepare a sentencing memorandum, hire a mitigation expert if need be. Just wouldn't have the time to do an adequate job."); M. R. U. Crim P. 5(e) ("When a person is entitled to court-appointed counsel, the court shall assign counsel to represent the defendant not later than the time of the initial appearance, unless the person elects to proceed without counsel. Counsel may be assigned, or a lawyer for the day may be designated, *for the limited purpose of representing the person at the initial appearance or arraignment*.") (emphasis added).

161. LODs "are not able to play the necessary role of counsel during the pre-trial investigative period of conducting a thorough investigation and doing adequate legal research to provide informed counsel to their clients." Primus Aff. ¶ 57; McKee Aff. ¶ 23 (stating that LODs do not "engage in any of the early ongoing tasks critical to adequate representation"); Tucker Aff. ¶ 55 (stating that LODs "are not expected to undertake tasks outside the scope of their highly limited engagement").

RESPONSE

Qualified. Tucker Depo. 20:21-21:7 ("Q. . . . Other than the issue of non-representation which I think you've testified to just now involves lack of counsel available to represent indigent criminal defendants, is it your intent to, with respect to your opinions in this matter, testify that counsel representing indigent defendants either meet or do not meet the applicable professional standard of care? A. Not at this point. Q. When you say, "not at this point," is it your intent to do further work in this matter between now and trial? A. No.").

OBJECTION

None of the three (3) expert witnesses whose testimony is cited in support of this statement of opinion have the necessary foundation to opine regarding the operation of the lawyer of the day program. M. R. Evid. 703; *see also* McKee Depo. at 37:14-38:3 ("Q. Have you ever served as a Lawyer of the Day? A. I have not. Q. So on what experience are you basing your opinion regarding the typical tasks that are performed by Lawyers of the Day? A. I have watched it hundreds of

times over the course of 30 years, in and out of just about every court in the State of Maine. Q. When you say you have watched it, what is it that you've watched? A. I have been there at initial appearances, I have watched the attorneys for the day who are assigned going through their tasks in speaking to individual defendants as much as they can, and providing whatever minimal service they can provide at that initial appearance."). Moreover, as an opinion on what is "necessary," this statement of opinion not a fact and is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material.").

162. Defendants' expert and MCPDS Executive Director Eleanor Maciag admits that LODs hiring experts is "[n]ot [something she has] encountered in [her] tenure." Maciag (Aug. 29) Dep. 86:25-87:1; Guillory Dep. 89:25-90:2 (LODs do not hire experts in status hearings).

RESPONSE

Qualified. Lawyers of the Day representing defendants in status hearings do not hire experts. Guillory Depo. 89:25-90:2. The testimony of Eleanor Maciag was, as acknowledged by Plaintiffs' counsel, in response to questions seeking her personal knowledge outside the scope of Plaintiffs' notice pursuant to M. R. Civ.

P. 30(b)(6). Maciag Depo. at 85:25-13 ("Q. Do Lawyers of the Day make requests for preservation of evidence? MR. MAGENIS: I'm going to object to this line of questioning. Last week at the deposition of Chris Guillory, who was designated as a 30(b)(6) witness, on these precise topics, these precise questions were asked. This is not a good use of time. MS. SOTOOHI: I do feel it's a little bit like my time to waste too. *There is no confusion over whether or not this is the 30(b)(6) or who Ms. Maciag is speaking on behalf of. She's speaking from her personal knowledge*. MR. MAGENIS: I made my objection. You can answer if you know the answer.").

163. Tarpinian admits that the "Lawyer of the Day program is one of the places where there's an issue with discovery," and LODs are sometimes not provided complaints or discovery, which she characterized as "unimaginable." Tarpinian Dep. 46:4-18.

RESPONSE

Denied. The cited source, characterizing an instance in one court, is inadmissible hearsay and does not support the statement. Tarpinian Depo. at 46:4-18 ("Q. Okay. Do you have an opinion on how other -- how the Lawyer of the Day program functions in general, like outside of how you personally do as Lawyer of the Day? How do the Lawyers of the Day do it as a general matter? A. Only from what I have seen, but I haven't seen a lot. The other defenders talk. So the newly coming up district defenders, we talk a lot about things we're seeing, and Lawyer of the Day program is one of the places where there's an issue with discovery.

Everything goes back to discovery. With discovery being handed out. So I know I talked to Logan Perkins on Tuesday about Monday's walk-in arraignments in Bangor, and she was fighting them because they weren't giving complaints or discovery to folks who were walking in which is unimaginable actually.").

OBJECTION

The cited source consists of inadmissible hearsay, M. R. Evid. 801(c).

164. LODs "have not reviewed discovery or spoken with their clients before the day of the hearing," and that day are given the charging document and "the discovery sometimes, not always." Often, LODs merely "review[] the actual charge itself, [and go] through a quick skim, if any, of the discovery." McKee Dep. 38:20-39:6, 44:5-46:7; McKee Aff. ¶¶ 24-25; Primus Aff. ¶¶ 60-61.

RESPONSE

Denied. Denied. Guillory Depo. at 51:4-52:1 ("Q. Do you think LODs have sufficient time to complete the task listed in No. 4 [on Exhibit 5] before they appear in court? MR. MAGENIS: Objection, calls for an opinion. A. I think our expectation is they will ensure they have sufficient time. And if they do not have sufficient time, they will request more time from the Court before proceeding. BY MS. BOCK: Q. This will vary from case to case, but in your opinion, about how much time would this take for an average case? MR. MAGENIS: Objection, calls for an opinion. A. I don't know that I could estimate it. Someone could have a

fact pattern that only takes five minutes to relay. On top of the basic constitutional argument, someone could have facts specific to their case and their life to be raised. In bail and other situations, it could take much longer to convey. Our expectation is that they will take as long as they need to execute their ethical duties responsibly."); *id.* at Exhibit 5 ("Guidance for Serving as LOD at Counsel Status Reviews" Memorandum (Dec. 7, 2023), p.2 ("The LOD must meet with each client and engage in a meaningful discussion about the client's rights, potential immigration consequences, bail, plea offers, and any questions the client has or issues they are experiencing in the correctional facility."

OBJECTION

Neither witness cited in support of this statement lacks the necessary foundation to opine regarding the operation of the lawyer of the day program. M. R. Evid. 703; McKee Depo. at 37:14-38:3 ("Q. Have you ever served as a Lawyer of the Day? A. I have not. Q. So on what experience are you basing your opinion regarding the typical tasks that are performed by Lawyers of the Day? A. I have watched it hundreds of times over the course of 30 years, in and out of just about every court in the State of Maine. Q. When you say you have watched it, what is it that you've watched? A. I have been there at initial appearances, I have watched the attorneys for the day who are assigned going through their tasks in speaking to individual defendants as much as they can, and providing whatever minimal service they can provide at that initial appearance."); Primus Aff. ¶¶ 60-61.

165. LODs cannot or do not "file substantive motions or even omnibus motions to preserve evidence or obtain more detailed discovery on their client's behalf. As a result, evidence is not preserved by this program and may be erased or destroyed while indigent defendants are waiting for appointment of counsel." Primus Aff. ¶¶ 68-69; Guillory Dep. 89:12-16 (such motions or requests are not made by LODs).

RESPONSE

Qualified. The cited sources are insufficient to support this conclusory opinion. Guillory Dep. 89:12-16 ("Q. Do Lawyers of the Day in the status hearings, the seven-day status hearings, make requests for preservation of evidence? MR. MAGENIS: Objection to form. A. I don't think so.").

OBJECTION

The cited basis for this statement, an affidavit of Plaintiffs' retained expert, lacks any foundation supporting the statement. M. R. Civ. P. 56(e) (affidavits "shall be made on personal knowledge, *shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein*.") (emphasis added); *see also Carignan v. Dumas*, 2017 ME 15 n.1, 154 A.3d 629 (foundation required for admissibility of facts asserted in support of summary judgment); *see also* M. R. Evid. 702-703. Moreover, this statement of opinion is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-*

Dore v. Webber Hosp. Ass'n, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."); 5 M.R.S.A. § 4682. This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

166. Conducting plea negotiations, evaluating pleas, identifying the need for an expert, hiring investigators, conducting legal research, or performing any investigation are all outside the scope of the limited representation of the LOD. Tucker Aff. ¶¶ 53, 57; Primus Dep. 78:10-13 (identifying that LODs do not have the time or ability to conduct the necessary legal research or factual investigation); Primus Aff. ¶ 62 (LODs "do not have any ability to conduct a thorough investigation of the charges and do not have sufficient time to conduct adequate legal research into the nature of the charges").

RESPONSE

Denied. Tucker Depo. 20:21-21:7 ("Q. . . . Other than the issue of non-representation which I think you've testified to just now involves lack of counsel available to represent indigent criminal defendants, is it your intent to, with respect to your opinions in this matter, testify that counsel representing indigent defendants either meet or do not meet the applicable professional standard of care? A. Not at this point. Q. When you say, "not at this point," is it your intent to do further work in this matter between now and trial? A. No."); Guillory Depo. at

7:9-12; 83:6-24; *id.* at 88:9-12; 88:20-23; Fisher Depo. at 8:14-9:6; 22:7-11; 24:6-19; 25:22-26:9; 26:19-27:2; 28:22-29:10.

OBJECTION

The cited basis for this statement, an affidavits of Plaintiffs' retained experts, lacks any foundation supporting the statement. M. R. Civ. P. 56(e) (affidavits "shall be made on personal knowledge, *shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein*.") (emphasis added); *see also Carignan v. Dumas*, 2017 ME 15 n.1, 154 A.3d 629 (foundation required for admissibility of facts asserted in support of summary judgment); *see also* M. R. Evid. 702-703.

167. MCPDS's Training and Supervising Director, Christopher Guillory admits there is no communication between LODs and their clients before the day of representation, and his understanding is "[t]hat there is not a continuing relationship" between the Lawyer of the Day and the person they were representing beyond that date of representation. Guillory Dep. 10:2-9; 23:12-17; McKee Aff. ¶ 27; Tucker Aff. ¶¶ 54, 58 (stating that "LODs are not expected to meet with clients after their initial limited representation").

RESPONSE

Qualified. Guillory Depo. at 9:22-10:9 ("Q. How do you understand the difference between being designated and appointed? A. There is not a formal appointment on the record as a Lawyer of the Day being counsel of record for any

of the people they serve on that date. Q. Does that mean that after that hearing ends that day, the LOD has no formal relationship with the person they were representing? A. *That's a question I think the overseers would have to answer* but -- Q. What is your understanding? A. That there is not a continuing relationship beyond that date.") (emphasis added).

OBJECTION

To the extent the statement relies on the Affidavit of Walter McKee, the witness lacks the requisite foundation for the asserted conclusion. M. R. Evid. 703; *see also* McKee Depo. at 37:14-38:3 ("Q. Have you ever served as a Lawyer of the Day? A. I have not. Q. So on what experience are you basing your opinion regarding the typical tasks that are performed by Lawyers of the Day? A. I have watched it hundreds of times over the course of 30 years, in and out of just about every court in the State of Maine. Q. When you say you have watched it, what is it that you've watched? A. I have been there at initial appearances, I have watched the attorneys for the day who are assigned going through their tasks in speaking to individual defendants as much as they can, and providing whatever minimal service they can provide at that initial appearance.").

168. Individuals accused of crimes will be denied effective representation if they are unrepresented or if they are only represented by an LOD because these lawyers are not given the time or guidance necessary to conduct client communications, expert work, investigations, or plea negotiations. Tucker Aff. ¶ 53

RESPONSE

Denied. Tucker Depo. 20:21-21:7 ("Q. . . . Other than the issue of non-representation which I think you've testified to just now involves lack of counsel available to represent indigent criminal defendants, is it your intent to, with respect to your opinions in this matter, testify that counsel representing indigent defendants either meet or do not meet the applicable professional standard of care? A. Not at this point. Q. When you say, "not at this point," is it your intent to do further work in this matter between now and trial? A. No."); Guillory Depo. at 7:9-12; 83:6-24; *id.* at 88:9-12; 88:20-23; Fisher Depo. at 8:14-9:6; 22:7-11; 24:6-19; 25:22-26:9; 26:19-27:2; 28:22-29:10.

OBJECTION

This statement of opinion is not a fact nor is it material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."); 5 M.R.S.A. § 4682. This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

169. Attorneys serving as LODs are not expected to undertake tasks outside the scope of their highly limited representation. Tucker Aff. ¶ 55.

RESPONSE

Qualified. Guillory Depo. at 7:9-12 ("Q. Okay. Moving to the Lawyer of the Day program, I'll refer to that as the LOD program. How would you describe an LOD? A. An LOD is a person designated by the Court to appear at either walk-in arraignments or in-custody initial appearances who provides people with advisement rights and makes bail arguments on their behalf."); M. R. U. Crim P. 5(e) ("When a person is entitled to court-appointed counsel, the court shall assign counsel to represent the defendant not later than the time of the initial appearance, unless the person elects to proceed without counsel. Counsel may be assigned, or a lawyer for the day may be designated, for the limited purpose of representing the person at the initial appearance or arraignment.").

OBJECTION

The cited basis for this statement, an affidavit of Plaintiffs' retained expert, lacks any foundation supporting the statement. M. R. Civ. P. 56(e) (affidavits "shall be made on personal knowledge, *shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein*.") (emphasis added); *see also Carignan v. Dumas*, 2017 ME 15 n.1, 154 A.3d 629 (foundation required for admissibility of facts asserted in support of summary judgment); *see also* M. R. Evid. 702-703.

170. Because an LOD's representation is limited, they are not in a position to provide adequate or constitutionally sufficient continuous representation to a client throughout their criminal case. Tucker Aff. ¶ 56.

RESPONSE

Denied. Guillory Depo. at 7:9-12; 83:6-24; *id.* at 88:9-12; 88:20-23; Fisher Depo. at 8:14-9:6; 22:7-11; 24:6-19; 25:22-26:9; 26:19-27:2; 28:22-29:10.

OBJECTION

Opinion testimony characterizing representation as "constitutionally [in]sufficient" is immaterial to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint, *see, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."). Asserting that representation provided by Lawyers of the Day is period is "constitutionally [in]sufficient" is an impermissible characterization of the controlling law by an expert, *see Nieves-Villanueva v. Soto-Rivera,* 133 F.3d 92, 99 (1st Cir. 1997).The cited basis for this statement, an affidavit of Plaintiffs' retained expert, lacks any foundation supporting the statement. M. R. Civ. P. 56(e) (affidavits "shall be made on personal knowledge, *shall set forth such facts as would be admissible in evidence,*

and shall show affirmatively that the affiant is competent to testify to the matters stated therein.") (emphasis added); *see also Carignan v. Dumas*, 2017 ME 15 n.1, 154 A.3d 629 (foundation required for admissibility of facts asserted in support of summary judgment); *see also* M. R. Evid. 702-703.

171. Conducting plea negotiations, evaluating pleas, identifying the need for an expert, hiring investigators, conducting legal research, or performing any investigation are all outside the scope of the limited representation of the LOD. Tucker Aff. ¶ 57.

RESPONSE

Denied. Guillory Depo. at 7:9-12; *id.* at 24:15-25 ("Q. What tasks are LODs expected to perform for arraignments? A. They advise the defendants of their rights, they review discovery with them, they advocate on behalf of the defendant if the defendant wants them to, they can negotiate with the state around resolution of a case, again, if the defendant wants them to. They provide the defendant with copies of their discovery that they are in turn provided by the state, and they can advise or assist the defendant in applying for court appointed counsel."); *id.* at 48:24-49:8 (Lawyer of the Day minimum standards training includes, "working with the clients, advising clients of their rights, researching collateral consequences, making arguments, reviewing, you know, bail code factors."); *id.* at 81:14-16 ("Q. Do Lawyers of the Day advise defendants on plea offers? A. Yes."); *id.* at 83:6-24; *id.* at 88:9-12; 88:20-23; Fisher Depo. at 8:14-9:6; 22:7-11; 24:6-19; 25:22-26:9; 26:19-27:2; 28:22-29:10.

OBJECTION

This statement of opinion is not a fact nor is it material to the standard determinative of Counts I and II of Plaintiffs' Amended Complaint. *See, e.g., Boles v. White*, 2021 ME 49, ¶ 6 ("A material fact is one that can affect the outcome of the case . . . ." (quoting *Stewart-Dore v. Webber Hosp. Ass'n*, 2011 ME 26, ¶ 8); see also, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("As to materiality, the substantive law will identify which facts are material."); 5 M.R.S.A. § 4682. This statement should, therefore, be stricken from Plaintiffs' Statement of Material Fact. M. R. Civ. P. 56(i).

172. LODs are not expected to meet with clients after their limited representation. Tucker Aff. ¶ 58.

RESPONSE

Qualified. Lawyers of the day represent clients at a specific event. Guillory Depo. at 87:3-7; M. R. U. Crim P. 5(e) ("When a person is entitled to court-appointed counsel, the court shall assign counsel to represent the defendant not later than the time of the initial appearance, unless the person elects to proceed without counsel. Counsel may be assigned, or a lawyer for the day may be designated, for the limited purpose of representing the person at the initial appearance or arraignment.").

OBJECTION

173. After the hearing is concluded, LODs typically are not performing any additional tasks for that defendant, are not remaining in communication with that defendant, and are not passing on information to any future lawyer working with that defendant. McKee Aff. ¶ 27.

RESPONSE

Qualified. Fisher Depo. at 8:14-9:6; 22:7-11; 24:6-19 ("Q. Are the Lawyers of the Day at the seven-day status hearing expected to compile notes or files that they'll pass on to the next Lawyer of the Day that's assigned to that defendant? A. Yes. Q. Where is that expectation articulated to the Lawyers of the Day for the hearings? A. I think that's something that we cover in the LOD minimum standards training. I also recall that I sent out an e-mail to counsel shortly after this initial standing order was released. I don't remember for sure, but I may have included it in there. It may also be in our standards of practice, but I'm not a hundred percent certain on that."); 25:22-26:9; 26:19-27:2; 28:22-29:10.

OBJECTION

The witness upon whom Plaintiffs' rely to support this statement has insufficient personal knowledge of the Lawyer of the Day program to support a reliable expert opinion on what Lawyers of the Day do "after the hearing." M. R. Evid. 703; McKee Depo. at 37:14-38:3 ("Q. Have you ever served as a Lawyer of the Day? A. I have not. Q. So on what experience are you basing your opinion regarding the typical tasks that are performed by Lawyers of the Day? A. I have watched it

hundreds of times over the course of 30 years, in and out of just about every court in the State of Maine. Q. When you say you have watched it, what is it that you've watched? A. I have been there at initial appearances, I have watched the attorneys for the day who are assigned going through their tasks in speaking to individual defendants as much as they can, and providing whatever minimal service they can provide at that initial appearance.").

Date: December 13, 2024

Respectfully submitted,

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