

COMMISSION TO STUDY PRIORITIES AND TIMING OF JUDICIAL PROCEEDINGS IN STATE COURTS

October 12, 2011
Meeting Summary

Convened 9:10 a.m., Room 438, State House, Augusta

Present:

Sen. David Hastings, Chair
Thomas Knowlton
Rep. Meghan Maloney
Judge Robert Mullen
Judge John Nivison
Rep. Ralph Sarty
Rich Thompson
Rep. Paul Waterhouse, Chair

Absent:

Sen. Cynthia Dill

Staff:

Susan Johannesman & Marion Hylan Barr

Introductions

Sen. Hastings convened the meeting at 9:10 a.m. and introduced the Commission members. Sen. Hastings thanked members for serving and thanked the Judicial Branch for its work in preparation for the meeting.

Review of Resolve, 2011, chapter 104 and Joint Rule 318

Commission staff reviewed the duties of the Commission pursuant to its enabling legislation, Resolve 2011, chapter 104. The Commission's duties include studying the priority and timing of judicial proceedings that require treatment pursuant to statute. Staff also summarized Joint Rule 318: "Review of Judicial Proceedings and Priorities," which was adopted by the Legislature during the First Regular Session of the 125th. Rule 318 provides that whenever a legislative measure is proposed that contains a provision to expedite, establish or adjust the priority of judicial proceedings, the legislative committee of jurisdiction shall hold a public meeting on the proposal and determine the level of support for the proposal among members of the committee. If a majority of the committee supports the proposal, the committee shall request the Judiciary Committee to review and evaluate the proposal as it pertains to the appropriate priority and timing of judicial proceedings in all state courts. The Judiciary Committee shall conduct the review and report back to the committee of jurisdiction. This review process is similar to the Judiciary Committee's review of proposed legislation dealing with public record exceptions pursuant to Title 1, Chapter 13, Subchapter 1-A; however, Joint Rule 318 does not set criteria on which to evaluate judicial priorities.

Presentation of Priorities and Timing of Judicial Proceedings by the Judicial Branch

Justice Nivison noted that the demands upon the Judicial Branch made an evaluation of needs and resources or a priority assessment very important. Justice Nivison thanked the Legislature for going forward with the study and also thanked the members of the Bar for their participation in the process. For purposes of Commission discussion, he explained that the Judicial Branch had placed statutory judicial priorities in categories and identified concerns. The Judicial Branch recognizes that some priorities are policy-related and some are of a legal nature. The Judicial Branch is prepared to make recommendations and to discuss modification as the Legislature determines appropriate. The Judicial Branch's breakdown of statutory priorities into 4 major categories follows.

I. NO CHANGES RECOMMENDED for these priorities (63cites)

A. CONSTITUTIONAL RIGHTS OF PERSONS CHARGED WITH CRIME:

1. BAIL (3 cites)
2. JUVENILE (7 cites)
3. ADULT (4 cites)

B. MENTAL HEALTH/Personal Liberty, Medical Emergency (12 cites)

C. FEDERAL REQUIREMENTS:

1. CHILD PROTECTIVE (9 cites)
2. Other (2 cites)

D. PUBLIC HEALTH EMERGENCIES: (7 cites)

E. ELECTIONS: (6 cites)

F. MISCELLANEOUS/PRIORITY:

1. INTERSTATE UNIFORM LAWS: (4 cites)
2. DOMESTIC VIOLENCE, Protection from Abuse: (3 cites)
3. MEDICAL NECESSITY: (2 cites)
4. FAMILYMATTERS/CHILD CUSTODY: (3 cites)
5. EVICTIONS: (1 cite)

II. DUPLICATIVE, ELIMINATION RECOMMENDED (1 cite)

TRAFFIC CRIMINAL (1 cite)

III. PROTECTION FROM HARASSMENT (2 cites)

IV. NO RECOMMENDATION (45 cites)

- A. CIVIL APPEAL TO SUPERIOR COURT B. ANIMALS (4 cites)
- C. LABOR RELATIONS BOARD (5 cites)
- D. ADMINISTRATIVE LICENSES (3 cites)

E. MISCELLANEOUS CIVIL (25 cites).¹

The Judicial Branch recommended that the priorities that fall into the 1st category remain as they currently are in statute because there are compelling reasons, including constitutional reasons, for the expedited process; that the 2nd category, which includes a traffic infraction, be eliminated because it appears duplicative; and that there be further discussion about the 3rd category regarding protection from harassment statutes, with the potential of carving out those cases that involve personal safety and distinguishing them from other cases with a property focus like boundary disputes. The Judicial Branch did not make recommendations in regard to the 4th and final category, which includes civil appeals to Superior Court, animal welfare, the Labor Relations Board, administrative licenses and miscellaneous civil provisions. This 4th category involves priorities based on many policy decisions, which require legislative (Commission) review. Of the 45 statutes in the 4th category, Justice Nivison could not identify one statute or group of statutes as currently bogging the courts down more than any other. He noted that it was important to look for consistency on how priorities are described, if they are maintained. Review of these provisions should be to determine whether any expedited language is needed or not.

Chief Judge Mullen noted that the protection from harassment (PFH) priorities (3rd category) have the biggest impact on the caseload in District Court. The PFH docket is frustrating for all. Sometimes the lengthy cases are justified, and sometimes they might be handled more effectively as a family matter or in some type of mediation process. Judge Mullen indicated that over time he has seen the civil harassment statute come to be abused, while the criminal harassment statute is hardly ever used.

Mary Ann Lynch, Director of Court Information described the PFH cases as “docket busters,” which delay cases involving landlord-tenant claims, creditor claims and other small claims. The important question that the Commission must ask is should the existing priorities have importance over other causes of action (like small claims) that have no priority assigned to them. Another question for the Commission is even if priorities are not docket busters, are they still necessary?

Following the presentation, several members of the Bar responded and shared their impression regarding the existing judicial priorities.

- Bill Robitzek, representing the Maine State Bar Association, noted that the real problem with the priorities is that the courts are understaffed and underfunded. The courts are asked repeatedly to meet unfunded mandates from the Legislature. Courts should be given more time to work on priorities or serious complaints. If the courts had the resources that they needed, they could meet all the priorities. Previous legislative determinations about existing priorities should not be assumed to be arbitrary, but they should be harmonized and made uniform. The priority issues

¹ See “Priorities & Timing of Judicial Proceedings,” October 12, 2011, presented by Hon. John Nivison, Superior Court Justice and Hon. Robert Mullen, Deputy Chief Judge, District Court.

appear to fall into two categories: 1) When do you get a hearing? and 2) When do you get a decision? For the 1st question, language like “as soon as the docket allows” that is uniform and gives the courts some discretion would be appropriate. For the 2nd question, we should defer to the experience of judges; judges know best as to what is a reasonable time.

- Evert Fowle, representing the Maine Prosecutors Association, recommended one way to help unclog the system - when a petition is denied because one has not established the necessary elements of a case, perhaps it should be denied period, without the ability for a later hearing. He noted that most time frames are reasonable now. Mr. Fowle also noted that we should be proud of our low crime and incarceration rates, which we have accomplished “on the cheap.” There is a continued need for courts, prosecutors and defense attorneys to talk to each other and work together. This communication has supported our success and efficiencies. We must also continue to try to properly compensate our judges and indigent defense counsel to ensure the public’s right to counsel and due process.
- Tom Kelley, representing Pine Tree Legal Assistance, categorized the priorities into subjects:
 - protection of life/community (public health, PFAs, PHAs)
 - protection of individuals from erroneous deprivation of liberty
 - elections
 - family law/other family matters
 - deprivation of property/licensing (livelihood - important but not as important as life safety issues)

Some of the priorities are obsolete, and some do not make sense. PFA proceedings are important, as are other family matters (custody with interstate issues), which may get bogged down in the system. It is rare that a PFH is used in a situation where there is fear of violence or a family issue – these cases are more often covered by PFAs. PFH cases do unduly burden courts. Mr. Kelley also noted that evictions have some mandates to expedite, but for PTLA clients, delays are usually a good thing. Landlords get into court fairly promptly, and it should be a judicial issue and not a legislative one that changes the timing of landlord-tenant cases. Unfortunately, the timing of these cases is an issue brought before the Legislature every session.

- John Pelletier, representing the Maine Commission on Indigent Legal Services, noted areas of concern are those dealing with deprivation of liberty, and the court correctly recognizes them as such. It should also be our common cause to see adequate resources in the criminal justice system, and comity among practitioners is important as it leads to efficiencies throughout the criminal justice system
- Sarah Churchill, representing the Maine Association of Criminal Defense Lawyers, said that the courts can and do meet the deadlines for constitutionally required protections. The system is lucky because of the efficiencies that are found because all attorneys (prosecutors and defense attorneys) work together.

Process

The Commission discussed process and quickly rejected the suggestion to possibly eliminate all 45 priorities in the 4th category and instead decided to look at the statutes for ways to position the courts so that they are justified in assigning cases in a reasonable manner. In looking at the 45 statutes, it was suggested that the Commission keep in mind common operative language and look to see if there are hierarchies within existing priorities; determine if there is a policy for keeping or not keeping a priority (reason); and determine what impact the 45 (or a smaller group) have on the courts. The Commission talked about creating a checklist similar to that used for public records exceptions reviews. Rep. Maloney suggested including criteria like:

- does the priority have a compelling legislative reason?
- what is the policy reason?
- has a full hearing already been granted?
- is there an immediate threat to life/liberty?

The Commission also noted that identifying something as not expedited does not mean that it is not important, but it gives courts the authority to determine where a case should go on the docket. The Commission determined that it would look at each of the 45 statutes and if the language includes a specific time frame they would not suggest changing it. If the statute does not have specific time language but an expedited hearing is appropriate, the Commission will recommend some general uniform language. The Judicial Branch and staff will look into providing examples of uniform language for the Commission to consider at its next meeting

The Commission determined that they would not recommend changes to the priorities listed in the 1st category (constitutional rights and personal liberties). After discussion between John Pelletier, Sarah Churchill and Evert Fowle, the Commission was reassured that repeal of the priority in the 2nd category (traffic) is appropriate as warrantless arrests are permissible now (See Title 17-A §15) and law enforcement officers can take PR bail for Class D and E crimes already. Regarding the 3rd category (protection from harassment), the Commission will wait to hear a report at the next meeting from a subcommittee working with the Judicial Branch. The Commission reviewed much of the 4th category of the chart (miscellaneous), and preliminary recommendations made can be seen on the revised chart (see attached.) The Commission will continue its review of additional statutes on the chart and will revisit those with preliminary recommendations for further decision making at its second meeting.

Issues/questions for next meeting

- For MSBA
 - input from members from different sections regarding priorities specific to their areas of practice
 - have practitioners brought PFH actions to your attention and have those affected your caseload?
- Subcommittee report on PFH review

- Review of revised chart of statutory priorities
- Review uniform language examples from the Judicial Branch and staff
- If time permits, discuss development of recommendations to assist the Judiciary Committee in its anticipated review of proposed priorities under Joint Rule 318. Rep. Maloney submitted preliminary criteria for the Commission to discuss.

Next meeting

The Commission's next meeting will be held Tuesday, November 15th from 9:00 a.m. to 3:00 p.m. in room 438 of the State House.

Respectfully submitted,
Susan Johannesman and Marion Hylan Barr, staff

DRAFT