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Sen. Anne Carney, Chair
Rep. Matt Moonen, Chair
Joint Standing Committee on Judiciary Maine State Legislature
100 State House Station
Augusta, ME 04333

Re: ***LD1259 An Act to Recover Legal Fees for Low-income Individuals in Actions or Proceedings***

Dear Sen. Carney, Rep. Moonen, and Members of the Judiciary Committee:

My name is Patrick Ende and I reside in Hallowell. I submit this testimony in support of LD1259 - An Act to Recover Legal Fees for Low-income Individuals in Actions or Proceedings.

I worked at the Presque Isle and Augusta-Area offices of Pine Tree Legal Assistance, Inc., first as a Staff Attorney, then as a Directing Attorney from 1982 through November 1998, at which point I worked for almost six years, as the first Litigation Director for the Maine Equal Justice Partners ("MEJP") until October 2004. Then, I worked in Governor Baldacci's Office for six years as a Senior Policy Advisor. For the last two of those six years, I was also the Chief Legal Counsel for the Office of The Governor. I then worked as a Maine District Court Judge, for one seven year term, before returning to the Legal Service Provider community, first at MEJP, then with Disability Rights Maine, until I retired in December 2020. I also served on the Justice Action Group's Administrative Law Task Force, from 2000 to 2006, on the Maine Supreme Judicial Court's Commission on Gender, Justice and the Courts (1994-1997), and I was on the Board of Directors of Legal Services for the Elderly, from the mid-80's through the early 90's.

I believe that is the most that I've written about myself in three decades, but I wanted to emphasize that I have some familiarity with Access to Justice issues in Maine, and the importance that these issues hold for me. Were I not presently out-of-state, on a personal matter, I would have appeared in person, to offer my testimony on this bill (and on LD 564, about which I was unaware, until I started preparing this testimony), and answer any questions that I could.

There was plenty of testimony in support of LD 564 that discussed the extent of unmet legal needs for Maine residents who could not afford a lawyer, so I won't cover any of that ground, except for the following two paragraphs.

"A growing recognition of the magnitude of need for legal assistance led to the establishment in the late 1980's of the Maine Commission on Legal Needs. Giving active leadership to this Commission was Senator Edmund Muskie's last major public service. Its report, now a decade old, sounded somber notes. A fifth of our people lived near the poverty level. Only 23 percent of the 85,000 households experiencing legal problems were receiving legal help. Most dramatically, **even if more lawyers took additional VLP-assigned cases, there would remain a need for no fewer than the equivalent of 232 fulltime professionals.**" Hon. Frank M. Coffin, *A History of the Justice Action Group – October 1995 – May 2000*, 15 Me. Bar. J. 248, 249 (2000) (bold added).

According to The Legal Services Corporation's Justice Gap Report in 2022, approximately 387,000 eligible problems are brought to LSC-funded organizations throughout the Northeast states annually, for which those organizations are "unable to provide any or enough legal help for 72% of these problems." *The Justice Gap: The Unmet Civil Legal Needs of Low-Income Americans* (April 2022), p.78. That's over 30 years with no substantial reduction in the access problems facing Maine's low-income residents.

First, if and when the State of Maine has money to additionally address the trouble that Maine's low-income residents have accessing its justice system, whether now or in the future, the state's money is best spent by spreading it among the Legal Service Provider entities in Maine. I believe that the record shows that the Staff Attorney/Paralegal Model is the most effective and efficient way to deliver legal services to Maine's lower-income individuals and families.

Second, I support the general idea of this bill. It's an innovative way to reduce the vast gulf in the relative abilities of business entities and low-income people to access the justice systems in Maine, without requiring more taxpayer dollars.

Some may argue that this is an unfair bill because the bill allows fee-shifting in only one direction. However, the current system is already unfair in Maine and at the federal level, because in virtually every lawsuit between an Institutional Entity and a low-income wage earner or a low-income recipient of governmental benefits, the state and federal governments put their thumbs on the scale in favor of the Institutional Entity by allowing the Institutional Entity to deduct the amount that it spends on attorney fees, when determining the Institutional Entity's Taxable Income, while the state and federal governments will not allow any such deduction for wage-earning individuals or recipients of governmental benefits, when determining their taxable income. LD 1259's unidirectional shifting of fees could partially rebalance the scales between Institutional Entities and Covered Individuals.

Ld1259 is not a perfectly written bill, but it is a welcomed way of addressing such a persistent fundamental problem. It is well worth enacting.

However, the exchange of financial information might be shifted from the commencement of the case to the relief stage of the case.

Also, during its work session, the Committee should consider whether sole proprietorships should be removed from the definition of Institutional Entities, since they have no separate existence from their individual owner, but there might be other considerations besides the tax treatment of sole proprietorships, that are relevant to deciding that issue.

This is the first time, since the late 80's that I've had some hope that Maine's legal access gap may finally be reduced. If I can get home to Maine, in time, I intend to attend the work sessions for this bill and render any assistance of which I am capable. I urge the Committee to unanimously vote Ought to Pass on L.D. 1259. Thank you for the opportunity to testify.

Sincerely,

Patrick Ende