



April 24, 2023

Testimony of John Brautigam, Esq., Legal Services for the Elderly, in opposition to L.D. An Act to Reduce Abuse of the Civil Ex Parte Attachment and Trustee Processes.

Senator Carney, Representative Moonen, and members of the Joint Standing Committee on the Judiciary.

On behalf of Legal Services for the Elderly I would like to speak briefly in opposition to LD 1459.

Legal Services for the Elderly (LSE) is a nonprofit legal services organization with the mission of providing free legal assistance to Maine's older adults when their basic human needs are threatened.

The purpose of the attachment and trustee process is to secure assets for potential recovery by a plaintiff. At LSE, we often use the attachment process in cases in which our client has lost their life savings and/or home as a result of financial exploitation. Litigation to recover what was fraudulently or unlawfully taken may take quite a while. Without the protection of the attachment, financial exploiters can spend or hide the assets and prevent any chance of recovery. At the end of the day, this defeats the ability of plaintiffs to secure recovery and justice in their case.

If a plaintiff moves for ex parte attachment, they already have a heavy burden. They must establish (1) that it is more likely than not they will recover judgment in an amount equal to or greater than the sum of the attachment, (2) that there is a clear danger that defendant would remove, conceal, or destroy the property if notified, and (3) that there is no insurance, bond, or other security to satisfy a judgment. Defendants' rights are also protected with the ability to request an immediate hearing to challenge any attachment.

Sanctions are already available under Rule 11, including attorney's fees, for any motion that fails to have proper support or is filed for delay.

Clients of LSE could face significant costs, in the form of attorney's fees and damages, in situations that are part of the normal litigation process. For example, it appears the proposed bill would allow fees and damages if a defendant posts cash or a bond as a

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substitute for attached property. That possibility undermines the purpose of Rule 4A. For the same reason, there are many reasons for dissolving or modifying an attachment order, and that effort should not be considered prima facie evidence of a tort.

As explained in the Advisory Notes, the threshold to be cleared for approval of an attachment has already been heightened to protect defendants and strike the right balance between the parties.

Thank you for the opportunity to make these comments. If you have questions about this testimony or related matters, I may need to speak to some of our line attorneys in order to give you a full response. I would be happy to provide written answers and/or try to respond at the work session.

Thank you for letting us share our thoughts with you and we hope that you vote ONTP on this bill.

