



April 24, 2023

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

Re: *LD 1459, An Act to Reduce Abuse of the Civil Ex Parte Attachment and Trustee Processes*

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

On behalf of the Board of Governors of the Maine State Bar Association, we write in opposition to LD 1459, *An Act to Reduce Abuse of the Civil Ex Parte Attachment and Trustee Processes*. While our Association is appreciative of the aim of this bill – ensuring that the civil ex parte attachment and trustee processes are not abused – we believe that appropriate safeguards currently exist to protect against such potential abuse.

**About us.** The Maine State Bar Association is a statewide trade association chartered in 1891 by the Maine Legislature. The Association currently represents approximately 3,000 attorneys in the State in both public service and private practice. The Association maintains 28 separate sections covering nearly every field of law practiced in Maine, from Administrative Law to Workers' Compensation Law.

**What does LD 1459 do?** LD 1459 proposes to make plaintiffs who obtain an ex parte order of attachment or an ex parte order of attachment on trustee process jointly and severally liable for the court costs and reasonable attorney's fees of a person having an interest in goods or credits that have been attached, provided such person successfully moves for modification or dissolution of the ex parte order. Additionally, if any amount of cash was attached pursuant to the ex parte order but is no longer subject to attachment due to the modification or dissolution of that order, the plaintiffs are also jointly and severally liable for interest under this bill. Further, LD 1459 provides that an order modifying or dissolving an ex parte order of attachment or an ex parte order of attachment on trustee process constitutes prima facie evidence of the common law tort of abuse of process.

**Discussion.** By way of background, the rules for judicial review of ex parte motions currently include several safeguards to protect parties from abusive requests under the existing Maine Rules of Civil Procedure 4A, 4B, and 11. For example, Maine Rule of Civil Procedure 11 requires every pleading and motion of a party represented by an attorney to be signed by the party's attorney, and if that requirement is not met, the Court may impose sanctions, including reasonable attorney's fees, on pertinent parties that fail to comply with the Rule.

In addition, Maine Rules of Civil Procedure 4A and 4B similarly contain safeguards to protect against abusive requests during the civil ex parte attachment and trustee processes. *See M.R. Civ. P. 4A (civil attachment process) and M.R. Civ. P. 4B (trustee process)*. Simply, our Association believes that the current Rules provide sufficient safeguards to protect parties from abusive requests.

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Moreover, based on the experience of members of our Association who undertake this type of work, modification of an ex parte attachment or trustee process typically has nothing to do with bad faith on the part of the plaintiffs or their counsel. Rather, modifications of an attachment order often have more to do with the valuation of the property attached, or the availability of other property to substitute for that attached, or similar concerns. In the very infrequent instances where bad faith is found, the Courts already have the authority to address such bad faith under the current Rules of Civil Procedure.

Overall, LD 1459 presents an overbroad remedy to address very infrequent instances where there may be an abuse of process, instances which can be addressed by current Rules of process. If LD 1459 were to pass, it would make it difficult for plaintiffs or their attorneys to seek an ex parte attachment, which tool is important in instances where there is a risk that the defendant will otherwise abscond with funds or property belonging to the plaintiff – a risk that must be demonstrated to a judge before an ex parte attachment order will be granted.

With that said, if the Committee is concerned with specific examples of abuses of the ex parte processes, we would be happy to be part of the discussion to narrowly tailor language to address such concerns in an appropriate and effective manner.

**Conclusion.** We appreciate the opportunity to provide this testimony. If you have questions or need additional information, please do not hesitate to let us know.

Sincerely,



Stacy O. Stitham  
President, Board of Governors

cc: Angela Armstrong, Executive Director  
Rachel Okun, Chair, MSBA Legislative Committee  
James I. Cohen, Verrill Dana, LLP  
Clara McConnell, Maine Street Solutions