



Maine Human Rights Commission

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February 5, 2025

The Honorable Anne Carney, Senate Chair
The Honorable Amy Kuhn, House Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta, ME 04333

Re: An Act to Provide Limited Immunity to Maine Human Rights Commission Mediators - LD 141

Dear Senator Carney, Representative Kuhn, and Members of the Joint Standing Committee on Judiciary:

The Maine Human Rights Commission ("Commission") is Maine's quasi-independent, nonpartisan State agency charged with enforcing our state anti-discrimination law, the Maine Human Rights Act, 5 M.R.S. §§ 4551, *et seq.* ("MHRA"). The Commission is statutorily charged with the duties of: investigating, conciliating, and at times litigating protected-class discrimination cases under the MHRA; promulgating rules and regulations to effectuate the Act; and making recommendations for further legislation or executive action concerning infringements on human rights in Maine. 5 M.R.S. § 4566(7), (11). With those duties in mind, the Commission is pleased to provide this testimony in favor of LD 141.

Background: The Commission's Mediation Program

Under the MHRA, the Commission is required to provide an opportunity for parties to resolve a complaint prior to a determination as to whether discrimination has occurred. 5 M.R.S. § 4612(1)(A). We do this in several ways, but primarily through our third-party mediation program. In most cases that appear to have the potential to resolve, the Executive Director invites the parties to participate in mediation after we receive the initial pleadings in a case (complaint, Respondent's answer, and Complainant's reply). If all parties agree to participate, one of the trained mediators we contract with will conduct a session of up to 4 hours for a flat rate of \$500, which is well below market rate. Each party pays \$275 to participate; \$500 goes to the mediator, and \$50 remains in the mediation fund, which allows the Commission to occasionally pay the fee for indigent parties. In FY 24, I invited parties in about 125 cases to mediation. Of those, about half accepted, and about half of those settled. This program consistently has a success rate of between 40-70 percent. It gets Complainants a meaningful resolution, and saves both parties time and money that would otherwise be spent at the Commission and possibly in court.

Providing Immunity to the Commission's Mediators Will Ensure the Commission's Mediation Program Remains Robust

This bill would provide limited immunity under the Maine Tort Claims Act ("MTCA"), 14 M.R.S. §§ 8101 *et seq.*, to the third-party mediators with whom the Commission contracts by making them employees of the State while they are performing mediation services for the Commission. Government employees have absolute immunity for most intentional actions and discretionary services they provide. See 14 M.R.S. § 8111. The skilled mediators performing work for the Commission, however, are not currently covered by this provision because they are contractors.

Nonetheless, they perform important, wholly discretionary work on behalf of the Commission; the Commission would not be able to offer mediation as a means of complaint resolution without these individuals.

During the most recent contract renewals with our panel of mediators, the standard indemnity language in the State's third-party vendor contract became an issue with the mediators' insurance carriers. One mediator has since had to step back from accepting Commission mediations while we work to resolve this. Others have seen a spike in their insurance premiums. This is a problem for them, since they are already being paid at a highly reduced rate in order to provide this service. The Commission is concerned that it will lose some or all of its mediation panel if this situation continues.

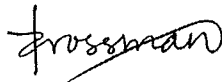
This immunity is already provided to other mediators who do work for the State, including for the Department of Education, *see* 20-A M.R.S. § 7207-C(3), the Maine Labor Relations Board (mediators are appointed by the Governor pursuant to 26 M.R.S. § 965(2)(C), and appointees are employees covered by the MTCA pursuant to 14 M.R.S. § 8102(1)(A) and § 8111), and the Court Alternative Dispute Resolution Service.

Fiscal Impact

The cost of covering the Commission's mediators under our existing tort/general liability insurance policy would be \$175 per mediator - \$1,225 total per year, if we have a full roster of seven mediators. This is a cost that can be absorbed by the Commission and does not require any further appropriation.

Thank you for this opportunity to provide testimony in favor of LD 141. The Commission would be pleased to discuss these issues with you at your convenience, including at the work session on this matter.

Sincerely,



Kit Thomson Crossman, Executive Director

Cc: Commissioners