



March 17, 2025

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

Re: *LD 921, An Act to Expand Use of Electronic Proceedings in the Judicial Branch*

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

On behalf of the Board of Governors of the Maine State Bar Association, we write to provide comments in **neither for nor against** *LD 921, An Act to Expand Use of Electronic Proceedings in the Judicial Branch*. Electronic proceedings can create needed efficiencies, which is important to ensuring that proceedings move forward expeditiously. At the same time, there are circumstances where electronic proceedings are not warranted, suggesting that Maine exercise great care to ensure judicial discretion regarding when and how such proceedings should be utilized. In this regard, we have concerns related to the current language of the bill.

About MSBA. The Maine State Bar Association is a statewide trade association chartered in 1891 by the Maine Legislature. The Association currently represents approximately 2,500 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 921 do? LD 921 requires that pretrial conferences, motion hearings, status hearings, mediations, judicial settlement conferences, and other judicial proceedings be held via electronic means, rather than in-person. The bill creates an exception to the proposed electronic hearing requirement for criminal and civil jury trials that require presentation of physical evidence. The bill also allows a court to order that any hearing or proceeding be conducted in-person or through hybrid means if the circumstances support a finding that an electronic proceeding is inappropriate because it would result in a deprivation of due process, fairness or justice.

Discussion. As a general matter, our Association supports the increased use of electronic means to conduct hearings and proceedings, which became more prevalent during the COVID-19 pandemic. Electronic hearings create significant efficiencies – attorneys can now competently represent clients in multiple jurisdictions throughout the state in the same day. For many types of proceedings, the electronic platforms employed provide sufficient opportunity for an attorney to zealously represent a client's interests.

We write here to provide several notes of caution. First, to the extent the increased use of electronic proceedings would add financial burdens to the Judicial Branch, it may be appropriate for LD 921 to include funding to ensure that the court system is able to meet these goals. Second, we note that hybrid proceedings – in which one party appears in court and the other participates electronically – can be problematic and unfair for the electronic participant. Our Association would support bill language that would ensure that either both parties participate remotely, or both participate in-person, unless otherwise agreed by the parties. This concern is particularly relevant to criminal matters where defense attorneys

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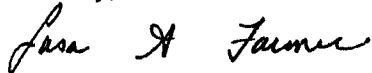
often represent different clients before multiple courts in the same day, while attorneys for the prosecution are often based in one jurisdiction.

Third, we are concerned about the high standard established in the bill for a party to request an in-person hearing. As provided in the bill, a party would need to show that there was a "deprivation of due process, fairness or justice." These factors are obviously needed, but not included is the ability to request an in-person proceeding simply because it allows for better connectivity and communication, including in circumstances where a criminal defendant facing the loss of liberty wants the opportunity to appear in-person. The fact is, as efficient as remote hearings can be with new technologies, in-person proceedings still allow for better communication, including the ability of participants to read body language, see all activities within the hearing room, and engage in side conversations.

Finally, we are concerned about legislating the process that judges must use in their courtroom to ensure proceedings that are both fair and efficient, something appropriately left to the discretion of judges themselves. And to the extent that rules are established, this is the appropriate province of the Judicial Branch itself.

Conclusion. Thank you for the opportunity to provide these comments neither for nor against LD 921. If you have questions or need additional information, please do not hesitate to let us know.

Sincerely,

A handwritten signature in cursive script, appearing to read "Susan A. Faunce".

Susan Faunce

President, Board of Governors

cc: Angela Armstrong, Executive Director
Rachel Okun, Chair, MSBA Legislative Committee
James I. Cohen, Verrill Dana, LLP, Legislative counsel for MSBA