

MAINE INDIGENT DEFENSE CENTER

INDIVIDUAL DEFENSE – SYSTEMIC REFORM

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POLICY & DEVELOPMENT

EMILY H. GOULETTE, J.D.

March 19, 2025

Senator Anne Carney, Chair
Representative Amy Kuhn, Chair
Joint Standing Committee on Judiciary

RE: Testimony in Opposition (as drafted) to LD 1101:

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

My name is Robert J. Ruffner, I am a former prosecutor and current defense attorney, and I am presenting this testimony in opposition to LD 1101.

While no one wants a case dismissed that should not be, nor a person out on bail if it cannot be done safely, why must it be the quality of the representation of the individual that suffers so the State can charge a shoplifting as a felony or to reject a plea offer because it isn't everything the State would seek in a perfectly funded system?

To hear the Prosecutors who have testified they have already done everything they can and have no role in the current crisis. They've made all the best decisions already. They promise safety, security and order under their control ... but at a high price -

"We've taken care of everything,
The bail we seek, the charges we bring,
Trust us, all is fair & just to our own eye,
We work for all, the State; 'We're You!'
Never need to wonder how or why"

PDS is often accused of letting "the perfect be the enemy of the good", But should the current crisis be the excuse to abandon our goal of "high-quality and effective" representation for your constituents?

There are some, such as DA Natasha Irving, who understand that the problem needs to be addressed from the demand side as well. In a March 11, 2025 Midcoast Villager article DA Irving is quoted as saying "There are simply not enough prosecutors, defense attorneys, judges, court

staff and court officers to handle the number of people who are being charged across the state.” Irving says she will be “reviewing Midcoast cases ahead of the judges’s deadline next month and that plea agreements will be offered so that no cases are dismissed by the court.”

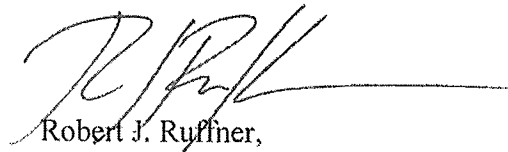
This bill only purports to try and address the crisis from attorney side of the equation. Supposedly, large numbers of attorneys are waiting in the wings. Capable and willing, yet daunted by the applications 11 questions (10 of which are yes/no or true false) or finding them too burdensome, to participate in the system. The money the Judicial Branch is requesting belies the notion that there would be any great response by non-rostered attorneys. \$62,500, for the rest of FY '25, is a little over 416 hours. The \$375,000 for FY '26 & '27 represents only 2,500, less than 10 hours a work day (M-F) those FYs. That response would hardly make a dent in the hours that the “Needs Counsel” list represents only a tiny fraction of the attorney time necessary to staff those cases.

If this bill were to pass it should not do so without several amendments. The attached amendments eliminate unnecessary references to undefined powers of the Court, provide a mechanism to ensure that any assignments made under this bill result in “high-quality and effective” representation and provide the funding necessary to actually provide counsel necessary to start the cases for the next biennium.

For these reasons, I ask the Committee to vote “ought not to pass” on LD 1101.

Thank you for considering these comments.

Respectfully,

A handwritten signature in black ink, appearing to read "R. Ruffner", with a long horizontal line extending to the right.

Robert J. Ruffner,
Director
Maine Indigent Defense Center

132nd Maine Legislature
An Act to Address the Limited Availability of Counsel in Courts to Represent Indigent Parties in Matters
Affecting Their Fundamental Rights
L.D.

**An Act to Address the Limited Availability of Counsel in Courts to Represent
Indigent Parties in Matters Affecting Their Fundamental Rights**

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this legislation is designed to address an existing crisis in the courts arising from the limited availability of counsel qualified by the Maine Commission on Public Defense Services to represent indigent parties in matters affecting their fundamental rights; and

Whereas, when a court appoints counsel to represent an indigent party, compensation must be made available to counsel, whether the commission or the court determined that counsel is qualified to provide the representation; and

Whereas, a Maine Superior Court order issued in *Robbins v. Billings, et al.*, No. CV-22-054 (Me. Super. Ct., Ken. Cty., March 7, 2025) (Order After Phase One Trial) establishes a conditional remedy to address claims for habeas corpus relief for violations of the United States Constitution, Amendment VI and the Constitution of Maine, Article I, Section 6 right to continuous representation; and

Whereas, the resources necessary to implement the conditional remedy are currently under consideration by the Legislature and requested by the Maine Commission on Public Defense Services; and

Whereas, the conditional remedy poses a concern about the public's interest in the administration of criminal justice and the potential to jeopardize public safety if a criminal defendant commits a dangerous act after dismissal and release granted in response to a claim for habeas corpus relief; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 4 MRSA §1805-A, sub-§1, as enacted by PL 2017, c. 284, Pt. UUUU, §14, is amended to read:

1. Duties. The executive director shall administer and improve reimbursement of expenses incurred by assigned counsel ~~and~~, contract counsel and, until July 1, 2027, a private attorney appointed under section 1807 by:

- A. Establishing procedures to ensure that the eligibility of defendants and civil parties is verified and reviewed randomly and when circumstances have changed, information has changed, additional information is provided or as otherwise needed;
- B. Petitioning the court to reassess the indigency of a defendant or civil party if the executive director determines that indigency should be reassessed;
- C. Providing to the commission recommendations to improve reimbursement of expenses;
- D. Requiring that the amount of time spent on each case by assigned counsel or contract counsel is recorded separately for each case; and
- E. Receiving from the courts collections for the costs of representation from defendants or civil parties who are found to be partially indigent or who have otherwise been determined to be able to reimburse

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the commission for expenses incurred by assigned counsel ~~or~~, contract counsel or, until July 1, 2027, a private attorney appointed under section 1807.

Sec. 2. 4 MRSA §1805-A, sub-§3, as enacted by PL 2017, c. 284, Pt. UUUU, §14, is amended to read:

3. Partial indigency and reimbursement. This subsection applies to partial indigency and reimbursement of expenses incurred by assigned counsel ~~or~~, contract counsel or, until July 1, 2027, a private attorney appointed under section 1807.

A. If the court determines that a defendant or civil party is unable to pay to obtain private counsel but is able to contribute to payment of assigned counsel ~~or~~, contract counsel or, until July 1, 2027, a private attorney appointed under section 1807, the court shall order the defendant or civil party to make installment payments up to the full cost of representation or to pay a fixed contribution. The court shall remit payments received to the commission.

B. A defendant or civil party may not be required to pay for legal services in an amount greater than the expenses actually incurred.

C. Upon petition of a defendant or civil party who is incarcerated, the court may suspend an order for reimbursement issued pursuant to this subsection until the time of the defendant's or civil party's release.

D. The executive director may enter into contracts to secure the reimbursement of fees and expenses paid by the commission as provided for in this section.

Sec. 3. 4 MRSA §1807 is enacted to read:

§1807. Court appointment of private attorney

1. Private attorney court appointment. Notwithstanding any provision of this chapter to the contrary, a court may appoint a private attorney to represent a person who is eligible to receive indigent legal services in a matter pending before the District Court, Superior Court or Supreme Judicial Court if the court finds the following:

A. A public defender, assigned counsel, contract counsel or employed counsel is not available to represent the person;

B. The private attorney is qualified to represent the person in the matter pending before the court and has not been disqualified by the commission; and

C. The private attorney is willing to undertake the representation, which may be limited representation defined by the court in its appointment order.

2. Compensation. The commission shall provide compensation and reimbursement to a private attorney appointed by the court under subsection 1. The compensation and reimbursement must be equivalent to the reimbursement provided to assigned counsel under the rulemaking directed by section 1804, subsection 3, paragraph F.

~~**3. Court's inherent authority.** This chapter does not affect the inherent authority of the court to appoint counsel.~~

4. Repeal. This section is repealed July 1, 2027.

Sec. 3-A Ensuring assignments result in high-quality and effective representation: 15 MRSA §2125 is amended to read:

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§2125. Ground for relief

A person who satisfies the prerequisites of section 2124 may show that the challenged criminal judgment or sentence is unlawful or unlawfully imposed, or that the impediment resulting from the challenged post-sentencing proceeding is unlawful, as a result of any error or ground for relief, whether or not of record, unless the error is harmless or unless relief is unavailable for a reason provided in section 2126, section 2128 unless section 2128-A applies, or section 2128-B.

1. For cases involving counsel assigned under Title 4 MRSA §1807 an additional ground for relief shall be that the person did not receive high-quality and effective representation by counsel assigned.

Sec. 4. Appropriations and allocations. The following appropriations and allocations are made.

PUBLIC DEFENSE SERVICES, MAINE COMMISSION ON

Maine Commission on Public Defense Services Z112

Initiative: Provides ongoing funding to establish one Office Associate II position and related costs to coordinate and facilitate the assignment of counsel to indigent clients across the State who are currently on the list of unrepresented criminal defendants and parents in child custody cases, especially defendants who are currently incarcerated.

GENERAL FUND	2024-25	2025-26	2026-27
POSITIONS - LEGISLATIVE COUNT	1.000	1.000	1.000
Personal Services	\$14,754	\$88,525	\$95,533
All Other	\$1,723	\$10,343	\$10,343
GENERAL FUND TOTAL	\$16,477	\$98,868	\$105,876

Maine Commission on Public Defense Services Z112

Initiative: Provides ongoing funding to establish 5 Public Service Manager III positions, 2 Paralegal positions and one Office Specialist Supervisor II position responsible for representing defendants whose motion for counsel has been granted or appointment was ordered by a court, but no counsel has been appointed; cases in which a defendant has requested counsel, but a court has not yet ruled on the motion; and cases in which a defendant previously had counsel, but that counsel withdrew and no new attorney has been assigned.

GENERAL FUND	2024-25	2025-26	2026-27
POSITIONS - LEGISLATIVE COUNT	8.000	8.000	8.000
Personal Services	\$169,883	\$1,019,300	\$1,031,170
All Other	\$6,000	\$40,660	\$40,660
GENERAL FUND TOTAL	\$175,883	\$1,059,960	\$1,071,830

Maine Commission on Public Defense Services Z112

Initiative: Provides ongoing funding to compensate assigned counsel that the Legislature authorized the courts to appoint at the current billing rate for assigned legal counsel of \$150 per hour.

GENERAL FUND	2024-25	2025-26	2026-27
All Other	\$62,500	\$375,000	\$375,000
		\$13,263,384	\$13,263,384

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GENERAL FUND TOTAL	<u>\$62,500</u>	<u>\$375,000</u> <u>\$13,263,384</u>	<u>\$375,000</u> <u>\$13,263,384</u>
PUBLIC DEFENSE SERVICES, MAINE COMMISSION ON DEPARTMENT TOTALS	2024-25	2025-26	2026-27
 GENERAL FUND	 \$254,860	 \$1,533,828 <u>\$14,442,212</u>	 \$1,552,706 <u>\$14,441,090</u>
 DEPARTMENT TOTAL - ALL FUNDS	 <u>\$254,860</u>	 <u>\$1,533,828</u> <u>\$14,422,212</u>	 <u>\$1,552,706</u> <u>\$14,441,090</u>

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Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

This bill provides for a private attorney to be compensated by the Maine Commission on Public Defense Services when a court appoints that attorney to represent a person who is eligible to receive indigent legal services in a pending matter if the court finds that no public defender, assigned counsel, contract counsel or employed counsel is available to represent the person; the private attorney is qualified to represent the person in the matter pending before the court; and the private attorney is willing to undertake the representation, which may be limited representation defined by the court in its appointment order. ~~The bill does not affect the inherent authority of the courts to appoint counsel.~~ The provisions of the bill apply until July 1, 2027.

The bill establishes a new position in the commission specifically responsible for coordinating and facilitating the assignment of counsel to indigent clients across the State who are currently on the list of unrepresented criminal defendants and parents in child custody cases, especially defendants who are currently incarcerated.

The bill establishes 5 new Public Service Manager III positions, also known as Assistant District Defender positions, in the commission specifically responsible for representing defendants whose motion for counsel has been granted or appointment was ordered by a court, but no counsel has been appointed; cases in which a defendant has requested counsel, but a court has not yet ruled on the motion; and cases in which a defendant previously had counsel, but that counsel withdrew and no new attorney has been assigned. It also funds 2 Paralegal positions and one Office Specialist Supervisor II position, also known as an Office Manager position.

The bill provides ongoing funding to compensate assigned counsel that the Legislature authorized the courts to appoint. This includes the additional \$12,888,284 needed to fund the current level of assigned counsel as well as the \$62,500 for the rest of this fiscal year and \$350,000 for FY '26 and '27 in anticipated assigned counsel costs for attorneys anticipated to be assigned under §1807.

Finally, to ensure persons assigned counsel under §1807 also receive "high-quality and effective" legal representation provides as an additional ground for relief in a post-conviction proceeding under 15 MRSA 2125 that the person did not receive "high-quality and effective" legal representation.

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STATE OF MAINE

PENOBSCOT COUNTY, ss. UNIFIED CRIMINAL DOCKET COURT

CRIMINAL ACTION REGION NO. 5

DOCKET NOS. PENCDCR-19-4104
PENCDCR-23-0242
PENCDCR-23-2397

STATE OF MAINE,

Plaintiff

VS.

LAWRENCE SHIRLAND,

Defendant

MOTION HEARING

SEPTEMBER 14, 2023
BANGOR, MAINE

BEFORE:

THE HONORABLE MEGHAN SZYLVIAN

APPEARANCES:

ON BEHALF OF THE PLAINTIFF:
ALICE CLIFFORD, ESQ.

ON BEHALF OF THE DEFENDANT:
ROBERT RUFFNER, ESQ.

RECORDED BY:

J., Clerk

TRANSCRIBED BY:

eScribers, LLC
7227 North 16th Street, Suite #207
Phoenix, AZ 85020



1 (This matter came for hearing before The Honorable Meghan
2 Szylvian of the Penobscot County Unified Criminal Docket
3 Court, Bangor, Maine, on September 14, 2023, at 1:54 p.m.)

4 THE COURT: Lawrence Shirland.

5 Counsel?

6 MR. RUFFNER: Your Honor, there's a September 5th motion
7 to reconsider. The order of signing is pending. I had
8 attempted to file a motion, via Sharefile, Tuesday, not
9 realizing the 48-hour turnaround time. So I don't know if a
10 copy was even provided to the Court. So --

11 THE COURT: I --

12 MR. RUFFNER: -- but definitely the September 5th one
13 was. That was filed by -- in-hand -- by hand.

14 THE COURT: The motion to reconsider the appointment
15 order is not in the file. My guess is because it should be
16 directed the jurist who issued the appointment order. But I
17 do -- I do have a motion to dismiss, though, I think.

18 MR. RUFFNER: Okay. Then -- then I guess it did make it
19 in there. And that -- I emailed that to the State on --
20 but -- when I -- contemporaneously, when loading it up to
21 Sharefile, and then again today, so.

22 THE COURT: All right. Give me just a second to wrap up
23 this one, Ms. Reddick.

24 Do you want your client brought up while we talk about
25 the motions?

1 MR. RUFFNER: There's a bit of a Catch-22 because I'm
2 taking the position that he's not my client.

3 THE COURT: Do you want Mr. Shirland brought up while we
4 talk about it?

5 MR. RUFFNER: I -- I don't. He's aware that I filed it,
6 and so --

7 THE COURT: Okay. Are you all set, Mercedes (ph), to
8 keep going?

9 UNIDENTIFIED SPEAKER: I'm on Mr. Shirland's case.

10 THE COURT: Okay. Alice, did you get the motion dated
11 the 12th that's a motion to dismiss?

12 MS. CLIFFORD: I did.

13 THE COURT: Okay. And you've had time to review it?

14 MS. CLIFFORD: I have looked at it, yes.

15 THE COURT: Are you in a position to address it today?

16 MS. CLIFFORD: Well, I -- I think it's -- I'm objecting
17 to it, Your Honor. I --

18 THE COURT: Okay. Do you want to put any basis for the
19 objection on the record?

20 MS. CLIFFORD: I'm sorry? I'm sorry --

21 THE COURT: It's okay.

22 MS. CLIFFORD: -- I don't mean to make you talk.

23 THE COURT: Do you want to put any basis for the
24 objection on the record?

25 MS. CLIFFORD: Well, yes. I think -- and -- I think that

1 it's really more a court -- the court-appointed -- the Court
2 has recognized Mr. Ruffner as the attorney, and -- and he's
3 indicating that he is not his attorney, he doesn't want to be
4 his attorney. So I think that's between the Court and Mr.
5 Ruffner. And he's asking for the Court to dismiss this case
6 because Mr. Shirland didn't have an attorney. But the Court
7 appointed Mr. Ruffner and recognized him as the attorney,
8 because the Court indicated that once Mr. Ruffner filed the
9 motions that was an indication to the Court that he was
10 undertaking representation. I mean, I -- I don't know if
11 he -- if he's not getting paid for coming up here today. But
12 if he's paid -- if he's getting paid by MCILS -- and I don't
13 know. But I mean, if that's -- I mean, then he's obviously
14 representing him.

15 THE COURT: All right. Thank you.

16 Mr. Ruffner, the motion to reconsider isn't physically in
17 front of me right now. But is it essentially the same
18 argument, that you believe the appointment order is an
19 unlawful order and you want it reconsidered?

20 MR. RUFFNER: Yes.

21 THE COURT: Okay. So that's what I'm not acting on
22 today, because that will be directed to Justice Murray's
23 attention, for whether she reconsiders her order. Motion to
24 dismiss, I do feel like I can address. I am going to deny it.

25 Tell me, are you qualified to represent Mr. Shirland?

1 MR. RUFFNER: And I'm not trying to be flippant or
2 anything, Your Honor, so I apologize. I -- I -- and you don't
3 have to speak, answer verbally, but -- unless I get it wrong.
4 I think the Court's asking, could I be actively rostered,
5 through MCILS, to take this assignment? And if that is what
6 the Court is asking by am I qualified, then I could be. When
7 I indicate that I haven't been rostered -- actively rostered
8 for trial cases for two years, I'm indicating that I haven't,
9 you know, been on the rosters. But I, as -- as an officer of
10 the court, I -- I could be.

11 THE COURT: So you're not actively accepting court
12 appointments, that part I understand --

13 MR. RUFFNER: Yes.

14 THE COURT: -- except for your lawyer-of-the-day work.

15 But my question is, are you qualified, as an attorney, to
16 represent this person?

17 MR. RUFFNER: I believe -- I believe, yes.

18 THE COURT: Okay. So you've been appointed by the Court
19 to do so, but if you don't want to or think that you can't or
20 think that you shouldn't, for any reason, just move to
21 withdraw so I can find someone else. Don't sit there and fill
22 the chair. You're in --

23 MR. RUFFNER: I -- well --

24 THE COURT: -- or ask to be out.

25 MR. RUFFNER: I -- yes, Your Honor. And I drove up here

1 with -- in less than an hour of the court being open, after I
2 received notice. I filed the motion to reconsider within an
3 hour of the court -- of it being open. It wasn't open for the
4 long weekend because they -- it was closed, already, when I
5 received the actual notice.

6 It was not my intent to "sit in the chair," so to speak.
7 I thought it was important to address it -- or to put it to
8 the attention of the -- the judge -- the Justice who signed
9 the orders, because I didn't want to appear to be judge
10 shopping, even though I knew it would be a random judge that
11 would get it from the basket if it went that way. I wasn't
12 trying to further delay it by asking for the specific Jus --
13 the Justice to address it.

14 THE COURT: It's just difficult for me to understand how
15 you haven't moved to withdraw, especially if you're saying
16 things to me like, you can't even bring him up. He's not my
17 client. That means you're -- from your perspective, he is
18 sitting in custody without counsel. If it's not going to be
19 you, it needs to be somebody else, with all haste.

20 MR. RUFFNER: Moving to withdraw means I'm accepting that
21 I am his attorney. It opens me up to certain liabilities.

22 THE COURT: There is a court order that says you're his
23 attorney.

24 MR. RUFFNER: And respectfully, Your Honor, I'm not his
25 attorney.

1 THE COURT: Then file both, Mr. Ruffner. You have
2 stalled this. We are -- we are without -- without you moving
3 to withdraw, I now am at the mercy of your motion to
4 reconsider being heard by the court that -- that issued it.
5 You've put this in a post-judgment posture instead of just
6 saying, please let me out. You put me in, please let me out.

7 MR. RUFFNER: It was -- I did not anticipate that by
8 asking for reconsidering that Justice Murray wouldn't be
9 available. I -- I had no idea that -- that that was going to
10 be the case, so.

11 Would the Court accept an oral motion to withdraw, then?

12 THE COURT: I -- I would consider it. I would ask you
13 why you can't, instead, represent this man who's here without
14 a lawyer, in need of legal advice, with an --

15 MR. RUFFNER: Your Honor --

16 THE COURT: -- attorney who is qualified to give it
17 standing in front of me and, if I may, is pursuing a cause
18 here at the expense of representing someone. He didn't ask to
19 be part of this. He didn't ask to be part of this motions
20 practice. He asked for, and is entitled to, a lawyer.
21 There's one who's qualified, bright, and ambitious, and
22 dedicated standing right in front of me, pleading
23 incompetence.

24 MR. RUFFNER: I have -- in answer, Your Honor, if I may.
25 If -- I do not have the capacity to take on 14 cases in

1 Penobscot County, which is what was ordered on August 29th,
2 including arson, aggravated trafficking, domestic violence,
3 and other felonies. I have one attorney that's in the
4 hospital right now, for the third time this month. I -- our
5 only paralegal is -- has been out for weeks with acute
6 little -- liver failure. I have, in addition to doing lawyer-
7 of-the-day, on average, three days a week for prisoners, a
8 murder case, a kidnapping case and other cases.

9 I have six attorneys that I'm in charge of in my office,
10 that I help supervise and support. And I -- I -- I have --
11 because of the 14 assignments, in dealing with them, I
12 unilaterally canceled other work that I did for the Commission
13 so that I could address these. If I -- I'm not -- I don't
14 have any work that isn't indigent related. I don't have any
15 retained work. And I'm working way more than full time before
16 I got these assignments, Your Honor. I --

17 THE COURT: Mr. Ruffner, if your capacity is so limited,
18 then your entry of appearance and filings need to be limited,
19 as well. But you did not do that. You did not file a motion
20 with a limited entry of appearance. You just filed a
21 pleading. And the Court has taken the position that by doing
22 so, you did signal to us you have the capacity to help Mr.
23 Shirland. What I'm hearing now is you telling me that you do
24 not. So put a motion to withdraw in writing, and we'll
25 consider it, unless you think maybe you could help this man

1 today.

2 You were given eight new clients. I understand there
3 were 14 docket numbers. You were asked to take on eight
4 clients, all of whom you had filed motions on their behalf.

5 MR. RUFFNER: As lawyer-of-the-day, while I was lawyer-
6 of-the day. And just for the record, I -- I, apparently
7 incorrectly, informed the clients that, at best, filing those
8 motions would preserve their rights and perhaps speed up the
9 process in an attorney being assigned. And I -- I'm just
10 being honest with the Court as to what I told the clients.
11 Because I do feel bad.

12 In fact, I asked the Commission -- I made a report to the
13 Commission that I did not anticipate that this would delay
14 them getting an attorney. And I asked them to suspend me from
15 taking trial-level cases. Because I didn't anticipate that
16 would happen, and I told those clients -- and I'm not trying
17 to be disrespectful at all, but -- building rapport with
18 clients, as lawyer-of-the-day, that I felt that the worst that
19 might happen is that the State and the court -- and I don't
20 mean you, specifically, Your Honor, but the system -- might
21 get a little bit annoyed with me with doing it, but my hope
22 was speeding up the process. I was evidently incorrect with
23 that, and I would --

24 THE COURT: I disagree with you, Mr. Ruffner. You were
25 effective in speeding up the process. They did get a lawyer.

1 The lawyer is you.

2 MR. RUFFNER: I understand.

3 THE COURT: You are in until you have a court order that
4 says you are out.

5 Tell me what you want to do for today.

6 MR. RUFFNER: Your Honor, what -- what I'd like to have
7 today is for the Court to accept an oral motion to withdraw.
8 And if there is an attorney who is on the -- I don't want --
9 the correct name of the -- the -- the -- sort of, the
10 roster -- the shadow roster, it's called in other places,
11 that's willing to take it today, I can --

12 THE COURT: And tell me, Mr. Ruffner, why your colleagues
13 in the defense bar, who are also not on the MCI list official
14 roster in this region, should be called upon to pick up these
15 appointments but you should not?

16 MR. RUFFNER: Your Honor --

17 THE COURT: Why are they qualified, and you are
18 unqualified?

19 MR. RUFFNER: Your Honor, I -- I assume they wouldn't say
20 yes unless they had the capacity for it, Your Honor.

21 THE COURT: I can tell you; they say yes to me every
22 single day without the capacity for it. These defense
23 attorneys are working harder than you can possibly imagine to
24 represent people who don't have counsel in this region. And
25 if you are not able to step up on the -- on the cases in which

1 you've decided to file unlimited motions on behalf of the
2 defendant and follow that through to the next step, what is
3 the Court to do? Turn to your brothers and sisters at the Bar
4 and ask them to pick it up as soon as they can, rather than
5 asking you to hang in there, just through that first court
6 appearance?

7 MR. RUFFNER: Your Honor, in -- in some of the later
8 motions -- not on the 16th, but in the two days after that, I
9 even requested just a hearing within a week, well before
10 whatever the next court date, and that was denied. I did
11 not -- was not attempting to -- to be here today and did not
12 anticipate in any way. I have not had this happen to me in
13 other places where I have made the motions. Those were very
14 sporadic until the 14th, I -- I will admit. I -- the motion
15 that I filed dealt with a act that was, under the rules, shall
16 happen at -- during initial appearance, in which that's what
17 the lawyer-of-the-day is there for, the initial appearance or
18 arraignment. It wasn't motions for convening a grand jury,
19 you know, outside of the things that were supposed to happen.

20 I felt it was my duty to preserve it, because without a
21 written motion, there's really no record, absent getting a
22 transcript in every case, as to what happened.

23 THE COURT: Mr. Ruffner --

24 MR. RUFFNER: I did not --

25 THE COURT: -- I believe that what you have done here is

1 very well-meaning. I'm going to ask you to consider, for a
2 moment, what it feels like to sit in this chair, in this
3 region, with an MCILS roster in front of me that is blank. I
4 have no one. I have worked extremely hard to try to,
5 cooperatively with MCILS and defense counsel, ask folks who
6 are not on the MCILS roster but none-the-less qualified to
7 pitch in and take some cases, because we have people sitting
8 in custody without lawyers. And that's intolerable under the
9 oath that I swore. I have treated you no differently.
10 Justice Murray has treated you no differently. We don't have
11 an option, and these people need lawyers.

12 MR. RUFFNER: Your --

13 THE COURT: I'm going to ask you if you want your motion
14 to withdraw to stay pending. I'll take it under advisement
15 for a few minutes. If you want to withdraw it, I'll give you
16 a few minutes to think about that. Mr. Shirland is down there
17 waiting for an answer.

18 I'm going to be in recess.

19 THE BAILIFF: All rise.

20 (Recess at 2:05 p.m., until 2:39 p.m.)

21 THE COURT: Mr. Ruffner, are you ready on Mr. Shirland?

22 MR. RUFFNER: Yes. And to answer the question you asked
23 me last time, I will -- I'm withdrawing the oral motion to --
24 to withdraw.

25 THE COURT: Okay.

1 MR. RUFFNER: And -- and if we could address the -- his
2 probation case today, if I could, after we do that, complete
3 the -- the record I'd like to make? But we can --

4 THE COURT: Yes.

5 MR. RUFFNER: We have an agreement for -- to do something
6 with that today.

7 THE COURT: Okay, I accept. So your motion to withdraw
8 as counsel is withdrawn. I will accept your limited
9 appearance for the next few minutes.

10 MR. RUFFNER: Thank you.

11 THE COURT: Okay. So we can have Mr. Shirland brought
12 up?

13 UNIDENTIFIED SPEAKER: Yeah.

14 THE COURT: Okay.

15 (Pause)

16 THE COURT: Good afternoon. You're Lawrence Shirland?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: I apologize about my voice. We're going to
19 do our best to get through this. Okay?

20 THE DEFENDANT: Yes. That's fine, Your Honor.

21 THE COURT: Mr. Shirland, you are before the Court today
22 because the State has filed a motion to revoke your probation.

23 MR. RUFFNER: I believe there's three, Your Honor. I
24 believe there's one from this -- filed December 21st, and one
25 filed from January 31st, which I think he had initial

1 appearances on August 16th. There was another file on August
2 16th, but I believe that the initial appearance in that was
3 held, perhaps, on the 23rd. I wasn't there for that.

4 MS. CLIFFORD: Yes, it was on the 23rd.

5 THE COURT: Okay.

6 MS. CLIFFORD: And Ms. Bailey was rep -- was representing
7 him --

8 THE COURT: So --

9 MS. CLIFFORD: -- as lawyer-of-the-day.

10 THE COURT: If I could zoom out even more for just a
11 second. I have three docket numbers. Two of them allege more
12 recent criminal conduct.

13 We're not doing anything with those today; is that right?

14 MR. RUFFNER: I think we may be putting an agreement as
15 to adjusting bail on them on the record. But I don't know
16 that -- there's some time before the bail needs to be
17 adjusted. So whether it's happening today or down the road,
18 just putting the record -- putting the agreement to amend them
19 on the record today.

20 THE COURT: Okay. But we're not trying to get through an
21 arraignment or anything else? Has he been arraigned on both?

22 MR. RUFFNER: He's -- he's had his -- either arraignment
23 or initial appearance, depending on the level of the case, on
24 the 16th of August.

25 THE COURT: Okay. Great.

1 MS. CLIFFORD: Yes. And he hasn't been indicted yet --

2 THE COURT: All right.

3 MS. CLIFFORD: -- on that case, so there's no arraignment
4 necessary.

5 THE COURT: Sounds good. Now I'm going to turn to the
6 case.

7 Mr. Shirland, the case we're talking about now is the one
8 where you were placed on probation. Okay?

9 THE DEFENDANT: Yes.

10 THE COURT: So I'm going to ask Madam Clerk to just
11 confirm the dates of the motions and make sure that they're
12 tied up, starting with the June 14, 2022, motion.

13 June 14, 2022, motion; is that one resolved?

14 MS. CLIFFORD: I believe that has been resolved. I
15 believe --

16 MR. RUFFNER: Yes, Your Honor.

17 THE COURT: I just want to check docket --

18 MS. CLIFFORD: Oh, okay.

19 THE COURT: -- records to make sure.

20 MS. CLIFFORD: Thank you.

21 MR. RUFFNER: The docket record that was sent to me
22 indicated that it was.

23 THE COURT: Okay.

24 MR. RUFFNER: I believe in November. The 17th, perhaps.
25 That's what the docket record looks like.

1 THE DEFENDANT: Yes, it was.

2 THE COURT: Okay, so that one's closed out. Next is
3 December 21, 2022. At least, in the file, I'm showing that
4 just a denial is entered. Okay? And January 31, 2023, a
5 denial. And August 16, 2023, a denial. Just dealing with
6 those three? Okay.

7 There are three different times, recently, Mr. Shirland,
8 that the State has filed motions to revoke your probation.
9 You've already been in court on all three of them, and
10 previously you've denied that you violated your probation.

11 The first thing I want to make sure is that you've had a
12 chance today to talk to Attorney Ruffner about these motions
13 to revoke your probation. Did you get that time?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And from speaking with him, do you understand
16 exactly what it is the State alleges that you did to violate
17 probation in these three motions?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: I'm going to start with the December 21,
20 2022, motion.

21 Do you know, from speaking with counsel, that your
22 options for today are to either admit or deny that you
23 violated your probation?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And which would you like to do for the

1 December 2022 motion?

2 THE DEFENDANT: Admit.

3 THE COURT: What's that?

4 THE DEFENDANT: Admit.

5 THE COURT: An admission is entered.

6 For the January 31, 2023, motion, you understand what the
7 State alleges you did to violate probation?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And do you wish to admit or deny?

10 THE DEFENDANT: Admit.

11 THE COURT: An admission is entered.

12 And the August 16, 2023, motion, you understand what the
13 State says you did to violate probation?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And do you wish to admit or deny?

16 THE DEFENDANT: Admit.

17 THE COURT: An admission is entered.

18 And do we have an agreement about the disposition of
19 those admissions?

20 MS. CLIFFORD: Your Honor, I understand that he has
21 applied to Wellspring and he will be meeting with intake on
22 August -- I'm sorry, September 25th.

23 THE COURT: Okay.

24 MS. CLIFFORD: And at -- at the time he does -- a bed
25 opens up, I would imagine -- I will be moving to amend his

1 bail, or there will be an amendment to his bail, for a bed-to-
2 bed, so he's either in Wellspring or he's back in jail --

3 THE COURT: Okay.

4 MS. CLIFFORD: -- depending -- it doesn't matter if he's
5 completed it or not. And then, obviously, if -- if that
6 changes near the course of the end of Wellspring, we would
7 obviously address that or -- at that time.

8 THE COURT: So for the disposition on the PV, we're just
9 continuing it out for sentencing?

10 MS. CLIFFORD: Yes, that's correct.

11 THE COURT: Okay.

12 MS. CLIFFORD: To see how he does at Wellspring.

13 THE COURT: Understood. And any agreement about how long
14 to continue it out?

15 MR. RUFFNER: I don't know -- since the screening is
16 later this month, I don't have an estimation of what that
17 translates to a potential bed date, and then how long after
18 that. So I -- I -- I don't have a specific suggestion as to
19 that.

20 THE COURT: Unfortunately --

21 MS. CLIFFORD: I would suggest that we do three or four
22 months, at this point, Your Honor.

23 THE COURT: Okay.

24 MS. CLIFFORD: And then if -- if all goes well, we might
25 be asking to extend that out a little longer. Or we might

1 not.

2 THE COURT: Unfortunately, I can tell you, at this point,
3 if he screens as eligible for residential, it's going to be at
4 least three months on the waiting list.

5 MR. RUFFNER: So perhaps five months?

6 THE COURT: Okay.

7 MR. RUFFNER: And then it could be advanced or --
8 hopefully he'll be in, and everyone will be agreeing to push
9 it out because he'll have only been in for a couple of months.

10 THE COURT: What's the farthest list out we have on PVs?
11 December.

12 MS. CLIFFORD: Okay.

13 THE COURT: We probably should've started there.
14 December date, December 21st at 1:00.

15 MR. RUFFNER: And, Your Honor, the two other pending
16 docket numbers are -- that the Court referred to are 23-00242
17 and 23-02397. And there's an agreement that the bail will be
18 amended in those so he can also get a bed-to-bed and -- with
19 the same. If unsuccessful or without other order of the
20 Court, he's going to be going back. Just so -- I know that'll
21 be followed up in writing, but.

22 THE COURT: Yes. So the request, when it comes in as a
23 motion to amend bail, will be a request that'll be made
24 concurrent, in other words?

25 MS. CLIFFORD: Yes.

1 MR. RUFFNER: Yeah.

2 MS. CLIFFORD: And it would be a request from both of
3 the --

4 THE COURT: Okay.

5 MS. CLIFFORD: -- a joint request.

6 THE COURT: All right. Anything else on this matter?

7 MR. RUFFNER: Other than making -- if I can take a little
8 time to finish making the record, no.

9 THE COURT: Yes. All right. Thank you very much, Mr.
10 Shirland. You are all set.

11 THE DEFENDANT: Thank you.

12 THE COURT: All right. So we'll start by saying I assume
13 you would like your limited entry of appearance to end now; is
14 that right?

15 MR. RUFFNER: Yes. I -- I know that in due course the
16 September 5th motion to reconsider will be addressed. But
17 that's not before you --

18 THE COURT: Well --

19 MR. RUFFNER: -- so.

20 THE COURT: But if you are ending your limited appearance
21 and now renewing your motion to withdraw, I could grant that
22 and moot the motion to reconsider.

23 MR. RUFFNER: I'm going to need an order on the -- I'm
24 told, on the motion to reconsider, that -- by people that are
25 smarter than me. So I can --

1 THE COURT: Well, it would be an order. It would be an
2 order saying it's moot.

3 MR. RUFFNER: Sorry, Your Honor. I think I've thought
4 through every possibility.

5 THE COURT: I mean, what you want is to be off this case
6 now, right? So I can make that happen right now. I can -- I
7 can --

8 MR. RUFFNER: Yes, Your Honor.

9 THE COURT: Okay. I mean, how could I let you stay on
10 if -- if what you're saying is you shouldn't be on, right?

11 MR. RUFFNER: Yes, Your Honor. So I -- I'm renewing my
12 oral motion to withdraw.

13 THE COURT: Okay.

14 MS. CLIFFORD: So to be clear, I just want to make sure
15 my records reflect --

16 THE COURT: All right, well let me start --

17 MS. CLIFFORD: Okay.

18 THE COURT: -- by saying that the motion to dismiss is
19 denied. I think I put that on the record earlier, and I'm
20 going to turn that into an order. Motion to dismiss is
21 denied. And then I'm going to say, on that same motion,
22 Counsel agreed to represent Mr. Shirland on a limited basis
23 today, right? After which --

24 MR. RUFFNER: I -- I did. I said it. So I did.

25 THE COURT: -- Okay -- after which he's moved to

1 withdraw.

2 MR. RUFFNER: Yes.

3 THE COURT: And that motion is granted. All right. And
4 I will --

5 MR. RUFFNER: And --

6 THE COURT: -- find new counsel. The motion to dismiss
7 wasn't filed in all three cases, I don't think. Was it?

8 MR. RUFFNER: I -- I think -- I attempted to, Your Honor.
9 It --

10 THE COURT: Okay.

11 MR. RUFFNER: It lists all three docket numbers, Your
12 Honor --

13 THE COURT: Okay.

14 MR. RUFFNER: -- even --

15 THE COURT: So the order will be docketed in all three,
16 as well.

17 MR. RUFFNER: And -- and, Your Honor, I appreciate you
18 giving me a little time to complete the record. I know the
19 Court's already denied the motion, but I just wanted to
20 complete the record and to answer some of the questions the
21 Court posed in terms of my thinking and things like that. And
22 I appreciate the indulgence, Your Honor.

23 The -- I -- in filing the -- the matters on the 16th,
24 when I was lawyer-of-the-day, I believe that I indicated that
25 I was -- as opposed to "attorney for" indicated "lawyer-of-

1 the-day" as lawyer-of-the-day. I don't disagree with the
2 Court. I did not -- well, I did enter an appearance, but did
3 not enter it -- certainly a limited one or ever used limited
4 anywhere in there to further signal my intent. I have filed
5 motions, as lawyer-of-the-day, indicating as such, that I can
6 definitely recall as of last -- last summer. It may have been
7 the summer before, but on a different issue, in Cumberland
8 County. I did it again in Washington County and had not ever
9 had anyone interpret that as entering my appearance. So I had
10 not anticipated it being taken that way.

11 I am -- I'm aware that, depending on which day I was
12 lawyer-of-the-day, there was a not-insignificant delay ranging
13 between 15 days to 8 days between my acting as lawyer-of-the-
14 day and the August 29th order. And so I didn't take just --
15 and obviously, I -- I didn't interpret Justice Murray's August
16 29th order as interpreting my actions as lawyer-of-the-day
17 on -- on those days as actually entering my appearance.

18 I -- there was -- the Court asked a question as to why
19 should I -- I'm -- know -- I know I'm paraphrasing it wrong.
20 But, like, comparing, you know, what I'm asking for with the
21 other lawyer that has, in the Court's words, stepped up.
22 I'm -- I'm aware that the -- many members of the Bar have
23 stepped up. And I think the -- the difference from the -- my
24 position, the difference is that those individuals agreed to
25 take on cases. They indicated as much to the Court, and in

1 some cases are -- I -- and I don't believe a court ever is
2 assigning cases to individuals who haven't agreed to it
3 without reaching out to them. I didn't have any advanced
4 warning that this would happen, and --

5 THE COURT: Mr. Ruffner, I don't want to cut you short.
6 I just -- this is an argument being made to the wrong jurist,
7 right?

8 MR. RUFFNER: Well, I'm just -- for the purposes of the
9 record, with regard to the motion to dismiss that's been
10 denied, just -- and that was the end of my -- so it works out
11 well.

12 THE COURT: All right. I -- I didn't issue those
13 appointment orders. I am unsurprised that Justice Murray has
14 done something that hasn't happened in other regions. She's
15 one of a kind. So if you want to take something up with her,
16 you can. I understand you have, in other cases, a motion
17 that's pending, and I'm certain she'll take it seriously.
18 Okay?

19 Anything else from the State?

20 MS. CLIFFORD: I'd just point out that I know this
21 morning, during arraignments, that this Court appointed an
22 attorney without asking them. So it's -- it's not unheard of
23 here in this county.

24 THE COURT: We are in a position on the bench that is
25 unheard of, which is that we have no lawyers on our roster.

1 So our jurists are doing all sorts of things that -- and doing
2 the best we can, in good faith, to defend the Constitution.
3 None of it can be by the book, because the book in front of us
4 is blank, so.

5 MS. CLIFFORD: Absolutely. And I will -- just for Mr.
6 Ruffner, is that that attorney is not on a roster, either,
7 that the Court appointed.

8 THE COURT: All right. I think we've created a record.
9 Like I said earlier, I have no doubt that what you've done in
10 these cases was pursued in good faith. It is an incredibly
11 difficult situation for all of us that we're facing, and we're
12 all doing the best we can to try to get this important work
13 done together.

14 MR. RUFFNER: And -- and, Your Honor, I will make sure
15 that if it comes up again that I indicated "limited only" or
16 words to that effect, clearly, on anything I file so it's all
17 there.

18 THE COURT: Understood.

19 MR. RUFFNER: Thank you, Your Honor.

20 THE COURT: Anything else, Ms. Clifford?

21 MS. CLIFFORD: Nothing else, Your Honor.

22 THE COURT: All right.

23 MS. CLIFFORD: Thank you.

24 THE COURT: Thank you very much.

25 THE CLERK: Did we do anything else?

1 THE COURT: The motion to reconsider will be moot, but I
2 didn't physically see it in our file. And it's not going to
3 be mooted in any other case.

4 THE CLERK: (Indiscernible).

5 THE COURT: Yep. And, Jess, if we could find -- if I
6 could find the motion to reconsider. Justice Murray.

7 THE CLERK: (Indiscernible).

8 THE COURT: Okay. And it should be my order denying it
9 as moot, so I need that flagged or brought to my chambers.

10 (Proceedings concluded at 3:02 p.m.)

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CERTIFICATION

I HEREBY CERTIFY, that the foregoing, pages 1 through 26, is a true transcript of a CD recorded on Thursday, September 14, 2023, at the Penobscot County Unified Criminal Docket Court located at Bangor, Maine, of the case entitled, STATE OF MAINE VS. LAWRENCE SHIRLAND, to the best of my professional skills and abilities.

November 8, 2023

Sabrina Owens

Sabrina Owens
Court-Approved Transcriber