

# Administrative Office of the Courts

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## **Judicial Branch testimony neither for nor against LD 1129, An Act to Clarify Standards for Defendants' Post-judgment Motions for Relief from Protection from Abuse Orders**

Senator Carney, Representative Kuhn, members of the Joint Standing Committee on Judiciary, my name is Julie Finn and I represent the Judicial Branch. I would like to provide the following testimony neither for nor against this bill to raise a few questions and points for consideration.

Under Maine law, a defendant to a protection from abuse (PFA) order can currently file a few different post-judgment motions in a PFA proceeding. First, a defendant may file a motion for relief from judgment pursuant to Maine Rule of Civil Procedure 60(b). This permits the court to set aside a judgment based on a variety of grounds, including “any other reason justifying relief from the operation of the judgment.” Additionally, although PFA orders are not “mutual orders” of protection or restraint in that they can only prohibit conduct by the defendant, *see* 19-A M.R.S. § 4101(6), a PFA order can and often does impose an affirmative obligation on a plaintiff in some circumstances. For example, a PFA order can order a plaintiff to return property to the defendant or allow the defendant to have contact with the parties’ mutual children pursuant to a temporary order of parental rights and responsibilities. When a plaintiff is not complying with provisions of this nature in a PFA order, a defendant may file a motion to enforce or a motion for contempt in the PFA case pursuant to the Maine Rules of Civil Procedure (which apply to PFA proceedings as stated in 19-A M.R.S. § 4106(6)).

This bill seeks to limit the ability of a defendant to seek post-judgment relief in a PFA case in two ways. First, the bill states that “[a]bsent extraordinary circumstances, a defendant may file a motion to extinguish a final order only in accordance with the Maine Rules of Civil Procedure pertaining to relief from judgments.” In other words, this would mean that a defendant can file a motion to extinguish when extraordinary circumstances do not exist. It is unclear what the defendant’s options would be when there are extraordinary circumstances. If the intent of the bill is to permit a defendant to file a motion to extinguish only when there are extraordinary circumstances, then this language should be revised. It is our understanding that the Family Law Advisory Commission is presenting an amendment to clarify this part of the bill.

Second, the bill proposes to preclude defendants from filing motions to enforce and motions for contempt in PFAs. In practice, that would mean that provisions in a PFA order that impose on the plaintiff an affirmative obligation to do something (as noted above) could not be enforced in the PFA and would always need to be addressed in a separate action. The Judicial

Branch questions whether it is appropriate or fair for one party to have access to a post-judgment remedy and not the other party.

That said, the Judicial Branch agrees that the PFA process should not be used for protracted litigation about property or parental rights. The bill's proposal to allow the court to summarily dismiss, without a hearing, post-judgment motions filed by a defendant under the proposed new subsection would give the court the necessary discretion to redirect motions not well-suited for litigation in the PFA proceeding to separate actions as appropriate, while permitting certain motions for enforcement filed by defendants that need immediate attention to be heard. This would be a welcome clarification that would permit the court to better manage its PFA dockets.

Thank you for your time. I would be happy to answer any questions.