



February 18, 2026

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

**Re: *LD 2193, An Act to Extend the Requirement That the Maine Commission on Public Defense Services Compensate Certain Private Attorneys Appointed to Provide Indigent Legal Services (Emergency)***

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 ***respectful opposition*** to LD 2193. MSBA strongly supports adequate funding and operational support for Maine's indigent legal defense system and recognizes the very real challenges facing our state in ensuring timely access to qualified counsel. We also understand and appreciate the obvious desire of judges in Maine's Judicial Branch to have a direct role in helping to alleviate the shortage of assigned counsel. However, respectfully, we do not agree that perpetuating a Judicial Branch appointment system running parallel to the Maine Commission on Public Defense Services is either efficient or in the long-term interest of Maine's indigent legal defense system. Instead, we believe the focus should be on making sure that MCPDS has the necessary tools and resources to function properly.

**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 2193 do?** LD 2193 would reinstate and extend, through February 1, 2028, allowing judges to directly assign legal counsel to represent indigent legal defendants in matters before their courts. This system — which both authorized direct judicial appointments of counsel and required MCPDS to compensate those attorneys — was instituted on a temporary basis last year, and expired on February 1, 2026, and LD 2193 would restore the prior mechanism on an emergency basis.

**Background.** Last year, our Association opposed the establishment of the judicial appointment system that LD 2193 now seeks to re-establish. Our concern at the time was that judicial assignment could have a coercive effect on lawyers who were identified by judges for assignment, particularly in small jurisdictions in Maine. Our Association also was concerned about whether assigned counsel through this system would be qualified as such counsel would not be subject to supervision and oversight by MCPDS. Ultimately, last year's bill was passed, but with a sunset date. We do not believe the performance of the system during this limited time period has demonstrated sufficient success to warrant extending it.

**Importance of a unified indigent defense system.** MSBA appreciates the intent underlying LD 2193 and the continued efforts of the Legislature and the Judicial Branch to ensure timely access to counsel for

indigent Mainers. At the same time, MSBA is concerned that the approach reflected in this proposal risks moving away from the unified system for assigning -- and overseeing -- defense counsel that the Maine Commission on Public Defense Services was created to administer. Rather than operating fully within that established framework, the proposal relies more heavily on appointments made directly from the bench, which may result in the development of a competing system for case assignment, even if intended to be temporary.

**MCPDS counsel are subject to supervision and training whereas judicially appointed counsel would not be subject to either.** Notably, unlike the existing MCPDS system, court-based appointments do not operate within MCPDS's established infrastructure, other than for purposes of compensation. Appointments made directly by the court would not have access to all of the systems maintained by MCPDS, including records related to attorney qualifications, workload, and availability. Nor would such counsel be part of the training and oversight function of MCPDS. This is of significant concern because it was not long ago that the State confronted claims and public concerns related to the qualifications and competence of assigned counsel, and substantial changes and improvements were made through MCPDS and its predecessor to ensure that all assigned counsel and public defenders were being properly overseen and trained for the matters to which they were assigned. These concerns in part led to a report from the Sixth Amendment Center in the late 2010's recommending tighter financial and quality controls, and the Legislature signaled broad approval for this direction. In response, the governing structure of MCPDS (then called the Maine Commission on Indigent Legal Services) was reconfigured by the Legislature and the Commission embarked on upgrading its standards and system. Extending a system of direct judicial appointments not subject to this training and oversight through MCPDS increases the risk that assigned counsel is not properly trained or supervised.

**MCPDS continues to positively evolve, and our focus should be on MCPDS.** Several years ago, particularly post-COVID, Maine confronted a substantial backlog in cases, and one of the many factors contributing to the backlog was a shortfall in counsel available to take on indigent legal defense cases. Numerous steps were taken to address this shortfall, including the development and expansion of public defender offices, increases in the compensation rate for private, assigned counsel, and a streamlining of the assignment process for private attorneys. These critical improvements helped slow and reverse the decline in available counsel, and with these improvements, the backlog in cases has gone down. We believe the way to continue this positive trend is to maintain focus on the MCPDS system, not to extend a parallel system operating outside MCPDS.

**Advance consent is critical to appointment of assigned counsel.** As MSBA noted a year ago, attorneys are very concerned about the potentially coercive effect of judicial appointments of defense counsel. In this regard, it remains critical that any lawyers assigned through the judicial appointment system -- should it be extended -- must be "willing" or "with consent." While we do not feel there is a meaningful difference between the term "willing" or "consent," MSBA believes any consent or "willingness" must be obtained **in advance** of an appointment. Otherwise, if an appointment is made without first determining an attorney's willingness or ability to take on a case, the lawyer's only available response is withdrawal, which is time-consuming and cumbersome. So, if the judicial appointment system is extended, consent of some form is essential, and no assignment should be made until after such consent has been obtained.

**Conclusion.** For these reasons, MSBA respectfully opposes LD 2193. We very much appreciate the important role that the Judicial Branch plays in ensuring that Maine has a workable indigent legal defense system -- both in terms of the quantity of participating attorneys, and the quality of those attorneys. But

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we do not believe this system can grow and flourish by continuing the bifurcated assignment process between the bench and MCPDS. The focus should remain on growing and improving the unified MCPDS system, rather than maintaining parallel tracks for assignment.

Thank you for the opportunity to provide these comments. We appreciate the Committee's ongoing work on these important issues and would be pleased to answer any questions or provide additional information.

Sincerely,



Rachel D. Okun  
President, Board of Governors

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