



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 2195, An Act to Prohibit the Appointment or Assignment of a Private Attorney to Provide Indigent Legal Services Without That Attorney's Consent*

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

On behalf of the Board of Governors of the Maine State Bar Association (MSBA), we write to provide comments in qualified support of LD 2195. Although MSBA does not support LD 2193 and the extension of the system allowing judges to directly assign counsel to assist indigent legal defendants, if the system is ultimately extended, we believe it is critical that assigned counsel be given the opportunity to consent to the appointment “*in advance of the formal appointment*” – which requirement would need to be added to the bill if finally passed.

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 2195 do? LD 2195 would establish a new statutory provision in Title 4 prohibiting courts from appointing or assigning a private attorney to represent a person eligible for indigent legal services unless the attorney explicitly consents and the Maine Commission on Public Defense Services (MCPDS) determines that the attorney is eligible to serve. The bill defines “private attorney” as an attorney who is not a public defender, contract counsel, or employed counsel.

MSBA’s preference for a unified assignment system. As MSBA has noted in prior testimony – including with regard to LD 2193, our Association believes that indigent defense services in Maine are best delivered through a single, coordinated system administered by MCPDS. MCPDS exists to manage attorney qualifications, training, supervision, workload, and availability, and to ensure that indigent Mainers are represented by qualified counsel operating within a system designed for oversight and accountability. MSBA does not believe that court-based appointment systems should be expanded or relied upon as a substitute for the MCPDS framework.

Importance of attorney consent if court appointments occur. That said, if courts continue to make appointments directly from the bench in limited circumstances, MSBA strongly supports the requirement in LD 2195 that any such appointment occur only with the attorney’s informed, affirmative consent. Under the Maine Rules of Professional Conduct, an attorney appointed by a court assumes the same ethical obligations as if the attorney had accepted the client through private engagement, including duties related to competence, diligence, and workload management. Attorneys must be able to assess their

capacity to take on a case before being assigned, and that *opportunity to consent needs to be in advance of any formal appointment*. If consent follows appointment by a judge, the only remedy for the attorney is withdrawal from the case, which is cumbersome and time-consuming.

Respecting professional judgment and practical realities. MSBA recognizes that when a court appoints an attorney who regularly appears before that judge, it can be difficult for the attorney to decline the appointment. Requiring affirmative consent in advance helps ensure that attorneys are able to make a considered decision about their capacity to take on a case and that professional judgment, rather than circumstance, guides whether an attorney accepts representation.

Role of MCPDS eligibility determinations. MSBA also supports the bill's requirement that MCPDS determine an attorney's eligibility to serve before an appointment is made. This provision helps ensure that attorneys appointed outside the traditional assignment process nonetheless meet established standards for qualification and fitness to represent indigent clients.

Conclusion. For these reasons, MSBA supports LD 2195 as an important safeguard if court-based appointments of private attorneys are to continue through LD 2193. At the same time, MSBA reiterates its preference that indigent defense assignments be handled through the MCPDS system wherever possible, and that legislative efforts continue to focus on strengthening that unified system.

Thank you for the opportunity to provide these comments. MSBA appreciates the Committee's continued work on these important issues and would be pleased to answer any questions.

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

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