JOHN D. SWEENEY
Firm Administrator
jsweeney@lokllc.com

October 5, 2018

Via E-Mail Only to lawcourt.clerk@courts.maine.gov

Matthew Pollack, Executive Clerk
Maine Supreme Judicial Court
205 Newbury Street Room 139
Portland, Maine 04112-0368
(207) 822-4146

RE: Comments on Proposed Maine Civil Justice Reform

Dear Mr. Pollack:

On behalf of Libby O'Brien Kingsley & Champion, LLC, please find our firm's comments on the proposed Maine Civil Justice Reform.

Please feel free to contact us if you have any questions or comments.

Sincerely,

/s/ John D. Sweeney

John D. Sweeney
Firm Administrator

c: LOKC Attorneys

Comments on Proposed Maine Civil Justice Reform

Libby O'Brien Kingsley & Champion (LOKC) thanks the Court for the opportunity to comment on the proposed Civil Justice Reform for Maine Courts. Although we applaud the Court's goal of improving access to justice through civil justice reforms, we do have some areas of concern, addressed below.

Track Assignments. We suggest that rules assign employment law cases to Track C. Employment law claims can be very complicated and usually involve multiple claims, and extensive discovery.

Presumptive Discovery Limits. We believe the rules should retain the existing limits of 5 depositions, 30 interrogatories, and no limit as to requests for production of documents or admissions. We are concerned that limiting the number of interrogatories or document requests will lead to (a) parties propounding compound or overbroad discovery requests to capture additional information, and (b) frequent requests to exceed the presumptive limits. If any additional limitations are imposed, we would suggest that the rules limit parties to two sets of requests for production of documents.

Initial Disclosures. We support the inclusion of an initial disclosure requirement in the Maine Rules of Civil Procedure. But we believe the timing of the initial disclosures should be altered. Frequently, a defendant will have no notice of a lawsuit until it is filed, and defendants sometimes do not retain counsel involved until shortly before the deadline to file an answer. We believe the defendant's deadline to file its initial disclosures should be 14 days after the plaintiff's initial disclosures. Alternatively, both parties could exchange initial disclosures simultaneously 30 days after the defendant's answer.

Summary Judgment Practice. Although LOKC agrees that summary judgment reform is needed, LOKC does not support the amendments in their current form. We believe there are other revisions that could better achieve the goal of streamlining the summary judgment process.

At the outset, LOKC's attorneys represent both defendants and plaintiffs. With respect to the statement of material facts, the primary problem is not generally the number of facts asserted, but that those facts sometimes offer argumentative, conclusory, or editorialized characterizations of the underlying record evidence. As a result, the other party frequently has to deny or qualify almost every fact. To address this, we suggest that the rule be amended to require that all statements of material fact should be direct quotations from the underlying record evidence, or a fair, non-argumentative description of the underlying evidence. This will lead to more admissions, and a cleaner record for the parties and the court.

Paired with the above, a presumptive limit of 50 and 75 statements of material facts in Track B and Track C cases, respectively would allow the parties to fully develop the record, yet prevent unnecessarily long or convoluted summary judgment records.

In terms of the summary judgment briefing schedule, we suggest that the Court adopt a format tracking the District of Maine's Local Rule 56, which creates a process requiring a party

to obtain authorization to file for summary judgment, and which stays all deadlines upon the filing of a notice of intent to file for summary judgment. The presiding judge may then tailor the deadlines and presumptive limits to fit the case and can hold a conference with the parties if appropriate.

Finally, we also believe that the Court should retain the existing page limits for the memorandum, together with the 14-day reply period. The 14-day reply period is of special importance, because 7 days is simply not enough time to draft a reply memorandum on a dispositive motion, and to admit, deny, or qualify all the non-moving party's statements of additional material fact. We believe the rules should retain the recently enacted 14-day reply period.