

STATE OF MAINE

SUPREME JUDICIAL COURT  
Sitting as the Law Court  
Docket No. Ken-24-3450

ANDREW ROBBINS, ET AL.,

v.

MAINE COMMISSION ON PUBLIC  
DEFENSE SERVICES, ET AL.,

**MOTION FOR CLARIFICATION OF ORDER**

Defendant-Appellant State of Maine (State) seeks clarification of this Court’s October 24, 2024 “Order Permitting Trial Court Action” in light of an apparent disagreement among the parties as to the meaning of that Order.

**Relevant Procedural Background**

The State appreciates that this Court is generally aware of the lengthy procedural history of this matter. The State provides the following abbreviated chronology of the orders and events solely relevant to the import of the Court’s October 24, 2024 Order Permitting Trial Court Action and this Motion:

1. On February 27, 2024, before the State of Maine was a party to this suit, the Superior Court issued a Combined Order informing parties that a trial on Plaintiffs’ original complaint would take place in two phases. Phase 1 of the trial was set to adjudicate the “federal and state claims and defenses regarding non-representation as they relate to [Plaintiffs’] subclass[.]” Phase 2 was set to adjudicate claims that “allege that systemic conditions or practices exist which may pose an ‘unconstitutional risk’ of deprivation of counsel[.]”

2. On May 23, 2024, the Superior Court granted Plaintiffs’ “Motion for Leave to Amend and Supplement the Complaint.”
3. On May 31, 2024, Plaintiffs filed an Amended Complaint, which named the State of Maine as a defendant in a single declaratory judgment count (Count V) of this lawsuit.<sup>1</sup>
4. On August 13, 2024, the Superior Court issued an order denying the State’s Motion to Dismiss, which had argued among other things that the State has sovereign immunity from both suit and liability.
5. On August 16, 2024, the State filed a notice of appeal in the Superior Court. Later that same morning, the Superior Court held a hearing in which it acknowledged the State’s appeal and confirmed that it intended to continue moving toward a “Phase 1 trial” on the Counts that Plaintiffs alleged against Defendant-Commissioners of the Maine Commission on Public Defense Services (“MCPDS”).
6. On October 2, 2024, the Superior Court issued an Order to Correct Clerical Error, which acknowledged that the State had timely filed a Notice of Appeal but that inadvertently the Notice had failed to be docketed. The Order instructed the Clerk to immediately docket the Notice of Appeal and to effectuate its docketing date as of August 16, 2024.
7. Between August 13, 2024 and October 24, 2024, the Superior Court issued several orders related to the structure of this suit and logistics of the Phase 1 trial set between Plaintiffs and the MCPDS Commissioner-Defendants. These orders include—but are not limited to—an Order on Motion for Protective Order (August 20); a Trial Scheduling Order setting forth deadlines for expert designations, pre-trial filings, and exchanges of information between the parties headed toward trial (September 17); an Order on Motion to Amend Class (September 26); and a Notice of Trial and Updated Scheduling Order (October 18).
8. Depositions of fact and expert witnesses also took place during this same time period. Given its position that it is entitled to sovereign immunity, the State has not yet participated in written or oral discovery.

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<sup>1</sup> The State was also originally named a Respondent—and later converted to a “Party in Interest”—in Plaintiffs’ habeas corpus count of this action, but that fact is not relevant to this Motion.

9. On October 24, 2024, this Court issued the Order Permitting Trial Court Action subject to this Motion for Clarification.
10. The Phase 1 trial is scheduled to take place from December 9-20, 2024. The deadline to designate experts has already passed, and the discovery deadline is November 8, 2024, with additional pre-trial deadlines set to run through December 1, 2024.
11. On October 30, 2024, the Superior Court Justice presiding over this action emailed all parties noting that the Order Permitting Trial Court Action authorizes the Superior Court to proceed “as though no appeal had been taken” and to inquire “whether or not the parties agree or not that the [Order] means that the State of Maine . . . will be participating as a party in the upcoming trial while the appeal remains pending.”

### **Parties’ Positions on this Court’s Order Permitting Trial Court Action**

The State interprets this Court’s October 24, 2024 Order Permitting Trial Court Action as an Order permitting the Superior Court to continue to proceed toward the Phase 1 trial set for December 9, 2024, between Plaintiffs and the Defendant-Commissioners of MCPDS. The State does not interpret this Court’s Order as authorizing the Superior Court to incorporate Defendant State of Maine and Count V into the December 9, 2024 Phase 1 trial. Counsel for the State has consulted with Counsel for the MCPDS Defendant-Commissioners, who agrees with the State’s interpretation of this Court’s Order.

Plaintiffs appear to interpret this Court’s Order as instructing the Superior Court to proceed to the Phase 1 trial and to incorporate Count V against the State as part of that trial.

## Request for Clarification

Given the parties' divergent interpretations of this Court's October 24, 2024 Order Permitting Trial Court Action, the State respectfully requests clarification that the Order was intended to permit the Superior Court to continue proceeding toward the Phase 1 trial set for December 9, 2024, between Plaintiffs and the Defendant-Commissioners of MCPDS and not that it was instructing the Superior Court to incorporate Count V against the State as part of the trial.

If the Court's intent was the latter, the State respectfully requests an opportunity to brief the legal and logistical reasons as to why it should not be required to proceed to trial in advance of litigating its sovereign immunity appeal and having not yet participated in any fact discovery.

Dated: November 1, 2024

Respectfully submitted,

/s/ Paul E. Suitter

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## **CERTIFICATE OF SERVICE**

I, Assistant Attorney General Paul E. Sutter, hereby certify that on this, the 1st day of November, 2024, I electronically served all counsel of record in this matter by delivering a copy of this Motion to the last known electronic mail address provided to this Court and the Superior Court in accordance with Maine Rule of Civil Procedure 5(b)(2) as incorporated into Maine Rule of Appellate Procedure 10(b).

/s/ Paul E. Sutter

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