

STATE OF MAINE
KENNEBEC: ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET No: KENSC-CV-22-54

ANDREW ROBBINS, et. al.,
Plaintiffs

v.

MAINE COMMISSION OF INDIGENT
LEGAL SERVICES, et al.,
Defendants.

PETITION TO INTERVENE
[M.R.Civ.P. 24]

AUGUSTA COURTS
MAR 11 '24 PM 1:21

Petitioner Daniel Feldman (“Petitioner”) seeks leave of the Court to intervene pursuant to the Maine Rules of Civil Procedure as a plaintiff in the pending lawsuit against the Maine Commission on Indigent Legal Services (“MCILS”) because he is at risk of constitutional deprivation based on MCILS’ systemic and unmitigated failure to provide adequate counsel to those coming before the courts of Maine. In support of this Petition, Petitioner states as follows:

1. Petitioner is a solo practitioner attorney in Maine.
2. Petitioner has devoted the past year to representing indigent Mainers throughout Maine in criminal, child protective, and other matters.
3. The vast majority of Petitioner's caseload is made up of clients who are eligible for, and have had appointed, court-appointed counsel specifically Petitioner as their attorney.
4. Petitioner was suspended by the Maine Commission on Indigent Legal Services in late January 2024 by an *ex parte* process.
5. Petitioner timely appealed his suspension through the appellate process provided by the MCILS rules.
6. Despite filing an appeal MCILS has refused to pay Petitioner for his time on its cases or recognize a stay of its suspension pending Petitioner's appeal.
7. In fact, on more than one occasion MCILS has informed Petitioner that it will refuse to pay Petitioner for his services effective the date listed on its suspension.

8. Further, MCILS has stated to others, specifically court clerks, that it will not pay Petitioner for his work.
9. MCILS demanded that Petitioner withdraw from representing cases funded by MCILS even while Petitioner sought to resolve the concerns of the suspension without having to withdraw.
10. In March 2024 Petitioner filed motions to withdraw from all his MCILS-related cases.
11. Although some motions remain unacted on, most motions have been granted and Petitioner has been relieved of his obligation to represent defendants (and other parties). Sadly in the vast majority of cases those former clients are now without counsel.
12. However, in more than one matter Petitioner was granted withdrawal but was not excused from the case until new counsel is appointed by the court through the MCILS system/roster. Several of Petitioner's Motions to Withdraw are still outstanding and he may have more matters from which his withdrawal is conditioned on new counsel being appointed.
13. As has become clear, Petitioner is at risk of being forced to work without compensation because he will only be released by courts when MCILS is able to supply suitable replacement counsel.
14. But MCILS likely cannot provide suitable counsel. That is the focus of this lawsuit.
15. Further, because MCILS is on record stating it will not pay Petitioner, Petitioner will be, like the other plaintiffs in the suit, forced into a constitutional deprivation because of the failure of MCILS to provide an adequate pool of attorneys willing to represent indigent parties.
16. Petitioner seeks declaratory and injunctive relief from MCILS that it must ensure adequate counsel to indigent Mainers (and others before the courts of Maine).
17. Petitioner specifically seeks that Defendants are required to provide a sufficient number of qualified attorneys to represent indigent defendants consistent with federal and state constitutional and statutory obligations through enforcing the obligation of MCILS pursuant to 4 M.R.S. §1801 *et. seq.*

MEMORANDUM OF LAW

Maine Rule of Civil Procedure 24 sets out the rules for intervention. In some cases, a party may be entitled to intervene as a matter of right. These are cases “(1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the application is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.” M.R. Civ. P. 24(a). Petitioner does not believe he has an unconditional right to intervene however he does assert that his interest-- to require MCILS to provide an adequate number of qualified attorneys willing and able to represent indigent Mainers-- is the same as the matter being resolved by this litigation. Pursuant to subsection (a)(2) it seems clear that Petitioner’s interest necessarily relates to the “subject of the action and the application”. Further considering the Class Action Plaintiffs’ attempts to settle this matter, the disposition of the action may as a practical matter impair or impede Petitioner’s ability to protect his interest unless his interest is adequately represented by existing parties because Petitioner seeks one thing-- a lifting of the requirement that he represent clients without compensation-- that is tied to MCILS providing more qualified attorneys. It may already be so that Petitioner's intimately related claim is in jeopardy of being impaired since current plaintiffs appear to be seeking to settle this matter with something short of what Petitioner desires: making sure that every client eligible for representation funded through MCILS is actually provided an attorney. Or less dramatically put, Petitioner is at least seeking that every one of the clients he has been granted conditional withdrawal is provided an attorney so that he can be relieved of his obligation to work for free. The fact that Class Action Plaintiffs have twice sought to resolve this litigation without that result shows that his interests likely would be impeded if this matter is resolved without his participation.

But even if Rule 24(a) does not give Petitioner a right to intervene, Rule 24(b) provides that the

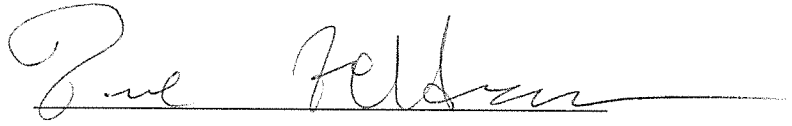
court may allow an applicant to intervene in a case where that applicant's "claim or defense and the main action have a question of law or fact in common," considering "whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Here Petitioner's claim has overlapping commonality with the Class Action Plaintiffs' in almost all areas and effects. His intervention will not cause delay or prejudice to the Class Action Plaintiffs. While it is possible that Petitioner's resolution can be achieved without mutual satisfaction of some of the other Plaintiffs receiving relief, that is not prejudicial to the Plaintiffs. Presumably a global resolution achieves all the goals of all plaintiffs, but a resolution that achieves the goals of some of the plaintiffs, without impacting the rights of the remaining group of plaintiffs is a good use of judicial economy. Here Petitioner seeks a ruling that MCILS is required to provide adequate counsel for cases in which he is being forced to work by his obligation to the court but is facing the real possibility that he will not be paid for his work. This is at least a common question of law or fact and a common remedy that Petitioner has with the members of the class of plaintiffs.

Petitioner's obligation to other courts¹ where his withdrawal is conditioned on new counsel being appointed means that he is at risk of losing his license to practice law and be held in contempt of court (and perhaps literally locked in a cell) should he refuse to handle such cases. But with MCILS refusing to pay Petitioner he is at risk of a fundamental limitation on his liberty based solely on the failure of MCILS to provide adequate counsel which is guaranteed to Class Action Plaintiffs through constitutional principles.

¹ At the time of the drafting of this Petition, Petitioner's several motions to withdraw from cases in the Kennebec County Unified Criminal Docket remain pending. It could be that his withdrawal from cases in Kennebec County is also granted conditioned on the appearance of new counsel. If so, the Petitioner may have a direct obligation to this Court.

WHEREFORE Petitioner prays this Honorable Court will grant him leave to intervene in the lawsuit as a Plaintiff and for other relief this Court finds just and proper.

Dated: March 11, 2024

A handwritten signature in cursive script, reading "Daniel D. Feldman", written over a horizontal line.

Daniel D. Feldman, Bar # 5638
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