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United States Court of Appeals
For the First Circuit

No. 25-1271

Glen Plourde,
Plaintiff – Appellant

v.

KEN MASON, Kennebec County Sheriff; TOM FEENEY, Kennebec County Sheriff's Department Office Manager; GEORGE M. JABAR, II, Kennebec County Commissioner; KENNEBEC COUNTY SHERIFF'S OFFICE; KENNEBEC COUNTY MAINE, BRIAN MACMASTER, former Chief of Investigations for the Maine Office of the Attorney General; STATE OF MAINE,
Defendants – Appellees.

Before

Barron, Chief Judge,
Gelpi, Montecalvo, Rikelman, Aframe, and Dunlap,
Circuit Judges.

JUDGEMENT

Entered: March 26, 2026

Plaintiff-Appellant Glen Plourde has filed a petition for panel rehearing and rehearing en banc that also contains a request to transfer him to "a neutral country" for medical treatment by the International Red Cross. We construe the latter

request as a petition for a writ of mandamus. So construed, we conclude that the extraordinary remedy of mandamus is not in order. See *De Graca v. Souza*, 991 F.3d 60, 63-65 (1st Cir. 2021) (general mandamus principals). Accordingly, Plourd's petition for a writ of mandamus is denied.

Further, the petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and the petition for rehearing en banc be denied.

By the Court:

Anastasia Dubrovsky, Clerk

United States Court of Appeals
For the First Circuit

No. 25-1271

Glen Plourde,
Plaintiff – Appellant

v.

KEN MASON, Kennebec County Sheriff; TOM FEENEY, Kennebec County Sheriff's Department Office Manager; GEORGE M. JABAR, II, Kennebec County Commissioner; KENNEBEC COUNTY SHERIFF'S OFFICE; KENNEBEC COUNTY MAINE, BRIAN MACMASTER, former Chief of Investigations for the Maine Office of the Attorney General; STATE OF MAINE,
Defendants – Appellees.

Before

Montecalvo, Rikelman, and Aframe, Circuit Judges.

JUDGEMENT

Entered: February 27, 2026

Plaintiff-Appellant Glen Plourde has filed an appeal from the district court's screening dismissal of his complaint pursuant to 28 U.S.C. § 1915(e)(2)(B), the order barring him from filing future cases without advance permission, and the order denying his motion to reconsider and motion to stay judgment.

After our own careful review of the record and of the arguments sufficiently developed by the appellant in briefing, we conclude that the appeal presents no "substantial question," and that summary affirmance is in order. See 1st Cir. R. 27.0(c) (permitting the court to dispose of an appeal at any time if it appears that no "substantial question" remains); see also *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) (endorsing liberal construction of pro se filings); *Bradshaw v. Corr. Med. Servs., Inc.*, 6 F App'x 45, 46 (1st Cir. 2001) (unpublished per curiam opinion) (reviewing de novo the screening dismissal for failure to state a claim); *United States v. Gomez-Rosario*, 418 F.3d 90, 101 (1st Cir. 2005) (reviewing for abuse of discretion an injunction on filings); *Biltcliffe v. CitiMortgate, Inc.*, 772 F.3d 925, 930 (1st Cir. 2014) (reviewing for abuse of discretion the denial of motion for reconsideration).

With his brief, appellant has not developed any argument to challenge the dismissal of his claims under Maine law or the Maine Constitution or the denial of his motion to stay the judgement, resulting in waiver. See *Sparkle Hill, Inc. v. Interstate Mat Corp.*, 788 F.3d 25, 29 (1st Cir. 2015) (stating this court "do[es] not consider arguments for reversing a decision of a district court when the argument is not raised in a party's opening brief"). Appellant also has not demonstrated error as to the district court's conclusion that his complaint failed to state a claim upon which relief could be granted. See *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) ("While legal conclusions can provide the framework of a complaint, they must be supported by factual

allegations."). Furthermore, scrutiny of the record suggests the State of Maine is entitled to Eleventh Amendment immunity. See Edelman v. Jordan, 415 U.S. 651, 663 (1974) (stating "an unconsenting State is immune from suits brought in federal court by her own citizens as well as by citizens of another State" when the damages sought "must be paid from public funds in the state treasury") (citations omitted); see also Me. Stat. tit. 14, § 8118 (stating the state does not waive Eleventh Amendment immunity). Finally, appellant has not demonstrated an abuse of discretion in the imposition of the filing restrictions or in the denial of his motion for reconsideration, and we affirm substantially for the reasons set forth in the district court's February 19, 2025 decision. See Cok v. Family Court of Rhode Island, 985 F.2d 32, 36 (1st Cir. 1993) (per curiam) ("stating this court ha[s] not hesitated to uphold injunctions that were narrowly drawn to counter the specific offending conduct") (citations omitted); see also Perez v. Larraine Enters., Inc., 769 F.3d 23, 28 (1st Cir. 2014) (stating that, when a party's original basis for relief fails, "there was, a fortiori, no abuse of discretion in the district court's denial of [a motion for reconsideration]"); Sierra Club v. Wagner, 555 F.3d 21, 26 (1st Cir. 2009) ("[A]rguments not raised in the district court cannot be raised for the first time on appeal.").

Accordingly, the judgment of the district court and the order imposing filing restrictions are affirmed. See 1st Cir. R. 27.0(c).

By the Court;

Anastasia Dubrovsky, Clerk

Cc:

Kyle Singhal, Michael S. Raab, Brett Allen Shumate, Anna Dronzek, Joshua K. Handell, Amanda Mundell

1:24-cv-00291-LEW PLOURDE v. MASON et al
CASE CLOSED on 02/19/2025

ENJOINED, APPEAL, CLOSED, STANDARD

U.S. District Court

District of Maine

Notice of Electronic Filing

The following transaction was entered on 03/19/2025 at 3:29 PM EST and filed on 03/19/2025

Case Name: PLOURDE v. MASON et al
Case Number: 1:24-cv-00291-LEW
Filer:
WARNING: CASE CLOSED on 02/19/2025
Document Number: 49(No document attached)

Docket Text:
ORDER – The Motion for Reconsideration (40) is DENIED pursuant to Rule 62.1. The Motions (43 & 44) seeking relief related to staying judgment pending appeal are DENIED. Rule 62(a) does not speak to this situation because there is no party seeking to execute or enforce the judgment. A party must request the stay of injunctive relief imposed in a district court order, pending appeal, pursuant to Rule 8 of the Federal Rules of Appellate Procedure. By JUDGE LANCE E. WALKER. (clp)

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

GLEN PLOURDE,

Plaintiff,

v. CIVIL NO. 1:24-cv-00291-LEW

KEN MASON, et al.,

Defendants,

JUDGMENT OF DISMISSAL

In accordance with the Order Affirming Recommended Decision, Granting Motions to Amend, Dismissing Case, and Enjoining the Filing of Further Cases without Advance Judicial Authorization entered by Chief U.S. District Judge Lance E. Walker on February 19, 2025,

JUDGMENT of Dismissal is hereby entered.

CHRISTA K. BERRY
CLERK

By: /s/ Charity Pelletier
Deputy Clerk

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

GLEN PLOURDE,

Plaintiff

v. CIVIL NO. 1:24-cv-00291-LEW

KENNEBEC COUNTY SHERIFF'S OFFICE, et al.,

Defendants

ORDER AFFIRMING RECOMMENDED DECISION, GRANTING MOTIONS TO AMEND, DISMISSING CASE, AND ENJOINING THE FILING OF FURTHER CASES WITHOUT ADVANCE JUDICIAL AUTHORIZATION

Between August 15, 2018 and October 5, 2018, Plaintiff Glen Plourde filed nine police reports with the Kennebec County Sheriff's Office. Evidently the reports concerned happenings at Plaintiff's then residence, though apparently they also related to Plaintiff's contention that he was "tortured by the Government" a year or two prior and sought "a referral to the International Red Cross" for "impartial medical testing and treatment." Proposed Second Am. Compl. ¶¶ 1-54. As alleged, the Sheriff's Office was not responsive to Plaintiff's reports and

eventually informed Plaintiff they would not accept more reports from him. Although the Sheriff's Office was not responsive to Plaintiff, it was aware of a conflict at Plaintiff's residence involving another tenant in the building and responded at some point, presumably after the other tenant's request for assistance. Regardless, it is apparent that both sides were heard in the dispute between tenants and the matter between them eventually ripened into charges and protection from harassment proceedings. *Id.* ¶¶ 89-91.

Plaintiff suspects that what he considers unfair treatment by the Sheriff's Office (and others) is the result of his disclosure that he was once tortured by the Government. *Id.* ¶54. Plaintiff sought assistance from state and county officials, and allegedly the FBI, to try to make the Sheriff's Office respond to his reports, but to no avail. *Id.* ¶ 77. Plaintiff claims that Attorney Jabar, allegedly in cahoots with the presiding state court judge, was seeking to evict Plaintiff so that International Red Cross flags that Plaintiff was displaying at his residence could be removed. Based on the list of defendants named in his Complaint, in Plaintiff's view nearly everyone with law enforcement authority in Kennebec County has conspired to deprive him of his supposed affirmative rights to be helped rather than hindered by law enforcement. *Id.* ¶¶ 82-85.

On October 4, 2024, United States Magistrate Judge John C. Nivison filed with the Court, with copies to Plaintiff his Recommended Decision on Plaintiff's Complaint (ECF No. 8). Judge Nivison explained the shortcomings in Plaintiff's factual allegations and legal theories and recommended that the case be dismissed pursuant to 28 U.S.C. §

1915(e)(2)(B). After being granted extensions, Plaintiff filed an Objection to the Recommended Decision (ECF No. 15), along with a Motion to Amend Complaint (ECF No. 16). Magistrate Judge Nivison granted leave to amend the complaint, screened the amended pleadings, and again recommended that the case be dismissed. Order on Motion to Amend Complaint and Supplemental Recommended Decision (ECF No. 17). After again being granted several extensions, Plaintiff filed an Objection on January 17, 2025 (ECF No. 33), along with a Motion to File a Second Amended Complaint (ECF No. 34). On January 21, he filed a Motion to Amend Proposed Second Amended Complaint (ECF No. 36). Then on February 12, he filed a Motion to (further) Amend Proposed Second Amended Complaint (ECF No. 37).

In the course of his filings, Plaintiff appears to have abandoned several of the claims he asserted in his original Complaint. However, he has also added new parties, including the State of Maine. Despite the potential waiver of certain claims screened by Judge Nivison, I have reviewed and considered the Recommended Decision on the original complaint, the Supplemental Recommended Decision on the amended complaint, and the entire record associated with same, and have made a *de novo* determination of the matters adjudicated by Judge Nivison in his first Recommended Decision and in his Supplemental Recommended Decision. I concur with the recommendations of United States Magistrate Judge and dismiss the claims for the reasons recommended. It is therefore **ORDERED** that the Recommended Decision (ECF No. 8) and

Supplemental Recommended Decision (ECF No. 17) of the Magistrate Judge are hereby **ADOPTED**.

As for Plaintiff's more recent Motion to File Second Amended Complaint (ECF No. 34), Motion to Amend Proposed Second Amended Complaint (ECF No. 36), and further Motion to Amend Proposed Second Amended Complaint (ECF No. 37), these motions are summarily granted, but the case is, nonetheless, dismissed for failure to state a plausible claim for relief. Plaintiff's new claim of a conspiracy on the part of all of the defendants to deprive him of procedural and substantial due process seemingly asks this Court to review the merits of the state court matters discussed in Plaintiff's pleadings, which would be improper. *Donovan v. Fowle,* 762 F. Supp. 2d 186, 196 (D. Me. 2011).[1] But even if that is not his request, the allegations do not give rise to a procedural due process claim. By all appearances, Plaintiff had notice and an opportunity to be heard in the context of his state court matters. *Herwins v. City of Revere,* 163 F.3d 15, 18 (1st Cir. 1998). And if Plaintiff believes he has a procedural due process right to beneficent police intervention I am unaware of any authority for that proposition. Furthermore, Plaintiff does not have a substantive due process claim. Executive action will only give rise to a substantive due process violation when the action is arbitrary or conscience-shocking in a constitutional sense, such as acts involving an abusive or brutal exercise of power for purposes of oppression. *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846-47 (1998).

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[1] Additionally, it is not evident that the Defendants are responsible for ensuring that Plaintiff receives due process in state court proceedings.

Defendants' alleged failure to act at Plaintiff's behest does not rise to that level.

Finally, it is apparent from a review of Plaintiff's allegations and other cases he has filed in this Court that the inferences upon which he often relies to assert claims against government actors and others are more paranoid than plausible, and that his allegations typically suppose large-scale conspiracies involving government and private actors. I have twice issued orders warning Plaintiff that filing restrictions may be in the offing based on such allegations. *See* Order of Dismissal, *Plourde v. State of Maine*, No. 1-20-cv-00137-LEW (ECF No. 8) (citing *Cok v. Family Court of Rhode Island*, 985 F.2d 32, 35 (1st Cir. 1993), and taking notice of prior dismissals in *Plourde v. United States and State of Maine*, 1:19-cv-00486-JAW (ECF No. 11) (partial dismissal), and *Plourde v. United States*, 2:19-cv-00532-JAW (ECF No. 24); see also Order of Dismissal, *Plourde v. State of Maine*, No. 1:20-cv-00149-LEW (ECF No. 8) (also citing *Cok* and pointing out the same prior dismissals). Like myself, Judge John Woodcock and Magistrate Judge John Nivison have also concluded Plaintiffs pleadings in other matters may fairly be characterized as implausible in the irrational sense, citing *Denton v. Hernandez*, 504 U.S. 25, 33 (1992).

At the same time, Plaintiff has managed to assert some plausible claims in this Court, including in case number l:19-cv-00486 and case number l:23-cv-00323. Then again, there is another case in which the Court has given Plaintiff leeway to attempt to develop claims that were rather outlandish, only to eventually dismiss his case after the review of five amended complaints and the accumulation of sixty-plus docket entries, all without a single defendant

ever being served. See *Plourde v. Redington Fairview General Hosp.*, 1:20-cv-00011-JAW. In a somewhat similarly themed case against another care provider, who like Redington Fairview appears to have encountered Plaintiff as a result of a mental health crisis, Plaintiff alleged coerced treatment at the direction of the Federal Government or the FBI. *Plourde v. Northern Light Acadia Hospital*, 1:20-cv-00043-JAW. There, like in Redington Fairview and this case, Plaintiff has basically used the Court's docket as a drafting platform to revise his pleadings over the course of several months, consuming a considerable amount of the time of judicial officers and Clerk's Office staff that could be better spent elsewhere.[2] Given these patterns and predilections on the part of Plaintiff, I conclude that a filing restriction is warranted so that the Court can review and consider his future cases in a less formal fashion than has been observed to date, docketing and advancing only those matters that warrant service on a defendant, without engaging with Plaintiff in the back and forth of screening recommendations, objections, and serial motions to amend.

CONCLUSION

[2] In another recent matter filed by Plaintiff in this Court, Plaintiff abandoned claims voluntarily after receiving a screening decision that recommended dismissal of his claims against Penobscot County officers who failed to effectuate proper service upon persons Plaintiff sought to sue. *Plourde v. Kinley*, 1:24-cv-00198-LEW. While it is commendable that Plaintiff would abandon a case after reviewing a decision that explains why his claims are not viable, the *Kinley* matter is still emblematic of an overly litigious individual who seems to want to turn every interaction with law enforcement into a federal case.

The Recommended Decision (ECF No. 8) and Supplemental Recommended Decision (ECF No. 17) of the Magistrate Judge are hereby ADOPTED. Plaintiff's Motion to File Second Amended Complaint (ECF No. 34), Motion to Amend Proposed Second Amended Complaint (ECF No. 36), and further Motion to Amend Proposed Second Amended Complaint (ECF No. 37), are summarily GRANTED. Following review of the amendments, the case is DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B).

A *Cok* order is issued against Glen Plourde to bar proceedings on any future cases without advance permission. The Clerk of this Court is directed to refuse to file or docket, without a prior order of this Court, any pleadings or paper submitted by or on behalf of Glen Plourde. This order does not apply to any matters currently pending in this Court. If Glen Plourde wishes to appeal this Order, he shall file a paper notice of appeal with the Clerk's Office of this Court within the time allowed by the Federal Rules of Appellate Procedure.

SO ORDERED,

Dated this 19th day of February, 2025.

/s/ Lance E. Walker
Chief U.S. District Judge

GLEN PLOURDE,

Plaintiff,

v. CIVIL NO. 1:24-cv-00291-LEW

KEN MASON, et al.,

Defendants,

ORDER ON MOTION FOR LEAVE TO AMEND COMPLAINT AND SUPPLEMENTAL RECOMMENDED DECISION

Following a preliminary review of Plaintiffs complaint in accordance with 2.8. USC § 1915, I recommended the Court dismiss the matter. (Recommended Decision, ECF No. 8.) Plaintiff subsequently filed an objection to the Recommended Decision (Objection, ECF No. 15) and a motion for leave to amend the complaint. (Motion, ECF No. 16.) After consideration of Plaintiffs motion, I grant the motion to amend and reiterate my recommendation that the Court dismiss the matter.

DISCUSSION

"A party may amend its pleading once as a matter of course" within twenty-one days of serving it. Fed R Civ P l 5(a)(l). Because the defendants have not been served with the complaint and because Plaintiff has not previously amended the complaint, Plaintiff is

entitled to amend his complaint. The amended complaint, therefore, is accepted for filing.

As in the original complaint, the gravamen of Plaintiffs amended complaint is that he made multiple complaints of criminal conduct to law enforcement, but law enforcement did not investigate the conduct. The question is whether the amended complaint adequately addresses the concerns identified in the Recommended Decision.

A. Equal Protection Claims

As in the original complaint, the gravamen of Plaintiffs amended complaint is that he made multiple complaints of criminal conduct to law enforcement, but law enforcement did not investigate the conduct. The question is whether the amended complaint adequately addresses the concerns identified in the Recommended Decision.

In the Recommended Decision, I found that Plaintiff had failed to allege an actionable Equal Protection Claim because he had not alleged any facts that would support a finding of disparate treatment. (Recommended Decision at 7.) In the amended complaint, Plaintiff includes more allegations in support of his equal protection claim. The circumstances Plaintiff cites in support of his equal protection claim involve law enforcement's lack of response to complaints of conduct by his landlord. Plaintiff alleges that the Kennebec County Sheriffs Office (KSO) responded to complaints of another "similarly situated" tenant but did not respond to his complaints. (Amended Complaint , 53, ECF No. 16-1.)

The evaluation of an equal protection claim begins with consideration of two issues: (1) whether "the person, compared with others similarly situated, was selectively treated"; and, if so, (2) whether "such selective treatment was based on impermissible considerations such as race, religion, intent to inhibit or punish the exercise of constitutional rights, or malicious or bad faith intent to injure a person." *Rubinovitz v. Rogato*, 60 F 3d 906, 910 (1st Cir. 1995) (quoting *Yerardi's Moody St. Rest. & Lounge, Inc. v. Bd. of Selectmen*, 878 F.2d 16, 21 (1st Cir. 1989)). Plaintiff has alleged no facts that would suggest that the KSO's conduct was based on an impermissible basis such as race or religion. Plaintiffs allegations do not support his contention that he is a member of a suspect class.

When an individual alleges the government singled that person out for reasons unique to the person, rather than for the person's membership in any group, that "class of one" claim requires the individual to show that he or she was "intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Snyder v. Gaudet*, 756 F.3d 30, 34 (1st Cir. 2014) (quoting Vill. of Willowbrook v. Olech, 528 US 562, 564 (2000) (per curiam)). Plaintiff, however, has not alleged an actionable class of one claim.

First, Plaintiff's allegations regarding the other tenant are conclusory and are insufficient to support a finding that the other tenant was similarly situated for purposes of an equal protection claim. In addition, and more importantly, class of one claims do not apply to "forms of state action . . . which by their nature involve discretionary decisionmaking based on a vast array of subjective, individualized

assessments." *Engquist v. Oregon Dep 't of Agric.*, 553 U.S. 591, 602 (2008) (holding class of one claim not applicable to public employment); see also *Cousins v. Higgins*, No. 1:14-cv-515-DBH, 2015 WL 3755272, at *5 (D. Me. June 15, 2015) (holding class of one claim not applicable to response of firefighters to ongoing fire). Law enforcement has broad discretion to decide whether and how to respond to the complaints it receives.

B. Claim against Brian MacMaster

Plaintiff seeks to add Brian MacMaster, the former Chief of Investigations for the Maine Office of the Attorney General, as a defendant. (Amended Complaint, ¶7.) According to Plaintiff, in response to materials Plaintiff sent to Mr. MacMaster's office about alleged inaction by the KSO, Mr. MacMaster declined to assist and stated in part that his office had "no authority or control over the operations of law enforcement agencies in this state." (Id. ¶72.) As discussed in the Recommended Decision, governmental inaction like Plaintiff has alleged cannot support a due process claim. (See Recommended Decision at 5-6); *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 US 189 195-96 (1989). Additionally, Plaintiff has not alleged sufficient facts to support an Equal Protection claim against Mr. MacMaster.

CONCLUSION

For the reasons discussed above, I grant Plaintiff's motion to amend his complaint. Based on the foregoing analysis and the analysis set forth in the

original Recommended Decision, I recommend the Court dismiss the mater.

NOTICE

Any objections to the order on motion to amend shall be filed in accordance with Federal Rule of Civil Procedure 72.

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U S C § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within fourteen (14) days of being served with a copy thereof.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

/s/ John C. Nivison
U.S. Magistrate Judge

Dated this 25th day of November, 2024.

GLEN PLOURDE,

Plaintiff,

v. CIVIL NO. 1:24-cv-00291-LEW

KEN MASON, et al.,

Defendants,

RECOMMENDED DECISION AFTER REVIEW OF PLAINTIFF'S COMPLAINT

Plaintiff seeks to recover damages allegedly resulting from Defendants' failure to respond to Plaintiffs reports of criminal activity. (Complaint, ECF No. 1.) Plaintiff also filed a motion to proceed without payment of fees, which motion the Court granted. (Motion, ECF No. 4; Order, ECF No. 6.)

In accordance with the statute governing actions filed without the prepayment of fees, a preliminary review of Plaintiffs complaint is appropriate. 28 U.S.C. § 1915(e)(2). Following a review of Plaintiffs complaint, I recommend the Court dismiss the matter.

FACTUAL BACKGROUND

Plaintiff alleges that he has filed numerous reports describing criminal acts committed against him with the Kennebec County Sheriff's Office (KCSO). (Complaint ¶75, ECF No. 1.) The reports

were filed on August 15, 2018; August 20, 2018; August 22, 2018; August 24, 2018; August 31, 2018; September 7, 2018; September 14, 2018; September 26, 2018; and October 5, 2018. (*Id.*) Plaintiff asserts that the KCSO and the other defendants did not contact him about the events described in his reports nor do anything to assist Plaintiff. (*Id.* ¶¶76, 78.) Based on this alleged inaction, Plaintiff seeks to assert federal and state claims against Kennebec County,[1] the KCSO, Kennebec County Commissioner George Jabar II, KCSO Office Manager Tom Feeney, and Kennebec County Sheriff Ken Mason.[2] Defendants Jabar, Feeney, and Mason are sued in their individual capacities. (*Id.* ¶101.)

LEGAL STANDARD

---

[1] "[A] plaintiff seeking to impose liability on a municipality under § 1983 ... [must] identify a municipality 'policy' or 'custom' that caused the plaintiffs injury." *Bd. Of County Comm 'rs v. Brown*, 520 U.S. 397, 403 (1997). In his complaint, Plaintiff does not identify a specific policy or custom of Kennebec County but instead states that he expects evidence of such a policy or custom to be uncovered during discovery. (Complaint, ¶54.) Because Plaintiff also names county employees in their individual capacity as defendants, I address whether Plaintiffs allegations are sufficient to allege a constitutional violation regardless of whether he has alleged a claim of municipal liability.

[2] The claims against Defendants KCSO, Jabar, Feeney, and Mason, might be barred or limited by qualified immunity. *Cf. Pearson v. Callahan*, 555 U.S. 223,231 (2009) ("[Q]ualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."). Because I conclude that Plaintiff has not alleged a constitutional violation (see below), I do not reach the question of qualified immunity.

28 U.S.C. § 1915 is designed to ensure meaningful access to the federal courts for individuals unable to pay the cost of bringing an action. When a party is proceeding pursuant to § 1915, however, "the court shall dismiss the case at any time if the court determines," *inter alia*, that the action is "frivolous or malicious" or "fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2)(B). "Dismissals [under § 1915] are often made sua sponte prior to the issuance of process, so as to spare prospective defendants the inconvenience and expense of answering such complaints." *Neitzke v. Williams*, 490 U.S. 319, 324 (1989).

When considering whether a complaint states a claim for which relief may be granted, courts must assume the truth of all well-plead facts and give the plaintiff the benefit of all reasonable inferences therefrom. *Ocasio-Hernandez v. Fortuno-Burset*, 640 F.3d 1, 12 (1st Cir. 2011). A complaint fails to state a claim upon which relief can be granted if it does not plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A self-represented plaintiff is not exempt from this framework, but the court must construe his complaint 'liberally' and hold it 'to less stringent standards than formal pleadings drafted by lawyers.'" *Waterman v. White Interior Sols.*, No. 2:19-cv-00032-JDL, 2019 WL 5764661, at *2 (D. Me. Nov. 5, 2019) (quoting *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)). "This is not to say that pro se plaintiffs are not required to plead basic facts sufficient to state a claim." *Ferranti v. Moran*, 618 F.2d 888, 890 (1st Cir. 1980).

DISCUSSION

Plaintiff, citing 42 U.S.C. § 1983 and 5 M.R.S. § 4682 as authority for his claims, alleges Defendants violated his rights secured by the Fifth and Fourteenth Amendments to the United States Constitution and Section 6-A of the Maine State Constitution.

A. Plaintiff's Federal Claims

Plaintiff cites 42 U.S. C. § 1983 as a basis for this Court's jurisdiction. Pursuant to the federal civil rights statute:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage ... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law ....
>
> 42 U.S.C. § 1983.

Section 1983 "'is not itself a source of substantive rights,' but merely provides 'a method for vindicating federal rights elsewhere conferred.'" *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)). To maintain a claim under section 1983, a plaintiff must establish: "1) that the conduct complained of has been committed under color of state law, and 2) that this conduct worked a denial of rights secured by the Constitution or laws of the United States." *Barreto-Rivera v. Medina-Vargas*, 168 F.3d 42, 45 (1st Cir. 1999).

Plaintiff alleges that Defendants' conduct was under color of state law. The issue is whether Plaintiff has alleged sufficient facts to assert an actionable claim based on the denial of rights secured to him under the Constitution.

1. Fifth Amendment

The Due Process Clause of the Fifth Amendment provides that "[n]o person shall . . . be deprived of life, liberty, or property without due process of law .... " U.S. Const. amend. V. "The Fifth Amendment Due Process Clause ... applies 'only to actions of the federal government-not to those of state or local governments." *Martinez-Rivera v. Sanchez Ramos*, 498 F.3d 3, 8 (1st Cir. 2007) (quoting *Lee v. City of Loss Angeles*, 250 F.3d 668, 687 (9th Cir. 2001). Because none of the defendants in this case is a federal actor, Plaintiff has not alleged an actionable claim under the Fifth Amendment.

2. Fourteenth Amendment

a. Due Process Claim

The Fourteenth Amendment's Due Process Clause prohibits state deprivations of "life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. The Supreme Court explained in *DeShaney v. Winnebago County Department of Social Services* that the Due Process Clause does not

require[] the State to protect the life, liberty, and property of its citizens against invasion by private actors. The Clause is phrased as a limitation on the State's power to act, not as a guarantee of certain

minimal levels of safety and security. It forbids the State itself to deprive individuals of life, liberty, or property without 'due process of law,' but its language cannot fairly be extended to impose an affirmative obligation on the State to ensure those interests do not come to harm through other means. . . . [The Due Process Clause's] purpose was to protect people from the State, not to ensure that the State protected them from each other. The Framers were content to leave the extent of governmental obligation in the latter area to the democratic political process. Consistent with these principles, [] cases have recognized that the Due Process Clauses generally confer no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual. . . . If the Due Process Clause does not require the State to provide its citizens with particular protective services, it follows that the State cannot be held liable under the Clause for injuries that could have been averted had it chosen to provide them. As a general matter then, we conclude that a State's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause.

DeShaney v. Winnebago Cty. Dept. of Soc. Servs., 489 U.S. 189, 195-96 (1989) (using State to refer "generically to state and local governmental entities and their agents."); see also *Warren v. District of Columbia*, 444 A.2d 1, 4 (D.C. App. 1981) (affirming lower court's holding recognizing "the well-established rule that official police personnel and the government employing them are not generally liable

to victims of criminal acts for failure to provide adequate police protection.").

Here, Plaintiff alleges a Fourteenth Amendment violation based on Defendants' inaction in response to his complaints about criminal activity perpetrated against him. Under the reasoning of *DeShaney*, Plaintiffs allegations do not support a due process claim. See *Stow v. Sloper*, No. 18-cv-1108-LM, 2020 WL 1516557, at *1 (D.N.H. Jan. 3, 2020), *rec'd dec. aff'd*, 2020 WL 1517062 (D.N.H. Mar. 27, 2020) ("There is no cause of action under 42 U.S.C. § 1983 for the failure to investigate a crime, as there is no federal constitutional right to have criminal wrongdoers investigated or brought to justice.") (citing *Linda R. S. v. Richard D.*, 410 U.S. 614 (1973)).

b. Equal Protection Claim

The Fourteenth Amendment provides under the Equal Protection Clause that "[n]o State shall ... deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend XIV, § 1. For a plaintiff to allege a claim under the Equal Protection Clause, the plaintiff must establish that she or he was "treated differently from others similarly situated." *Estate of Bennett v. Wainwright*, 548 F.3d 155, 166 (1st Cir. 2008) (affirming grant of summary judgment on Equal Protection claim when plaintiffs pleadings did not compare treatment of plaintiff to treatment of any person similarly situated); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432,439 (1985); see *Vill. of Willowbrook v. Olech*, 538 U.S. 562,564 (2000); *Santos v. Fed. Emergency Mgmt. Agency*, 327 F. Supp. 3d 328, 341

(D. Mass. 2018). This requirement "demands more than lip service" and "is meant to be 'a very significant burden." *Cordi-Allen v. Conlon*, 494 F.3d 245, 251 (1st Cir. 2007) (quoting *Discovery House, Inc. v. Consol. City of Indianapolis*, 319 F.3d 277, 283 (7th Cir. 2003)); see *Barrington Cove Ltd. P'ship v. R.I Hous. And Mortg. Fin. Corp*, 246 F.3d 1, 8 (1st Cir. 2001) (affirming Rule 12(b)(6) dismissal because plaintiffs failed the "similarly situated" test).

Plaintiff asserts that he was intentionally treated differently from other residents of Kennebec County seeking police assistance. (Complaint, ¶52.) Plaintiff's relevant allegations are conclusory; he does not allege any facts that would support the disparate treatment necessary to support an equal protection claim.[3]

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[3] Even if Plaintiff had alleged enough facts to support a finding that he was treated differently from similarly situated individuals, Plaintiffs allegations would likely not allege an actionable equal protection claim. If Plaintiff had an equal protection claim, the claim would undoubtedly be a "class of one" claim. *See Snyder v. Gaudet,* 756 F.3d 30, 34 (1st Cir. 2014) (When an individual alleges the government singled that person out for reasons unique to the person, rather than for the person's membership in any group, that "class of one" claim requires the individual to show that he or she was "intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment") (quoting *Vil!. Of Willowbrook v. Olech,* 528 U.S. 562, 564 (2000) (per curiam)). In *Engquist v. Oregon Department of Agriculture,* the Supreme Court held that class of one claims do not apply to "forms of state action ... which by their nature involve discretionary decisionmaking based on a vast array of subjective, individualized assessments." 553 U.S. 591, 603 (2008) (holding class of one claim not applicable to public employment); *see also Cousins v. Higgins,* No. 1:14-cv-515-DBH, 2015 WL 3755272, at *5 (D. Me. June 15, 2015) (holding class of one claim not applicable to response of

B. Plaintiff's State Law Claims

5 M.R.S. § 4682 is the Maine analogue to 42 U.S.C. § 1983. *Cohen ex rel. Cohen v. City of Portland*, 110 F.4th 400, 404 (1st Cir. 2024). "The disposition of a [section] 1983 claim also controls a claim under the [analogous Maine statute]." *Id.* (quoting *Berube v. Conley*, 506 F.3d 79, 85 (1st Cir. 2007)). Therefore, the above analyses apply to any claims brought under 5 M.R.S. 4682 alleging violations of the Fifth and Fourteenth Amendments to the U.S. Constitution. Because Plaintiff has not alleged an actionable claim based on the violation of a federal right or law, Plaintiff cannot proceed on his claims based on an alleged violation of the Maine State Constitution.

CONCLUSION

Based on the foregoing analysis, after a review of Plaintiffs complaint m accordance with 28 U.S.C. § 1915, I recommend the Court dismiss the matter.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a

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firefighters to ongoing fire). Given law enforcement's discretion to decide whether and how to respond to the complaints it receives, Plaintiff has not alleged and would likely be unable to allege facts that would support an actionable class of one claim.

supporting memorandum, within fourteen (14) days of being served with a copy thereof.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

/s/ John C. Nivison
U.S. Magistrate Judge

Dated this 4th day of October, 2024.

Geneva Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987, in accordance with article 27 (1)

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading

Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

PART I

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the victim is a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory

under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to

enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph I of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than

those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph I of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

18 U.S.C. § 2340

As used in this chapter—

(1) "torture" means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control;

(2) "severe mental pain or suffering" means the prolonged mental harm caused by or resulting from—

(A) the intentional infliction or threatened infliction of severe physical pain or suffering;

(B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

(C) the threat of imminent death; or

(D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality; and

(3) "United States" means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States.

(Added Pub. L. 103–236, title V, § 506(a), Apr. 30, 1994, 108 Stat. 463; amended Pub. L. 103–415, § 1(k), Oct. 25, 1994, 108 Stat. 4301; Pub. L. 103–429,

§ 2(2), Oct. 31, 1994, 108 Stat. 4377; Pub. L. 108–375, div. A, title X, § 1089, Oct. 28, 2004, 118 Stat. 2067.)

U.S. CONSTITUTIONAL PROVISIONS

THE Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution.

RESOLVED by the Senate and House of Representatives of the United States of America, in Congress assembled, two thirds of both Houses concurring, that the following Articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States, all, or any of which Articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution; viz.

ARTICLES in addition to, and Amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

Amendment I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; ***or abridging the freedom of speech,*** or of the press, ***or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.***

Amendment IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; ***nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law***; nor shall private property be taken for public use, without just compensation.

Amendment VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations, to be confronted with the witnesses against him; ***to have compulsory process for obtaining witnesses in his favor, and to have thAssistance of Counsel for his defense.***

Amendment VIII.

Excessive bail shall not be required, nor excessive fines imposed, ***nor cruel and unusual punishments inflicted.***

Amendment IX.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment XIII.

SECTION 1.

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Amendment XIV.

SECTION 1.

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. ***No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due***

process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

MAINE STATE CONSTITUTIONAL PROVISIONS

Article I.

Declaration of Rights.

Section 1. Natural Rights.

All people are born equally free and independent, and have certain natural, inherent and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness.

Section 3. Religious freedom; sects equal; religious tests prohibited; religious teachers. All individuals have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences, ***and no person shall be hurt, molested or restrained in that person's liberty or estate for worshipping God in the manner and season most agreeable to the dictates of that person's own conscience, nor for that person's religious professions or sentiments***, provided that that person does not disturb the public peace, nor obstruct others in their religious worship; -- and all persons demeaning themselves peaceably, as good members of the State, shall be equally under the protection of the laws, and no subordination nor preference of any one sect or denomination to another shall ever be established by law, nor shall any religious test be required as a qualification for any office or trust, under this State;

and all religious societies in this State, whether incorporate or unincorporate, shall at all times have the exclusive right of electing their public teachers, and contracting with them for their support and maintenance.

Section 5. Unreasonable searches prohibited. ***The people shall be secure in their persons, houses, papers and possessions from all unreasonable searches and seizures; and no warrant to search any place, or seize any person or thing, shall issue without a special designation of the place to be searched, and the person or thing to be seized, nor without probable cause – supported by oath or affirmation.***

Section 6. Rights of Persons Accused.

In all criminal prosecutions, ***the accused shall have a right to be heard by the accused and counsel to the accused, or either, at the election of the accused;***

To demand the nature and cause of the accusation, and have a copy thereof; To be confronted by the witnesses against the accused;

To have compulsory process for obtaining witnesses in favor of the accused;

To have a speedy, public ***and impartial trial,*** and except in trials by martial law or impeachment, by a jury of the vicinity. The accused shall not be compelled to furnish or give evidence against himself or herself, ***nor be deprived of life, liberty,***

property or privileges, but by judgement of that person's peers or the law of the land.

Section 6-A. Discrimination against persons prohibited.

No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of that person's civil rights or be discriminated against in the exercise thereof.

Section 9. Sanguinary laws, excessive bail, cruel or unusual punishments prohibited.

Sanguinary laws shall not be passed; all penalties and punishments shall be proportioned to the offense; excessive bail shall not be required, nor excessive fines imposed, ***nor cruel nor unusual punishments inflicted.***

Section 13. Suspension of Laws.

The laws shall not be suspended but by the Legislature or its authority.

Section 15. Right to Petition.

The people have a right at all times in an orderly and peaceable manner to assemble to consult upon the common good, to give instructions to their representatives, and to request, of either department of the government by petition or remonstrance, redress of their wrongs and grievances.

Section 19. Right of redress for injuries.

Every person, for an injury inflicted on the person or the person's reputation, property or immunities, shall have remedy by due course of law; and right and justice shall be administered freely and without sale, completely and without denial, promptly and without delay.

Article 5, Section 12. Shall Enforce the laws.

The Governor shall take care that the laws be faithfully executed.

THE MAINE CODE OF JUDICIAL CONDUCT

CANON 1

A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary; shall avoid impropriety; and should avoid the appearance of impropriety.

RULE 1.1

Compliance with the Law

A judge shall comply with the law and the Maine Code of Judicial Conduct.

RULE 1.2

Promotion of Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary; shall avoid impropriety; and should avoid the appearance of impropriety.

RULE 1.3

Avoiding Abuse of the Prestige of Judicial Office

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others; nor shall a judge convey or permit others to convey the impression that any person or organization is in a special position to influence the judge.

CANON 2

A judge shall perform the duties of judicial office impartially, competently, and diligently.

RULE 2.2

Impartiality and Fairness; Upholding the Law

A judge shall uphold and apply the law, and shall perform all judicial and administrative duties promptly, fairly, and competently. An error of law in a judicial decision, whether recognized on appeal or not, shall not constitute a violation of this Code unless the judge's action demonstrates willful or repeated disregard of explicit requirements of the law.

RULE 2.3

Bias, Prejudice, and Harassment

(A) ***A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.***

(B) ***A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice for or against an individual or a party***, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon, race, sex, gender, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, ***and shall not permit court staff, court officials, or others, while subject to the judge's direction and control, to do so.***

RULE 2.4
External Influences on Judicial Conduct

(A) A judge shall not be swayed by public clamor or fear of criticism.

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

RULE 2.5
Competence, Diligence, and Cooperation

(A) A judge shall perform judicial and administrative duties competently and diligently.

(B) A judge shall cooperate with other judges in the administration of court business.

RULE 2.6
Ensuring the Right to Be Heard

(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

(B) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that forces any party to settle. A judge may participate in case management conferences, judicial settlement conferences, and dispositional conferences, and such participation

alone does not disqualify the judge from participating in later adjudicatory proceedings.

(C) ***A judge may take affirmative steps, consistent with the law, as the judge deems appropriate to enable an unrepresented litigant to be heard.*** A judge may explain the requirements of applicable rules and statutes so that a person appearing before the judge understands the process to be employed. A judge may also inform unrepresented individuals of free or reduced cost legal or other assistance that is available in the courthouse or elsewhere.

RULE 2.7
Responsibility to Decide
A judge shall hear and decide matters except when disqualification or recusal is required.

RULE 2.8
Decorum, Demeanor, and Communication with Jurors
(B) ***A judge shall be patient, dignified, and courteous to litigants***, jurors, witnesses, lawyers, court staff, law enforcement and corrections officers, members of the public, and others ***with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officers, and others subject to the judge's direction and control.***

RULE 2.9
Ex Parte Communications

(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers concerning a pending or impending matter except as follows:

(1) Where circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes that does not address substantive matters is permitted, provided:

(a) The judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) The judge makes provision promptly to notify all other parties of the substance of the ex parte communication and gives the parties an opportunity to respond.

(2) A judge may obtain the written advice of a ***disinterested expert*** on the law applicable to a specific proceeding before the judge if the judge

(a) gives notice to the parties of the person to be consulted and the subject matter of the advice to be solicited, and

(b) affords the parties a reasonable opportunity to object and respond to the notice and the advice requested.

(3) A judge may consult with court staff and court officials whose functions are to aid the judge in

carrying out the judge's adjudicative responsibilities, or with other judges, ***provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record and does not abrogate the responsibility personally to decide the matter.***

(4) A judge may, ***with the consent of the parties, confer separately with the parties with or without their lawyers present, or separately with their lawyers alone.***

(5) A judge may initiate or consider any ex parte communications when expressly authorized by law, court rule, or administrative order to do so, such as when serving in judicially assisted settlement conferences or on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, counsel, treatment providers, probation officers, social workers, and others.

(B) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(C) Except when receiving case-related information about events in or around the courthouse that is relevant to assuring a fair trial and protecting the integrity of the judicial process, a judge shall not investigate facts in a

matter independently ***and shall consider only the evidence presented and any facts that may properly be judicially noticed.***

RULE 2.10
Judicial Statements on Pending and Impending Cases

(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might subsequently interfere with a fair trial or hearing.

(B) A judge shall require court staff and others subject to the judge's discretion and control to refrain from making statements that the judge would be prohibited from making.

(C) Notwithstanding the restrictions, a judge may make public statements in the course of official duties and may explain court procedures.

(D) Notwithstanding the restrictions, a judge may comment on any proceeding in which the judge is a litigant in a personal capacity.

(E) Subject to this rule, a judge may respond directly or through a third party to statements in the media or elsewhere concerning the judge's conduct in a matter.

question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the Board of Overseers of the Bar and any other appropriate authority including disciplinary boards of other jurisdictions in which the lawyer is admitted to practice. The fact that a judge has referred an attorney to the Maine Assistance Program or has filed a disciplinary complaint against an attorney with the Board of Overseers of the Bar does not provide a good faith basis for recusal when the basis for the complaint would not otherwise require recusal.

(C) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action.

(D) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Maine Rules of Professional Conduct should take appropriate action.

(E) Acts or omissions of a judge, in the discharge of disciplinary responsibilities required or permitted by sections A through D of this rule, are a part of a judge's judicial duties and shall be absolutely privileged, and no civil actions predicated thereon may be instituted against the judge.

Additional material from this filing is available in the Clerk's Office.