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Senator Breen and Representative Gattine, members of the Joint Standing Committee on Appropriations and Financial Affairs, my name is Ted Glessner and I am the State Court Administrator for the Maine Judicial Branch. I appreciate the invitation to speak to you about the challenges faced by the Judicial Branch during this pandemic emergency and our request for Coronavirus Relief Funds to support critical Judicial Branch operations.

Balancing access to justice and public health needs during the pandemic

As the coronavirus pandemic continues to unfold, the Judicial Branch has tried to strike a balance between the need to maintain operations and the social distancing measures required to limit the spread of the virus. From the beginning of the pandemic, the Judicial Branch has implemented various responses as we work to balance these two goals:

- Providing access to justice
- Ensuring the safety of the public and our employees

How the courts have managed during the COVID-19 public health crisis

The courts have remained open from the beginning of the pandemic, but only for the most serious cases involving life and liberty interests. The work of the Judicial Branch is critical and never more so than during this pandemic emergency. The courts implement the rule of law and society has no other protective recourse. Cases such as PFAs and child protection matters, serious criminal proceedings and the like do not stop because of COVID-19. While individual courthouses experienced reduced hours, especially at the start of the pandemic, the Judicial Branch has remained open throughout it all.

Focus on critical cases

Since the early days of the pandemic beginning in March, the Supreme Judicial Court has issued a series of Emergency Orders focused on limiting community transmission of COVID-19, while ensuring access to justice for those who seek protection from personal violence and whose liberty interests are at stake. This was no small task given that the basic concept of a court proceeding involves in-person appearances bringing people together in a courtroom before a Judge. Most of these courtrooms are small and under normal circumstances offer minimal space. Much of our business is still conducted by paper. And although we have been diligently working on technology solutions to automate operations, digitize court records, and implement the electronic filing of court documents, we are two years away from statewide implementation.

Given these operational limitations and the looming public health crisis, on March 13, 2020, the Supreme Judicial Court issued the first Emergency Order which provided that the courts would schedule and hear only the following:

- Arraignments and first appearances of defendants held in custody
- Motions for review of bail
- Juvenile detention hearings
- Protection from Abuse requests and hearings
- Protection from Harassment requests and hearings
- Child Protection petitions and hearings
- Mental health requests and hearings
- Hearings granted on motion

The Supreme Court's Revised Emergency Order dated March 18, 2020 expanded that list to include Emergency guardianships.

Reduced Courthouse Hours

On March 22, 2020, the Judicial Branch announced that it was reducing operations in courthouses throughout the state to further protect employees of the courts and the public. The changes were intended to ensure that the most urgent court proceedings identified in the Supreme Court's Emergency Order dated March 13, 2020 and revised March 18, 2020 could continue, while reducing the exposure of the public and Judicial Branch staff to potential contagion.

Phased Management Plan

As the pandemic emergency progressed, the Judicial Branch has worked to develop a plan to resume full operations, but there have been many challenges. On May 27, 2020, the SJC implemented the State of Maine Judicial Branch COVID-

19 Phased Management Plan (the “Plan”). The Plan creates a five-phased process for increasing the number of cases being handled and addressing the backlog of cases that has built up over the past several months. The Plan is based on the most recent scientific data available from the Maine Center for Disease Control and Prevention (CDC) and stakeholder input. The Plan sets out guidelines that must be met for each phase, including necessary staffing, availability of technology, and availability of personal protective equipment.

What the JB needs to return to full operations during the pandemic

In a very short period of time, the Judicial Branch has worked to adapt to the changing circumstances by turning to technology solutions and, in particular, the use of video conferencing to resume operations and address the backlog of cases as quickly as possible. Workgroups were created to examine the current status of all court proceedings statewide that have been affected by the pandemic and look at methods for resolving cases with remote technology and other new procedures. The move toward more “virtual” hearings is a major historical shift in Judicial Branch operations.

Technology to support remote proceedings

Video conferencing has become an important tool as the SJC has directed that hearings be conducted remotely where possible by video to limit possible exposure. After extensive review of different video conferencing platforms, our Office of Information Technology (“OIT”) determined that Zoom offers important features necessary to successfully conduct many remote proceedings. Options for closed captioning for hearing impaired litigants and breakout rooms for confidential attorney/client conversations and the like are critical for even the most basic court proceedings.

To accommodate the demand, we have purchased licenses for Zoom so that we might increase the ability to conduct remote proceedings and begin to address the backlog of cases in a safe and efficient manner. A critical component to managing large court dockets is the ability to hold a "hybrid" court session whereby some participants are in the courtroom and some attend remotely. OIT has researched and made recommendations for potential solutions which would enable all participants to see and hear one another regardless of their physical location, while also integrating interpreter services, witness testimony, document presentation, electronic document signing, large file transfers, and more.

In addition, recognizing the need for open court proceedings, the Judicial Branch has worked hard to develop and implement solutions by which members of the

public, including the press, may have access to public court proceedings given limited courthouse capacity and the move to remote hearings. Possible solutions include public streaming that could provide remote public access, as appropriate, to court proceedings without the need to physically enter a courthouse. We have submitted a request for funds to support these technology solutions which will allow us to handle more cases and address the backlog in an efficient and safe manner.

Automated case management and efilng system

Efforts to keep the court system operational without physical access to a courthouse have meant finding digital ways to do things that had primarily been done in person. And it turns out that one of our ongoing initiatives — our automated case management and efilng system — is, perhaps, among the most critical tools to address the pandemic. The automated case management system was implemented for Violations Bureau cases, and we have been working to implement the system for all cases in all courts statewide. Our hard work has paid off and we are on target to implement that system in Bangor for most civil and family matters this fall. We look to continue that expansion to other case types, courts, and regions in the spring and into 2022. Court systems around the country that have implemented similar systems prior to the pandemic have reported experiencing far less disruption to operations and have been able to shift to remote court proceedings more easily.

Public safety enhancement measures at Judicial Branch facilities

Judicial Branch leadership has had to completely rethink how much of our work must be done in person and how much can be done using technology. Unfortunately, video conferencing is not a solution for all court proceedings. Concerns about due process and a litigant's access to technology have made it difficult to provide a remote solution for all case types, including jury trials. The very notion of a jury of 12 creates logistical issues with CDC guidelines for social distancing during the pandemic. Managing traffic flow throughout the courts has been challenging given that the very essence of court proceeding is about bringing many people into close spaces for an extended period of time. Shifting guidance from the CDC as more is learned about the virus has meant that responses must be nimble and reviewed on an ongoing basis.

For those case types that must be in person, Judicial Branch leadership has developed procedures and protocols and made recommendations for facilities enhancements to keep people safe. Our facilities group conducted a statewide analysis of all facilities and identified maximum capacity limits for each space

consistent with CDC guidelines. This review has confirmed what we already suspected — very few of our courtrooms are designed to accommodate large groups during a pandemic. We have had to rethink how to handle our large dockets which must be done in person and which draw numerous lawyers and members of the public in relatively small spaces. Jury trials of all types have been delayed as we try to find a way to move forward with these case types while ensuring that social distancing is maintained.

PPE and other courthouse enhancements

The Judicial Branch has taken several steps to make sure our facilities are safe for our employees and those who must come to a courthouse during the public health emergency. Consistent with guidance from the Maine CDC and the Governor, the Judicial Branch requires that all persons entering a courthouse wear cloth face coverings. Although funding is not provided in our General Fund budget, the Judicial Branch has purchased supplies of masks for our employees and the public to ensure that all have access to appropriate PPE. We are grateful to the Executive Branch, especially DAFS and the Department of Corrections, for assisting us in providing this important equipment.

Installation of barriers in critical locations throughout Judicial Branch facilities to protect our employees and the public entering our courthouses, also using funds that were earmarked for other court needs. But more is needed including renovations to spaces that can no longer safely accommodate necessary parties and court staff. For example, very few Judicial Branch facilities have spaces that could safely accommodate a jury selection process. As an example, renting larger spaces to hold jury selections may be necessary to move the existing backlog of jury trials.

In addition, given recent reports that the virus is airborne, our facilities group has recommended enhancements to court ventilation systems to make sure that employees and the public are safe when they are required to attend in-person hearings. Unfortunately, there are no funds available for this work.

Entry screening

Entry Screening is an important component of the Judiciary's COVID-19 response and has been implemented at every open courthouse to screen for COVID as well as weapons. But the need for entry screening has limited our ability to make all courthouses available to the public across the state. Even before the pandemic, a longstanding Judicial Branch request has been to add additional law enforcement to provide entry screening at every courthouse during the hours of operation. We

are grateful for the additional resources we have received in prior years, but it falls short of the goal.

Plan to address Backlog

As discussed above, the Judicial Branch is working to address the backlog of cases that has accumulated since the beginning of the pandemic through the use of technology solutions and facilities enhancements. Most recently, the SJC released PMO-SJC-6 which establishes a process for the resumption of Forcible Entry and Detainer (FED) cases (evictions) pending from the beginning of the pandemic emergency. During Phases 1-3, the Plan only allowed certain requests for writs of possession as provided in Executive Order 40.

PMO-SJC-6 makes clear that the restriction on these cases will be lifted in Phase 4 of the Plan set to begin on August 3, 2020. Cases will be scheduled from oldest to newest. Plaintiffs will be required to file a form verifying that the property at issue in the eviction actions is not a “covered dwelling” under the CARES Act or otherwise subject to a prohibition against evictions. Every eviction action will first be scheduled for an initial telephonic status conference before being referred to mediation, when appropriate, or being scheduled for a final hearing. Hearings will be held in person at the courthouse unless otherwise ordered by the court or agreed upon by the parties and the court during the telephonic conference, or upon the granting of a party’s motion to participate remotely at the final hearing.

Another area of significant backlog is the Violations Bureau cases with approximately 5400 waiting to be heard since the beginning of the pandemic. Plans are underway to centralize these cases made possible by the automated CMS and efilng system (Odyssey) implemented two years ago for this case type. Proceedings will be conducted by video conference statewide. This two-pronged approach of combining electronic court records and video conferencing will help the court to address the backlog in an efficient manner and provides an example of what may be accomplished in the future when Odyssey is implemented for all case types statewide.

Budgetary limitations

I have attempted to outline our needs and the budget constraints above. The bottom line is that our courthouses and paper systems have proved to be inadequate in the face of this public health emergency. We can no longer delay justice. We must move forward to hear cases and address the backlog. But we cannot do it safely without implementing a combination of remote technology solutions and facilities enhancements. In some instances, we have started to implement those

solutions to keep the courts open and hearing cases. But we must do more if we are to become fully operational. We simply cannot wait for the pandemic to be over.

We have had to resort to using other funds to begin this process. We have provided a spreadsheet to show expenditures we have made or will be making in the short term. In addition to protective equipment and additional cleaning, it includes equipment and software to accommodate remote hearings, and building modifications. But by doing so, we have sacrificed in the short-term available funding for other critical court programs.

With regard to the Coronavirus Relief Fund Requests, we have provided you with the submission we made in May. Some of those things we have had to purchase to address our emergency needs. Additional needs have become evident as our response to the pandemic has developed. In general terms the scale of our needs has not changed, and the biggest expenditure, that is the funding for Audio/Video improvements has become even more urgent. If we do not receive federal funding to support these solutions, we will need to make drastic changes to our budget for the current year which will significantly impact our ability to provide services.

Thank you

I appreciate the invitation to outline some of the challenges facing the Judicial Branch. Our Coronavirus Relief Fund Request is attached and supports the ongoing efforts to address operational needs so that we may continue to provide access to justice while maintaining safety for our employees and the public.