

STATE OF MAINE
KENNEBEC, ss

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. KENSC-CV-22-54

ANDREW ROBBINS, et al.,)
)
Plaintiffs,)
)
v.)
)
MAINE COMMISSION ON INDIGENT)
LEGAL SERVICES, et al.)
)
Defendants)
)

**ORDER ON MOTION
FOR CLASS CERTIFICATION**

Before the Court is Plaintiffs’ Motion for Class Certification filed 3/1/22. Oral argument was held 6/22/22. Plaintiffs move for certification of this case as a class action, arguing under Rule 23 that they meet the requirements for class certification, and that their counsel should be appointed as class counsel as they are able to provide capable representation to the class. The proposed class consists of:

[a]ll individuals who are or will be eligible for the appointment of competent defense counsel by the Superior or District Court pursuant to 15 M.R.S. § 810 because they have been indicted for a crime punishable by imprisonment in the State Prison and they lack sufficient means to retain counsel.

Legal Standard

Pursuant to M.R. Civ. P. 23(a), a class may be certified if:

- (1) the class is so numerous that joinder of all members is impracticable,
- (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

M.R. Civ. P. 23(a). The State does not contest the Plaintiffs' claim of numerosity in subparagraph 1, nor does it contest their claim that the class will adequately represented as required by subparagraph 4.

In addition to satisfying the requirements of Rule 23(a) one of several additional requirements listed in M.R. Civ. P. 23(b) must also be met. One of those requirements, Rule 23(b)(2), states that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole."

Importantly, at the class certification stage, inquiry into the merits of a claim is limited to the Rule 23 criteria. *Campbell v. First Am. Title Ins. Co.*, 269 F.R.D. 68, 71 (D. Me. 2010).

Discussion

Plaintiffs define their proposed class as containing as many as 7,269 members, and likely contains at least 5,815 members.¹ They argue that the large number of individuals along with the everchanging composition of the class makes joinder impracticable. Plaintiffs also contend that the case depends on resolution of questions common to the proposed class members, including for example, whether MCILS has violated the Constitution in failing to provide adequate counsel to indigent defendants under Sixth Amendment standards. They argue that typicality is met because the named indigent Plaintiffs and every indigent member of the proposed class, who they claim receive inadequate representation, must receive these services through MCILS. Finally, Plaintiffs argue that the interests of the class will be fairly and adequately protected

¹ Plaintiffs acknowledge that some portion of the approximately 7,269 potential class members have hired their own attorneys but estimate that portion constitutes less than 20% of the pending felony cases in Maine. The second figure (5,815) represents Plaintiffs' highest estimation (7,269 potential class members) minus 20% of those potential class members who retain private counsel.

because the Plaintiffs have no conflicting interests and aim to vindicate their own rights as well as the rights of the other proposed class members, who are similarly situated.

For their part, Defendants begin by arguing that Plaintiffs' claim deserves extra scrutiny because it is a novel cause of action. They cite *In re New Motor Vehicles Canadian Export Antitrust Litigation* for the proposition that "when a Rule 23 requirement relies on a novel or complex theory as to injury, [the court] must engage in a searching inquiry into the viability of that theory and the existence of facts necessary for the theory to succeed." 522 F.3d 6, 26 (1st Cir. 2008). Maine courts have routinely ruled upon 42 U.S.C. § 1983 claims based on various Constitutional Amendments. *E.g. Creamer v. Sceviour*, 652 A.2d 110 (Me. 1995) (First Amendment); *Cayer v. Town of Madawaska*, 2016 ME 143, 148 A.3d 707 (First Amendment); *Struck v. Hackett*, 668 A.2d 411 (Me. 1995) (Fourth Amendment); *Richards v. Town of Eliot*, 2001 ME 132, 780 A.2d 281 (Fourth Amendment); *Miller v. Szeleni*, 546 A.2d 1013 (Me. 1988) (Fourteenth Amendment). Therefore, the fact that this claim is brought pursuant to the Sixth Amendment does not by itself make the claim novel. The Court declines to subject this claim, at this stage, to "extra scrutiny" as this is not the time for the Court to engage in a weighing of the merits of any claim made. Neither party has conducted discovery or had an opportunity to develop a factual record. The Court would finally note that the 2008 First Circuit case cited by Defendant bears no factual similarity to the constitutional claim raised here.

Defendants also directly challenge the commonality and typicality requirements of Rule 23(a) by arguing that Plaintiffs have not shown causation. They allege that the link between MCILS's alleged failures and actual injuries to the Plaintiffs have not been adequately established or described. The Court believes that the Defendants once again misconstrue the nature of Plaintiffs' remaining claim. The claim is that MCILS has failed to provide adequate

defense services causing an unconstitutional risk of deprivation of counsel - a claim that has been recognized in other jurisdictions, as the Court found in its June 2, 2022 Order on Defendants' Motion to dismiss. The Court concludes that Plaintiffs have sufficiently asserted facts on the issue of causation to satisfy the commonality and typicality requirements of Rule 23. *See Campbell*, 269 F.R.D. at 71.

Plaintiffs originally contended that their claim also satisfies Rule 23(b)(2) because they seek declaratory and injunctive relief to address Defendants' "failure to adopt rules and standards and to otherwise ensure that Plaintiffs and those similarly situated are given adequate assistance of counsel." Motion at 12. Defendants appropriately note that the Court has dismissed the Rule 80C claim brought by the Plaintiffs. They also argue that Plaintiffs' Motion fails to establish that injunctive relief is appropriate for the proposed class as a whole because the proposed class members differ in circumstance such that no determination of general applicability would be appropriate.

The Court concludes that Plaintiffs' claim satisfies Rule 23(b)(2). While the rule-making claim brought pursuant to the Maine Administrative Procedures Act is out of the case, the core of the Plaintiffs' case now is that MCILS has failed to carry out its constitutional obligations to the proposed class, creating an unconstitutional risk that all members of the proposed class will be denied effective assistance of counsel.² Plaintiffs adequately assert facts that the failures affect the class as a whole, and they seek relief that would direct MCILS to provide indigent defense services that could avoid unconstitutional harm to all proposed class members. Thus, the Court finds Plaintiffs have met the requirements of Rule 23(b)(2) as well.

² "MCILS's deficient policies and practices ... are systemic, statewide failures that expose every indigent defendant to a common harm: the unconstitutional risk that they will be deprived of effective assistance of counsel." Reply at 1. *See also, Tucker v. State*, 484 P.3d 851, 859-62, 865-6 (Idaho 2021).

In sum, the Court does not here make any finding with respect to the merits of the constitutional claim being made. It has concluded, however, that Plaintiffs have met the requirements of both Rule 23(a) and Rule 23(b)(2).

The entry is:

Plaintiffs' Motion for Class Certification is GRANTED.

The Court certifies this case as a class action with the class consisting of:

All individuals who are or will be eligible for the appointment of competent defense counsel by the Superior or District Court pursuant to 15 M.R.S. § 810 because they have been indicted for a crime punishable by imprisonment, and they lack sufficient means to retain counsel.

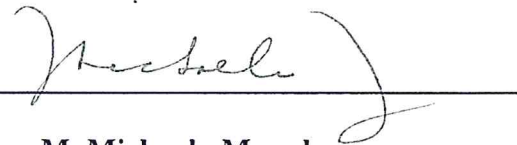
The Court further appoints the following individuals as class counsel:

Zachary L. Heiden and Anahita Sotoohi of the American Civil Liberties Union of Maine Foundation; Matt Warner and Anne Sedlack of Preti Flaherty; and Kevin P. Martin, Gerard J. Cedrone, and Jordan Bock of Goodwin Procter.

The clerk may incorporate this Order in the docket by reference. M.R. Civ. P. 79(a).

Date: July 13, 2022

Signed:



**M. Michaela Murphy
Justice, Superior Court**