

## STATEMENT FROM THE ACTING CHIEF JUSTICE REGARDING THE SCHEDULING OF CASES IN MAINE COURTS

I receive letters—very compelling letters—on a regular basis from parties and lawyers who are genuinely and appropriately aggrieved by the fact their cases have not been scheduled for hearing. The letters involve virtually all case types and offer heart-rending accounts of how the delay has resulted in hardship and -- a sense of injustice. They are often difficult to read.

The trial Court Chiefs, top level administrators, and I meet endlessly to consider how to allocate limited judicial resources and develop innovative ways to increase efficiency. The challenges and obstacles are many and, at least now, often insurmountable.

### THE “OLD” BUSINESS AS USUAL

We are now seven months into the COVID era. Looking backward, it is becoming increasingly obvious that the Maine courts have historically been able to process exceptional numbers of cases in exemplary timeframes due to practices and procedures that evolved over many decades. We were able to accomplish those case resolution numbers despite the fact that we have notably fewer judges per capita than other states having similar demographics and geography. We utilized large docket calls, robust case management, and judicial supervision of the dockets to great advantage. While case management and judicial supervision of dockets are still being used, large docket formats are simply no longer an option, and everything we do requires more resources or more time, or both.

### CHALLENGES AND OBSTACLES

Courthouses and courtrooms are places where (1) people gather, (2) in close quarters, (3) in closed spaces, (4) often with marginal ventilation systems, (5) often for extended periods of time.

In other words, courthouses and courtrooms are made to order for a highly contagious and virulent microbe. Our challenge is to balance the need for access to justice with our duty to keep the public and our staff safe.

We have instituted extensive measures to keep our courthouses from becoming places of virus transmission. These measures, however, significantly reduce the number of cases that we can process with in-person proceedings.

#### CASE TYPE PRIORITY SCHEDULING

Cases are scheduled based upon our long-standing priority case type list. Cases that involve risks of people being hurt or killed or that involve constitutionally protected liberty interests are at the top of the list. At present, with our limited resources, the higher level priority cases are essentially filling the dockets. Despite our best efforts, lower priority matters that often involve civil disputes simply cannot be scheduled until well into 2021, if not later. We cannot predict with any degree of certainty when that might be.

One of the most significant challenges to scheduling additional cases remains the limited number of judicial marshals available on any given day. We simply do not have sufficient numbers of marshals to staff entry screening at all courthouses every day. As a result, many courts are subject to regular closures to the public. We do not have the prerogative to increase the number of judicial marshals—the Legislature has the sole authority to create those positions.

We continue to expand and evolve our video remote court proceedings (Zoom) resources to the maximum degree possible. While this alternative platform allows us to process additional matters, it will not return us to pre-COVID-19 case resolution numbers.

#### JURY TRIALS

We have demonstrated that we can accomplish jury trials during the COVID era. It involves significant use of clerk and technology resources, extra planning, and some innovative approaches, but we have successfully completed the pilot experimental jury trials.

Jury trials are marshal-intensive events. We must pull marshals from other duties and other locations to staff jury trials, thereby necessitating limiting or closing other court locations. It is abundantly clear that this fact, along with

the other challenges presented by jury trials, means that we cannot conduct simultaneous jury trials in multiple locations at the same time.

Because they are priority cases, we have tabulated the pending criminal cases throughout the state, many of which involve jury trials and persons subject to pretrial detention. The numbers are staggering. At present there are more than 6,000 felony cases pending on dockets throughout the state. As of 12/31/19, there were approximately 2,600 cases that were pending more than six months; that number has increased to over 8,800 cases presently, a 240% increase.

The undeniable conclusion is civil jury trials, like the civil matters noted above, will be in line behind the priority matters on the very truncated jury trial dockets. In short, they will not be addressed until the criminal jury trial backlog has been substantially reduced.

The trial court Chiefs are starting the planning process for criminal jury trials in 2021. As expected, this process is extremely complex. Schedules will be established after consideration of (1) appropriateness of facilities, (2) availability of courtrooms, (3) availability of marshals, (4) numbers of pending cases and backlogs, and (5) availability of judges.

The court welcomes suggestions for innovative and creative solutions for addressing the challenges to operating our court system during the pandemic. We are in close contact with other courts across the country who are facing similar challenges. No one has identified a magic solution; all are doing the best they can with what they have, as are we.

HON. ANDREW M. MEAD  
Acting Chief Justice. Senior Associate Justice  
Maine Supreme Judicial Court