

STATE OF MAINE
UNIFIED CRIMINAL DOCKET

STANDING ORDER ON INITIAL ASSIGNMENT OF COUNSEL

Effective November 3, 2023

Whereas, every criminal defendant has a right to counsel at every stage of the proceeding (U.S. Const. amend. VI; Me. Const. Art. 1 sec. 6; M.R.U. Crim. P. 44(a)(1));

Whereas, the Legislature has authorized the Maine Commission on Indigent Legal Services to develop and maintain a system for providing quality and efficient indigent legal services (4 M.R.S. § 1804(3)(A) (2023));

Whereas, counsel assigned by the court to indigent defendants must be designated by the Maine Commission on Indigent Legal Services as eligible to receive assignments for the type of case to which counsel is to be assigned (M.R.U. Crim. P. 44(a)(1));

Whereas, rosters of attorneys designated by the Maine Commission on Indigent Legal Services as eligible for assignment are frequently inadequate to timely ensure court-appointed counsel for indigent defendants at every stage of the proceeding;

Whereas, criminal proceedings may be delayed by the process of assigning court-appointed counsel because the Maine Commission on Indigent Legal Services is unable to meet its statutory obligation as set forth and required by 4 M.R.S. § 1804(3)(A) (2023), or may be delayed by a defendant's retention of counsel;

Whereas, the court has duties to protect a criminal defendant's constitutional rights and ensure the appointment of counsel to indigent defendants, and ensure the speedy administration of justice;

NOW, THEREFORE, it is ORDERED as follows:

To ensure no process for seeking an attorney causes undue delay in the proceedings, the court shall determine the status of a criminal defendant's constitutionally protected right to counsel by bringing before the court (A) any defendant who is entitled to an assigned attorney and remains in custody awaiting an assignment, or (B) any defendant who expressed an intent to retain counsel or seek an indigency determination.

A. In-Custody Defendants

When an in-custody defendant is entitled to court-appointed counsel, but counsel is unavailable for assignment at the time of the initial appearance, that person shall be brought before the court on the next convenient date on which in-custody arraignments

are held, but in no event later than seven (7) days after the date of the initial appearance. Such appearance may be by audiovisual device in the discretion of the court.

At the subsequent appearance, the court shall advise the defendant of the defendant's right to counsel and assign counsel if counsel is available for assignment. If counsel is unavailable for assignment, a lawyer for the day may be designated for the limited purpose of representing the person at that appearance. The court shall proceed to hear motions regarding bail and other matters as necessary and may take such action as the court deems appropriate.

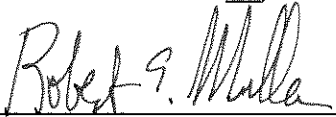
B. Defendants Not in Custody

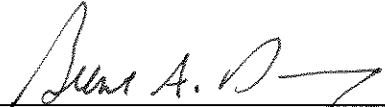
When a defendant who is not in custody is unrepresented at the time of the initial appearance or arraignment and indicates an intent to seek a determination of indigency or to retain counsel, the court shall require the defendant to (1) file a financial affidavit for purposes of a determination of indigency the same day of the initial appearance or arraignment or (2) retain counsel and have the attorney file an entry of appearance within thirty (30) days of the initial appearance or arraignment. If no affidavit or entry of appearance is filed, the court shall require the defendant to appear at a conference not later than thirty (30) days before the dispositional conference.


If a conference is held prior to a dispositional conference, the court shall determine whether the defendant has been assigned counsel or has retained counsel. If the defendant appears without counsel, the court shall advise the defendant of the defendant's right to counsel and inquire as to whether the defendant elects to proceed without counsel. The court will advise the defendant that unless the defendant files a financial affidavit for purposes of a determination of indigency before leaving the courthouse or retains counsel within two (2) weeks, the defendant risks the court finding that the defendant forfeited their right to assigned counsel by their noncompliance with this order.

SO ORDERED.

Dated: November 3, 2023


Robert E. Mullen, Chief Justice
Maine Superior Court


Brent A. Davis, Chief Judge
Maine District Court


Lea-Anne Sutton, Deputy Chief Judge
Maine District Court