

STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. SJC-23-2

State of Maine ex rel. Angelina
Dube Peterson, et al.

v.

Peter A. Johnson, et al.

STATE RESPONDENTS' MEMORANDUM OF LAW

Respondents in the above-captioned matter, Hon. Sarah Gilbert, in her official capacity, and Hon Carrie Linthicum, in her official capacity (collectively “State Respondents”), by and through undersigned counsel, pursuant to this Court’s Amended Second Procedural Order of October 17, 2023, hereby provide their Memorandum of Law in response to Petitioner’s Amended Petition for Writ of Habeas Corpus (Oct. 20, 2023) (“Amended Petition”).¹

A. The State Respondents should be dismissed.

The Amended Petition concedes that Petitioners have not stated any viable cause of action against the State Respondents. Amended Petition, p. 1, 12 (“This Court should dismiss Respondents Hon. Sarah Gilbert and Hon Carrie Linthicum . . . from this Proceeding.”). Based on Petitioners’ concession, and the absence of any viable claim against the State Respondents as a matter of law, the State Respondents should be dismissed.

¹ Respondents expressly incorporate the arguments asserted in the Response of Respondents previously filed on October 11, 2023 (“Response”).

B. The Maine Rules of Civil Procedure Apply to the Amended Petition

Habeas corpus is a civil proceeding. *Browder v. Dir., Dep't of Corr. of Illinois*, 434 U.S. 257, 269 (1978) (“It is well settled that habeas corpus is a civil proceeding”) (collecting cases)²; *see also Beaulieu v. State*, 161 Me. 248, 250, 211 A.2d 290, 291 (1965) (“[P]ost conviction habeas corpus is taken in the same mode and scope of review as any civil action.”) (internal quotations omitted). Rule 81 of the Maine Rules of Civil Procedure, expressly referencing petitions for a writ of habeas corpus, addresses the application of procedures established by the habeas statute, 14 M.R.S.A. § 5301, et seq., and the Maine Rules of Civil Procedure. “These rules do not alter the practice prescribed by the statutes of the State of Maine . . . for beginning and conducting the following proceedings in the Superior Court or *before a single justice of the Supreme Judicial Court*.” Me. R. Civ. P. 81(b) (including among enumerated causes of action, “[p]roceedings for post-conviction relief in criminal actions or *under the writ of habeas corpus*.”) (emphasis added). “In respects *not specifically covered by statute or other court rules*, the practice in these proceedings shall follow the course of the common law, but shall otherwise conform to these rules” *Id.* (emphasis added). Rule 81 directs the Court to procedures contained in statute, M. R. Civ. P. 81(e) (“In applying these rules to any proceeding to which they are applicable, the terminology of any statute which is also applicable, where inconsistent with that in these rules or inappropriate under these rules, shall be taken to mean the device or procedure proper under these rules.”), and provides the Court with discretion to determine the applicable procedure to address events for which none is specified. M. R. Civ. P. 81(f) (“When

² *Fisher v. Baker*, 203 U.S. 174, 181 (1906); *Ex parte Tom Tong*, 108 U.S. 556 (1883); *Heflin v. United States*, 358 U.S. 415, 418 n. 7 (1959).

no procedure is specifically prescribed, the court shall proceed in any lawful manner not inconsistent with the Constitution of the State of Maine, these rules or any applicable statutes.”).³

Contrary to the approach reflected by the Petition, Amended Petition, and Petitioners’ supplemental filings, the process applicable to seeking a writ of habeas corpus is not a blank slate. Consistent with Rule 81, the Maine Rules of Civil Procedure govern that procedure.

C. The Amended Petition fails to assert claims upon which relief can be granted.

Petitioners provide no factual context for the status of the newly identified Petitioners, simply alleging the number of days which had passed since their initial appearances. Amended Petition, p.4. Petitioners have failed to address the standard controlling the alleged “unlawfulness” of their detention. *See* Response, p. 14-19. Instead, the Amended Petition newly cites authority consistent with the standard advanced by the State Respondents. *Cf. Id.* at 17 (the scope of the Sixth Amendment guarantee is evaluated against “the effect of the absence of counsel on the reliability of the trial process.” (quoting *United States v. Cronin*, 466 U.S. 648, 658 (1984)) (internal quotations omitted) and Amended Petition, p. 9-10 (citing *Powell v. Alabama*, 287 U.S. 45, 59 (1932) for the proposition that the right to counsel is the right to “have sufficient time to advise with counsel and prepare his defense.”). The Amended Petition fails to advance any argument addressing the standard under which Petitioners’ could support a claim

³ Notwithstanding the statutory differences between federal and Maine habeas relief and process, including the existence of Federal Rules Governing Section 2254 Cases in the United States District Courts (available at https://www.uscourts.gov/sites/default/files/rules_governing_section_2254_and_2255_cases_in_the_u.s._district_courts_-_dec_1_2019.pdf), federal law and practice reflects the shared recognition that the Court reviewing a petition seeking a writ of habeas corpus retains significant discretion in considering procedural and substantive defects in a petition seeking habeas relief. *Id.* at Rule 4 (“If the petition is not dismissed, the judge must order the respondent to file an answer, motion, or other response within a fixed time, or to take other action the judge may order.”).

that they are under “unlawful” detention based on an alleged violation of their rights under the Sixth Amendment to the United States Constitution. *See* Response, p. 14-19.

For the reasons identified in the Response, Petitioners Amended Petition fails to assert a justiciable claim and should be dismissed. 14 M.R.S.A. § 5515 (“If, on inspection, it appears to the court or justice that such person is thereby lawfully imprisoned or restrained of his liberty, a writ shall not be granted.”); *see also Wawenock, LLC v. Dep’t of Transportation*, 2018 ME 83, ¶ 4, 187 A.3d 609, 612 (equating judgment on the pleadings to dismissal pursuant to M. R. Civ. P. 12(b)(6) upon “ascertaining whether the complaint alleges the elements of a cause of action *or facts entitling the plaintiff to relief on some legal theory.*” (quoting *Cunningham v. Haza*, 538 A.2d 265, 267 (Me. 1988)) (emphasis added).

D. To the extent the Amended Petition asserts a claim upon which relief may be granted, the State of Maine is the proper Respondent.

To the extent that the Amended Petition asserts any claim upon which relief can be granted, the State of Maine should be joined as a Respondent. “A justiciable controversy is a claim of present and fixed rights, as opposed to hypothetical or future rights, asserted by one party against another *who has an interest in contesting the claim.*” *Connors v. Int’l Harvester Credit Corp.*, 447 A.2d 822, 824 (Me. 1982) (emphasis added). Rule 19 of the Maine Rules of Civil Procedure requires a party be joined, “if (1) in the person’s absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person’s absence may (i) as a practical matter impair or impede the person’s ability to protect that interest” Me. R. Civ. P. 19(a) (further providing, “If the person has not been so joined, the court shall order that the person be made a party.”).

Petitioners, conceding to the dismissal of the State Respondents, seek relief compelling action by the State of Maine. *See* Amended Petition, p. 12 (demanding, as relief, information identifying “those unnamed parties entitled to relief,” and orders declaring as unconstitutional and compelling release of criminal defendants who “ha[ve] not received the actual assistance of counsel” for over seven days). Respondent Sheriffs are named as custodians based on Petitioner’s allegation that they are detaining the Petitioners pursuant to commitments issued by Maine judges. Even if accurate, those Respondents do not have the requisite interest in contesting Petitioners’ claims for relief. Respondent Sheriffs are, likewise, strangers to the circumstances Petitioners allege renders their continued confinement “unlawful”. *See* 14 M.R.S.A. § 5501 (permitting relief to a person “unlawfully deprived of his personal liberty”).

As in other matters requiring the joinder of parties with a cognizable interest in the claims asserted and/or the requested relief, Petitioners’ claim that their detention pursuant to a commitment issued by the Judicial Branch is “unlawful” necessary implicates the interests of the State of Maine. *See, e.g., Centamore v. Comm’r, Dep’t of Hum. Servs.*, 634 A.2d 950, 951 (Me. 1993) (dismissing appeal where plaintiffs challenging lawfulness of granting state permit failed to join permittee, “a necessary party under M.R. Civ. P. 19(a),” which would render “our opinion on the substantive merits of the appeal [] in the nature of an advisory opinion, not binding on [the permittee].”); *Booker v. Town of Poland*, 599 A.2d 812, 812 (Me. 1991) (permittee was necessary party where relief granted in permittee’s absence was “vacat[ing] the permit issued [] and remand[ing] the matter . . . with directions to dismiss [permittee]’s application for a permit”). If the claims asserted in the Amended Petition are justiciable, then, pending the dismissal of the State Respondents, this Court should join the State of Maine as a respondent.

E. The Petitioners are the individuals on whose behalf Petitioners’ counsel purports to assert entitlement to a writ of habeas corpus: not counsel asserting those claims.

The Amended Petition seeks to assert the rights of multiple “part[ies] alleged to be imprisoned or restrained of [their] liberty but not convicted or sentenced.” 14 M.R.S.A. §5511. Counsel for Petitioners are not parties to this action. *Cf.* Petitioners’ Traverse, p.5-6 (“Petitioners are Attorneys Robert Ruffner and Rory McNamera.”). The relief available pursuant to the Amended Petition is that the Court, “may issue the writ of habeas corpus *to bring before them any party alleged to be imprisoned or restrained of his liberty* but not convicted and sentenced, who would be entitled to it on his own application.” 14 M.R.S.A. § 5511 (emphasis added). As the Law Court has observed in the analogous situation of a claim brought on behalf of a minor child, “A person acting as either a next friend or a guardian ad litem is only a nominal party to the litigation; the child is the real party in interest.” *Miller v. Miller*, 677 A.2d 64, 67 (Me. 1996). Petitioners’ contention unnecessarily complicates the posture of this action and has no foundation in Maine law.

F. Petitioners are not entitled to bring this action “in the name of the State of Maine.”

The Amended Petition continues to assert claims “in the name of the State of Maine.” The Petition contends that this designation of the State of Maine as the party bringing the suit, *cf.* Petitioners’ Traverse, p.5-6 (contending that “Petitioners” are counsel executing the Petition), is authorized by Rule 17. M. R. Civ. P. 17(a) (“when a statute so provides, an action for the use or benefit of another shall be brought in the name of the State of Maine”). Petitioners contend that 14 M.R.S.A. § 5511, allowing the “application of any person” to permit the issuance of a writ of habeas corpus on behalf of a party “who would be entitled to it on his own application,” provides the statutory authorization referenced in Rule 17. It does not.

The Amended Petition applies for relief on behalf of another pursuant to 14 M.R.S.A. § 5511.⁴ However, that statute does not permit an action in the name of the State of Maine. Statutes which do permit such an action state that expressly. *See, e.g.*, 9-A M.R.S.A. § 6-113(1) (the administrator, through the Attorney General, may bring a civil action” permitting court to “grant *to each consumer affected* the option to recover all excess charges, to have the contract reformed to conform to this Act or to rescind the contract.”) (emphasis added); 5 M.R.S.A. § 4613 (authorizing action which, “shall be brought in the name of the commission for the use of the victim of the alleged discrimination or of a described class, and the commission shall furnish counsel for the prosecution thereof.”); *see also* 5 M.R.S.A. § 191(3) (“The Attorney General or a deputy, assistant or staff attorney shall appear for the State . . . in all civil actions and proceedings in which the State is a party or interested . . .”). Because there is no statutory authority for the Amended Petition to be prosecuted in “the name of the State of Maine,” it must be brought into conformity with Rule 17, identifying “the real party in interest.” M. R. Civ. P. 17(a).

G. Newly identified Petitioners

Petitioners have unilaterally eliminated any allegations with respect to Angelina Dube Peterson, the individual on whose behalf the Petition for Writ of Habeas Corpus was initially filed and whose name remains in the caption of this matter. Amended Petition, p.1. Petitioners have now named eight (8) individuals as Petitioners, collectively involving fourteen (14) underlying criminal matters. Among those eight individuals are four (4) Petitioners not

⁴ The State Respondents do not concede that the present form of action permits assertion of claims on behalf of “similarly situated” Petitioners.

addressed or identified in Petitioners' argument or the document⁵ which Petitioners filed immediately prior to the last hearing in this matter. Presumably, Petitioners have added previously undisclosed Petitioners because the four (4) individuals identified on October 16 have had counsel appear on their behalf in their underlying criminal matters. Petitioners' sole allegations specific to the new Petitioners are representations regarding the number of days since their initial appearances. Amended Petition, p.4. State Respondents, having provided this Memorandum of Law pursuant to this Court's Amended Second Procedural Order, are prepared to address the procedural posture of the underlying criminal matters and facts relevant to the status of liberty restrictions affecting the newly named Petitioners at the hearing scheduled for November 2, 2023 or prior thereto, pending the Court's direction.

CONCLUSION

As with the original Petition in this matter, it remains Petitioners' burden to identify the basis for their claim that their continued detention is "unlawful" in the Amended Petition. Petitioners have failed to meet that burden. For the aforementioned reasons, and for those reasons asserted in the Response, this Court should deny the Amended Petition and dismiss this proceeding with prejudice.

⁵ "Petitioners' Traverse" (Oct. 16, 2023).

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Respectfully submitted,

/s/ Sean D. Magenis
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