

MAINE FAMILY LAW ADVISORY COMMISSION

Report to Maine Legislature Joint Standing Committee on Judiciary On LD 291, “An Act Regarding Continuances for Protection From Abuse Hearings”

Introduction

The Maine Family Law Advisory Commission hereby reports to the Maine Legislature, Joint Standing Committee on Judiciary, on LD 291, “An Act Regarding Continuances for Protection From Abuse Hearings.” For the reasons set out below, the Commission opposes this bill as presented and submits amended language for consideration.

Discussion

Title 19-A M.R.S. § 4006(1), which governs hearing procedure in Protection from Abuse cases, states that a hearing on a Complaint for a Protection from Abuse Order must be held within 21 days. Nevertheless, the Law Court has held that, despite this statute, the District Court retains the discretion afforded to it under the Maine Rules of Civil Procedure to continue the final hearing in a Protection from Abuse matter either on its own motion or upon the motion of either party after evaluating the needs presented in the individual case. *Shaw v. Packard*. 2005 ME 122, ¶ 12, 886 A.2d 1287. LD 291 would act to limit the court’s discretion to continue the final hearing to only those requests made by a Defendant and only for the purpose of preparing for the hearing. FLAC advises against this limitation on judicial discretion.

Protection from Abuse cases are summary proceedings and are usually scheduled within 21 days of the filing of the Complaint by the Plaintiff. In practice, in light of the presenting circumstances, these matters are sometimes continued to a later date at the request of one of the parties (defendant or plaintiff) or, to a lesser extent, as a result of time and resource constraints on the court. The judicial officer presiding over the individual case is best positioned to evaluate the individual circumstances of each case and to determine any prejudice that might result to either party in granting or denying a continuance request.

Because the case law and the plain language have created some confusion—the statute seems to indicate the hearing must happen within 21 days; while the case law clarifies that court maintains discretion to continue cases—FLAC does support an amendment of the current statute, but not as LD 291 is currently drafted. As drafted, LD 291 would limit continuances to only those requested by defendants and only those for a specific reason. As drafted, this bill would seem to prohibit the court from continuing a case for other reasons, such as the court’s own schedule or a defendant or plaintiff having an unavailable, vital witness, such as a police officer or treating doctor. Instead, FLAC proposes that the Committee substitute the following amendment in place of the current bill draft:

- 1. Full hearing.** Within 21 days of the filing of a complaint, a hearing must be held at which the plaintiff must prove the allegation of abuse by a preponderance of the

evidence. If a request for temporary, emergency or interim relief is denied, the hearing must be held as soon as practicable within the 21-day period. Nothing in this section limits the court's discretion to continue the final hearing upon the court's own motion or upon the motion of either party.

Conclusion

Because LD 291 as proposed would limit judicial discretion in managing court calendars and the legitimate needs of litigants and witnesses in protection from abuse proceedings, FLAC opposes the bill as proposed and puts forward the above amendment for consideration.

Dated: February 22, 2021

Respectfully submitted:
Maine Family Law Advisory Commission

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