

**MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT**

LAW DOCKET NO: KEN-23-393

PATRICK GORDON
Appellant

v.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
Appellee

*ON APPEAL FROM THE SUPERIOR COURT
FOR KENNEBEC COUNTY*

APPELLANT'S REPLY BRIEF

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ARGUMENT

An important goal of an administrative procedure act is not only to provide a fair mechanism for regulatory conduct but to instill public confidence in the same. *See Narowetz v. Bd. of Dental Prac.*, 2021 ME 46, ¶ 29, 259 A.3d 771, 780.

In a time when the MCILS and Maine Courts are struggling to meet the Constitutional requirements for providing legal representation to criminal defendants, the MCILS continues to make random and arbitrary rules and procedures, foreclosing some lawyers from its rosters and pushing countless others away. This Court has an opportunity to restore confidence in the MCILS system, by holding it accountable for applying such arbitrary procedures as allowing the Executive Director to make his own rules and procedures without any written authority for doing so. Appellant has previously set forth the facts in his original Brief, but here addresses the Appellee's claims that he has waived his arguments regarding the procedures used by the Executive Director and the Commission in handling his matter. Contrary to Appellee's argument, Appellant more than preserved the record concerning the procedures utilized by the Executive Director and Commission.

Appellee argues that Appellant did not specifically mention the issue of the Commission's Hearing Officer refusing to allow him to subpoena witnesses to the

hearing against Petitioner and the Attorney General's Office continued conflict of interest in this matter in his brief to the Superior Court.¹

The administrative record is clear that Appellant raised these issues during the administrative process, pre-hearing and post hearing, raised the issue of the unfairness of the process in his Petition for a Rule 80C review, and in his written brief and oral argument on the 80C appeal.

In order to preserve an issue on appeal, that issue needs to be raised at the administrative agency level. *See York Hosp. v. Dep't of Health & Hum. Servs.*, 2008 ME 165, ¶ 19, 959 A.2d 67, 72. In contrast, it stands to reason that any issue raised at the administrative agency level is preserved for appeal. A simple review of the administrative hearing and pre and post filing pleadings, proves that Appellant preserved the issue of an unfair procedure, including the denial of issuance of subpoenas and the Attorney General's continuing conflict in the matter.²

In his Response and Objection to the Hearing Officer's Recommended Decision after the hearing, Petitioner specifically argued the following:

¹ In fact, despite AAG Black acknowledging that AAG Hudson-MacRae should not be representing the Commission at the hearing on this matter, he has reinstated her as counsel on this appeal.

² 5 M.R.S.A. § 9060(1) required the Hearing Officer to obtain permission from the Attorney General's Office to issue subpoenas, meaning the prosecuting agency controlled what evidence Gordon could produce.

“Third, the issue of the Attorney General’s Office representation of Andrus at the hearing has not been adequately addressed. Not only was there a blatant conflict of interest, which amazingly the AG’s office remains unconcerned about their ethical obligations, but most importantly, Gordon sought to subpoena each of the members of this Commission. Specifically, he sought to inquire about discussions regarding the case in executive session at MCILS meetings, which based on the testimony at the hearing by the three MCILS associated individuals, it was clear that his matter was discussed in executive session without Gordon being invited. A direct violation of law. More importantly, the Attorney General’s Office did not approve the subpoenas, so Gordon was prevented from calling them as witnesses. This obvious violation of the Maine Rules of Professional Responsibility regarding conflicts is alarming. The Attorney General’s office, while representing the Executive Director against Gordon, directly interfered with Gordon’s ability to adequately present his case by not allowing him to call certain witnesses. It is very difficult to comprehend how this is not a direct conflict of interest for the Attorney General and each of his assistants involved in this case.”

See Appellant’s Response to Recommended Decision, pp. 2-3, May 30, 2023.

Appellee even responded to this argument in the Executive Director’s Response to Appellant’s Comments Regarding the Presiding Officer’s Recommended Decision:

“Finally, Attorney Gordon asserts the denial of his requested subpoenas as evidence of conflict in the Office of the Attorney General. The Executive Director notes, however, that his proposed subpoena was also denied, a fact that eliminates any possible claim of discriminatory treatment.”

See Executive Director’s Response to Appellant’s Comments Regarding the Presiding Officer’s Recommended Decision, p. 3, May 31, 2023.

During oral argument at the Superior Court on the 80C appeal, the Court asked Gordon to elaborate on his claims of the unfair procedure and conflict of interest issues, during which he set forth these very arguments. *See Transcript of Oral Argument, at pp. 3-4.*

It is difficult to imagine how Gordon could have made his argument any clearer regarding the unfair process by the Commission and Attorney General's Office controlling his ability to adequately secure witnesses and the conflict of the Attorney General's Office being involved in the procedure at all.

For all of these reasons, this Court should remand this matter to the Superior Court to order the Commission to provide Attorney Gordon with a fair and just process for challenging the random and arbitrary procedure used by the Executive Director to suspend him from the rosters.

Date: March 12, 2024

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CERTIFICATE OF SERVICE

I, Verne E. Paradie, Jr. hereby certify that I have forwarded two copies of Appellant's Reply Brief via first class United States Mail to the following individuals:

Aaron Frey, AG
Megan Hudson-MacRae

Date: March 12, 2024

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