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The Unemployment Reform Blue Ribbon Commission, Findings and Recommendations, 2013

Maine Unemployment Reform Blue Ribbon Commission

Department of Labor

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The Unemployment Reform Blue Ribbon Commission

Findings and Recommendations

December 1, 2013

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I. Introduction

On May 29th, 2013, Governor Paul R. LePage signed Executive Order 2013-003, An Order Establishing the Unemployment Reform Blue Ribbon Commission. This order established that the Unemployment Reform Blue Ribbon Commission shall consist of two co-chairs, and four members appointed jointly by the co-chairs, to represent the interests of both employers and employees. Once appointed, the Commission determined that it would strive for a unanimous position, whenever possible, and it has succeeded in achieving that goal.

The Commission was tasked with reviewing various complaints and concerns raised by Maine citizens about the consistency and objectivity of the unemployment adjudication process. Furthermore, the Commission was instructed to interview personnel involved with the unemployment system to understand their perspectives and concerns, review cases and governing statutes and any regulations for clarity and consistency.

Additionally, the Commission was directed to make a recommendation to the Governor that included any measures the Commission believes appropriate, for consideration in legislative or rulemaking proposals on or before December 1, 2013.

Reduced to its simplest, the adjudication process for unemployment claims consists of three levels. Level One takes the form of a telephonic investigation of the claim by an adjudicator. The resulting written ruling by the adjudicator is binding on the parties unless either the employee or the employer takes an appeal to Level Two, the Department of Administrative Hearings. At that level, a hearing officer, conducts a full scale hearing, either in person or by telephone and issues a written decision. Once again, that decision is final unless one of the parties takes an appeal to Level Three, the Unemployment Insurance Commission, a panel of three commissioners appointed by the Governor to represent the interests of the public,

employees and employers. In this regard, Maine is not unique. A majority of the states allow for an initial fact-finding process to determine eligibility followed by two levels of appeal. Five states, Hawaii, Minnesota, Nebraska, Vermont and the District of Columbia, have only one level of appeal, thereby eliminating what we refer to as Level Three. A decision at Level Three is final and binding on the parties unless it is appealed to the Superior Court, which carries with it the possibility of a further appeal to the Supreme Judicial Court.

The Commission has interviewed a number of present and former employees of the unemployment compensation system, reviewed hundreds of documents including a number of case files representing a random sample consisting of 10% of all misconduct and voluntary quit cases rendered in the nine month period from October 1, 2012 to May 31, 2013, and has held a public hearing in order to better understand the complexities of the adjudicatory process that employers and employees in Maine deal with on a daily basis.

II. Executive Summary

This Commission has been charged with the task of reviewing the unemployment insurance system and identifying ways in which the system may be improved. Our work has been guided by the principle that the unemployment insurance system is critical to Maine people and the Maine economy. The basic promise of the unemployment insurance system is that people who have amassed a sufficient record of work should receive unemployment benefits if they are out of work through no fault of their own. The system is also critical to Maine's economy, as it helps to maintain a stable workforce and to maintain consumer demand by providing a continuing stream of income for families.

The members of this Commission begin by recognizing the hard work of the talented and dedicated staff of Maine's Department of Labor. Without the efforts of the Department's staff

assigned to the unemployment compensation system, Maine would be unable to fulfill the basic promise that the system offers.

We have found no direct or intentional bias evidenced toward employers or employees in the adjudication process for unemployment claims. Complaints and suggestions that a bias exists in favor of employees or employers appear to be based on an incomplete understanding of existing law and the statutory burden of proof that it places on employees in voluntary quit cases and on employers in discharge cases alleging misconduct.

As a result of our review, we found opportunities for improvement which we hope will be helpful in increasing efficiency in the unemployment insurance adjudication process.

Areas for improvement include the following:

- The unemployment insurance system is vastly understaffed, resulting in burdensome delay in providing needed benefits, preventable overpayments, and inconsistent factual findings between the first and second levels;

- A lack of effective communication necessary to standardize decision making between all levels involved in the claims adjudication process;

- The evidentiary practices of Level Two relating to business records in a subset of misconduct cases;

- Inadequate public understanding of the laws and processes governing the Unemployment Insurance Program; and

- A need to improve efficiency in the appeals process through: (1) improvements in the forms used by the Department to collect information from employers relevant to an appeal; (2)

improved procedures for entering evidence in Level two proceedings originally introduced at Level one; and (3) technological improvements at all three levels.

III. Findings

1. Understaffing.

The unemployment insurance system in Maine experienced a substantial increase in the number of claims following the economic downturn that occurred in 2008. Total initial unemployment claims increased from 73,000 in 2007 to a record high in excess of 155,000 claims in both 2009 and 2010. Currently claims seem to have settled back to something in excess of 100,000 per year. The increase in the volume of claims was experienced at all three levels. Over this time period, total adjudications at Level One swung from a low of 106,000 per year to a high of 171,000. Level Two went from a low of 5,700 appeals to a high of 11,000. Level Three experienced an increase from a low of 724 to a high of 1816. No significant increase in staffing accompanied the increase in claims volume. High claims volume, in excess of pre-recession levels, is forecasted to continue into the foreseeable future.

This level of understaffing and the delay it produces has serious consequences for claimants, employers and the unemployment insurance system overall and is manifested either by delays in payment or in overpayments.

a. **Harmful delays in benefit payment.** This problem has resulted in chronic and burdensome delays in paying unemployment benefits to unemployed Maine people who rely on this insurance system for critical income replacement if they lose their jobs through no fault of their own. Federal unemployment law requires that states pay benefits promptly when due. 20 CFR §640(3). Delay at any point in the three

levels of the adjudicatory process may place unemployed individuals in the untenable position of choosing between paying the rent and putting food on the table. According to data compiled by the U.S. Department of Labor, during the last two years, Maine has failed to meet federal performance standards ranking at or near the bottom of all states for making timely "non-monetary" determinations affecting eligibility and disqualification for benefits, involving issues such as voluntary quit, separation for misconduct, ability to work and availability for work.

b. **Preventable Overpayments.** In some cases these delays mean that a claimant who was initially found eligible may subsequently be determined ineligible for program benefits. In these cases overpayments accrue which the employee is liable to repay. This creates significant hardship for individuals trying to recover financially from a period of unemployment. In some instances claimants are simply unable to repay these overpayments resulting in a loss to either the Unemployment Insurance Trust Fund, thereby contributing to higher employer tax rates in the future, or a financial loss to the Direct Reimbursement Employer. At present, Maine's Department of Labor has outstanding accounts receivable for overpayments to employees in excess of $47,000,000. This figure includes penalties and interest which were never part of the Trust Fund as well as the amount owed to Direct Reimbursement Employers. A significant but undetermined portion of that sum is undoubtedly attributable to the delay that has existed in the system.

c. **Inadequate Fact Finding.** Inadequate staffing also contributes to inadequate fact finding at Level One where the initial determination is made. At current staffing levels, adjudicators simply cannot conduct thorough interviews with both parties and

there is seldom time for rebuttal to resolve factual discrepancies and form appropriate credibility determinations. This is unfortunate, as regularly obtaining rebuttal evidence results in a more efficient system for two reasons: (1) issues are clarified at Level One so that appeals are less likely and (2) when cases are appealed there is a more complete record and less likelihood of factual inconsistencies between Levels One and Two.

2. **Lack of effective communication between all levels involved in claims adjudication.**

It is apparent that working relationship between the three levels should be improved, and that the present lack of meaningful communication contributes to delays, inefficiencies, and unnecessary appeals. We spoke with several individuals about the value of the "Precedent Committee" that existed in the past. We understand from them that the committee, which was comprised of adjudicators, hearing officers and a member of the UIC, aided in standardizing the application of law and process throughout the three levels of the system. Committee members met regularly to discuss substantive policy, legal and procedural issues related to the program. The committee also developed and circulated a manual that provided guidance on interpreting and administering relevant rules and procedures.

We discussed the idea of reinstituting the "Precedent Committee" with staff from each of the three levels. Staff members agree that it would be a valuable asset and enhance the overall uniformity and efficiency of the system. For example, in our review of voluntary quit cases we noted some inconsistency in the way in which "good cause attributable to the employment" was interpreted in cases involving work-related medical conditions. Clear guidance on this issue in a manual promulgated by the "Precedent Committee" would likely promote greater uniformity in decisions regarding this issue. The "Precedent Committee" would be able to analyze cases that

present precedential issues, including those found in decisions made by the Maine Superior Court and the Maine Supreme Judicial Court. This Committee would also be useful in providing guidance related to the issue of business records discussed herein.

3. **Evidentiary Evaluation at Level Two.**

One of the issues brought to the attention of the Commission and noted in examining the random sample of cases is the treatment of business records. Although such records technically meet the definition of hearsay, for decades they have been universally admitted as substantive evidence in courts, administrative agencies, and in private arbitrations as an exception to the hearsay rule if they are maintained in the regular and ordinary course of business. The standard for admissibility of evidence in unemployment insurance cases is even more relaxed than in court proceedings. Maine's Administrative Procedures Act provides that: "agencies need not observe the rules of evidence observed by courts" and "evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs." 5 MRSA §9057(2). Clearly the statutory language encompasses entries made systematically in the regular routine and usual course of the business, even though it does not embrace entries made as to isolated transactions or incidents or for a specific purpose which is the subject of the litigation or hearing.

Although, both employers and employees face the same rules and procedures in admitting evidence, employers are typically more dependent upon business records to establish a discharge from employment for misconduct and this fact accounts for a number of the complaints heard from employers. While the evidence provided by an employee about their own behavior will likely be a first-hand account, employers will often present a business record reciting a series of incidents and the imposition of progressive discipline leading to a discharge for misconduct.

Occasionally, hearing officers at Level Two decline to admit the business records in evidence but more often they are admitted. The problem arises, however, with the analysis that the hearing officers articulate in determining the weight and credibility of the evidence once it is admitted. Typically, the formula or template for assessing the weight and credibility takes the form of some combination or all of the following propositions:

a. Hearsay evidence is generally not the kind of evidence upon which reasonable persons rely in the conduct of serious affairs.
b. Hearsay evidence will not be given greater weight as evidence than the direct testimony of an individual.
c. The admissibility standard is not a black and white standard but rather is one premised upon whether there are sufficient indicia of reliability to give the evidence weight.
d. Rule 5.1.E.5 specifies that, "No sworn written evidence shall be admitted unless the author is available for cross examination or subject to subpoena, except for good cause shown.
e. Hearsay statements attributed to third parties cannot be examined for accuracy or bias. This raises concerns about due process and fundamental fairness in the hearing process. When balancing the need to provide the parties with a fair hearing against the inconvenience of having to bring witnesses with first-hand knowledge, the balance must be struck in favor of providing a fair hearing process.

We find that at times, hearing officers use template language inappropriately by referring to a rule that is not relevant to the matter being discussed. For example as in (c) above, they address admissibility, when they should be evaluating the weight and credibility of the evidence. At other times, the hearing officers may make an overly broad statement that is not necessarily supported by statute, rule, or case law. For example, "Hearsay evidence is generally not the kind of evidence upon which reasonable persons rely in the conduct of serious affairs" or "Hearsay evidence will not be given greater weight as evidence than the direct testimony of an individual." These statements are rather absolute and sweeping and there are exceptions to them. Such statements lend themselves to criticism because they are overly broad and suggest that, although

the business record is admitted, it is not weighed against the countervailing evidence in the case as required by the law.

We note that the admission and evaluation of business records is not among the subjects reviewed by the United States Department of Labor as part of their quarterly quality review of the work of Level Two. We also note that because of the structure of the employment system in Maine, the evidentiary practices of the hearing officers at Level Two for evaluating evidence are not directly subject to effective appellate review. Although Level Three can reverse a decision rendered by a hearing officer in a particular case, it has no authority to declare the law that will be applied in future cases. Decisions by hearing officers at Level Two are not directly appealable into the court system. Only Level Three decisions can be appealed to courts. Given the expense and limitations involved in court review, there should be a more effective means for reviewing and correcting evidentiary practices in Level Two.

Based on the nature and extent of the issue, which arises in a small subset of all misconduct cases, and having discussed our concerns with the hearing officers at Level Two, we are persuaded that training and increased supervision by the Chief Hearing Officer is necessary. Properly implemented, supervision and training will afford an effective remedy. The law is relatively clear. It is the application of the law that is in doubt. In recent months the Chief Hearing officer has begun a monthly quality review of two decisions for each hearing officer. It is important that staffing levels permit the time necessary for this important supervisory function and that it be expanded and followed up with training focused on subjects suggested by the supervisory oversight.

4. **Public Education and Systems Administration.**

At the Commission's public hearing, we heard compelling testimony regarding the need for improved educational materials to help the public better understand the unemployment insurance system, including ways for parties to present their cases most effectively throughout the hearing process. We also heard a call for more education regarding the basics of eligibility for certain classes of workers.

We have found that misunderstanding related to the burden of proof and the legal standard in misconduct cases is common and partially to blame for the perception of bias in the system. Parties often do not fully appreciate what is necessary to meet this burden including the need to present evidence that is both reliable and credible.

At the Commission's public hearing, at least two employers testified that they believed that a past employee's violation of personnel rules should constitute misconduct per se. However, it is well established law that a violation of personnel rules does not necessarily constitute misconduct, but rather the employee's conduct must be evaluated under the state law definition of "misconduct" see Moore v. Maine Dept. of Manpower Affairs, 388 A.2d 516. We also heard testimony indicating that inadequate understanding of the unemployment system contributes to Maine's relatively low "recipiency" rate over the past decade. Testimony from the Maine Women's Lobby presented evidence that low-income working women often do not apply for unemployment benefits when they are out of work because of a mistaken belief that they are not eligible. This failing is also well documented in the literature published by experts in the field.

We believe that the availability of improved instructional materials, including the possibility of a short video on a web site, would greatly assist employers and employees in better understanding eligibility and the legal standards that are applied by the Department in making

Unemployment Insurance decisions We recognize that the Bureau of Unemployment Compensation is working to update and refine the website, videos, materials and forms that are currently made available to participants in the system. This is an ongoing and underappreciated task that must be addressed on an ongoing basis. All education materials and other printed or electronic information must be available in alternative format for individuals with disabilities or for those for whom English is their second language.

We have two specific examples of revisions in forms submitted to an employer in the case of an employee discharge that would increase efficiency and fairness. There must be a place on the "request for separation/ wage information" form or any subsequent hearing form that directs the employer to identify the person that it designates as the "point of contact" in a particular case. This information is vital for telephonic hearings and would ensure that companies utilizing a payroll service or human resources department can identify the proper person and phone number to be called at the time of the hearing.

Second, there is currently no option for an employer to indicate whether an employee has been discharged for a reason other than intentional misconduct. By having this option available for employers to check off, fewer cases requiring consideration at Level One should be generated.

5. **Case File Treatment.**

At present, the adjudicator at Level One receives documentary evidence and exhibits from each party that becomes part of the case file. The adjudicator makes a decision based on this and any oral testimony that he or she receives. If either party decides to appeal the decision to Level Two, the documents submitted at Level one accompany the case, but are not officially entered

into evidence at that level unless one party affirmatively requests that the material be introduced into evidence.

Although hearing officers make clear the status of these documents in their introductory remarks, it appears that in some instances there has been misunderstanding by parties about the necessity to reintroduce evidence presented at Level One that they want considered at Level Two. In order to ensure that all parties understand how to properly introduce evidence on appeal, hearing officers are to ask each party if they want the evidence introduced as part of the hearing protocol. This would create a process by which parties could make a decision as to whether to submit or decline to submit any material presented below. This process would alert the opposing party to the need to object to the introduction of the material.

6. **Technology Upgrade.**

A reoccurring comment among the staff at all three levels is the need for technological improvement. The time required for processing a claim can be shortened by upgrading the current software used to process claims and utilizing voice-to-text software that would enable adjudicators and administrative hearing officers to render decisions more quickly. Upgrades should also allow employers and employees to submit documentary evidence electronically. This would assist the Department in electronic storage, retrieval and transfer of documents and evidence between all three levels. Some of this work is currently underway and it is important that these efforts are concluded as soon as possible.

7. **Unemployment Insurance Commission.**

We considered models in a small minority of states in which there are only two appellate levels and no final appellate body similar to our Level Three. Both employer and employee

members of this Blue Ribbon Commission expressed support for continuation of Level Three. Both interests appreciate the representative structure of the Unemployment Insurance Commission and believe that it gives greater confidence that there will be a more balanced review of cases under appeal.

IV. Recommendations

1. The understaffing problem at Level One and Two can be and should be addressed promptly. The precise level of staff increases should be determined after an analysis of backlog, workload and improvements in efficiency. Based on information received by the Commission, we conclude that six to eleven additional adjudicators should be added at Level One, and two to three hearings officers at Level Two. We believe that funding sufficient to add these staff is available from Reed Act distributions made to the State under Section 903 of the Social Security Act. States are permitted to, and commonly use these funds for administrative purposes such as we recommend. Moreover, we believe that the expectation of additional collection of overpayment debt through implementation of the Federal Tax Offset Program (TOP) in April 2014 will provide an additional cushion to the Unemployment Insurance Trust Fund making withdrawal of Reed Act funds even more prudent given the serious staffing shortage we have identified.

2. The Commission recommends that, under the direction of the Commissioner of Maine's Department of Labor and the Director of the Bureau of Unemployment Compensation, a precedent committee be established that includes representatives of all three levels of the unemployment system. The committee should meet regularly to consider issues of common interests and areas in which the application of law and procedure throughout the three levels of

the system could be improved and made more efficient. The committee should develop and circulate a manual to provide guidance on interpreting and administering relevant rules and procedures for the benefit of adjudicators, hearing officers, and commissioners.

3. The Commission recommends that under the direction of the Director of the Bureau of Unemployment Compensation, the Chief Hearing Officer of Level Two be charged with the responsibility of routinely conducting a quality review of decisions rendered by all hearing officers. The review should be broad ranging, but should include evidentiary practices, both in terms of admission of evidence and analysis. Any areas of concern or opportunity for improvement identified by the quality review should be followed up with training, either individually or as a group.

4. The Commission recommends that improved instructional and educational materials be developed and made accessible to the general public. Representatives of employers and employees should be included in the design process for such materials.

5. The Commission recommends that the initial claims forms sent to employers and hearing forms sent thereafter prompt the employer to identify a point of contact with a telephone number. Additionally, it is recommended that the forms relating to discharge be modified to permit the distinction to be drawn between a discharge and discharge for misconduct.

6. The Commission recommends an immediate technology upgrade, including one that would allow for the electronic filing of documents by employers and employees.

7. The Commission recommends a minor but important clarification in the handling of documentary submissions contained in the case files as they progress from Level One to Level Two.

Respectfully submitted:

Unemployment Reform Blue Ribbon Commission

Daniel E. Wathen and George M. Jabar, II, Co-Chairs

Christine Hastedt and Kristin L. Aiello, Employee Representatives

David G. Walck and Shawn Anderson, Employer Representatives

Chase S. Martin, Staff

V. Commission Biographies

Daniel E. Wathen

With 25 years of judicial experience including ten years as Chief Justice of Maine, Dan is an expert in litigation at both the trial and appellate levels. Since rejoining Pierce Atwood in 2002, Dan has developed an extensive mediation and arbitration practice in Maine and throughout the nation and Puerto Rico. His ADR assignments cover the entire spectrum of business litigation, including mergers, securities, insurance, employment, professional malpractice, valuation, public and private construction projects, personal injury and products liability.

- Prior to becoming a judge, Dan was a trial lawyer, both civil and criminal, with some emphasis on defense work for insurance companies. He also handled a significant amount of transactional work for state and federal government loan guarantee agencies in connection with industrial and recreational projects.

Honors & Distinctions

Dan recently received The Muskie Access to Justice Award for his lifelong commitment to justice for low income and elderly Americans.

Dan is listed in *The Best Lawyers in America* for ADR, is a panelist for the American Arbitration Association, American Health Lawyer's Association, and is included on the national general counsel panel of distinguished neutrals maintained by CPR: International Institute for Conflict Prevention and Resolution.

Professional Activities

Maine Bar Association

American Law Institute

Supreme Court Historical Society

Lawyers Committee of The National Center for State Courts

Former Chair, National Judicial College

Former Vice Chair, The National Center for State Courts and the National Conference of Chief Justices

Civic Activities

Chair, Board of Maine Turnpike Authority, 2011-present

Chair and member, Board of Maine's Community College System 2003-2011

Founding member, Foundation for Maine Community Colleges 2010-present

Board of Trustees, Jobs for Maine's Graduates

George M. Jabar, II.

George M. Jabar, II, has been a partner in the firm Jabar, Batten, Ringer & LaLiberty since 1982. He graduated from the University of Maine at Orono and received his law degree from the New England School of Law. He is a member of the Maine Bar Association, Maine Trial Lawyers, American Bar Association, and he is a Sustaining Member of the National Organization of Social Security Claimants' Representatives, also known as NOSSCR.

George has served as Kennebec County Commissioner from 1985 through 1997 and from

2001 to the present. He is a member of the Board of Directors for the Maine County Commissioners Association where he served as President for the last two years. He is a member of the Board of Directors for the Statewide Maine County Risk Pool. He is active in the Boys' and Girls' Club and served as Chairman of the Board of Directors during 1996 and 1997. He also served as Chairman of the Board of Directors for the Maine Youth Alliance in 1998 and 1999. George has testified multiple times in front of various legislative committees on behalf of Maine County Commissioners Association, the Board of Corrections, as well as Kennebec County.

George was appointed to the State Board of Corrections by Governor Baldacci and is a liaison to the Judiciary for the Maine Board of Corrections. George was a member of the team representing counties that negotiated and drafted legislation for the newly formed Board of Corrections.

He has extensive experience in social security disability claims (of which he has obtained benefits for thousands of claimants over the last fifteen years). His practice also includes personal injury claims, civil litigation, criminal law, corporate law, and real estate.

Raised in Waterville, George, and his wife, Beth Smiley Jabar, have four children: Mallory - a graduate of Providence College presently living and working in Portland, Justine - a graduate of Boston College is currently working as a Nurse at Mercy Hospital in Portland, Michael - a recent graduate of Catholic University with a degree in Biomedical Engineering, Hannah, a sophomore at University of Maine at Orono, majoring in Marketing and Business

Administration. George enjoys tennis, golfing, skiing, boating, and photography.

Shawn Anderson

Shawn Anderson is Chief Operating Officer at Cary Medical Center, a position he assumed in June of 2004. Prior to his appointment at Cary Medical Center, Anderson spent ten years in positions of increasing leadership in education and health care administration. Within the healthcare arena, he has served in the areas of human resources, business development, physician practice management, clinical services administration, and medical staff recruitment and retention. Anderson holds senior administrative oversight responsibilities for numerous Cary departments including: Anesthesia Services, Pharmacy Services, Cardio-Pulmonary Services, Laboratory Services, Nutritional Services, and a host of other Support Service departments. Additionally, he oversees Corporate and Regulatory Compliance and Risk Management for the Medical Center. While at Cary, Anderson received the Pinnacle award for Inspiring Administrator given by the HealthCare Service Excellence Association.

Anderson serves on the Maine State Trauma Advisory Committee, on the Board of Directors for Aroostook Home Health Services and Valley Home Health Services, and as Vice President of the Caribou Economic Growth Council. Further, he is Chairman of the Board for The County Federal Credit Union. He is a member of The American College of Healthcare Executives. As a leader in Maine healthcare, Anderson was selected to participate in the prestigious inaugural class of Maine's statewide Health Leadership Development

Program sponsored by the Daniel Hanley Center for Health Leadership and the Institute for Civic Leadership. He now serves on the Board of Directors of the HLD Alumni Association. Shawn is a past-President and a current member of the Caribou Rotary Club, and has served a Board member for the United Way of Aroostook.

Anderson received his Bachelor's degree in Business Administration from the University of Maine at Presque Isle in 1986 and his Master's Degree in Business Administration from Husson College in 1995.

Christine Hastedt

Chris Hastedt is the Public Policy Director, Maine Equal Justice Partners. Christine has been a legal advocate for low-income people for more than 40 years. She has received numerous awards for her work, including the Kutak-Dodds Award from the National Legal Aid and Defenders Association and the Bernard Lown Humanitarian Award from the University of Maine at Orono.

In 1996 Chris co-founded Maine Equal Justice Partners and Maine Equal Justice Project. She is responsible for policy research and analysis, education and outreach, and legislative and administrative advocacy largely in the areas of Medicaid and other public health policy, TANF, Food Stamps, employment law issues, including issues affecting low wage workers.

Prior to founding MEJP, Chris worked for Pine Tree Legal Assistance for 20 years, where she represented low income clients in administrative and legislative proceedings. Chris received a B.A. from the University of Maine in 1968.

David G. Walck

David has been a small business owner in Maine since 1999 and has subsequently opened four other business locations in Maine and one in Virginia. Prior to becoming a small business owner, David worked for 30 years in legal and senior sales and marketing positions for various Fortune 500 companies. Some of his disciplines encompass execution management, marketing, sales and profitability analyses, strategic planning, new business development, government bidding and contracting, contract negotiations, billing, service, and policy administration.

Currently, David owns and operates Dunkin' Donuts restaurants in Thomaston, and Richmond, VA. He also serves as Chairman of Mid-Maine CPL, a producer of many Dunkin' Donuts products for over 106 locations in Maine and New Hampshire. Mid-Maine CPL has 60 employees and operates 364 days a year. David was selected as a recipient of the National Award of Retail Excellence by Dunkin' Brands.

Kristin L. Aiello

Kristin Aiello is a managing attorney for Disability Rights Center of Maine, the designated "protection and advocacy" system for people with disabilities in Maine. The DRC provides

advocacy and representation in a wide range of areas affecting people with disabilities, including working to safeguard the rights of Maine people with disabilities in the workplace and community as well as in housing, education, facilities and institutions.

Kristin leads the Americans with Disabilities Act (ADA) team at DRC and handles all employment matters at DRC. She has been representing people with disabilities in employment and public accommodations discrimination matters, among other areas, at DRC for over ten years. Her practice involves representing individuals in investigative, administrative and court proceedings. Kristin has also previously been engaged in the private practice of law, where she has handled a variety of matters on behalf of individuals.

Kristin is an experienced trainer on discrimination law, including the Americans with Disabilities Act and the Maine Human Rights Act, and has presented to diverse groups including employers, employees, people with disabilities, union members, non-profit companies, the State of Maine, the Maine State Bar Association, law enforcement, and other groups. She is a member of the Maine Employment Lawyers Association and the National Employment Lawyers Association.

Kristin has also successfully advocated for the rights of individuals in the community, including in voting. She was the lead attorney for the plaintiffs in the landmark case *Doe v. Rowe*, 156 F. Supp. 35 (Me. 2001) a seminal ADA voting rights case which was later cited by the United States Supreme Court in *Tennessee v. Lane*, which overturned Maine's constitutional provision which had prohibited individuals under guardianship from voting.

Kristin served as an employee representative in a group appointed by the Maine Legislature to draft an amendment to the definition of disability under the Maine Human Rights Act.

The new definition of disability was enacted in 2007, and served as a model for the Americans with Disabilities Act Amendments of 2008. In addition, Kristin was previously served as a Commissioner on the Maine Human Rights Commission, having been appointed by Governor Baldacci in 2007.Kristin is a graduate of Boston College and University of Maine School of Law. Kristin is a graduate of Boston College and University of Maine School of Law.