

Federal Judge Tosses Personal Injury Firm's Challenge to Law Sealing Med-Mal Decisions

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What You Need to Know

- Gideon Asen a law firm that specializes in medical malpractice litigation, asked the district court to invalidate a law that precludes the public from accessing judicial decisions in medical malpractice cases issued during mandatory prelitigation panel proceedings.
- The defendant argued that the district court should abstain because the three conditions under the 'Pullman' abstention are met.
- Judge Nancy Torresen granted the defendant's motion to dismiss without prejudice, finding that 'Pullman' abstention is appropriate.

Without reaching an analysis on the merits, a federal judge in Maine has rejected a personal injury firm's bid to invalidate a state law that seals judicial decisions in medical malpractice cases made during mandatory prelitigation panel meetings.

Gideon Asen, a firm that specializes in medical malpractice litigation, filed the lawsuit against State Court Administrator James T. Glessner in his official capacity.

Glessner oversees all court operations for the state's judicial branch, including the provision of access to court records, [according to the complaint](#).

Gideon Asen asked the U.S. District Court for the District of Maine to declare Section 2857 of the Maine Health Security Act—relating to confidentiality and admissibility—unconstitutional under the First Amendment because it doesn't allow the Maine Superior Court to make individualized determinations regarding whether to seal its decision on medical malpractice matters.

Rather, the mandate requires that every medical malpractice case brought in Maine be screened by a prelitigation screening panel before proceeding to litigation in Superior Court in order to identify meritorious claims of professional negligence. However, all proceedings, including the final determination, are required by law to be kept private and confidential by the panel and the parties to the claim. The [law firm has argued](#) that this requirement is unconstitutional.

“Judicial decisions in tort cases before the Maine Superior Court have historically been open to the press and general public,” Gideon Asen partner Taylor Asen wrote in the complaint. “The published decisions of the Maine Superior Court play a significant

positive role in the functioning of the civil justice system and the development of the common law of torts in Maine. There is no general interest in keeping all of these decisions confidential sufficient to overcome the presumption of access.”

The firm made reference to two instances in 2016 in which Superior Court Justices William Anderson and Ann Murray were asked to adjudicate an unresolved legal question in a medical malpractice before the prelitigation screening panel. Both opinions were then sealed.

Glessner, however, has argued in its [motion to dismiss](#) that Gideon Asen failed to allege that it attempted to gain access to the written decisions by Anderson or Murray or that the firm had been harmed by any interaction with the confidentiality policy. The defendant further contended that the plaintiff has failed to state a cognizable First Amendment claim.

Additionally, the defendant argued that the federal court should not rule on the issue because the three conditions under the *Pullman* abstention doctrine have been met: there is an unclear state law at issue; resolution of the federal constitutional issue depends on the interpretation of the state law; and the state law is susceptible to an interpretation by a state court that would avoid or modify the federal constitutional issue.

The plaintiff countered that, because the decisions are sealed, there is no way of knowing that any written decision has been

handed down.

On Friday, Judge Nancy Torresen [granted the defendant's motion to dismiss without prejudice](#), finding that *Pullman* abstention is appropriate, as the case involves “difficult constitutional questions that hinge on unsettled state law.” Torresen rejected the plaintiff's suggestion to certify the state law question to the Maine Supreme Court.

“I agree with the Defendant that there is ambiguity in the MHSA provisions at issue here. Although ‘all proceedings before the *panel*’ are confidential, 24 M.R.S. § 2857(1), the statute does not state that all ancillary proceedings before the Superior Court are to be confidential as well,” Torresen wrote. “...Nor do the Maine Rules of Civil Procedure clearly state that the Superior Court's rulings on medical malpractice motions must remain confidential. Instead the rule confines itself to the panel's proceedings.”

Additionally, the judge agreed with the defendant that it didn't appear that Gideon Asen has challenged the sealing of prelitigation motions, nor did the firm explain how it knew of the two mentioned cases in the complaint.

“Unless the Plaintiff is a party to the prelitigation proceedings (in which case it presumably already would have access to any decisions issued in that matter), it would not be aware of the existence of those Superior Court decisions,” Torresen wrote. “But the Plaintiff does not allege that it ever asked any of the clerks of

the Maine Superior Court to identify prescreening panel proceedings or provide any (or all) of the decisions that the court issued to a panel proceeding.

“As I ultimately conclude that the MHSA is more ambiguous than the Plaintiff believes, I cannot assume that if the Maine Superior Court received a request for its opinion in prelitigation screening cases, it would decide that its opinions were necessarily confidential and inaccessible to the public,” Torresen added.

Asen told Law.com that he respectfully didn't agree with the judge's decision.

“We don't believe that *Pullman* abstention was appropriate here—and either way, the Court could have—and we believe should have—decided to consider the merits of this important constitutional issue,” Asen said. “The bottom line is this: the Maine Judiciary is routinely sealing opinions written by Superior Court Justices in medical malpractice cases. This practice, we believe, is a flagrant violation of the First Amendment. We don't think it's a close call.”

The firm is considering its options whether to appeal the district court's decision or head to state court.

“We do believe it's important for our state to allow these opinions to be published,” he said.

Glessner was represented by Maine Assistant Attorney General Jason Anton. A spokesperson for the Maine Attorney General's Office declined to comment on the case.





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