

STATE OF MAINE  
KENNEBEC, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. CV-94-

STATE OF MAINE,

Plaintiff

v.

COMPLAINT  
( Injunctive Relief)

AMERICAN VETERANS  
ASSISTANCE CORPORATION,  
a California nonprofit  
corporation with a principal  
place of business in Tustin,  
CA., also d/b/a Veterans  
Wish Foundation, and  
GEORGE CAMPBELL,  
WILLIAM TWOHIG,  
HERBERT WOODLAND,  
AND ROBERT GAGNE,

Defendants

### INTRODUCTION

1. This is an action under the Unfair Trade Practices Act, 5 M.R.S.A. §§ 206-216 (1989 and Supp. 1994) and the Charitable Solicitations Act, 9 M.R.S.A. §§ 5001-5016 (1980 and Supp. 1994) to enjoin American Veterans Assistance Corporation (hereinafter referred to as "AVAC") and George Campbell, William Twohig, Robert Gagne and Herbert Woodland (hereinafter referred to as "Defendant Fund Raisers")<sup>1</sup> from engaging in fund raising until such time as Defendant fundraisers have registered and posted bonds as professional fundraisers pursuant

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Collective references to all defendants (AVAC and the individual defendants) will be referenced as "Defendants".

to 9 M.R.S.A. § 5008(1) , from engaging in unfair and deceptive fund raising practices, to obtain declaratory relief, a preliminary and permanent injunction, an accounting, restitution, and civil penalties.

#### PARTIES AND JURISDICTION

2. Plaintiff State of Maine, a sovereign state, by and through the Attorney General, commences this action under 5 M.R.S.A. §§ 206-214 (1989 and Supp. 1994), commonly known as the Unfair Trade Practices Act, and 9 M.R.S.A. §§ 5001-5016 (1980 and Supp. 1994), commonly known as the Charitable Solicitations Act, to protect the public by preventing and restraining Defendant from engaging in violations of the Unfair Trade Practices Act and the Charitable Solicitations Act.

3. Defendant AVAC is a nonprofit corporation duly incorporated under the laws of California with a principal place of business in Tustin, California. AVAC is registered to engage in fund raising in the State of Maine as a charitable organization. AVAC leases an office at 142 High Street, Suite 416, Portland, Maine from which AVAC engages in fund raising on behalf of itself and Veterans Wish Foundation, a charitable enterprise operated by AVAC.

4. Defendant George Campbell is a resident of Massachusetts. He is a principal of RD Marketing, a Massachusetts fund raising company and is employed by AVAC in its Portland fund raising efforts.

5. Defendant William Twohig is a resident of Massachusetts. He is an employee of RD Marketing and was employed by AVAC in the Portland fund raising office.

6. Defendant Herbert Woodland is a resident of Massachusetts. He is an employee of RD Marketing and was employed by AVAC in the Portland fund raising office.

7. Defendant Robert Gagne is a resident of Massachusetts. He is an employee of RD Marketing and was employed by AVAC in the Portland fund raising office.

#### JURISDICTION AND VENUE

8. This court has jurisdiction over this action pursuant to 5 M.R.S.A. § 209, 4 M.R.S.A. § 105, and 9 M.R.S.A. § 5014.

9. Venue is properly laid in Kennebec County pursuant to 5 M.R.S.A. § 209.

#### STATUTORY BACKGROUND

##### Unfair Trade Practices Act

10. The operative provision of the Unfair Trade Practices Act ("UTPA"), 5 M.R.S.A. § 207, renders it unlawful to engage in unfair or deceptive acts or practices in the conduct of any trade or commerce. Intentional violations of the UTPA are subject to a penalty of up to \$10,000 per violation.

##### Charitable Solicitations Act

11. The Charitable Solicitations Act, 9 M.R.S.A. §§ 5001-5016 (1980 and Supp. 1994), regulates charitable fund raising by requiring charitable organizations which intend to solicit contributions in this State to register and file a financial statement with the Commissioner of Professional and Financial Regulation

("Commissioner"). 9 M.R.S.A. 5004.

12. A "charitable organization" is defined as any person which is or holds itself out to be organized or operated for any charitable purpose and which solicits, accepts or obtains contributions from the public for any charitable purpose. 9 M.R.S.A. § 5003(1) (Supp. 1994). "Charitable purpose" means "charitable, benevolent, educational, philanthropic, humane, patriotic or eleemosynary purpose." 9 M.R.S.A. § 5003(2) (Supp. 1994).

13. All persons acting as a professional fund raising counsel or professional solicitor must register and post bond in the amount of \$10,000 with the Commissioner before engaging in any fund raising activities on behalf of any charitable organization in the State. 9 M.R.S.A. § 5008(1) (Supp. 1994). A professional fund raising counsel or professional solicitor includes persons employed by a "charitable organization", when those persons are paid on a commission basis or "on the basis of funds to be raised or actually raised." 9 M.R.S.A. §§ 5003(9) and(10).

14. All persons acting as a professional fund raising counsel or professional solicitor must file with the Commissioner copies of all contracts entered into with any charitable organization. 9 M.R.S.A. § 5009.

15. All persons acting as a professional fund raising counsel or professional solicitor must disclose, prior to requesting a contribution, his name and address and the name and address of the charity on behalf of which he is soliciting. In addition, a professional fund raising counsel or professional solicitor must also

make the following statement prior to requesting a contribution:

"[name of fund raising counsel or solicitor] is a professional fund raiser."

9 M.R.S.A. 5015 (Supp. 1993).

16. Any violation of the Charitable Solicitations Act constitutes a violation of the UTPA. 9 M.R.S.A. § 5014.

17. Pursuant to 5 M.R.S.A. § 194, the Attorney General is authorized to enforce the due application of funds given or appropriated to public charities and to prevent breaches of trust in the administration of those funds.

#### FACTUAL BACKGROUND

18. From approximately November 1, 1994, Defendants have been engaged in fund raising in the State of Maine.

19. Defendants conduct their fund raising activities from a leased office suite at 142 High Street, Portland. The leased Portland office is Defendants only place of business in this State and exists solely as a location from which to conduct fund raising in this State.

20. The office space was leased from Congress Property Management by George Campbell of RD Marketing of Woburn, Massachusetts. RD Marketing is a professional fund raising counsel in Massachusetts.

21. AVAC and RD Marketing were sued by the State of Massachusetts in May 1994 for engaging in unfair and deceptive fund raising practices. AVAC and RD Marketing are both presently enjoined from fund raising in Massachusetts.

22. Defendant Campbell is a principal of RD Marketing. Defendants

Twohig, Gagne, and Woodland are or were employees of RD Marketing. Neither RD Marketing nor any of the Defendant Fund Raisers are licensed and bonded as professional fundraisers in the State of Maine.

23. Defendant Fund Raisers manage the Portland fund raising office and are under the direction and control of AVAC in the State of Maine.

24. Defendants' fund raising activities are conducted by individuals hired by Defendant fundraisers, as well as by Defendant Fund Raisers themselves, to solicit contributions by telephone from the Portland area.

25. Defendants provide their solicitors with a telephone script containing the following pitch:

Hello Mr/Mrs \_\_\_\_\_. This is \_\_\_\_\_ calling from the American Veterans Assistance Corp. here in Portland. Mr/Mrs \_\_\_\_\_ were [sic] starting our 1994 drive and as you may recall, we help out the homeless vets with food, clothing, shelter, & holiday meals. We were just hoping to count on your support again this year. We still have our gold, silver, bronze levels of support. They haven't changed.

GOLD	75.00	50.00
SILVER	55.00	35.00
BRONZE	35.00	20.00

Please make checks payable to A.V.A.C. and put for deposit only on the back of the check. One of our representative [sic] will stop by between 9 am & 2 pm. If you're not going to be home, please put the check in an envelope and tape it to the door. We will leave a tax deductible [sic] receipt in it's [sic] place.

On behalf of myself and all our vets, thank you for your help.

26. Defendants' misrepresent in the course of soliciting contributions that AVAC is located in Portland. Defendants fail to disclose that AVAC 's address is Tustin, California.

27. Defendants' representation that AVAC is located in Portland and its practice of sending drivers to personally pick up contributions at donors' homes creates the impression that AVAC is a Portland charity providing services to Portland area homeless veterans.

28. AVAC does not provide any shelter, counselling, employment or any other type of assistance to veterans in Maine. To the extent that such services may be provided by AVAC, they are provided in the State of California.

29. AVAC has not provided any holiday meals to homeless veterans in Maine as of the date of this Complaint. Defendant had made arrangements to donate approximately \$400 worth of food for the annual Christmas dinner prepared by St. Luke's Soup Kitchen. Acceptance of the offer was withdrawn by the soup kitchen upon learning that Defendants were raising \$400-500 per day and had plans to donate only \$400 worth of food as its sole charitable expenditure.

30. Defendants also solicits contributions for the Veterans Wish Foundation, an enterprise operated by AVAC.

31. In the course of soliciting funds for Veterans Wish Foundation, Defendants represents that Veterans Wish Foundation uses donations to fulfill the last wish of terminally ill veterans and that its program is in every veterans hospital in the country.

32. The Veterans Wish Foundation program does not operate at the Veterans Administration Hospitals in Maine, Massachusetts or New Hampshire.

33. AVAC pays its telephone solicitors, including Defendant Fund Raisers,

a commission on the basis of funds raised. AVAC currently pays each solicitor a flat 25% commission on all funds raised.

34. AVAC pays its drivers, who it sends to the homes of donors to pick up the money and leave a receipt, a commission of 8% of the total amount of donations picked up by each driver.

35. AVAC's solicitors, including Defendant Fund Raisers, and drivers are under the direction and control of AVAC.

36. Defendant Fund Raisers also fail to disclose, in the course of soliciting contributions, the address of their fund raising office and the fact that they are professional fundraisers.

37. Defendant Fund Raisers have not registered or posted a \$10,000 bond as professional fund raising counsel or professional solicitors with the Department of Professional and Financial Regulation.

38. Defendant Fund Raisers have not filed with Department of Professional and Financial Regulation a copy of a written contract entered into with AVAC for fund raising services.

39. AVAC filed a registration statement with the Department of Professional and Financial Regulation on September 20, 1994. AVAC failed to disclose in its registration statement that it had been enjoined from engaging in fund raising activities in the State of Massachusetts in June 1994 and that the lawsuit was still pending. AVAC disclosed only that it had been enjoined from fund raising in 1992 in California and that the lawsuit had been resolved. AVAC also failed to



disclose that it was using professional fund raisers in Maine, the name and address of the professional fund raisers, and the amount of funds raised in the previous fiscal year.

40. AVAC stated in its registration statement that 18% of the money raised would be used for fund raising expenses, 2% for management expenses, and 80% for program services.

41. AVAC is expending a minimum of 33% of funds raised to pay its telephone solicitors and drivers. That figure does not include the fundraising expenses of rent, telephones and other overhead costs.

42. AVAC renewed its registration in November 1994, as required by statute, and failed to file a financial statement with its renewal.

43. AVAC failed to file the result of its 1993 fund raising campaign in Maine, conducted by Heritage Publishing Company, within 30 days of completion of the campaign.

#### COUNT ONE

(Misrepresentations by AVAC and Defendant Fund Raisers)

44. Plaintiff repeats, realleges and incorporates herein by reference 1 through 43 of this Complaint.

45. Defendants' practice of misrepresenting to potential donors that AVAC is located in Portland and otherwise creating the false impression that AVAC is a local charity providing food and shelter to local veterans in need, constitutes a pattern or

practice of unfair and deceptive conduct in violation of 5 M.R.S.A. 207.

46. Defendants' unlawful conduct as described herein is intentional.

COUNT TWO

(AVAC's Use of Unlicensed and Unbonded Fundraisers)

47. Plaintiff repeats, realleges and incorporates herein by reference 1 through 46 of this Complaint.

48. AVAC's use of unlicensed and unbonded professional solicitors or professional fund raising counsel, thereby denying to Maine consumers the protection afforded by the bond and the mandatory disclosures required of professional solicitors and professional fund raising counsel constitutes a pattern or practice of unfair and deceptive conduct in violation of 5 M.R.S.A. 207.

49. AVAC's unlawful conduct as described herein is intentional.

COUNT THREE

(Defendant Fund Raisers' Failure to Obtain License and Bond)

50. Plaintiff repeats, realleges and incorporates herein by reference paragraphs 1 through 49 of this Complaint.

51. At all times relevant to this Complaint, Defendant Fund Raisers have acted as a professional fund raising counsel or professional solicitor, without having first registered and posted a \$10,000 bond with the Department of Professional and Financial Regulation, in violation of the Charitable Solicitations Act, 9 M.R.S.A. 5008(1) (Supp. 1994).

52. Defendant Fund Raisers' violations of the Charitable Solicitations Act

also constitute violations of the Unfair Trade Practices Act pursuant to 9 M.R.S.A. 5014 (1980).

53. Defendant Fund Raisers' conduct described herein is intentional.

#### COUNT FOUR

(Defendant Fund Raisers' Failure to Disclose Address of AVAC, Name and Address of Fund raisers, and to Identify Selves as Professional Charitable Fund raisers)

54. Plaintiff repeats, realleges and incorporates herein by reference paragraphs 1 through 53 of this Complaint.

55. Defendant Fund Raisers' failure to disclose, prior to requesting contributions: (a) the address of AVAC ; (b) Defendant fundraisers' name and business address; and (c) the fact that the telephone solicitor is a "professional charitable fundraiser", constitutes violations of the Charitable Solicitations Act, 9 M.R.S.A. 5008(1)-(3) (Supp. 1994).

56. Defendant Fund Raisers' violations of the Charitable Solicitations Act also constitute violations of the Unfair Trade Practices Act pursuant to 9 M.R.S.A. 5014 (1980).

57. Defendant Fund Raisers' conduct as described herein is intentional.

#### COUNT FIVE

(Defendant Fund Raisers' Failure to File Copy of Contract)

58. Plaintiff repeats, realleges and incorporates herein by reference paragraphs 1-57 of this Complaint.

59. Defendant Fund Raisers failure to file with the Department of

Professional and Financial Regulation a copy of the contract entered into with AVAC for fundraising services constitutes a violation of 9 M.R.S.A. § 5009 of the Charitable Solicitations Act.

60. Defendant Fund Raisers' violation of the Charitable Solicitations Act also constitutes a violation of the Unfair Trade Practices Act pursuant to 9 M.R.S.A. § 5014 (1980).

61. Defendant Fund Raisers' conduct as described herein is intentional.

#### COUNT SIX

(AVAC's Failure to Disclose Injunction and Lawsuit, Use of Fund Raisers, Percentage of Money to be Expended on Fundraising Costs, and Amount of Funds Raised in 1993)

62. Plaintiff repeats, realleges and incorporates herein by reference paragraphs 1-61 of this Complaint.

63. AVAC's failure to provide the registration statement information of this Complaint constitutes separate and distinct violations of 9 M.R.S.A. § 5004, specifically: 9 M.R.S.A. 5004(3)(F) (failure to disclose use of professional solicitor); 5004(3)(G) (failure to disclose names and addresses of professional solicitors); 5004(3)(H) (failure to disclose June 1994 injunction imposed by States of Massachusetts); and 5004(3)(N) (failure to disclose amount of funds raised in previous fiscal year).

64. AVAC's violations of the Charitable Solicitations Act, 9 M.R.S.A. 5001-5016 (1980 and Supp. 1994), also constitute violations of the Unfair Trade Practices Act pursuant to 9 M.R.S.A. 5014 (1980).

65. AVAC's unlawful conduct as described herein is intentional.

COUNT SEVEN

(AVAC's Failure to File Financial Statement and Fundraising Report)

66. Plaintiff repeats, realleges and incorporates herein by reference paragraphs 1-65 of this Complaint.

67. AVAC's failure to file a financial statement with renewal of its registration and failure to file the results of its 1993 fund raising campaign in the State of Maine within 30 days of completion of the campaign constitute violations of 9 M.R.S.A.5005(1) and 5005(4) respectively.

68. AVAC's violations of the Charitable Solicitations Act also constitute violations of the Unfair Trade Practices Act pursuant to 9 M.R.S.A. 5014 (1980).

COUNT EIGHT

(Request for an Accounting)

69. Plaintiff repeats, realleges and incorporates herein by reference paragraphs 1-68 of this Complaint.

70. Defendants have been collecting contributions from Portland area donors since early November 1994.

71. Plaintiff requests an accounting of all funds raised on behalf of AVAC and Veterans Wish Foundation, pursuant to 5 M.R.S.A. § 194 (the Attorney General's statutory authority to enforce the due application of charitable funds), 9 M.R.S.A. 5008(2) (professional fund raiser's obligation to permit inspection of records by the Attorney General) and the Attorney General's common law authority

to superintend the activities of charities.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Issue a preliminary and permanent injunction:

A. restraining Defendants AVAC, Campbell, Twohig, Woodland, and Gagne, their employees, agents, assigns, successors, and all persons acting for or on their behalf from conducting charitable solicitations without conforming to the requirements of the Charitable Solicitations Act, including but not limited to:

(1) failing to disclose to potential donors that the professional solicitor or professional fund raising counsel is "a professional charitable fund raiser" as required by 9 M.R.S.A. 5015(3);

(2) failing to disclose to potential donors the name and address of the charitable organization on whose behalf the solicitation is being conducted as required by 9 M.R.S.A. 5015 (Supp. 1994);

(3) failing to disclose to potential donors the name and address of the professional solicitor or professional fund raising counsel as required by 9 M.R.S.A. 5015 (2);

(4) acting as a professional fund raising counsel or professional solicitor without first registering and posting bond with the Department of Professional and Financial Regulation;

(5) failing to file a copy of the contract entered into with a professional fund raising counsel, professional solicitor or commercial co-venturer;

(6) failing to fully and accurately complete the registration form required by 9 M.R.S.A. 5004;

(7) failing to file a financial statement with renewal of its annual registration as required by 9 M.R.S.A. 5005(1); and

(8) failing to file the results of fund raising campaigns in the State of Maine within 30 days of their completion;

B. restraining Defendant, his employees, agents, assigns, successors and all persons acting for it or on its behalf from violating any provision of the Unfair Trade Practices Act in the course of conducting charitable solicitations.

2. Order Defendants to provide to the Attorney General an accounting of all donations collected in the State of Maine since September 20, 1994 and include the names and addresses of each donor who donated to AVAC and the amount paid by each donor.

3. Order Defendants to pay restitution to each donor who donated money to AVAC since September 20, 1994.

4. Order Defendants to pay to the Department of Attorney General the costs of suit and investigation, including attorney's fees.

5. Order Defendants to pay to the Department of Attorney General, pursuant to 5 M.R.S.A. 209, civil penalties in an amount not to exceed \$10,000 for each intentional violation of 5 M.R.S.A. 207.

6. Order such other relief as may be necessary to ameliorate the effects of Defendants' unfair and deceptive practices.

Dated:

MICHAEL E. CARPENTER  
ATTORNEY GENERAL

STEPHEN L. WESSLER  
Director, Public Protection Unit

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AMY M. HOMANS  
Assistant Attorney General  
Public Protection Unit  
State House Station 6  
Augusta, Maine 04333  
(207) 626-8800



STATE OF MAINE  
KENNEBEC, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. CV-95-201

STATE OF MAINE, )  
 )  
 Plaintiff )  
 )  
 v. ) ORDER  
 )  
 )  
 AMERICAN VETERANS )  
 ASSISTANCE CORPORATION )  
 )  
 Defendants )

Following a review of the State's Motion for Default Judgment and Affidavit in Support of Default Judgment, the Court orders and the entry shall read:

Plaintiff's Motion for Default Judgment is GRANTED and the following relief is ORDERED:

1. Defendants, their agents, assigns, successors, officers, directors, and anyone acting on their behalf or under their control are permanently enjoined from:

A. restraining Defendant AVAC, its employees, agents, assigns, successors, and all persons acting for or on its behalf from conducting charitable solicitations without conforming to the requirements of the Charitable Solicitations Act, including but not limited to:

(1) failing to disclose to potential donors that the professional solicitor or professional fund raising counsel is "a professional charitable fund raiser" as required by 9 M.R.S.A. 5015(3);

(2) failing to disclose to potential donors the name and address of

the charitable organization on whose behalf the solicitation is being conducted as required by 9 M.R.S.A. 5015 (Supp. 1994);

(3) failing to disclose to potential donors the name and address of the professional solicitor or professional fund raising counsel as required by 9 M.R.S.A. 5015 (2);

(4) acting as a professional fund raising counsel or professional solicitor without first registering and posting bond with the Department of Professional and Financial Regulation;

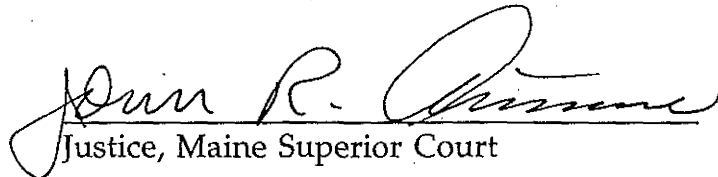
(5) failing to fully and accurately complete the registration form required by 9 M.R.S.A. 5004;

(6) failing to file a financial statement with renewal of its annual registration as required by 9 M.R.S.A. 5005(1); and

(7) failing to file the results of fund raising campaigns in the State of Maine within 30 days of their completion;

B. restraining Defendant, its employees, agents, assigns, successors and all persons acting for it or on its behalf from violating any provision of the Unfair Trade Practices Act in the course of conducting charitable solicitations.

DATED: *Sep 14, 1995*

  
Justice, Maine Superior Court

STATE OF MAINE  
KENNEBEC, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. CV-95-

STATE OF MAINE,

Plaintiff

v.

CONSENT DECREE  
(Defendant AVAC)

AMERICAN VETERANS  
ASSISTANCE CORPORATION,  
a California nonprofit  
corporation with a principal  
place of business in Tustin,  
CA., also d/b/a Veterans  
Wish Foundation, and  
GEORGE CAMPBELL,  
WILLIAM TWOHIG,  
HERBERT WOODLAND,  
AND ROBERT GAGNE,

Defendants

Plaintiff, State of Maine, filed its Complaint in the above-captioned matter on January , 1995. Plaintiff and Defendant American Veterans Assistance Corporation, (hereinafter Defendant AVAC) ) have consented to entry of this Consent Decree without trial or adjudication of any issue of fact or law herein and for purposes of settlement only and without this Decree constituting any evidence against, or an admission by, any party with respect to such issues and with Defendant AVAC denying the allegations in the Complaint, it is hereby ORDERED and the entry shall be as follows:

1. Defendant AVAC, its agents, employees, assigns, successors, or other persons acting for the Defendants or under their control, are permanently enjoined and restrained from:

A. conducting charitable solicitations without conforming to the requirements of the Charitable Solicitations Act, including but not limited to:

(1) employing the services of professional fund raising counsel, professional solicitors, or commercial co-venturers who are not licensed and bonded in the State of Maine;

(2) failing to disclose to potential donors that the professional solicitor or professional fund raising counsel is "a professional charitable fund raiser";

(3) failing to disclose to potential donors the name and address of the charitable organization on whose behalf the solicitation is being conducted;

(4) failing to disclose to potential donors the name and address of the professional solicitor or professional fund raising counsel:

(5) failing to file a copy of the contract entered into with a professional fund raising counsel, professional solicitor or commercial co-venturer;

(6) failing to fully and accurately complete the registration form required by 9 M.R.S.A. 5004;

(7) failing to file a financial statement with renewal of its annual registration as required by 9 M.R.S.A. 5005(1); and

(8) failing to file the results of fund raising campaigns in the State of Maine within 30 days of their completion; and

B. violating any provision of the Unfair Trade Practices Act in the course of conducting charitable solicitations including but not limited to misrepresenting to potential donors when, where and how the solicited funds will be used.

2. Jurisdiction is retained by this court for the purpose of enabling any party to this Consent Decree to apply to this court at any time for such further orders as may be necessary for the construction, modification, or enforcement of any other provision of this Decree, and for punishment pursuant to 5 M.R.S.A. § 209 for any violation of the provisions of this Decree.

Date:

\_\_\_\_\_  
Amy M. Homans  
Assistant Attorney General  
For Plaintiff State of Maine

Date:

\_\_\_\_\_  
Larry Silveira, Executive Director  
American Veterans Assistance Corporation

Date:

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Counsel for Defendant

Date:

\_\_\_\_\_  
Justice, Maine Superior Court