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SJC RULING LEAVES INDIGENT DEFENDANTS' CONSTITUTIONAL RIGHTS DEPENDENT ON LEGISLATIVE GOODWILL

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BOSTON, MA — The Massachusetts Association of Criminal Defense Lawyers (MACDL) responds today to the Supreme Judicial Court's decision in *Committee for Public Counsel Services v. Middlesex and Suffolk County District Courts*, issued this date, in which the Court declined to authorize judicially ordered increases to bar advocate compensation rates.

While MACDL respects the Court's careful analysis of separation of powers, we are deeply concerned that today's ruling places the constitutional rights of the Commonwealth's most vulnerable citizens — indigent criminal defendants — entirely at the mercy of legislative timing and political will. The Court itself acknowledged that the counsel shortage constitutes a systemic problem of constitutional dimension. That problem did not arise overnight, and today's decision does not resolve it.

As the Court's opinion documents, Massachusetts has chronically underpaid bar advocates for decades. Today, Massachusetts still pays among the lowest rates in New England: \$65–\$75 per hour, compared to \$88 in Connecticut, \$100 in Vermont, \$112 in Rhode Island, \$125 in New Hampshire, and \$150 in Maine. These are not abstract numbers. They represent the gap between a functioning public defense system and the crisis that erupted in May 2025, when hundreds of indigent defendants in Suffolk and Middlesex Counties were left without counsel.

The Court's decision relies heavily on the Lavallee protocol — a procedural mechanism that releases detained defendants and dismisses pending charges when counsel cannot be found — as a sufficient constitutional remedy. MACDL respectfully disagrees. The Lavallee protocol does not vindicate the right to counsel; it manages its absence. When a defendant's case is dismissed because the state cannot provide a lawyer, justice has not been served. Victims are denied resolution. Public safety is compromised. And defendants face the prospect of re-arrest and re-prosecution once counsel eventually becomes available.

The Court points to CPCS's October 2025 incentive payment program, which reduced unrepresented defendants from nearly 800 to just eight, as evidence the crisis has abated. MACDL is not reassured. That an emergency, off-cycle financial intervention was necessary simply to approach baseline functionality reveals how close to the breaking point the system had come, not how well it is working. The program was originally set to expire November 17, 2025, has already been extended once, and will eventually end — at which point attorneys who accepted cases through it are under no obligation to continue. The structural conditions that produced this crisis remain largely unchanged. A public defense system that requires recurring emergency measures to meet its constitutional obligations is not a functioning system; it is one perpetually one budget cycle away from collapse.

MACDL acknowledges and welcomes the Legislature's August 2025 supplemental budget action, which raised District Court rates to \$75 per hour — with a further increase to \$85 scheduled for August 2026. These are meaningful steps, and we commend lawmakers who fought for them. But they remain below the regional average, and history teaches that without a permanent structural commitment to adequate funding, Massachusetts will find itself in this same crisis again. The Legislature must not treat today's ruling as an excuse to delay further action.

The Sixth Amendment and Article 12 of the Massachusetts Declaration of Rights guarantee the right to counsel. That guarantee is not conditional. It does not depend on whether the Legislature has prioritized it in a given fiscal year, or whether the Governor has signed a supplemental budget in time to avert collapse. MACDL believes Massachusetts must establish a mechanism that ensures bar advocate rates remain competitive and are adjusted regularly, without requiring a crisis to prompt action.