

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE

AS PUBLIC LAWS AND CONSTITUTIONAL RESOLUTIONS

at the

THIRD SPECIAL SESSION

September 15, 1988 to September 16, 1988

and the

FOURTH SPECIAL SESSION

November 28, 1988

AND

AS PRIVATE AND SPECIAL LAWS AND RESOLVES

at the

FIRST REGULAR SESSION

December 3, 1986 to June 30, 1987

FIRST SPECIAL SESSION

October 9, 1987 to October 10, 1987

SECOND SPECIAL SESSION

October 21, 1987 to November 20, 1987

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February 9, 1988

by

CHIEF JUSTICE VINCENT L. McKUSICK

A Report to the Joint Convention

of the

One Hundred and Thirteenth Legislature

I am pleased to appear again before this Joint Convention of the 113th Legislature. It always is a special honor to stand at the Speaker's rostrum in this beautiful House Chamber. Last Saturday I stood at the Speaker's rostrum of the House of Representatives at the State House in Boston. The occasion was the reenactment by 355 high school students from Maine and Massachusetts of the convention in Boston that exactly 200 years before had voted by a narrow margin to ratify the United States Constitution. Forty-six outstanding students with their teachers from some 20 high schools across Maine represented the 46 delegates from the District of Maine who voted on ratification on February 6, 1788. I joined Chief Justice Edward F. Hennessey of Massachusetts in opening that commemorative mock convention.

That splendid occasion in Boston last Saturday came after a year and a half of celebratory activities here in Maine under the leadership and inspiration of our Maine Commission for the Commemoration of the Bicentennial of the U. S. Constitution, chaired by Dr. Arthur M. Johnson. I again thank the Legislature for creating and funding that Commission. It has led all of us in a valuable history lesson.

It was exactly ten years ago this month that I first reported to the Legislature. I report to you in this way at regular intervals so that you may be in a better position to discharge your heavy responsibilities for supporting the administration of justice in this State — responsibilities for funding the courts, for defining their jurisdiction, and for otherwise legislating to promote their effective operation. In this endeavor there is a necessary partnership between the Legislature and us who manage the courts — a partnership in which we court managers must work with you in the spirit of the Three C's — communication, cooperation, and comity.

Let us take a few minutes this morning to reflect on where we have been over the past 10 years. Let us tote up what our partnership has accomplished in the past decade.

In 1978 the Administrative Court, with jurisdiction over the suspension or revocation of liquor and most professional and vocational licenses, was integrated into the Judicial Department.

In 1980 the Probate Code eliminated trial *de novo* of appeals from the Probate Courts to the Superior Court, making probate appeals on only questions of law go directly to the Law Court. The Probate Code did, however, leave the 16 county probate judges as Maine's only part-time, elected judges.

In 1981 the county law libraries and their state funding came under the direction of a State Court Library Committee, staffed by a professional supervisor.

In January 1982 the Single Trial Law eliminated trial *de novo* in the Superior Court on appeals of criminal cases already tried to judgment in the District Court.

In 1984 the Legislature rescued Maine's judges from being the lowest paid in the country -- by enacting a scheduled set of salary increases, along with a modern contributory pension fund to replace the previous pay-as-you-go retirement system.

By authorizing the Chief Justice to assign judges to sit in other courts than his or her own and by creating a chief justice for the Superior Court, with comparable functions to those of the Chief Judge of the District Court, you have enabled us to achieve a functional and administrative unification of the courts — an integrated court system.

Use of the State drivers' license list as the primary source of jurors has permitted computerized random selection of jurors for the Superior Court.

In 1984 collective bargaining for court employees came into being by the coordinated action of the Legis-

lature and the Supreme Judicial Court. You now have before you our most recently bargained contract covering the current biennium. I strongly recommend funding of the salary increases bargained for our employees.

You have by statute made our highly successful mediation project, started experimentally 10 years ago, an established part of court operations, and you have mandated mediation of all issues in a contested divorce between a couple with minor children. You have more recently given permanent status to our CASA program, whose successes I will later relate.

Last year you created the Court Facilities Authority, which, with funds raised through tax-free revenue bonds, can be expected to provide the courts with a lower cost alternative to leasing facilities from private developers.

You have funded the computerization of our trial courts. That installation is proceeding in good order. All 33 District Court locations will be processing their criminal and traffic cases on computer before the end of next month. We also now have fully in operation a computerized fiscal management system.

I could go on, but the examples I have given well illustrate the steps taken at every legislative session over the past 10 years to improve the operation of our court system. At the same time, new, added duties have been placed upon the courts. In these 10 years statutes have created new court proceedings in order to achieve defined goals of our society: court proceedings to determine the propriety of institutionalizing particular mentally ill or mentally retarded persons; court proceedings to protect children in jeopardy, followed in many cases by proceedings to terminate parental rights in order to permit "permanency planning" for the children; court proceedings brought by the Department of Human Services to determine paternity; streamlined court proceedings to enforce land use ordinances and statutes, with prosecution by code enforcement officers and other nonlawyers; court proceedings to protect family and household members against abuse, and, by an enactment of last year, protection of victims of harassment from anyone. Many of these statutes providing for special court proceedings require judges to hold emergency hearings within a prescribed short period of time.

What has been the impact of these new court proceedings, along with other economic and social forces, upon the workloads of the courts in these 10 years?

First, the District Court, which had about 200,000 cases filed in 1977, received almost 300,000 new cases in 1987. Annual District Court filings have increased by 50,000 cases in just the last 2 years. An increase in the jurisdictional limit of small claims from \$800 to \$1,400 has resulted in over 11,000 more small claims cases, an increase that translates directly into much greater work for the District Court clerks offices, as well as for judges and mediators. Increase in limits from \$20,000 to \$30,000 on ordinary civil actions and other additions to the District Court's jurisdiction account for part of the explosion in District Court filings, but most of the explanation lies simply in the fact that increased economic and other activity in Maine has produced more civil violations and traffic infractions. These 10 years have also seen a radical change in the nature of many District Court proceedings, with protracted hearings that are routinely recorded for the purpose of making a record for appeal. With increased frequency substantial cases are tried in the District Court, followed by appeal to the Law Court, either directly or through the Superior Court. In the past half year, at least 22 of the cases argued in the Law Court were appeals from District Court judgments.

In the Superior Court, our court of general jurisdiction, the number of criminal cases filed annually has gone up 50% in the 10 years, to a record high in 1987 of 11,662 cases. Of course, only in the Superior Court is a jury available, and only there can offenses formerly denominated felonies be tried. On the civil side, the Superior Court filings have actually dropped by 18% in the 10 years. This drop occurred

in the same period that civil cases in the District Court increased substantially. The higher jurisdictional limits of the District Court, as well perhaps as the much higher filing fee in the Superior Court, may be the explanation. Qualitatively, the average civil case that now comes to the Superior Court is more complex than 10 years ago, and often requires protracted hearings and extensive opinion-writing time. As some examples, I might cite the recent well-known *Wells Beach* litigation. And then there are hospital cases arising from the issuance or denial by DHS of certificates of need, municipal zoning and other land use cases, and so on. The Superior Court also acts as an intermediate appellate court on appeals from the District Court and the Administrative Court, handling about 400 of those appeals a year.

Turning to the Law Court, we find that in 10 years its caseload has grown by almost 75% to a record 565 new appeals filed last year. After a five-year plateau at about 500 cases, filings spurted upward by about 10% in 1987. Much of the latest increase comes from appeals in child protection proceedings, criminal sex abuse cases, and zoning and other litigation generated by development and other economic activity. My Law Court colleagues and I are determined to continue to dispose of this heavy caseload in a timely fashion. We will be watching the trends in our caseload because we are already near the limit of what the experts say is the maximum load for an appellate court.

Ten years ago the Judicial Department had 43 judges. With the recent appointment of District Court Judge Robert Crowley of York County, that total number has been brought to 49, the District Court having been progressively increased from 20 to 24 judges and the Superior Court from 14 to 16 judges. Maine has a remarkably small judiciary. Handling the greatly increased caseloads of all the courts has been possible only by the functional integration of our court system and by the help we get from our active retired judges. But the mammoth increase in the workloads of our courts could not be coped with by the judges alone. I am proud of the clerks, the court administrators, and all the other employees of the courts and our Administrative Office. They are hardworking professionals, indispensable to our success in carrying out the mission of the Maine courts. One specific measure of the increased workload that those professionals are carrying is provided by the fact that in the past 10 years the annual revenues generated by the Judicial Department in fines and fees have more than tripled to almost \$18 million.

Since 1977 we have steadily worked at meeting our needs for more courtrooms and other court facilities. The program for making all courts accessible to the handicapped is well along toward completion; and our court security officer has upgraded security at our courts for the protection of court personnel and the public. The District Court has new or improved facilities at many locations around the State — Farmington, Belfast, Lincoln, and Millinocket, to mention some recent examples. The counties have also made improvements in some of the Superior Court facilities; the Sagadahoc County Courthouse is a fine recent example. We are right now working closely with the Cumberland County Commissioners to meet the space needs of the courts in that courthouse, where about 20% of all court business statewide is conducted. But we have much more to do. We hope to meet the urgent needs of the District Court in Bath-Brunswick and the Kittery-Wells areas in the very near future. Some of the county courthouses need additional jury courtrooms and associated facilities for the Superior Court. We will work with the counties to identify and address those needs.

Let me report on several special programs.

Our in-court mediation program, now a lusty 10-year-old, continues to receive well-deserved plaudits. In 1987 about 3,700 cases went to mediation, more than two thirds being domestic relations cases. Mediation still succeeds in resolving a majority or more of all cases. In the District Court, where pretrials are now held in many civil cases, Chief Judge Devine is experimenting with having a mediator available on the days scheduled for pretrials. The results are encouraging.

Our volunteer guardian ad litem program (known as CASA), started in 1985, has expanded from southern

and central Maine to Bangor, Ellsworth, Machias, and Houlton. More than 125 volunteers have been appointed guardians ad litem for more than 300 children in child protection proceedings in the District Court. The CASA volunteers by their commitment of time and compassion are performing a great public service in helping the courts to protect children in jeopardy. District Court Judge John Beliveau of Lewiston acts as judicial liaison to the CASA program.

In the Superior Court Chief Justice Brody has fully implemented the program of medical malpractice screening panels required by Chapter 804 of the Laws of 1986 as a precondition to the prosecution of medical malpractice suits. As of last month 98 medical malpractice cases had been filed under that law and more than one third had been disposed of by the panels.

Under the Superior Court's expedited caseload project, now implemented in every county, a judge reviews each civil case soon after filing to determine whether it is appropriate for the fast track. The purpose of the program is to expose a majority of civil cases to trial at an earlier date, thus reducing delay and expense. Both attorneys and judges see the benefits of early judicial intervention to speed up civil litigation.

You have before you a proposal, coming unanimously from the Tort Reform Commission chaired by former Senator Richard Trafton, for an experimental Alternative Dispute Resolution program in the Superior Court. The Judicial Council, with modest funding, will design and evaluate that experiment. The pilot ADR program will be mandatory for a substantial segment of civil cases in two test counties. Both the bar, represented by the Maine State Bar Association, and the Superior Court are supportive of the experiment. This is an auspicious time to proceed with this promising program.

Our trial courts have implemented the statutes passed last year for the improved collection of court fines and for the imposition of the so-called jail surcharge of 10% on all fines. I am proud of the way in which our already heavily burdened clerks offices have taken on these new tasks.

The Governor in his budget submission has recommended that the Judicial Department appropriation for indigent defense be broken out from our "All Other" appropriation item and that for fiscal year '89 additional funds be provided for that separate line item. I endorse the Governor's recommendation wholeheartedly. Under the Federal and State Constitutions, and by statute as well, the State is obligated to provide attorneys at State expense to defend indigent persons in criminal cases, as well as in civil cases where the indigent persons may lose custody of their children or even lose all their parental rights. I am convinced that our appointed counsel system is basically sound and is the right "fit" for Maine. We have, however, a serious problem in several counties of finding enough lawyers to take court appointments at the rates established a number of years ago. The fee level is now one of the lowest in the country and it will not cover the costs of overhead of most Maine law offices. The Governor's proposal to make "Indigent Defense" a separate budget item will make the appropriations and the expenditures for that purpose more readily identifiable, and at the same time our remaining "All Other" account will become relatively more predictable and manageable. Incidentally, the indigency screening program that you authorized last year is getting under way in the two test counties. That program promises to give us a way of assuring that only persons truly in need receive free legal representation.

You also have before you, carried over from your last session, a proposed resolve, L.D. 159, which is recommended unanimously by the legislatively created Commission to Study the Relocation of the Supreme Judicial Court. That Commission, consisting of both legislators and citizens at large, after extensive study, recommended that funds be appropriated for site exploration here in Augusta and for preliminary architectural and financial planning. Out of respect for your Study Commission, I urge you to authorize the assembling of that further data so that you can render a fully informed judgment on the question whether your State Supreme Court should have a headquarters here in this city. I remind you that Article IX, section 16 of the Maine Constitution reads: "Augusta is hereby declared to be the seat of government of this State."

In my review of the past 10 years I have mentioned many legislative measures affecting the courts. Every session considers numerous L.D.s relating to court operations, a good many initiated by us responsible for managing the courts and a good many initiated by others. As to all that proposed legislation I commit the Judicial Department to working with you to analyze its impact upon the administration of justice in Maine and in providing information from the courts. Our Legislation Committee chaired by Justice Robert Clifford, and our Public Information Officer, Edward Kelleher, are available to help you in your very important task.

During the first week of this coming August, we in Maine will have the honor of hosting the National Conference of Chief Justices, meeting for five days at the Samoset in Rockport. Comparable to the National Governors Association that met in Portland in 1983, the Conference of Chief Justices will bring to Maine the chief judicial officers of the 50 states, as well as 5 other jurisdictions such as the District of Columbia and Puerto Rico. The National Conference of State Court Administrators, hosted by our State Court Administrator Dana Baggett, is meeting at the Samoset at the same time. Perhaps the best news to Chairmen Pierson and Carter of your Joint Appropriations Committee is that the conferences are financed by the National Center for State Courts, with a generous contribution from the Maine State Bar Association, and will require no legislative appropriation from the State of Maine.

Alexander Hamilton in the 17th of the Federalist Papers addresses the fear of many anti-federalists that the new central government would swallow up the state governments. In answer to that fear, Hamilton said: "There is one transcendent advantage belonging to . . . the State governments . . . I mean the ordinary administration of criminal and civil justice." Hamilton goes on to call the "ordinary administration of criminal and civil justice" "[t]his great cement of society." Note that he spoke of the "ordinary," that is, the day-in and day-out, operation of the State courts. Those courts today handle well over 95% of all litigation. To Hamilton, the State courts, "being the immediate and visible guardian[s] of life and property," "contribute[], more than any other circumstance, to impressing upon the minds of the people, affection, esteem, and reverence toward the [State] government." That probably is today an unrealistically high expectation for any court to meet. But I assure you that all of us involved in the "ordinary" administration of the Maine courts will strive to merit your continued respect and the respect of the public we serve.

Thank you very much for your time and attention.