State of Maine
130th Legislature, First Regular/Special Session

Commission To Create a Plan To Incorporate the Probate Courts into the Judicial Branch

December 2021

Office of Policy and Legal Analysis

STATE OF MAINE
130th LEGISLATURE
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Table of Contents

Executive Summary

Maine's Probate Courts occupy a unique position in Maine's justice system. Unlike the District and Superior Courts, the Probate Courts are not considered part of the state Judicial Branch. Instead, the 16 county Probate Courts spread across the State operate largely independently from the Judicial Branch and from one another, although the Probate Courts are governed by a single set of probate laws, procedural rules and court forms. Probate Judges also stand apart because, pursuant to Article VI, Section 6 of the Constitution of Maine, they are elected rather than appointed. Furthermore, because probate judgeships are generally considered to be part-time in nature and their pay is often structured accordingly, Probate Judges are authorized to and often do engage in the practice of law.

More than 50 years ago, in 1967, over two-thirds of the Legislature voted in favor of an amendment to the Constitution of Maine repealing Article VI, Section 6, which would "become effective at such time as the Legislature by proper enactment shall establish a different Probate Court system with full-time judges." The people of Maine voted to approve the constitutional amendment later that same year. Nevertheless, despite numerous studies and commissions addressing probate court reform in the intervening decades, which have consistently recommended the creation of full-time probate judgeships, legislation establishing a probate court system with full-time judges has never been enacted. As a result of this inaction, the repeal of Article VI, Section 6 of the Constitution of Maine has not yet been implemented, resulting in the highly unusual situation in which a contingent amendment to Maine's constitution has sat, untriggered, for 54 years.

This past spring, more than half a century after the constitutional referendum, the 130th Legislature established the Commission To Create a Plan To Incorporate The Probate Courts into the Judicial Branch through Resolve 2021, chapter 104 "to honor the intent of a long-standing vote of Maine people and ensure that Maine people currently have the same access to justice in all Maine courts." The Legislature directed the commission to create a plan for a probate court system with full-time judges and to describe how the system will be funded. In addition, the Legislature suggested that the commission consider including features in that plan that will:

- Ensure timely, convenient and meaningful access to justice;
- Promote judicial responsibility and adherence to the Maine Code of Judicial Conduct;
- Provide for qualified full-time judges and adequate professional staff;
- Reflect efficient practices in scheduling and case management throughout the system;
- Allow for convenient and consumer-friendly processing of uncontested matters; and
- Reflect economies of scale in all appropriate operational aspects.

Commission members included individuals who brought a broad range of experience to the table, including five legislators, three county Probate Judges, a county Register of Probate, a justice of the Maine Supreme Judicial Court, a state District Court Judge, a state court clerk, a state court administrator, and two attorneys currently engaged in the practice of probate law, one of whom works for a legal services organization. Over the course of four meetings, these members requested presentations from probate law subject-matter experts, practitioners, registers and jurists. The commission solicited and received public comments. The commission also gathered as much data regarding the current county probate court system as was possible, including information regarding the governing statutes and rules; the current caseload, facilities, and budgets for county Probate Courts; and the costs associated with court-appointed attorneys, guardians *ad litem* and visitors in county Probate Court proceedings.

After engaging in lengthy, thoughtful and complex discussions, a majority (12-2, with one member absent) of the commission voted to recommend a plan for incorporating the Probate Courts into the Judicial Branch. The plan was designed to achieve three fundamental goals.

- First, the plan respects the will of the people of Maine by providing for the ***appointment of full-time Probate Judges within the state Judicial Branch***. Commission members felt strongly that implementation of the 1967 vote to amend the Constitution of Maine should not be delayed any longer. Commission members also grounded this recommendation in the work of numerous past studies proposing that probate matters be adjudicated by full-time, appointed judges.

- Second, the plan approved by a majority of the commission ***preserves the exceptional customer service and accessibility provided by the county registries of probate*** across the State, especially in uncontested probate proceedings. Throughout the commission's work, stakeholders praised the highly personalized and hands-on services provided by the Registers of Probate and their staff. Because no analogous positions currently exist within the Judicial Branch, commission members urge that additional time and consideration be invested in determining how best to preserve these features of the register system before that system is incorporated into the Judicial Branch.

- Third, the plan proposed by the commission ***transfers oversight and payment of attorneys, guardians* ad litem *and visitors appointed at public expense in probate proceedings to the State***, both to alleviate the financial burden borne by county governments under the current system and to provide for the establishment of uniform qualification and training requirements for these court-appointed professionals.

Accordingly, the commission is pleased to present the following substantive recommendations for consideration by the Legislature:

Recommendation A: The county probate court system should be fully incorporated into the state Judicial Branch through the deliberately multi-step process detailed in Recommendations B to F.

Recommendation B: Legislation should be enacted to establish a new state Probate Court with full-time, appointed state Probate Judges*.*

i. Over the course of four years, by January 1, 2025 as is described in Recommendation F, the 16 part-time, elected county Probate Judges and 16 separate county Probate Courts should be replaced by nine full-time, appointed state Probate Judges and a statewide Probate Court within the state Judicial Branch that is distinct from the District and Superior Courts. At least one new Probate Judge should be assigned to each court region within the State.

ii. The Chief Justice of the Supreme Judicial Court should designate one state Probate Judge to serve as the Chief Judge of the Probate Court, who should undertake certain administrative responsibilities in addition to judicial responsibilities that include, but are not limited to: creating the statewide Probate Court schedule; ensuring uniformity of court processes and procedures; working with the Supreme Judicial Court to ensure the accessibility and safety of probate court facilities; and preparing annual reports.

iii. State Probate Court proceedings should be held in existing county Probate Court facilities, with arrangements to be made between the counties and the Judicial Branch regarding the use of those facilities. When necessary, state District Court and Superior Court facilities may also be utilized for Probate Court proceedings.

iv. *Emergency matters on the state Probate Court's docket should be prioritized and addressed expediently, to the same extent that those matters are prioritized by the county Probate Courts.*

v. *The state Probate Court and state Probate Judges should be supported by, at a minimum, the following new Judicial Branch staff: an information technology specialist, a Probate Court facilities manager; two law clerks; two judicial administrative assistants; and nine court marshals, one per judge.*

vi. *This recommendation should be funded with General Fund appropriations.*

Recommendation C: At this time, the county registries of probate should be preserved.

i. *Elected Registers of Probate and their staff should remain county officials and retain their existing statutory duties and authorities, including their roles in docketing; scheduling Probate Court proceedings in conjunction with Probate Judges; assisting parties in completing Probate Court forms; and performing quasi-judicial functions in informal probate matters.*

ii. *State Probate Court matters should, at least initially, continue to be entered into the ICON electronic case management system.*

iii. *Counties should continue to retain Probate Court fees to offset the costs of maintaining the county registries and their staff.*

Recommendation D: Responsibility for establishing the qualifications of court-appointed attorneys, guardians* ad litem *and visitors in probate proceedings and for paying these professionals when they are appointed at public expense should be borne by the State and not the county governments.

i. *The Maine Commission on Indigent Legal Services (MCILS) should establish the minimum experience, training and additional qualifications for attorneys appointed to represent indigent individuals at public expense in Probate Court and the State should be responsible for paying such counsel through new legislative appropriations to MCILS.*

ii. *The Judicial Branch, which currently establishes the minimum experience, training and additional qualifications for court-appointed guardians* ad litem*, should also establish the minimum experience, training and additional qualifications for court-appointed visitors in probate proceedings. The Legislature should provide sufficient new appropriations to the Judicial Branch to cover the expenses of these court-appointed professionals when the parties are indigent or the court is allowed or directed by law to pay these expenses.*

iii. *This recommendation should be funded with General Fund appropriations.*

In addition, the commission presents two procedural recommendations for achieving the substantive reforms proposed in Recommendations A through D:

Recommendation E: The new probate court system described in Recommendations A through D should be thoroughly reviewed in 2027 before any further changes are made to the system.

i. *The review should be conducted by a 15-member study group comprised of the same categories of members appointed to the current commission under Resolve 2021, chapter 104 and should include, but not be limited to, evaluating whether the number of supported state Probate Judge positions proposed in Recommendation B was appropriate or should be adjusted; whether*

additional investments should be made to enhance the compatibility of the Probate Court and Judicial Branch electronic case management systems; whether the jurisdiction of the state Probate Court, District Court and Superior Court should be adjusted to increase judicial efficiency and access to justice; whether to authorize cross-assignment of state Probate Court Judges to preside over District Court or Superior Court dockets to the same extent that the judges in the District Court and Superior Court are available for cross-assignments; and whether additional opportunities exist to advance toward the ultimate goal of fully incorporating the probate court system into the Judicial Branch.

Recommendation F: The transition from Maine's existing county probate court system to the new state probate court system should be implemented over four years.

i. *As is described in more detail in Part III of this report, the commission proposes that the seven county Probate Judges whose terms end on December 31, 2022 be replaced with a small cohort of appointed state Probate Judges, including a new Chief Judge of Probate, on January 1, 2023. The remaining nine county Probate Judges whose terms end on December 31, 2024 should be replaced with a second cohort of appointed state Probate Judges on January 1, 2025. This plan not only preserves each elected official's term of office but also allows the first cohort of state Probate Judges to benefit from the experience and wisdom of sitting county Probate Judges as they undertake their new judicial duties.*

ii. *The commission has also developed a timeline set forth in Part III of this report for transitioning responsibility for training, rostering and paying court-appointed attorneys, guardians ad litem and visitors in probate proceedings from the counties to the State. This transition plan will increase access to quality legal representation across the State without requiring county governments to bear the financial responsibility for paying professionals appointed by state judges to appear in probate matters at public expense.*

I. Introduction

Article VI, Section 6 of the Constitution of Maine provides for the election of county Probate Judges and Registers of Probate:

> **Judges and registers of probate, election and tenure; vacancies.** Judges and registers of probate shall be elected by the people of their respective counties, by a plurality of the votes given in, at the biennial election on the Tuesday following the first Monday of November, and shall hold their offices for 4 years, commencing on the first day of January next after their election. Vacancies occurring in said offices by death, resignation or otherwise, shall be filled by election in manner aforesaid at the November election, next after their occurrence; and in the meantime, the Governor may fill said vacancies by appointment, and the persons so appointed shall hold their offices until the first day of January next after the election aforesaid.[1]

Accordingly, there are currently 16 county Probate Courts across the State of Maine. These courts operate largely independently both from one another and from the state Judicial Branch, although they are governed by the same statutory and constitutional strictures; are equally subject to the Maine Rules of Probate Procedure prescribed by the Supreme Judicial Court; and persons involved in matters within the Probate Court's jurisdiction are required to use the official probate forms adopted by the Maine Advisory Committee on Probate Rules.[2] Probate judgeships are generally part-time in nature, although the case load and attendant time required to perform judicial duties in each county varies.

In 1967, the Legislature proposed an amendment to the Constitution of Maine that would repeal Article VI, Section 6 and would "become effective at such time as the Legislature by proper enactment shall establish a different Probate Court system with full-time judges.[3] The amendment was approved by a majority of the Maine voters who participated in the election held on November 7, 1967.[4] Nevertheless, despite the work of numerous studies and commissions addressing Probate Court reform in the intervening decades, each of which has consistently recommended the creation of full-time probate judgeships, legislation establishing a probate court system with full-time judges was never enacted. As a result of this inaction, Article VI, Section 6 of the Constitution of Maine has not yet been repealed.

More than half a century later, the 130th Legislature established the Commission To Create a Plan To Incorporate The Probate Courts into the Judicial Branch through Resolve 2021, chapter 104, "to honor the intent of a long-standing vote of Maine people and ensure that Maine people currently have the same access to justice in all Maine courts." (A copy of Resolve 2021, ch. 104 is included as Appendix A.) In accordance with the resolve, 15 members were appointed to the commission, including: five legislators, three county Probate Judges, a county Register of Probate, a justice of the Maine Supreme Judicial Court, a state District Court Judge, a state court clerk, a state court administrator, and two attorneys currently

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[1] *See* https://legislature.maine.gov/ros/LawsOfMaine/#Const.

[2] *See* 4 M.R.S. §8 ("The Supreme Judicial Court has the power to prescribe, by general rules, for the Probate, District and Superior Courts of Maine, the forms of process, writs, pleadings and motions and the practice and procedure in civil actions at law."); M.R. Prob. P. 84(a) ("All persons involved in matters within the Probate Court's jurisdiction must use official forms. "Official forms" shall be those forms as promulgated by the Maine Advisory Committee on Probate Rules, after review by the Maine Probate Judges Assembly and the Maine Association of Registers of Probate.").

[3] Resolve 1967, chapter 77.

[4] *See* Maine Law and Legislative Library, Amendments to the Maine Constitution, 1820-Present, *available at*: https://www.maine.gov/legis/lawlib/lldl/constitutionalamendments/.

engaged in the practice of probate law, one of whom works for a legal services organization. (A list of commission members is included as Appendix B.)

Resolve 2021, chapter 104 directs the commission to create a plan for a probate court system with full-time judges and to describe how the system will be funded. The resolve authorizes the commission to consider including features in that plan that will:

- Ensure timely, convenient and meaningful access to justice;
- Promote judicial responsibility and adherence to the Maine Code of Judicial Conduct;
- Provide for qualified full-time judges and adequate professional staff;
- Reflect efficient practices in scheduling and case management throughout the system;
- Allow for convenient and consumer-friendly processing of uncontested matters; and
- Reflect economies of scale in all appropriate operational aspects.

The resolve further directs the Administrative Office of the Courts and registers of probate to provide the information and assistance requested and required by the commission in the performance of its duties. Ultimately, the resolve requires the commission to submit a report that includes its findings and recommendations, including suggested legislation, for presentation to the Joint Standing Committee of Judiciary. The Judiciary Committee may report out a bill on the subject matter of the report during the Second Regular Session of the 130th Legislature.[5]

II. Commission Process

The commission held four public meetings at the Maine State House on October 19, November 1, November 15 and November 30, 2021. These meetings were conducted using a hybrid format, through which commission members could choose to attend each meeting either in person or remotely through a Zoom webinar. Members of the public were afforded an opportunity to attend each meeting in person, to view a live video stream or archived video recording of each meeting on YouTube or to listen to a live audio stream of each meeting through the Legislature's website. In addition, members of the public were afforded the opportunity to provide public comment during the meeting held November 1st, either in-person or remotely through the Zoom webinar. The commission also invited members of the public to submit written comments at any time prior to completion of the commission's work. Meeting materials and background materials were posted online and remain archived at the following website: https://legislature.maine.gov/commission-to-create-a-plan-to-incorporate-the-probate-courts-into-the-judicial-branch.

A. First Meeting - October 19, 2021[6]

The commission held its first meeting on October 19, 2021. The meeting began with commission member introductions, opening remarks by commission co-chair Representative Barbara Cardone, and an overview by legislative staff of the commission's authorizing legislation, including the duties, process and projected timeline for the commission's work. In addition, legislative staff provided a brief summary of selected background materials relating to the potential restructuring of the county Probate Courts, including two studies conducted prior to approval of the contingent constitutional amendment in 1967 and

[5] Although Resolve 2021, chapter 104 established December 1, 2021, as the deadline for submission of the commission's report, the Legislative Council granted the commission's request pursuant to Joint Rule 353(7) to extend the report-submission deadline to December 15, 2021.

[6] A recording of the October 19th meeting is available at the following link: https://www.youtube.com/watch?v=uTKeGxA_zls.

multiple study reports and law review articles published after that date. (A copy of the Summary of Selected Events, Reports and Recommendations Regarding Probate Court Reform is included as Appendix C.[7])

During the course of the first meeting, commission members heard from and discussed the information they received from the following individuals:

1. *Commission member Kathy Ayers, Kennebec County Register of Probate*, provided an overview of the Register of Probate's responsibilities in the current probate court system. (A copy of the handout prepared by Register Ayers is included as Appendix D.)

2. *Commission member William Avantaggio, Lincoln County Probate Judge*, provided an overview of the role of the Probate Judge in proceedings involving wills, trusts and estates.

3. *Commission member Elizabeth H. Mitchell, Kennebec County Probate Judge*, provided an overview of the role of the Probate Judge in proceedings involving adult and minor guardianships, adoptions and name changes.

4. *Professor Deirdre M. Smith, University of Maine School of Law*, presented an overview of her research on past efforts to restructure Maine's Probate Courts, the historical context in which these past efforts took place and the laws governing probate court structure in selected states across the country. Professor Smith also suggested the commission consider several specific facets of probate court practice in developing its recommendations for reform.

5. *Patricia A. Nelson-Reade, Esq., a probate law practitioner, and retired Franklin County Probate Judge Richard Morton* provided their professional perspectives regarding the current structure of the probate court system.

Summaries of the information presented by Register Ayers, Judge Avantaggio, Judge Mitchell, Professor Smith, Attorney Nelson-Reade and Judge Morton are included in Appendix E. In addition, a table comparing the structure and administration of the trial courts with jurisdiction over probate matters in the states identified by Professor Smith as helpful to the commission's work is included in Appendix F.

B. Second Meeting - November 1, 2021 [8]

The second commission meeting was held on November 1, 2021, and began with commission member introductions, followed by a review of the responses received to the requests for information compiled during the first meeting, a public comment period and a preliminary discussion of commission members' recommendations for a restructured probate court system.

1. *Information gathered by the Maine Association of Registers of Probate*

Lincoln County Register of Probate Catherine Moore presented information gathered by the Maine Association of Registers of Probate on county Probate Court case loads, court-appointed professional

[7] Scanned copies of each of the background materials summarized by legislative staff are also posted to the commission's webpage at: https://legislature.maine.gov/commission-to-create-a-plan-to-incorporate-the-probate-courts-into-the-judicial-branch-background-materials.

[8] A recording of the November 1st meeting is available at the following link: https://www.youtube.com/watch?v=BAdEmFofkLw.

expenses, budgets and facilities and the status of historical record scanning. (A summary of Register Moore's presentation and copies of the data presented are included in Appendix G.)

2. *Information from a survey of the Maine Probate Judges Assembly*

Commission member Jarrod Crockett, Oxford County Probate Judge, presented the information on judicial workloads and time spent on judicial responsibilities, percentages of judicial time spent handling various categories of cases, and the unique role of county Probate Judges. (A summary of Judge Crockett's presentation and a copy of the results of the survey of Maine Probate Judges Assembly members is included in Appendix H.)

3. *Information provided by the Administrative Office of the Courts*

Although not discussed during the meeting, commission members received from the Administrative Office of the Courts a detailed breakdown of the budgetary costs of a state District Court judge and Superior Court justice, including the cost of law clerk and security support, as well as an explanation of the difficulty of estimating the cost to convert probate court records to the new Odyssey case management and e-filing system. (A copy of this information is included in Appendix I.)

4. *Public Comments*

The Commission, which had solicited input from members of the public and the bar, next turned to the receipt of public comments. The commission heard from and asked questions of the following individuals during the meeting: Martha Greene, Esq. of Brann & Isaacson, Elizabeth Stout, Esq. of the Maine Volunteer Lawyers Project, Christopher Berry, Esq. of Berry Law P.A., and Susan Lobosco, LCSW. In addition, although they did not speak during the meeting, written comments were submitted by Penny Collins, LCSW, Nathan Dane, Esq., Camille Desoto, Gregory Farris, Esq. and the following group of attorneys, who submitted a joint written comment for the commission's consideration: Gene Libby, Esq., Jon Lund, Esq., Barry K. Mills, Esq., Robert Edmund Mittel, Esq., Richard Moon, Esq., Peter L. Murray, Esq., and Peter Plumb, Esq. (An overview of the concerns raised in these public comments is included in Appendix J.[9])

5. *Information from legislative staff*

Legislative staff presented research regarding an issue raised by commission members during the first commission meeting: whether the elected or appointed nature of a Probate Judge impacts the judge's ability to supervise or provide oversight of an elected Register of Probate. Legislative staff were unable to discern any legal barrier[10] to oversight of an elected Register of Probate by a Probate Judge, regardless of whether the judge is appointed by the Governor or elected by county voters. An appointed or elected judge may not, however, remove a register from office. Because the office of Register of Probate is currently established in Article VI, Section 6 of the Constitution of Maine, the Constitution establishes the only permissible methods for removing an elected register from office: pursuant to Article IX, Section 6 a register may be removed from office either by impeachment or through the action of the Governor on the address of both chambers of the Legislature. (A copy of the memorandum prepared by legislative staff is included in Appendix K.)

[9] The written public comments are posted on the commission's website at https://legislature.maine.gov/commission-to-create-a-plan-to-incorporate-the-probate-courts-into-the-judicial-branch-meeting-november-1-2021.

[10] Legislative staff did not comment on whether political or administrative considerations might weigh against creation of a system that includes appointed state Probate Judges and elected county Registers of Probate.

At the request of the commission co-chairs, legislative staff next outlined the potential models for a probate court system with full-time judges that had been raised during the first commission meeting.[11] First, the commission might recommend retaining the county Probate Courts, registries and their jurisdiction, perhaps achieving full-time Probate Judge positions by combining lower-caseload counties. As a second option, the commission could, in addition to maintaining the county Probate Courts and registries as described in the first model, recommend reducing the overlap in jurisdiction among trial courts in the State by transferring jurisdiction over specific categories of probate matters to the Superior Court and the District Court. Third, the commission might choose to recommend elimination of the county Probate Courts and an allocation of their current jurisdiction to the Superior Court and District Court, either maintaining the registries in each county or also merging the registries' functions into the Judicial Branch. As an alternative, a fourth approach discussed at the first commission meeting would combine elimination of the county Probate Courts and transfer of their jurisdiction to the state court system. One path for that transfer would involve the establishment of a special trial court division to handle specific types of probate matters within the Superior Court, the District Court or both courts. Another route would be the establishment of a separate state Probate Court to handle some or all of the county Probate Court's current jurisdiction. As with the other models, the commission would have to decide whether to maintain the county-based registries or to merge their functions into the Judicial Branch if the fourth model were adopted. While the commission's discussions at the first meeting had identified these four possibilities, legislative staff reminded commission members that they were not restrained by the options presented to date and were free to propose any other model for the establishment of a probate court system with full-time judges.

To facilitate commission discussions, legislative staff distributed a chart outlining the current statutory jurisdiction of Probate Courts and the statutory duties and authority of Registers of Probate, in a format that afforded members the opportunity to note their recommendations for restructuring, or for preserving, each of these aspects of the current probate court system. (A copy of the chart summarizing Probate Court jurisdiction and register duties is included in Appendix L.[12])

6. *Discussion and development of a preliminary model*

After a break to afford members time to review the information and materials they had received, commission co-chair Senator Anne Carney invited each commission member to comment on that member's preferred model for restructuring the probate court system, to identify any barriers or concerns regarding adoption of the member's proposed model, and to raise any other issues that the member deemed important for the commission to consider. After a lengthy discussion, the members who remained in attendance reached a preliminary consensus on the following aspects of a potential model for reforming Maine's probate court system:

- Create a Probate Court within the Judicial Branch as a state trial court distinct from the District Court and Superior Court with a certain number of full-time appointed judges (perhaps eight) who have statewide jurisdiction but are each assigned to a specific geographic region. These judges should be supported by new Judicial Branch staff including, at a minimum, two law clerks.

[11] A chart distributed to the commission that briefly summarizes these models and identifies several of the issues that should be addressed for each is available at the following link: https://legislature.maine.gov/doc/7364.

[12] The copy of the chart included in Appendix H has been amended from the version presented at the November 1, 2021 meeting to include information on an issue raised by commission members during the meeting—*i.e.*, the relative authority of the register and Probate Judge over the selection of a deputy register—as well as to include citations to the Maine Rules of Probate Procedure that describe the duties of registers.

- State Probate Court proceedings should be held in existing county Probate Court courtrooms and, to the extent necessary in some counties, state trial courtrooms should also be made available for state Probate Court proceedings.
- Emergency matters appearing on the state Probate Court docket should be prioritized and addressed expediently, to the same extent that those matters are prioritized by the existing county Probate Courts.
- The county registry system should be preserved and registers and their staff should retain their existing statutory duties and authorities.
- State Probate Courts should continue to utilize the ICON electronic case management system, with a possible long-term goal of developing compatibility with the electronic case management system utilized by the state Judicial Branch.
- To increase uniformity among registers, the Maine Advisory Committee on Probate Rules should prepare a manual for use by county Registers in processing Probate Court matters.
- The new probate court system should be thoroughly reviewed three years after implementation, including, at a minimum, an evaluation of whether the number of supported state Probate Judge positions is appropriate and whether additional steps should be taken to enhance the compatibility of the state probate court system with the other courts within the state Judicial Branch.

At the close of the meeting, commission co-chair Senator Carney proposed that commission members reflect on whether they support this model and identify any additional details that may need to be added to the model in preparation for a robust conversation and potential vote on commission recommendations at the third commission meeting.[13]

C. Third Meeting - November 15, 2021 [14]

The third commission meeting was held on November 15, 2021, and began with commission member introductions. The commission received and discussed the following information during the meeting.

1. Information from the Maine County Commissioners Association

Prior to the meeting, commission member Oxford County Probate Judge Jarrod Crockett provided the commission with updated information regarding the salaries and benefits of county Probate Judges in 2021 that he had obtained from the Maine County Commissioners Association. (A copy of this salary and benefit information is included in Appendix M.)

2. Public Comments

Commission members also received copies of additional written public comments submitted by Camille Desoto, retired Cumberland County Commissioner and Probate Judge Joseph Mazziotti, and Stephen Gorden, chair of the Cumberland County Board of County Commissioners and President of the Maine County Commissioners Association prior to the meeting. (An overview of the concerns raised in these public comments is included in Appendix J.[15])

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[13] Legislative staff prepared and distributed to all commission members a summary of the proposed model, identifying the outstanding issues that had not yet been addressed, in advance of the third meeting. A copy of that summary is available on the commission website through the following link: https://legislature.maine.gov/commission-to-create-a-plan-to-incorporate-the-probate-courts-into-the-judicial-branch-meeting-november-15-2021.

[14] A recording of the November 15th meeting is available at the following link: https://youtu.be/ByCbcnE9_hc.

[15] These public comments are posted on the commission's website at https://legislature.maine.gov/commission-to-create-a-plan-to-incorporate-the-probate-courts-into-the-judicial-branch-meeting-november-15-2021.

3. *Presentation by MCILS Executive Director Justin Andrus, Esq.*

During the meeting, the commission received a presentation from Justin Andrus, Executive Director of the Maine Commission on Indigent Legal Services (MCILS), who had been invited to speak about the possibility of transferring responsibility to MCILS for establishing the qualifications, training, assignment and payment of court-appointed counsel in Probate Court proceedings. (A summary of Director Andrus's presentation is included in Appendix N.)

4. *Identification of the types of information necessary to assess the financial impact of a new probate court system*

After commission members discussed the information received from Director Andrus, the commission co-chairs asked legislative staff to provide an overview of the potential financial impact of the preliminary model for a new probate court system proposed during the November 1st commission meeting in order to increase commission members' basic understanding of the financial considerations attendant to the various probate court systems that the commission might recommend.

Legislative staff explained that it is difficult to provide an estimate of potential costs without further detail regarding, for example: (1) the precise number of state Probate Judges and the number and types of Judicial Branch support staff to be established; (2) the rate of attorney appointments in the newly established state probate court system and hours spent by those attorneys on court-appointed cases; (3) the rate of guardian *ad litem* appointments at public expense in the newly established state probate court system and whether a different rate will be paid to guardians *ad litem* who are not attorneys; (4) the number of visitor appointments that will be made by the state probate court system in adult guardianship and conservatorship proceedings involving indigent respondents, average number of hours spent by visitors on those proceedings and the payment rate for visitors; and (5) the cost to the Judicial Branch for state Probate Court facilities, including courtroom lease, maintenance and utilities expenses as well as the cost of Probate Court supplies, equipment, mailing and technology support costs.

On the other side of the balance sheet, legislative staff observed, county government expenses will likely decrease if the preliminary proposal developed during the November 1st commission meeting is adopted. Although it is not possible to fully calculate those savings at this time, they will include, for example, (1) an elimination of county Probate Judge salaries and benefits; (2) potential reductions in the personnel costs for other county positions, including IT and custodial staff; and (3) the elimination of county payments for court-appointed attorneys, guardians *ad litem* and visitors.

Commission co-chair Senator Carney reminded commission members that more detailed and exact cost estimates will be prepared during the legislative process that follows submission of the commission's report to the Joint Standing Committee on Judiciary. The Office of Fiscal and Program Review will develop a fiscal note assessing the financial impact to the State of any probate court reform model or models encapsulated in a bill in or an amendment or amendments to a bill ultimately reported out by the Judiciary Committee.

5. *Continued discussion and development of the preliminary model proposed on November 1st*

The commission spent the balance of the meeting reviewing and debating the merits of the preliminary model for the establishment of a probate court system with full-time judges that had been developed at the end of the commission's November 1st meeting. During the discussion and debate, commission members addressed several issues that had not been resolved in that preliminary proposal, including:

- The number of state Probate Judge positions that should be established, whether those judges should be assigned to the Judicial Branch's current court regions or other geographic regions, whether those judges should be available for cross-assignment to preside over District and Superior Court dockets, and what additional Judicial Branch staff would be necessary to support those new state Probate Judges;
- How to increase uniformity of procedure in the new probate court system, including whether to recommend establishment of a Chief Judge for the state Probate Court;
- Who should be responsible for establishing state Probate Court fees and whether to recommend that all or a portion of these fees continue to be retained by the counties;
- Who should bear responsibility for the selection and payment of attorneys, guardians *ad litem* and visitors appointed by state Probate Judges;
- Whether any portion of the current county Probate Courts' jurisdiction should be reallocated to the District Court or Superior Court;
- Whether to identify specific future changes to be made to the new probate court system in phases, or whether to identify specific aspects of the new system that should be evaluated as potential targets for further reform by the commission that will review the new system three years after it is implemented.

At the conclusion of the discussion, the commission took a preliminary vote. A majority (11-1) of commission members present voted in support of recommending the creation of a new probate court system with full-time judges that is described in Recommendations A through E in Part III of this report.[16] Senator Carney and Representative Cardone, the commission co-chairs, announced that the three absent commission members would be permitted to vote on this package of recommendations within the 24 hours following the conclusion of the meeting. In addition, the co-chairs agreed to develop a proposal for transitioning from the existing county probate court system to the state Probate Court and county registry system described in Recommendations B and D and to present that transition model to the commission for its consideration at the final commission meeting.

D. Fourth Meeting - November 30, 2021 [17]

The commission conducted its final meeting on November 30, 2021. Prior to the meeting and at the request of the commission co-chairs, legislative staff prepared and distributed two documents designed to clarify financial and legal issues regarding probate court procedure that had arisen in earlier meetings. A copy of the first document, which summarizes the statutes governing the appointment and payment of attorneys, guardians *ad litem* and visitors in probate proceedings under Title 18-C of the Maine Revised Statutes, is included in Appendix O. A copy of the second document, which describes the process for establishing the fees assessed in probate court proceedings, is included in Appendix P.

The commission meeting once again began with member introductions. Commission co-chairs Senator Carney and Representative Cardone then explained that a member who had been unable to attend the November 15 meeting submitted a vote on the proposed model for a new probate court system with full-time judges shortly after the 24-hour deadline for absentee voting. Commission members ultimately agreed that it was not necessary for absent members to vote on the preliminary model developed on November 15th, because the commission would conduct a final vote on a package of recommendations at

[16] Senator Carney, Representative Cardone, Representative Sheehan, Tudor Goldsmith, Register Ayers, Leo Delicata, Justice Gorman, Julie Howard, Judge Martin, Katharine Wiltuck, and Judge Mitchell voted in favor and Judge Crockett voted against the proposal.

[17] A recording of the November 30th meeting is available at the following link: https://www.youtube.com/watch?v=716z18re0rc.

the end of the November 30th meeting. Any commission member not present at the time of this final vote would be permitted to submit that member's vote via email to the commission co-chairs and legislative staff before 5:00 p.m. on December 1, 2021.

The commission next discussed the best method for transitioning to the system of full-time, appointed state Probate Judges approved by a majority of commission members at the previous meeting without prematurely ending the term of office to which the existing county Probate Judges have been elected. The co-chairs proposed a two-step plan that involved replacing the seven county Probate Judges whose terms expire on December 31, 2022 with a small cohort of appointed state Probate Judges and later replacing the nine county Probate Judges whose terms expire on December 31, 2024 with the remaining cohort of appointed state Probate Judges. (A map of current Probate Judge terms by county and court region is included in Appendix Q.) After a lengthy discussion during which commission members refined the co-chairs' proposed transition plan, Senator Cardone moved that the commission adopt the package of recommendations outlined in Part III of this report.

III. Recommendations

Resolve 2021, chapter 104 directs the commission to "create a plan for a probate court system with full-time judges." A majority of the commission (12-2)[18] proposes the following plan, described in Recommendations A through F below, for the reasons that follow the description of each portion of the plan.

Recommendation A: The county probate court system should be fully incorporated into the state Judicial Branch through the deliberately multi-step process detailed in Recommendations B to F.

For more than half a century, numerous studies and commissions have recommended integrating Maine's county probate court system into the state Judicial Branch. A majority of the commission believes that completing the transition in one fell swoop may be not only cost-prohibitive but that it also may be more efficient and less disruptive to public service not to change all aspects of the system at the same time.

Recommendation B: Legislation should be enacted to establish a new state Probate Court with full-time, appointed state Probate Judges.

i. Over the course of four years, by January 1, 2025 as is described in Recommendation F, the 16 part-time, elected county Probate Judges and 16 separate county Probate Courts should be replaced by nine full-time, appointed state Probate Judges and a statewide Probate Court within the state Judicial Branch that is distinct from the District and Superior Courts. At least one new Probate Judge should be assigned to each court region within the State.

ii. The Chief Justice of the Supreme Judicial Court should designate one state Probate Judge to serve as the Chief Judge of the Probate Court, who should undertake certain administrative responsibilities in addition to judicial responsibilities that include, but are not limited to: creating the statewide Probate Court schedule; ensuring uniformity of court processes and procedures; working with the Supreme Judicial Court to ensure the accessibility and safety of probate court facilities; and preparing annual reports.

[18] Senator Carney, Representative Cardone, Representative Sheehan, Justice Gorman, Judge Martin, Katharine Wiltuck, Register Ayers, Julie Howard, Judge Avantaggio, Judge Mitchell, Tudor Goldsmith and Leo Delicata voted in favor and Senator Keim and Judge Crockett voted against the package of recommendations described in this Part of the report. No vote was cast by Representative Haggan. Statements from Judge Crockett and Senator Keim explaining their minority reports are included in Appendix R.

iii. *State Probate Court proceedings should be held in existing county Probate Court facilities, with arrangements to be made between the counties and the Judicial Branch regarding the use of those facilities. When necessary, state District Court and Superior Court facilities may also be utilized for Probate Court proceedings.*

iv. *Emergency matters on the state Probate Court's docket should be prioritized and addressed expediently, to the same extent that those matters are prioritized by the county Probate Courts.*

v. *The state Probate Court and state Probate Judges should be supported by, at a minimum, the following new Judicial Branch staff: an information technology specialist, a Probate Court facilities manager; two law clerks; two judicial administrative assistants; and nine court marshals, one per judge.*

vi. *This recommendation should be funded with General Fund appropriations.*

In 1967, the people of Maine expressed their preference for full-time, non-elected Probate Judges by voting to repeal Article VI, Section 6 of the Constitution of Maine, which describes the current election and tenure of county Probate Judges and Registers of Probate. That amendment was made contingent upon the Legislature's enactment of legislation establishing "a different Probate Court system with full-time judges." Unlike other judges in the State, as part-time jurists, Probate Judges are authorized to practice law and to represent clients in court. This could include cases heard in other county Probate Courts and in circumstances where an attorney for an opposing party may also represent a litigant in a case that the Probate Judges will later adjudicate. Numerous studies have recognized the potential for conflicts of interest and the appearance of impropriety attendant to these situations. Adoption of Recommendation B is thus designed to trigger the contingency clause of the constitutional amendment by eliminating the part-time nature of probate judgeships.

By requiring that at least one new state Probate Judge will eventually be assigned to each court region,[19] commission members believe that Recommendation B will preserve two benefits inherent in the current county probate court system: the regional familiarity of county Probate Judges and the access to justice provided by county Probate Courts, especially in rural areas of the State. At the same time, commission members believe that the new state Probate Judges will benefit from the assistance currently offered to other state trial court judges, including the assistance of law clerks, dedicated information technology staff and full-time court security officers. Commission members nevertheless recommend that the new state Probate Court's docket remain separate from the docket of the District Court and Superior Court, to prevent adoption, trust and estate matters from being pushed to the bottom of the list of those trial courts' priorities, which could result in delayed resolution of these important cases.

Recommendation C: At this time, the county registries of probate should be preserved.

i. *Elected Registers of Probate and their staff should remain county officials and retain their existing statutory duties and authorities, including their roles in docketing; scheduling Probate*

[19] The eight court regions established by the Judicial Branch, which also serve as the State's prosecutorial districts, are comprised of the following counties: Region 1 (York County); Region 2 (Cumberland County); Region 3 (Oxford, Franklin and Androscoggin counties); Region 4 (Kennebec and Somerset counties); Region 5 (Penobscot and Piscataquis counties); Region 6 (Sagadahoc, Lincoln, Knox and Waldo counties); Region 7 (Hancock and Washington counties); and Region 8 (Aroostook County). *See* Maine Judicial Branch, 2020 Annual Report at 4, available at https://www.courts maine.gov/about/reports/ar2020.pdf; *see also* 30-A M.R.S. §254.

Court proceedings in conjunction with Probate Judges; assisting parties in completing Probate Court forms; and performing quasi-judicial functions in informal probate matters.

ii. *State Probate Court matters should, at least initially, continue to be entered into the ICON electronic case management system.*

iii. *Counties should continue to retain Probate Court fees to offset the costs of maintaining the county registries and their staff.*

County Registers of Probate provide unique services—registers and their staff assist members of the public in correctly completing court forms and perform quasi-judicial duties in informal probate matters, for example, by appointing personal representatives in uncontested proceedings. These unique services not only increase the Probate Courts' efficiency but are also two of the features of the current county probate court system most appreciated by the public. Because Judicial Branch court clerks are not authorized to perform similar functions, the commission recommends that additional time and consideration be invested in determining how best to preserve these features of the register system before incorporating that system into the state Judicial Branch. In addition, given the challenging life events and personal circumstances that lead to the public's interaction with Probate Courts, it is essential to retain local county probate registries rather than consolidating registries across counties in a way that is less convenient to Maine residents and that may negatively impact access to justice in rural areas of the State.

The commission also recommends that Probate Court matters continue to be entered in the ICON electronic case management system at this time. The complexity of integrating probate records into the Judicial Branch's new electronic case management system may be significant and it makes sense to wait until the Judicial Branch's new Odyssey system is fully deployed and operational before revisiting the question of integrating the two systems.

Recommendation D: Responsibility for establishing the qualifications of court-appointed attorneys, guardians* ad litem *and visitors in probate proceedings and for paying these professionals when they are appointed at public expense should be borne by the State and not the county governments.

i. *The Maine Commission on Indigent Legal Services (MCILS) should establish the minimum experience, training and additional qualifications for attorneys appointed to represent indigent individuals at public expense in Probate Court and the State should be responsible for paying such counsel through new legislative appropriations to MCILS.*

ii. *The Judicial Branch, which currently establishes the minimum experience, training and additional qualifications for court-appointed guardians* ad litem*, should also establish the minimum experience, training and additional qualifications for court-appointed visitors in probate proceedings. The Legislature should provide sufficient new appropriations to the Judicial Branch to cover the expenses of these court-appointed professionals when the parties are indigent or the court is allowed or directed by law to pay these expenses.*

iii. *This recommendation should be funded with General Fund appropriations.*

Through Recommendation D, commission members emphasize the necessity of establishing uniformity regarding the qualifications, compensation and training of court-appointed professionals across the State and ensuring that they are appointed in all appropriate cases while avoiding a situation where counties are required to expend county funds to pay the cost of attorneys, guardians *ad litem* or visitors appointed by state (as opposed to county) judges.

Recommendation E: The new probate court system described in Recommendations A through D should be thoroughly reviewed in 2027 before any further changes are made to the system.

i. *The review should be conducted by a 15-member study group comprised of the same categories of members appointed to the current commission under Resolve 2021, chapter 104 and should include, but not be limited to, evaluating whether the number of supported state Probate Judge positions proposed in Recommendation B was appropriate or should be adjusted; whether additional investments should be made to enhance the compatibility of the Probate Court and Judicial Branch electronic case management systems; whether the jurisdiction of the state Probate Court, District Court and Superior Court should be adjusted to increase judicial efficiency and access to justice; whether to authorize cross-assignment of state Probate Court Judges to preside over District Court or Superior Court dockets to the same extent that the judges in the District Court and Superior Court are available for cross-assignments; and whether additional opportunities exist to advance toward the ultimate goal of fully incorporating the probate court system into the Judicial Branch.*

Although the commission strongly supports the goal of fully integrating the county probate court system into the state Judicial Branch, it is essential to allow the changes proposed in Recommendations B through D to be implemented and data to be collected on various aspects of the new system before considering further changes to that system. For example, given the distinction between the roles of Registers of Probate and Judicial Branch Clerks of Court as well as the lack of additional space in many state court facilities in which separate registry offices could be established, it will be necessary to develop a long-term plan before integrating the register function into the Judicial Branch.

Recommendation F: The transition from Maine's existing county probate court system to the new state probate court system should be implemented over four years.

i. *The Judicial Branch should be authorized to hire an information technology specialist and a Probate Court facilities manager, who should help prepare for the transition, beginning on the effective date of the legislation enacted to implement the recommendations in this report.*

ii. *Funding for the nine new state Probate Judges described in Recommendation B should be provided beginning January 1, 2023, although not all of the positions will be filled immediately.*

iii. *When the terms of the seven county Probate Judges in Cumberland, Androscoggin, Franklin, Penobscot, Knox, Hancock and Washington counties expire on December 31, 2022:*

- *The county Probate Judge positions in Androscoggin, Franklin, Penobscot and Knox counties should remain elected county positions for a single two-year term established by statute that commences January 1, 2023 and ends December 31, 2024.*
- *The county Probate Judge positions in Cumberland, Hancock and Washington counties—Court Regions 2 and 7—should be replaced by four new, appointed state Probate Judge positions that are supported by one new law clerk, one new judicial administrative assistant and four new court marshals within the Judicial Branch.*
- *The Chief Justice of the Supreme Judicial Court should designate one of the newly appointed state Probate Judges to serve as the first Chief Judge of the new State Probate Court. In addition to exercising the administrative functions described in Recommendation B(ii), the Chief Judge should facilitate and oversee the process for transitioning from the county probate court system to the state probate court system.*

- *The new state Probate Judges should preside over probate proceedings in Cumberland, Hancock and Washington counties. When a judicial vacancy in the county Probate Courts occurs due to the death, resignation or retirement of the elected county Probate Judge, the vacant position should not be filled and jurisdiction over the county's probate matters should be transferred to the new state Probate Court. Because the funding for all nine new state Probate Judge positions will be provided beginning on January 1, 2023, the Chief Justice of the Supreme Court should be afforded discretion to request that the Governor appoint additional state Probate Judges as necessary when these vacancies occur to ensure meaningful access to justice in state Probate Court matters.*
- *MCILS should assume responsibility for training, rostering and paying counsel appointed to represent individuals at public expense by all county and state Probate Judges and the Legislature should appropriate new funds for this purpose beginning on January 1, 2023.*
- *The state Judicial Branch should assume responsibility for the training, rostering and payment of guardians* ad litem *and visitors appointed at public expense in state Probate Court proceedings by a state Probate Judge and the Legislature should appropriate new funds for this purposes beginning on January 1, 2023. If a guardian* ad litem *or visitor is appointed at public expense in a county Probate Court by a county Probate Judge, the county should remain responsible for paying the appointed professional's fees.*

iv. When the terms of the remaining county Probate Judges expire on December 31, 2024:

- *Appointments should be completed for all unfilled state Probate Judge positions and the full complement of nine state Probate Judges should be supported by a total of two law clerks, two judicial administrative assistants and nine court marshals within the Judicial Branch.*
- *The state Judicial Branch should bear responsibility for training, rostering and paying of all guardians* ad litem *and visitors appointed at public expense in probate proceedings and the Legislature should appropriate supplemental funding for this purpose beginning January 1, 2025.*

Maine's 16 county Probate Judges have each been elected to a specific four-year term of office under Article VI, Section 6 of the Constitution of Maine. Through Recommendation F, the commission has therefore proposed a pathway for transitioning from the existing county probate court system to the state probate court system described in Recommendations B and D without necessitating the early termination of an elected official's term of office.

IV. Acknowledgments

The commission expresses its gratitude to the following individuals and organizations, who at the commission's request meticulously gathered a substantial amount of information that appears on the commission's website and in the appendices to this report, often within extremely short timeframes:

- Kennebec County Register of Probate Kathy Ayers, Sagadahoc County Register of Probate Jean M. Guzzetti, Lincoln County Register of Probate Catherine H. Moore, Washington County Register of Probate Carlene M. Holmes and the other members of the Maine Association of Registers of Probate;
- Oxford County Probate Judge Jarrod Crockett and the other members of the Maine Probate Judges Assembly;
- The Maine County Commissioners Association;
- Piscataquis County Manager Michael L. Williams and Aroostook County Administrator Ryan D. Pelletier; and

- Katharine E. Wiltuck and the Administrative Office of the Courts.

The commission also wishes to acknowledge and express its gratitude to the following individuals whom, when asked, willingly shared their professional expertise and valuable time with the commission:

- Professor Deirdre M. Smith of the University of Maine School of Law;
- Lincoln County Probate Judge William Avantaggio;
- Kennebec County Probate Judge Elizabeth H. Mitchell;
- Retired Franklin County Probate Judge Richard Morton;
- Patricia A. Nelson-Read, Esq.; and
- MCILS Executive Director Justin Andrus, Esq.

Finally, the commission would be remiss if it did not recognize the Maine residents and professionals who either currently work on matters within the jurisdiction of Maine's Probate Courts or who have done so in the past and who submitted written or oral public comments, sometimes both, to assist the commission in fulfilling its duties:

- Christopher M. Berry, Esq.;
- Penny Collins, LCSW;
- Nathan Dane, III, Esq.
- Camille Desoto;
- Jed Davis, Esq.;
- Gregory J. Farris, Esq.;
- Stephen Gorden, President of the Maine County Commissioners Association;
- Martha E. Greene, Esq;
- Susan Lobosco, LCSW;
- Joseph Mazziotti, Esq., retired Cumberland County Probate Judge;
- Elizabeth Stout, Esq.; and
- Gene Libby, Esq., Jon Lund, Esq., Barry K. Mills, Esq., Robert Edmund Mittel, Esq., Richard Moon, Esq., Peter L. Murray, Esq., and Peter Plumb, Esq., who submitted a joint written comment for the commission's consideration.

APPENDIX A

Authorizing Legislation, Resolve 2021, chapter 104

APPROVED
JULY 6, 2021
BY GOVERNOR

CHAPTER
104
RESOLVES

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-ONE

H.P. 530 - L.D. 719

Resolve, To Establish the Commission To Create a Plan To Incorporate the Probate Courts into the Judicial Branch

Preamble. Whereas, the existing probate court system established pursuant to the Constitution of Maine, Article VI, Section 6 was conditionally repealed by a vote of the people of Maine in 1967; and

Whereas, the effective date of repeal was dependent upon the creation of a different probate court system with full-time probate judges by the Legislature; and

Whereas, a different probate court system has not been created since the repeal and the Legislature has not considered a plan to establish a probate court system with full-time judges; and

Whereas, to honor the intent of a long-standing vote of Maine people and ensure that Maine people currently have the same access to justice in all Maine courts; now, therefore, be it

Sec. 1. Commission established. Resolved: That the Commission To Create a Plan To Incorporate the Probate Courts into the Judicial Branch, referred to in this resolve as "the commission," is established.

Sec. 2. Commission membership. Resolved: That, notwithstanding Joint Rule 353, the commission consists of 15 members appointed as follows:

1. Two members of the Senate appointed by the President of the Senate, including one member from each of the 2 parties holding the largest number of seats in the Legislature;

2. Three members of the House of Representatives appointed by the Speaker of the House of Representatives, including members from each of the 2 parties holding the largest number of seats in the Legislature;

3. Three members appointed by the Chief Justice of the Supreme Judicial Court;

4. One member who is a member of the Maine Probate Judges Assembly appointed by the Speaker of the House of Representatives;

5. One member who is a register of probate appointed by the Speaker of the House of Representatives;

6. One member who is a judicial branch clerk appointed by the Chief Justice of the Supreme Judicial Court;

7. One member who is a member of the Probate and Trust Law Advisory Commission appointed by that commission;

8. One member who is a member of the Family Law Advisory Commission appointed by that commission; and

9. Two members who are members of the Maine State Bar Association, one of whom is a member of a nonprofit organization providing statewide free legal services, appointed by the Speaker of the House of Representatives.

Sec. 3. Chairs; subcommittees. Resolved: That the first-named Senate member is the Senate chair and the first-named House of Representatives member is the House chair of the commission. The chairs of the commission are authorized to establish subcommittees to work on the duties listed in section 5 and to assist the commission. Any subcommittees established by the chairs must be composed of members of the commission and interested persons who are not members of the commission and who volunteer to serve on the subcommittees without reimbursement.

Sec. 4. Appointments; convening of commission. Resolved: That all appointments must be made no later than 30 days following the effective date of this resolve. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. After appointment of all members, the chairs shall call and convene the first meeting of the commission. If 30 days or more after the effective date of this resolve a majority of but not all appointments have been made, the chairs may request authority and the Legislative Council may grant authority for the commission to meet and conduct its business.

Sec. 5. Duties. Resolved: That the commission shall create a plan for a probate court system with full-time judges. The commission may consider for inclusion in the plan any features that the commission determines relevant, including, but not limited to, features that will ensure timely, convenient and meaningful access to justice, promote judicial responsibility and adherence to the code of judicial responsibility, provide for qualified full-time judges, provide adequate professional staff, reflect efficient practices in scheduling and case management throughout the system, allow for convenient and consumer-friendly processing of matters that are not contested and reflect economies of scale in all appropriate operational aspects. The commission shall describe how the system would be funded.

Sec. 6. Staff assistance. Resolved: That the Legislative Council shall provide necessary staffing services to the commission, except that Legislative Council staff support is not authorized when the Legislature is in regular or special session.

Sec. 7. Information and assistance. Resolved: That the Administrative Office of the Courts and registers of probate shall provide to the commission information and assistance requested by the commission and required for the commission to perform its duties.

Sec. 8. Report. Resolved: That, no later than December 1, 2021, the commission shall submit a report that includes its findings and recommendations, including suggested legislation, for presentation to the Joint Standing Committee on Judiciary. The Joint Standing Committee on Judiciary may report out a bill regarding the subject matter of the report to the Second Regular Session of the 130th Legislature.

APPENDIX B

Membership list, Commission To Create a Plan To Incorporate The Probate Court Into the Judicial Branch

Commission To Create a Plan To Incorporate the Probate Courts into the Judicial Branch

Resolve 2021, ch. 104

Membership List

Name	Representation
Senator Anne Carney – Chair	Member of the Senate, appointed by the President of the Senate
Representative Barbara Cardone – Chair	Member of the House, appointed by the Speaker of the House of Representatives
Senator Lisa Keim	Member of the Senate, appointed by the President of the Senate
Representative Erin Sheehan	Member of the House, appointed by the Speaker of the House of Representatives
Representative David Haggan	Member of the House, appointed by the Speaker of the House of Representatives
Justice Ellen Gorman	Member appointed by the Chief Justice of the Supreme Judicial Court
Judge John Martin	Member appointed by the Chief Justice of the Supreme Judicial Court
Katharine Wiltuck, Esq.	Member appointed by the Chief Justice of the Supreme Judicial Court
Judge Jarrod Crockett	Member of the Probate Judges Assembly, appointed by the Speaker of the House of Representatives
Kathy Ayers, Register of Probate	A register of probate appointed by the Speaker of the House of Representatives
Julie Howard	A judicial branch clerk appointed by the Chief Justice of the Supreme Judicial Court
Judge William Avantaggio	Member of the Probate and Trust law Advisory Commission, appointed by that commission
Judge Elizabeth ("Libby") Mitchell	Member of the Family Law Advisory Commission, appointed by that commission
Tudor Goldsmith, Esq.	Member of the Maine State Bar Association, appointed by the Speaker of the House of Representatives
Leo Delicata, Esq.	Member of the Maine State Bar Association who is a member of a nonprofit organization providing statewide free legal services, appointed by the Speaker of the House of Representatives

APPENDIX C

Summary of Selected Events, Reports and Recommendations Regarding Probate Court Reform

Summary of Selected Events, Reports and Recommendations Regarding Probate Court Reform[1]

1952. Study by Edward F. Dow, University of Maine[2]

This report, *County Government in Maine: Proposals for Reorganization*, was completed by Professor Dow of the University of Maine for the the Maine Legislative Research Committee. Professor Dow's report examined the sheriffs and municipal court system in detail. He issued seven recommendations. As regards the probate court system, he offered the following:

1. "Judges of probate should be appointed. They are presently the only elected judges in Maine."
2. "Registers of probate and clerks of courts should be appointed by the courts."[3]

1967. Statewide Referendum approving Constitutional amendment.[4]

Resolve 1967, Chapter 77 proposed an amendment to the Constitution of Maine that would remove Article VI, Section 6, which provides for the election of Probate Judges and Registers of Probate. The referendum passed.[5] However, the resolve provided that the amendment becomes effective "at such time as the Legislature by proper enactment shall establish a different Probate Court system with full-time judges,"[6] a contingency that has yet to occur.

1967. University of Maine Bureau of Public Administration Report[7]

The *Report of the Preliminary Analysis of the Feasibility of a Probate District Court System for Maine,* prepared by the Bureau of Public Administration at the University of Maine at the request of the Legislature's Probate Court Revision Committee, compiled information on the workings of the probate court system, with an eye towards reform. Based on its research, the bureau observed that a "district court system for probate courts is feasible with full time judges selected through some appointment procedure rather than being elected by the people."[8] However, it also noted that judges and attorneys surveyed were of the opinion that the functions of the Probate Court could not be "well attached to another type of court."[9] Rather, the report suggested that the "preferred method for establishing the probate districts is to use some combination of counties which would continue the present system of handling probate records

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[1] Professor Deirdre Smith provides a comprehensive overview of many of the reports and events described below in her 2016 work: Deirdre M. Smith, *From Orphans to Families in Crisis: Parental Rights Matters in Maine Probate Courts*, 68 Me. L. Rev. 45 (2016), *available at* https://digitalcommons.mainelaw.maine.edu/mlr/vol68/iss1/11. Please also see the forthcoming book from Justice Donald Alexander, *The Maine Supreme Judicial Court and the Maine Judiciary: Prepared in Recognition of the 200th Anniversary of the Creation of the State of Maine and the Maine Supreme Judicial Court* at ch. VI, Pt. C §1(c). In addition, copies of the materials discussed in this summary are posted at the following link: https://legislature.maine.gov/commission-to-create-a-plan-to-incorporate-the-probate-courts-into-the-judicial-branch-background-materials.

[2] Edward F. Dow, *County Government in Maine: Proposals for Reorganization* (1952).

[3] *Id.* at III.

[4] *See* Resolve 1967, Chapter 77.

[5] *See* Law and Legislative Reference Library, Amendments to the Maine Constitution, 1820-Present, *available at* https://www.maine.gov/legis/lawlib/lldl/constitutionalamendments/.

[6] *Id.*

[7] Bureau of Public Administration, University of Maine, *Report of the Preliminary Analysis of the Feasibility of a Probate District Court System for Maine,* Project Report No. 67-1. (1967).

[8] *Id.* at III-IV.

[9] *Id.* at IV.

within easy access of the registry of deeds" and further proposed that, based on data the bureau collected, combining the Probate Courts into "5-7 districts seem[s] plausible."[10] Nevertheless, the bureau identified several problems that may arise in implementing such a proposal: "financial arrangements for cost sharing, the actual selection procedure, relationships between the full-time probate judges and county and state officers, procedural matters, and jurisdiction."[11]

1969. Institute of Judicial Administration Report[12]

This report, *The Desirability of Integrating Activities of the Probate Courts of Maine into the Superior Court,* was prepared by the New York-based Institute of Judicial Administration for the Legislature's Legislative Research Committee. After reviewing the problems with the current probate court structure through discussions with all active Probate Judges, nearly all active Registers of Probate, practicing probate attorneys across State, the chief justice and several other justices of the Supreme Judicial Court, and after updating the statistical information compiled by the Bureau of Public Administration in 1967, the Institute recommended a plan for restructuring the Probate Courts. Its proposed court structure included a three-tier court system, the first tier being the district court, the second a superior court as the trial court of general jurisdiction that would handle the majority of probate cases, necessitating the appointment of additional superior court justices, and the third the Supreme Judicial Court.[13] The Institute further recommended that Registers of Probate be full-time county officers appointed by the Chief Justice in the same manner as court clerks.[14]

1975. Report on Administrative Unification of the Maine State Courts[15]

This report, *Report on Administrative Unification of the Maine State Courts*, was prepared for the benefit of the Maine Legislature by the National Center for State Courts pursuant to a contract between the Trial Court Revision Commission and National Center for State Courts. The report included recommendations for reform of the trial courts in Maine. The report authors did not focus on the Probate Courts, though they did recommend creation of a "judicial conference" to include a Probate Court judge. They also suggested that the Chief Justice designate a presiding justice for each judicial region, who would have oversight authority over all courts in that region, including the Probate Courts. Finally, they suggested creation of an administrative office for the courts, which would coordinate the personnel activities of all courts, including the Probate Courts.

1980. Maine Probate Law Revision Commission Report[16]

This report, *Report to the Legislature: Recommendations Concerning the Probate Code and Constitutional Amendment,* was prepared by the Maine Probate Law Revision Commission at the

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[10] *Id.* at IV.
[11] *Id.*
[12] The Institute of Judicial Administration, *The Desirability of Integrating Activities of the Probate Courts of Maine into the Superior Court,* Legislative Research Committee, Pub. No. 104-21. (1969).
[13] *Id.* at 16.
[14] *Id.* at 22-23.
[15] National Center for State Courts, *Administrative Unification of the Maine State Courts*, Pub. No. R0020 (January 1975).
[16] Maine Probate Law Revision Commission, *Report to the Legislature: Recommendations Concerning the Probate Code and Constitutional Amendment* (1980).

direction of the Legislature. After examining the current probate court workload and system, including the newly enacted Probate Code, the Commission concluded that the best approach to reform was to transfer the jurisdiction of the Probate Courts to the Superior Court and increase by 3 the number of Superior Court justices.[17] The report also proposed preserving the county-based nature of Registers of Probate and probate registries. Rather than integrating the functions into the Superior Court clerks' offices, the commission recommended that the Chief Justice appoint and maintain supervisory authority over Registers of Probate. The report included proposed language for a bill to achieve these goals.

1980. Supreme Judicial Court Opinion. [18]

The Senate, concerned over the constitutionality of instituting the Maine Probate Law Revision Commission's recommendations and resulting bill, S.P. 775, L.D. 1968, sought an opinion from the Supreme Judicial Court. The Justices were asked the following questions:

1. Would S.P. 775, L.D. 1968, if enacted, constitute a violation of the Constitution of Maine, Article V, Part First, Section 8, which excludes the appointment of "judges of probate" from the Governor's authority to appoint all judicial officers?

2. Would S.P. 775, L.D. 1968, if enacted, constitute a violation of the Constitution of Maine, Article VI, Section 6 in that it would not "establish a different Probate Court system with full-time judges?"[19]

The Justices provided the following answers:

1. Enactment of legislation transferring probate jurisdiction to the Superior Court would not constitute a violation of the Constitution of Maine, Article V, Part First, Section 8 because expanding the jurisdiction of Superior Court justices to include probate matters along with all of the other matters currently within their jurisdiction did not make those justices "judges of probate";[20] and

2. Enactment of legislation transferring probate jurisdiction to the Superior Court would not violate the Constitution of Maine, Article VI, Section 6 because the legislation authorizes Superior Court justices to adjudicate controversies arising under the Probate Code, thereby creating a new probate court system with full-time judges and triggering repeal of Article VI, Section 6 under Resolve 1967, chapter 77.[21]

It should be noted that the language of Article V, Part First, Section 8 was amended in 1980 (after the Opinion of the Justices was published) after a constitutional resolution[22] was approved to allow the Governor to appoint judges of probate as long as there is no other manner for selecting probate judges in the constitution or statute. This amendment resolved a future constitutional conflict with Article V, Part First, Section 8 that might present in the event legislation passed providing for the appointment of probate judges.

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[17] *Id.* at 1, 11.
[18] *Opinion of the Justices*, 412 A.2d 958 (1980).
[19] *Id.* at 958.
[20] *Id.* at 982.
[21] *Id.* at 982.
[22] Const. Res. 1979, ch. 4., passed in 1980.

1985. "Cotter Report"[23]

This report, created by the Committee for the Study on Court Structure in Relation to Probate and Family Law Matters, is referred to as the "Cotter Report" as the committee was chaired by William R. Cotter.[24] The committee was tasked by the Judicial Council with studying the current probate court system, with a special emphasis on family law matters. Among the Committee's recommendations were the following:[25]

1. That the Code of Judicial Conduct be amended to prohibit the practice of law by sitting Probate Judges;

2. That Probate Judges be appointed by the Governor; that Registers of Probate be appointed in the same manner as other court clerks in the state court system; and that probate registries become part of the state court system but nevertheless remain separately maintained within each county; and

3. That the State assume all funding of the Probate Courts.

In terms of the structure of the Probate Courts, the commission offered the following options for achieving the three recommendations above: [26]

1. Transfer jurisdiction of estate and trust matters to the Superior Courts; transfer jurisdiction of family matters to the District Court and transfer concurrent jurisdiction of guardianship and protective matters to both the Superior Court and District Court;

2. Establish a Family and Probate Division within the District Courts; or

3. Keep the current structure of county-based, part-time Probate Courts and judges, but prohibit the practice of law by Probate Judges and also require that Probate Judges be appointed by the Governor to 4-year terms, rather than elected, with the Governor granted discretion to appoint a judge to serve multiple counties (to increase the workload and salary, thereby attracting a larger pool of candidates). The committee observed that this third option would likely require a state constitutional amendment.

1986. Commission to Study Family Matters in Court Report[27]

The 112th Legislature established the Commission to Study Family Matters in Court to review the handling of family law matters in Maine courts and, specifically, to examine, *inter alia*, whether family courts or a family division would "offer advantages in administration services and expertise available to families"; whether "the jurisdiction of the Probate Court should be transferred to the Superior Court and District Court" and whether the jurisdiction of these courts should be "rearranged to more adequately handle family matters."[28] In its report, the Commission recommended "elimination of the scattered jurisdiction over family matters existing in Maine courts," and proposed "the creation of a Family Division of the District Court." Furthermore, the Commission recommended "the establishment

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[23] Committee for the Study on Court Structure in Relation to Probate and Family Law Matters, *Report to the Judicial Council* (1985).
[24] Smith, *supra* n.1, at 95.
[25] Report to the Judicial Council, *supra* n. 23, at 6.
[26] Report to the Judicial Council, *supra* n. 23, at 7.
[27] Commission to Study Family Matters in Court, *Final Report to the 112th Legislature* (1986).
[28] P. & S.L. 1985, ch. 65., *available at* http://lldc.mainelegislature.org/Open/Laws/1985/1985_PS_c065.pdf.

of a Probate Court within the Judicial Department," comprised of 6 full-time judges appointed to 7-year terms by the Governor to serve 6 defined regions of the State. The Commission also recommended that the Registers of Probate remain elected county officials, funded by remitting a small percentage of probate filing fees to each county. [29] The commission did not recommend immediately transferring jurisdiction over guardianship or adoption proceedings from the Probate Court to the Family Division, however, but noted that it might make sense to do so in the future.[30]

1993. Report of the Commission to Study the Future of Maine's Courts. [31]

In 1993, the Commission to Study the Future of Maine's Courts released a comprehensive report on the state of the court system in Maine entitled *New Dimensions for Justice*. The report included many recommendations for reforming Maine's judicial system. Specifically regarding the structure of Probate Courts, the Commission recommended "Establishing full-time regional Probate Judges as members of the Judicial Branch and eventually bringing the Probate Courts and Registers fully into the Judicial Branch."[32] With respect to the latter recommendation, the Commission recommended that once the other changes in the report (not summarized here) it recommended to the state court system as a whole in "have increased the accessibility, affordability, and efficiency of the system to the level of the present Probate Courts," current Probate Judges be replaced over time with 4 full-time Probate Judges who would be: part of the Judicial Branch, assigned to specific regions of the state, receive the same pay as District Court Judges and Superior Court Justices; and available for cross-assignment in the District Court and Superior Court. The commission also recommended that the probate registries be transferred to the Judicial Branch at the same time as the Probate Courts, with Registers of Probate appointed in the same manner as clerks of court. [33] The Commission also recommended that a new study examine "whether to change the jurisdiction of the Superior, District, and Probate Courts to minimize those areas of concurrent jurisdiction for which there are no compelling reasons" without harming access to justice in rural areas.[34]

2010. Peter Murray Article on Judicial Reform

In 2010, Peter Murray published a law review article entitled *Maine's Overdue Judicial Reforms*, which provided an overview of some of the challenges facing Maine's courts, including the Probate Court System. [35] He was particularly critical of the election and part-time nature of Probate Judges[36] and suggested that the political power of Probate Judges has impeded judicial reform.[37] He concluded: "Ultimately, it appears that the most likely mechanism to achieve and effectuate significant reforms to the Maine judicial system will be some kind of task force sanctioned by the Legislature, guided by the Supreme Judicial Court, but staffed largely by members of the bar and legal academics who would do the bulk of the work."[38]

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[29] *Final report to the 112th Legislature*, supra note 27 at 17-21.
[30] *Id.* at 12.
[31] Commission to Study the Future of Maine's Courts, *New Dimensions for Justice* (1996).
[32] *Id.* at V.
[33] *Id.* at 72.
[34] *Id.* at 74.
[35] Peter L. Murray, *Maine's Overdue Judicial Reforms*, 62 Me. L. Rev. 631 (2010), *available at* https://digitalcommons.mainelaw.maine.edu/mlr/vol62/iss2/14.
[36] *Id.* at 639.
[37] *Id.* at 641.
[38] *Id.* at 646.

2014. Family Division Task Force Report[39]

In 2014, the Family Division Task Force-2013 released its final report examining the function of the Family Division. Among its recommendations was that the Legislature authorize the District Court to exercise concurrent jurisdiction over certain matters that were at that time within the exclusive jurisdiction of the Probate Court—specifically, name changes in paternity actions and guardianship or related proceedings—when parallel family matter proceedings are pending in District Court. To this end, the Task Force also recommended increased communication between District Court judges and Probate Court judges in resolving cases involving families to facilitate the recommended consolidation of such proceedings within the District Court.[40]

2016. Deirdre Smith Article on Probate Courts and Parental Rights Matters[41]

Professor Deirdre Smith's 2016 Maine Law Review article, *From Orphans to Families in Crisis: Parental Rights Matters in Maine Probate Courts*, focused on parental rights and family law matters and the intersection between the Probate Court and District Court in Maine. She described in detail the difficulties posed by the current Probate Court structure and proposed reforming to the system by, *inter alia*:

1. Expanding the jurisdiction of the District Court to include exclusive jurisdiction over "guardianship of a minor, change of a minor's name, and adoption (including paternity determinations and terminations of parental rights in the context of adoption petitions)" whenever the child is subject to an interim or final order in a family matters proceeding or is the subject of a pending family matters proceeding in the District Court;[42]

2. Mandating the recording of all probate court proceedings involving parental rights;[43] and

3. Limiting the practice of law by Probate Judges by, at a minimum, amending the Maine Code of Judicial Conduct to prevent Probate Judges from appearing as attorneys in Probate Courts or in other, non-probate courts within the county that they serve.[44]

As an alternative to the foregoing recommendations, Professor Smith observed that the Maine Legislature consider adopting a "different Probate Court system with full-time judges" as proposed in Resolve 1967, chapter 77, perhaps by eliminating the separate Probate Courts and creating a "Probate and Family Court" within the Judicial Branch, which would have comprehensive jurisdiction of nearly all types of proceedings involving children.[45]

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[39] Maine Judicial Branch, Family Division Task Force-2013, *Final Report to the Justices of the Maine Supreme Judicial Court* (2014).
[40] *Id.* at 6-7.
[41] Smith, supra note 1.
[42] Smith, supra note 1, at 99.
[43] *Id.*at 104.
[44] *Id.* at 104-05.
[45] *Id.* at 106-07.

APPENDIX D

Role of Registers

Commission To Create a Plan to Incorporate the Probate Courts into the Judicial Branch

October 19, 2021

- **REGISTERS**
  - Elected by the people of our Counties
  - Judge is supervisor of Court and Registrar
  - Those who also have authority over Registrar
    - County Commissioners
    - Municipal Budget Committees
    - Supreme Court through Rules
    - Maine State Legislature through Statutes
  - **RESPONSBILITIES**
    - Quasi-Judicial role in Informal Estates
    - Court clerk role
    - Administrative role on budgets
    - Supervisory role of personnel
    - Fiduciary role in accounting for fees and outgoing expenses
    - Law Clerk role in research and updates of rules and forms, appeals
    - Preservation of historical records

- **CASES GENERALLY**
  - Non probate – Register
  - Informal probate - Register
  - Formal probate – Judge
  - Other duties of non-Judicial nature

- **NON-PROBATE CASES**
  - What do you do when someone dies?
    - Call Probate! Or come in.
  - Issued in a case with not enough assets to Probate
    - A Letter of no Probate - standard proof nationwide of no estate in county of death.
  - Other assistance
    - Affidavit of Collection of Personal Property
    - Directed to Vital Statistics, Town office, or Motor vehicle
    - Directed to legal service agencies
    - Directed to police

        - Directed to probate forms for other estate proceedings
        - Directed to County Public Administrator
        - Directed to Informal Probate
        - Directed to Maineprobate.net for forms

- **INFORMAL PROBATE PROCEEDINGS**

    - Application to have a will allowed
    - Intestate and appointment of Personal Representative (PR) – No will
    - Testate with appointment of Personal Representative - Will
    - Summary administration
    - Domiciliary Personal Representative
    - Informal Special Administrator

- **INFORMAL APPLICATIONS/DECLINATION OF INFORMAL ESTATE**

    - The Register can decline to probate an estate informally
    - A formal petition would need to be filed
        - Reasons are most often persons with priority refuse or unwilling to be PR
        - Only a copy of the will can be found
        - Problem with holographic will
        - Will is deficient in some other way

- **INFORMAL APPOINTMENT**

    - Register accepts the filing and the application must be correct and no bond required
        - By mail there may be a lot of sending back n forth until application is correct
        - Filed over the Counter it's given back for corrections
        - E-filed it is rejected with explanation for corrections and resubmission
    - Most common reasons why applications are sent back for corrections
        - No renunciation from person with priority
        - Missing names or addresses of heirs or devisees
        - Location of real estate
    - Appointment is made and a Letter of Authority issued
        - The application is correct
        - Testate only after the original will comes in and is valid.
        - All necessary renunciations have been filed.
        - Findings are made and Letters issued.
        - The time it takes to process depends on the staff availability.
    - **After appointment**
        - Notice is given to all interested parties.
        - Including DHHS Third Party Liability for decedents over 55
        - Publications for Creditors notice is prepared and published.

Commission To Create a Plan to Incorporate the Probate Courts into the Judicial Branch

        - Special Publication for unknown heirs as well.
        - Real Estate Abstracts are prepared and recorded at the Registry of Deeds.
        - Demands for notice filed and copies sent per requests.
        - Claims against the estate are filed and copy sent to PR if required.
        - Correspondence for copies requests and claimants and devisees.
        - Issue certificates of appointment
        - Sworn statements closing
    - **Current Certificates of Appointment and Exemplified copies of Wills and Records**
        - Current Certificates of appointment are issued on request
        - They are used for banks, stocks and bonds, insurance companies, Real Estate transactions, IRS and many other import businesses.
        - Exemplified copies of Wills and Probates as well as any other types of cases.
        - Important for Domiciliary proceedings and Court cases involving Real Estate disputes.
        - Some will exemplifications are used even know in cases that date back centuries.
    - **Most Common Problems with wills.**
        - Can't find original
        - Cross outs no initials
        - One witness
        - No rest and residue clause
        - No PR appointment
        - No alternate PR
        - Written in someone else's hand signed by testator

- **DOMICILLARY FOREIGN PERSONAL REPRESENTATIVE**

    - Proceeding recognizing the authority of a PR appointed in another state is used for Real Estate in Maine.

- **FORMAL PROCEEDING Categories-Court-Judge**

    - Estates in controversy
    - Guardianship/Conservatorships, adult/minor
    - Adoptions/terminations
    - Civil Complaints
    - Name Changes adult/minor

- **OTHER DUTIES NON-JUDICIAL**
    - Checking guardianship files for police Departments in requests for concealed weapon applications
    - Passport applications not all counties
    - Confirming identity of applications for Personal Representatives in other states

Commission To Create a Plan to Incorporate the Probate Courts into the Judicial Branch

APPENDIX E

Summaries of October 19, 2021 Presentations

Summaries of October 19, 2021 Presentations

1. *Commission member Kathy Ayers, Kennebec County Register of Probate*

Register Ayers explained that each elected county register is subject to various degrees of oversight by the county Probate Judge, county commissioners and municipal budget committees as well as by the Supreme Judicial Court through its rulemaking authority and the Legislature through the enactment of legislation. Registers have a host of responsibilities, including: performing traditional court clerk functions—maintaining the docket, scheduling hearings and assigning appointed counsel, guardians *ad litem* and visitors; performing a quasi-judicial role in informal probate proceedings—for example, appointing personal representatives when decedents are intestate and overseeing other informal proceedings; assisting members of the public, including by directing individuals to appropriate resources when a family member has died and by providing assistance to parties in completing and correcting court petitions and other forms; supervising registry staff of varied sizes in different counties; preparing and presenting the Probate Court budget to the county administrator, county commissioners and municipal budget committees and accounting for all Probate Court fees and expenses; performing research for updated court rules and forms; preserving historic probate records; and performing various non-court related duties including processing passport applications in some counties. (A copy of the handout prepared by Register Ayers is included as Appendix D.)

In response to commission members' questions, Register Ayers reported that the most pressing current challenges for registers include the additional reviews required in guardianship proceedings under the newly enacted Maine Uniform Guardianship, Conservatorship and Protective Proceedings Act,[1] the lack of attorneys willing and available to take court appointments, and the incomplete information with which Probate Courts must proceed when the respondents in adult guardianship proceedings are subject to involuntary commitment proceedings in District Court. Although state law does not impose specific eligibility criteria for registers, Register Ayers explained that the Maine Association of Registers of Probate has engaged in efforts to assist newly elected registers by, for example, creating a policy book, conducting trainings prior to the onset of the COVID-19 pandemic, and providing the expertise of experienced registers when new registers request assistance.

2. *Commission member William Avantaggio, Lincoln County Probate Judge*

Judge Avantaggio explained that, when a person dies, that person may be intestate or may have either a "good" or a "bad" will. In many intestate cases and cases where the decedent has a "good" will, informal proceedings conducted by the Register are sufficient and the Probate Judge does not become involved. By contrast, a "bad" will can lead to judicial involvement, requiring determinations, for example, of whether a specific document is in fact the testator's will, whether the will is valid, and the meaning of the will's language. In these cases, it is important that members of the public, who are dealing with difficult and sometimes dysfunctional family situations, to feel they have been heard. Probate Judges also have jurisdiction over trusts, which can be simple or complex and are a mechanism for individuals to exert control over their assets after their death. Trust proceedings include requests by beneficiaries for an accounting, for interpretation of trust language or even to terminate or to modify the trust. While trust and estate proceedings are important aspects of the Probate Judge's workload, Judge Avantaggio indicated that Probate Judges spend the majority of their time on adult and minor guardianships and related proceedings, which often require more immediate attention and process.

In response to commission members' questions, Judge Avantaggio explained: in his experience, very few Probate Court cases are transferred to Superior Court for resolution, although matters in which the parties

[1] *See* 18-C M.R.S. art. 5, pts. 1-5, which incorporates many of the provisions of the Uniform Guardianship, Conservatorship, and other Protective Arrangements Act (UGCOPAA).

invoke the right to a trial by jury must be transferred to Superior Court and may be returned to Probate Court after trial for administration; it is difficult to estimate the percentage of Probate Court cases that require hearings, especially given the large number of informal probate proceedings that do not require his involvement as a judge; and it is rare for the parties on both sides of a contested case to be represented by counsel. In addition, Judge Avantaggio reported that each county has a single Probate Court courtroom, except Sagadahoc County, which no longer has a courtroom because the former courtroom is now utilized by the county sheriff's department.

3. *Commission member Elizabeth Mitchell, Kennebec County Probate Judge*

Judge Mitchell noted that minor guardianships arise for many different reasons and these cases can be quite complex. Only rarely do such cases begin with emergency *ex parte* orders—for example, if the child's parents die in a car accident—which must be followed by emergency review hearings. A more typical minor guardianship proceeding arises when the Department of Health and Human Services investigates suspected abuse and advises the parents that they must either identify and secure a suitable guardian for the child or the child will be placed in foster care. These proceedings require adherence to important due process protections for the parents' constitutional rights and an evaluation of the best interests of the minor. If the minor is 14 years of age or older, the judge will also talk to the minor about the proceeding. While Probate Court guardianships are often intended to be temporary, unlike in District Court child protection proceedings, no rehabilitation and reunification services are available in Probate Court. Recently, the new guardianship law has required additional periodic reviews in these cases, which have proved helpful in alerting Probate Judges to many of the issues they would otherwise not realize have arisen with these families.

Adult guardianships, Judge Mitchell explained, are often initiated by adult protective services and hospitals in additional to family members. The Probate Judge appoints a visitor to provide notice of the proceeding to the respondent and to gather information for the judge. If an *ex parte* order is entered, it must be followed by an emergency review hearing, which must be scheduled quickly and typically lasts approximately 2-3 hours. Given the potential curtailment of respondent's fundamental rights, the court must appoint counsel for an unrepresented respondent who objects to the guardianship. If the respondent is indigent, the county pays the respondent's attorney's fees. Judge Mitchell observed that the shortage of attorneys available to take these court appointments has been problematic. In addition, because Riverview Psychiatric Center is located within Kennebec County, Judge Mitchell has adjudicated many cases without knowing that the respondents subject to the guardianship order were also involuntarily committed in District Court. The overlap in jurisdiction and lack of information-sharing between the Probate Courts and District Court in these mental health guardianship cases requires further study.

Adoption proceedings arise in Probate Court for myriad reasons, including traditional parental consent adoptions as well as step-parent adoptions involving the surrender of parental rights by one of the child's birth parents in favor of the other birth parent's spouse. Probate Courts also handle petitions for adoptions of adults. Adults may also bring petitions for a name change in Probate Court; a Probate Judge may not deny an adult's name change request unless the Probate Judge believes that the change will defraud creditors or others. More legal processes and standards apply to name change proceedings for minors. The court must ensure that any non-petitioning parent whose parental rights have not been terminated receives notice of the proposed name change, even if the petitioning parent has been awarded sole parental rights in a family matter proceeding.

Judge Mitchell emphasized the importance of her relationship with Kennebec County Register of Probate Kathy Ayers, who assists her not only in scheduling proceedings but also in discussing the issues that arise in pending proceedings. Because Probate Courts are "form-driven," Judge Mitchell further emphasized the critical nature of the register's role in assisting *pro se* litigants in completing forms

correctly. In response to questions from committee members regarding the dearth of attorneys available for court appointments, Judge Mitchell explained that, although many counties track the court-appointed attorney payment rate established by the Maine Commission on Indigent Legal Services, that rate is insufficient to attract experienced probate attorneys. As a result, Probate Courts often must appoint newer attorneys who have not yet gained expertise in this area of law. Although her county has had difficulty finding attorneys, the pool of available attorneys is likely even smaller in rural counties.

4. *Professor Deirdre Smith of the University of Maine School of Law*

Professor Smith, whose scholarship has focused on minor guardianships, adoptions, and child protection matters, serves as the managing director of the Cumberland Legal Aid Clinic, through which she supervises students who practice in Maine trial courts including county Probate Courts. Professor Smith became interested in the history of the Probate Courts while supervising clinic students litigating guardianships and adoptions in county Probate Courts. She was curious why these matters were not within the jurisdiction of Family Division if the District Court, why Probate Courts were separate from the state Judicial Branch, and why Probate Judges are elected and may practice law unlike other Maine Judges.

The original Constitution of Maine in 1820 established the Supreme Judicial Court and authorized the Legislature to create all other courts by statute. The Legislature established Probate Courts in 1821, following the Massachusetts county-based court model, with one Probate Judge and Register of Probate in each county. While justices of the Supreme Judicial Court rode the circuit to conduct trials and appeals, the Probate Courts provided residents with a local court to obtain letters of administration and additional assistance when a family member died. Probate Judges were appointed by the Governor at that time and the Register of Probate office was created to maintain estate records. This original structure has largely been maintained in the State.

In 1855, an amendment to the Constitution of Maine removed probate, municipal and police court judges from the Governor's appointment power and provided for the election of Probate Judges at the county level. Although subsequent constitutional amendments reinstated the Governor's appointment power over some of these positions, Probate Judges were not included in these amendments and remain elected officials. Indeed, a separate proposed constitutional amendment for appointment of Probate Judges was defeated in 1875. The Maine Constitutional Commission established in 1963 supported eliminating the practice of electing Probate Judges, but the commission could not agree on a model for Probate Courts and thus did not include Probate Courts in its recommendations. The Legislature eventually proposed a constitutional amendment in 1967 to repeal Article VI, section 6 of the Maine Constitution, requiring the election of Probate Judges and Registers of Probate, but the amendment was made contingent upon the creation of a new system of probate courts.

Turning to legislative changes that have affected the Probate Courts, Professor Smith explained that the jurisdiction of Probate Courts has essentially remained unchanged since the first Maine Probate Courts were established in 1821. The most significant developments include the enactment of the Uniform Probate Code in 1981, which clarified the jurisdiction and function of Probate Courts in the administration of estates and clarified the allocation of responsibility between the Probate Judge and Register of Probate, and the Probate Court's evolving jurisdiction over family matters. The Probate Courts have held jurisdiction over minor guardianships since the court's inception in 1821 and were afforded jurisdiction over adoptions when adoption was first created by statute in 1855. Over time, Probate Courts were granted and then lost jurisdiction over actions for desertion and nonsupport and they currently have concurrent jurisdiction with state courts to issue preliminary protection orders in child

protection proceedings. Most importantly, the recent expanded use of minor guardianships has rendered these cases a significant portion of the Probate Courts' work.

It is important, Professor Smith observed, to understand that while the Probate Courts have remained largely unchanged, Maine's other courts have undergone significant restructuring. In 1852, the Legislature enacted a court reorganization act, which expanded the number of Supreme Judicial Court justices—who served both in trial and appellate roles—and their jurisdiction. In 1929, the Legislature created the statewide Superior Court to serve as a statewide trial court of general jurisdiction and later, in 1961, the Legislature abolished the municipal courts and created a statewide District Court within the state Judicial Branch. In combination, these efforts gave Maine one of the most uniform court systems in the country, with all courts centrally administered except the county Probate Courts. In the 1997, the Family Division was created within the Judicial Branch, followed by the grant of exclusive jurisdiction over divorce and other family matters cases to the District Court, thus establishing a distinct division between District and Superior Courts. Each of these changes was consistent with national trends. Beginning in the Progressive Era of the 1920s, states began establishing trial courts of general jurisdiction with central administration rather than maintaining separate courts for each type of legal problem. State Supreme Courts were also empowered to establish rules for the entire state court system, consistent with the American Bar Association's 1970 best practice standards for unification and central administration of court forms, rules and budgets. Maine deviated from the trend of central administration, however, by not integrating its Probate Courts by granting courts of general jurisdiction authority over probate matters.

A series of studies has raised concerns about not including Probate Courts in these court-consolidation efforts.[2] In reviewing these studies, Professor Smith advised commission members to examine the types of data examined, the rational provided for their recommendations and the influence of the underlying court structure on those recommendations. These studies demonstrate that more than one approach can be taken toward integration of the Probate Courts into the state court system. In 1952, Professor Dow of the University of Maine recommended that the Probate Courts become part of the state court system and that Probate judgeships become appointed, full-time positions. The Maine Intergovernmental Relations Commission recommended integration of the Probate Courts after further study, the Legislature commissioned a more thorough study by the Bureau of Public Administration at the University of Maine in 1967. The bureau gathered comprehensive data and evaluated the pros and cons of creating full-time, appointed Probate Judges with a district-court like system but did not identify a specific structure for the new system, in part due to financial considerations. When the Legislature subsequently passed Resolve 1967, chapter 77 to amend the Constitution of Maine to eliminate the provisions regarding election of Probate Judges and Registers of Probate, it realized that additional studies must be conducted before finally determining the structure of a new Probate Court system. For this reason, the Legislature added contingency language, rendering this the only contingent constitutional amendment in the history of Maine. The Legislature immediately commissioned a new study, conducted by the Institute of Judicial Administration. In its 1969 report, the institute specifically considered and ultimately rejected the Bureau of Public Administration's suggestion of a probate district court system, in part due to the inconsistent workloads across the counties. Instead, the institute recommended merging probate court jurisdiction into the state Superior Courts, necessitating the appointment of additional Superior Court justices, similar to the approach that had recently been adopted in 22 other states.

The next significant development, according to Professor Smith, occurred in 1980 when the Legislature established the Maine Probate Law Revision Commission to decide whether Maine should adopt the Uniform Probate Code (UPC) and, if so, whether changes should be made to the structure of the Probate

[2] Copies of most of the studies referenced by Professor Smith are available on the commission's website through the following link: https://legislature.maine.gov/commission-to-create-a-plan-to-incorporate-the-probate-courts-into-the-judicial-branch-background-materials.

Courts. With respect to the latter question, the commission proposed legislation that would merge jurisdiction of probate matters with the Superior Court to address concerns regarding the practice of law by part-time judges and the anomalous nature of elected Probate Judges. The Maine Senate then requested an opinion from the Supreme Judicial Court whether the legislation drafted by the Maine Probate Law Revision Commission would survive constitutional challenge, given that several provisions of the Constitution of Maine refer to probate judges. After failure of the 1980 court reform efforts, the 1985 "Cotter Report" noted that the work of Maine's county Probate Courts had shifted away from a focus on trusts and estates toward family matters, which were becoming a larger part of the Probate Court caseload. The Cotter Report recommended applying the Code of Judicial Conduct fully to Probate Judges, by preventing the practice of law and providing for their appointment rather than election, and provided several options for creating a new Probate Court system funded by the State. In his subsequent State of the Judiciary speech to the Legislature, then-Chief Justice Vincent McKusick proposed that the Superior Court assume jurisdiction over estate and trust matters and the District Court assume jurisdiction over family matters but that the county-based registries of probate be maintained within each county.

Later, in 1993, the Commission to Study the Future of Maine's Courts conducted a far-reaching and in-depth study of the entire Maine court system. In its *New Dimensions for Justice* report, the commission recommended establishing full-time probate judges, available for cross-assignment in the District and Superior Courts, who would be paid the same as District Court judges and Superior Court justices. Once again, this commission expressed concern about preserving the helpful features of the county registries of probate. In 2014, the Family Division Task Force expressed noted continuing concerns with having certain aspects of family matters simultaneously proceeding in District Court and Probate Court due to the fragmented and concurrent nature of jurisdiction over family matter proceedings. As these studies were performed, numerous pieces of legislation were introduced to change the structure of the Probate Court, failing due to concerns over funding and a disagreement over a preferred new structure. The "Home Court Act" was adopted in 2016, however, to prevent simultaneous proceedings involving the same child from being heard in the state District Court and county Probate Court systems.[3]

Overall, Professor Smith observed, several themes emerge from these studies. Most emphasized the excellent customer service provided by and accessibility of county-based Registers of Probate, but nevertheless consistently proposed integrating the Probate Courts into the Judicial Branch for the following reasons: Probate Courts have been left out of the unified and simplified structure of the state court system, which now benefits from central administration and support. Although the Supreme Judicial Court has appellate and disciplinary authority over Probate Judges, the lack of central administration has led to different procedures and a lack of uniformity between counties. Problems also arise from the fragmentation of jurisdiction over probate matters between the Probate Courts and state courts. In addition, the studies noted an inefficient allocation of resources under the current system, which assigns judges based on county lines and not caseloads. Finally, most studies emphasized key differences between Probate Judges and all other state judges, expressing a need for full-time judges to increase the dignity of the court and eliminate the need for these judges to practice law to make a living, which leads to their appearance as attorneys in other cases. When judges also practice law, it is difficult to decide which code of professional conduct applies: the Code of Judicial Conduct or the Maine Rules of Professional Conduct for attorneys. In addition, election of Probate Judges creates ethical issues related to campaigning and campaign financing.

As it conducts its work, Professor Smith recommended that the commission preserve the aspects of the current system that are working well while addressing the concerns that led to the adoption of the 1967 constitutional amendment and answer the following questions: (1) should there be a distinct probate court or should probate jurisdiction be absorbed into courts of general jurisdiction; (2) if the latter, should a

[3] An Act To Ensure a Continuing Home Court for Cases Involving Children, P.L. 2015, ch. 460.

separate probate division be established within either the District or Superior Courts; (3) how many additional state judges are needed to conduct these proceedings; (4) should the new courts be county-based or state-based; (5) what should the role of registers be and should they remain elected or be hired in the same manner as state court clerks; (6) should the registers retain their roles that are significantly distinct from the court-clerk role; (7) should the case management systems of the county Probate Courts and state Judicial Branch be integrated; (8) how should the new courts be funded?

In answering these questions, Professor Smith suggested that the commission review the probate court systems in other states, most of which no longer have unique probate courts and instead assign jurisdiction over these matters to general jurisdiction trial courts. In New England, for example, Massachusetts moved away from separate probate courts in the 1970s, Vermont brought its county-based probate courts into its Superior Court in 2010, New Hampshire similarly brought its county-based probate courts into its Circuit Court in 2011. Although Connecticut has retained its county-based probate court system but those courts are nevertheless part of and subject to central administration by the statewide judicial system. Rhode Island, by contrast, has a town-based approach to probate law, where Probate Judges are appointed by town councils. Professor Smith also recommended review of the probate court structure in specific states that adopted the UPC after 1980 as well as in Washington State, which is the only state other than Maine to have adopted the Uniform Guardianship, Conservatorship, and other Protective Arrangements Act (UGCOPAA). While none of these states have a county-based, distinct probate court system, each state has taken a different approach. (A copy of a table prepared by legislative staff comparing the structure and administration of the trial courts with jurisdiction over probate matters in the states that were identified by Professor Smith is included in Appendix F.)

5. *Patricia A. Nelson-Reade, Esq. and retired Franklin County Probate Judge Richard Morton*

Patricia A. Nelson-Reade, Esq., who has practiced law for approximately 28 years in Probate Courts across the State, observed that these courts have a unique jurisdiction, are accessible to the public, and often resolve uncontested, routine matters in a way that is very different from the adversarial system in the state Judicial Branch. In her opinion, it would be unfortunate to lose these benefits of the existing system. Most people either directly or indirectly end up with matters before the Probate Courts, which handle three major types of cases. First, Probate Courts address decedent's estates, which affect families who are undergoing periods of confusion and, potentially, dysfunction. While the Probate Court accommodates these disputes, its structure does not invite these disputes. Instead, most cases are handled through an informal process: an application is filed, a personal representative is appointed, and an abstract is filed in the Registry of Deeds. The Probate Court publishes notice in the newspaper for creditors and sends notices to heirs and devisees. The personal representative then pays the relevant taxes and distributes the estate, filing paperwork with the court when the process is complete. Formal procedures exist to handle disputes that arise during informal proceedings as well as to address other disputes, for example, disputes over who to appoint as a personal representative or when the language of a will is unclear. Attorney Nelson-Reade expressed concern that these estate cases not be pushed to the back of the docket in a new Probate Court system, which has been her colleagues' experience in the Massachusetts courts' Probate and Family Division, where guardianship proceedings take precedence.

The second category of proceeding includes guardianships—appointment of a person to make personal decisions for the ward—and conservatorships—appointment of a person to make financial decisions for a ward. These matters involve fundamental rights and due process protections and involve critical times and issues in people's lives, including when a child with a disability reaches the age of majority, when adults experience mental health issues and when seniors have dementia. The Probate Court's goal is that of a gatekeeper, limiting the ward's rights only if absolutely necessary. Most guardianship cases are uncontested and the litigants appear *pro se*, and the courts do not emphasize formal procedural requirements that limit access to the courts. For example, only a "communication" is required from a

ward to initiate proceedings to terminate a guardianship, a phone call is often deemed sufficient. Conservatorships more often involve legal representation due to increased financial resources.

The third category of proceedings are civil matters, which usually involve the modification or interpretation of a trust. Even in these cases, the Probate Court is more of a problem-solving than an adversarial court; it is a place where ordinary people feel comfortable as it deals with some of the fundamental events in people's lives. For these reasons, Attorney Nelson-Reade recommended that the commission focus on its duty under Resolve 2021, chapter 104 to "ensure timely, convenient and meaningful access to justice" while also increasing the uniformity of practice across the State and ensuring that the courts have all of the resources that they need. She agreed that the question whether Probate Judges should remain elected was an important one to consider and, to create full-time courts it might make sense to combine some counties into regions. In response to questions from commission members, Attorney Nelson-Reade added that, in her experience, it can take a long time to obtain results when litigation occurs in Probate Court because the judges work part-time, they have to address many emergency proceedings involving guardianships, Probate Judges do not have law clerks, and litigation generally only occurs when there are novel issues, since this is a problem-solving court.

Retired Judge Richard Morton Served as the Franklin County Probate Judge for 36 years, a parents' attorney in protective custody cases for more than 40 years as well as in other positions, including as a U.S. Army Judge Advocate General, an assistant District Attorney, and an attorney for the Republicans in the Legislature when it was considering whether to adopt the UPC. Judge Morton indicated that many of the topics he planned to address had already been raised before the commission. Nevertheless, he believed it was important to emphasize several aspects of the current Probate Court system that the commission should consider as it moves forward. He began by highlighting the critical importance of a separate docket for probate matters, regardless of which court ultimately handles these proceedings. There is a potential risk that the emergency, heightened focus on children's issues will cause decedent's estate matters to be pushed to the back of the docket, which should be avoided. He also emphasized the unique, complicated nature of probate law, which has specialized deadlines, notice processes, and rules of procedure. Yet, people are often unrepresented and there can be multiple parties; for example, multiple unrepresented parties may appear in the courtroom when it hears a dispute regarding who to appoint as the personal representative for a decedent's estate.

Judge Morton also observed that the current county Probate Courts are flexible and nimble. During the pandemic, for example, they have handled their cases, conducting remote proceedings over Zoom when necessary, and except for a brief time period continued to process paperwork in informal matters. He recommended that the unique mechanisms of the informal probate process, the quasi-judicial nature of the register's duties in these cases, and the enhanced access to justice provided by having a registry located in each county should be preserved, even if the commission decides to incorporate the courts into the state court system. He suggested that the New Hampshire system, where there is a probate division of the circuit court, might work well as might the creation of a separate court akin to the bankruptcy courts at the federal level. These distinct courts could be assigned to handle all of the tradition types of probate matters.

APPENDIX F

Administration and Structure of Probate Courts: Selected States

Administration and Structure of Probate Courts - Selected States

State	UPC, UGCOPAA*?	Structure; Administration; Rules and Forms	Court(s) with Jurisdiction** over probate matters	Judges	Clerks or Registers of Probate	Funding
Maine	UPC (1979; rev. 2018) & UGCOPAA (2018)	16 county based Probate Courts. • Generally separate from the state judicial branch except: • The Maine Supreme Judicial Court has authority to prescribe rules of procedure. • The Maine Advisory Committee on Probate Rules promulgates all official probate court forms after review by the Maine Probate Judges Assembly and the Maine Association of Registers of Probate.	Probate Courts have jurisdiction over: • Wills, trusts & estates—except the Superior Court has concurrent jurisdiction over equitable matters and all matters involving trusts; • Adult guardianships, and conservatorships; adult adoptions and adult name changes; • Minor guardianships and conservatorships; minor adoptions and name changes—except District Court has exclusive jurisdiction if other proceedings involving custody, parental rights (including TPR), grandparents' rights, protective custody, name change, guardianship, paternity, or protection orders for the same minor child are pending in that District Court; and • Other: consent to marriage of a minor or to a minor's abortion.	16 Probate Judges, one per county probate court. • Part time. • Elected by the county's voters to 4 year terms. • In case of a vacancy, the governor may appoint someone to serve as probate judge until the first day of January after a November election to fill the vacancy. • Must be Maine residents and licensed to practice law in Maine. • Authorized to engage in the practice of law during their term of office. • May not act as lawyers in any proceeding in which they have served as a judge or in any related proceeding.	16 county Registers of Probate. • Elected to 4-year term by voters in the county. • If a vacancy occurs, the governor may appoint someone serve as register until the first day of January after a November election to fill the vacancy. • County officers. • May not act as an attorney in a matter pending in the register's probate court or as an administrator, guardian, appraiser or similar in a case within the jurisdiction of the register's probate court. • May, with county commissioner approval, hire deputy registers. • Provide substantial assistance to individuals who use the services of the probate court, especially in informal proceedings.	Funded by the county. • Probate court fees are retained by the county.
Connecticut	Neither	One probate court is located in each of the state's 54 probate districts; there are also 6 regional children's courts where certain probate cases are heard on a separate docket. • Centrally administered by the Probate Court Administrator, a probate judge selected by the Chief Justice of the Connecticut Supreme Court. Probate Court Administrator and executive committee of Probate Assembly regulate court accounting, case assignment, training, staffing levels and budget matters. • Probate Court Administrator, in consultation with the Probate	Probate Courts have jurisdiction over: • Wills, trusts & estates—except the Superior Court has concurrent jurisdiction over actions involving title to property in a trust or estate; determining the validity of or the meaning of a trust or will; and the doctrine of *cy pres*; • Guardianships and conservatorships for minors and adults; • Adoptions—except all cases may be transferred to Superior Court and must be transferred if the child is involved in dependency proceedings; • Name changes concurrent with Superior Court; and	54 probate judges, one per probate district. • Appear to be part time (may be full time in busier districts). • Elected by the probate district's voters to 4 year terms. • Must be members of the bar and may engage in the practice of law, but may not appear as an attorney in any probate court. • Receive a salary according to a formula established by statute based on the district population and annual caseload.	One Probate Court Clerk per district. • Appointed by the probate district's Probate Judge. • Probate Court Clerks are deemed not to be state employees and serve at the pleasure of the relevant probate court judge. • No special qualifications for office or restrictions found. • No special authority beyond a typical court clerk noted.	Dual funding. • Facility, equipment and supply costs are borne by municipalities. • All other expenses are funded through the state—primarily using revenue from probate court fees with supplemental General Fund appropriations. The Probate Court Administrator submits the budget for the Probate Courts approval to the state's Chief Court Administrator.

Administration and Structure of Probate Courts - Selected States

State	UPC, UGCOPAA*?	Structure; Administration; Rules and Forms	Court(s) with Jurisdiction** over probate matters	Judges	Clerks or Registers of Probate	Funding
		Assembly and others, recommends adoption and amendment rules to the Supreme Court. • Probate Court Administrator publishes forms for use in probate matters.	• Other: Paternity; consent to marriage of a minor, emancipation—concurrent with the Superior Court; and mental health and alcohol and drug dependency commitment proceedings.			
Massachusetts	UPC (2009)	One "Probate and Family Court Department," of the statewide trial court is located in each of the state's 14 counties. • Centrally administered by the chief justice of the Probate and Family Court Department, subject to oversight by the Chief Justice of the Trial Court the Massachusetts Supreme Judicial Court. • The Supreme Judicial Court has general rulemaking authority, but a majority of probate judges may make supplemental procedural rules and forms, with the approval of the Supreme Judicial Court.	The Probate and Family Court Department has jurisdiction over: • Wills, trusts & estates—except jurisdiction over equitable relief is concurrent with the Superior Courts and Supreme Judicial Court; • Guardianships and conservatorships for minors and adults—except the juvenile and district courts have concurrent jurisdiction to appoint guardians for minor children when matters involving those children are being heard in those courts and the Superior Courts and Supreme Judicial Court have concurrent jurisdiction over equitable relief; • Adoptions; • Name changes; • Divorce; annulment; paternity; child support and custody—except district court and Boston municipal court have concurrent jurisdiction over certain actions for paternity and child support not involving custody or visitation; and • Other: Caregiver authorizations to exercise parental rights; child protection and grandparents' visitation; consent to marriage of a minor and waiver of 3 day notice for any marriage; validity of health care proxies.	51 justices are appointed to the Probate and Family Court Department. • Full time. • Massachusetts judges, including justices in the trial court Probate and Family Court Department, are appointed by the Governor with the advice and consent of the 8 member Executive Council. • May not engage in the practice of law and may not act as executor, administrator, guardian, conservator, trustee under a will, commissioner or appraiser of an estate within the jurisdiction of any probate and family court.	14 Registers of Probate serve as the clerks of each of the state's 14 county Probate and Family Courts. • Elected to 6 year term by voters in the county. • Employed by state judicial branch; • Must serve full time, may not engage in the practice of law and may not act as executor, administrator, guardian, conservator, trustee under a will, commissioner or appraiser of an estate within the jurisdiction of the register's own probate and family court. • Have special authority to issue orders of notice and citations, issue process of attachment and execution, issue warrants "necessary to carry into effect any order, judgment or decree of the courts" and appoint appraisers to make inventories for the court.	The Probate and Family Court Department of the trial court is funded as part of the state judicial branch.

Administration and Structure of Probate Courts - Selected States

State	UPC, UGCOPAA*?	Structure; Administration; Rules and Forms	Court(s) with Jurisdiction** over probate matters	Judges	Clerks or Registers of Probate	Funding
New Hampshire	Neither	The Probate Division of the state Circuit Court has locations in each of the state's 10 counties. • Centrally administered by the Chief Justice of the New Hampshire Supreme Court. • The Chief Justice adopts procedural rules for all courts in the state, including the Probate Division. • The judicial branch's Administrative Council establishes forms for all courts, including the probate division.	The Probate Division has jurisdiction over: • Wills, trusts & estates except the Superior Court has concurrent jurisdiction over cases involving the *cy pres* doctrine and trust related partition actions and the Superior Court and District Division have concurrent jurisdiction over ancillary matters involving claims for damages or the recovery of money or property by or against a third party; • Guardianships and conservatorships for minors and adults; • Adoptions; • Name changes—except the Family Division has concurrent jurisdiction to change the name of a spouse during a divorce; and • Other: consent to marriages of minors concurrent with Superior Court; interpretations of living wills; and powers of attorney—exclusive jurisdiction over powers of attorney for health care but concurrent jurisdiction with Superior Court for other powers of attorney. But, if a jury trial right exists and is requested by a party, the Superior Court has exclusive jurisdiction. §547:11 d.	Any of the state's 38 Circuit Judges may be assigned to the probate division by the Administrative Judge of the Circuit Court. • Full time. • Judges are nominated by the Governor and confirmed by a majority vote of the 5 member Executive Council. • May not engage in the practice of law.	10 county Registers of Probate but most of their historic duties, other than the preservation of files—have been transferred to circuit court clerks. • Registers elected to 2 year terms by their county's voters while Circuit court clerks are hired by the Administrative Judge of the Circuit Court. • Registers are county officers while Circuit court clerks are employees of the state judicial branch. • Registers must reside in the county of their election and may not act as counsel or be appointed as an appraiser in that county. Circuit court clerk restrictions not noted. • No special authority beyond a typical court clerk noted.	The Probate Division of the Circuit Court is funded as part of the state Judicial Branch.
Rhode Island	Neither	Each of Rhode Island's 39 cities and towns establishes its own Probate Court. • Not part of the state judicial branch. • Each Probate court promulgates local administrative rules to	**Probate Courts** have jurisdiction over: • Wills, trusts & estates except the Superior Court exclusive jurisdiction over most equitable proceedings with the Probate Court having concurrent jurisdiction over testamentary trust trustee replacement and removal;	39 municipal Probate judges. • Unclear if full or part time (may depend on the city or town). • Each town or city council may act as the probate court, elect a probate judge or establish the process to select a probate judge.	One clerk of the probate court in each of the 39 cities and towns. • The clerk of each town and city, who is an elected official, acts as the clerk of the probate court unless the town or city provides otherwise by ordinance or charter. • Municipal official.	Probate Courts receive funding through court fees and other appropriations from the city or town where the court is located.

Administration and Structure of Probate Courts - Selected States

State	UPC, UGCOPAA*?	Structure; Administration; Rules and Forms	Court(s) with Jurisdiction** over probate matters	Judges	Clerks or Registers of Probate	Funding
		supplement statutory procedures. • A 21-member Legislative Commission to Study the Feasibility of Modernizing Probate Law and Procedure prescribes the forms to be used in probate courts. *Note*: The Family Court, which also hears certain probate matters, is an 11-member statewide trial court.	• Guardianships and conservatorships for minors and adults except the Family Court has the exclusive jurisdiction specified below; • Adoption of adults; and • Name changes for adults except the Superior Court has concurrent jurisdiction if the adult seeking a name change has been convicted of a crime. The **Family Court** has exclusive jurisdiction over family matters—divorce, child and spousal support, paternity, etc.—and: • Guardianships for minors placed in the care of the department for children, youth and families; • Name changes for minors; and • TPRs and minor adoptions.	• Must be licensed attorneys who have been engaged in the active practice of law in the state and may continue to practice law but may not appear or act in any capacity as an attorney in a case in the judge's own city or town. • Each city or town may establish additional standards or qualifications for its probate judge.	• No special qualifications for office or restrictions found. • No special authority beyond a typical court clerk noted.	
Vermont	Neither	Probate matters are handled by the Probate Division of the Superior Court, with one probate district in each of the 14 counties. • The Probate Division of the Superior Court is part of the state judicial branch, subject to the administration of the Vermont Supreme Court. • The Vermont Rules of Probate Procedure are promulgated by the Supreme Court. • Statewide probate court forms are created and revised by the Court Administrator and posted on the Vermont Judiciary's website.	The Probate Division has jurisdiction over: • Wills, trusts & estates; • Guardianships of adults; • Guardianships of minors—except any such case *may* be transferred to the Family Division of the Superior Court and *must* be so transferred if the Family Division has a pending proceeding involving the same child; • Conservatorships of adults and minors; • Adoptions of adults and minors except a minor's case must be transferred to the Family Division if the issues, parties and evidence are so similar to a pending proceeding that transfer would expedite	14 Probate Judges, one per county. • Some full time and some part time (varies). • Elected to 4 year terms by the county's voters. • Must be licensed to practice law in the state but may not act as an attorney or a guardian, executor, administrator, trustee or in any other fiduciary capacity in a probate matter pending in any court in the state.	14 county Registers of Probate • Hired by the Superior Court clerk or court operations manager, after consultation with the probate judge and approval of the state court administrator. • Employed by state judicial branch. • May not act as an attorney or a guardian, executor, administrator, trustee or in any other fiduciary capacity in a probate matter pending in any court in the state.	The Probate Division is funded as part of the Superior Court in the state judicial branch.

Administration and Structure of Probate Courts - Selected States

State	UPC, UGCOPAA*?	Structure; Administration; Rules and Forms	Court(s) with Jurisdiction** over probate matters	Judges	Clerks or Registers of Probate	Funding
			resolution of the cases or serve the interests of justice; • Name changes and issuance of new or amended birth, marriage and death certificates; and • Other: emancipations; consents to marriages of minors; grandparents' visitation proceedings—concurrent with the Family Division; and other proceedings involving health care directives, cemeteries, etc.			
Hawaii	UPC (1996)	Probate matters are handled by the Circuit Court, the state's general jurisdiction trial court. • Centrally administered by the Chief Justice of the Hawaii Supreme Court. • The Supreme Court has authority to promulgate procedural rules for all matters, including probate matters; the Hawaii Probate Rules and Hawaii Family Rules govern different types of matters. • A few forms related to wills, conservatorships, intestacy, elective shares, etc. are included as "flag sheets" in Appendix A to the Hawaii Probate Rules. By contrast, each of the 4 Circuit Courts has its own forms for cases within the jurisdiction of the Family Court.	Circuit Courts sometimes handle probate matters when sitting as a Family Court. Circuit Family Court cases may be assigned by the senior family judge to be heard by a District Court family judge. The Circuit Court has exclusive jurisdiction over the following: • Wills, trusts & estates; and • Conservatorships for adults and minors. The Circuit Court & Family Court have concurrent jurisdiction over several types of matters, including: • Guardianships for incapacitated adults. The Family Court has jurisdiction over family matters *e.g.*, divorce, parentage, child support, child welfare, juvenile, consent to minor's marriage, protection from abuse, mental health commitment, etc.—and: • TPRs and minor adoptions; • Guardianships for minors; and • Name changes due to marriage, divorce, adoption, parentage	No distinct probate judges; judges of the Circuit Court and the District Court preside over probate matters. • Full time. • Circuit Court judges are appointed for 10-year terms by the governor with the consent of the senate and District Court judges are appointed for 6 year terms by the Chief Justice of the Supreme Court with the consent of the senate from list of circuit court and district court nominees chosen by the judicial selection commission. The judicial selection commission decides whether to renew the judge's term of office. • Circuit Court judges must have been licensed to practice law in Hawaii for at least 10 years, while District Court judges must have been so licensed for at least 5 years. Judges may not engage in the practice of law and must retire at age 70.	No specific probate clerks or registers. • The Circuit Court and District Court judges, or the administrative judge of the Circuit Court or District Court, selects clerks for their respective courts. • Employed by state judicial branch. • No special qualifications for office or restrictions found. • No special authority beyond a typical court clerk noted.	Trial courts are funded as part of the state judicial branch.

Administration and Structure of Probate Courts - Selected States

State	UPC, UGCOPAA*?	Structure; Administration; Rules and Forms	Court(s) with Jurisdiction** over probate matters	Judges	Clerks or Registers of Probate	Funding
			proceedings—other name changes require an order from the lieutenant governor.			
Minnesota	UPC (1974; rev. 1985)	Probate matters are handled by the District Court, the state's general jurisdiction trial court. District courts may establish separate divisions, including a probate division, family court division and a juvenile division: • Centrally administered by the Minnesota Supreme Court and its Chief Justice. • The Supreme Court has the authority, with the advice of an advisory committee, to promulgate rules governing practice in all state courts. The District Courts may also recommend rules. • The Supreme Court has authority to establish court forms for all state courts.	The District Court has jurisdiction over all civil and criminal actions, including: • Wills, trusts & estates; • Guardianships and conservatorships of adults and minors; and • Name changes. When sitting as a Juvenile Court, the District Court also has jurisdiction over certain proceedings involving minors—*e.g.,* child protection, delinquency, judicial consent for minors to marry, etc.—as well as: • TPR and adoption.	No distinct probate judges. The 10 judges of the District Court preside over probate matters. • Full time. • Elected to 6-year terms by the voters in their districts. In case of a vacancy, the governor may appoint a person to fill the vacancy from a list of nominees prepared by the Commission on Judicial Selection to serve until the election of a successor at the next general election more than one-year after appointment. • Must "be learned in the law," by are prohibited from engaging in the practice of law except when the judge "is a party in interest"; also may not be a partner of any practicing attorney.	No specific probate clerks or registers. • Each District Court has one administrator who serves as the clerk and who is appointed by the chief judge of the district, with the advice of the other district judges and the approval of the Supreme Court. • Employed by state judicial branch • No special qualifications for office or restrictions found. • No special authority beyond a typical court clerk noted.	Primarily state funding: • The District Court is funded as part of the state judicial branch, except counties must provide office facilities for the district administrator.
North Dakota	UPC (1999)	Probate matters are handled by the District Court, the state's general jurisdiction trial court: • Centrally administered by the North Dakota Supreme Court, which specifies the number of districts and number of judges. • The Supreme Court has authority to prescribe rules of pleading, practice and procedure for all courts. Each District Court has also adopted a few local procedural and/or administrative rules. • The Supreme Court has established uniform court	The District Court has jurisdiction over: • Wills, trusts & estates; • Guardianships and conservatorships of adults; • Conservatorships of minors; and • Testamentary appointment of guardians for minors when there is no objection; • TPRs and adoptions of minors and of adults; and • Name changes for adults and minors. When sitting as a Juvenile Court, the District Court also has jurisdiction over certain proceedings involving minors—	No distinct probate judges. The 52 District Court Judges preside over probate matters. • Full time. • Elected to 6-year terms by the voters in their districts. In case of a vacancy, the Supreme Court first determines whether the judgeship remains necessary. If so, the governor may either call a special election to fill the remainder of the term or may appoint a person to fill the vacancy for at least a 2-year term until the next general election from a list of nominees prepared	No specific probate clerks or registers. • The Supreme Court provides clerk of district court services in each county of the state, unless either the county elects to provide clerk services at its own expense or the Supreme Court agrees to provide funding for clerks hired by the county. • If clerk services are provided by the Supreme Court, the clerks are state employees. • No special qualifications for office or restrictions found. • No special authority beyond a typical court clerk noted.	The District Court is funded with legislative appropriations as part of the state judicial branch.

Administration and Structure of Probate Courts - Selected States

State	UPC, UGCOPAA*?	Structure; Administration; Rules and Forms	Court(s) with Jurisdiction** over probate matters	Judges	Clerks or Registers of Probate	Funding
		forms—including for informal probate, for minor and for adult guardianships, for minor and adult conservatorships and for name changes—but has not established forms for formal probate or adoption proceedings.	*e.g.*, child protection, delinquency, judicial consent for minors to marry, placement of certain children in out of-home treatment programs—and: • Non testamentary guardianships of minors; and • Resolving objections to testamentary appointments of guardians for minors.	by the judicial nominating committee. • Must be state residents "learned in the law" but may not engage in the practice of law except to act *pro se* or to give legal advice to a member of the judge's family. The judge may not serve as the family member's lawyer in any forum, however.		
South Carolina	UPC (1986)	There is one Probate Court in each of the state's 46 counties. • Although the probate courts are county based and county funded, the probate courts are "part of the unified judicial system of" the state, centrally administered by the South Carolina Supreme Court. • The Supreme Court has authority to adopt rules of procedure for Probate Courts. • The state judicial branch website provides uniform forms for use in probate court proceedings across the state. *Note:* The Family Court, which also hears some probate matters, is a statewide trial court of limited jurisdiction.	The **Probate Court** has jurisdiction over: • Wills, trusts & estates—except the Circuit Court has concurrent jurisdiction over the determination of heirs and successors when necessary to resolve partition, quiet title and other real estate matters; • Guardianships and conservatorships for adults and minors as well as special needs trusts; • Approval and allocation of settlements of wrongful death or survival actions—concurrent with the circuit court, which may also hear the underlying actions; • Issues relating to paternity, common-law marriage and interpretation of marital agreements but only in connection with pending estate, trust, guardianship and conservatorship actions concurrent with the family court. The **Family Court** has jurisdiction over most family matters—*e.g.*, protective custody, delinquency, divorce, annulment, child and spousal support, paternity and child custody proceedings	46 county Probate Judges: • Full time. • Elected to 4 year terms by the voters in their counties. In the case of a vacancy, the governor may appoint a person for the reminder of the unexpired term or until the next general election, whichever is sooner. • Must be at least 21 years of age, a state resident and a registered voter in the county in which elected. May not act as attorneys in any matter pending or originating the Probate Court in their county.	46 Probate Clerks, one per county Probate Court. • Appointed by the county's elected Probate Judge. • Employee of the Probate Judge rather than the county. • May not appear as attorneys in the court in which the clerk works. • Special authority to (1) "examine, vouch, and approve uncontested accountings"; (2) "subject to the control of the judge, . . . issue notices and make all necessary orders for the hearing of any matter," and (3) hear and "make all orders, judgments and decrees . . . which the judge could make" for uncontested matters, "subject to the same being set aside or modified by the judge" within 30 days of the order.	Funded by the County. • The county retains all probate court fees. • The county also receives fee paid out of the State Treasury for the settlement of each estate, which is calculated on the basis of the value of the estate tax collected.

Administration and Structure of Probate Courts - Selected States

State	UPC, UGCOPAA*?	Structure; Administration; Rules and Forms	Court(s) with Jurisdiction** over probate matters	Judges	Clerks or Registers of Probate	Funding
			(subject to concurrent Probate Court jurisdiction noted above)—and: • Adoptions (children and adults); and • Name changes of children and adults.			
Washington	UGCOPAA (2019; currently effective for minors, will be effective for adults in 2022)	Most probate matters handled by the District Court, the state's general jurisdiction trial court located within each of the state's 39 counties. • Centrally administered by the Chief Justice of the Washington Supreme Court and the state court administrator. • The Supreme Court has the authority to adopt rules governing the forms for and the pleading, practice and procedure to be used in the Superior Courts. Superior Court judges also have the power to establish rules supplementary to and not in conflict with the Supreme rules adopted by the Supreme Court. To that end, each county Superior Court has also adopted its own local rules, some of which govern probate matters. • The Supreme Court has authority to adopt uniform forms for use in the Superior Courts.	The Superior Court has jurisdiction over: • Wills, trusts & estates; • Guardianships and conservatorships of minors and adults; and • Name changes for victims of domestic violence—when sitting as a Family Court, the superior court may order a name change for a spouse as part of a marital dissolution or for a child as part of an adoption proceeding; • Otherwise, jurisdiction over name changes lies in the District Court. When sitting as a Family Court, the Superior Court has exclusive jurisdiction over family proceedings—*e.g.*, marital dissolution, child custody, child and spousal support, parentage, relative visitation—and: • Adoptions.	No distinct probate judges. The judges of the Superior Court preside over probate matters. (Some counties share a judge(s) while other counties have or share multiple judges). • Full time. • Elected to 4-year terms by the voters in their county or counties of jurisdiction. In the case of a vacancy, the Governor appoints a person to fill the vacancy for the remainder of the unexpired term. • Must be licensed to practice law in the state but may not practice law during the judge's term of office.	No specific probate clerks or registers. • County clerks are elected by the voters in the county to 4-year terms of office. The county clerk for each county is the clerk of the superior court. • County officers. • Must be a citizen of the United States and a resident of the county • No special authority beyond a typical court clerk noted.	Dual funding; mostly by county. • One-half of each Superior Court judge's salary is paid by the state and one-half is paid by the county or counties in which the judge serves. If the judge serves more than one county, the county portion of the salary must be apportioned between those counties on the basis of the assessed value of each county's taxable property. • The counties must provide courtroom facilities and pay all other expenses of the Superior Courts including the salaries of other court personnel.

*UGCOPAA = Uniform Guardianship Conservatorship & Other Protective Arrangements Act

** Jurisdiction is exclusive to the court listed unless otherwise noted.

APPENDIX G

Information Provided by the Maine Association of Registers of Probate on November 1, 2021:

2018 Probate Court Case Load Data
2020 Probate Court Case Load Data
Probate Court Court-Appointed Professionals and Budget Information
Probate Court Facilities and Status of Record Scanning

Information provided by the Maine Association of Registers of Probate on November 1, 2021

After the first commission meeting on October 19th, commission member Kathy Ayers, Kennebec County Register of Probate, requested information from the Maine Association of Registers of Probate on court case loads, court-appointed professional expenses and court budgets. Although Register Ayers was unable to attend the commission meeting on November 1, 20201, she asked Catherine Moore, Lincoln County Register of Probate, to attend the meeting to present and the information compiled by the association.

Copies of the following information provided by Register Moore is included in this appendix:

- *2018 and 2020 Probate Court Case Load Data*: These charts include the data retrieved from the county Probate Courts' ICON electronic case management system detailing each county Probate Court's caseload, by subject-matter category, both in 2018, prior to the COVID-19 pandemic, and in 2020, the most recent calendar year. [1]

- *2020 Court-Appointed Professionals and Budget Information:* This table compiles information submitted from many of the State's Registers of Probate with respect to their county's Probate Court budget as well as information provided by a few registers regarding court-appointed attorney, guardian *ad litem* and visitor fees in their counties. Commission members understood that, given the short allotted for compilation of this information, it was not possible to collect all of the requested data from each county. [2]

- *Probate Court Facilities and Status of Record Scanning:* Although not discussed at the meeting, the association also provided the commission with a chart outlining the results of a survey of county probate court facilities and the status of electronic scanning of historic probate records.

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[1] During the meeting, questions arose whether the 2018 and 2020 Probate Case Load data includes new petitions filed during 2018 and 2020 in cases that began in earlier years or whether each year's data only includes proceedings assigned an initial docket number in that calendar year. After the meeting, Jean Guzzetti, Sagadahoc County Register of Probate, clarified that all petitions filed during either 2018 or 2020, including new petitions in cases that were previously opened and assigned docket numbers in previous years, are included in the 2018 and 2020 Probate Case Load data. For example, if a petition to terminate an adult guardianship was filed in 2018, it would appear in the 2019 Probate Case Load data even if the adult guardianship case originally commenced in 2002 and bears a 2002 docket number. She further clarified that a case originally filed and assigned a docket number in either 2018 or 2020 may be reported more than once in that year's data if more than one petition was filed in the case—for example, if a will was filed for informal probate in 2018 and a will contest arose later in 2018, the case would be counted under both the informal testate and formal testate categories in the 2018 data. Similarly, if a petition for guardianship of a minor was filed in 2018 and a petition to terminate the guardianship was filed later that same year, the case would be counted both under the Guardianship-minor and Guardianship Termination categories in the 2018 P data.

[2] Detailed county Probate Court budget information was also provided by Aroostook County Administrator Ryan Pelletier and Piscataquis County Manager Michael Williams; in addition, legislative staff received additional county budget information from the registers of probate for Lincoln, Penobscot and Washington Counites during the meeting. All of this information was sent electronically to commission members and posted on the commission's website. *See* https://legislature.maine.gov/commission-to-create-a-plan-to-incorporate-the-probate-courts-into-the-judicial-branch-meeting-november-1-2021.

Detailed Case Load - Sorted by Category - 2018

	Proceedings	Androscoggin	Aroostook	Cumberland	Franklin	Hancock	Kennebec	Knox	Lincoln	Oxford	Penobscot	Piscataquis	Sagadahoc	Somerset	Waldo	Washington	York	totals
A	Adoption - Consent /surrender	0	6	43	8	29	6	9	0	5	21	1	9	26	6	0	45	214
A	Adoption Adult	0	2	19	4	0	16	1	2	5	7	2	2	3	3	0	0	66
A	Adoption foreign recognition	0	0	7	0	0	1	0	0	0	5	0	0	0	0	0	3	16
A	Adoption - All other	3	9	40	4	23	28	4	1	27	29	5	3	21	12	3	33	245
A	Termination of Parental rights	4	2	4	3	11	12	2	0	6	6	1	0	12	8	1	15	87
A	Petition to for Information or Examine records	0	3	4	0	1	17	0	0	0	16	0	0	19	3	3	5	71
	TOTAL ADOPTIONS	**7**	**22**	**117**	**19**	**64**	**80**	**16**	**3**	**43**	**84**	**9**	**14**	**81**	**32**	**7**	**101**	**699**
C	Change of Name-adult	38	26	262	13	38	86	24	34	28	24	6	27	18	39	22	99	784
	Change of Name-minor	33	10	57	3	11	20	5	8	2	29	1	10	12	9	6	32	248
C	Complaint - civil	0	0	8	2	1	9	0	4	0	3	0	0	1	1	2	9	40
	TOTAL CHANGE OF NAME/CIVIL	**71**	**36**	**327**	**18**	**50**	**115**	**29**	**46**	**30**	**56**	**7**	**37**	**31**	**49**	**30**	**140**	**1072**
E	Petition to Resolve disputed claim	7	5	11	4	6	10	4	5	10	11	0	1	7	4	15	15	115
E	Formal Intestate	47	8	14	1	2	9	4	4	3	12	0	1	12	2	4	14	137
E	Formal Testate	97	7	35	4	11	12	3	5	11	13	3	4	4	8	7	32	256
E	Heir Determination	1	1	3	0	0	9	0	0	1	16	0	0	3	3	2	3	42
E	Special Administrator	7	10	38	4	15	21	3	2	3	39	0	2	4	4	5	34	191
	Subtotal Estates - Formal	**159**	**31**	**101**	**13**	**34**	**61**	**14**	**16**	**28**	**91**	**3**	**8**	**30**	**21**	**33**	**98**	**741**
E	Claim Against Estate	132	129	371	54	8	218	104	84	174	251	0	61	96	71	58	287	2098
E	Foreign Domicilliary P.R.	13	13	44	17	48	16	19	15	28	18	4	8	14	33	24	68	382
E	Affidavit for Collection of Property	0	0	0	0	0	0	0	0	0	0	0	0	0	0	30	0	30
E	Informal Probate Intestate	38	64	184	28	58	96	22	30	101	133	23	31	92	47	43	170	1160
E	Informal Probate Testate	132	173	805	104	226	316	164	163	174	364	69	101	117	118	100	506	3632
E	Informal will only	0	5	2	0	0	4	0	0	0	29	1	2	17	5	1	1	67
E	Will-No Probate	18	6	36	2	0	27	31	12	0	36	0	0	17	5	3	35	228
E	Subsequent informal appointment	0	0	0	4	0	0	0	0	3	0		0	6	0	4		17
E	Demand for Notice	26	28	42	13	3	35	12	18	20	32	1	3	11	7	11	21	283
	Subtotal Estates - Informal	**359**	**418**	**1484**	**222**	**343**	**712**	**352**	**322**	**500**	**863**	**98**	**206**	**370**	**286**	**274**	**1088**	**7897**
	TOTAL ESTATES	**518**	**449**	**1585**	**235**	**377**	**773**	**366**	**338**	**528**	**954**	**101**	**214**	**400**	**307**	**307**	**1186**	**8638**

	Proceedings	Androscoggin	Aroostook	Cumberland	Franklin	Hancock	Kennebec	Knox	Lincoln	Oxford	Penobscot	Piscataquis	Sagadahoc	Somerset	Waldo	Washington	York	totals
G	Foreign Domiciliary Conservator	0	0	1	0	3	1	0	1	2	0	0	0	1	5	0	2	16
G	Formal all other	29	0	37	0	39	0	0	8	7	52	0	26	12	10	9	75	304
G	Guardianship - Adult	76	58	181	5	34	69	13	7	40	100	12	15	34	24	48	79	795
G	Guardianship - temporary minor	6	0	8	3	5	11	1	3	13	18	0	4	3	5	2	80	162
G	Guardianship - minor	44	14	81	13	16	57	9	14	29	38	4	5	41	15	16	89	485
G	Guardianship Termination	34	20	35	2	1	21	4	0	11	37	0	2	20	9	3	38	237
G	Conservatorship - Adult	6	2	4	1	5	2	0	2	2	8	0	2	2	1	1	2	40
G	Termination of Conservatorship	2	3	5	0	1	19	5	0	1	3	0	3	3	7	3	6	61
G	Conservatorship - Minor	0	0	2	1	0	1	0	0	0	3	0	0	2	0	0	6	15
G	Accounts filed	60	17	100	7	67	115	38	12	21	36	7	7	37	30	25	38	617
G	Single transaction authority	1	3	5	0	0	2	1	2	0	6	6	0	3	0	1	5	35
G	Joined Guardianship/conservatorship adult	10	15	21	8	11	21	6	9	2	33	0	2	3	11	3	57	212
G	Joined Guardianship/conservatorship minor	0	0	0	1	0	0	0	0	5	10	0	1	1	0	0	3	21
G	Joined/termination	0	0	4	12	2	2	3	0	1	34	0	0	0	2	0	6	66
	TOTAL GUARDIAN/CONSERVATOR	**268**	**132**	**484**	**53**	**184**	**321**	**80**	**58**	**134**	**378**	**29**	**67**	**162**	**119**	**111**	**486**	**3066**
T	Trust	0	4	12	1	3	4	0	2	0	8	0	1	3	0	2	7	47
	TOTAL TRUST	**0**	**4**	**12**	**1**	**3**	**4**	**0**	**2**	**0**	**8**	**0**	**1**	**3**	**0**	**2**	**7**	**47**
	TOTALS	**864**	**643**	**2525**	**326**	**678**	**1293**	**491**	**447**	**735**	**1480**	**146**	**333**	**677**	**507**	**457**	**1920**	**13522**

Detailed Case Load - Sorted by Category - 2020

	Proceedings	Androscoggin	Aroostook	Cumberland	Franklin	Hancock	Kennebec	Knox	Lincoln	Oxford	Penobscot	Piscataquis	Sagadahoc	Somerset	Waldo	Washington	York	totals
A	Adoption - Consent /surrender	3	9	37	6	0	17	0	3	7	3	3	3	11	5	5	68	180
A	Adoption Adult	5	2	9	19	1	9	5	1	5	8	0	3	1	5	2	8	83
A	Adoption foreign recognition	0	0	6	1	0	0	0	1	0	3	0	1	0	0	0	2	14
A	Adoption - Minor	7	9	13	2	14	29	7	5	8	23	0	1	8	8	0	28	162
A	Termination of Parental rights	16	0	3	2	2	7	3	1	8	13	0	0	1	7	2	7	72
A	Petition to for Information or Examine records	2	4	5	0	0	6	0	0	1	0	0	0	22	2	1	0	43
	TOTAL ADOPTIONS	**33**	**24**	**73**	**30**	**17**	**68**	**15**	**11**	**29**	**50**	**3**	**8**	**43**	**27**	**10**	**113**	**554**
C	Change of Name-adult	64	30	201	20	32	87	28	25	30	122	16	31	21	41	10	105	863
	Change of Name-minor	24	9	34	5	12	8	12	6	12	27	0	5	14	9	7	35	219
C	Complaint - civil	3	2	0	1	0	0	0	0	0	13	0	1	1	1	2	25	49
	TOTAL CHANGE OF NAME/CIVIL	**91**	**41**	**235**	**26**	**44**	**95**	**40**	**31**	**42**	**162**	**16**	**37**	**36**	**51**	**19**	**165**	**1131**
E	Petition to Resolve disputed claim	13	8	8	2	0	10	4	4	7	8	0	1	4	3	4	11	87
E	Formal Intestate	4	8	14	20	11	20	1	6	6	17	0	2	15	6	2	18	150
E	Formal Testate	9	3	24	3	4	23	4	9	12	28	3	7	8	7	11	44	199
E	Heir Determination	0	0	2	0	0	2	0	1	0	0	0	0	2	0	3	0	10
E	Special Administrator	9	5	20	0	4	19	1	6	4	56	4	3	10	4	0	28	173
	Subtotal Estates - Formal	**35**	**24**	**68**	**25**	**19**	**74**	**10**	**26**	**29**	**109**	**7**	**13**	**39**	**20**	**20**	**101**	**619**
E	Claim Against Estate	14	128	362	39	7	223	73	72	95	400	5	49	98	65	83	231	1944
E	Foreign Domicilliary P.R.	1	9	49	16	31	19	19	31	16	0	16	5	17	7	11	56	303
E	Affidavit for Collection of Property	0	0	0	0	0	0	0	0	0	0	0	0	88	0	20	0	108
E	Informal Probate Intestate	56	66	202	41	52	117	38	24	63	138	66	26	55	39	47	163	1193
E	Informal Probate Testate	217	137	760	91	187	381	132	172	114	387	0	110	137	99	74	542	3540
E	Informal will only	0	4	1	0	0	6	0	0	10	29	0	2	14	0	0	0	66
E	Will-No Probate	40	6	35	0	9	6	23	9	2	36	0	0	10	7	0	0	183
E	Subsequent informal appointment	4	2	0	0	2	0	0	2	1	0	0	0	3	0	0	0	14
E	Demand for Notice	25	36	28	5	8	29	8	14	6	32	0	8	11	20	19	12	261
	Subtotal Estates - Informal	**357**	**388**	**1437**	**192**	**296**	**781**	**293**	**324**	**307**	**1022**	**87**	**200**	**433**	**237**	**254**	**1004**	**7612**
	TOTAL ESTATES	**392**	**412**	**1505**	**217**	**315**	**855**	**303**	**350**	**336**	**1131**	**94**	**213**	**472**	**257**	**274**	**1105**	**8231**

	Proceedings	Androscoggin	Aroostook	Cumberland	Franklin	Hancock	Kennebec	Knox	Lincoln	Oxford	Penobscot	Piscataquis	Sagadahoc	Somerset	Waldo	Washington	York	totals
G	Foreign Domiciliary Conservator	0	0	1	0	0	0	0	0	0	0	0	0	1	0	0	0	2
G	Formal all other	12	0	29	3	1	0	0	0	0	158	3	43	6	29	142	62	488
G	Guardianship - Adult	61	23	129	12	23	62	8	16	26	123	0	5	21	21	31	65	626
G	Guardianship - emergency minor	0	1	25	9	0	30	0	1	12	23	22	5	2	4	4	71	209
G	Guardianship - minor	0	15	59	6	11	23	13	10	30	47	7	4	25	18	14	103	385
G	Guardianship termination - adult	37	14	24	1	0	33	0	8	6	27	0	6	1	13	1	23	194
G	Guardianship termination - minor		2	15	0	0	16	3	1	5	17	0	0	1	0	0	18	78
G	Conservatorship - Adult	2	2	13	0	2	6	0	2	4	8	0	11	2	0	1	10	63
G	Termination of Conservatorship	5	4	37	0	0	0	0	1	0	3	0	0	1	0	1	12	64
G	Conservatorship - Minor	7	2	0	0	0	0	0	1	4	2	0	0	4	2	0	5	27
G	Accounts filed	34	8	104	2	0	107	7	24	14	67	0	6	29	17	2	15	436
G	Single transaction authority	0	0		0		4	1	0	0	17	0	0	12	0	0	2	36
G	Joined Guardianship/conservatorship adult	17	9	26	8	11	16	6	11	9	38	0	3	5	6	3	37	205
G	Joined Guardianship/conservatorship minor	1	0		1	0	0	0	0	0	0	0	0	1	0	0	0	3
G	Joined/termination	0	0		1	0	0	3	0	8	11	0	0	1	0	1	24	49
	TOTAL GUARDIAN/CONSERVATOR	**176**	**80**	**462**	**43**	**48**	**297**	**41**	**75**	**118**	**541**	**32**	**83**	**112**	**110**	**200**	**447**	**2865**
T	Trust	2	0	18	0	2	2	2	3	0	0	0	0	1	0	0	11	41
	TOTAL TRUST	**2**	**0**	**18**	**0**	**2**	**2**	**2**	**3**	**0**	**0**	**0**	**0**	**1**	**0**	**0**	**11**	**41**
	TOTALS	**694**	**557**	**2293**	**316**	**426**	**1317**	**401**	**470**	**525**	**1884**	**145**	**341**	**664**	**445**	**503**	**1841**	**12822**

Probate Courts Court-Appointed Professionals and Budget Information - 2020

	Androscoggin	Aroostook	Cumberland	Franklin	Kennebec	Lincoln	Oxford	Penobscot	Piscataquis	Sagadahoc	Somerset	Waldo
Hearing Hours												
Avg Hearing Hours Scheduled per Week	20	many	16	6	12	3	7	16	2	10	< 10	7
Avg. time between final hearings & final order												
Days	90 - 120	< 3		14	2	21	30	> 7	7-14	< 20	< 5	1
Court Appointments Attorney by Hour												
Estate cases					92.7		20					
Minor G/C cases		1			88.5	10	10			24.4	30	13
Adult G/C cases		1			31.5	10	0		See Total	9.87	30	8
Adoptions/TPR cases							0				10	
Other cases							0					
TOTAL ATTORNEY APPTS BY HOUR	**0**	**2**	**0**	**0**	**212.7**	**20**	**30**		**18**	**34.27**	**70**	**21**
Court Appointments Attorney by Cost[3]												
Estate cases							60-70/hr					
Minor G/C cases		742					70/hr			Hours		< same
Adult G/C cases		1,648	See Total			Hours above @			See Total	above @		
Adoptions/TPR cases						MCLIS rates				MCLIS		
Other cases										rates		
TOTAL ATTORNEY APPTS BY COST $	**0**		**1,200**	**0**	**0**		**0**		**900**		**0**	**0**
Court Appointments GAL by Hour												
Estate cases						0						
Minor G/C cases						10	40			5	20	3
Adult G/C cases					See Total	0				48.3		2
Adoptions/TPR cases						0				30.2	20	1
Other cases						0						
Total APPTS GAL BY HOUR		**4**			**71.5**				**0**	**83.5**		
Court Appointments GAL by Cost[3]												
Estate cases												
Minor G/C cases		803					70/hr			Hours		
Adult G/C cases		999		See Total	See Total	Hours above @				above @	< same	
Adoptions/TPR cases						MCLIS rates				MCLIS		
Other cases										rates		
TOTAL APPTS GAL by COST				900	3,015				0			
Court Appointments Visitors by Hour												
Estate cases												
Minor G/C cases										6.6	6	
Adult G/C cases					See Total	4				8.6	63	

Adoptions/TPR cases												
Other cases												
TOTAL COURT APPTS VISITORS by Hour	**2**				**390.5**					**15.2**		
Court Appointments Visitors by Cost												
Estate cases												
Minor G/C cases												
Adult G/C cases						60			See Total[4]			
Adoptions/TPR cases												
TOTAL COURT APPTS VISITORS by Cost									**668**			
How many total visitors appointed	61	64		12		23	26	227		11	23	36
How they are paid	By petitioner	Petitioner/ County Pay/DHHS	$150 flat fee. Charge petitioner	Direct by Petioner	Petitioner/ county/	MCLIS rates, Self pay, court pays, DHHS pays	When filing (check payable to visitor)		Paid by County	Self pay, court pays, DHHS		Collect $150 at filing, pay visitors once report
Operating Budget[1]												
Total Annual Budget	184,743	318,005		212,624	340,808	277,067.00	177,518	613000	108,413	168,314	166,156	259,000
Total Actual Expenses	175,898	304,323	584,082	207,000	328,003	270,630.00	177,376		125,776	156,505	166,281	232,000
Judge Salary[2]	33,619	37,200		34,000	49,002	64,837.00	31,334	47000	25,000	31,292	40,000	
Register and Staff Salary and Benefits	95,718	234,780		154,139	328,188	169,971.00	119,114	347000	47,048	100,970	166,281	
Judge, Register & Staff salaries w/o benefits												
Judge, Register & Staff salaries and benefits combined												310,877
Number of employees included in Register & Staff Salary[5]		3.0				3.0			3.0	2.5	3	
Court Appointments	6,091	3,764	48,640	7,000	44,000	11,749.00	7,000	81000		10,000	18,000	
Facility, Equipment & Supplies	11,934	27,948	46,699	11,000	6,000	11,842.00	6,000	63000		23,700	15,000	
Security							0					
Technology	3,250	5,500		4,610			3,100		2,000			
Other		25,630	4,158		5,500	12,585.00	10,040			2,352	6,100	
Revenues												
Probate Court/Registry fees		70,613		yes	192,359	114,999	105,770	220,000	yes	81,766	65,000	
Taxes or Other Revenues				none		177,067	3,780		none			
TOTAL REVENUES										81,766		

1. Budgets are for one year. In some cases a fiscal year, in some cases a calendar year
2. The Sagadahoc and Franklin County judge do not receive a benefits packagage
3. Aroostook County's rate for court appointed attorneys and GALs is $55/hr plus mileage
4. Piscataquis County did not have any GAL or Visitors during 2020 b/c of Covid. These are 2019 numbers.
5. Piscataquis hires 2 clerks per diem

Note: Given the short timeframe of the request for information, it was not possible to compile information from Hancock, Knox, Washington and York Counties.

Probate Court Facilities and Status of Record Scanning - 2020

	Courtroom Facilities	Use by Judicial Branch	Registry Space	Percent of Records Scanned
Androscoggin	yes	no	yes	1999 - present
Aroostook				
Cumberland	Judge's chambers and probate courtroom	We think so	Office space for Register, and a large open space for deputy and registery staff	All records since the initiation of ICON. Hundreds of records through record preservation project
Franklin	None - Use Superior Court room		very small	52%
Hancock				
Kennebec	small courtroom, 16'x24'	yes	3 large vaults, two offices (16'x26') & (26'x30'), conference room (11'x15')	12%
Knox	Up to Commissioners			0%
	Presently, a room is available for use by the Probate Court that is appropriate for court proceedings. It has been equipped with modern videoconferencing equipment and is handicap accessible. This room is in continuous use by most county departments, not just Probate, as well as outside agencies.	Lincoln County is not able to allocate use of this room exclusively to the Judicial Branch (as it does with the District Courtroom). Any lease arrangement would need to be complementary to the needs of Lincoln County operations and include compensation that considers the true cost to maintain to the standards of the Judicial Branch, including security screening and Judicial Marshall service. This compensation would also need to include maintaining the areas of the Courthouse accessible to the public (i.e. restroom facilities).	Registry of Probate general office, Probate Judge private office, Probate file room, climate-controlled storage of physical archived records, cloud/server storage of electronic records, additional meeting rooms used occasionally when large parties are attending Probate Court proceedings.	Scanned 61/26 years worth of records 1 = 23% Additionally, 200 select records from the years of 1760 – 1899 that have been scanned.
Oxford	Courtroom with Judges Chambers	Probate	Office 570sq ft Vault 240 sq ft	8%
Penobscot				
Piscataquis	Same building as District/Superior Court		Records storage, Chambers/hearing room, staff area	

Sagadahoc	Uses Grand Jury room when available, otherwise Commissioner's meeting room. Breakroom for zoom hearings.	N/A	Small office w/o designated court room	Scanned 20/165 years worth of records = 12%
Somerset	Yes. Used by all dept.	No	Office w/ space for research	12% (years)
Waldo	Owned by county and used solely for Probate	No	Yes	1981 - present = 40%
Washington	Share w/ Commissioners once per month	No		
York			Yes	1993 - current = 100% 1982 - 1993 = 50% 1785 - 1981 = 0%

APPENDIX H

Information Provided by the Maine Probate Judges Assembly on November 1, 2021:

Probate Judge Time and Workload Survey Results

Information provided by the Maine Probate Judges Assembly on November 1, 2021

During the November 1st meeting, commission member Jarrod Crockett, Oxford County Probate Judge, presented the information he received from a survey of the Maine Probate Judges Assembly regarding the hours each county Probate Judge spends presiding over hearings; preparing for cases, including by conducting legal research; writing decisions; and on other tasks, including scheduling and administrative duties. Judge Crockett observed that few of Maine's county Probate Judges spend less than 20 hours per week on their judicial duties. Indeed, the size of the population and the unique circumstances in some counties—for example, the presence of a mental health facility that accepts involuntary commitments—cause the Probate Judges in those locations to work far beyond a traditional "part-time" schedule. After reviewing the numbers, Judge Crockett and Judge Avantaggio posited that several Probate Judges may also have underreported their hours. Considering the low salaries paid to many Probate Judges, Judge Crockett suggested that the existing county Probate Court system represents a good deal for the taxpayer.

Judge Crockett provided additional survey information in which Maine Probate Judges Assembly members estimated the percentages of their reported judicial time that was spent on traditional probate matters (wills, trusts and estates), family matters (guardianships, conservatorships, terminations of parental rights, adoptions and name changes) and other matters. Their estimates demonstrate that, in all except one county with a new judge whose data Judge Crockett suggested may be skewed by one or two outlier cases, Probate Judges spend the majority of their time on guardianship matters. Judge Crockett posited that this time demand is partly due to the recent changes in guardianship law but largely the result of the opioid crisis and its impact on families in the State.

Finally, Judge Crocket presented a list of tasks compiled during the survey that demonstrate the unique nature of the county Probate Judge's role in comparison to the role of a state court judge, emphasizing: the flexibility of part-time judges and their ability to schedule additional matters on an emergency basis; that because cases are uniquely assigned to their courts, a single Probate Judge may be able to follow a case over several years; Probate Judges have been known to use the resources of their private law offices, including paralegal research time, to perform court tasks at no cost to the taxpayer; and the ability of county Probate Judges to reallocate the Register of Probate's work to other individuals if it is not being completed, with an attendant reallocation of pay by the county.

A copy of the survey results presented by Judge Crockett is included in this Appendix.

Responses to RFI's from Commission to plan to Incorporate the Probate Courts into the Judicial Branch

(as of 10.30.21)

	Presiding[i]	Preparation[ii]	Writing[iii]	Other[iv]	Total[v]
Androscoggin County					
Aroostook County					15
Cumberland County					40
Franklin County	6		4	4.5	14.5
Hancock County					
Kennebec County	12	8		7.5	27.5
Knox County	9.5	10	2	3	24.5
Lincoln County	2.6		.8	1.3	4.7
Oxford County	8	7	3	4	22
Penobscot County	16		8		24
Piscataquis County					
Sagadahoc County	10		4	4	18
Somerset County					
Waldo County	9.5	2		2	13.5
Washington County	8	7	4	3	22
York County					40-50

Notes:

Question #2: With respect to your answers to questions 1(a) and 1(b) above, how much or what percentage of that time is spent on the following categories of matters:

a. Wills, trusts and estates matters:
b. Guardianships, conservatorships, TPRs, adoptions, name changes
c. Other

	Wills, ect.	Guardian/Conservator, ect.	Other
Androscoggin County			
Aroostook County			
Cumberland County	25%	75%	
Franklin County	25%	74%	1%
Hancock County			
Kennebec County	25%	75%	
Knox County			
Lincoln County	30%	65%	5%
Oxford County	30%	60%	10%
Penobscot County	20%	50%	30%
Piscataquis County			
Sagadahoc County	62%	25%	13%
Somerset County			
Waldo County	15%	65%	20%
Washington County	35%	65%	
York County			

Question # 3: Are there certain tasks that you currently perform as a Probate Judge that you might not be able to perform if you were a Judicial Branch employee?

-May appoint legal counsel in ALL cases

- This is a court dedicated to just probate issues, which we all recognize as extremely important to the filer, whether it is an estate issue, a guardianship issue or an adoption. Even name changes are emotional and the filer cares deeply about the matter.

-Flexibility to schedule matters within a few hours of a filing, any day of the week, if necessary to handle emergency matters.

-All authorities of Register under 18-C

-Ability to reallocate pay if work is not being completed

-Off site hearings, as needed (nursing homes, personal residences, towns, etc.) 4 MRS Sect 304

*-Probate judges may use their private paralegals on research projects at **NO** expense to taxpayers*

-Use private space at no expense to taxpayers

-"Continuous Session" (4 MRS Sect 303)

- A single judge following a case through for years (even decades).

-Relationship with Sheriff under 4 MRS

-Work directly with County Commissioners on court needs

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[i] "Presiding" includes regular hearings/court day and specially assigned cases (some judges included writing time on court days)

[ii] "Preparation" includes trials/hearings, including research, particularly on unique issues presented in more complex cases conduct all their own research and writing (no clerks); review annual guardianship and conservative reports and accountings for all previously approved cases

[iii] "Writing" represents an average throughout the year—these include complex cases where decisions on motions occur, where sometimes cases are of first impression, and also routine orders.

[iv] "Other" includes scheduling, conference with Registers, administrative duties, education (increased with new code), arranging judges' conferences, service on special committees related to judicial duties (FLAC, PATLAC, Judicial Responsibility, Forms, Ect,), bench/ bar meetings, drafting policies, "Blue Papers," coordination with other courts, (Some respondents including writing and research in this category.)

[v] 7-day week, averaged throughout a year

APPENDIX I

Information provided by the Administrative Office of the Courts on November 1, 2021:

Cost of State Trial Court Judges and Justices and Anticipated Technology Costs

Stocco, Janet

From: Katharine Wiltuck <katharine.wiltuck@courts.maine.gov>
Sent: Tuesday, October 26, 2021 11:48 AM
To: Stocco, Janet
Cc: Gorman, Ellen A.; Senft, Samuel; Condon, Tanya
Subject: Re: Requests for Information from Probate Courts Commission
Attachments: Trial Judge w_ Support Cost FY22 & 23 5.10.21.xls

Follow Up Flag: Follow up
Flag Status: Flagged

Good morning,

1. Annual personnel costs of a judge: In response to the request for the cost of a judge, I have attached a spreadsheet that identifies the costs associated with adding a judge, including All Other costs, a marshal, a clerk, and a law clerk. The MJB has determined that these are the full costs of adding a judicial officer, as the support efforts cannot be absorbed with current resources. If you would like to discuss how we came to this conclusion, please let us know.

2. Technology costs for converting Probate Court records: The following information provides a preliminary assessment of the cost components for the technology requirements for converting records. Additional technical conversations would be necessary to more robustly scope the necessary work, and more precisely answer questions on this topic.

   a. *System integration:* The MJB is currently transitioning to the Odyssey case management and efiling systems. Therefore, either an interface would need to be developed between the Probate Court system and the MJB systems, or preferably, the Probate Courts could transfer to a compatible system. The DAs have purchased the Tyler Attorney Manager solution for approximately $1.3M.

      i. The concern with integrating a separate system is ensuring that adaptations to any future Odyssey updates can be coordinated. Using two separate vendors is not ideal and has introduced significant complications with other partner entities.

      ii. Even if the Probate Courts could be transitioned to a Tyler product, the timing could be an issue depending on that vendor's ability to incorporate this project into their current schedule.

   b. *Digitizing documents:* Digitizing documents requires scanning equipment, labor to perform the scanning, labor and expertise to index and attach document files to a case management system, and electronic storage for the digitized files. Depending on the types of documents being digitized, the scanning equipment can be more expensive and necessitate a more manual process - e.g., for older documents that cannot be fed into a rapid scanner wheel, and instead have to be scanned individually in a flat scanner.

      i. For cases that have been initiated before Odyssey go-live, the MJB is scanning documents only as necessary. The documents in pending cases are voluminous and therefore scanning all of those documents individually and linking the documents to the docket events is not possible with current resources.

      ii. To the extent that the Probate Courts intended to scan legacy documents into an existing case management system, we would have to answer the same questions of moving forward with scanning into a legacy system that interfaces with the MJB systems, or pursue an intrinsically compatible system. This would require additional conversations between technical resources.

Please post and disseminate as directed by the Chairs.

Thank you.
Katharine

FY'22 & FY'23

Trial Judge Cost (w/ support staff)

5/10/21

	FY'22 Salary	FY'22 Benefits	FY'22 Total
Judge	$ 141,398	$ 49,474	$ 190,872
Family Law Magistrate	$ 106,059	$ 58,778	$ 164,837
Deputy Marshal (step 3)	$ 43,472	$ 38,000	$ 81,472
Assistant Clerk (step 3)	$ 39,042	$ 36,533	$ 75,575
Law Clerk	$ 56,680	$ 42,385	$ 99,065
	$ 386,651	$ 225,170	$ 611,821

(NOTE: Magistrates are usually paid at least partially by Fed T.IV-D Funds. Ratio: 34% GF, 66% fed funds)

	FY'23 Salary	FY'23 Benefits	FY'23 Total
Judge	*$ 145,642*	*$ 51,189*	*$ 196,831*
Family Law Magistrate	*$ 109,242*	*$ 61,029*	*$ 170,271*
Deputy Marshal (step 4)	*$ 45,718*	*$ 39,957*	*$ 85,675*
Assistant Clerk (step 4)	*$ 40,976*	*$ 38,393*	*$ 79,369*
Law Clerk	*$ 56,680*	*$ 43,596*	*$ 100,276*
	$ 398,258	***$ 234,164***	***$ 632,422***

DETAIL OF "All Other" Costs:

	First year set up costs:	Mileage (1st yr & Annual ongoing)	Annual (other than mlg)	1st yr Set-Up	1st yr Jud Coll/Train	Mileage (1st yr & Annual)	Annual Tech/phone Supply	Annual Legal Book	Annual Training Costs
Judge	*$ 12,500*	$ 7,000	*$ 1,700*	$ 12,500	$ -	$ 7,000	$ 700	$ 1,000	$ -
Family Law Magistrate	*$ 12,500*	$ 7,000	*$ 1,700*	$ 12,500	$ -	$7,000	$ 700	$ 1,000	$ -
Deputy Marshal	*$ 3,400*	$ 5,000	*$ 600*	$ 3,100	$ 300	$ 5,000	$ 500		$ 100
Assistant Clerk	*$ 5,500*	$ 500	*$ 800*	$ 5,500		$ 500	$ 800		
Law Clerk	*$ 6,000*	$ 500	*$ 800*	$ 6,000		$ 500	$ 800		
	$ 27,400	***$ 13,000***	$ 3,900						

TOTAL SALARIES FOR ONE TRIAL JUDGE & SUPPORT STAFF FY'22

	#	FY'22 Salary	FY'22 Benefits	FY'22 Total
Judge	1	$ 141,398	$ 49,474	$ 190,872
Deputy Marshal	1	$ 43,472	$ 38,000	$ 81,472
Assistant Clerk	1	$ 39,042	$ 36,533	$ 75,575
Law Clerk	0.5	$ 28,340	$ 21,193	$ 49,533
TOTAL PERSONAL SERVICES		$ 252,252	$ 145,200	**$ 397,452**

TOTAL SALARIES FOR ONE TRIAL JUDGE & SUPPORT STAFF FY'23

	#	FY'23 Salary	FY'23 Benefits	FY'23 Total Pers Serv
Judge	1	$ 145,642	$ 51,189	$ 196,831
Deputy Marshal	1	$ 45,718	$ 39,957	$ 85,675
Assistant Clerk	1	$ 40,976	$ 38,393	$ 79,369
Law Clerk	0.5	$ 28,340	$ 21,798	$ 50,138
	TOTAL	**$ 260,676**	**$ 151,337**	**$ 412,013**

TOTAL SALARIES FOR ONE TRIAL JUDGE & SUPPORT STAFF & SETUP COSTS

	FY'22	FY'23
Personal Services	$ 397,452	$ 412,013
All Other	$ 44,300	$ 16,900
GRAND TOTAL	$ 441,752	$ 428,913

Annual Rent per Sq. Ft.	$ 12.5	*usually not necessary)*
# sq. feet per judge	300	$ 3,750
# sq. feet per clerk	120	$ 1,500

APPENDIX J

Overview of the Concerns Raised in the Public Comments Submitted to the Commission

Overview of the Concerns Raised in the Public Comments Submitted to the Commission

At its first meeting on October 19, 2021, the commission invited members of the public and the bar to provide live input during the meeting that would be held on November 1 either in person or remotely through the Zoom webinar and to submit written comments via email to legislative staff at any time prior to the final commission meeting on November 30, 2021. Messages inviting public comments were also posted on the commission's website for the November 1st, November 15th and November 30th meetings. Several reminders were also sent by email to the individuals who registered to receive information from the commission's interested parties' listserv.

November 1, 2021 Meeting

The commission heard from and asked questions of the following individuals during the November 1 meeting: Martha Greene, Esq. of Brann & Isaacson, Elizabeth Stout, Esq. of the Maine Volunteer Lawyers Project, Christopher Berry, Esq. of Berry Law P.A., and Susan Lobosco, LCSW. In addition, although they did not speak during the meeting, written comments were submitted by: Penny Collins, LCSW, Nathan Dane, Esq., Camille Desoto, Gregory Farris, Esq. and Robert Mittel, Esq.[1]

These commentators raised the following, sometimes contrasting, concerns for the commission's consideration:

- There is no good reason to change the Probate Court system, which is working well in the State.
- Self-represented litigants do not understand the separation between the county Probate Court and state court systems; having all court services available through one clerk's office would increase court accessibility.
- Candidates for Probate Judge are not required to specialize in probate law before assuming their judicial responsibilities and the amount of time they spend on their judicial duties differs between counties in part due to differences in pay across the State.
- The system of review by a judicial screening panel, appointment by the Governor and confirmation by the Senate ensures that judges have sufficient relevant experience and has worked well for state court judges.
- Maine deserves a Probate Court system comprised of full-time judges who are not burdened by an appearance of impropriety when they engage in the part-time practice of law.
- It is difficult for an attorney to know how to manage opposing counsel in a high-conflict case if that counsel is the local Probate Judge who will preside over a case the attorney is scheduled to litigate the following week.
- There are inherent ethical issues related to the election of judges, political campaigning and the solicitation of financial contributions to campaigns.
- In some counties, the delay caused by inconsistent and irregular schedules and inconsistent application of the law costs Maine residents thousands of dollars in unnecessary legal fees.
- While the state court process can be very slow, the Probate Courts are an order of magnitude more delayed in resolving matters.
- Systematic scheduling of cases through the Judicial Branch should ensure that cases are not delayed due to any particular county's budget and staffing difficulties.
- Pre-reservation of court dates before an adoption action is filed in cases where a birth parent will consent to an adoption—*i.e.*, before the child is born— is normal in the Probate Court. By contrast, it is unusual to have a hearing in District Court even two to four months after filing. These delays and the attendant uncertainty are not only detrimental to birth mothers and adoptive parents, but also the delayed processing of birth mother consents and resulting delay in subsequent notification to putative fathers may count against the fathers in termination actions.
- Children, even infants, bond with their caretakers and it is of utmost importance that the legal risks associated with an adoption by consent be resolved quickly to provide stability for the child.

[1] The written public comments are posted on the commission's website at https://legislature.maine.gov/commission-to-create-a-plan-to-incorporate-the-probate-courts-into-the-judicial-branch-meeting-november-1-2021.

- If private adoption becomes unmanageable in Maine, birth mothers and adoptive parents will choose to conduct adoptions in other states, limiting their options and increasing their expenses.
- It might be possible to address some of the delays in District Court adoption hearings through statute and rule changes—including use of a putative birth father registry—but this must be coupled with training for Judicial Branch court clerks on how to handle these cases.
- The worst outcome, relative to adoption proceedings, would be to transfer Probate Court matters to the District Court without sufficient additional funding, making adoptions just one more case type for District Court Judges who have inadequate resources. Appointment of several full-time state Probate Judges who handle only probate matters on a specialized docket would be ideal.
- Domestic infant adoption is a very specialized area of the law and it is important that judges handling these cases be educated and possess the requisite expertise to handle these cases.
- While some county registers are experienced and excellent resources for the public and their colleagues, there is no requirement that registers have prior knowledge of the law or the skills required for the position nor is specific training required after an individual is elected. This results in inconsistent application of the procedural rules and the law between counties. Registers would benefit from the ongoing training that would be available in the Judicial Branch.
- Less variation in practice between counties would increase the fair administration of justice. Attorneys have difficulty explaining to clients how their cases will be handled in Probate Court, unlike in state court, which has more consistent procedures.
- The variation in practice between counties makes it difficult to find attorneys from southern Maine's urban areas who are willing to provide remote assistance to clients in rural counties, where local Probate Court practices may be quite different.
- Registers should continue to function as they do now but receive regular continuing education, allowing probate practitioners to receive uniform answers and services across the state.
- Incorporating the Probate Courts in the Judicial Branch will increase critically needed oversight.
- For more than 50 years, the Constitution has provided for a change to the system as soon as the Legislature might act; now is the time for the Legislature to act.

November 15, 2021 Meeting

At the third commission meeting on November 15, 2021, commission members received copies of additional written public comments that had been submitted by Camille Desoto, retired Cumberland County Commissioner and Probate Judge Joseph Mazziotti, and Stephen Gorden, chair of the Cumberland County Board of County Commissioners and President of the Maine County Commissioners Association after the November 1, 2021 meeting.[2]

These commentators asked the commission to consider the following, sometimes contradictory, concerns:

- Incorporating the Probate Court system into the Judicial Branch will protect the most vulnerable members of our society by increasing oversight of these courts; the State's Probate Court system should be focused on compassion and fairness.
- It is difficult for part-time Probate Judges, who also maintain private law practices, to reconcile these roles. In addition, there is a perception in the general public, among probate attorneys and parties in probate proceedings that a judicial system that allows sitting judges to appear before their peers in contested cases is not impartial and unbiased.

[2] These public comments are posted on the commission's website at https://legislature.maine.gov/commission-to-create-a-plan-to-incorporate-the-probate-courts-into-the-judicial-branch-meeting-november-15-2021.

Overview of the Concerns Raised in the Public Comments Submitted to the Commission

- The Registers of Probate and their staff, who have frequent contact with families in crisis, sharing their knowledge, understanding of the process, and professionalism, have earned the public's confidence. Yet, more should be done to promote uniformity in these offices.
- Significant concerns arise if the registers and their staff remain within the county government but the Probate Judges are moved to the Judicial Branch, including whether an appointed state official may exert supervisory authority over an elected county official.
- Part-time Probate Judges are adept at flexible scheduling for handling emergency hearings. This flexibility may be lost with full-time judges who have larger caseloads.
- Creating state Probate Judges will subject the system to the whims of legislative appropriations, placing the system at risk of not remaining fully funded.
- Integration of the county and state databases, which is essential for the proposed model to succeed, would be a costly and complicated undertaking.
- The State's courts are overwhelmed and understaffed, a situation that will only be exacerbated by the proposed reorganization of the Probate Courts. Yet, the proposed reorganization will not guarantee any tangible benefits to the people of Maine.

The commission did not receive any additional public comments after the November 15, 2021 meeting.

APPENDIX K

Memorandum on Oversight of Registers

To: Commission to Create a Plan to Incorporate the Probate Courts into the Judicial Branch

From: Office of Policy and Legal Analysis Staff

Date: November 1, 2021

Subject: Oversight of Registers

During the first meeting of the *Commission to Create a Plan to Incorporate the Probate Courts into the Judicial Branch* ("the Commission"), Commission members requested legislative staff research whether there is a legal impediment preventing appointed Probate Judges from overseeing the work of elected Registers of Probate. This memo summarizes the research conducted. It should be noted that this memo examines only legal barriers, and not the political or logistical considerations attendant to this issue.

Key Finding:

- There is no clear precedent in Maine suggesting a constitutional or statutory prohibition on oversight of an elected Registrar of Probate by an appointed, rather than elected judge.

Constitutional and Statutory Framework

The terms of Probate Judges and Register of Probate are established Article VI, Section 6 of the Maine Constitution, which reads as follows:

> ***Article VI Section 6. Judges and registers of probate, election and tenure; vacancies.*** *Judges and registers of probate shall be elected by the people of their respective counties, by a plurality of the votes given in, at the biennial election on the Tuesday following the first Monday of November, and shall hold their offices for 4 years, commencing on the first day of January next after their election. Vacancies occurring in said offices by death, resignation or otherwise, shall be filled by election in manner aforesaid at the November election, next after their occurrence; and in the meantime, the Governor may fill said vacancies by appointment, and the persons so appointed shall hold their offices until the first day of January next after the election aforesaid.*

Section six is followed by this note:

> *Note: Section 6 of Article VI has been repealed by Amendment which by virtue of Chapter 77 of the Resolves of the One Hundred and Third Legislature, 1967 "shall become effective at such time as the Legislature by proper enactment shall establish a different Probate Court system with full-time judges."* [1]

When the contingency described in Resolve 1967, chapter 77 is met (that is, a new Probate Court system with full-time judges is established), the Constitution will no longer require election of probate judges or registers, though elections could be required by statute.

[1] *See also* 18-C M.R.S. §1-501(1) ("Registers of probate are elected or appointed as provided in the Constitution of Maine.").

The day-to-day work of Registers of Probate is overseen and supervised by the Probate Judge in the Register's county.[2] Specifically,

1) The Probate Judge is required to "constantly inspect the conduct of the register with respect to the register's records and duties";[3]
2) A Probate Judge must provide information, in writing, to the county treasurer regarding "any breach of the register's bond to the treasurer of the county," and the treasurer is then required to bring a civil action on the bond to recover funds to pay another person who has been selected by the Probate Judge to fulfill the register's duties.[4]
3) In the event a Register of Probate is unable or unwilling to conduct the Register's duties, the Probate Judge is required to certify such inability or neglect to the county treasurer, including information regarding "the time of the commencement and termination of the inability or neglect and the name of the person who has performed the duties for that time period."[5] The treasurer must in turn pay out of the Register's salary the person who is named by the Probate Judge to perform the Register of Probate's duties.[6]

A Register of Probate may be removed from office by impeachment or by the Governor on the address of the Legislature, pursuant to Article IX, section 5 of the Maine Constitution:

> ***Section 5. Removal by impeachment or address.*** *Every person holding any civil office under this State, may be removed by impeachment, for misdemeanor in office; and every person holding any office, may be removed by the Governor on the address of both branches of the Legislature. But before such address shall pass either House, the causes of removal shall be stated and entered on the journal of the House in which it originated, and a copy thereof served on the person in office, that the person may be admitted to a hearing in that person's own defense.*

Case Law

There is limited case law regarding oversight of Registers of Probate. However, the 2005 case *York County Probate Court v. Atwood*[7] examined the limits of a probate judge's power over the Register. In that case, the York County Probate Judge was displeased with the work of the York County Register. He reassigned several of the Register of Probate's duties to a deputy register. In accordance with 18-A M.R.S. §1-508,[8] the judge certified the reassignment and submitted it to the county treasurer, who redistributed pay between the Register of Probate and deputy register accordingly. However, when the judge again reassigned duties and sent another certification, the treasurer did not act, instead seeking the input of the county commissioners. The judge sought an

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[2] *See* 18-C M.R.S. §1-305 ("The register is subject to the supervision and authority of the judge of the court in which the register serves.").
[3] 18-C M.R.S. §1-507.
[4] 18-C M.R.S. §1-507.
[5] 18-C M.R.S. §1-508.
[6] 18-C M.R.S. §1-508.
[7] *York County Probate Court v. Atwood*, No. CV-03-041, 2005 WL 2759304 (Me. Super. Ct. May 10, 2005).
[8] 18-A M.R.S. §1-508 has since been repealed and replaced by 18-C M.R.S. §1-508, which has identical text.

order from the Superior Court directing the treasurer to act. In denying this request, the court held that "once the certification is made, the judge has no further authority or role in certification"[9] and that the treasurer was within his rights to seek the counsel of the county commissioners, as "implementation of the judge's certification should not be an automatic, ministerial act."[10]

While the *Atwood* case does not anticipate a situation in which the Probate Judge is appointed, rather than elected, it does distinguish between a Probate Judge's statutory authority to oversee the work of the Register of Probate and the Probate Judge's lac of authority to actually terminate the Register. Indeed, the court stated, "It also is clear from the Constitution that the judge cannot remove a Register of Probate from office since both the judge and Register are officials whose terms of office are set by the Constitution (Me. Const. art. [VI], § 6) and, as a result, neither may be removed from office except by impeachment or address of the Legislature."[11]

Of course, should a new probate system be established that satisfies the contingency of Resolve 1967, chapter 77, then Article VI, section 6 of the Constitution will be repealed. In that event, new statutory language must be drafted to establish the manner in which the Registers of Probate are selected and removed from office. The Legislature may also wish to decide whether to continue supervision of Registers of Probate by Probate Judges at that time.[12]

Comparison: District Attorney Oversight by Attorney General

District attorneys are elected to four year terms and serve in the prosecutorial districts established by state law.[13] The Attorney General, who is chosen by joint ballot of the Legislature,[14] is directed by law to "consult with and advise the district attorneys in matters relating to their duties."[15] Furthermore, the Attorney General may choose to "act in place of or with the district attorneys, or any of them, in instituting and conducting prosecutions for crime, and is invested, for that purpose, with all the rights, powers and privileges of each and all of them."[16] The Attorney General can file a complaint for removal of a district attorney, and the Supreme Judicial Court may take action to remove that district attorney.[17]

The relationship of the Attorney General to the district attorneys in analogous in some ways to the relationship of the Probate Judge to the Register of Probate. Both the Attorney General and the Probate Judges are state officials, though the Probate Judges are paid by the various counties

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[9] *Atwood,* 2005 WL 2759304 at *3.
[10] *Id.* at *3.
[11] *Id.* at *2.
[12] In the event a newly established probate system no longer includes dedicated Probate Judges, 18-C M.R.S. §1-305, §1-507 and §1-508 will need to be amended to specify by whom Registers of Probate are supervised.
[13] 30-A M.R.S. §251, §254.
[14] Me. Const. art. IX, §11.
[15] 5 M.R.S. §199.
[16] *Id.*
[17] 30-A M.R.S. §257.

they serve.[18] Both are authorized to exercise a significant level of supervision over the work of the elected district attorneys and the elected Registers of Probate, respectively.

The structure of the district attorney system has changed significantly over the years. Prior to 1973, each county had what was referred to as a county attorney. However, in 1973, legislation passed that established a smaller number of prosecutorial districts. The county attorneys were replaced with district attorneys, who were assigned to prosecutorial districts and were considered state officials, though they were still locally elected.[19]

A 1975 Opinion of the Justices of the Supreme Judicial Court[20] examined whether the Governor, upon receiving a complaint from the Attorney General regarding the performance of a district attorney, must conduct a quasi-judicial hearing regarding that district attorney. The Court answered in the affirmative, noting that while individuals whose terms were established by the Constitution could be removed only in accordance with the Constitution, the same reasoning did not apply to all civil offices established by statute. The Justices also specifically addressed whether the Governor would violate separation of powers by initiating a removal proceeding of a district attorney. The court found that the determining factor was whether the official's tenure of office was provided for in the Constitution. When an official's term of office is not established by the Constitution, the court stated, "Section 5 of Article IX does not clearly and expressly mandate impeachment or address of the Legislature as the exclusive methods for the removal of all civil officers."[21]

Conclusions

The classification of Registers of Probate and Probate Judges as state verses local officials does not appear to be of significance when considering oversight of registers by judges. At present, Probate Judges, though elected, are considered state officers, while Registers of Probate, also elected, are considered local officials.[22] Yet, there is no indication that this difference, in and of itself, presents any current barrier to oversight of the Registers by the Probate Judges. A transition to a system where Registers of Probate remain elected and Probate Judges become appointed would presumably not change the classification of Registers as local officials and Judges as state officials.

A current system of supervision that may provide a useful analogy for a framework in which appointed Probate Judges oversee the work of elected Registers of Probate is the system in which the Attorney General, who is appointed by the legislature, oversees District Attorneys, who are elected at the local level but are also state officials.

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[18] *See LeGrand v. Nadeau*, No. ALFSC-CV-15-269, 2016 WL 11509002 (Me. Super. Ct. Feb. 12, 2016) at *1 ("Probate judges are also anomalous in that they are state officers even though they are paid by the county.").
[19] P.L. 1973, ch. 567.
[20] *Opinion of the Justices*, 343 A.2d 196 (Me. 1975).
[21] *Id.* at 203.
[22] *LeGrand v. Nadeau*, *supra* note 18.

As regards the constitutionality of an appointed Probate Judge supervising the Register of Probate, there is nothing in the Maine Constitution that appears to bar an arrangement in which appointed, rather than elected, Probate Judges exercise oversight of Registers of Probate. The elected or appointed nature of the Probate Judge does not appear to be dispositive.

That stated, the elected nature of the *Register of Probate* is relevant in turns of the ability of the Probate Judge, whether appointed or elected, to supervise the Register. Statutory language provides mechanisms by which Probate Judges oversee the work of the Registers. They may, if aggrieved by the performance of a Register, seek to have the Register's duties and pay attenuated through the county treasurer. However, Probate Judges lack the authority to actually terminate or replace Registers. Article VI, Section 6 and Article IX, Section 5 of the Maine Constitution currently create a barrier to full judicial oversight of Registers of Probate. Article VI, Section 6 specifically describes registers and their elected nature. Article IX, Section 5 establishes the sole means by which an officer established by the constitution maybe removed from office, that is, by impeachment or by removal by the Governor upon the approval of the Legislature. Of course, should the Legislature elect to establish a system of full-time Probate Judges, Article VI, Section 6 of the Constitution will be repealed.

APPENDIX L

Probate Court Jurisdiction and Register Duties

Current Statutory Jurisdiction of Probate Courts

Type of Matter	Cite	Does any other court share jurisdiction?	Recommendation
Wills/Estates/Trusts			
Probate of wills, estate administration and related proceedings (for example, to order the perpetual care of a cemetery lot with estate funds).[i]	4 M.R.S. §251; §252;[ii] 18-C M.R.S. §1-302; §1-306.	• Register has jurisdiction over informal probate proceedings. *See* Register's duties in chart below. • Superior Court has concurrent jurisdiction over equitable relief and exclusive jurisdiction over jury trials.	
Trusts	18-B M.R.S. §203; 18-C M.R.S. §1-302(1)(C).[iii]	Superior Court has concurrent jurisdiction, except: • Superior Court has exclusive jurisdiction over jury trials.	
Adoptions and Name Changes			
Adoptions (and associated terminations of parental rights)	4 M.R.S. §251; 18-C M.R.S. §9-103 & §9-205; and 22 M.R.S. §4051.	• District Court has exclusive jurisdiction if Home Court Act applies, *see* 4 M.R.S. §152(5-A). • District Court concurrent jurisdiction to conduct reviews if Probate Court adoption is not final within 18 months.	
Minor name changes	4 M.R.S. §251; 18-C M.R.S. §1-701; §9-308(3).	• District Court has exclusive jurisdiction if Home Court Act applies, *see* 4 M.R.S. §152(5-A). • District Court has jurisdiction to change minor's name as part of an adoption decree	
Adult name changes	4 M.R.S. §251; 19-A M.R.S. §1051.	District Court has jurisdiction to change spouse's name in a divorce judgement	
Protective Matters Involving Minors			
Minor guardianships	4 M.R.S. §251;[iv] 18-C M.R.S. §1-302; §5-104(1).	District Court exclusive jurisdiction if Home Court Act applies, *see* 4 M.R.S. §152(5-A).	
Minor conservatorships	4 M.R.S. §251;[v] 18-C M.R.S. §1-302(3).	District Court exclusive jurisdiction if Home Court Act applies, *see* 4 M.R.S. §152(5-A).	
Issue or deny PPOs in child protection proceedings	22 M.R.S. §4031(1)(B).	District and Superior Court have concurrent jurisdiction to issue/deny a PPO, but: • After the PPO petition is decided, District Court has exclusive jurisdiction.	
Petitions for protection and care of unmarried noncitizens who are minors	18-C M.R.S. §5-104(1-A); 22 M.R.S. §4099-I.	District Court has concurrent jurisdiction, except: • District Court has exclusive jurisdiction if Home Court Act applies, *see* 4 M.R.S. §152(5-A).	
Maine Uniform Transfers to Minors Act proceedings	33 M.R.S. §1652(5); 4 M.R.S. §252.	• Superior Court has concurrent jurisdiction over equitable relief • District Court has exclusive jurisdiction if Home Court Act applies [vi]	

Current Statutory Jurisdiction of Probate Courts

Type of Matter	Cite	Does any other court share jurisdiction?	Recommendation
Protective Matters Involving Adults			
Adult guardianships	4 M.R.S. §251;[vii] 18-C M.R.S. §1-302; §5-104(2-3).	Superior Court has concurrent jurisdiction to determine the validity of a claim against the respondent or respondent's property or to resolve questions of title to the property	
Adult conservatorships	4 M.R.S. §251; 18-C M.R.S. §1-302; §5-104(2-3).	Superior Court has concurrent jurisdiction to determine the validity of a claim against the respondent or respondent's property or to resolve questions of title to the property	
Issue writ of habeas corpus to release debtor with mental illness who is arrested for contempt in civil action	14 M.R.S. §5546.	Justices of the Supreme Court or Superior Court have concurrent jurisdiction to issue the writ	
Other matters involving real estate			
Appointment of trustee to sell real property subject to contingent remainder or executory devise	33 M.R.S. §153-§155.	Concurrent w/District & Superior Court • After trust created, exclusive (?)[viii] jurisdiction lies in Probate Court	
Other matters involving domestic relations or protection of persons			
Issuance of marriage license when caution has been filed	19-A M.R.S. §653.	Exclusive to Probate Court	
Issuance of marriage license to a minor	19-A M.R.S. §652(7) .	District Court has exclusive jurisdiction if Home Court Act applies [vi]	
Parentage (when part of another probate proceeding, *e.g.*, estate administration or guardianship)	19-A M.R.S. §1834(3); §1838(4); §1839(1) .	District Court has exclusive jurisdiction if Home Court Act applies [vi]	
Petition for spousal or child support (by spouse, other parent, guardian or State)	19-A M.R.S. 1652(1); §1654.	District Court has exclusive jurisdiction if Home Court Act applies [vi]	
Approval of contracts for support for life (persons not related w/in 3rd degree)	4 M.R.S. §311.	District Court has exclusive jurisdiction if beneficiary of contract is a minor and if the Home Court Act applies [vi]	
Emergency involuntary hospitalizations (blue papers) and Emergency dangerous weapon restriction orders	34-B M.R.S. §3863(3); and §3862-A(3).	Concurrent w/District Court, Superior Court and justices of the peace—after emergency order issues, the case proceeds in District Court	
Consent to minor's abortion	22 M.R.S. §1597-A(2)(D).	District Court has exclusive jurisdiction if Home Court Act applies [vi]	
Order for access to original birth certificate after adoption or parentage action	22 M.R.S. §2765(2-A)(C); §2766(3).	District Court has exclusive jurisdiction if Home Court Act applies [vi]	
Enforcement of DHHS subpoena to investigate abuse or neglect of an adult	22 M.R.S. §3480(1)(2).	Concurrent with District Court.	
Miscellaneous Matters			
Actions or proceedings on probate bonds of any kind payable to State of Maine or the Probate Court	18-C M.R.S. §8-209.	Concurrent with Superior Court.	

Current Statutory Jurisdiction of Probate Courts

Type of Matter	Cite	Does any other court share jurisdiction?	Recommendation
Allowance of claim against a county sheriff (to institute suit against sheriff's bond)	30-A M.R.S. §431.	Probate Court may "allow[the] claim" or the injured party may bring a civil action, presumably in District or Superior Court	
Other Probate Judge Duties			
Supervise register and report to county commissioners: • breach of register's bond; or • register's inability to perform duties or neglect of duties.	18-A M.R.S. §1-305; §1-507; §1-508.	Exclusive duty of Probate Judge.	
Name someone to perform register's duties in case of register's breach of bond or inability or neglect of duties	18-C M.R.S. §1-507; §1-508.	Exclusive authority of Probate Judge.	
Name a deputy register of probate **if** the office of register is vacant and no deputy register has yet been appointed	18-C M.R.S. §1-506.	Exclusive authority of Probate Judge (but, as noted, only if the register has not appointed a deputy and there is a vacancy in the office of register).	

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[i] Statutes granting Probate Courts jurisdiction over estate-related matters include: 4 M.R.S. §310 (perpetual cemetery lot care); 13 M.R.S. §1222 (same); 14 M.R.S. §7561 (trespass or waste to real estate by executor or administrator); 22 M.R.S. §2843-A (custody and control of deceased's remains); 36 M.R.S. §112(3) (order compelling witnesses to testify before State Tax Assessor regarding estate taxes); 36 M.R.S. §4046 (remission orders); 36 M.R.S. §4118 (ordering PR bond to secure payment of estate taxes); 36 M.R.S. §943 (order granting devisee a 60-day period to redeem municipal property tax lien); 36 M.R.S. §3922 (order for payment of expenses of interstate arbitration board, which determines domicile state of decedent). *See also* 36 M.R.S. §559.

[ii] Other statutes granting Probate Courts jurisdiction over decedent's estates include: 22 M.R.S. §4065 (petition to settle estate of child who dies in DHHS custody); 29-A M.R.S. §108(3) (petition by county public administrator where Title 29-A action is pending for administration of estate of deceased nonresident defendant); 34-B M.R.S. §1409(10) (claims against patient's estate by state institutions); 36 M.R.S. §4116 (State Tax Assessor petition for appointment of PR 6 months after death).

[iii] *See also* 9-B M.R.S. §476(1)(A) (petition to Superior Court or Probate Court transfer fiduciary capacity to new financial institution); 22 M.R.S. §1819 (hospital petition to Superior Court or Probate Court to approve accounting of trust funds).

[iv] *See also* 23 M.R.S. §154 (Dept. of Transp. petition in Probate Court to appoint guardian of minor who owns property subject to condemnation; the condemnation matter is separately heard in Superior Court); 30-A M.R.S. §5108(9) (Probate Court approval of appointed guardian's or conservator's settlement of eminent domain case brought by urban renewal authority); 30-A M.R.S. §5204(8) (same for municipal eminent domain proceedings).

[v] *See also* 22 M.R.S. §3765 (Probate Court appointment of conservator to receive TANF payments on behalf of a child).

[vi] The District Court jurisdictional provision of the Home Court Act, 4 M.R.S. §152(5-A), grants the District Court exclusive jurisdiction of actions in Probate Court *brought under Title 18-C* if there is a proceeding involving parental rights involving the same minor child pending in District Court. Yet, 4 M.R.S. §251-A(2) of the Home Court Act, directs judges of probate to "notify the District Court and take appropriate action to facilitate a transfer" to the District Court if "a matter," a phrase not limited to matters brought under Title 18-C, "concerning a minor child" is pending in Probate Court and a proceeding involving parental rights to the same minor child is pending in District Court.

[vii] *See also* 5 M.R.S. §19507(4)(D) (protection and advocacy organization Probate Court petition to represent person under a public guardianship); 22 M.R.S. §3481(2) (DHHS petitions for removal or appointment of guardian if current guardian or caretaker refuses to allow consented-to adult protective services); 23 M.R.S. §154 (DOT petition in Probate Court to appoint guardian of incompetent person who owns property subject to condemnation); 30-A M.R.S. §5108(9) (Probate Court approval of appointed guardian's or conservator's settlement of eminent domain case brought by urban renewal authority); 30-A M.R.S. §5204(8) (same for municipal eminent domain proceedings); *cf.* 22 M.R.S.§3473(3) & 22-A M.R.S. §207(5) (DHHS appearance in Probate court through non-attorneys in certain uncontested or emergency guardianship or conservatorship proceedings); 4 M.R.S. §807(3)(H) (same).

[viii] After appointment of the trustee, 33 M.R.S. §155 provides that the Probate Court "shall have jurisdiction of all matters thereafter arising in relation to such trust." *But see* 18-B M.R.S. §203(1) ("The Probate Court and the Superior Court have concurrent jurisdiction of all proceedings in this State involving a trust.").

Statutory Authority of Register of Probate

Task	Cite	Recommendation
Maintain probate court records and files, including docket of probate cases and the recording of wills	18-C M.R.S. §1-305; §1 503.	
Grant or deny application for informal probate after making statutory findings	18 C M.R.S. §1 307; §3-102; and §3-301 to §3 305.	
Grant or deny application for informal appointment of personal representative after making statutory findings	18-C M.R.S. §1-307; §3 103; and §3-307 to §3 309.	
Provide copies of wills, accounts, inventories, petitions and decrees (and remit all fees paid to the county)	18-C M.R.S. §1 501(5).	
Act as "an auditor of accounts" when requested by Probate Judge	18-C M.R.S. §1-503(2).	
Certify wills, PR appointments and elective share petitions involving real estate to Registry of Deeds	18 C M.R.S. §1 504.	
Notify all beneficiaries within 30 days after a will has been probated	18 C M.R.S. §1 505.	
Discretion to appoint a deputy register of probate	18-C M.R.S. §1 506.	
Assist parties in drafting applications, petitions or sworn statements: • for informal probate proceedings; • to close an uncontested decedent's estate; • for change of name; and • for guardianship of minors.	18-C M.R.S. §1-510(2).	
Establish, with approval of county commissioners, fees for approved blanks, forms and schedules	18 C M.R.S. §1 511.	
Account for all fees received and transfer them to the county monthly	18-C M.R.S. §1-603.	
Mail to the PR a copy of a demand for notice of filings or orders related to an estate	18-C M.R.S. §3-204.	
Determine sufficiency of a PR bond and authorize reduced bond amount in certain circumstances	18 C M.R.S. §3 604	
Informal appointment of a special administrator prior to appointment of a PR or if PR is terminated	18-C M.R.S. §3 614	
Issue certificate that PR appears to have fully administered an estate	18 C M.R.S. §3-1007	
Filing certificate of adoption with State Registrar of Vital Statistics after judge issues adoption decree	18 C M.R.S. §9-304(9)	
File certificate of annulment with State Registrar of Vital Statistics after court annuls an adoption decree	18-C M.R.S. §9-315(3)	

Note: The table above lists the statutory duties and authorities of the register but does not include any statutes requiring other persons or entities to file specific types of documents with the register unless the statute also affirmatively impose a duty or grants an authority to the register.

APPENDIX M

Information provided by Maine County Commissioners Association on November 15, 23021:

2021 Probate Judge Compensation

Probate Judge Compensation - 2021

County	Salary	Health Insurance	Retirement	Notes
Androscoggin	$34,627	provided - cost unknown	provided - cost unknown	
Aroostook	$37,209	provided - cost unknown	provided - cost unknown	
Cumberland				Compensation amount of $67,932 provided (unclear what is included)
Franklin				Compensation amount of $35,020 provided (unclear what is included)
Hancock	$29,710	provided - cost unknown	provided - cost unknown	
Kennebec	$39,289	provided - cost unknown	provided - cost unknown	Also dental, vision, life insurance
Knox	$37,020	provided - cost unknown	provided - cost unknown	
Lincoln	$35,467			
Oxford	$32,274	provided - cost unknown	provided - cost unknown	
Penobscot	$37,209	provided - cost unknown	provided - cost unknown	
Piscataquis	$25,000	none	none	
Sagadahoc	$32,231	none	none	
Somerset	$41,017.60	$11,717.52	$4,224.81	Also dental ($520.32) and vision ($66.92)
Waldo	$32,966.40	provided - cost unknown	provided - cost unknown	Also dental, life and disability insurance, and 457 ($600 match)
Washington	$43,253.51	provided - cost unknown		Also dental and vision
York	$49,680.07			Also short and long term disability insurance. Health insurance available but not taken

Information provided by Maine County Commissioners Association

Data may be incomplete

APPENDIX N

Summary of Justin Andrus's Presentation on November 15, 2021

Summary of Justin Andrus's Presentation on November 15, 2021

Please note that Mr. Andrus provided his presentation to the commission at short notice and without access to a full set of data that would allow for a precise calculation of the potential costs of court-appointed attorneys in probate matters. He therefore provided data that assumed that each individual entitled to counsel in Probate Court is eligible for counsel at public expense. While in reality not all of these individuals would be eligible for counsel at public expense, the numbers provided by Mr. Andrus gave the commission an idea of the outer limits of the cost of transferring responsibility for payment of court-appointed counsel in probate matters from the counties to MCILS. Additional limitations to the data are described at the end of this summary.

During the November 15, 2021 meeting, the commission received a presentation from Justin Andrus, Executive Director of the Maine Commission on Indigent Legal Services (MCILS), who had been invited to speak about the possibility of transferring responsibility to MCILS for establishing the qualifications, training, assignment and payment of court-appointed counsel in Probate Court proceedings. Director Andrus began by explaining that he was speaking in his capacity as the Executive Director of MCILS, but that his remarks did not represent a formal position taken by MCILS commission members.

MCILS, he explained, is an independent commission comprised of individuals appointed by the Governor and confirmed by the Senate. MCILS staff implement policies established by MCILS regarding the identification, training and appointment of counsel to provide high-quality representation to indigent defendants and other parties entitled to court-appointed counsel at public expense under state statute or the state or federal constitutions. Counsel are provided not only to indigent defendants in criminal proceedings but also to parents in child protection proceedings, the subjects of involuntary mental health commitment hearings and defendants in juvenile court proceedings. A great deal of overlap exists between the types of cases within MCILS's jurisdiction currently and the cases in which counsel are appointed at public expense in Probate Court proceedings. Indeed, many of the attorneys who accept Probate Court appointments are also rostered by and trained by MCILS.

Director Andrus suggested that it would make sense to employ consistent practices and qualification criteria when attorneys are appointed to represent parents in child protective proceedings in District Court or in guardianship proceedings in Probate Court, given that the same fundamental parental rights are at issue in these cases. Currently, attorneys who wish to receive state court appointments submit applications to MCILS, whose staff screens those applicants for compliance with the training and experience criteria established for the types of cases in which the attorney wishes to accept appointments. MCILS provides additional trainings and also assists attorneys who lack sufficient experience by arranging for those attorneys to appear as co-counsel in relevant cases. Once an attorney achieves the required training and experience, MCILS designates the attorney as eligible to receive court appointments by placing the attorney on the relevant roster. Criminal defendants who wish to receive court-appointed counsel are typically evaluated by MCILS's financial screeners, who determine whether they are eligible to receive counsel fully paid by the State or for reduced-fee counsel partially paid by the state. The state courts also identify individuals in child protective, mental health and juvenile cases who are similarly eligible for appointed counsel. Once an individual is designated as eligible to receive a court-appointed attorney, a court clerk typically assigns one of MCILS's rostered attorneys to represent that individual.

Accordingly, if MCILS were tasked with overseeing the appointment of attorneys in Probate Court matters, it would first identify the requisite eligibility criteria and the establish a roster of attorneys possessing sufficient experience, education and training to appear in guardianship, conservatorship, adoption, mental health and other Probate Court proceedings where indigent litigants have a statutory or constitutional right to counsel at public expense.

Director Andrus next explained that, in an attempt to estimate the cost of transferring to MCILS the responsibility for payment of appointed counsel in Probate Court proceedings, he examined the 2018 and 2020 Probate Case Load information presented at the November 1st commission meeting as well as the limited information presented

on court-appointed counsel costs in these cases. As he reviewed the data, Director Andrus developed an impression that, if MCILS were responsible for court-appointed attorneys fees in these matters, more attorneys would be appointed than are appointed currently and the number of hours appointed attorneys spend on each case would also likely increase. To calculate his cost estimate, Director Andrus identified the "nearest equivalent" MCILS case type for each category of cases in which Probate Courts currently appoint attorneys—for example, he identified an involuntary mental health commitment proceeding as the nearest equivalent to an adult guardianship proceeding—and multiplied the average attorney cost for that the MCILS case type by the number of Probate Court proceedings brought in 2018 and 2020. Using this approach, Director Andrus calculated that transferring responsibility for the payment of court-appointed in Probate Court proceedings would cost approximately $3.7 million to $4.3 million per year. These costs cannot be absorbed in the current MCILS budget and would require specific, additional Legislative appropriations.

In response to questions from commission members, Director Andrus clarified that his calculations assume that each individual entitled to counsel in Probate Court proceedings is eligible for counsel at public expense. Commission member and Kennebec County Register of Probate Kathy Ayers cautioned that these calculations may not be entirely accurate, not only because respondents in adult guardianship and conservatorship cases sometimes have sufficient means to pay for their attorneys but also because the 2020 Probate Court case load numbers were affected by the coronavirus pandemic, which led to increases in some types of proceedings, including adult guardianships, and decreases in other types of proceedings, including adoptions. Director Andrus further clarified that his calculations do not include the cost of hiring additional financial screeners or new MCILS staff to establish qualification criteria and to conduct screening, training and rostering of attorneys for Probate Court proceedings. In addition, his figures do not include the costs of court-appointed guardians *ad litem* or visitors, because those types of professionals are not currently part of the MCILS system for state court proceedings.

APPENDIX O

Appointment and Payment of Attorneys, Guardians *ad Litem* and Visitors in Title 18-C Proceedings

Statutes[1] Governing Appointment and Payment of Attorneys, Guardians *ad Litem* and Visitors in Title 18-C Proceedings

A. Court-appointed attorneys

- Respondent in guardianship, conservatorship and other protective proceedings:
  - An attorney ***shall*** be appointed for a *minor* respondent in a *guardianship* proceeding in the circumstances stated in §5-205(5); for an *adult* respondent in a *guardianship* proceeding in the circumstances stated in §5-305(1); for an *any* respondent in a *conservatorship* proceeding in the circumstances stated in §5-406(1); and for *any* respondent in a proceeding involving *other protective arrangements* in the circumstances stated in §5-507(1). If the adult or minor is found to be indigent, §5-119[2] suggests but does not expressly state that counsel ***shall*** be appointed at no cost to the respondent; otherwise, the attorney is entitled to compensation from the property of the respondent.
- Other appointments in minor guardianship proceedings:
  - In minor guardianship proceedings, a non-consenting parent whose parental rights have not been terminated is ***entitled*** to court-appointed legal counsel if indigent, §5-205(4). The court ***may*** appoint counsel for an indigent guardian or a petitioner seeking to become a guardian when a parent or legal custodian has counsel, §5-205(4).
  - The court ***may*** appoint counsel for the minor or any indigent guardian or parent when parent brings a petition to terminate the guardianship of a minor, §5-210(7).
- Adoptions:
  - In a hearing under Article 9 (adoptions), including parentage and termination of parental rights hearings, the court ***shall, upon request***, appoint an attorney for an indigent parent or indigent putative parent, §9-106(1). The court ***shall pay*** the reasonable costs and expenses of the attorney. *Id.*
  - Even absent a request, the court ***shall*** appoint an attorney for an indigent minor parent unless it finds representation is unnecessary or the indigent minor parent refuses representation, §9-106(2). (Presumably, the court shall pay the reasonable costs and expenses of the attorney for an indigent minor parent under §9-106(1), cited above.)
  - If a petition is brought to annul the adoption decree of a minor, the court ***may*** appoint counsel for the minor adoptee or a party to the annulment proceedings. §9-315(1).

B. Guardians ad litem

- For minors, generally:
  - When a court appoints a guardian ad litem for a minor under Title 18-C, the court shall specify the fee arrangements, §1-111(1). *See also* 4 M.R.S. §1555 (court may appoint such a guardian ad litem "when the court has reason for special concern as to the welfare

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[1] This document outlines the statutes governing appointment and payment of attorneys, guardians *ad litem* and visitors under Title 18-C of the Maine Revised Statutes but does not address potential constitutional appointment requirements.

[2] *See also* §5-119(4) (court may order the petitioner to pay respondent's attorney's fees if the petition for guardianship, conservatorship or for other protective arrangements was brought in bad faith).

of the child"; the appointment order "***must*** specify that payment for the services of the guardian ad litem is the responsibility of the parties, with the terms of payment specified in the order").

- Guardianship, conservatorship and other protective proceedings:
    - The court ***may appoint*** a guardian ad litem for an individual[3] in a guardianship, conservatorship or other protective proceeding if "the court determines the individual's interest otherwise would not be adequately represented" and shall state on the record who is responsible for payment of the guardian ad litem fees, §5-115; *see also* §5-212 (court may appoint a guardian ad litem in any minor guardianship proceeding); 4 M.R.S. §1555 (order must specify parties pay for a guardian ad litem for a minor in a Title 18-C case).
    - Pursuant to §5-712, the Department of Health and Human Services ***may*** be ordered to pay the costs of a guardian ad litem in certain circumstances if the respondent has been a client of DHHS or has received services from DHHS within 3 months before the filing of a petition for appointment of a public guardian or conservator and the respondent is indigent.
- Adoption proceedings:
    - In most adoption proceedings, the court ***may appoint*** a guardian ad litem, §9-304(6). *See also* 4 M.R.S. §1555 (court may appoint guardian ad litem for a minor in a Title 18-C case "when the court has reason for special concern as to the welfare of the child"; the appointment order "***must*** specify that payment for the services of the guardian ad litem is the responsibility of the parties, with the terms of payment specified in the order").
    - The court also ***may appoint*** a guardian ad litem for the child when a petition for termination of parental rights is brought as part of an adoption proceeding. Although the appointment decision is discretionary, the ***court shall pay*** the cost of any guardian ad litem it appoints in these proceedings, §9-204(4).
    - By contrast, if a petition for annulment of the adoption decree of a minor is filed, the court ***shall appoint*** a guardian ad litem for the minor adoptee and ***may*** allocate the costs to one or more of the parties. §9-315(1)(A); *see also* 4 M.R.S. §1555 (cited above).

C. Visitors

- Minor guardianships, conservatorships and other protective arrangements:
    - There is ***no provision*** for appointment of a visitor in a *minor guardianship* proceeding. However, on receipt of a petition for *one or more protective arrangements instead of a guardianship*, the court ***shall appoint*** a visitor who has "training or experience in the type of abilities, limitations and needs alleged in the petition," §5-506(1). The statutory language of 5-506(1) is not limited to cases involving adult respondents.

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[3] While §5-115 permits the appointment of a guardian ad litem for an adult respondent, the Comment to this section of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act observes that, due "appointment of a guardian ad litem for an adult respondent is . . . not typical and is not required for any proceeding under the act"). *See* https://www.uniformlaws.org/viewdocument/final-act-with-comments-127?CommunityKey=2eba8654-8871-4905-ad38-aabbd573911c&tab=librarydocuments.

- The court ***may appoint*** a visitor in a *minor conservatorship* proceeding or upon receipt of a petition for a *protective order instead of a conservatorship* of a minor "to investigate a matter related to the petition or to inform the minor or a parent of the minor about the petition or a related matter," §5-405(1) (conservatorship); §5-506(2) (other protective arrangement instead of a conservatorship).

- Adult guardianships, conservatorships and other protective arrangements:
  - The court ***shall appoint*** a visitor in an *adult guardianship* proceeding or on receipt of a petition for o*ne or more protective arrangements instead of guardianship*; the visitor must have "training or experience in the type of abilities, limitations and needs alleged in the petition," §5-304(1) (guardianship); §5-506(1) (one or more protective arrangements instead of guardianship).
  - The court ***shall appoint*** a visitor in an *adult conservatorship* proceeding ***unless*** the respondent is represented by an attorney; the visitor must have "training or experience in the type of abilities, limitations and needs alleged in the petition," §5-405(2). The court also ***shall appoint*** a visitor upon receipt of a petition for a *protective order instead of conservatorship* for an adult ***unless*** the respondent is represented by an attorney; however, no language regarding the visitor's special qualifications is set forth in the statute, §5-506(3).

- When does the court pay for a visitor?
  - Although the visitor statutes do not indicate whether or when a court pays the expenses of the appointed visitor, the mandatory visitor appointment statutes generally require an appointed visitor to inform the respondent that "all costs and expenses of the proceeding . . . ***may*** be paid from the respondent's assets." Use of the word "may" suggests that the court, rather than the respondent, may be required to pay the costs of the visitor if the respondent is indigent. *See* §5-304(2)(D) (visitor for adult respondent in guardianship proceeding); §5-405(3)(D) (visitor for adult respondent in conservatorship proceeding); §5-506(4)(D) (visitor for adult respondent if petition is filed for a protective order instead of a conservatorship or for any respondent if petition is filed for one or more protective arrangements instead of guardianship).

APPENDIX P

Establishment and Disposition of Probate Court Fees

A. Establishment of Probate Court Fees

1) Fees established by each county:

- Subject to county commissioner approval, the county Register establishes fees for "approved blanks, forms or schedule paper required in court proceedings." 18-C M.R.S. §1-511.

2) Fees established by statute: *Citations are to Title 18-C of the Maine Revised Statutes*

§1-602(1)	Certification of devises of real estate, abstracts of petitions to appoint a personal representative or for an elective share or any other document to be filed in the registry of deeds	$20 + the recording fee, which is ultimately paid to the Register of Deeds
§1-602(2)	Petitions and applications for estates, including testate, intestate and foreign estates	Estate value — Fee ≤ $10,000 — $40 $10,001 - $20,000 — $60 $20,001 - $30,000 — $75 $30,001 - $40,000 — $95 $40,001 - $50,000 — $125 $50,001 - $75,000 — $190 $75,001 - $100,000 — $250 $100,001 - $150,000 — $325 $150,001 - $200,000 — $375 $200,001 - $250,000 — $450 $250,001 - $300,000 — $500 $300,001 - $400,000 — $575 $400,001 - $500,000 — $625 $500,001 - $750,000 — $700 $750,001 - $1,000,000 — $750 $ 1,000,001 - $1,500,000 — $875 $1,500,001 - $2,000,000 — $950 > $200,000,000 — $1200 + $250 per ½ million
§1-602(2)	Filing a will for no probate	$15
§1-602(2)	Filing a will for probate without an appointment	$20
§1-602(3)	Copies of court records[1]	$1 per page
§1-602(4)	Each certificate, under seal, of appointment and qualification for personal representatives, guardians, conservators or trustees	$10 (or $20 for a double certificate)
§1-602(5)	Petition for appointment of a guardian	$90
§1-602(6)	Application for involuntary hospitalization	$10

[1] *See also* 18-C M.R.S. §1-505 (authorizing beneficiaries to obtain a copy of a probate will upon payment of a fee of $1 per page, the same rate established in §1-602(3)). *Compare* 18-C M.R.S. §1-501(5) (authorizing Registers to "make copies of wills, accounts, inventories, petitions and decrees and furnish the copies to the persons requesting the copies" and allowing Registers to "*charge a reasonable fee for that service.*").

§1-602(7)	Joint petition for appointment as a guardian and conservator	$115
§1-602(8)	Petition for appointment of conservator	$90
§1-602(9)	Petition for elective share	$120
§1-602(10)	Subsequent informal appointments	$50
§1-602(11)	Any other formal proceeding	$50
§1-602(12)	Registration of a guardianship order from another state	$50
§1-701	Petition for name change	$75 + cost of criminal background check
§9-301	Petition for adoption and change of name	$65 + cost of criminal background checks
§9-312	Petition to recognize a foreign adoption (and for a change of name)	$55

3) **Fees established by Court Rule:** Rule 54A of the Maine Rules of Probate Procedure establishes the following fees:

Issuance of subpoena or summons	$5 each
Certification and attestation of copies	$5 each
Certificate, under seal of court[2]	$5 each
Filing notice of removal to the Superior Court	$100 + a separate fee paid to Superior Court
Filing jurisdictional affidavit pursuant to M.R. Prob. 9	No charge
Request to transfer to District Court via M.R. Prob. 71-B	No charge
Filing notice of a domiciliary foreign conservator's appointment	$25
Demand for notice	$25
Filing notice of appeal to the Law Court	$100 + a separate fee paid to District Court
Statutory will form	$5
Writs and renewal of writs	$25
Petition for Termination of Parental Rights	$65
Surrender and Release of Child for Adoption	$25
Consent of Non-Petitioning Parent for Adoption	$25
Filing a claim against an estate	$25
Filing a petition or complaint in a civil proceeding	$120

4) **Statutory Surcharge:**
   - 18-C M.R.S. §1-607 requires a register to "collect a surcharge of $10 per petition, application or complaint, except for name changes, filed in the court."

5) **Fees established by reference to District Court and Superior Court fees:**
   - Under 18-C M.R.S. §1-608, if the fee for a certain procedure is not "specifically stated in statute or in the Rules of Probate Procedure published by the Supreme Judicial Court, the Probate Court shall charge the same fee charged by the District Court or the Superior Court for a similar procedure."

[2] The $5.00 fee for a certificate under seal of court in M.R. Prob. P. 54A matches the $5.00 fee established by 18-C M.R.S. §1-602(4) "for each certificate, under seal of court" regarding "appoint and qualification of a personal representative, guardian, conservator or trustee."

6) **Fees established by the Supreme Judicial Court:**
   - The fee for obtaining a transcript of a proceeding under Title 18-C are "prescribed by the Supreme Judicial Court." 18-C M.R.S. §1-606.[3] Those fees vary from as high as $5.75 per page if the person requesting the transcript needs the transcript within 1 day to as low as $3.30 per page if the person requesting the transcript is willing to way 30 days for preparation of the transcript. *See* https://www.courts.maine.gov/programs/oto/index.html.

B. Disposition of Probate Court Fees

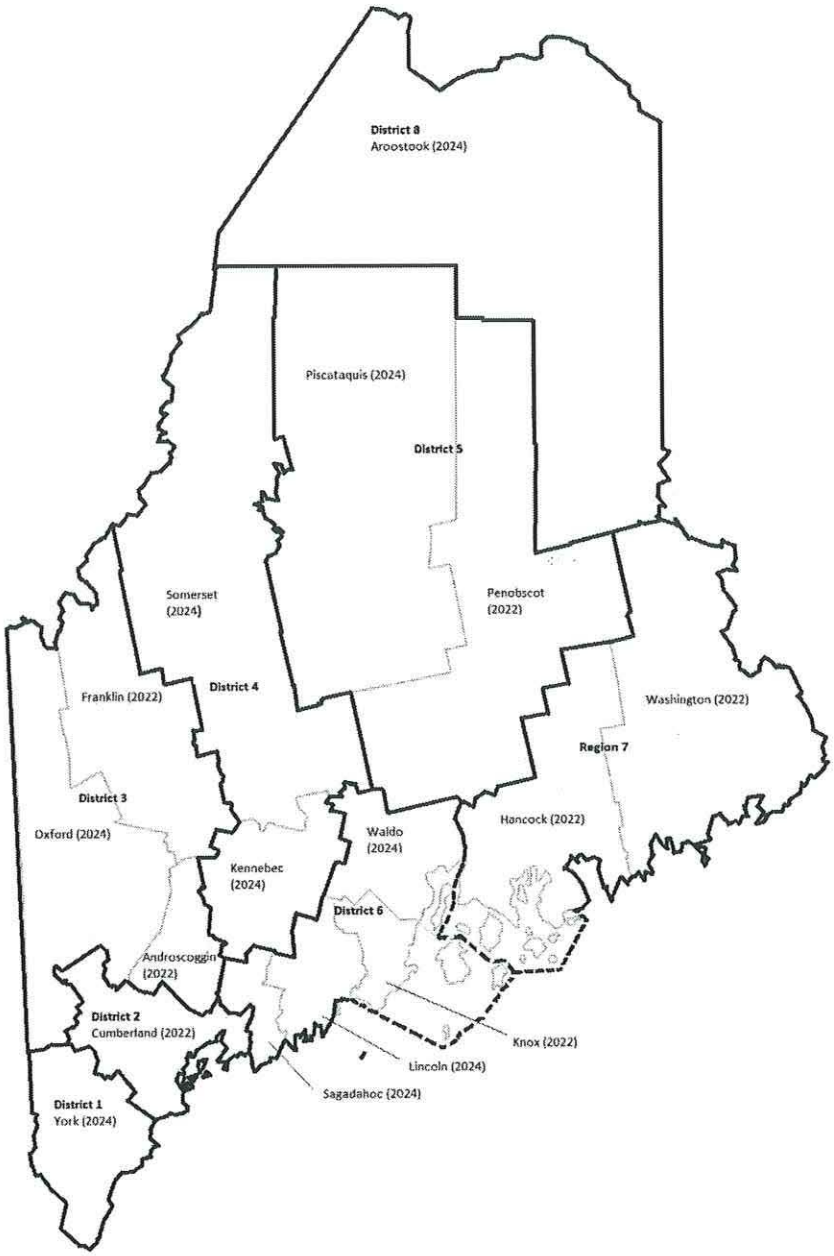
Probate Court fees inure to the benefit of the county or to the benefit of the registry office:

- Pursuant to 18-C M.R.S. §1-501(5), fees collected by Registers for copies of records "are considered official fees for the use of the county."
- Pursuant to 18-C M.R.S. §1-603, the register must remit "all fees received by the register or payable to the register by virtue of the office" to the county treasurer.
- In addition, the "surcharge of $10 per petition, application or complaint, except for name changes, filed in the [Probate] court" that must be collected by the register under 18-C M.R.S. §1-607 in addition to any applicable filing fee required by law must be transferred to the county treasurer for deposit in a separate, nonlapsing account that "must be used for the restoration, storage and preservation of the records filed in the office of the register and in the court" and may not be used "as general revenue of the county."

[3] *See also* 18-C M.R.S. §1-605 (requiring the county in which the court is held to pay for transcripts furnished for the files of the court unless the assets of a decedent's estate or a respondent's estate in a guardianship or conservatorship proceeding are sufficient to cover the costs of the transcript.").

APPENDIX Q

Map of Current Probate Judge Terms by County and Court Region


District 8
Aroostook (2024)
Piscataquis (2024)
District 5
Somerset
(2024)
Penobscot
(2022)
Franklin (2022)
District 4
Washington (2022)
Region 7
District 3
Oxford (2024)
Waldo
(2024)
Hancock (2022)
Kennebec
(2024)
District 6
Androscoggin
(2022)
District 2
Cumberland (2022)
Knox (2022)
Lincoln (2024)
Sagadahoc (2024)
District 1
York (2024)

APPENDIX R

Statements from Commission Members Voting Against the Commission's Recommendations:

Senator Lisa Keim
Oxford County Probate Judge Jarrod Crockett

Commission Member Senator Lisa Keim's Minority Report

Consistent with my vote in opposition to LD 719, the legislation that established this commission, I have also voted in opposition to the commission's proposal to incorporate Maine's Probate Court into the Judicial Branch for several reasons.

The Probate Courts are a perennial subject, and have been discussed many times, even in my short time serving in the Legislature. Although there are mutually agreed upon shortcomings in Maine's current system, these deficiencies are not consequential enough to demand the statewide or legislative attention necessary for committing the large amount of taxpayer funds required for restructuring.

The constituencies noted for repeated complaints with Maine's system are [some] members of the bar and academics. In my time serving on the Judiciary Committee, very few Maine people who have utilized their local Probate Court have come to us with complaints. The people of Maine are generally satisfied; it's my job to listen to them.

Until the taxpayers themselves, the people, start speaking up and stating opposition to the current system there will be no impetus for change.

Perspectives shift over time, and simply because Maine voters were in favor of a constitutional change in the late 60s does not mean the issue of Probate Courts is still a concern, or even much of an issue, today. The concerns of Maine people today have shifted far from this topic. And, based on more recent public input, it is very doubtful that Maine voters would still vote to change our system, with the change from elected to appointed judges likely garnering the strongest opposition.

Of all complaints regarding Maine's Probate Court system, the most commonly agreed upon is the appearance of "conflicts of interest" with part-time judges who also practice law. However, changing these part-time judges to full-time positions is likely monetarily out of reach, given the concerns regarding impact on county budgets and the minimal negative impact expressed overall.

With almost no appetite to spend money on Probate Courts in the Executive or Legislative Branches, the money required to adopt the changes being considered has little chance of being appropriated. However, if a minor amount of taxpayer funds were budgeted this session to this endeavor, given the consistent lack of interest over the past several decades, the funding required for systemic overhaul would be unlikely to continue into future Legislatures. Given the people's level of comfort with and acceptance of the current system, we should question whether the people's money should be spent in this way; there are bigger issues in Maine.

I would like to commend Maine Probate Courts for keeping their dockets moving along in a manner that serves the people well, even in the midst of the pandemic disruption. Thank you all! The Judicial branch has not done nearly so well, and might look to Probate for pointers on how to keep up with workload. In sharp contrast to the minimal complaints received regarding Maine's probate court system, there are multiplying complaints regarding the unacceptable state court backlogs which are cause for great

concern, creating an inexcusable lack of justice in Maine that is damaging lives. Do we really want to move our probate courts into their system?

Thank you to all commission members and to our amazingly competent staff for your time and diligence. Even when I vote in opposition to legislative proposals, I appreciate the work that is required for us to remain a self-governing people and value highly the involvement of Maine citizens who take on this facet of civic duty.

Commission to Create a Plan to Incorporate the Probate Courts into the Judicial Branch

A Minority View

(by Judge Jarrod Crockett)

Objection to Majority Report

The conclusion that all courts in the State, including the sixteen county Probate Courts, should be under one state court system is well supported by the findings of the Commission. The absence of fiscal restraints would likely have resulted in a unanimous vote to integrate the entire probate court system into the Judicial Branch, as well as a thorough plan to achieve that end. However, the fiscal restraints exist and in working around those restraints the majority proposal creates a system that will require almost immediate remedies if adopted. In fact, the system being proposed by the majority actually existed in large part in the Superior Court over four decades ago when the counties provided the staff for the courts but the judges, administration and some of the staff were part of the state Judicial Branch.

The majority proposal creates a "chain of command" whereby some probate court employees will in theory work under both the authority of their respective county commissioners and the state Judicial Branch. The areas where immediate issues arise between the counties and the State include: (1) oversight of employees, (2) staff training, (3) liability exposure/indemnity issues for HR for the State and counties, (4) wage fairness inequity between union/non-union employees, (5) responsibility for 200 years of records, (6) state renegotiation with the online filing service provider (ICON) for judicial branch employees to gain access, (7) scheduling court days, (8) implementation of HR policies, and (9) politically appointed state officials overseeing/directing elected county officials.

The simple question of "who is in charge of the Probate Courts in Maine--the State or counties?" still remains unanswered in the current proposal. The employees of the Probate Court will be accountable to the elected County Register of Probate and their respective County Commissioners, but it is unclear what the State's role in the state probate court system will be in terms of authority.

The current proposal also appears to diminish the geographic ties of Probate Judges to dedicated counties. It creates a situation whereby the judges may be moved throughout the State and will not be assigned to particular counties. The wisdom of doing this is questionable given the continuing jurisdiction of certain types of cases which exist in probate courts. For example, an adult guardianship may remain open in a probate court for many decades which makes it beneficial for the same judge to preside over the case with all its developments and progressions. This scenario highlights the continuing jurisdiction of the Probate Courts.

The majority's proposal will likely cost between $6,000,000 and $10,000,000 annually but will need additional statutory fixes and a likely increase in funding as soon as the plan is implemented. This will result in committing a great deal of funding to a system that is parallel to one that has failed in the past. It is very analogous to buying a car and knowing it will take additional funds to make the car road worthy at the very moment the car is purchased. Surprisingly, the cost of the repairs to "fix" the newly created court are simple to calculate because they will equal the cost of the total integration of the Probate Courts into the Judicial Branch —ironically that is the very same expense the majority seeks to avoid in its proposal. The history of the integration of the county employees into the state's Judicial Branch over forty years ago gives evidence of the need to immediately "fix" the majority's proposed solution.

An Alternate Plan: Probate Districts

Undoubtedly, the ultimate goal should be the integration of the Probate Court into the state Judicial Branch; however, a more phased or moderate approach may be advisable. One such approach would be to create eight (8) probate districts based on the existing district attorney model and have a full-time elected judge preside in each district, paid for by the State. It is comparable to the transition from the "part-time county attorney system" to the "full-time district attorney system" the State went through in the early 1970s. All parties to that transition agreed that while the newly created system was not perfect, there was no disputing the change represented a marked improvement. The creation of the full-time elected Probate Judges: (1) removes part-time judges, which was the major concern of the commission, (2) takes a greater step towards uniformity among the courts by having fewer judges, (3) is a fraction of the expense compared to the majority's proposal, (4) requires no other statutory changes to the Registers, Deputy Registers or clerks, (5) will create a funding line in the Judicial Branch's budget for eight judges, which would be useful if the legislature in the future wishes to take the next step in integrating the county courts into the Judicial Branch, (6) provides a plan that saves the counties money by shifting the expense of the judges selected by the citizens of the county to the State, (7) leaves the judges dedicated to a respective counties as opposed to being moved around geographically at the whim of a state-appointed official, (8) gives the Registers greater access to full-time judges, and (9) sets the stage for the Judicial Branch to include the full-time probate judges into judicial training.

If, after creating the probate districts with full-time elected judges, the Legislature wants to take another step in transitioning the Probate Courts to the state Judicial Branch, it can begin the process of transitioning the probate-court-appointed counsel to the Maine Commission on Indigent Legal Services. This would allow a less expensive transition.

Conclusion

Under the excellent leadership of the Chairs, this commission benefited from an atmosphere of collaboration and fact-finding under a very condensed timeline for such a monumental task. The respectful manner in which the hearings were conducted and their willingness to obtain as much factual information as possible ultimately allowed the commission to explore a very complicated issue in an admirable manner. The hard work of everyone involved is much appreciated and should be noted. In the end, it appears the proposed plan too closely parallels a previously unsuccessful system and fails to garner the necessary support from the counties, as evidenced by submitted testimonies in opposition. The majority's proposal may also be considered in excess of the fiscal constraints for this type of reform which are commonly believed to exist.

At this point, it would seem more moderate and prudent to instead address the issue of full-time judges separately and distinctly from the rest of the system, thus embracing a phased approach to satisfying the historical mandate implied by the 1967 constitutional amendment. The cost to the State of creating full-time elected Probate Judges would only be approximately 1.7 million dollars (a small fraction of the cost of the other proposal) and require no other changes to the current arrangements between the counties and the State. While the ambitious goal of the majority is fully appreciated, embracing a solution that addresses the major issue of the current Probate Courts would seem more pragmatic and a better fit to the current circumstances.