

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

On Nov. 15th, the Commission voted (11-1) in favor of recommending adoption of the proposed Probate Court system highlighted in gray in the table below. Legislative staff seek input from Commission members as the report is drafted: what reasons are commission members who voted in favor of the model comfortable including in the report to explain why they supported various aspects of the recommended model? In addition, what reasons are members who opposed the model comfortable including in the report to explain their opposition to different aspects of the recommended model?

Long-term goal: The Commission recommends a long-term goal of fully incorporating the Probate Court system into the state Judicial Branch, although the Commission does not believe it is feasible to accomplish this goal immediately.

Reasons for supporting this goal

Include in Report?

1. A number of studies completed in the past 60 years have recommended integrating the county Probate Courts into the state Judicial Branch.
2. The decentralized nature of the county Probate Court system and lack of oversight has resulted in variations in process and procedure from court-to-court as well as inconsistent interpretations of the law.
3. Funding a complete transition in one fell swoop would be cost-prohibitive.
4. The current system inefficiently allocates judicial resources—some county Probate Judges have a small and others an excessive workload.
5. The existence of 2 different court systems—the state courts and county probate courts—is confusing to the public who would benefit from a single system, especially when different courts handle different aspects of family matters.
- 6.
- 7.

Reasons for opposing this goal (*Do any commission members oppose this goal?*)

Include in Report?

- 1.
- 2.

Judge recommendations: At this time, the Commission recommends creating a Probate Court within the Judicial Branch with 9 full-time, appointed judges. Although state Probate Judges will have statewide jurisdiction, at least one Probate Judge will be assigned to each of the 8 court regions and one Probate Judge will be designated by the Chief Justice of the Supreme Judicial Court to serve as the Chief Judge of the Probate Court. The Chief Judge will have administrative responsibilities in addition to judicial responsibilities that include, but are not limited to: creating the statewide Probate Court schedule (*i.e.*, the number of days of judicial hearing time in each region or court location); preparing annual reports; working toward enhancing the uniformity of Probate Court processes and procedures across the State; and working with the Supreme Judicial Court to ensure both the accessibility of Probate Court facilities as well as the safety of all members of the public and staff in those facilities. It is anticipated that new Judicial Branch staff will be required to support the state Probate Judges, likely to include 2 law clerks, 2 judicial administrative assistants, 8 judicial marshals, a facilities manager and an Information Technology support person. The Commission also recommends that state Probate Court proceedings be held in existing county Probate Court courtrooms, with arrangements to be made between the counties and the Judicial Branch regarding the

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use of those facilities. To the extent necessary in certain counties, state trial court courtrooms may also be used to conduct state Probate Court proceedings. Emergency matters appearing on the state Probate Court docket will continue to be prioritized and addressed expediently, to the same extent that those matters are prioritized under the existing county Probate Court system.

Reasons for supporting this recommendation

Include in Report?

1. In 1967, the people of Maine indicated their preference for full-time, non-elected Probate Judges by voting in favor of an amendment to the Maine Constitution that would repeal Article VI, §6, which describes the election and tenure of Probate Judges and Registers; that amendment will not become effective until the Legislature establishes a Probate Court system with full-time judges.
2. Unlike other judges in the State, a part-time Probate Judge is authorized to practice law and to represent clients, including in other Probate Courts in the State against attorneys who later represent litigants in cases that the judge adjudicates. Numerous past studies have recognized the potential for conflicts of interest and the appearance of impropriety caused by this practice.
3. Judges who are paid a part-time salary are more likely to be distracted or overwhelmed by other work because they must maintain a private law practice.
4. Full-time judgeships, with the attendant prestige, higher salaries and benefits, are likely to attract a larger pool of well-qualified applicants.
5. It is difficult to determine the precise number of full-time Probate Judges needed from the data gathered by the Commission. It therefore makes sense to assign at least one new judge to each court region (*i.e.*, prosecutorial district) given the history of coordination between counties and courts in these regions and to reassess this allocation of judges in a few years (see recommendation below).
6. Assigning at least one Probate Judge to each region helps preserve the beneficial regional familiarity of the current county Probate Court system and preserves access to justice for people in rural counties across the State.
7. The lack of specific education and experience qualifications to run for office as a Probate Judge and the paucity of training provided may result in certain Probate Judges lacking the knowledge necessary to perform their role.
8. Probate Judges are the only elected judges in the State; their qualifications should be screened and they should be appointed using the same system currently used to appoint state judges.
9. Although not necessarily a current problem in the State, there is a public perception that elected judges are less independent than appointed judges and that these positions could in the future become politicized.
10. A Chief Judge responsible for unifying court practices and procedures will help alleviate the concern with the variations in process, procedure and interpretations of the law that exist in the current, decentralized county Probate Court system.
11. Probate Judges would benefit greatly from the assistance offered state trial court judges, including the assistance of law clerks, IT support and full-time security.
12. It is important to keep the Probate Court docket separate from the docket of general jurisdiction trial courts to prevent pushing estate and trust matters to the back of the list of priorities and delaying resolution of these important cases.
- 11.
- 12.

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Reasons for opposing this recommendation

Include in Report?

1. Difficulties may arise if appointed state judicial officers supervise and exercise oversight over elected county Registers of Probate and their staff, who are county employees.
2. Difficulties may arise if the state judicial branch directs the use of county funds. *(Staff needs a bit more detail to explain the contours of this objection - does it refer to more than the ability of judges to appoint a person to perform the Register's duties and the re-allocation of register pay in [18-C M.R.S. §1-508](#)?)*
3. Part-time county Probate Judges have more flexibility than full-time District Court judges to schedule emergency hearings and other pressing matters.
4. County Probate Judges can (if re-elected) remain assigned to the same matters for the duration of the case, which in some adult guardianship matters can last for decades. Their intimate knowledge of the case benefits the parties.
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Registry recommendations: At this time, the Commission also recommends preserving the system of county Registers of Probate, through which elected county registers and their staff will continue to serve as county officers and employees. Registers will retain their existing statutory duties and authorities, including but not limited to their roles in docketing; scheduling Probate Court proceedings in conjunction with the Probate Court Judges; assisting parties in filling out Probate Court forms; and performing quasi-judicial functions in informal probate matters. State Probate Court matters should initially continue to be entered into the ICON electronic case management system. The Commission also recommends that Probate Court fees continue to be retained by the counties to offset the costs of funding the county registries and their staff.

Reasons for supporting this recommendation

Include in Report?

1. Registers provide unique services—assistance with filing forms, quasi-judicial duties in informal probate matters—that are of great assistance and comfort to the public as they deal with personally challenging life circumstances that bring them to Probate Court. There is no analogous position in the JB currently, requiring additional time to determine how best to preserve these features of the register system should the offices eventually move to the JB.
2. Given the circumstances that lead to interaction with the Probate Court, it is essential to retain local, county probate registries rather than consolidating registries across counties in a way that is less convenient for the public.
3. It would be extremely expensive to move the county registry system into the Judicial Branch at this time, especially given the heightened responsibilities of registers over court clerks (filling out forms, appointing PRs, etc.).
4. Although concerns have repeatedly been raised about the part-time and elected nature of county Probate Judges, similar concerns have not arisen regarding the nature of the register position.
5. The cost of integrating the Probate Court case management system with the Judicial Branch's new case management system is likely to be quite high. It makes sense to wait until the Judicial Branch's system is fully deployed and operational before revisiting the question whether to integrate the two systems.

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6.

7.

Reasons for opposing this recommendation

Include in Report?

1. Difficulties may arise if appointed state judicial officers supervise and exercise oversight over elected county Registers of Probate and their staff, who are county employees. For example, can a state judge require a register to schedule an extra day of court, or may the register refuse?
2. Practitioners expressed frustration with the differences in practice and procedure among county registries across the state, adding to client frustration and cost.
3. There are no qualifications to run for Register currently; it may make sense to appoint or hire only law-trained or experienced individuals to serve as Registers.
- 4.
- 5.

Court-appointed professionals: The Commission recommends that the Maine Commission on Indigent Legal Services establish the minimum experience, training and other qualifications for attorneys appointed by Probate Court Judges to represent indigent individuals who are entitled to counsel at public expense in probate court proceedings under the U.S. or Maine Constitution or under Maine statutes and that the State, through new legislative appropriations to MCILS, pay the costs of such counsel. The Judicial Branch, which already establishes the minimum experience, training and other qualifications for guardians *ad litem*, should additionally establish the minimum experience, training and other qualifications for court-appointed visitors. It should also pay the cost of court-appointed guardians *ad litem* and court-appointed visitors in Probate Court proceedings where the parties are indigent or the court is directed by law to pay such costs, and the Legislature should provide sufficient new appropriations to cover the costs to the Judicial Branch of these appointments.

Reasons for supporting this recommendation

Include in Report?

1. Need for uniformity regarding the qualifications and training of court-appointed professionals across the State.
2. Smaller or more rural counties cannot afford to pay court-appointed attorneys at the same rate as MCILS, and as a result there is a dearth of well-qualified attorneys available and willing to take these appointments.
3. This proposal avoids a situation where counties are required to pay the costs of attorneys, guardians *ad litem* or visitors appointed by state judges.
- 4.
- 5.

Reasons for opposing this recommendation

Include in Report?

- 1.
- 2.

Three-year review: Finally, the Commission recommends that the new Probate Court system outlined above be thoroughly reviewed 3 years after it has been implemented by a 15-member study

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group comprised of the same categories of members appointed to the current Commission—*i.e.*, 2 Senators; 3 Representatives; 3 members appointed by the Chief Justice; one member of the Maine Probate Judges Assembly; one register of probate; one judicial branch clerk; one member of the Probate and Trust Law Advisory Commission; one member of the Family Law Advisory Commission; and 2 members of the Maine State Bar Association, one of whom is a member of a nonprofit organization providing statewide free legal services. The 3-year review conducted by this new study group must include, but is not limited to, evaluating whether the number of supported state Probate Judge positions is appropriate or should be adjusted; whether the case management systems used by Probate Court and the remainder of the state Judicial Branch should be made compatible; whether any changes or adjustments should be made to the jurisdiction of the state Probate Court, District Court and Superior Courts; whether the Chief Justice should be authorized to cross-assign state Probate Court judges to preside over District Court or Superior Court dockets; and whether additional opportunities exist to move toward the ultimate goal of fully incorporating the Probate Court system into the Judicial Branch, including, for example, by incorporating the county registries and their staff into the Judicial Branch.

Reasons for supporting this recommendation

Include in Report?

1. Although the Commission strongly supports the goal of fully integrating the Probate Courts into the Judicial Branch, it is essential to allow the changes proposed in this report to be implemented and data to be collected on various aspects of the new system before proposing further changes to the system.
2. Given the distinct roles of Registers of Probate and Court Clerks as well as the lack of additional space in many state court facilities to establish separate registry offices, it makes sense to develop a long-term plan for integrating the register function into the Judicial Branch.
3. The jurisdictional overlap between the Probate Court and the District Court have been alleviated to some degree by the Home Court Act, but overlaps remain, for example, when cases involving the same minor children are not simultaneously occurring in the 2 courts and in adult guardianship cases where the is also involved in mental health proceedings in District Court. Overlap also exists with the Superior Court, which has concurrent jurisdiction over trust matters and is the only forum for jury trials. It will therefore be important to consider whether to reallocate jurisdiction among these courts after the new Probate Court system has been established and data can be collected to determine the impact on the District Court (in terms of numbers of judges, court staff, etc.) of assuming responsibility for these cases.
4. One Legislature cannot bind a future Legislature; however, even if the 3-year review does not occur as recommended, the Probate Court system proposed above (state appointed judges and elected registers) could continue.
- 5.
- 6.

Reasons for opposing this recommendation

Include in Report?

- 1.
- 2.