

PROPOSED COMMITTEE AMENDMENT TO
LD 657, AN ACT TO REORGANIZE THE PROBATE COURTS
FOR PUBLIC COMMENTS ON MARCH 3, 2020
Updated 2/27/2020 7:40 AM

Amend the bill (a concept draft) by striking everything after the enacting clause and inserting in its place the following:

PART A

Sec. A-1. 4 MRS §9-A is amended to read:

§9-A. Power to prescribe rules of evidence

The Supreme Judicial Court shall have the power and authority to prescribe, repeal, add to, amend or modify rules of evidence with respect to any and all civil actions or other proceedings, and any and all proceedings in criminal cases before justices of the peace, District Courts, ~~probate courts,~~ Superior Courts and the Supreme Judicial Court.

Such rules shall take effect on such date not less than 6 months after their promulgation as the Supreme Judicial Court may set. After their promulgation, the Supreme Judicial Court may repeal, amend, modify or add to such rules from time to time without a waiting period. After the effective date of said rules as promulgated or amended, all laws in conflict therewith shall be of no further force or effect. Any statute incorporated specifically or in general terms in a rule shall remain in effect.

Sec. A-2. 4 MRS §9-B is amended to read:

§9-B. Committee on judicial responsibility and disability

The Supreme Judicial Court has the power and authority to prescribe, repeal, add to, amend or modify rules relating to a committee to receive complaints, make investigations and make recommendations to the Supreme Judicial Court in regard to discipline, disability, retirement or removal of justices of the Supreme Judicial Court and the Superior Court and judges of the District Court ~~and the probate courts.~~

Sec. A-3. 4 MRS §57 is amended to read:

§57. Jurisdiction; disposition of cases; technical errors in pleading and procedure

The following cases only come before the court as a court of law: Cases on appeal from the District Court, the Superior Court or a single Justice of the Supreme Judicial Court ~~or from the probate courts;~~ questions of law arising on reports of cases, including interlocutory orders or rulings of such importance as to require, in the opinion of the justice, review by the Law Court before any further proceedings in the action; agreed statement of facts; cases presenting a question of law; all questions arising in cases in

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which equitable relief is sought; motions to dissolve injunctions issued after notice and hearing or continued after a hearing; questions arising on habeas corpus, mandamus and certiorari and questions of state law certified by the federal courts. They must be marked "law" on the docket of the county or district where they are pending, and there continued until their determination is certified by the Clerk of the Law Court to the clerk of courts of the county and the court shall immediately after the decision of the question submitted to it make such order, direction, judgment or decree as is fit and proper for the disposal of the case, and cause a rescript in all civil actions, briefly stating the points therein decided, to be filed therein, which rescript must be certified by the Clerk of the Law Court to the clerk of courts of the county or district where the action is pending and to the Reporter of Decisions. If no further opinion is written out, the reporter shall publish in the next volume of reports thereafter issued the case, together with such rescript, if the reporter deems the same of sufficient importance for publication.

When the issues of law presented in any case before the Law Court can be clearly understood, they must be decided, and a case may not be dismissed by the Law Court for technical errors in pleading alone or for want of proper procedure if the record of the case presents the merits of the controversy between the parties. Whenever, in the opinion of the Law Court, the ends of justice require, it may remand any case to the court below or to any justice or judge thereof for the correction of any errors in pleading or procedure. In remanding said case, the Law Court may set the time within which said correction must be made and said case reentered in the Law Court.

When it appears to the Supreme Court of the United States, or to any court of appeals or district court of the United States, that there is involved in any proceeding before it one or more questions of law of this State, which may be determinative of the cause, and there are no clear controlling precedents in the decisions of the Supreme Judicial Court, such federal court may certify any such questions of law of this State to the Supreme Judicial Court for instructions concerning such questions of state law, which certificate the Supreme Judicial Court sitting as the Law Court may, by written opinion, answer.

Sec. A-4. 4 MRSA §152, sub-§5-A is amended to read:

5-A. Actions involving minors under Title 18-C. Exclusive jurisdiction of actions for guardianship, adoption, change of name or other matters involving custody or other parental rights brought under Title 18-C if proceedings involving custody or other parental rights with respect to a minor child, including but not limited to adoption, divorce, parental rights and responsibilities, grandparents' rights, protective custody, change of name, guardianship, paternity, termination of parental rights and protection from abuse or harassment, are pending in the District Court.

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A. The District Court presiding over any matter involving custody or other parental rights with respect to a minor child shall require all parties to disclose whether they have knowledge of:

- (1) Any interim or final order then in effect concerning custody or other parental rights with respect to the minor child;
- (2) Any proceeding involving custody or other parental rights with respect to the minor child currently filed or pending before any court of this State or another state, including before a probate court in this State; or
- (3) Any other related action currently filed or pending before any court of this State or another state, including before a probate court in this State.

B. If the District Court presiding over any matter involving custody or other parental rights with respect to a minor child becomes aware that a proceeding for guardianship, adoption or change of name or another matter involving custody or other parental rights with respect to the minor child is pending in a probate court in this State, the District Court shall notify the Probate Court and take appropriate action to facilitate a transfer of the matter from the Probate Court.

This subsection is repealed January 1, 2023.

Sec. A-5. 4 MRSA §152, sub-§8 is amended to read:

8. Consent to minor's abortion. Original jurisdiction, ~~concurrent with that of the Probate Court,~~ to grant equitable relief in proceedings brought under Title 22, section 1597-A;

Sec. A-6. 4 MRSA § 152, sub-§15 is amended to read:

15. Restoration of right to possess firearms. Exclusive jurisdiction to conduct de novo review of a determination by the Commissioner of Public Safety pursuant to Title 15, section 393, subsection 4-A; ~~and~~

Sec. A-7. 4 MRSA §152, sub-§16 is amended to read:

16. At-risk noncitizen petitions. Jurisdiction over petitions regarding the protection, well-being, care and custody of unmarried noncitizens 18 years of age or older and under 21 years of age pursuant to Title 22, chapter 1071, subchapter 17-; and

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Sec. A-8. 4 MRSA §17 is enacted to read:

17. Probate. The civil jurisdiction exercised by all probate courts in the State on December 1, 2022, including all actions and proceedings under Title 18-C and as provided in former chapter 7. This subsection does not affect the powers of registers under Title 18-C, section 1-307.

Sec. A-8. 4 MRSA §155, sub-§9 is enacted to read:

9. Probate. An action or proceeding concerning probate matters shall be brought pursuant to the appropriate venue provision contained in Title 18-C.

Sec. A-9. 4 MRSA §185 is enacted to read:

§185. Probate Court Division of District Court

The Chief Justice may establish a Probate Court Division within the District Court that has jurisdiction over all matters over which the former Probate Court had under former chapter 7 and as provided in Title 18-C. The Supreme Judicial Court may adopt administrative orders and court rules governing the practice, procedure and administration of the Probate Court Division.

Sec. A-10. 4 MRSA c. 7, subc. 6 is enacted to read: is repealed.

SUBCHAPTER 6
REPEAL

§407. Repeal

This chapter is repealed January 1, 2023.

Sec. A-11. 4 MRSA §757 is enacted to read:

§757. Repeal

This subchapter is repealed January 1, 2023.

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Sec. A-12. 18-C MRSA §1-201, sub-§8 is amended to read:

8. Court. "Court" means ~~any one of the several courts of probate~~ the Probate Court Division of the District Court of this State established as provided in Title 4, ~~sections 201 and 202~~ section 185.

Sec. A-13. 18-C MRSA §1-501 is amended to read:

§1-501. Election; bond; vacancies; salaries; copies

1. Election. Registers of probate are elected ~~or appointed as provided in the Constitution of Maine~~ 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. Registers shall hold their offices for 4 years. A register's election is effected and determined as is provided for county commissioners by Title 30-A, chapter 1, subchapter 2, and a register's term commences on the first day of January following the register's election, except that the term of a register appointed to fill a vacancy commences immediately.

2. Bond. A register, before acting, shall give bond to the treasurer of the register's county with sufficient sureties in the sum of \$2,500, except that this sum must be \$10,000 for Cumberland County. A register, having executed the bond, shall file the bond in the office of the county commissioners of the register's county, to be presented to the county commissioners at the next meeting for approval. After the bond is approved, the county commissioners shall retain a copy of the bond and deliver the original bond to the register, who shall deliver the original bond to the treasurer of the county within 10 days after the bond's approval. Surety and fidelity insurance coverage provided by a public sector self-funded risk pool organized pursuant to Title 30-A, section 2253 in the sum ordered by the commissioners is deemed to comply with the requirements of this section.

3. Vacancies. Vacancies caused by death, resignation, removal from the county, permanent incapacity as defined in Title 30-A, section 1, subsection 2-A or any other reason must be filled ~~as provided in the Constitution of Maine~~ in the manner described in subsection 1 at the November election next after their occurrence, and in the meantime the Governor may fill vacancies by appointment, and the persons so appointed shall hold their offices until the first day of January after the election described in subsection 1. In the case of a vacancy in the term of a register who was nominated by primary election before the general election, the register appointed by the Governor to fill the vacancy until a successor is chosen at election must be enrolled in the same political party as the register whose term is vacant. In making the appointment, the Governor shall choose from any recommendations submitted to the Governor by the county committee of the political party from which the appointment is to be made.

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4. Salary. A register is entitled to receive an annual salary as established by the register's county pursuant to Title 30-A, chapter 3. The salary of the register must be in full compensation for the performance of all duties required of the register.

5. Copies and fees. Registers may make copies of wills, accounts, inventories, petitions and decrees and furnish the copies to the persons requesting the copies and may charge a reasonable fee for that service, which is considered a fee for the use of the county. Fees for exemplified copies of the records of the probate of wills and the granting of administrations, guardianships and conservatorships; fees for copies of petitions and orders of notice for personal service; fees for appeal copies; and the statutory fees for abstracts and copies of the waivers of wills and other copies required to be recorded in the registry of deeds are considered official fees for the use of the county. This subsection may not be construed to change or repeal any provisions of law requiring the furnishing of certain copies without charge.

Sec. A-14. 21-A MRSA §1, sub-§11 is amended to read:

11. County office. "County office" means the office of ~~judge of probate,~~ register of probate, county treasurer, register of deeds, sheriff, district attorney or county commissioner.

Sec. A-15. 21-A MRSA §601, sub-§3 is amended to read:

3. Order of offices. The order of offices on the ballot is as follows: President, United States Senator, Governor, Representative to Congress, State Senator and Representative to the Legislature, and the county offices in the following order: ~~judge of probate,~~ register of probate, county treasurer, register of deeds, sheriff, district attorney and county commissioner.

Sec. A-16. Effective date. This part takes effect January 1, 2023.

PART B

Sec. B-1. 4 MRSA §157, sub-§1, ¶A is amended to read:

A. The Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary matters and to confirmation by the Legislature, shall appoint to the District Court ~~39~~ 47 judges. At least one judge must be appointed from each district who is a resident of a county in which the district lies, except that in District 3 there must be 2 judges appointed who are

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residents of a county in which the district lies; in District 6 there must be 2 judges appointed who are residents of a county in which the district lies; and in District 9 there must be 2 judges appointed who are residents of a county in which the district lies. Each District Court Judge has a term of office of 7 years. To be eligible for appointment as a District Judge, a person must be a member of the bar of the State. The term "District Judge" includes the Chief Judge and Deputy Chief Judge.

Sec. B-2. Appointment of additional District Court Judges. The Governor shall appoint, subject to review by the Legislature, the 8 new District Court judges whose positions are created in Title 4, section 157 in time to assume their duties on January 1, 2023. When making these appointments, the Governor may consider the needs of the District Court in developing and maintaining expertise in issues over which the former probate courts had jurisdiction. In the process of confirming these appointees, the Legislature shall include consideration of their knowledge and experience in the area of probate law as a factor in the confirmation decision.

Sec. B-3. Probate Court Judges elected in 2018. The terms of Probate Court Judges elected in 2018 end on December 31, 2022. (Do not include in bill, but just for reference: Androscoggin, Cumberland, Franklin, Hancock, Knox, Penobscot and Washington)

Sec. B-4. Probate Court Judges elected in 2020. The terms of Probate Judges elected in 2020 end on December 31, 2022. (Do not include in bill, but just for reference: Aroostook, Kennebec, Lincoln, Oxford, Piscataquis, Sagadahoc, Somerset, Waldo, York)

Sec. B-5. Existing election procedures continue to apply to Probate Court Judges to be elected in 2020. The procedures that apply to the election of Probate Court Judges that exist under the Constitution of Maine, Article VI, Section 6, on the effective date of this Act continue to apply to the election and seating of Probate Court Judges whose terms begin January 1, 2021 except that the terms of the Probate Court Judges elected in 2020 are 2 years and end on December 31, 2022.

SUMMARY

This amendment replaces the bill, which is a concept draft. It authorizes the Chief Justice of the Supreme Judicial Court to create a Probate Court Division within the District Court and adds 8 additional District Court Judge positions.

The term for Probate Judges elected in 2020 will be 2 years. The term for Probate Judges currently serving and not subject to election in 2020 will not change, but end on December 31, 2022.

This amendment does not affect the election, compensation or duties of Probate Registers.