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REPORT OF PRELIMINARY ANALYSIS OF THE FEASIBILITY OF

# A PROBATE DISTRICT COURT SYSTEM FOR MAINE



BUREAU OF PUBLIC ADMINISTRATION  
UNIVERSITY OF MAINE

PROJECT REPORT  
NO. 67-1

MAY 10  
1967

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UNIVERSITY OF MAINE

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A PROBATE DISTRICT COURT SYSTEM FOR MAINE

Project Report  
No. 67-1

May 10, 1967

29 North Stevens  
Orono, Maine 04473

May 11, 1967

Honorable Fred E. Hanscomb, Esq.  
Chairman  
Probate Court Revision Committee  
State House  
Augusta, Maine 04330

Dear Chairman Hanscomb:

The Report of Preliminary Analysis of the Feasibility of a Probate District Court System for Maine is submitted herewith pursuant to the agreement between the Probate Court Revision Committee and the Bureau of Public Administration.

Essentially, the agreement provided that the Bureau would accumulate whatever data was possible within the time period allocated and review existing information for its utility. In addition, it was agreed to interview present probate judges and attorneys associated with probate work as well as to review whatever literature was available about current practices in probate organization generally. The information derived might then be used by the Committee in determining the feasibility of establishing a Probate District Court System in the State of Maine.

As we agreed copies of this report are being sent simultaneously special delivery to the other Committee members individually.

Personnel of the Bureau of Public Administration involved with this project as well as the Bureau's consultant, William S. Cohen, Esq., would be pleased to meet with the Committee at its convenience to discuss the substance of the report.

Sincerely,

Dana R. Baggett  
Bureau Director

DRB:cl

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## PREFACE

This report presents some factual data and observations on selected aspects of the feasibility of establishing a Probate District Court System in Maine. It has been prepared for the use of the Probate Court Revision Committee appointed pursuant to Order of the 103rd Maine Legislature.

As the Committee knows, this material was prepared under severe limitations of time. The Bureau of Public Administration was retained by the Committee on March 23, 1967 and commenced the study on March 27, 1967 with the intention of rendering a report to the Committee by May 10, 1967.

Because of the time frame it was necessary to establish and adhere to a definite selected study scope so as to render for committee use as much factual and meaningful information as could be reasonably developed on the position and workload of the probate court judges. An attempt was made to fully utilize existing sources of information rather than to develop wholly new data.

The fact that the study is not exhaustive or all-inclusive should not be allowed to detract from its purpose to inform and allow for knowledgeable discussion of further action by the Committee. We believe the material presented to be accurate, and the observations offered are felt to be reasonable and likely to stand under more intensive examination. One of its strengths is the incorporation of the opinions and observations of all sixteen of Maine's incumbent probate court jurists whose cooperation is greatly appreciated.

The assembling of statistical data on our Maine probate courts, information on probate court systems and studies elsewhere, and general supervision of the project was under the direction of the Bureau's Supervisor of Government Research, Paul C. Dunham. The Bureau was fortunate

to have retained the services of William S. Cohen, Esq. of Paine and Cohen, Bangor to assist in the project. Mr. Cohen conducted field interviews with each of Maine's probate court judges and obtained the opinions and comments of numerous other attorneys experienced in probate matters. Mr. Cohen's legal training and background was invaluable to this project.

The Bureau of Public Administration is solely responsible for the content of this report, however.

We hope the Committee will find the report useful and that its important work will be made easier because of it.

## SUMMARY

Since 1855 part-time probate judges have been elected by the residents of the counties. Recently several suggestions have been made that these court officials should be full-time and that a different selection procedure be utilized. This report provides some data and opinions bearing on the matter.

The problem of securing competent judges may be pronounced in a few counties, but upon investigation it was not found to be pervasive. The members of the Bar generally appear to be satisfied with the operations of the probate courts. The public is probably not generally aware of the operations of the court. If one considers these factors alone, there appears to be no urgent, compelling need for establishing probate courts on a full-time basis.

Most of the judges, however, feel that full-time probate judges are desirable in order to elevate the administration of justice in this area of human activities to a level which is appropriate for administration of justice generally.

The reason for the apparent dichotomy between these two positions has not been identified. There is apparently a vague, elusive feeling that a full-time judgeship would stimulate more interest among qualified persons to seek the position and would also produce an intangible, somewhat indescribable amelioration in the judge's ability to serve the public. More time for legal research, development of new procedures, and greater professionalism among the probate judges might be some of the intangible benefits.

The five points below summarize the material contained in the body of the report.

1. The opinions and data included suggest that a district system for probate courts is feasible with full-time judges selected through some



appointment procedure rather than being elected by the people.

2. Present opinion of judges and attorneys is that the existing district court system ought not be utilized for this purpose and that the probate function would not be well attached to another type of court.

3. The preferred method for establishing the probate districts is to use some combination of counties which would continue the present system for handling probate records within easy access of the registry of deeds.

4. There is not sufficient information to detail precisely what areas the probate districts should encompass, although some possibilities are noted. However, utilizing some of the data and opinions, 5-7 districts seem plausible.

5. Several problems which may arise include 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.

## INTRODUCTION

Since 1820 the Probate Court has been a function of the state's judicial operations carried on by an administrative arm of the state - the county. There evidently has been very little change since 1820 in the operation of the probate courts except perhaps in terms of procedures, and forms used and method of selection of judges. The judges of probate were originally appointed by the Governor and Council until 1855 when they became elective positions.

### Background of the Study

In October, 1952 Edward F. Dow in his study of County Government in Maine for the Legislative Research Committee made the following comments and recommendations relating to the probate court.

In the offices of judge of probate, register of probate and clerk of courts we have three elective positions which should be integrated with the state court system through appointment. The probate judge is the only elective judge in the court system of Maine, and while the present system of appointing judges should be improved, it is superior to election. Probate judges should be selected on the same basis as the proposed district court judges.

The register of probate should not be an elective officer, but appointed by and subordinate to the probate judges. The schedule of official fees for this office needs clarification.

Clerks of courts should be appointed by the Chief Justice and subordinate to him.

### Recommendations

1. Probate court judges should be appointed in the same manner as district court judges, that is, by the chief justice on recommendation of a screening committee. The number of probate judges should be reduced, and the position made a full time, well-paid job.

2. Registers of probate should be placed under the state classified service, and should be appointed by the judges of probate. The number of registry offices should be reduced to conform to the number of probate courts as re-organized,

3. Clerks of courts should be placed under the state classified service, and should be appointed by the Chief Justice.<sup>1</sup>

The first political party support for this proposal was apparently in the Republican State Platform of 1956. In 1966 both party platforms had a plank relating to appointment of the judges of probate by the governor. The Republican platform went further and proposed that the office be full-time and that a district system be established "comparable to the present District Court system."

The Maine Intergovernmental Relations Commission issued a report on "County Government" in August, 1965. The portion of that report pertaining to probate courts is reproduced here.

Besides providing space as needed for the Supreme and Superior Courts, each county maintains a probate court of its own. To gain an indication of the extent of the services provided, each was asked for the number of wills filed, the number of wills processed, the number of dockets prepared, the number of estates of deceased persons handled, the number of adoptions handled, the number of custody cases handled, the number of name-changing cases, the number of committals handled, the number of guardians appointed, and the number of miscellaneous cases handled. Although a few of the questions were not answered, the report was generally fairly complete and the figures came to a total of 19,867. The number of days in session was also requested. Seven counties reported a continuous session, and the other nine totaled 1,587 days. The reports of the total operating costs of these courts were not quite as thorough. One county gave no report of expenses at all and most of the other county totals were incomplete. Nevertheless, the figures which were given totalled \$202,412.57.<sup>2</sup>

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<sup>1</sup>pp. 17-18

<sup>2</sup>Maine. Intergovernmental Relations Commission. Report by the . . . "County Government", August 1965, pp. 8-9.

That report itself contained no recommendations, but in a subsequent report of the Commission to the legislature a recommendation was made that

. . . probate courts be placed in districts and that the judges and registrars be appointed but that it be studied for the purpose of determining proper methods for districts and appointments, therefore the Commission recommends that the legislature authorize an appropriate sum for a complete, comprehensive and detailed study in regard to placing probate courts in districts and for appointing judges and registrars.<sup>3</sup>

In the 1967 session of the legislature (103rd) LD 479 (SP 216) was introduced by Senator Harding of Aroostook to create a committee to study the present probate laws and method of choosing judges and registers of probate. Senator Harding also proposed a resolution (LD 563) to amend the constitution by repealing the provisions relating to the election of judges and registers of probate.

An order (SP 254) was introduced by Senator Jon Lund of Kennebec to establish a committee to study the feasibility of establishing a Probate District Court system with full-time judges to be appointed by the Governor, with the advice and consent of the Council. This report has been prepared in connection with that order.<sup>4</sup>

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<sup>3</sup>Maine. Intergovernmental Relations Commission. "County Government Report." November, 1966. This report does not appear to differ from the 1965 version except for the addition of a few pages of recommendations.

<sup>4</sup>See Appendix 1 for a copy of the "Scope of Services" for the project.

PROBATE COURTS IN OTHER STATES

There are apparently 21 states (including Maine) in which there is a separate probate court variously named, viz., surrogate court, etc. These courts seem to be organized generally at the county level. In some of the other states the probate functions are merely subsumed as part of the superior court at the county level or perhaps at the district level. In ten of the 21 states with separate probate courts the term of the judge is 4 years and in only one is it for life. In most of these states the judges are elected, more often on a partisan ballot. Table I portrays this information.

Table I. Terms and Methods of Selection of Probate Judges

<u>State</u>	<u>Term<sup>a</sup></u>	<u>Method of Selection</u>
Alabama	6	Elected on partisan ballot
Connecticut	4	Elected on partisan ballot
Florida	4	Elected on partisan ballot
Georgia	4	Elected on partisan ballot
Idaho	2	Elected on partisan ballot
Indiana	4	Elected on partisan ballot
Kansas	2	Elected on partisan ballot
Maine	4	Elected on partisan ballot
Maryland	4	Unavailable
Massachusetts	Life	Appointed by Governor with Council Consent
Michigan	6	Elected on nonpartisan ballot
Minnesota	4	Elected on nonpartisan ballot
Missouri <sup>b</sup>	4	
New Hampshire	to age 70	Appointed by Governor, confirmed by Council
New Mexico	2	Elected on partisan ballot
New York	6	Elected on partisan ballot
Ohio	6	Elected on nonpartisan ballot
Pennsylvania	10	Elected on partisan ballot
South Carolina	4	Elected on partisan ballot
Texas	4	Elected on partisan ballot
Vermont	2	Elected on partisan ballot

<sup>a</sup>in years.

<sup>b</sup>in St. Louis and Jackson County, appointed initially by Governor from nominations submitted by special commission. Run on record for reelection. Others elected on partisan ballot.

### Reorganization of the Probate Function

There does not appear to be any extensive writings on reorganizations of the probate function, although, of course, there are materials on general court reorganization. The general gist of court reorganization has been to remove the selection process from the arena of partisan politics to the extent possible, to increase the efficiency of the court through better administrative and procedural techniques, and to establish specialized courts in some instances.

The only concrete proposal for reorganization of the probate function which came to the attention of this study was in the State of Idaho. There judges are elected for two years by the qualified electors at general elections on a partisan ballot, which is analogous to the situation in Maine, except for the length of the term. The probate court there does not have terms in the sense that the court is always open. The salary of the probate judge in Idaho is fixed by the board of county commissioners within limits set by laws which are between \$1,500 and \$12,000 per year. The fees received by the probate courts in Idaho over and above the expenses of the court are turned over to the county treasurer quarterly and go into the general expense fund of the county.<sup>5</sup> The probate judge is ex officio clerk of his own court and with the approval of the county commissioners

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<sup>5</sup>Idaho. Legislative Council. Report to the Idaho Legislature. Court Modernization in Idaho. (Research Publication No. 10). Nov. 1966, p. 23.

An article by Vernon F. Chaffin in the Alabama Law Review of Feb. 1957 entitled "Suggestions for Improving Probate Court Organization and Procedure in Alabama" is principally devoted to procedural reform.

The Michigan Law Review carried an article by Simes and Basye entitled The Organization of the Probate Court in America in 1944. See 42 Michigan Law Review 962,995-1008 (1944).

may appoint a deputy clerk whose salary is fixed by the board of county commissioners.

The proposal (in the form of a bill) of the Idaho Committee on Courts relating to probate court reorganization is reproduced here.

AN ACT RELATING TO DISTRICT COURTS:

SECTION 1. Probate Courts, Justice Courts, Police Courts abolished. - All probate courts, justice of the peace courts, and police courts shall cease to exist on the date as provided in this act.

SECTION 2. Transfer of pending cases and facilities from probate court. - On the effective date of this act, all cases pending on the docket of the probate court shall be transferred to the docket of the district court for the county and be pending in such court, without affecting any bond or obligation in such cases. On the effective date of this act, all functions, facilities and services of the probate court shall be transferred to the district court for the county and be continued in the district court. Judgments entered by the probate court but not yet satisfied, shall be enforceable in the manner provided by law for district court judgements. Civil and criminal matters pending before each probate court shall be continued in the district courts and be subject thereafter to the provisions of law and rules of procedure applicable in the district courts on the effective date of this act. All records, funds, bonds, or any other items pertaining to the cases or facilities transferred shall be forwarded forthwith by the clerk of the probate court to the clerk of the district court.

SECTION 3. Transfer of terminated cases and records from probate court. - The records and all cases terminated in the probate courts prior to the effective date of this act shall be placed in the custody of the clerk of the district court, and any proceeding to reopen these cases shall be brought there. The clerk of the district court shall have the power to certify the contents of these records in appropriate cases.<sup>6</sup>

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<sup>6</sup>Court Modernization in Idaho, p. 66.

THE PROBATE COURT IN MAINE

The probate court in Maine is a court of record<sup>7</sup> in which the judge is elected by the people of the counties for a four year term of office. The register of probate is also elected by the people of the county for a four year term.<sup>8</sup> However, there is no necessary relationship between the two elections. Vacancies in office are filled by election at the first November election after the vacancy occurs, but in the meantime the Governor with the advice and consent of the Council may fill the vacancy by appointment.<sup>9</sup>

Probate judges (who must be attorneys admitted to the Maine bar) and registers are prohibited from being members of the legislature or Congress and may not at the same time be a justice of the Supreme Court or any other inferior courts, attorney general, county attorney, state treasurer, adjutant general, register of deeds, sheriff or court clerk.<sup>10</sup> In addition, a judge or register of probate who is an interested party in matters of probate may not retain jurisdiction over the matter but must transfer the case to the probate court in an adjoining county.<sup>11</sup> There is nothing to prevent a probate court officer from maintaining an interest and participating in a case when transferred to another jurisdiction, however.

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<sup>7</sup>4 Maine Revised Statutes Annotated 201. Henceforth, the citation will be as follows: 4 MRSA 201.

<sup>8</sup>Maine Constitution, Article VI, Section 6.

<sup>9</sup>Ibid.

<sup>10</sup>Maine Constitution, Article IX, Section 2.

<sup>11</sup>4 MRSA 307



### Jurisdiction of the Court

The probate court has authority to take the probate of wills and grant letters testamentary or of administration on the estates of deceased persons who were inhabitants or residents of the county and who, if not residents of the state, died leaving an estate to be administered in the county. It can also grant adoptions, change of names, and appoint guardians for minors and others according to law.<sup>12</sup> In addition, the probate judges in the counties of Penobscot and Kennebec commit persons to the state mental hospitals.

### Organization of the 16 Courts

There is no integrated probate court system in the State of Maine. Consequently, each of the 16 probate courts is, in essence, a court unto itself, although there is an appeal procedure to the Superior Court sitting as a Supreme Court of Probate. There is apparently no continuous supervision of the probate judges by any other judicial official. However, procedure is established originally by the Justices of the Supreme Judicial Court and modified as necessary by a Commission on Probate Rules and Blanks. In effect, there is very little coordination of the operations of the 16 courts.

The 16 registers of probate, who are an intimate part of the probate court operation, are independent of the probate court in fact and also are not effectively coordinated or integrated. Although prevailing opinion suggests that the register and judge are independent judicial officials independently elected, the probate judge by law is required to

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<sup>124</sup> MRSA 251

"constantly inspect the conduct of the register with respect to his records and the duties of his office . . ." <sup>13</sup> The probate judge himself cannot bring action for recovery but must inform the county treasurer who initiates a civil action to recover on any breach of bond. <sup>14</sup>

#### Relationship with the Counties

The relationship between the probate courts and the counties has been noted earlier. The court is usually housed in the county court house as is the register of probate. Thus, the court is physically close to the register of deeds with whom there is a close affinity in terms of records.

The county commissioners are authorized to allow judges and registers of probate their necessary clerical and travel expenses which are "just and proper to the performance of their official duties," <sup>15</sup> Evidently, the determination of what is just and proper resides with the county commissioner and not the judge.

All fees received by the register is deposited with the county treasurer quarterly. Salaries of the judges and registers are paid by the county. Table 2 indicates the Salaries of Probate Officers in Maine, while Table 3 provides a summary of Probate Court finances in 1965. In the following tables where an average figure is indicated, one should be careful in interpreting the average because of the difference in the time the courts are in session.

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<sup>13</sup>18 MRSA 257

<sup>14</sup>18 MRSA 257

<sup>15</sup>30 MRSA 2

Table 2. Salaries of Probate Officers - 1966

<u>County</u>	<u>Code</u>	<u>Probate Judge</u>	<u>Register of Probate</u>
Androscoggin	(01)	\$5,400	\$5,200
Aroostook	(02)	4,500	4,000
Cumberland	(03)	8,000	7,000
Franklin	(04)	2,000	3,600
Hancock	(05)	4,500	4,000
Kennebec	(06)	6,000	4,000
Knox	(07)	3,000	3,000
Lincoln	(08)	3,500	4,000
Oxford	(09)	4,200	4,400
Penobscot	(10)	5,900	4,800
Piscataquis	(11)	3,200	3,600
Sagadahoc	(12)	3,500	3,400
Somerset	(13)	4,700	4,700
Waldo	(14)	3,600	3,600
Washington	(15)	3,000	3,600
York	(16)	6,500	4,500
TOTAL		\$71,500	\$67,400
Average		\$ 4,469	\$ 4,213
Range		\$ 2,000- \$ 8,000	\$ 3,000- \$ 7,000

SOURCE: 39 Maine Revised Statutes Annotated 2

N.B.: These figures are inclusive of 1966 special legislative session acts. See 1967 acts for subsequent authorizations.

Prepared by Paul C. Dunham, Supervisor of Government Research,  
Bureau of Public Administration, University of Maine.

Table 3. Financial Data for Probate Courts - 1965

<u>County</u>	<u>Code</u>	<u>Revenue (Fees)</u>	<u>Total Expenses</u>	<u>Judge's Salary</u>	<u>Register's Salary</u>	<u>Deputy Register's Salary</u>	<u>Clerks</u>	<u>Contractual Services</u>	<u>Supplies</u>	<u>Equipment</u>
Androscoggin	(01)	\$ 4,478	\$ 19,730	\$ 4,509	\$ 4,800	\$ 3,710	\$ 3,536	\$ 813	\$ 2,070	\$ 292
Aroostook	(02)	2,064	18,219	4,000	4,000		5,645	412	2,220	1,943
Cumberland	(03)	7,440 <sup>a</sup>	38,569	8,000	7,000		19,656	361	2,361	
Franklin	(04)	1,084	7,958	2,000	3,600		1,500	177	681	
Hancock	(05)	2,728 <sup>b</sup>	20,050	4,250	3,750		9,489		2,561	
Kennebec	(06)	5,026	22,667	6,000	4,000	3,710	6,360	375	2,222	
Knox	(07)	2,739	10,797	3,000	3,000		3,780	199	818	
Lincoln	(08)	1,968	14,186	3,500	4,000		4,971	251	1,363	101
Oxford	(09)	1,582 <sup>c</sup>	13,939	4,000	4,000		3,741	205	1,993	
Penobscot	(10)	5,853	29,917	5,500	4,500		14,632	806	4,479	
Piscataquis	(11)	1,266 <sup>d</sup>	10,713	2,472 <sup>f</sup>	3,400		3,336 <sup>e</sup>	282	1,243	
Sagadahoc	(12)	1,325	9,782	3,000	3,000	3,016		133	633	
Somerset	(13)	1,728	15,999	4,500	4,500		5,915	271	750	63
Waldo	(14)	1,289	10,540	3,000	3,200		2,930	255	1,155	
Washington	(15)	1,529	10,089	3,000	3,331		2,745		998	15
York	(16)	5,181 <sup>g</sup>	21,345	6,500	4,500		6,890	1,056	2,402	
TOTAL		\$47,280	\$274,503	\$67,231	\$64,581	\$ 10,436	\$95,126	\$ 5,596	\$25,707	\$2,414
Average		\$ 2,955	\$ 17,156	\$ 4,202	\$ 4,036	\$ 652	\$ 5,945	\$ 350	\$ 1,607	\$ 151
Range		\$ 1,084- \$ 7,440	\$ 7,958- \$ 38,569	\$ 2,000- \$ 8,000	\$ 3,000- \$ 7,000		\$ 1,500- \$19,656	\$ 133- \$ 1,056	\$ 633- \$ 4,479	\$ 15- \$1,943

<sup>a</sup>plus \$289.58 Probate Account interest & 0.40 refund

<sup>b</sup>plus \$158 miscellaneous

<sup>c</sup>plus \$55 probate accounts

<sup>d</sup>plus \$3.28 probate deposits cashed

<sup>e</sup>substitute judges and reporters

<sup>f</sup>incomplete year

<sup>g</sup>plus \$664 interest on probate deposits  
and \$513 transcript refund

SOURCE: 1965 Annual Financial Reports of the counties.

Prepared by Paul C. Dunham, Supervisor of Government Research, Bureau of Public Administration.

If the county commissioners determine that the "public convenience so requires" they may, at county expense, have the files and records of the probate court rearranged, indexed, docketed, repaired, etc. under the direction of the registers.<sup>16</sup>

Thus, it is observable that the operations of the probate court are quite dependent upon the county commissioners. In addition, there is a close functional relationship between the registry of probate and the registry of deeds, at least in terms of probate practice by members of the bar and in the tracing of titles.

#### Work-load of the Courts

In order to obtain some idea of the work-load of the sixteen probate courts, it was decided to utilize the information obtained earlier by the Intergovernmental Relations Commission and attempt to up-date that information for this report. It is however, easier to seek statistics about the probate courts in Maine than it is to derive those statistics.

Table 4 shows data obtained by the Intergovernmental Relations Commission including number of wills filed, number of wills processed, number of dockets prepared, total value of inventories filed, number of estates of deceased persons handled, number of adoptions, number of custody cases, committals, guardians appointed, and miscellaneous cases handled. These statistics are based on 1963 information. Table 5 converts some of this information to the number of cases per 1,000 population which is a technique used for presenting court case-loads.

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<sup>16</sup>30 MRSA 301

Table 4. Probate Court Statistics - 1963

County	Code	# Wills Filed	# Wills Processed	# Dockets Prepared	Total Value of Inventories Filed	# Estates of Deceased Persons	# of Adoptions	# of Custody Cases	# of Name Change Cases	# of Committals	# of Terms	Days in Session	Number of Guardians Apptd.	Miscellaneous Cases
Androscoggin	(01)	312	273	627	\$ 13,395,331	473	110	22	24	0	12	260	69	100
Aroostook	(02)	149	133		4,465,757	230	73	0	10	0	7	*	33	26
Cumberland	(03)	669	643	1,384	30,326,951	949	183	0	58	0	0	*	181	13
Franklin	(04)	80	77	2,356	2,194,206	117	16	11	2		12	260	18	
Hancock	(05)	193	191	40	5,694,486	272	40		1			*	45	6
Kennebec	(06)	256	290	2	11,508,911	139	76	2	6	15	24	156	103	732
Knox	(07)	147	137	281	5,500,000	281	24		5		12	12	35	
Lincoln	(08)	107	97	224	3,662,370	174	24	2	3	0	0	68	19	3
Oxford	(09)	159	149	5	3,434,196	72	33	0	11	1	12	251	29	0
Penobscot	(10)	326	302	772	16,289,908	464	137	0	30	13	12	*	94	234
Piscataquis	(11)	108	100	204	1,856,601	152	18	1	2	0	30	*	28	5
Sagadahoc	(12)	89	79	197	3,208,593	36	41	0	2	0	24	72	17	12
Somerset	(13)	23	123		2,662,341	209	33		9	0	12	255	50	14
Waldo	(14)	89	83		6,327,851	191	26		3	0	12	260	26	
Washington	(15)	101	92	213	3,246,911	151	27		5		12	*	30	
York	(16)	35	300		21,958,096	345	147	0	17	0		253	75	133
TOTAL		2,843	3,069		\$ 135,732,509	4,255	1,008		188		181		852	
AVERAGE		178	192		\$ 8,483,282	266	63		12		11		53	

\* Continual Session

SOURCE: Data accumulated by Maine Intergovernmental Relations Commission.

Table 5. Probate Court Statistics Per 1,000 Population - 1963

County	Code	# Wills Filed	# Wills Processed	Value of Inventories Filed (\$000)	# Deceased Estates Handled	# Adoptions Handled	# Guardians Appointed
Androscoggin	(01)	3.6	3.2	156	5.5	1.3	0.8
Aroostook	(02)	1.4	1.3	42	2.2	0.7	0.3
Cumberland	(03)	3.7	3.5	166	5.2	1.0	1.0
Franklin	(04)	4.0	3.9	110	5.9	0.8	0.9
Hancock	(05)	6.0	6.0	178	8.5	1.3	1.4
Kennebec	(06)	2.9	3.3	129	1.6	0.9	1.2
Knox	(07)	5.1	4.7	190	9.7	0.8	1.2
Lincoln	(08)	5.9	5.4	203	9.7	1.3	1.1
Oxford	(09)	3.6	3.4	78	1.6	0.8	0.7
Penobscot	(10)	2.6	2.4	129	3.7	1.1	0.7
Piscataquis	(11)	6.4	5.9	109	8.9	1.1	1.6
Sagadahoc	(12)	3.9	3.4	140	1.6	1.8	0.7
Somerset	(13)	0.6	3.1	67	5.2	0.8	1.3
Waldo	(14)	3.9	3.6	275	8.3	1.1	1.1
Washington	(15)	3.1	2.8	98	4.6	0.8	0.9
York	(16)	0.4	3.0	222	3.5	1.5	0.8
STATE		2.9	3.2	140	4.4	1.1	0.9
AVERAGE		3.6	3.7	143	5.4	1.1	1.0

Source: Computed from data accumulated by Maine Intergovernmental Relations Commission.

An attempt was made to bring these statistics up-to-date, but in some instances this does not prove to be possible. However, the following tables portray the data which was obtained.

Table 6. Wills Entered for Probate -- 1962 - 1966

<u>County</u>	<u>Code</u>	<u>1962</u>	<u>1963</u>	<u>1964</u>	<u>1965</u>	<u>1966</u>	<u>Average</u>
Androscoggin	(01)						
Aroostook	(02)						
Cumberland	(03)						
Franklin	(04)	78	87	64	86	67	76
Hancock	(05)						
Kennebec	(06)						
Knox	(07)						
Lincoln	(08)	116	104	106	113	129	114
Oxford	(09)	163	142	130	139	153	145
Penobscot	(10)		326		360	330	
Piscataquis	(11)	72	94	77	89	79	82
Sagadahoc	(12)	76	89	78	89	64	79
Somerset	(13)	23					
Waldo	(14)	95	95	105	78	94	93
Washington	(15)	75	92	68	77	88	80
York	(16)					32	

Table 7. Administrations

<u>County</u>	<u>Code</u>	<u>1962</u>	<u>1963</u>	<u>1964</u>	<u>1965</u>	<u>1966</u>	<u>Average</u>
Androscoggin	(01)						
Aroostook	(02)						
Cumberland	(03)						
Franklin	(04)	42	33	42	26	41	37
Hancock	(05)					58 <sup>a</sup>	
Kennebec	(06)						
Knox	(07)						
Lincoln	(08)	53	37	51	42	42	45
Oxford	(09)	69	69	60	61	64	65
Penobscot	(10)				149	155	
Piscataquis	(11)	36	45	40	54	45	44
Sagadahoc	(12)	32	31	38	39	35	35
Somerset	(13)			73 <sup>b</sup>	61 <sup>b</sup>	82 <sup>b</sup>	
Waldo	(14)	85	64	67	67	52	67
Washington	(15)	55	50	54	54	58	54
York	(16)					159	

<sup>a</sup>April 1, 1966 - April 1, 1967

<sup>b</sup>Estimate



Table 8. Custody and Support

<u>County</u>	<u>Code</u>	<u>1962</u>	<u>1963</u>	<u>1964</u>	<u>1965</u>	<u>1966</u>	<u>Average</u>
Androscoggin	(01)						
Aroostook	(02)						
Cumberland	(03)						
Franklin	(04)	3	9	7	2	2	5
Hancock	(05)						
Kennebec	(06)						
Knox	(07)						
Lincoln	(08)	a					
Oxford	(09)	2			1	2	
Penobscot	(10)						
Piscataquis	(11)	3					
Sagadahoc	(12)						
Somerset	(13)						
Waldo	(14)				2		
Washington	(15)						
York	(16)					0	

<sup>a</sup>only 2 in five years.

Table 9. Change of Name

<u>County</u>	<u>Code</u>	<u>1962</u>	<u>1963</u>	<u>1964</u>	<u>1965</u>	<u>1966</u>	<u>Average</u>
Androscoggin	(01)						
Aroostook	(02)						
Cumberland	(03)						
Franklin	(04)	2	3	3	2	7	3
Hancock	(05)						
Kennebec	(06)						
Knox	(07)						
Lincoln	(08)	2-3*	2-3*	2-3*	2-3*	2-3*	2-3
Oxford	(09)	12	10	5	8	8	8
Penobscot	(10)		30	18	17	36	25
Piscataquis	(11)	5	3	0	4	3	3
Sagadahoc	(12)	2	2	1	4	6	3
Somerset	(13)						
Waldo	(14)	4	4	4	1	6	4
Washington	(15)	1	5	2	6	6	5
York	(16)					17	

\* average

Table 10. Adoptions

<u>County</u>	<u>Code</u>	<u>1962</u>	<u>1963</u>	<u>1964</u>	<u>1965</u>	<u>1966</u>	<u>Average</u>
Androscoggin	(01)						
Aroostook	(02)						
Cumberland	(03)						
Franklin	(04)	18	17	18	14	18	17
Hancock	(05)					40 <sup>a</sup>	
Kennebec	(06)						
Knox	(07)						
Lincoln	(08)	16	24	19	14	21	19
Oxford	(09)	40	38	28	41	35	36
Penobscot	(10)		137	141	129	127	134
Piscataquis	(11)	15	19	20	10	5	14
Sagadahoc	(12)	34	40	30	18	38	32
Somerset	(13)			44 <sup>b</sup>	18 <sup>b</sup>	36 <sup>b</sup>	
Waldo	(14)	29	24	28	19	21	24
Washington	(15)	24	27	32	41	27	30
York	(16)					123	

<sup>a</sup>April 1, 1966 - April 1, 1967<sup>b</sup>estimate

Table 11. Guardians and Conservators Appointed

<u>County</u>	<u>Code</u>	<u>1962</u>	<u>1963</u>	<u>1964</u>	<u>1965</u>	<u>1966</u>	<u>Average</u>
Androscoggin	(01)						
Aroostook	(02)						
Cumberland	(03)						
Franklin	(04)	14	18	15	14	19 <sup>a</sup>	16
Hancock	(05)					19 <sup>a</sup>	
Kennebec	(06)						
Knox	(07)						
Lincoln	(08)	32	18	35	37	34	31
Oxford	(09)	46	36	44	47	44	43
Penobscot	(10)			101	93	99	
Piscataquis	(11)	27	28	18	33	23	26
Sagadahoc	(12)	28	15	21	18 <sup>b</sup>	24 <sup>b</sup>	21
Somerset	(13)			33 <sup>b</sup>	29 <sup>b</sup>	44 <sup>b</sup>	
Waldo	(14)	42	35	55	46	32	42
Washington	(15)	30	30	30	32	19	28
York	(16)					74	

<sup>a</sup>April 1, 1966 - April 1, 1967<sup>b</sup>estimate

From the preliminary and incomplete data presented in the preceding tables, there does not appear to be any discernible trends and the most one could expect from these data would be averages. The totals for the various kinds of cases in each court noted do not appear to change very greatly, tending to indicate that the workload of the court is quite uniform from year to year. However, there is very little information presented here about the two largest counties - Cumberland and Penobscot - and little more about the county of York

The compilation of data concerning the various kinds of cases per 1,000 population in 1963 presented in Table 5 seems to indicate a rather uniform case load on that basis with the exceptions noted here. Hancock and Piscataquis seemed to have a higher ratio of guardians appointed than the other counties. There seems to be a greater number of adoptions handled in Sagadahoc and York Counties. Waldo, Piscataquis, Knox and Hancock appear to have a greater incidence of deceased estates handled per 1,000 population. The number of wills processed were apparently higher per 1,000 population in Hancock, Piscataquis, Knox and Lincoln counties. The value of inventories filed appeared to be greater in Cumberland, Hancock, Knox, Lincoln, Waldo and York counties.

Man-hours of work. It was not anticipated that the judges would be able to determine with certainty the exact number of hours (daily or weekly) that they devote to their probate court duties. All the judges allocate specific hours during the day, or days, wherein they are active and available at their courts. In addition, an unascertainable amount of time is devoted to probate matters in their own law offices when attorneys visit or telephone about matters under the jurisdiction of the court.

Even considering this lack of definitude, only three (3) judges indicated that they spent as much as one-half (1/2) of their work week on probate matters. The remaining thirteen (13) judges devote between one-half (1/2) day per week to two (2) days per week. Table 12 portrays an approximate number of hours spent per week by the judges of the probate courts.

Table 12. Approximate Number of Hours Spent Per Week  
on Probate Matters

<u>County</u>	<u>Code</u>	<u>Hours Per Week *</u>
Androscoggin	(01)	8 - 10
Aroostook	(02)	10 - 13
Cumberland	(03)	20
Franklin	(04)	8
Hancock	(05)	8
Kennebec	(06)	12
Knox	(07)	5 - 8
Lincoln	(08)	8 - 10
Oxford	(09)	8 - 10
Penobscot	(10)	20
Piscataquis	(11)	8
Sagadahoc	(12)	No Estimate
Somerset	(13)	15 - 18
Waldo	(14)	6 - 8
Washington	(15)	8
York	(16)	20

SOURCE: Interviews with probate judges

\*Approximate

Man-hours per class of case. Without exception, the judges were not able to provide an estimate of the time demanded by various classes of cases. Apparently, it is deemed impossible to classify cases on a time-table basis due to an array of imponderables which cannot be anticipated. It is the general consensus, however, that ninety per cent (90%) or more of the work is purely administrative in nature, and that adversary proceedings, while often time-consuming, are infrequently encountered. It appears that a major portion of the judge's time devolves around proceedings related to the administration of trusts and estates, judging from the statistical information noted earlier.

A notable exception to this general conclusion is found in the Kennebec County Probate Court which because of its geographical location considers on a yearly basis approximately 100 adoptions, 25 complaints from the Department of Health and Welfare, 50 re-hearings on commitments to the Veterans Administration and state hospitals. The judge of this court indicated that of the 25 complaints brought by the Department of Health and Welfare in 1966 for child neglect, 7 required a combined total of 19 hearings. The re-hearings on commitments have also proved to be extremely time-consuming.

In an effort to formulate some broad classification of the time required for the disposition of various cases, the probate judges were asked to estimate the number of cases which are routine and require virtually little time and those which are not routine and require substantial amounts of time. The brief but unanimous response to this inquiry was that the great portion of probate work is routine and that it is impossible to draw any sharp or even broad distinctions on a time-commitment basis among such matters as guardianships, conservatorships, surrender and releases, adoptions, and the administration of trusts and estates. Although non-routine matters such as adversary or contested cases individually may present complex problems and involve lengthy hearings, they are relatively infrequent in occurrence and not particularly burdensome.

FEASIBILITY OF A REORGANIZED PROBATE SYSTEM

Information about the feasibility of full-time probate judges, possible probate districts, and potential problems in reorganization are considered below.

Full-time Probate Judges

The 16 probate judges were asked their opinions concerning the feasibility of full-time probate judgeships including advantages, disadvantages, and any major problems foreseen. The following commentary summarizes those opinions.

Advantages. The opinions of the judges and others as to the need for establishing full-time probate judgeships indicate that there are weaknesses and deficiencies inherent in the present system which could be eliminated.

1. With the possible exception of Cumberland County, the present workloads of the probate courts would not warrant establishing full-time judges for each county. Notwithstanding this fact, twelve (12) of the 16 judges hold the opinion that full-time judges are not only feasible, but definitely desirable. Although the reasons given in support of their opinions are not entirely uniform, the majority of the 12 believe that full-time judgeships would result in a greater and more proficient service to the members of the legal profession and to the public. Part-time judges, who are full-time attorneys, can not always devote the necessary research and contemplation which would assist in arriving at satisfactory resolution of the legal questions presented to them. If the need for a probate judge to practice law to earn an adequate living were eliminated, he could exert his full efforts and abilities to the duties of the office and thereby render a greater service to those whom he serves.

2. Secondly, the establishment of full-time judgeships would add to the dignity of the probate court and foster a greater respect for the function it serves. Judges are charged with the heavy responsibility of dispensing justice, of resolving the conflicts which arise from human relationships, and it is of compelling importance that public confidence in our judges' ability and integrity be merited and maintained. While the great portion of the probate court's activities is administrative in nature, probate judges nevertheless do have a substantial amount of contact with the personal problems and conflicts of the individuals within their communities. It is interesting to note that only one probate judge conducts his court with a formality comparable to that found in the other courts of our judicial system. Perhaps this lack of customary judicial formalism is due to the fact that probate judges are regarded, and regard themselves, more as attorneys than as members of the judiciary. Whatever the reason, however, the functions of the probate court should not be considered less important than those of other courts. Certainly the individuals who appear in our probate courts for a determination of their legal rights should feel assured that they will be afforded judicial service of the highest order. The practice of having a part-time public servant, who does not appear to stand on a higher level than the attorneys who come before him, pass judgement upon the legal rights of others, does not comport with our traditional concepts of the judicial process.

It is an often-quoted adage that a judicial decision must not only be just, it must appear to be just. Similarly, if public confidence in our judicial tribunals is to be preserved, a judge must not only possess the dignity and ability that his position demands, he must also appear to possess them.

It is submitted that the establishment of full-time judgeships would have the attendant and salutary effect of enhancing the general stature of the court and its functions.

3. A third advantage offered by full-time judgeships is the elimination of a potential abuse of the judge's position. One judge disclosed that he experienced some discomfort in occupying the dual role of advocate and judge. In his opinion, a probate judge should not be put in a position where he has to engage with his colleagues on one day and then render decisions affecting their clients' rights on another. The obvious ramifying effects of this conflict in roles is that an attorney may find it difficult or even impossible to remain completely dispassionate and objective when acting as a probate judge. In addition to suppressing any personal disposition he might have toward a particular attorney with whom he has had previously dealt, a part-time judge may feel compelled to extend the attorney more than fair consideration as evidence of his objectivity, and this would operate adversely against the interests of other parties.

Although a probate judge is precluded from handling probate matters within his own county, he is permitted to render services in other counties. One attorney interviewed, expressed dissatisfaction with the existing system because he discovered that the opposing attorney in a contested will case was a prominent judge of probate from an adjoining county.

Instances of the above described conflicts may be isolated or rare; nevertheless, the mirror of justice that is held up to reflect our judicial system should be removed, as far as is practicable, from any stones of imputation. The judges of our other courts are not permitted to engage in the practice of law and it seems undesirable that probate judges should be allowed, or forced by circumstances to do so.



4. A fourth advantage offered by full-time judgeships would be the introduction of greater uniformity in the procedural aspects of probate practice. A number of attorneys interviewed felt that greater procedural uniformity among the counties is needed and that a reduction in the number of judges with an attendant expansion of a full-time judge's geographical jurisdiction would serve to mitigate the procedural conflicts which now exist.

Disadvantages.

1. Several judges indicated that a possible disadvantage to having full-time judges would be the loss in ready accessibility to a judge in emergency situations, such as the appointment of special administrators to manage and maintain the business affairs of a decedent. These emergency cases, however, are infrequent in occurrence and with the communication and transportation facilities available today, an attorney could easily make contact with a probate judge should he be sitting at another court.

2. One judge who originally favored the creation of a Probate District Court system with full-time judges concluded, after considerable reflection, that full-time judges might increase the efficiency of our Probate Court system, but it could result in the loss of the close relationship which a part-time, resident probate judge maintains with people in his community. In his opinion, a part-time judge who serves a comparatively restricted geographical area is, or can become, more familiar with the background of the parties who appear before him than can a "traveling" full-time judge, and therefore can make a more adequate and equitable disposition of a particular case.

Observations.

While the view may appear to have merit, the present size of many Maine communities precludes the "grass roots" communication in all but the

small counties. Moreover, it is submitted that any capable and conscientious judge can and will become sufficiently acquainted with the facts of any given case so as to render a fair and just decision.

In Part III of a report by the Institute of Judicial Administration entitled A District Court for Maine, the same problem was encountered. The following quotation from that report is enlightening here.

The problem of preserving the confidence of the community in the impartiality of a judge who, concurrently with his judicial duties, is carrying on the practice of law among the very people on whom he sits in judgment, has long been recognized as a serious one. In the Canons of Judicial Ethics promulgated by the American Bar Association, the practice of law by a judicial officer is deplored, to be suffered as a necessary evil only where "the county or municipality is not ably (sic) /able/ to pay adequate living compensation for a competent judge." The Canons go on to declare that a judge who practices law "is in a position of great delicacy and must be scrupulously careful to avoid conduct in his practice whereby he utilizes or seems to utilize his judicial position to further his professional success." (Canon 31) However upright the lawyer-judge, there always exists the possibility of his being influenced, albeit subconsciously, in the disposition of a case before him, by the effect such disposition may have on the possibility of future retainers by one or another of the parties. Even if he in fact bends over backward, the suspicion of divided loyalty is always lurking in the background.

The small size of the communities served by many of the municipal courts is doubtless an aggravating (sic) circumstance. In a small town the judge is necessarily well-acquainted with its leading citizens. They are likely to be, either actually or potentially, among his more desirable clients. In this aspect, the fact that the judge is rooted in the community and knows the local people presents itself as a distinct weakness of the present system rather than its chief merit, as frequently claimed.<sup>17</sup>

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<sup>17</sup>Maine. Legislative Research Committee. A District Court for Maine. Report to the . . . on the Desirability of Integrating Activities of Municipal Courts and Trial Justices. (By the Institute of Judicial Administration) (Publication No. 100-4) January 1961, p. 17.

Reorganization of the Probate Courts.

The interviewees were asked several questions about possible reorganization of the probate courts. The questions and opinions are noted below, although not necessarily in the order they were asked.

Question 1.

Would it be possible to attach the existing probate functions to all or some of the district courts as an added judicial functions to be performed by that court?

The majority of the judges indicated that none of the existing probate functions should be transferred to the district courts for two principal reasons: (1) the district courts are already over-extended with their present workloads; and (2) the district court judges are not adequately acquainted with the intricacies of probate law and procedure. Several attorneys also suggested that the nature and pace of probate work differed markedly from that found in the district court and that the two courts may even demand different judicial temperaments.

Question 2.

Would it be possible to attach the existing probate function to some other court than the district courts for this purpose?

When the answers to Question 1 were received, it was found not to be necessary to ask this question. Thus, there is no specific response but a negative answer is implied from the answers to Question 1. It might be commented that in many states (29) the probate function is evidently attached to some other court.

Question 3.

If a separate probate court system were established could the same divisions and districts used by the district court system or some combination thereof be utilized.

Every judge and attorney interviewed answered in the negative. The

unanimous reason advanced for the negative answer was that it is of critical importance that probate records be permanently maintained at a central location and that this central location must necessarily be where a county's registry of deeds is situated. An attorney searching the title to real estate must be able to refer to the probate records in order to complete any breaks he might find in the chain of title to this real estate. To disrupt the present filing and recordation system would result in consummate inconvenience and confusion to the members of the Bar.

Observations about the Questions and the Opinions Expressed.

Question 1. It is suggested that the reasons suggested for not attaching probate functions as an added function of the district courts will not bear analysis. First, the fact that the district courts may be overburdened with work now has no bearing upon the question posed. Reorganizations are never suggested unless it is assumed at the same time that a sufficient number of persons will be transferred also to perform the function which is to be transferred.

Although the general notion exists that the district court is simply a traffic or criminal court, it is not reasonable to suppose that district court judges are unqualified to handle judicial separations, surrender and release of children for adoption, adoptions, changes of name, conservatorships or guardianships. Admittedly, probate accounting is somewhat complex, but a judge worthy of appointment to the district court is certainly capable of mastering probate accounting. Moreover, the majority of probate judges receives substantial assistance from their registers on the accounts filed and are, therefore, able to minimize the actual time spent in reviewing accounts.

While the pace of the probate court may indeed be more leisurely and accommodating than that of the district court, it is interesting to note that at least five of the 16 judges are active in trial work in the District and Superior Courts and that this diversion of interests and activity does not appear incompatible with their abilities.

Question 3. The judges' replies favoring rejection of such a proposal were based on the premise that it is of critical importance that probate records be permanently maintained at a central location, and that this central location must necessarily be where a county's registry of deeds is situated. It was maintained that an attorney searching the title to real estate must be able to refer to the probate records in order to complete breaks he might find in the chain of title to this real estate. To disrupt the present filing and recordation system would result in consummate inconvenience and confusion to the members of the Bar.

The rejection of the proposal on this basis would be logical provided that some change were proposed in the permanent central location not in close proximity to a county's registry of deeds. The implication that there would necessarily have to be a relocating of permanent records does not follow from the proposal. Therefore, on this basis the rejection of the proposal seems invalid.

If the proposal for utilizing present district court boundaries in some combination were to be rejected, it could more logically be done on the basis that probably it would be impossible from the present statistical sophistication about the probate courts to arrive at any meaningful data with which to establish the boundaries of the district if such items as man-hours of time, caseload by various types of cases, etc. were to be utilized. It is impossible presently to discover information about the probate court operations on a basis other than county-wide distribution of data and any interpolation of this information statistically probably would not be sufficient for purposes of establishing these districts.

PROBATE DISTRICT COURT SYSTEM

It is the general consensus of those interviewed that a separate probate court system should be maintained and that full-time judgeships be established by having one judge serve two or more counties. This proposal would preserve the integrity of county lines and the continuity of the centralization of probate courts.

Number of Districts.

The interviewees were asked what number of full-time judges they felt might be necessary to perform the probate function. Most indicated somewhere between 6 and 8 might be feasible.

Observing that the approximate maximum hours spent by the judges collectively amount to 200 man-hours per week to conduct the probate court business in the state, one might deduce that 5 probate court districts would be sufficient to handle the case-load, assuming a normal 40-hour work week per judge and no extenuating circumstances necessitating other provisions.

There do appear to be extenuating circumstances which might dictate one or more additional judges. First, it might be desirable to have a chief probate judge to coordinate the activities of the probate courts and judges and to fill in during vacations, illnesses, and other vacancies. Secondly, the case-load and population in the southern portion of the state suggests the desirability of an additional judge to assist in the probable increase in the workload which would also provide additional flexibility in the operations of the court. Thirdly, it might be desirable to have more time available to the judges for legal research and contemplation.

It should be noted that most judges emphasized that the reorganized probate courts should have a specific judge serve a particular area as

is the case in the District Court System rather than having judges assigned to different districts for specific terms of court as is the practice in the Superior Court system.

It is not uncommon for certain probate matters to remain open for several years and it is important that continuity in the administration of these cases be maintained by having the same judges hear the cases to their conclusions.

It is interesting to note that the majority of judges thought that the probate court's jurisdiction should be expanded to include divorces and that several judges suggested that the probate court might become a general "family-court." While the idea is interesting it is beyond the scope of this study. Nevertheless, an expansion in the probate courts' jurisdiction would necessarily demand consideration of the work-load and would have a bearing upon the combination of counties.

#### Salaries of Full-Time Judges.

Eleven of the present probate judges believe that a full-time probate judge's salary should be commensurate with that received by district court judges; four judges indicated that the salary should exceed that received by district court judges; and one judge felt that a full-time judge should receive only the combined salary of the part-time judges that he replaced.

Two of the four judges who stated that the salary should exceed that received by district court judges expressed considerable doubt whether a sufficient salary could be paid to attract competent attorneys to a full-time position. One judge felt that any young attorney who demonstrated an interest in a probate judgeship would probably be attracted by the salary, and his lack of experience would result in a disservice to the Bar and public. Moreover, an attorney who is fully engaged in the practice of law either could not or would not forego the rewards of his practice to accept a full-time probate judgeship. It was suggested that those attorneys who would

accept such a position would probably be professionally unqualified for the job.

Observation. The general satisfaction of the Maine Bar with the judges of our District Courts would seem to be an adequate refutation of the above contention. Assuming that probate judges would be appointed for seven-year terms with salaries and retirement benefits comparable to that received by the district court judges, there should be little difficulty in obtaining qualified attorneys to fill the judgeships.



POTENTIAL REORGANIZATION PROBLEMS

There are several problems which reorganization of the probate court system would seem to introduce including financing, selection procedures, the relationship between the register of probate and the reorganized system, and the method of making the change.

1. Finances

Table 3 on page 11 relating to the finances of the probate court system in Maine in 1965 indicates income of \$47,000 while expenses amounted to \$275,000. In other words income was only 17% of direct costs. The balance of expenses are borne by the county. A reduction in the number of probate judges probably will not produce any reduction in costs because of the increased salary for the judges and the prospects of some increased travel expenses. If the existing probate courts in two or more adjoining counties are combined how will the expenses of the judge and his office be shared? Will the individual county treasurers remain the proper agency to receive the receipts of the probate court system?

2. Judicial Selection Procedure

Although the legislative order organizing the Probate Court Review Committee specifies potential selection of the judges by the governor and council, the question might be raised whether it would be preferable to use some other method for selecting the judges. Although appointment by the governor may be superior to election by the people there is another method which combines features of both of these alternatives. Under the Missouri plan or some modification thereof, a judge would originally be appointed by the governor from among a list of potential nominees submitted by a selection committee. After an initial year had expired, the incumbent would run at the next general election on his record. If

he were not elected, the process would be re-instituted.

### 3. Relationship between the Probate Judge and the Register of Probate.

Since the register of probate is in reality an administrative official of the court and since any change in the judicial selection procedure would require a constitutional amendment it might be wise to consider removing the register from an elected position also. He makes no policy decisions, therefore, there is no compelling reason for his direct election by the people of the county. It might be noted here, however, that a number of the interviewees were of the opinion that the register remain an elected official.

Since the register is also subject to the oversight of the probate judge, it does not seem philosophically sound that the register be elected (and therefore directly accountable to the people) while his supervisor is appointed in some manner.

### 4. Procedural Problems.

Any reorganization of the existing probate functions may require a re-examination of probate procedure. Since the Superior Court is the Supreme Court of Probate in which cases may be tried de novo, there might need to be further consideration of the jurisdiction of the new court and the appeals procedures to be used. It has been suggested that with the establishment of full-time judgeships, the probate courts could become a true court of record, having a court reporter utilized in contested cases with appeals taken directly to the law court.

### 5. Court Jurisdiction.

Since the time allotted to this study has been brief, no attempt is made to propose unequivocal formulas for the combination of counties. With this caveat it might be appropriate to relate several of the combinations

suggested by the probate judges as well as other possibilities on the basis of the limited data presented in this report.

One judge, while not suggesting that the population of the respective counties be used as the sole guide, indicated that the counties could be combined so that they would be substantially equal in population.\*

Cumberland	186,000
York (90,000) and Oxford (44,000)	134,000
Androscoggin (86,000), Sagadahoc (23,000), and Franklin (20,000)	129,000
Kennebec (89,000), Somerset (39,000), and Knox (28,000)	156,000
Penobscot (126,000), Waldo (22,000), and Piscataquis (17,000)	165,000
Aroostook (106,000), Washington (33,000), and Hancock (32,000)	171,000

While the above combinations would appear to satisfy the necessity of maintaining geographical contiguity, they do not necessarily give adequate consideration to the amount of travel time and expense implicit in full-time judgeships. It is to be noted that the inclusion of Lincoln County, which apparently was inadvertently omitted, would alter this scheme somewhat.

Most of the judges merely indicated what other counties could be feasibly combined with their own in terms of the workload and convenient traveling distance. The divergences in the following suggested combinations only serves to re-enforce the belief that more consideration should be given to these potential combinations.

Androscoggin, Sagadahoc and Oxford  
 Lincoln, Sagadahoc and Kennebec  
 Knox, Lincoln, and Sagadahoc  
 Sagadahoc and Franklin  
 York, Oxford and Androscoggin  
 Somerset, Franklin and Piscataquis  
 Aroostook and Washington  
 Hancock, Washington and Waldo  
 Penobscot and Piscataquis  
 Hancock, Waldo and Knox  
 Franklin, Somerset and Oxford  
 Hancock and Waldo

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\*The population figures are only approximate

The following unsupported preliminary suggestion might be a possibility also for the geographic jurisdiction of the various probate courts:

#1 - Cumberland County, Oxford County, and York County - 2 judges

The Cumberland Probate Court is now at least half-time and the judge feels that a full-time court is desirable. The Oxford and York Courts combined would provide another nearly full-time operation. If one considers additional time for research and improvement, then it becomes evident that these two judges would have full-time jobs. There seems to be some advantage in providing one district with two judges in this area where there is a larger volume of business. Thus, in the eventuality that one of the judges is absent for some reason the other could continue the court's business without any interruption.

#2 - Androscoggin, Kennebec, Sagadahoc and Lincoln Counties - 1 judge

According to the approximate time spent in existing courts, these four counties might add up to one full-time operation. The present probate courts are located in Auburn, Augusta, Bath and Wiscasset which would not seem to provide too great a problem with travel.

#3 - Waldo, Hancock, Washington and Knox Counties - 1 judge

These four present courts collectively require approximately 30 judicial man-hours weekly. The courts are presently located in Belfast, Ellsworth, Rockland and Machias. Since there is a substantial amount of traveling which would be required to cover these four counties, the additional traveling time combined with the court operations might amount to a full-time judgeship.

#4 - Somerset, Franklin, and Piscataquis Counties - 1 judge

The probate courts are presently located in Farmington, Skowhegan and Dover-Foxcroft. These three locations do not appear to present too great

a difficulty in traveling. The existing courts require approximately 35 hours of court time per week.

# 5 - Penobscot and Aroostook Counties - 1 judge

The present probate courts operate in Houlton and Bangor. The distance between the two locations is 116 miles. Presently, the Aroostook Probate Court is required to hold one session annually in Fort Kent. Sessions are also held at Van Buren and Caribou. These two courts presently utilize approximately 30 hours weekly of judges time.

Chief Probate Judge.

In order to provide greater administrative efficiency and increased coordination, it would seem desirable to provide a Chief Probate Judge. It might be considered whether the Chief Probate Judge should have the power to assign the justices and also to transfer them from court to court as necessary and appropriate.

6. Constitutional Amendment.

It ought to be pointed out that the Supreme Judicial Court in 1941 considered the propriety of introducing conditional legislation which would amend the constitution subject to a later referendum. Such legislation was thought to be clearly unconstitutional. See Opinions of the Justices (1941) 137 Me. 350-355.

A P P E N D I X

Bureau of Public Administration  
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MEMORANDUM

TO : Dana R. Baggett, Bureau Director

FROM : Paul C. Dunham  
Paul C. Dunham  
Supervisor Government Research

SUBJECT : Probate Court Preliminary Examination and Bureau of Public Administration  
Scope of Services

This memorandum will summarize the results of the various meetings in which we have recently participated relating to the probate court preliminary examination, LD \_\_\_\_\_ (SP 254), and a course of action for consideration.

The Probate Court Revision Committee established by the referenced Order was directed to study the feasibility of establishing a Probate District Court system with full-time judges to be appointed by the Governor and Council. The Committee is required to report to the Legislature by May 15, 1967. The study is to include at least: (1) a review of current work-loads as well as trends in the work of the 16 present probate judgeships; (2) translation of case load into manhours of work of the probate judgeships; (3) consideration of travel time and other factors implicit in full-time judgeships; and (4) administration, staffing, structure, organization and operation of the probate court system.

THE MAJOR CONSIDERATION is that the time and funds allocated to this project will not allow much more than an initial development of some facts. The portion of the order relating to the study of "administration, staffing, structure, organization and operation of the probate court system" is outside the scope of what we initially felt we might accomplish in three months time and is certainly beyond our capabilities in less than two months time. Moreover, in all our discussions we have indicated that within the serious strictures of time and funds we would not

be able to arrive at any conclusions concerning the feasibility of a districting system on the basis of such a meagre array of facts, although some of the facts might possibly point toward certain alternatives. If any conclusions are to be drawn from this data it would necessarily have to be done by the committee or others.

In considering the probate judgeships one would normally also want to consider in some detail the operations of the register of probate which is intimately linked with the probate judge and especially the administration of the 16 probate systems. Constitutionally, both officers are elected by the people of the counties in biennial elections for four year terms.

The administration of the system in terms of administrative procedures, rules, etc. is too broad a subject to be covered in such a cursory review and should be ignored except that the concept of Probate Rules of Procedure might be discussed in passing, i.e., the possibility of using the American Bar Associations newly established Model Rules for Probate Procedure.

Because the administrative arrangements would not be considered, one would not examine the operations of the register in terms of the use of card index systems versus the present volume-indexing system in use in some areas, the question of the necessity of keeping both an original and recorded copy of court papers in the same office, the use of microfilm, the security storage of copies, etc.

In order to attempt to measure the work-loads of the various courts (both current and past), one would probably need to know on a fiscal year basis the number of cases entered in each category of activities, the number of cases closed (if appropriate), the number of active versus inactive cases (if appropriate), the relationship between contested and non-contested cases, and the dollar value of the cases, particularly in the administration of estates and trusts.

Without detailed records it may not be possible to obtain an accurate portrayal of the manhours; however, if one can obtain from the judges a relatively accurate portrayal of his time and some estimation of the relative time required for various



types of cases, then one may correlate these two items to some extent.

The present staffing, structure and organization of the probate court system can probably be covered rather simply in order to comply with the order provided one does not attempt to probe into the relationships between the judge's official position and his private practice, the power structure, the relationship between the court and the remainder of the county officers and the remainder of the judicial system. However, in considering staffing one would have to consider the relationship which exists between the county commissioners in providing funds for secretarial and other staff and the probate judges. There can also be no analysis of the involvement of the probate judges in politics, if any exists.

In order to provide as much data as is possible in the short time available, the Bureau of Public Administration would propose that it proceed to undertake the following scope of services:

1. Review whatever information has been accumulated by the Maine Intergovernmental Relations Commission relating to probate courts.
2. Interview all sixteen probate judges by a competent person to obtain the following data:
  - a. An estimate of the amount of hours daily and weekly which the judge devotes to probate court duties;
  - b. An estimate of the relative amount of time necessary to handle various types of cases;
  - c. The judge's opinions as to the feasibility of full-time probate judges; advantages, disadvantages, any major problems;
  - d. The judge's opinions of the necessary salary for a full-time probate court judge;
  - e. An estimate of the number of cases which are routine and require virtually little time and those which are not routine and require substantial amounts of time;
3. Interview various attorneys (and perhaps others) connected with the probate court especially through their own probate work or as representatives of a trust institution personally by a competent person to attempt to seek the same types of information indicated in 2 above, where appropriate.

4. Review various earlier studies, if any, concerning the probate court system in Maine for their relevancy now; especially any reports pertaining to county government and any articles relating to the probate court system of Maine which might have appeared in the Maine Law Review;

5. Consider various literature about other probate jurisdictions for pertinency and apparent trends;

6. Consider the organization of the district court system in Maine for its potential benefit from the following points of view at least:

a. If a separate probate court system were established could the same divisions and districts used by the district court system or some combination thereof be utilized?

b. Would it be possible to attach the existing probate functions to all or some of the district courts as an added judicial function to be performed by that court?

c. Would it be possible to attach the existing probate function to some other court than the district courts for this purpose?

7. Determine if a separate system were indicated, what might be the appropriate number of full-time judges necessary to perform the function and where might they be located?

8. Determine if a separate system were not indicated, what distribution of the probate function might be made among existing courts?

## ABOUT THE BUREAU OF PUBLIC ADMINISTRATION

The Bureau of Public Administration was established by Act of the 102nd Maine Legislature in 1965 as an integral part of what is now the Political Science Department of the University of Maine at Orono. It strives to apply university resources and academic competencies in the service of Maine government, in the support of its public servants, and towards the solution of significant governmental problems of concern to Maine.

Its Functions include:

### CAREER DEVELOPMENT.

A variety of educational offerings are made available state-wide including —

**Certificate courses** of study and discussion offered over a period of several weeks, culminating in the award of a university certificate. Cooperating professional societies and associations often confer additional recognition.

**Seminars, Institutes.** Programs which undertake more intensive consideration of selected topics of interest to professional, administrative, and technical personnel, usually over a 3-4 day to two weeks consecutive period.

**Workshops.** Special one-day discussions are scheduled to serve the particular training needs of public employees who find such a format useful.

**Credit programs.** The Bureau encourages an interest in degree programs and academic offerings of the Political Science Department and university through publicity, promotional efforts, and person-to-person contacts.

### FACT-FINDING.

The Bureau conducts programs of study in state, local and intergovernmental problem areas of significance to the State of Maine and its subdivisions. These include:

**Special Projects.** Studies of major dimensions and scope involving fundamental governmental problems, especially dealing with public administration.

**Planning and Development.** Projects applying scientific methodology to the assistance of government agencies and instrumentalities in improving present performance and implementing new services.

**Continuing Government Research.** In addition to studies of a project nature, the Bureau is developing a continuing fact-finding program that will assist the operation of Maine government.

### PUBLICATIONS.

The Bureau publishes as a part of its career development and fact-finding activities. In addition, however, it publishes the *Maine Managers' Newsletter* and the results of independent academic study of interest to Maine public administrators.

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For further information contact Bureau of Public Administration, 29 North Stevens Hall, University of Maine, Orono 04473.