

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

Recommendations Regarding: Current Statutory Jurisdiction of Probate Courts

Type of Matter	Cite	Does any other court share jurisdiction?	Recommendation
Wills/Estates/Trusts			
Probate of wills, estate administration and related proceedings (for example, to order the perpetual care of a cemetery lot with estate funds). ⁱ	4 M.R.S. §251; §252; ⁱⁱ 18-C M.R.S. §1-302; §1-306.	<ul style="list-style-type: none"> Register has jurisdiction over informal probate proceedings. <i>See</i> Register's duties in chart below. Superior Court has concurrent jurisdiction over equitable relief and exclusive jurisdiction over jury trials. 	
Trusts	18-B M.R.S. §203; 18-C M.R.S. §1-302(1)(C). ⁱⁱⁱ	<p>Superior Court has concurrent jurisdiction, except:</p> <ul style="list-style-type: none"> Superior Court has exclusive jurisdiction over jury trials. 	
Adoptions and Name Changes			
Adoptions (and associated terminations of parental rights)	4 M.R.S. §251; 18-C M.R.S. §9-103 & §9-205; and 22 M.R.S. §4051.	<ul style="list-style-type: none"> District Court has exclusive jurisdiction if Home Court Act applies, <i>see</i> 4 M.R.S. §152(5-A). District Court concurrent jurisdiction to conduct reviews if Probate Court adoption is not final within 18 months. 	
Minor name changes	4 M.R.S. §251; 18-C M.R.S. §1-701; §9-308(3).	<ul style="list-style-type: none"> District Court has exclusive jurisdiction if Home Court Act applies, <i>see</i> 4 M.R.S. §152(5-A). District Court has jurisdiction to change minor's name as part of an adoption decree 	
Adult name changes	4 M.R.S. §251; 19-A M.R.S. §1051.	District Court has jurisdiction to change spouse's name in a divorce judgement	
Protective Matters Involving Minors			
Minor guardianships	4 M.R.S. §251; ^{iv} 18-C M.R.S. §1-302; §5-104(1).	District Court exclusive jurisdiction if Home Court Act applies, <i>see</i> 4 M.R.S. §152(5-A).	
Minor conservatorships	4 M.R.S. §251; ^v 18-C M.R.S. §1-302(3).	District Court exclusive jurisdiction if Home Court Act applies, <i>see</i> 4 M.R.S. §152(5-A).	
Issue or deny PPOs in child protection proceedings	22 M.R.S. §4031(1)(B).	<p>District and Superior Court have concurrent jurisdiction to issue/deny a PPO, but:</p> <ul style="list-style-type: none"> After the PPO petition is decided, District Court has exclusive jurisdiction. 	
Petitions for protection and care of unmarried noncitizens who are minors	18-C M.R.S. §5-104(1-A); 22 M.R.S. §4099-I.	<p>District Court has concurrent jurisdiction, except:</p> <ul style="list-style-type: none"> District Court has exclusive jurisdiction if Home Court Act applies, <i>see</i> 4 M.R.S. §152(5-A). 	
Maine Uniform Transfers to Minors Act proceedings	33 M.R.S. §1652(5); 4 M.R.S. §252.	<ul style="list-style-type: none"> Superior Court has concurrent jurisdiction over equitable relief District Court has exclusive jurisdiction if Home Court Act applies^{vi} 	

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Protective Matters Involving Adults			
Adult guardianships	4 M.R.S. §251 ; ^{vii} 18-C M.R.S. §1-302 ; §5-104(2-3) .	Superior Court has concurrent jurisdiction to determine the validity of a claim against the respondent or respondent's property or to resolve questions of title to the property	
Adult conservatorships	4 M.R.S. §251 ; 18-C M.R.S. §1-302 ; §5-104(2-3) .	Superior Court has concurrent jurisdiction to determine the validity of a claim against the respondent or respondent's property or to resolve questions of title to the property	
Issue writ of habeas corpus to release debtor with mental illness who is arrested for contempt in civil action	14 M.R.S. §5546 .	Justices of the Supreme Court or Superior Court have concurrent jurisdiction to issue the writ	
Other matters involving real estate			
Appointment of trustee to sell real property subject to contingent remainder or executory devise	33 M.R.S. §153-§155 .	Concurrent w/District & Superior Court <ul style="list-style-type: none"> • After trust created, exclusive (?)^{viii} jurisdiction lies in Probate Court 	
Other matters involving domestic relations or protection of persons			
Issuance of marriage license when caution has been filed	19-A M.R.S. §653 .	Exclusive to Probate Court	
Issuance of marriage license to a minor	19-A M.R.S. §652(7) .	District Court has exclusive jurisdiction if Home Court Act applies ^{vi}	
Parentage (when part of another probate proceeding, <i>e.g.</i> , estate administration or guardianship)	19-A M.R.S. §1834(3) ; §1838(4) ; §1839(1) .	District Court has exclusive jurisdiction if Home Court Act applies ^{vi}	
Petition for spousal or child support (by spouse, other parent, guardian or State)	19-A M.R.S. 1652(1) ; §1654 .	District Court has exclusive jurisdiction if Home Court Act applies ^{vi}	
Approval of contracts for support for life (persons not related w/in 3 rd degree)	4 M.R.S. §311 .	District Court has exclusive jurisdiction if beneficiary of contract is a minor and if the Home Court Act applies ^{vi}	
Emergency involuntary hospitalizations (blue papers) and Emergency dangerous weapon restriction orders	34-B M.R.S. §3863(3) ; and §3862-A(3) .	Concurrent w/District Court, Superior Court and justices of the peace—after emergency order issues, the case proceeds in District Court	
Consent to minor's abortion	22 M.R.S. §1597-A(2)(D) .	District Court has exclusive jurisdiction if Home Court Act applies ^{vi}	
Order for access to original birth certificate after adoption or parentage action	22 M.R.S. §2765(2-A)(C) ; §2766(3) .	District Court has exclusive jurisdiction if Home Court Act applies ^{vi}	
Enforcement of DHHS subpoena to investigate abuse or neglect of an adult	22 M.R.S. §3480(1)(2) .	Concurrent with District Court.	
Miscellaneous Matters			
Actions or proceedings on probate bonds of any kind payable to State of Maine or the Probate Court	18-C M.R.S. §8-209 .	Concurrent with Superior Court.	

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Allowance of claim against a county sheriff (to institute suit against sheriff's bond)	30-A M.R.S. §431.	Probate Court may “allow[the] claim” or the injured party may bring a civil action, presumably in District or Superior Court	
Other Probate Judge Duties			
Supervise register and report to county commissioners: <ul style="list-style-type: none"> breach of register's bond; register's inability to perform duties of office; or register's neglect of duties of office. 	18-A M.R.S. §1-305 ; §1-507 ; §1-508.	Exclusive duty of Probate Judge.	
Name someone to perform register's duties in case of register's breach of bond or inability or neglect of duties	18-C M.R.S. §1-507 ; §1-508.	Exclusive authority of Probate Judge.	

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

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

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

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

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

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

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

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

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Recommendations regarding: Statutory Duties and Authority of Register of Probate

Task	Cite	Recommendation
Maintain probate court records and files, including docket of probate cases and the recording of wills	18-C M.R.S. §1-305; §1-503.	
Grant or deny application for informal probate after making statutory findings	18-C M.R.S. §1-307; §3-102; and §3-301 to §3-305.	
Grant or deny application for informal appointment of personal representative after making statutory findings	18-C M.R.S. §1-307; §3-103; and §3-307 to §3-309.	
Provide copies of wills, accounts, inventories, petitions and decrees (and remit all fees paid to the county)	18-C M.R.S. §1-501(5).	
Act as “an auditor of accounts” when requested by Probate Judge	18-C M.R.S. §1-503(2).	
Certify wills, PR appointments and elective share petitions involving real estate to Registry of Deeds	18-C M.R.S. §1-504.	
Notify all beneficiaries within 30 days after a will has been probated	18-C M.R.S. §1-505.	
Assist parties in drafting applications, petitions or sworn statements: <ul style="list-style-type: none"> • for informal probate proceedings; • to close an uncontested decedent’s estate; • for change of name; and • for guardianship of minors. 	18-C M.R.S. §1-510(2).	
Establish, with approval of county commissioners, fees for approved blanks, forms and schedules	18-C M.R.S. §1-511.	
Account for all fees received and transfer them to the county monthly	18-C M.R.S. §1-603.	
Mail to the PR a copy of a demand for notice of filings or orders related to an estate	18-C M.R.S. §3-204.	
Determine sufficiency of a PR bond and authorize reduced bond amount in certain circumstances	18-C M.R.S. §3-604	
Informal appointment of a special administrator prior to appointment of a PR or if PR is terminated	18-C M.R.S. §3-614	
Issue certificate that PR appears to have fully administered an estate	18-C M.R.S. §3-1007	
Filing certificate of adoption with State Registrar of Vital Statistics after judge issues adoption decree	18-C M.R.S. §9-304(9)	
File certificate of annulment with State Registrar of Vital Statistics after court annuls an adoption decree	18-C M.R.S. §9-315(3)	

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