

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

At the Nov. 1, 2021 meeting, Commission members proposed a model for a new Probate Court system with full-time judges, which they planned to discuss and possibly vote whether to recommend during the Nov. 15, 2021 meeting. The proposal, which has been edited for clarity, is outlined below.

Proposed Model

Items in **[bracketed red text]** were not fully decided at the Nov. 1, 2021 meeting and are included in the list of “outstanding issues” on the next page of this document.

Create a Probate Court within the Judicial Branch as a state trial court distinct from the District Court and Superior Court, with [8] full-time, appointed judges, who have statewide jurisdiction **[but are each assigned to a specific geographic region]**. The new state Probate Judges will be supported by 2 law clerks **[as well as certain new Judicial Branch staff]**. State Probate Court proceedings will be held in existing county Probate Court courtrooms **[leased from the counties by the Judicial Branch]**. To the extent necessary in certain counties, state trial court courtrooms may also be used to conduct state Probate Court proceedings. Emergency matters appearing on the state Probate Court docket will be prioritized and addressed expediently, to the same extent that those matters are prioritized under the existing county Probate Court system.

Preserve the county Register of Probate system, through which the elected county registers and their staff serve as county officers and employees. Registers will retain their existing statutory duties and authorities, including but not limited to their roles in docketing and scheduling Probate Court proceedings, assisting parties in filling out Probate Court forms, and performing quasi-judicial functions in informal probate matters. State Probate Court matters will continue to be entered into the ICON electronic case management system **[, with a possible long-term goal of developing compatibility between the state Probate Court case management system and the case management system employed by the other courts within the Judicial Branch]**. To increase uniformity across the State, the Maine Rules of Probate Procedure should be amended to provide that the Maine Advisory Committee on Probate Rules will adopt, and update as necessary, a manual for use by county Registers in processing Probate Court matters.

The new Probate Court system will be thoroughly reviewed 3 years after it has been implemented by **[a commission established in the legislation creating the new system]**. The review must include **[, at a minimum,]** an evaluation of whether the number of supported state Probate Judge positions is appropriate and whether additional steps should be taken to enhance the compatibility of the state Probate Court system with the other courts within the Judicial Branch.

Staff Notes:

- The second-to-last sentence in the first paragraph addresses a very specific detail that may not need to be included in the Commission’s proposed model; instead, the availability of state court courtrooms could be discussed in the body of the report. We defer to the Commission on this issue.
- Although not detailed in the draft language developed during the meeting on Nov. 1, it was staff’s understanding that registry staff, in addition to the county Registers, will remain within the county system and will continue to perform case docketing and scheduling tasks for the new state Probate Court. Please let us know if this was an incorrect interpretation of the discussion.

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Outstanding Issues

Compiled from relevant “deeper dive” questions and other items discussed during Nov. 1 mtg.

Issue	Recommendation (if any)?
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Issues in **[bracketed red text]** in proposed model

1. Is 8 the appropriate number of new state Probate Court Judges?

Note: If the Commission does not believe it has sufficient information to recommend a specific number of judges, several alternatives are available, including recommending that the Judiciary Committee calculate the number of judges after gathering and reviewing certain information specified by the Commission.

2. Should each judge each be assigned to one of the [existing court regions](#) or to other specified geographic regions? Or, should the Chief Justice be authorized to make this determination?

3. Additional Judicial Branch Staff:

- a. What new support staff (beyond law clerks) should Probate Court Judges have within the Judicial Branch?
 - i. Judicial administrative assistant(s)?
 - ii. Judicial marshal(s)?
 - iii. A facilities manager?
 - iv. IT staff person?
- b. Should any new court clerk positions be created?

4. Should the Judicial Branch lease the existing Probate Court courtroom space from the counties?

Query: Is that space sufficient? For example, are there chambers? Is this something to address in the report?

5. Does the Commission recommend a long-term goal of making the two case management systems compatible? Or, should this be something that is considered as part of the 3-year evaluation?

6. Does the Commission have recommendations regarding the composition of the ?

7. Are there specific items the 3-year evaluation should address, other than the appropriateness of the number of Probate Court judges?

Compare item 15 below.

Other outstanding issues raised during discussion

8. Probate Court fees:

- a. Who should be responsible for setting the fees?
- b. Should all fees be retained by the counties? Or, should only certain categories of filing fees—*e.g.*, for informal & uncontested matters—be retained by the counties?

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Issue	Recommendation (if any)?
9. How will the following be selected, who will pay their fees, and what rate should be paid? <ol style="list-style-type: none">Court-appointed attorneys;Court-appointed guardians <i>ad litem</i>; andCourt-appointed visitors.	
10. May state Probate Court judges be cross-assigned to preside over District or Superior Court dockets? <i>Cf.</i> 4 M.R.S. §121 ; §157-C .	
11. Should the state Probate Court have a Chief Judge?	
12. Should recommendations be made for other facilities issues, including: <ol style="list-style-type: none">Entry screening for state Probate Courts / registries?Accessibility of state Probate Court courtrooms / registries?	
13. Should any portion of the current county Probate Court jurisdiction be re-allocated to the District or Superior Court? If yes: <ol style="list-style-type: none">Which items are recommended for transfer? Where?How does this recommendation affect the recommended number of Probate Judges?Does the resulting increase in District or Superior Court jurisdiction lead to recommendations for increased District or Superior Court judges/justices or staff?	
14. How should the transition from the existing county Probate Court system to a state Probate Court system be accomplished? Should the Commission recommend a specific timeline and schedule for implementation?	
15. Should additional recommendations be made at this time for further changes to the Probate Court system— <i>i.e.</i> , a phased-in approach?	
<i>Note:</i> As an alternative to establishing broader changes to the Probate Court system to be implemented in phases, it was suggested that the Commission identify the facets of the new Probate Court system that should be evaluated after 3 years and for which recommendations for reform can be made at that time.	
16. Other issues?	