



February 9, 2022

Sen. Anne Carney, Chair
Rep. Thom Harnett, Chair
Joint Standing Committee on the Judiciary
Maine State Legislature
100 State House Station
Augusta, ME 04333

Re: ***LD 1950 An Act To Implement the Recommendations of the Commission To Create a Plan To Incorporate the Probate Courts into the Judicial Branch***

Dear Sen. Carney, Rep. Harnett, and Members of the Judiciary Committee:

On behalf of the Board of Governors of the Maine State Bar Association, we submit this letter neither for nor against LD 1950. While MSBA is not taking a position on this bill, given its importance to our members, we conducted a survey of our members about the proposal, and the results of that survey are included below. We hope this information is helpful to the Committee as it deliberates this issue.

About us. The Maine State Bar Association is a statewide trade association chartered in 1891 by the Maine Legislature. The Association currently represents approximately 3000 attorneys in the State in both public service and private practice. The Association maintains 28 separate sections covering nearly every field of law practiced in Maine, from Administrative Law to Workers' Compensation Law.

Discussion. In June of 2021, the Maine Legislature passed legislation to establish the Commission to Create a Plan to Incorporate the Probate Courts into the Judicial Branch. *Resolve 2021, c. 104*. The Commission was charged with evaluating how Maine's probate court system should transition to the Judicial Branch. The Commission was not charged with evaluating whether such transition should occur.

The Plan put forth by the Commission in its [final report](#) recommends that the current county probate court system be fully incorporated into the State Judicial Branch through a deliberate, multi-step process. In the initial phase, the State would appoint nine full-time Probate Judges as a separate division within the Judicial Branch, while retaining the current county registries of probate, including elected probate registrars. Over time, the goal would be to fully transition to a state probate court system within the Judicial Branch.

In order to understand how MSBA's members feel about the Commission's proposal, the Association surveyed its members. We asked members about each part of the Commission's proposal. The survey questions are noted below, and respondents were asked whether they "strongly agree," "agree," "disagree," "strongly disagree," or are "unsure."

1. The county probate court system should be fully incorporated into the state Judicial Branch through a multi-step process over the next 5 years, subject to review.
2. As part of a phased-in process to move the probate court system into the Judicial Branch, phase one of the transition should include replacing Maine's elected, part-time county probate judges with 9 full-time appointed judges within a separate branch of the Judicial Branch.

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3. As part of a phased-in process to move the probate court system into the Judicial Branch, phase one of the transition should retain Maine's current system of elected county registrars of probate along with their office staff.
4. Responsibility for establishing the qualifications of court-appointed attorneys, guardians ad litem and visitors in probate proceedings and for paying these professionals when they are appointed at public expense should be borne by the State and not the county governments.

In total, 195 members of the bar responded to the survey, 147 of whom described themselves as practitioners within the probate court system. Overall, there was broad support for the Commission's proposal. For instance, nearly 70 percent of respondents replied either strongly agree or agree to Question 1 regarding fully incorporating the probate court system into the state Judicial Branch. We have provided a full reporting of survey results – including a breakdown of responses by those who practice in probate court vs. those who do not – as an attachment to this letter.

Members were able to submit open-ended comments as part of their survey responses. The themes that were mentioned most often in the comments are as follows:

- The need for one uniform probate court system across the state instead of a system with county-by-county differences
- A preference for appointed judges vs. elected judges
- A desire for probate judgeships to be full-time positions and to not allow probate judges to practice law in addition to serving as a judge
- A recognition that current registrars and their staff have institutional knowledge that will be important to maintain during the transition
- A concern about the current backlog in the Judicial Branch impacting the ability of the judiciary to take on probate as a third branch

Conclusion. In closing, we acknowledge that the debate over how Maine's probate court system should operate is longstanding. In 1967, Maine voters supported an amendment to the Constitution of Maine calling for a transition of the probate court system will full-time judges. In the decades since, there have been numerous studies and commissions addressing probate court reform; however, legislation establishing a probate court system with full-time judges has never been enacted.

Given the time and attention given to this matter over the course of more than half a century, it does seem that the time has come for the Legislature to choose a path, and then proceed. We hope the survey results included here are helpful as you make this decision.

Sincerely,



Frank Bishop
President, Board of Governors

cc: Angela Armstrong, Executive Director
Rachel Okun, Chair, MSBA Legislative Committee
James I. Cohen, Verrill Dana, LLP
Clara McConnell, Verrill Dana LLP



**LD 1950, Probate Court Transition
MSBA Member Survey
February 8, 2022**

Commission Recommendation	Probate Practitioner					Non-probate Practitioner					Total				
	SA	A	D	SD	U	SA	A	D	SD	U	SA	A	D	SD	U
The county probate court system should be fully incorporated into the state Judicial Branch through a multi-step process over the next 5 years, subject to review.	33.3%	31.3%	12.9%	15.7%	6.8%	66.7%	14.6%	4.2%	10.4%	4.2%	41.5%	27.2%	10.8%	14.3%	6.2%
As part of a phased-in process to move the probate court system into the Judicial Branch, phase one of the transition should include replacing Maine’s elected, part-time county probate judges with 9 full-time appointed judges within a separate branch of the Judicial Branch.	40.8%	27.2%	14.3%	10.9%	6.8%	58.3%	20.8%	8.3%	8.3%	4.2%	45.1%	25.6%	12.8%	10.3%	6.2%
As part of a phased-in process to move the probate court system into the Judicial Branch, phase one of the transition should retain Maine’s current system of elected county registrars of probate along with their office staff.	35.4%	34.0%	10.2%	9.5%	10.9%	16.7%	33.3%	18.8%	8.3%	22.9%	30.8%	33.8%	12.3%	9.3%	13.8%
Responsibility for establishing the qualifications of court-appointed attorneys, guardians ad litem and visitors in probate proceedings and for paying these professionals when they are appointed at public expense should be borne by the State and not the county governments.	48.3%	29.9%	3.4%	4.1%	14.3%	45.8%	35.4%	2.1%	2.1%	14.6%	47.7%	31.3%	3.1%	3.6%	14.3%

SA = Strongly Agree D = Disagree U = Unsure
A = Agree SD = Strongly Disagree