



Written Testimony of Jess Maurer on Behalf of  
the Maine Council on Aging  
to the Joint Standing Committee on Judiciary

**In Favor of LD 1950 – An Act To Implement the  
Recommendations of the Commission To Create a  
Plan to Incorporate the Probate Courts into the  
Judicial Branch**

Submitted in Writing on February 9, 2022

Greetings Senator Carney, Representative Harnett, and members of the Joint Standing Committee on Judiciary:

My name is Jess Maurer and I'm the Executive Director of the Maine Council on Aging (MCOA). The MCOA is a broad, multidisciplinary network of over 120 organizations, businesses, municipalities, and older community members working to ensure we can all live healthy, engaged and secure lives with choices and opportunities as we age at home and in community settings. I am testifying in favor of LD 1950.

LD 1950, if passed, will have at least two important outcomes. First, it will improve the delivery of high quality Probate Court services for Maine's people, especially older Mainers, and second, it will help keep Maine property taxes from increasing even more—a result that is especially important to older Mainers hoping to remain in their homes as they age. We appreciate the thoughtful work of the Commission in making recommendations to address concerns with the current Probate Court system.

With luck, most Mainers won't ever need to step foot inside a courthouse. However, increased age brings with it a higher likelihood of engagement with one court – the Probate Court. While many older adults live full and active lives, many will experience the loss of a spouse or other family member and need to interact with the Probate Court system around a will or intestacy. Others who experience cognitive decline, and the people who care for them, may become involved with the Probate Court around the need for guardianship or conservatorship. Because of the jurisdiction of the Probate Court, this may be the only part of the legal system an older adult may interact with during a lifetime.

Probate courts are currently 16 separate independent county courts supported by property tax revenues—a direct tax burden on homeowners. The integration of the Probate Courts into the Judicial Branch will shift that funding. The Judicial Branch courts are integrated and administratively managed courts overseen by the Chief Justice of the Supreme Judicial Court and the Legislature and supported by income and other tax revenue. The tax burden is spread among individual and business taxpayers.

In assessing issues around guardianship and conservator matters, court visitors, attorneys and guardians ad litem may be involved. A Court Visitor assesses an individual's level of function, explains legal rights and determines whether the individual wishes to contest and recommend

whether an attorney should be appointed. Visitors do not have formal training for their role as the “eyes and ears” of the court. Most Visitors are trained by the 16 different elected Registers in each County but without common standard or a curriculum. Counties have not traditionally provided funds to recruit, train, and monitor the performance of visitors. To promote greater consistency and reliable high quality Court visitor service, the Commission recommended that the Judicial Branch would be involved in improving the visitor function and all costs including fees for the visitor’s services would be paid through the State general fund.

Similarly, the performance of guardians and conservators is not uniformly monitored. A uniform system is needed to ensure quality of care and safety of individuals subject to guardianships or conservatorships. New annual reporting requirements will require more court staff in all probate courts and more instances in which visitors will be needed to determine whether protective action or changes in the care plan are necessary. County budgets will not be able to meet these challenges; the Judicial Branch general fund funding would be better able to respond.

In the current system, Probate judges do not appoint attorneys for every indigent person facing a guardianship, conservatorship, or other protective arrangement even though the partial or full loss of liberty is at stake in every case. In some counties finding qualified attorneys to represent these individuals is difficult especially since their compensation is very low. The Commission recommended that the Maine Commission on Indigent Legal Services recruit, qualify, and pay attorneys appointed in Probate cases. This change would increase the likelihood that persons facing a protective arrangement would be able to access quality legal services. The costs would then shift from the county to the State General Fund.

Probate judges are the only elected judges in our judiciary. They have no chief judge and do not receive any formal training for the judge role. Their salary and benefits vary by county. Probate judges may also practice law in other probate courts as well as all judicial branch courts, and most do because they are not paid enough as judges. This creates the ethical appearance of impropriety and certainly does not foster public confidence that justice will be served, especially when opposing counsel is a probate judge appearing in a case before another judge. Probate Judges also set their own Probate Court hearing schedule, which creates access issues.

The Commission recommended the addition of a Probate Court (like the existing District and Superior Courts) in the Judicial Branch. It recommended a staged but full shift of the Probate judge function from the Counties to the State Probate Court. When fully integrated this Court would have nine judges servicing sixteen counties. Judges in the Judicial Branch are full time professionals appointed by the Governor and are not allowed to have a private law practice. This plan would be implemented in stages over the next biennium. This shift to the Judicial Branch would relieve the counties from the responsibility to fund salary and benefits for probate judges.

On the other hand, the Commission recommends that Registers of Probate and their staff remain at the county level. These public servants are generally recognized as providing excellent service to Maine people who call or visit the probate court. They provide necessary probate forms and answer questions about how to fill them out. They also explain the process needed to obtain a particular service that the individual desires. With this help and the authority given to the Register by the various iterations of the Probate Code it is possible for an individual to successfully complete a probate need without an attorney. Filing and completing the probate of an uncontested will is but one example. High consumer satisfaction with the Register function is evident. The Commission recommended no changes to the office of Register at this time. It also

recommended the appointment of a successor Commission to review the need for any further changes to the Probate system.

We see significant benefits for all Mainers, and in particular older adults in Maine, through implementation of the Recommendations of the Commission and ask for your support for the passage of LD 1950.

Thank you.  
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